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Abstract

The enforced opening of Thailand's cigarette market to imports in 1990 has become a *cause celebre* in debates about the social and health impacts of trade agreements. At the instigation of leading US-based cigarette manufacturers, the US Trade Representative (USTR) threatened trade sanctions against Thailand to compel the government to liberalize its domestic cigarette market. Thailand's challenge to the USTR led to referral to General Agreement on Tariffs and Trade (GATT) arbitration. While GATT ruled in favour of the USTR on market access, it also found that Thailand could subsequently enact non-discriminatory tobacco control regulation without contravening the GATT agreement. This article contributes to existing literature via its analysis of tobacco industry documents that highlight not only USTR responsiveness to lobbying from tobacco corporations, raising concerns about the drivers of globalization and the limited protection afforded to public health concerns in trade agreements. Significantly, the documents also indicate that USTR support of the tobacco industry was not unconditional, being subject to wider pressures of global trade negotiations. Such qualification notwithstanding, however, ongoing governmental willingness to advance the international interests of tobacco corporations remains a concern from a public health perspective, particularly given the failure of the US to ratify the World Health Organization's Framework Convention on Tobacco Control.

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Keywords

Bilateral trade agreements, FCTC, globalization, Thailand, tobacco industry, trade liberalization, USCEA, USTR

Introduction

Increasing tobacco consumption and associated mortality in developing countries (Mathers and Loncar, 2006) reflect the dramatic global expansion of transnational tobacco corporations (TTCs) in recent decades. This shift has been driven by trade liberalization (Chaloupka and Nair, 2000; Taylor et al., 2000), the privatization of state-run tobacco monopolies (Gilmore et al., 2009) and by the active support of 'home' governments in the US and UK (Durbin and Waxman, 2003; US GAO, 2003b).

The dispute over access to Thailand's tobacco market represents a particularly significant case study of trade liberalization and the expansion of TTCs. At the instigation of leading US-based cigarette manufacturers the US Trade Representative (USTR) threatened trade sanctions under Section 301 of the 1974 Trade Act against four Asian countries in the 1980s if they failed to remove import restrictions on tobacco products. Gaining access to the markets of Japan (Lambert et al., 2004), South Korea and Taiwan (Wen et al., 2005) was achieved comparatively easily. Thailand, however, mounted a substantive challenge to the USTR (Chaloupka and Laixuthai, 1996) that was ultimately referred to General Agreement on Tariffs and Trade (GATT) arbitration.

Thailand based its opposition on GATT's health exemption proviso, Article XX(b) (GATT, 1990), arguing that cigarette consumption would increase if the market were opened to imports and thereby constituted a risk to public health. This strategy required demonstration that market restrictions were both necessary to prevent increased smoking prevalence, and were the least restrictive option available (Eckhardt, 2002). The GATT panel rejected Thailand's claims, ruling that existing restrictions violated non-discrimination obligations under the agreement. Crucially however, the panel also ruled that comprehensive tobacco control legislation was permissible if applied in a non-discriminatory manner to foreign and domestic manufacturers (GATT, 1990), and allowed that excise tax and import duty could be levied on imported cigarettes.

The politics of the dispute have been analysed (Chitanondh, 2001; Vateesatokit, 2003), its implications for international tobacco control contested (Bettcher and Shapiro, 2001; Callard et al., 2001) and the case has become an oft-cited *cause celebre* in broader debates about the social and health impacts of trade agreements (Taylor et al., 2000; Trebilcock and Howse, 1999; WHO and WTO, 2002). The public availability of tobacco industry documents offers a unique opportunity to re-examine the dynamics of this key dispute. The documents allow for a detailed analysis of USCEA (United States Cigarette Export Association) strategies to lobby support in Washington and overseas, and to counter health-based opposition to market liberalization that included well-organized campaigns aimed at reassuring politicians and the public, and its strategic use of both in presenting its case to the US and Southeast Asian media.

Particularly significant in this context is that while confirming the previously asserted close relationship between the US tobacco industry and the USTR, material contained in the documents demonstrates that the dynamics of that relationship are more complex

than previously supposed. As the dispute progressed, USTR support for industry preferences became qualified, and the USTR decision to refer it to GATT adjudication was (contrary to previous understanding) strenuously opposed by tobacco companies. This demonstration of the industry's determination to avoid recourse to multilateral adjudication, and clear preference to pursue their global goals via bilateral negotiations has important implications not only for understanding the dispute itself but for contemporary debates. Whereas to date debates about the compatibility of trade liberalization and tobacco control have centred primarily on the extent of public health protections afforded via World Trade Organization (WTO) agreements, particularly in the context of negotiating the World Health Organization's (WHO) Framework Convention on Tobacco Control (FCTC), this analysis highlights the potential value to tobacco companies of proliferating bilateral agreements that can undermine such flexibilities.

Methods

This article is based on analysis of previously confidential internal tobacco industry documents, made publicly accessible through litigation, and available electronically via the Legacy Tobacco Documents Library. The provenance, mechanics and limitations of using tobacco industry documents have been described elsewhere (Carter, 2005; MacKenzie et al., 2003). Document research for this article employed an iterative search model in which initial use of broad terms and phrases, *Thailand*, *market opening*, *trade barriers*, *USTR*, *USCEA* for example, led to more specific searches using names of company personnel and political figures in Thailand and the US. Analysis incorporated validation techniques within a hermeneutic process (Forster, 1994), and corroboration of interpretation between authors was particularly significant. Secondary research included reviews of tobacco industry publications, NGO reports and newspaper archives.

Results

Opening the monopoly markets of Southeast Asia

Having moved into Latin America in the 1950s (Shepherd, 1985), US cigarette manufacturers turned to the potentially hugely lucrative Asian markets during the 1970s as part of their ongoing global expansion (Campaign, 2001; Yach and Bettcher, 2000). Responding to the 'unique challenges' (Philip Morris Asia, 1989) presented by import restrictions in a number of Southeast Asian markets, leading US tobacco companies formed the United States Cigarette Export Association (USCEA) in 1981 (Frankel, 1996) to represent their interests. Philip Morris (PM), the driving force behind the organization (BAT, 1993), was joined by RJ Reynolds (RJR) and Brown & Williamson (B&W); the combined output of the three companies accounted for almost 99% of US tobacco exports (US GAO, 1992). The USCEA's specific remit was to lobby the US government for elimination of regional restrictions on imported tobacco products (Frankel, 1996), and to insulate US manufacturers from domestic advertising bans and other tobacco control regulations once market access was achieved (*The Economist*, 1992). Significantly, the USCEA was formed amid growing US trade deficits with the

countries targeted, which created a favourable political climate in which to highlight tobacco's prominence as 'one of only four product categories for which America shows a trade surplus' (USCEA, n.d.). Association lobbyists also claimed that access to markets in Southeast Asia would generate considerable income (USCEA, 1990) and lead to domestic job creation (USCEA, n.d.).

In 1985 and 1986, USCEA appeals to the Reagan administration concerning import restrictions in Japan and Taiwan were referred to the USTR, an executive branch agency responsible for US bilateral and multilateral trade policy. The agency has substantial autonomy under Section 301 of the 1974 Trade Act, and is distinctive in being wholly under executive branch control, authorizing either the president or the USTR to identify restrictions on US imports, demand negotiations for their removal and impose retaliatory trade sanctions against offending countries (Sherman, 2002). When the USCEA later sought USTR assistance in challenging closed markets in Korea in 1988, and Thailand in 1989, it petitioned the USTR directly (Chaloupka and Corbett, 1998), suggesting development of close links between the two organizations. A 1990 US General Accounting Office (GAO) report detailed such connections between senior executives of USCEA member companies and government officials, and found that the cigarette manufacturers had offered market and technical information to trade negotiators, and employed 'former senior White House officials as consultants to promote their interests in Taiwan and Korea' (US GAO, 1990).

From 1985 to 1989, the USTR was headed by Clayton Yeutter, whose career reflects the close links between the agency, the US Republican Party and the tobacco industry. Having served in various offices under four presidents, Yeutter was chairman of the Republican National Committee from 1991 to 1992 (Hogan and Hartson, 2009), and become a non-executive director of BAT (British American Tobacco) in 1993 (Asian Development Bank, 2004; BAT, 1994). Under his leadership the USTR adopted a firm line in negotiations. Citing the operation of state tobacco monopolies in countries targeted by his agency, Yeutter dismissed public health justifications made for import restrictions on cigarettes:

. . . when a nation violates its international trade obligations by restricting tobacco imports while allowing domestic sales, that constitutes discrimination against United States products. We have an obligation under the law to attack such discrimination, and we intend to do so – no matter the product. (USCEA, 1989a)

Turning to the Thai market

Thailand's tobacco market has long been dominated by the Thailand Tobacco Monopoly (TTM). Formed in 1939 and granted monopoly control four years later, the TTM remains a consistently profitable enterprise for the Ministry of Finance (Thailand MoF, 2009). TTC attempts to enter Thailand through joint ventures and licensing agreements in the early 1980s (Norsworthy, 1983; Scott, 1988; Snyder, 1987) followed indications from within some government ministries that the monopoly was to be included in privatization programmes (Norsworthy, 1988). An agreement reached between the USTR and the

MoF to drop restrictions on US cigarettes imports, following confidential negotiations, was withdrawn in March 1989 after complaints by the National Committee for the Control of Tobacco Use and the Thai Anti-Smoking Campaign Project, a prominent NGO (Vateesatokit, 2003).

