

ISTob

**Brunei Darussalam
“Legal Strategies to Reduce
Tobacco Caused Death and
Disease”**

**Prof. Prakit Vathesatogkit
Mahidol University
ASH Thailand
July 13, 2002**

Speaker's experience

1. Lobby for executive & legislative ban on tobacco advertising 1988 - 1989
2. Involvement in trade dispute negotiation with USTR & GATT 1989 - 1990
3. Drafting and lobbying for the Tobacco Product Control Act 1989 - 1992
4. Lobby for “Tax for health” policy 1993

5. Drafting & lobbying for ingredient regulation 1993 - 2000
6. Drafting of health warning regulation 1989, 1992, 1997
7. Lobbying for a dedicated tax on alcohol & cigarette for health promotion 1996 - 2001
8. A decade of experiences on enforcement of the Tobacco Product Control Act.

**Legislative Action to Combat the
World
Tobacco Epidemic
Ruth Roemer
World Health Organization
(1993)**

The “Scream Test”

- What does the tobacco industry scream about?
- What does it keep quiet about?
- What does it actively promote?

Blood curdling screams

- Significant price rises
- advertising bans
- restrictions on smoking
- BIG, nasty pack warnings
- generic packaging
- Ingredient disclosure

Things it supports

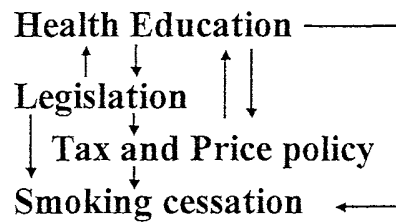
- School education programs
- small, general pack warnings
- voluntary codes on advertising
- “don’t smoke, children!” signs in shops
- 18 plus sticker

Do what they (the tobacco industries) oppose, not what they agree to

Major component of tobacco control

- Health Education
- Legislation
- Tax and Price policy
- Smoking cessation

Major component of tobacco control



Legislation two main categories (WHO)

1. Those leading to changes in practice among those engaged in the manufacture, promotion and sale of Cigarettes (Supply side)
2. Those leading to Changes in practice among smokers. (demand side)

1. Supply side

- 1.1 Control of advertising, sponsorship, and promotion
- 1.2 Health warning and statements of tar and nicotine contents.
- 1.3 Control of harmful substances
- 1.4 Restriction on sales to adults
- 1.5 Economic strategies

2. Demand side

- 2.1 Tax and price policies
- 2.2 Control of smoking in public places and public transport
- 2.3 Control of smoking in workplace
- 2.4 Preventing young people from smoking
- 2.5 Health education

13

The Tobacco Products Control Act (1992)

- Article 4. Bans sales to persons under age 18
- Article 5. Bans sales by vending machines
- Article 6. Bans free samples, exchanges, and gift of cigarettes
- Article 7. Prohibit giving cigarettes for commercial purposes.
- Article 8. Prohibit all tobacco advertising in all medias

14

- Article 9. Prohibits advertising of products with same name as tobacco products
- Article 10. Bans production, import, advertising and sales of products that imitate tobacco products
- Article 11. Requires disclosure of the ingredients of the product
- Article 12. Labeling requirement on tobacco product, including health warning.

15

Nonsmokers Health Protection Act 1992

- Category 1 totally smoke-free
 - Public buses, taxis, Cinema hall etc.
- Category 2 -totally smoke-free. Except private rooms
 - Schools, art halls, libraries etc.
- Category 3 -totally smoke-free. Except designated smoking areas
 - Hospitals, department stores etc.
- Category 4 - smoke-free area at least 75%
 - restaurants

