

TOBACCO INDUSTRY RESPONSE TO INGREDIENT DISCLOSURE LAW

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Among the \$64 million questions one should be : “What is the product that causes or contributes to 3 million deaths per year to the world’s population, yet its contents are almost totally secret and it is exempted from all health regulations?”

When one buys packaged foods or pharmaceuticals the contents are, by law, listed on the labels. Yet tobacco products, the merchandise of death, do not have to inform their consumers about their ingredients.

WHY LAW ON INGREDIENT DISCLOSURE ?

At present only two countries in the world,i.e.,Canada and Thailand, have laws requiring producers of tobacco products to disclose the list and amount of ingredients in each brand. In the U.S., Massachusetts passed the ingredient disclosure law in 1996 but was upheld in federal appeals court in 1997 after the commonwealth was sued by a group of cigarette companies.

In other cases the law can only demand a collective list of ingredients be submitted. In the U.S., the Comprehensive Smoking Education Act of 1984 and the Comprehensive Smokeless Tobacco Education Act of 1986 require that cigarette and smokeless tobacco companies submit annually to the Secretary of the U.S. Department of Health and Human Services confidential lists of ingredients added to tobacco in the manufacture of these products. The Secretary, by law, must treat these lists as confidential information, but may report to any subcommittee or committee of the U.S. Congress on any ingredient which in the judgement of the Secretary poses as a serious health to cigarette smokers. The Secretary has not been granted any authority to regulate any hazardous products that may be identified through this collection process. The Office on Smoking and Health admitted that the existing law requires insufficient information from the industry to permit analysis of the health effects of exposure.¹

As far back as 1913 when the first Camel cigarettes rolled off the production line they were flavored with chocolate to please the taste buds of smokers who were not pleased with the “fine tobacco”. Since then the industry has developed more than 4,000 compounds to be added to cigarettes, according to The National Cancer Institute.² Around the year 1983 William Schlotzhauer, a chemist for the USDA in Athens, Georgia was doing the duty of keeping track of the chemicals, foodstuffs, and nontobacco vegetation that cigarette manufacturers added to their products. In the course of analyzing one popular low-tar cigarette, Schlotzhauer found a mysterious compound he was unable to identify. The compound’s molecular weight and pattern in smoke were not on file. He had inadvertently stumbled across an “X compound” cigarette ingredient, apparently invented inside the tobacco industry and then hidden from public scrutiny behind the impenetrable wall of trade secrecy.

Demand for low tar and low nicotine cigarettes started in the mid 1970s in response to smokers’ continuing demand for a reduction in health risks. Lowering tar in cigarettes is not difficult. One method is mixing air in the smoke through ventilated filters or perforated paper. Other measures include narrowing the diameter of the cigarettes, packing with less tobacco using low filter, and breeding low-tar tobacco. But filters and low tar and nicotine alter flavor – the smoke becomes drier, losing much of its body. Taste yield is reduced and descriptive analytical profile of the smoke flavour changes. A repeatedly described taste deficiency is that of “dry mouth feeling”. To compensate for these deficiencies the flavorists had to work hard to find the right solution. Frederick J. Triest, veteran U.S. tobacco industry flavor consultant said “regular smokers are accustomed to inhaling a certain amount of taste and body. With low tar, the only way manufacturers can give it to them is in flavors and fragrances”. In other words, additives.

The issues of additives has been a tobacco industry secrecy. The industry people, with the claim of low, lower, lowest tar, link each brand they create to some “ideal” safer cigarettes that tastes good like a cigarette should. The miracle, of course, is top secret. Robert Ruckeyser, public – affairs director for American Brands Inc. said “We are really do consider flavor-enhancing to be a trade secret, and we prefer not to discuss that area at all”. Ernest Pepples, senior vice-president of B&W Tobacco said “It

would be an extraordinary breach of our policy to discuss what we use or don't use"...The recipes (for flavoring) are carefully kept secrets". Art Bentlay, spokesman for U.S.Tobacco said "due to the competitive nature of the tobacco industry, all information is proprietary and confidential".

U.S. health authorities had been concerned about the secrecy over cigarette ingredients for a decade. In July 1980 the then Surgeon General Dr. Julius Richmond wrote to the six major American firms asking for "a list of those substances which your firms use in the brands". He received polite replies, but no specific information. His successors pursued the Richmond's lead but the dialogue with the tobacco industry was complex, prolonged, and inconclusive. The best they could do was enacting the law in 1984 that requires the cigarette makers to submit a collective list of ingredients to the DHHS Secretary.

THE DANGEROUS ADDITIVES

The additives may be natural or synthetic. Additives employed may include artificial tobacco substitutes, flavor extracts of tobacco and other plants, exogenous enzymes, powdered cocoa, and other synthetic flavoring substances. Numbers of additives used may vary. Anywhere from 30 to 150 different flavors may be used for one brand.³ The tobacco industry claimed it had 1,400 additives that could be put into cigarettes.² A flavor may contain more than a hundred chemical ingredients.