Subsequent inability to access the Thai market left the USCEA with 'no choice but to ask for U.S. Government assistance' (USCEA, 1989a), and representatives approached the USTR to initiate proceedings against Thailand in April 1989. Carla Hills had replaced Yeutter, and reiterated her predecessor's position that Thailand's restrictions were aimed at protecting its monopoly rather than protecting public health (Frankel, 1996).

The USCEA specifically petitioned US negotiators to accept only:

... bona fide market access which feature [sic] the following pre-conditions:

- a) No manufacturer quotas.
- b) Independent distribution at individual manufacturers choice.
- c) Revised cigarette taxes that allow tax paid imports to be price competitive with contraband. (Jilla, 1989)

Its case rested on three economic planks: income generated by the opening of the Japanese, Korean and Taiwanese markets was estimated to have reached US\$1 billion annually (USCEA, 1990); tobacco's positive trade balance – particularly significant given Thailand's annual US\$2 billion trade surplus with the US (USCEA, n.d.); and associated domestic job creation (Frankel, 1989). The USCEA also depicted its challenge to Thai trade policy as a test of US commitment to free market values, and Association president Owen Smith warned in September 1989 that those opposed to the USTR's actions in Thailand would 'provide foreign protectionist lobbies and enemies of free enterprise with additional pretexts for protectionist action and retaliation against U.S. producers and manufacturers' (USCEA, 1989b). Similar sentiments were voiced by the former Democratic senator from Kentucky Walter Huddleston who described Thailand as the 'only major country in the non-communist world (apart from Iran and Syria) that does not allow the sale of American brands of cigarettes' (USCEA, 1990).

USCEA members expected a swift and positive conclusion to negotiations with Thailand, given the resolution of the earlier 301 actions in the region. PM business projections for a liberated Thai market indicated that the country's economic expansion and growing middle class would lead to 'a substantial market for a range of American consumer goods' (Philip Morris, 1990), and company officials were confident that the TTM's dominance would quickly dissipate given the monopoly's inefficient production methods (Philip Morris, 1990), which were attributed to the strength of the monopoly's workers' union (Wichers, 1987), a poor distribution network and limited marketing capacity and expertise (Altizer, 1989).

Political support for US tobacco corporations

Industry documents indicate that the USCEA, PM in particular, was consistently able to mobilize a powerful support network that encompassed Washington, US government officials overseas and sections of the Thai business community. Andrew Whist, vice president of corporate affairs at Philip Morris International (PMI) reported in 1986 that:

Staff from Hong Kong and New York worked closely and cooperatively with the Washington Office in developing new strategies on trade issues and market access, strengthening our relationship with the U.S. Government, particularly with the United States Trade Representative's Office (USTR). The outcome will greatly enhance our business in Asia. (Whist, 1986)

In 1990, US vice president Dan Quayle declared that 'Tobacco exports should be expanded aggressively, because Americans are smoking less' (*The Economist*, 1992). Other high profile Republican backers included Robert Dole, Republican senator for Kansas and 1996 presidential candidate (Frankel, 1996); John Block, Secretary of the Department of Agriculture in the Reagan administration (USCEA, 1989b); tobacco belt senators Mitch McConnell of Kentucky (USCEA, 1990); and Jesse Helms of North Carolina (Frankel, 1996). During 301 talks with Japan, Helms had written to prime minister Yasuhiro Nakasone to recommend that 'friends in Congress will have a better chance to stem the tide of anti-Japanese sentiment if and when they can cite tangible examples of your doors being opened to American products', and suggested a goal of 20% market share for US cigarettes within 18 months (*The Economist*, 1992).

The recruitment of Howard Baker – former Senate majority leader, Chief of Staff under Ronald Reagan and, later, US ambassador to Japan – was particularly significant to PM's international strategy. In June 1989, Jim Dyer of PM Management Corporation informed colleagues that Baker had completed 'his one year "cooling off" period' after leaving elected office, and would 'begin to play a more active role in our government affairs programs' (Dyer, 1989b). Baker's anticipated value as 'an effective high level advocate of our policies' was based on his contacts within the Bush administration, Congress, the media and the business community, which allowed him 'access that few Washingtonians can ever hope to achieve' (Dyer, 1989b).

A series of dinners co-hosted by Baker and PM president and CEO Hamish Maxwell in late 1989 were described by Dyer as 'the long awaited opportunity to use Senator Baker's considerable talents on behalf of Philip Morris' (Dyer, 1989a). These meetings with leading political figures were organized to 'develop personal contacts, to demonstrate our good will and our citizenship, to promote their understanding of our needs' (Dyer, 1989a), and included Bob Mosbacher, Secretary of Commerce from 1989 to 1992, and the USTR's Carla Hills. Mosbacher was described as potentially a 'powerful ally very close to the President who can assist with any of our international activities' while the meeting with Hills would allow PM 'to address any needs we have internationally, specifically with Thailand' (Dyer, 1989a). Other guests included Clayton Yeutter, members of the Senate Finance Committee and 'other targets of opportunity' such as Robert and Elizabeth Dole (Dyer, 1989a).

The USCEA was also able to attract considerable bipartisan support. Key Democrat backers included Al Gore (Frankel, 1996), former Democratic congressman and senator

for Tennessee, vice president and presidential candidate; former Texas governor Ann Richards; and George Mitchell, former Senate majority leader and special envoy to Ireland and later, to the Mideast (Public Citizen, 1998; Torry, 1998). Both Richards and Mitchell later worked as tobacco industry lobbyists for Washington, DC law firm, Verner, Liipfert, Bernhard, McPherson and Hand (Torry, 1998). Other Democrat supporters included Huddleston, noted above, and congressman Robin Tallon from South Carolina (USCEA, 1990). In a 1990 testimony to the Senate Committee on Labour and Human Resources Tallon asserted that it was not immoral to remove trade barriers on tobacco products when, inter alia, 'the country enjoys a trade surplus with the United States' (Tallon, 1990).

Allies within Thailand

Industry lobbying extended well beyond Washington, and PM Asia's 1990–1992 corporate affairs plan, for instance, highlighted the need to 'educate U.S. government officials based in Asia and appropriate government ministries' (Philip Morris Asia, 1989). US Embassy positions and interactions with the Thai government were carefully monitored by the USCEA (Donner, 1989), and close links established within the Thai business and political communities (Baker and Phongpaichit, 2005) presented distinct opportunities for the USCEA. PM strategists sought to 'create a climate favorable to participation in the market through building alliances and media and government contacts' (Philip Morris Asia, 1989). Support was also pursued with jewellery, furniture, food, garment and other industries that could be affected by retaliatory US trade sanctions (Kennedy, 1989; Schaverien, 1989), and representatives of these industries met with Thai trade officials to push for a quick resolution to the 301 case (Frankel, 1996).

International support for Thailand's opposition to the USCEA

The Thai government's challenge to USTR demands for market entry rested on its claim that it was protecting its citizens from the public health threat posed by anticipated increases in cigarette consumption that market liberalization would create (Chitanondh, 2001), and this argument underpinned the Thai health community's ability to build a public opposition campaign based on nationalist sentiment (Chantornvong and McCargo, 2001). Opposition also came from a protectionist camp, led by the TTM, that regarded market opening as a threat to its economic and political interests (Ross, 1989b).

Although most US newspapers backed the USTR's actions (Kim, 2003), and the USCEA claimed substantial public support, the US government's role in the dispute attracted growing criticism from health advocates (US GAO, 1990). While publicly describing tobacco export policy as 'a blueprint for other American industrial sectors to follow', the USCEA acknowledged that use of Section 301 had 'caused anti-smoking activists to become far more vociferous in their attacks on the exportation of American cigarettes' (USCEA, n.d.). The GAO's 1990 report noted that while tobacco market liberalization in Japan, South Korea and Taiwan appeared to be the 'culmination of just another irritating trade dispute with the United States' (US GAO, 1990), Thailand's resistance had attracted greater media interest and broad support from domestic and

international health advocacy groups. A PM situation assessment highlighted 'links between the U.S. anti-smoking groups and their Asian counterparts' which had led to 'the development of a strong and vocal opposition to U.S. cigarette exports generated by the success of our products in the recently opened markets' (Philip Morris Asia, 1989).