16

1.1 Control of advertising, sponsorship, and promotion

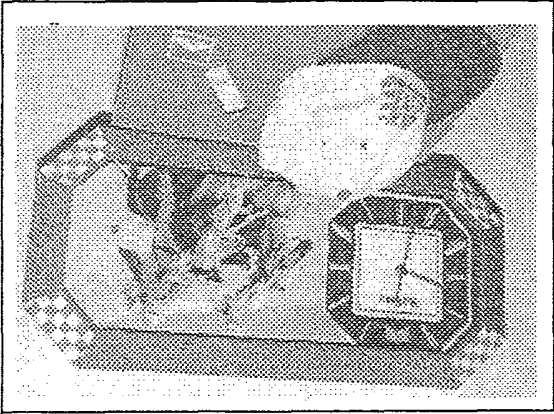
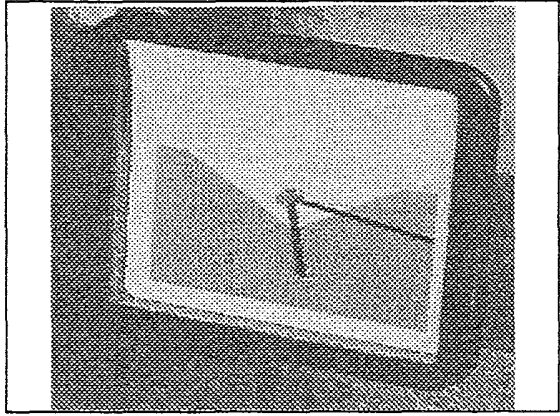
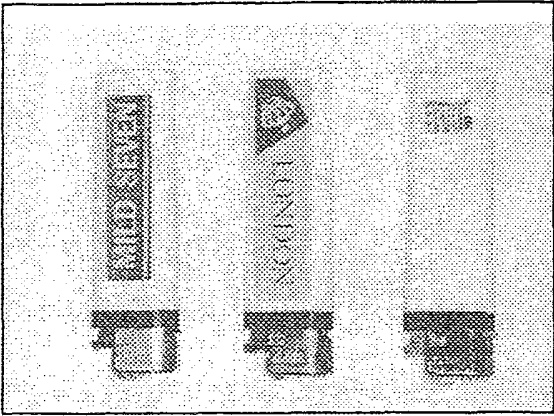
- Legislation is a must
- Partial ban is useless
- Total ban must specifically spell out
 - all forms of indirect advertising
 - point of sale advertising and promotion

17

In Thai law:

Advertising = any act that enables people to see, hear or recognize the wording or sign for commercial purposes

18



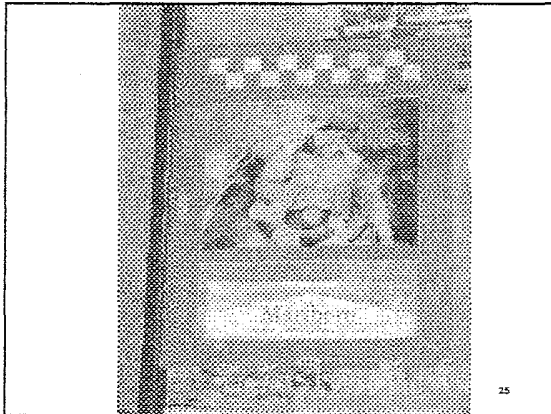
TTC Promotion



TTC Promotion



TTC Promotion



25

Philip Morris Asean Arts Award

“Since countries in this region have banned cigarette advertising, we will use art sponsorship to promote our products”

How can we ban sponsorship by corporate name?

26

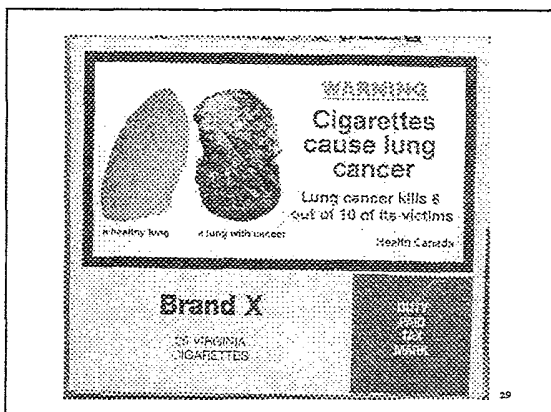
1.2 Health Warning and statement of tar and nicotine content

- Large letter, few words (T)
- On the back and front of packages (T)
- On the top of the packages (T)
- White letter on black background (T)
- Specify size of letter, size of warning (T)
- Graphic or picture
- Generic packaging
- Posting of health warning at point of sale