USCEA response to criticism

In response to growing domestic and international criticism, the USCEA downplayed the significance of health issues in the dispute and asserted that 'Trade policy, not morals or health policy, is the fundamental issue involved in the exportation of cigarettes' (USCEA, n.d.), and argued that the USTR had adopted 'the entirely justifiable position that discrimination against U.S. products exists when cigarette imports are restricted while allowing unfettered sales of domestic products' (Dollison and Donner, 1989). The association also rejected accusations that it was exploiting developing countries, insisting instead that member companies were selling 'in countries where large numbers of the population already smoke' (USCEA, n.d.). The 'real imperialists' according to the USCEA, 'are those persons who attempt to impose their values on these foreign countries' (USCEA, n.d.).

In response to concerns that aggressive marketing associated with market liberalization would have significant health consequences for Thailand, the USCEA argued that TTM production and tax revenues undermined the public health defence (USCEA, 1989c), and attributed criticisms of aggressive marketing in the region to the vested interests of national tobacco monopolies aiming 'to maintain market share and profitability' (Dollison and Donner, 1989). When the existence of robust advertising techniques were tacitly acknowledged, these were justified as 'necessary to familiarize smokers with American brands and their attributes' (Dollison and Donner, 1989).

The USCEA public relations campaign was augmented by a special task force 'to mount a campaign to counter increased actions by anti-smoking groups here and in Asia' (Ricke, 1989b). Concerned both that 'it would be more difficult to win a highly emotional public battle' and that further publicity could 'cause the issue to spread beyond the predictable anti-smoking groups', the task force concentrated on reaching policy-makers and media via brochures and reports on the economic benefits of cigarette exports to the US economy for distribution in Congress; fact sheets prepared for congressional staff; materials for US and overseas commercial attachés; and press kits for the US media (Ricke, 1989a).

Strategies to create 'a presence in Asia to counter attacks on U.S. exports and correct the misstatements and inaccuracies put forth by our opponents' centred on establishing contacts in the Asian media via invitations to journalists to attend sponsored events throughout the region (Philip Morris Asia, 1989). A bilingual industry booklet entitled *Setting the Record Straight* similarly stressed that the 'purpose of 301 is to facilitate an agreement, not to retaliate indiscriminately and recklessly as some suggest' (Rekart, 1989), and the Asian Tobacco Council was established to monitor the Asia Pacific Association for the Control of Tobacco, WHO and the International Organization of Consumers Unions (Philip Morris Asia, 1989).

Towards resolution and referral to GATT

In July 1989, PM CEO Geoff Bible (1989) emphasized that the company's USTR strategy was 'extraordinarily important to us and we cannot allow pressure on it to be reduced'. USCEA expectations of a rapid resolution to the Thai 301 action were, however, frustrated by protracted negotiations. Ian Ross of STC (Singapore Tobacco Company) noted the 'Thais' finely honed ability to prevaricate' as a key element in the inability to resolve the dispute in his March 1989 progress report, and suggested that Thai officials were not as concerned by threatened trade sanctions as their counterparts in Japan, South Korea and Taiwan had been (Ross, 1989b). A further complication noted by Ross was that the Thai government was simultaneously opposing intellectual copyright law and pharmaceutical patent protection, and that the US Embassy 'has got its hands full on these two issues alone' (Ross, 1989b).

In September 1989, USCEA president Owen Smith described the situation in Thailand as 'more restrictive and egregious' than those in the other 301 states (USCEA, 1989b). As negotiations wore on, unease grew among association members over suggestions that a compromise solution would be reached whereby imports may be allowed into the market, but would be administered by the TTM (Donner, 1989; Downham, 1989b; Ross, 1989a), and particularly by reports that the USTR was considering sending the dispute to GATT mediation. In response, the USCEA called on the trade agency to exert greater pressure on the Thai government to allow unrestricted market access (Downham, 1989a; Kennedy, 1989).

Following public hearings in Washington and two rounds of talks, the USTR did refer the dispute to GATT's arbitration panel in December 1989, a move congressman Chet Atkins described as 'a stunning blow to the multinational cigarette firms' (Smith, 1990). Brandt's (2007) suggestion that the decision to seek arbitration reflected concerns within the US government that escalating pressure on Thailand could have broader repercussions for ongoing multilateral trade negotiations is seemingly borne out by contemporary industry correspondence. RJR's Donald Albert reported that during a September 1990 meeting, the USTR's Sandy Kristoff had stated that the timing of the Thai dispute in relation to the broader Uruguay Round of multilateral trade negotiations presented potential difficulties 'at the political level within USTR', noting that there may have been 'opposition just below the Ambassador Hills level to proceeding with retaliation just prior to the crucial negotiating phase of the GATT Uruguay Round' (Albert, 1990).

USTR assurances that initiating the GATT process would enhance the prospects for successfully negotiating a bilateral agreement with the Thai government (Oglesby, 1990b) left USCEA members unconvinced. Donald Albert stated that he and his colleagues had 'repeatedly warned USTR and other US Government agencies that the GATT route was inadvisable and we were dragged into the GATT kicking and screaming' (Albert, 1990). Ray Donner proposed that US Senators Helms and McConnell approach Hills, and that USCEA officials contact other trade officials to express their concern with developments (Donner, 1989).

A key point of dissatisfaction in referring the dispute to GATT for USCEA members was that it enabled Thailand to withdraw from the talks with the USTR during

arbitration, and RJR's Donald Albert conceded 'that if the Thais are smart, they could take unilateral action and thereby undercut the bilateral process' (Albert, 1990). Adoption of such a strategy is confirmed in September 1990 RJR reports of the frustration of USTR negotiators 'with the Thai government's refusal to negotiate on market access outside of the GATT framework' (Oglesby, 1990a).

GATT arbitration: Response and implementation

Thai government negotiators based their defence on the qualified exemption for public health protection contained within the general exemptions described in GATT Article XX(b):

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(b) necessary to protect human, animal or plant life or health. (GATT, 1990)

Thai negotiators argued that opening its domestic market to imports would lead to increased cigarette consumption, causing a related threat to the nation's public health. Their position required unambiguous demonstration that proposed market restrictions were necessary to ensure prevention of increased smoking prevalence; and that such restrictions were the least restrictive option available to meet the desired public health goals (Eckhardt, 2002).

The arbitration panel's decision, made public in October 1990 and adopted by the GATT council the following month, rejected Thai claims that foreign imports would necessarily lead to increased cigarette sales, and agreed with the USTR that import restrictions violated GATT. Significantly, it also ruled that domestic tobacco control legislation was permissible if applied in a non-discriminatory manner to both foreign and domestic manufacturers (GATT, 1990), and that Thailand could also levy excise tax and import duty on incoming cigarettes.

Considerable uncertainty regarding the details of market entry remained after the GATT ruling, and B&W's chairman and CEO RJ Pritchard noted in October 1990 that the Thai government's probable strategy would be 'to preempt [*sic*] detailed negotiations' on issues of import duties, excise taxes and advertising regulation so that 'they can claim compliance with GATT and yet maintain effective barriers to imports' (Pritchard, 1990). TTM's managing director largely confirmed Pritchard's assessment, observing that the 'GATT ruling says we have to open the market, and we will. But we will do it as we see fit. GATT did not set a definite date as to when it should be opened' (Zimmerman, 1990). Talks to resolve these technical issues allowed Thai officials to exploit uncertainty during implementation, delaying arrival of the first legal shipments of imported cigarettes until August 1991 (Aitken, 1991a, 1991c).

Frustrated by ongoing delays, the USCEA petitioned both US government and USTR officials (Payne, 1991) to 'reinstate negotiations aimed at achieving the kind of market opening that was obtained in Japan, Taiwan, and Korea' (Pritchard, 1990). B&W officials convinced a number of US senators to meet with Thailand's ambassador to the US to express their dissatisfaction with his country's unwillingness to negotiate beyond the parameters of the GATT ruling, and Carla Hills was urged to apply pressure to the Thai government 'now that the GATT ruling has had no practical effect on eliminating tariffs' (Pritchard, 1990).

In Thailand, David Aitken of BAT UK & Export (BATUKE) Thailand reported that the US ambassador (Daniel O'Donohue) and economic counsellor John Mederios had met with Thailand's finance minister in April 1991 where 'at the request of the USTR (prompted by USCEA) they raised the cigarette issue and asked why there had been such slow progress since liberalisation last October' (Aitken, 1991b). Aitken also noted that the US Embassy would then send a letter to the minister 'asking him to meet with the Industry along with the D.G. of Excise. This will avoid the MOF being able to say he doesn't know the details' (Aitken, 1991b). The GATT ruling, however, effectively insulated the Thai government from such pressures.

Discussion

Thailand's dispute with the USTR has had implications for the domestic tobacco market, but its most significant impact remains its relevance to broader discourse on trade liberalization, the tobacco industry and global health. In 2002, former USTR general counsel and trade ambassador Ira Shapiro noted that 'Trade liberalisation in tobacco products has worked in much the way the economics textbooks would predict' (Shapiro, 2002). In the case of the Southeast Asian '301' countries, per capita tobacco consumption rates in 1991 were nearly 10% higher in all four countries forced to acquiesce to USCEA demands than would have been the case had these markets remained closed to imports (Chaloupka and Laixuthai, 1996). Subsequent analyses have demonstrated a significant rise in smoking rates among women in Japan (Honjo and Kawachi, 2000; Sato et al., 2000), South Korea (Lee et al., 2009) and Taiwan (Chaloupka and Laixuthai, 1996).

The outcome of the dispute with the USTR has been described by one Thai participant as a defeat in trade but a victory for health (Chitanondh, 2001). The dispute did serve to accelerate Thailand's enactment of far-ranging tobacco control legislation, particularly the 1992 Tobacco Products Control Act (Thailand, 1992). TTC challenges to unfavourable legislation (Chitanondh, 2003; MacKenzie et al., 2004; Vateesatokit et al., 2000) and tactical use of indirect advertising, sponsorship schemes and brand stretching in defiance of domestic legislation (Chitanondh, 2000) were, importantly, heavily circumscribed by national legislation, and never reached the levels or intensity of marketing seen in the other 301 countries (MacKenzie et al., 2007).

Nevertheless, Thailand's compliance with GATT significantly altered its domestic tobacco market by expanding imports of cigarettes considered by consumers to be superior to those produced by the national tobacco monopoly, and led to an overall increase in tobacco consumption (Taylor et al., 2000). Following commencement of

cigarette imports in August 1991, both total tobacco consumption and packs consumed per capita began to rise. Having fluctuated around 38.7 billion and 38.8 billion sticks between 1989 and 1991, total consumption reached 48.3 billion sticks by 1997 before declining during the Asian economic crisis of the late 1990s (Thailand MoPH, 2005).

Assisted by extensive restrictions on all cigarette promotion, the TTM continues to dominate the domestic market, but has experienced a seemingly inexorable loss of sector share. In 2001, the monopoly accounted for 85% of cigarette sales, with PM brands making up 90% of the remainder (Dalvey Group, 2004). By 2006, TTM sales had dropped to 72% of total, the remainder split between PM (24%), BAT (2%) and Imperial Tobacco (1%) (Euromonitor, 2007). In this newly competitive context, the TTM has become a more assertive commercial enterprise, testing national legislation with marketing and promotional strategies (TTM, 2003), exporting its brands to Southeast Asian and Middle Eastern countries, and targeting the Russian and Polish markets (Deboonme, 2008). Such developments suggest an evolving corporate philosophy resembling those of its international competitors.

Implications of the dispute for global health policy

Beyond its significance for Thailand, the dispute retains powerful contemporary relevance and a contested place in debates about the compatibility of tobacco control and trade (Eckhardt, 2002; Zeigler, 2006), and the health impacts of economic globalization (Bloche and Jungman, 2003; Howse, 2000; Price et al., 1999). Proponents of policy coherence between trade liberalization and tobacco control highlight the range of non-discriminatory, WTO consistent measures recognized by the GATT panel and effectively implemented by Thailand (Bettcher and Shapiro, 2001; WHO and WTO, 2002). Conversely, for advocates concerned that trade agreements restrict the scope for domestic regulation, the case demonstrates that GATT's public health exception under Article XX(b) is narrowly framed, circumscribed by a stringent necessity test and insufficient to protect discriminatory measures that may have an important public health function (Callard et al., 2001; Weissman, 2003).

US policy on international tobacco and trade issues since the 1990s has displayed striking persistence, but the use of US diplomacy in advancing the global interests of TTCs has not gone unchallenged. Since 1994, the ability of the US Department of Agriculture's Foreign Agriculture Service (FAS) to use funds to promote the sale or export of US tobacco or tobacco products overseas has been circumscribed by the 1992 Durbin Amendment to the Agriculture Appropriations Act (US GAO, 2003a; Waxman and Durbin, 2003), while a 1998 directive issued to all US diplomatic posts encouraged promotion of tobacco control measures in host countries (Weissman and Hammond, 2000). These measures, however, have been undermined by lack of enforcement. The FAS has, for instance, continued to 'gather and disseminate tobacco-related information that identifies foreign production and consumption rates, import trends, and changes in foreign regulations' and 'provided insights into market niches for tobacco exporters' (US GAO, 2003a).

Most notable among such efforts has been the 1997 Doggett Amendment to the FY98 Appropriations Act for the Departments of Commerce, State and Justice and related

agencies. The amendment held out particular promise in its stipulation that funds provided by the Act could not be used to:

. . . promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type. (Taylor et al., 2000)

Though often seen as indicative of a substantive policy shift under the Clinton administration (Callard et al., 2001; Weissman and Hammond, 2000), the purported aim of Doggett, 'to get the government out of the overseas tobacco business altogether' (Beelman and Davidson, 1999) was significantly compromised by the provision for measures to be taken against restrictions deemed discriminatory. The amendment maintains the status quo that accords priority to trade principles where these come into conflict with health objectives and leaves scope for further actions such as those taken in the Thai dispute. The global health ramifications of USTR powers in this context were again evident for Thailand when it was placed on the Special 301 priority watch list in 2007 after issuing WTO-compliant compulsory licences for three pharmaceuticals.

Concerns have also been raised by reportedly widespread flouting of the amendment, including the example of US ambassador to Thailand Ralph Boyce organizing a meeting between tobacco companies and the Thai minister of public health in August 2006 at which company representatives voiced their opposition to national advertising regulations (Waxman and Doggett, 2006). But a more fundamental concern is that the Doggett amendment perpetuates the subordination of health objectives to trade principles that has been characteristic of the US approach to international tobacco issues.

Tobacco control and multilateral trade agreements

US positions adopted during the Thai dispute are echoed in the FCTC context. The USCEA's interaction with, and apparent influence over, the USTR seem replicated in the Bush administration's broad adoption of positions in FCTC negotiations requested by PM in meetings with government officials (Waxman, 2002; Yeoman, 2003). Similarly, the insistence that the 301 dispute should be narrowly conceived as a trade issue rather than a question of public health is mirrored in the State Department later encouraging 'trade and agriculture ministry participation in developing country positions' during FCTC negotiations (Waxman et al., 2003). The continued reluctance of the US to ratify the FCTC can be seen as a failure of national responsibility given the key role of US tobacco companies as vectors of the tobacco pandemic. Having enacted domestic legislation that places the tobacco industry under the regulation of the US Food and Drug Administration (Mitka, 2009), ratification of the FCTC by the Obama administration would demonstrate a comparable commitment to advancing global tobacco control.

Beyond US failure to ratify the treaty, there is a broader need to re-engage in questions around the relationship between trade agreements and health (McGrady, 2007) that have not been satisfactorily addressed by the FCTC. An alliance of delegates from many low- and middle-income countries (LMICs) and NGOs to secure specific language that

gave public health and tobacco control measures priority over trade agreements during FCTC negotiations (Yach et al., 2006) received unexpected support in 2002 from former USTR general counsel and trade ambassador Ira Shapiro (2002). Shapiro acknowledged the potential value of a protectionist case for public health (such as that previously advanced by Thailand), arguing against the presumption that harmful products should be freely traded. While the majority of participating member states favoured the inclusion of language prioritizing 'health over trade', this was successfully opposed by a group of high income countries including the United States, the United Kingdom, Germany and Japan (Collin and Lee, 2009; Mamudu et al., 2011).¹

The increasing salience of trade agreements for the tobacco control policy agenda is suggested by ongoing disputes within the WTO. In July 2010, for example, the trade organization's dispute settlement body established a panel to arbitrate on a claim brought by Indonesia against the United States, in something of a reversal of the latter's role in the Thai cigarettes case. Indonesia claims that Section 907 of the US Family Smoking Prevention and Tobacco Control Act prohibiting the production or sale in the US of cigarettes with a 'characterizing flavor' other than menthol or tobacco constitutes trade discrimination against Indonesian clove-based kreteks (World Trade Organization, 2011a). In June 2010 over 20 WTO member states expressed concerns about Canada's 'Cracking Down on Tobacco Marketing Aimed at Youth Act', claiming that measures prohibiting some flavourings and additives would preclude traditional blended cigarettes and thereby breach obligations under the Technical Barriers to Trade Agreement (World Trade Organization, 2010a). Ukraine has similarly requested the establishment of a panel to review its claim that Armenian legislation levies discriminatory internal taxes on imported tobacco products, imposing duties in excess of WTO obligations (World Trade Organization, 2010b).