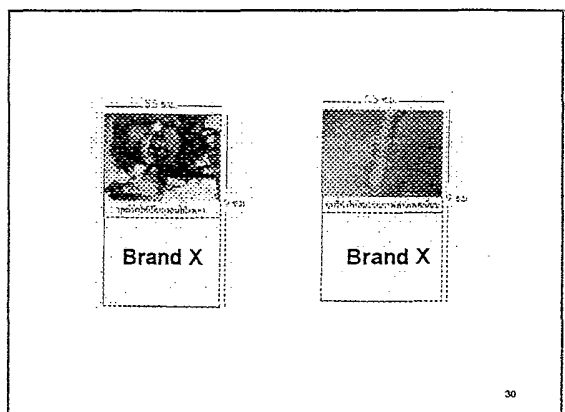
27



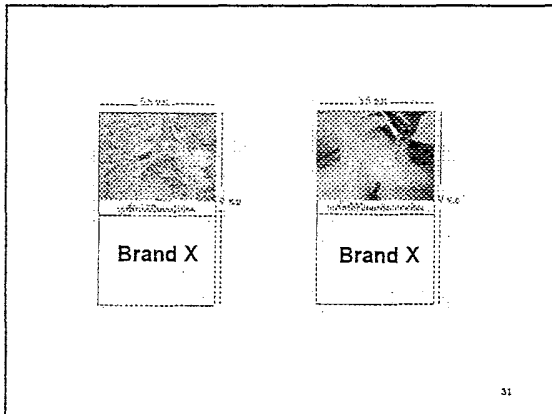
28



29



30



31



32

Plain (Generic) Packaging

- Reduces the appeal, imagery and attractiveness of the package to young people
- Reduce the impact of point of sale displays (marketing tool to young people)
- Permits the public health warning to be prominently displayed

33



34

- **The implementation of plain packaging legislation could result in a dispute settlement case under the WTO-TRIPS agreement**

Dr. Derek Yach

35

TRIPS agreement

Article 64 : Members of WTO may obtain Compensation when another member's measure has the effect of nullifying or impairing a benefit ensured under the agreement

36

2002 The National Committee for the Control of Tobacco Use backed down on tobacco control advocate's proposal for regulation on "generic packaging" on tobacco products.

37

Ministry of Commerce's representative :

"(We) do not want confrontation with the US Trade Representative and do not want to go to WTO for dispute settlement, it's not worthwhile"

38

Tar and nicotine content
Light and Mild cigarette
Low tar and Nicotine
Lists of toxic constituents printed on packages
Inserted leaflets on health effect of smoking

39

- Smoking Kill
- Smoking causes cancer
- Smoking causes heart disease
- Smoking damages the health of those around you
- Smoking causes impotence

40

1.3 Control of harmful substance

- Set maximum tar and nicotine levels
- Government power to inspect and approve tobacco products
- Ingredient disclosure regulation

41

1995-2002

- Thailand's Cigarette Ingredient disclosure dispute.
Ministerial Regulation requiring cigarette manufacturer to disclose their cigarette ingredients in 1998

42

Result : the ingredient submitted by cigarette companies have to be kept secret and can not be disclosed to the public.

MOPH : Foreign cigarette companies claim "violation of TRIPS"

43

1.4 Restrictions on sales to adults

- Banning sales in hospitals (T)
- Banning sales in school and University (T)
- Banning sales in government building

44

1.5 Economic strategies

- Tobacco subsidies
- Tobacco trade policies
 - National - US Trade Act. Section 301
 - Regional - Asean Free Trade Area (AFTA)
 - North American Free Trade Area (NAFTA)

45

- Global - World Trade Organization (WTO)
- General Agreement on Tariffs and Trade (GATT)
 - Trade-Related Aspects of Intellectual Property Rights (TRIPS)
 - Agreement on Technical Barriers to Trade (TBT)
 - General Agreement on Trade in Services (GATS)

46

1994 the ASEAN Free Trade Area (AFTA)

Objectives : - liberalizing trade
 - ↑competitiveness of ASEAN products

the CEPT scheme : a tariff reduction scheme for trade within the region will reduce tariff rates to 0-5% by 2003

(CEPT = Common Effective Preferential Tariff)

47

AFTA's CEPT Scheme

Year	Import Tax (%)
1990	30.5
1995	22.5
1996	20.0
1998	15.0
2000	10.0
2002	5.0
2003	0

Import Tax from non-ASEAN countries = 60%

48

Results : - Migration of Transnational Tobacco
Companies to ASEAN countries

- Price war between TTM & TTCs

Advocate :

- Exclude tobacco from - AFTA trade list

49

Why Special rules in international trade should be applied for tobacco products:

- Tobacco products harm public health and the global economy
- Liberalization of trade in tobacco products stimulate tobacco consumption and harms public health.