The rejection in June 2011 of Thailand's appeal of an earlier ruling in favour of the Philippines against a Thai tax on tobacco imports strongly echoes the dispute analysed above. The Philippine case was predicated on claims that Thailand's customs valuation practices, excise, health and other taxes imposed unfair obstacles to cigarette importers in contravention of GATT (World Trade Organization, 2011b).

Tobacco control and trade agreements: Beyond the WTO

The analysis presented above also raises particular concerns in the context of the shifting politics of global trade, whereby the limited public health protections afforded by multilateral WTO agreements are being eroded via bilateral and regional agreements (Correa, 2006; Smith et al., 2009) that often provide for investor-state disputes that are precluded within the WTO. The Canadian government's decision to drop its proposal for plain cigarette packaging in the mid-1990s is an explicit example of the potential value to tobacco companies of such agreements. In 1994, the Canadian government was informed by PM and RJR Reynolds, represented by former USTR chief Carla Hills, that the proposed legislation threatened intellectual property rights inherent in brand logos, and constituted an actionable infringement of the North American Free Trade Agreement (NAFTA) to which Canada was a signatory, as well as GATT. Recent research suggests that industry officials had been made aware that this approach was unlikely to succeed

and that their threatened protests to trade bodies were disingenuous, but the Canadian government's decision to drop the proposal in 1996 represented an important triumph for the industry (Physicians for a Smoke-Free Canada, 2009).

A key related finding from the analysis presented here is the previously unrecognized strategic preference of tobacco companies to pursue their global objectives via bilateral negotiation, in which possibilities for collective action by LMICs are restricted. Following resolution of the Thai dispute, B&W's vice president and general counsel Ernest Pepples (1991) suggested, for instance, that 'The referral of recent trade issues to the GATT for resolution, e.g., Thailand, and the ineffectiveness of the GATT process, as compared to bilateral trade negotiations, does not bode well for the 301 process as a tool for the industry to liberalize other markets.'

The US has increasingly sought to achieve its trade policy objectives via the negotiation of bilateral agreements; pressure that can be exerted can reasonably be expected to ensure favourable outcomes, and negotiations largely occur away from the intense scrutiny accompanying the WTO. Signatory to just one comprehensive bilateral free trade agreement before 2000, the US had entered into nine by 2011; agreed others with Colombia, South Korea and Panama that were awaiting congressional approval in July 2011; and was in negotiations with Malaysia, Thailand and the UAE (USTR, 2012). The US has also negotiated bilateral investment treaties (BITs) with 40 countries since 1989 (USTR, 2012) further indicating the shift towards two-party trade agreements. The potential risks of bilateral agreements are demonstrated by the elimination of Singapore's tariff on incoming tobacco products as part of the 2003 US–Singapore free trade agreement. This enables investors, including tobacco companies, to challenge governmental regulation at local, state and national levels directly, and pursue compensation for profits lost due to rules that fail to comply with strict investment obligations detailed in the agreement (Shaffer et al., 2005).

The increasing significance of bilateral agreements for tobacco control is underlined by PMI's recent initiation of a claim against Uruguay, alleging that key provisions of Uruguay's recent tobacco control programme, including enlarged health warnings and restrictions on branding, breach its bilateral investment treaty with Switzerland (International Centre, 2010; Peterson, 2010). Similar arguments have been raised in Australia following the government's announcement that it would legislate introduction of plain packs by 1 January 2012. In June 2011, PMI's Australian subsidiary announced it would challenge the proposed legislation on the grounds that it breaches the country's bilateral trade agreement with Hong Kong (ABC, 2011), and concerns related to potential trade restrictions have reportedly been raised by the European Union (Kerr and Dunlevy, 2011), and by the governments of Mexico and Indonesia (Johnston, 2011).

Such developments highlight the need for further research to provide more detailed understanding of how bilateral trade agreements may advance corporate interests in ways that undermine public health. They suggest also that the debate regarding the relationship between tobacco control and trade liberalization should no longer be framed with primary reference to WTO, and demonstrate the continuing importance of efforts to more effectively represent public health concerns within the work of the USTR (Center for Policy Analysis, 2010).

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Note

1. Recognition in the Foreword to the convention that the tobacco epidemic is ‘facilitated through a variety of complex factors with cross-border effects, including trade liberalization and direct foreign investment’, and the statement in its Preamble that parties to the convention are ‘*Determined* to give priority to their right to protect public health’ (World Health Organization, 2009; italics in original) notwithstanding, the FCTC does not incorporate language giving it priority over trade agreements.

References

- ABC News (2011) Tobacco giant to challenge packaging laws. 27 June. Available at: www.abc.net.au/news/stories/2011/06/27/3254069.htm (accessed 4 July 2011).
- Aitken D (1991a) Thailand update 24/4/91. British American Tobacco. Bates No. 300028794/8798. Available at: legacy.library.ucsf.edu/tid/fjq87a99/pdf.
- Aitken D (1991b) Key points arising from Thailand industry meeting 30th April 1991. British American Tobacco. Bates No. 300028809/8811. Available at: legacy.library.ucsf.edu/tid/kjq87a99/pdf.
- Aitken D (1991c) Marketing rationale for entry into Thailand market. 22 April. British American Tobacco. Bates No. 300028790/2873. Available at: legacy.library.ucsf.edu/tid/ejq87a99/pdf.
- Albert D (1990) Thailand. 28 September. RJ Reynolds. Bates No. 507624437/4441. Available at: legacy.library.ucsf.edu/tid/wgf24d00.
- Altizer CB (1989) Thailand product mapping. 4 December. Philip Morris. Bates No. 2050245799/5801. Available at: legacy.library.ucsf.edu/tid/egs62e00/pdf.
- Asian Development Bank (2004) Clayton Yeutter. Personal data. Available at: www.adb.org/Documents/Events/2004/WTO_Doha_Dev/cv_yeutter.pdf (accessed 15 January 2011).
- Baker C and Phongpaichit P (2005) *A History of Thailand*. Cambridge: Cambridge University Press.
- BAT (1994) Board of Directors. Annual Report to Stockholders 1994. British American Tobacco. Bates No. 503805941/5945. Available at: legacy.library.ucsf.edu/tid/pvd41a99/pdf.
- BAT (2003) An overview of Salem cigarettes in markets in Asia. 20 January. British American Tobacco. Bates No. 500350074/0086. Available at: legacy.library.ucsf.edu/tid/cey77a99/pdf.
- Beelman MS and Davidson Z (1999) U.S. support for tobacco overseas: Going out of business? Center for Public Integrity. November. Available at: www.publicintegrity.org/report.aspx?aid=586# (accessed 16 June 2011).
- Bettcher D and Shapiro I (2001) Tobacco control in an era of trade liberalisation. *Tobacco Control* 10: 65–67.
- Bible G (1989) Memo [USTR support]. 14 July. Philip Morris. Bates No. 2023277254. Available at: legacy.library.ucsf.edu/tid/hbt24e00.
- Bloche M and Jungman E (2003) Health policy and the WTO. *Journal of Law, Medicine and Ethics* 31: 529–545.
- Brandt AM (2007) *The Cigarette Century*. New York: Basic Books.
- Callard C, Chitanondh H and Weissman R (2001) Why trade and investment liberalisation may threaten effective tobacco control efforts. *Tobacco Control* 10: 68–70.

- Campaign for Tobacco-Free Kids (2001) *Public Health, International Trade and the Framework Convention on Tobacco Control*. Washington, DC: Campaign for Tobacco-Free Kids.
- Carter SM (2005) Tobacco document research reporting. *Tobacco Control* 14: 368–376.
- Center for Policy Analysis on Trade and Health (2010) Public health call for representation on trade advisory committees. 2 December. Available at: www.cpath.org/sitebuildercontent/sitebuilderfiles/responsepublichealth_to_the_itacschairs_signed.pdf (accessed 14 June 2011).
- Chaloupka FJ and Corbett M (1998) Trade policy and tobacco: Towards an optimal policy mix. In: Abedian I, Van der Merwe R, Wilkins N and Jha P (eds) *The Economics of Tobacco Control: Towards an Optimal Policy Mix*. Cape Town: University of Cape Town, pp. 129–145.
- Chaloupka FJ and Laixuthai A (1996) U.S. trade policy and cigarette smoking in Asia. NBER Working Paper 5543. Cambridge, MA.
- Chaloupka F and Nair R (2000) International issues in the supply of tobacco: Recent changes and implications for alcohol. *Addiction* 95(Supp 4): S477–S489.
- Chantornvong S and McCargo D (2001) Political economy of tobacco control in Thailand. *Tobacco Control* 10: 48–54.
- Chitanondh H (2000) *The Passage of Tobacco Control Laws: Thai Davids versus Transnational Tobacco Goliaths*. Bangkok: Thailand Health Promotion Institute.
- Chitanondh H (2001) *Defeat in Trade – Victory in Health*. Bangkok: Thailand Health Promotion Institute.
- Chitanondh H (2003) *Advertising and Promotion Bans: Thailand Country Report on Tobacco Advertising and Promotion Bans*. Geneva: WHO.
- Collin J and Lee K (2009) Globalization and the politics of health governance: The framework convention on tobacco control. In: Cooper A and Kirton J (eds) *Innovation in Global Health Governance: Critical Cases*. Farnham: Ashgate Press, pp. 219–244.
- Correa C (2006) Implications of bilateral free trade agreements on access to medicines. *Bulletin of the WHO* 84(5): 399–404.
- Dalvey Group (2004) Amazing Thailand. *Tobacco Journal International*, 22 June. Available at: www.tobaccojournal.com/Amazing_Thailand.X3861.0.html (accessed 21 February 2011).
- Deboonme A (2008) TTM targeting Eastern Europe. *The Nation* (Bangkok), 13 August. Available at: www.nationmultimedia.com/2008/08/13/business/business_30080411.php (accessed 22 April 2011).
- Dollison J and Donner R (1989) USCEA press release. U.S. companies defend cigarette exports. 12 June. Philip Morris. Bates No. 2025827701/7703. Available at: legacy.library.ucsf.edu/tid/ldr74e00.
- Donner RK (1989) Thailand/USCEA. 4 September. R.J. Reynolds. Bates No. 2504046697/6699. Available at: legacy.library.ucsf.edu/tid/cdy32e00.
- Downham ML (1989a) Letter from BATUKE Singapore to Ian McLean, Thai International Products Co. 22 November. British American Tobacco. Bates No. 301634428. Available at: legacy.library.ucsf.edu/tid/tfj77a99/pdf.
- Downham ML (1989b) Letter from BATUKE Singapore to MJ Scott on Thai response to 301. 28 April. British American Tobacco. Bates No. 301634700/7003. Available at: legacy.library.ucsf.edu/tid/mhj77a99/pdf.
- Durbin R and Waxman H (2003) Letter questions USDA promotion of tobacco trade. United States House of Representatives Committee on Government Reform - Minority Office. Available at: house.decenturl.com/reform-min-pdfs-108-pdf-inves (accessed 4 April 2011).
- Dyer J (1989a) Contacts with the administration. 18 October. Philip Morris. Bates No. 2073193374. Available at: legacy.library.ucsf.edu/tid/rcw27d00.
- Dyer J (1989b) Senator Howard Baker. Philip Morris. Bates No. 2073193366/3367. 29 June. Available at: legacy.library.ucsf.edu/tid/kcw27d00.

- Eckhardt JN (2002) Balancing interests in free trade and health: How the WHO's Framework Convention on Tobacco Control can withstand WTO scrutinies. *Duke Journal of Comparative International Law* 12(1): 197–230.
- Euromonitor (2007) *International. Cigarettes – Thailand. Country Sector Briefing February 2008*. London: Euromonitor.
- Forster N (1994) The analysis of company documentation. In: Cassell C and Symon G (eds) *Qualitative Methods in Organizational Research: A Practical Guide*. London: Sage, pp. 147–166.
- Frankel G (1996) U.S. aided cigarette firms in conquests across Asia. *Washington Post*, 17 November, A01. Available at: www.washingtonpost.com/wp-srv/national/longterm/tobacco/stories/asia.htm (accessed 12 April 2011).
- GATT (General Agreement on Tariffs and Trade) (1990) Thailand – Restrictions on importation of and internal taxes on cigarettes: Report of the panel adopted on 7 November 1990 (DS10/R-37S/200). Available at: www.worldtradelaw.net/reports/gattpanels/thaicigarettes.pdf (accessed 28 June 2011).
- Gilmore A, Fooks G and McKee M (2009) The International Monetary Fund and tobacco: A product like any other? *International Journal of Health Services* 39(4): 789–793.
- Hogan and Hartson (2009) Professionals. Clayton Yeutter. Available at: www.hhllaw.com/cyeutter/ (accessed 10 April 2011).
- Honjo K and Kawachi I (2000) Effects of market liberalisation on smoking in Japan. *Tobacco Control* 9: 193–200.
- Howse R (2000) Democracy, science, and free trade: Risk regulation on trial at the World Trade Organization. *Michigan Law Review* 98: 2329–2357.
- International Centre for Settlement of Investment Disputes (2010) FTR Holdings S.A. Switzerland et al, Request for arbitration. 19 February. Available at: www.smoke-free.ca/eng_home/2010/PMIvsUruguay/PMI-Uruguay%20complaint0001.pdf (accessed 12 June 2011).
- Jilla JH (1989) Fax: Trip report Thailand, April 26–28 and next steps. 2 May. Philip Morris. Bates No. 2504047531/7535. Available at: legacy.library.ucsf.edu/tid/vrx32e00.
- Johnston M (2011) Smoke signals from Mexico. *Herald Sun* (Melbourne), 16 August, 17.
- Kennedy D (1989) White Group Limited. [Letter to Mr. Michael Norsworthy, BAT]. 20 November. British American Tobacco. Bates No. 301634432. Available at: legacy.library.ucsf.edu/tid/wfj77a99/pdf.
- Kerr C and Dunlevy S (2011) EU uneasy with plain packaging. *The Australian*, 28 June, 8.
- Kim KK (2003) It's all about trade: United States press coverage of cigarette export talks and policy. *Mass Communication and Society* 6(1):75–97.
- Lambert A, Sargent JD, Glantz SA and Ling PM (2004) How Philip Morris unlocked the Japanese cigarette market: Lessons for global tobacco control. *Tobacco Control* 13: 379–387.
- Lee K, Carpenter C, Challa C et al. (2009) The strategic targeting of females by transnational tobacco companies in South Korea following trade liberalisation. *Globalization and Health* 5(2). DOI:10.1186/1744-8603-5-2. Available at: www.ncbi.nlm.nih.gov/pmc/articles/PMC2655290/ (accessed 14 January 2011).
- McGrady B (2007) Trade liberalisation and tobacco control: Moving from a policy of exclusion towards a more comprehensive policy. *Tobacco Control* 16: 280–283.
- MacKenzie R, Collin J and Lee K (2003) *The Tobacco Industry Documents: An Introductory Handbook and Resource Guide for Researchers*. London: LSHTM. Available at: www.lshtm.ac.uk/cgch/tobacco/Handbook%2008.07.03.pdf (accessed 22 January 2011).
- MacKenzie R, Collin J and Sriwongcharoen K (2004) 'If we can just "stall" new unfriendly legislations, the scoreboard is already in our favour': Transnational tobacco companies and ingredients disclosure in Thailand. *Tobacco Control* 13(Supp. II): ii79–ii86.