50

- Major multilateral trade agreement do not adequately protect tobacco control measures from trade-based challenges.
- There is precedent in other international agreements for provision to restrict trade in particularly harmful products such as tobacco.

Campaign for Tobacco-Free Kids

51

2.1 Tax and Price Policies

Tax increase – a win - win situation

- ↓ consumption (exp. young people)
- ↑ government revenue

52

“Of all the concerns, there is one-taxation-that alarms us the most. While marketing restrictions and public and passive smoking (restrictions) do depress volume, in our experience taxation depresses it much more severely.”

[1985 Philip Morris document]

53

Excise tax, cigarette sales and tax revenue

Year	Tax(%)	Sales (million Pack)	Tax revenue (million of Baht)
1992	55	2035	15,438
1993	55	2135	15,345
1994	60	2328	20,002
1995	62	2171	20,736
1996	68	2463	24,092
1997	68	2415	29,755
1999	70	1810	26,708
2000	71.5	1826	28,110
2001	75	1727	29,627

54

Achieving a dedicated tax for Health Promotion

- 1999 - Thai Cabinet :
- liberalize the alcohol market
 - direct the MOF to find ways to reduce the impact of market liberalization.
- “moral counter claim”
- approved setting up a Health Promotion Office (2000)
 - approved the Health Promotion Bill

55

Thai Health Promotion (Thai Health)

An autonomous state agency under the supervision of the Prime Minister, funding health promotion related activities with 2% of alcohol and cigarette taxes

56

MOPH Smoking

control budget = 12 million Baht/year

ASH budget = 3-5 million Baht/year

Thai Health Promotion

Foundation's budget = 1,400 million Baht/year (US \$ 35 million)

57

2.2 Smoke-free public places and public transport

2.3 Smoke-free work places

- to minimize and eliminate the risk of passive smoking
- conveying the idea that smoking is unhealthy & socially unacceptable.
- provide support for smokers who want to quit
- to introduce a type of smoking control that has wide public support
- Reduce the risk of fire

58

Bans of smoking in air conditioned restaurants

1992 50% of the area

1997 75% ”

2002 100% ”

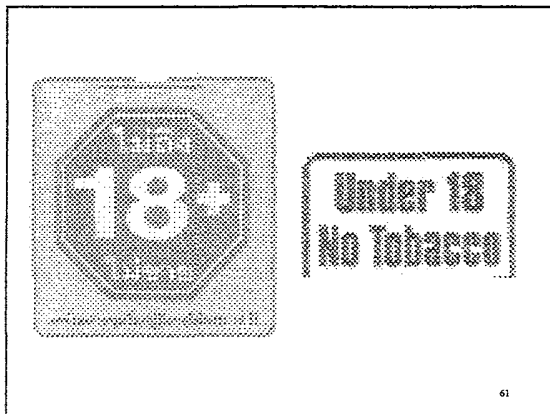
Bans of smoking in pub&nightclubs using the same strategy?

59

2.4 Preventing young people from smoking

- Prohibition of sales to minors (T)
- Bans sales by vending machines (T)
- Bans sales in school and University (T)
- Bans sales of single or loose cigarettes (T)
- Bans sales of smokeless tobacco products (T)
- Bans smoking scene on TV (T)
- Bans smoking by minors
- Posting of signs at points of sale stating that sales to minors are illegal

60



61

2.5 Health education

- General statutory requirements (health warning) (T)
- Requirements for health education on smoking in schools
- Public information on smoking cessation (PSA)
- Funding for health education

62

Remaining issues

- Amend existing legislation to deal with.
 - Indirect advertising
 - Point of sale advertising
- Ingredient disclosure to public
- Smuggled cigarettes
- Trans border- satellite - internet advertising
- Duty free cigarette
- Tobacco subsidy
- Litigation
- How to exclude tobacco from international trade law

63

Litigation

- Product liability suits
- Workplace suit
- Suits resisting exploitation by transnational tobacco companies
- Cases enforcing advertising bans
- Lawsuits to prevent illegal sales to minors
- Lawsuits brought by the tobacco industry.

64

Conclusion

- Comprehensive legislation is essential
- Strict enforcement is needed
- Do what they oppose, not what they agree to.
- How to exclude tobacco from international trade agreement?

65

Will Brunei bans import and sales of tobacco products ?

66