- MacKenzie R, Collin J and Sriwongcharoen K (2007) 'Thailand – lighting up a dark market': British American Tobacco, sports sponsorship and the circumvention of legislation. *Journal of Epidemiology and Community Health* 61: 28–33.
- Mamudu HM, Hammond R and Glantz SA (2011) International trade versus public health during the FCTC negotiations, 1999–2003. *Tobacco Control* 20: e3. DOI:10.1136/tc.2009.035352. Available at: tobaccocontrol.bmj.com/content/20/1/e3.full (accessed 7 January 2011).
- Mathers CD and Loncar D (2006) Projections of global mortality and burden of disease from 2002 to 2030. *PLoS Medicine* 3(11): e442. DOI:10.1371/journal.pmed.0030442. Available at: medicine.plosjournals.decenturl.com/archive-1549-1676-3-11-pdf (accessed 12 January 2011).
- Mitka M (2009) FDA exercises new authority to regulate tobacco products, but some limits remain. *Journal of the American Medical Association* 302(19): 2078–2081.
- Norsworthy M (1983) East Asia/Pacific Basin project team. 8 February. British American Tobacco. Bates No 303665996/6108. Available at: legacy.library.ucsf.edu/tid/eik38a99/pdf.
- Norsworthy M (1988) Secret. Note to Messrs BD Bramley, DG Heywood, RA Crichton. Thailand. 17 May. British American Tobacco. Bates No. 301667390/7393. Available at: legacy.library.ucsf.edu/tid/kon77a99/pdf.
- Oglesby MB Jr (1990a) Memorandum biweekly status report. Tobacco issues. 14 September. RJ Reynolds. Bates No. 507609388/9390. Available at: legacy.library.ucsf.edu/tid/pch24d00.
- Oglesby MB Jr (1990b) Interoffice memorandum biweekly status report. Tobacco issues. 12 January. RJ Reynolds. Bates No. 507609450/9452. Available at: legacy.library.ucsf.edu/tid/drg24d00.
- Payne T (1991) RJR Nabisco. Bi-weekly status report. 8 March. RJ Reynolds. Bates No. 507602743/2746. Available at: legacy.library.ucsf.edu/tid/cvh24d00.
- Pepples E (1991) Five-year tobacco environment. 10 July. Brown & Williamson. Bates No. 682502118/2134. Available at: ltdlimages.library.ucsf.edu/imagesv/v/s/h/vsh30f00/Svsh30f00.pdf.
- Peterson LE (2010) Philip Morris files first-known investment treaty claim against tobacco regulations. *Investment Arbitration Reporter*, 3 March. Available at: <http://www.iareporter.com/articles/20100303> (accessed 3 July 2011).
- Philip Morris (1990) Thailand market research report. Philip Morris. Bates No. 2500098327/8336. Available at: legacy.library.ucsf.edu/tid/bzd42e00.
- Philip Morris Asia (1989) Philip Morris Asia corporate affairs plan 1990–1992. December. Philip Morris. Bates No. 2500084000/4042. Available at: legacy.library.ucsf.edu/tid/lil19e00.
- Physicians for a Smoke-Free Canada (2009) Packaging phoney intellectual property claims. Ottawa. Available at: tiny.cc/fkxmu.
- Price D, Pollock A and Shaoul J (1999) How the World Trade Organization is shaping domestic policies in health care. *Lancet* 354: 1889–1892.
- Pritchard RJ (1990) Thailand market opening. 9 October. British American Tobacco. Bates No. 201763062/3063. Available at: bat.library.ucsf.edu/tid/jqu20a99.
- Public Citizen (1989) Burning down the houses: Big tobacco's 1997 congressional lobbying. Available at: www.citizen.org/congress/civjus/prod_liability/tobacco/articles.cfm?ID=908 (accessed 17 March 2011).
- Rekart P (1989) Thailand media and public relations. 23 August. Philip Morris. Bates No. 2500062008/2017. Available at: legacy.library.ucsf.edu/tid/gjy81f00.
- Richter P (2009) Obama names Mideast, South Asia envoys. *Los Angeles Times*, 23 January. Available at: latimes.decenturl.com/obama-names-mideast-south (accessed 23 March 2011).
- Ricke T (1989a) USTR support plan. 19 June. Philip Morris. Bates No. 2023277255/7257. Available at: legacy.library.ucsf.edu/tid/ibt24e00.

- Ricke T (1989b) Status report on USTR support project. 16 June. Philip Morris. Bates No. 2047358229/8233. Available at: legacy.library.ucsf.edu/tid/hqw66e00.
- Ross IA (1989a) Thailand. 23 March. British American Tobacco. Bates No. 301634748/4759. Available at: legacy.library.ucsf.edu/tid/nij77a99/pdf.
- Ross IA (1989b) Visit report - Thailand: 8/9 March 1988 [sic]. Bates No. 301634727/4733. Available at: legacy.library.ucsf.edu/tid/eij77a99/pdf.
- Sato H, Araki S and Yokoyama K (2000) Influence of monopoly privatization and market liberalization on smoking prevalence in Japan: Trends of smoking prevalence in Japan 1975–1995. *Addiction* 95(7): 1079–1088.
- Schaverien L (1989) Thai-Consult Limited. [Letter to BAT's IA Ross]. 19 July. British American Tobacco. Bates No. 301634671/4673. Available at: legacy.library.ucsf.edu/tid/ehj77a99/pdf.
- Scott MJ (1988) Thailand BATCo JV proposal. 16 June. British American Tobacco. Bates No. 301667367. Available at: legacy.library.ucsf.edu/tid/con77a99/pdf.
- Shaffer ER, Brenner JE and Houston TP (2005) International trade agreements: A threat to tobacco control policy. *Tobacco Control* 14(Supp. 2): ii19–ii25.
- Shapiro I (2002) Treating cigarettes as an exception to the trade rules. *SAIS Review* 22(1): 87–96.
- Shepherd P (1985) Transnational corporations and the international cigarette industry in Latin America. In: Newfarmer RS (ed.) *Profits, Progress and Poverty: Case Studies of International Industries in Latin America*. South Bend, IN: University of Notre Dame Press.
- Sherman R (2002) Delegation, ratification, and U.S. trade policy: Why divided government causes lower tariffs. *Comparative Political Studies* 35(10): 1171–1197.
- Smith OC (1990) Rep Atkins' press release re: Thai cigarette GATT Claim. 10 January. Philip Morris. Bates No. 2500044934. Available at: legacy.library.ucsf.edu/tid/xyf87e00.
- Smith R, Correa C and Oh C (2009) Trade, TRIPS and pharmaceuticals. *Lancet* 373: 684–691.
- Snyder RL (1987) Proposal for PM joint venture with TTM. 26 March. British American Tobacco. Bates No. 301667656/7660. Available at: legacy.library.ucsf.edu/tid/avn77a99/pdf.
- Tallon R (1990) Testimony of the Honorable Robin Tallon before the Senate Committee on Labor and Human Resources. 18 April. Tobacco Institute. Available at: legacy.library.ucsf.edu/tid/xbk03f00/pdf.
- Taylor A, Chaloupka FJ, Guidon E and Corbett M (2000) The impact of trade liberalization on tobacco consumption. In: Jha P and Chaloupka FJ (eds) *Tobacco Control in Developing Countries*. Oxford: Oxford University Press, pp. 343–364.
- Thailand (1992) *Tobacco Products Control Act*. B.E. 2535.
- Thailand MoF (Ministry of Finance) (2009) Organizational structure. Available at: www2.mof.go.th/government_agencies.htm (accessed 19 February 2011).
- Thailand MoPH (Ministry of Public Health) (2005) Thailand health profile 2001–2004. Nonthaburi: Ministry of Public Health / Thai Health Promotion Foundation. Available at: www.moph.go.th/ops/health_48/index_eng.htm (accessed 6 March 2011).
- The Economist* (1992) The search for El Dorado. 16 May, 21.
- Torry S (1998) Tobacco's lobbying outlay soared in '98. *Washington Post*, 30 October, A10. Available at: www.washingtonpost.com/wpsrv/national/longterm/tobacco/stories/outlays103098.htm (accessed 4 February 2011).
- Trebilcock M and Howse R (1999) *The Regulation of International Trade*. London: Routledge.
- TTM (Thailand Tobacco Monopoly) (2003) Annual report 2002. Bangkok.
- USCEA (n.d. [probably 1989]) Global Tobacco Trade U.S. Policy and American Cigarettes. Washington, DC: USCEA. Bates No. TIMN0028712/8764. Available at: legacy.library.ucsf.edu/tid/eck03f00/pdf.
- USCEA (1989a) Setting the record straight (approval version). 21 July. Philip Morris. Bates No. 2500062021/2028. Available at: legacy.library.ucsf.edu/tid/uzi19e00.

- USCEA (1989b) Remarks by Owen Smith, President, USCEA. 18 September. RJ Reynolds. Bates No. 507610690/0695. Available at: legacy.library.ucsf.edu/tid/evg24d00.
- USCEA (1989c) Rebuttal statement. Thailand cigarette 301 public hearing. 19 September. Philip Morris. Bates No. 2500062071/2075. Available at: legacy.library.ucsf.edu/tid/jef42e00.
- USCEA (1990) Thailand blocks U.S. cigarette imports as it steps up exports of Thai tobacco. 4 May. Tobacco Institute. Bates No. TIMN0016538/6540. Available at: legacy.library.ucsf.edu/tid/wpn03f00.
- US GAO (United States General Accounting Office) (1990) Report to congressional requesters. Trade and health issues: Dichotomy between U.S. tobacco export policy and antismoking initiatives. GAO/NSIAD-90-190. Washington, DC.
- US GAO (United States General Accounting Office) (1992) Report to congressional requesters. International trade: Advertising and promoting U.S. cigarettes in selected Asian countries. December. GGD-93-38. Washington, DC.
- US GAO (United States General Accounting Office) (2003a) Tobacco exports: USDA's Foreign Agriculture Service lacks specific guidance for congressional restrictions on promoting tobacco. 30 May. GAO-03-618.
- US GAO (United States General Accounting Office) (2003b) United States House of Representatives Committee on Government Reform – Minority Office. Washington DC. Available at: www.house.gov/reform/min/pdfs_108/pdf_inves/pdf_tobacco_gao_FAS_rep.pdf.
- USTR (Office of the United States Trade Representative) (2012) Free trade agreements. Available at: www.ustr.gov/trade-agreements/free-trade-agreements (accessed 4 April 2012).
- Vateesatokit P (2003) Tailoring tobacco control efforts to the country: The example of Thailand. In: de Beyer J and Waverley Brigden L (eds) *Tobacco Control Policy: Strategies, Successes and Setbacks*. Washington, DC: World Bank, pp. 154–179.
- Vateesatokit P, Hughes B and Ritthiphakdee B (2000) Thailand: Winning battles, but the war's far from over. *Tobacco Control* 9: 122–127.
- Wade RH (2003) What strategies are viable for developing countries today? The World Trade Organization and the shrinking of 'development space'. *Review of International Political Economy* 10(4): 621–644.
- Waxman H (2002) The future of the global tobacco treaty negotiations. *New England Journal of Medicine* 346: 936–939.
- Waxman H and Doggett L (2006) Letter to Secretary of State Condoleezza Rice re: Doggett Amendment compliance. 5 December. Essential Action. Available at: www.takingontobacco.org/trade/ (accessed 2 July 2011).
- Waxman H and Durbin RJ (2003) United States Committee on Government Oversight and Reform. Letter to President Bush. Re: Administration promotion of tobacco products abroad. 12 February. Available at: www.henrywaxman.house.gov/UploadedFiles/Letter_to_the_President_4.pdf (accessed 2 July 2011).
- Waxman H, Doggett L and Durbin J (2003) Letter to the President. 26 February. Committee on Government Reform, Washington, DC. Available at: oversight.house.gov/Documents/20040830123156-65062.pdf (accessed 28 April 2011).
- Weissman R (2003) International trade agreements and tobacco control: Threats to public health and the case for excluding tobacco from trade agreements. November. Essential Action. Available at: www.essentialaction.org/tobacco/trade/tobacco.trade.v02.backgrd.pdf (accessed 16 April 2011).
- Weissman R and Hammond R (2000) International tobacco sales. *Foreign Policy in Focus* 3(17). Available at: www.fpi.org/pdf/vol3/17iftob.pdf (accessed 16 April 2011).
- Wen CP, Cheng TY, Eriksen MP et al. (2005) The impact of the cigarette market opening in Taiwan. *Tobacco Control* 14(Supp. 1): i4–i9.

- Whist A (1986) Philip Morris International corporate affairs. 17 December. Philip Morris. Bates No. 2025431401/1406. Available at: legacy.library.ucsf.edu/tid/mjr25e00.
- Wichers JA (1987) Meeting with V.P.C. (Thai consult) at Oriental Hotel on 8th December 1987 (1900 HRS). 21 December. British American Tobacco. Bates No. 301667560/75672. Available at: legacy.library.ucsf.edu/tid/rsn77a99/pdf.
- World Health Organization and World Trade Organization (2002) *WTO Agreements and Public Health: A Joint Study by the WHO and the WTO Secretariat*. Geneva: WHO/WTO. Available at: www.wto.org/English/res_e/booksp_e/who_wto_e.pdf (accessed 6 April 2011).
- World Health Organization (2009) Framework Convention on Tobacco Control. Available at: www.who.int/tobacco/framework/WHO_FCTC_english.pdf (accessed 2 July 2011).
- World Trade Organization (2010a) Technical barriers to trade: Tobacco and alcohol again among members' trade concerns. News item, 23 June. Available at: www.wto.org/english/news_e/news10_e/tbt_23jun10_e.htm (accessed 28 July 2011)
- World Trade Organization (2010b) Dispute settlement: Dispute DS411 Armenia – Measures affecting the importation and internal sale of cigarettes and alcoholic beverages. Available at: www.wto.org/english/tratop_e/dispu_e/cases_e/ds411_e.htm (accessed 27 July 2011).
- World Trade Organization (2011a) Claim brought by Indonesia against the United States dispute settlement: Dispute DS406 United States - Measures affecting the production and sale of clove cigarettes. 23 March. Available at: www.wto.org/english/tratop_e/dispu_e/cases_e/ds406_e.htm (accessed 29 April 2011).
- World Trade Organization (2011b) Dispute settlement: Dispute DS371. Thailand – Customs and fiscal measures on cigarettes from the Philippines. Available at: www.wto.org/english/tratop_e/dispu_e/cases_e/ds371_e.htm (accessed 3 July 2011).
- Yach D and Bettcher D (2000) Globalisation of tobacco industry influence and new global responses. *Tobacco Control* 9: 206–216.
- Yach D, Wipfli H, Hammond R et al. (2006). Globalization and tobacco. In: Kawachi I and Wamala S (eds) *Globalization and Health*. Oxford: Oxford University Press, pp. 39–67.
- Yeoman B (2003) Secondhand diplomacy: After closed-door meetings with cigarette makers, the Bush administration is seeking to derail a global tobacco treaty. *Mother Jones*, March/April. Available at: www.motherjones.com/news/outfront/2003/10/ma_284_01.html (accessed 17 April 2011).
- Zeigler DW (2006) International trade agreements challenge tobacco and alcohol control policies. *Drug and Alcohol Review* 25: 567–579.
- Zimmerman C (1990) My way: A conversation with the Thailand Tobacco Monopoly. *Tobacco Reporter* 118(1): 34–38.

Résumé

'Politique commerciale, non morale ou politique de santé': Le Représentant Américain au Commerce, les compagnies de tabac et la libéralisation du marché en Thaïlande

En 1990, l'ouverture forcée du marché de la cigarette thaïlandais à l'importation est devenue une cause célèbre dans les débats sur l'impact social et sanitaire des accords commerciaux. À l'instigation des principaux fabricants de cigarettes basés aux Etats-Unis, le Représentant Américain au Commerce (RAC) a menacé de sanctions commerciales la Thaïlande pour contraindre le gouvernement de ce pays à libéraliser son marché de cigarette domestique. Le défi de la Thaïlande au RAC a conduit à la saisine de

l'Accord Général sur les Tarifs Douaniers et le Commerce (GATT) pour arbitrage. Si le GATT a statué en faveur du RAC concernant l'accès au marché, il a également constaté que la Thaïlande pourrait par la suite promulguer une réglementation non discriminatoire en matière de contrôle du tabac sans contrevenir à l'accord du GATT. Ce document contribue à la littérature existante par le biais de son analyse des documents de l'industrie du tabac qui mette en évidence non seulement la réactivité du RAC au lobbying des compagnies de tabac, ce qui soulève des préoccupations concernant les moteurs de la mondialisation et la protection limitée accordée aux préoccupations de santé publique dans les accords de commerce. De manière significative, les documents indiquent également que le soutien du RAC à l'industrie du tabac n'était pas inconditionnel, car sujet de pressions plus larges de négociations commerciales mondiales. Malgré cette restriction, la volonté permanente du Gouvernement à promouvoir les intérêts internationaux des sociétés de tabac reste une préoccupation dans une perspective de santé publique, compte tenu notamment de l'échec des Etats-Unis à ratifier la Convention-cadre de l'Organisation mondiale de la Santé pour la lutte antitabac.

Mots-clés

Accords de commerce bilatéraux, CCLAT, industrie du tabac, libéralisation du commerce, mondialisation, RAC, Thaïlande, USCEA

Resumen

Política comercial, ni ética ni política de salud: el representante norteamericano de comercio, compañías tabacaleras y apertura comercial en Tailandia

La apertura de las importaciones de cigarrillos impuesta en Tailandia en 1990 se ha convertido en una *cause celebre* en los debates sobre los impactos sociales y de salud de los acuerdos comerciales. Respondiendo a demandas de los principales productores de cigarrillos de los Estados Unidos el representante comercial de ese país (USTR) amenazó con imponer sanciones comerciales para forzar al gobierno tailandés a liberalizar la comercialización interna de ese producto. La negativa de Tailandia a dicha demanda dio lugar al arbitraje del GATT (Acuerdo General de Tarifas y Comercio) que falló a favor del representante comercial norteamericano en lo relativo al acceso al mercado, si bien consideró además que Tailandia podría implementar controles no discriminatorios al tabaco sin trasgredir el acuerdo del GATT. Este artículo contribuye a la literatura existente a través del análisis de documentos que echan luz no solamente sobre la permeabilidad del representante comercial norteamericano frente al lobby de las corporaciones tabacaleras, generando preocupación sobre los mecanismos de la globalización y la escasa protección de la salud pública presentes en los acuerdos comerciales. Significativamente el documento también indica que el apoyo del representante comercial norteamericano a la industria del tabaco no fue incondicional ya que estuvo sujeto a presiones más amplias de las negociaciones comerciales globales. Sin embargo, la voluntad gubernamental para favorecer los intereses internacionales de las corporaciones

tabacaleras es preocupante para la salud pública, particularmente dada la negativa de los Estados Unidos de ratificar la Convención Marco de Control del Tabaco de la Organización Mundial de la Salud.

Palabras clave

Acuerdos comerciales bilaterales, *aperture commercial*, FCTC, globalización, industria tabacalera, Tailandia, USCEA, USTR

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