"List of Permitted Additives to Tobacco Products" was first published in 1975.⁴ by the British Independent Scientific Committee on Smoking and Health. There were some 350 in all. The list contained a number of known animal carcinogens considered potentially hazardous to human health. The FDA has its own list of food and drug additives :Generally Recognized as Safe (GRAS). The American cigarette producers adhere to the GRAS list for the defence of their flavor additives.

Several additives are known to be dangerous to health. Acetaldehyde is one of volatile aldehydes and may be cytotoxic or genotoxic. Additives dl-Alanine, l-leucine and l-phenylalanine are aminoacids which are known to give rise to aminoheterocyclic compounds during heating.⁵ One of them induces liver cancer in nonhuman primates.⁶

These compounds are powerful genotoxic agents and several are experimental carcinogens

Ammonia is probably the most important additive. Research by James Pankow, a chemist at Oregon Graduate Institute, showed that when the smoker lights up, nicotine shown here in green is dragged from tobacco and into the lungs by most droplets within smoke. When ammonia is added, nicotine changes into a form that more easily escapes tobacco and is more available to the body. Pankow made his measurements by trapping the many chemicals of tobacco smoke on filters. He found that he could release the highly reactive, free-base form of nicotine by passing ammonia through those filters. Ammonia can make the nicotine in a cigarette up to one hundred times more available to the smoker.

Angelica root extract is another chemical added. Two oils, angelica and Bergamot contain furocoumarins, angelicin and 5-methoxypsoralin. Both furocoumarins can be photoactivated to DNA-damaging reactants.⁷ In conjunction with solar-simulated radiation, 5-methoxypsoralin has been judged by a working group of IARC.⁸ to be an experimental carcinogen and there was limited evidence for angelicin.

Benzyl acetate is used as a flavoring agent. It occurs naturally in plants such as apples, jasmine, and ylang-ylang. In 1988, the National Toxicology Program reported that for male and female mice there was some evidence of carcinogenicity in that benzyl acetate caused increased incidence of liver and forestomach tumors.

Ethyl 2 Furoate was a possible chemical warfare agent in the 1930s. Ethyl furoid is a chemical in a family of "notorious liver toxins". Little is known about ethyl furoid except that it causes liver damage when tested on animals. Eugenol is suspected of being carcinogen all by itself. Another additive freon is a chlorofluorocarbons (CFC) which damage the ozone layers. The additives furfuraldehyde, glyoxal, and 2-hexenal are volatile aldehydes and therefore likely to be in the smoke. These may be cytotoxic or genotoxic.

Humectants are added to make aged tobacco workable and keep cigarettes fresh. The major ones are glycerol and glycol. According to the 1979 Surgeon General's Report glycols are suspected to influence the smoker's risk of bladder cancer. Burning of triethylene glycol produces 1,4 dioxane, another harmful substance. Some industry

sources say the triethylene glycol has been replaced with diethylene glycol, a humectant which is not known to be harmful⁹ The burning product of glycerol is acrolein which suppresses the action of microscopic cilia that force irritants from the lungs. As a result, the smokers' risk of chronic obstructive lung disease is increased and the lungs are open to attack by toxins and carcinogens. In a report, 35 million pounds of glycerol was added each year just to keep cigarettes moist.¹⁰ Cigarette smokers have an increased risk of leukemia.¹¹ One of leukemogenic agents in cigarette smoke is benzene.¹² Since many tobacco additives are known to give rise to benzene during burning¹³ the effect of flavor additives on the smoke yield of benzene should be investigated.

Although cocoa powder makes a healthful drink, smoke from cocoa burned in cigarettes could be hazardous. In the mid 1970s Dr. Gio Gori of the NCI found that condensate of tar produced by cigarette flavored only with cocoa produced more tumors when painted on the skin of mice than did tars from unflavored cigarettes.

Practically all licorice extract produced in the U.S. goes into tobacco. It adds flavor, help keep tobacco moist, and improves the burning quality. Licorice root extract contains up to 25% glycyrrhizin, a compound which, when burned, is a precursor for cancer-causing polycyclic aromatic hydrocarbons.

Menthol is an inducer of enzymes and thus may accelerate the metabolic activation of tobacco carcinogen. Methoprene is a pesticide used to kill insects on stored tobacco. Methyl salicylate when given orally or topically to Syrian golden hamsters and rats is teratogenic.¹⁴ Orange-Peel oil promotes tumors in mice. Sclareol can react with other chemicals to produce convulsions.

A standard recipe for flavoring 100 pounds of tobacco calls for 14 pounds of sugar. When burned with tobacco sugar increases tar yield. Sugar is precursor of polynuclear aromatic hydrocarbons (PAH) which are carcinogenic. Certain forms of sugar, particularly caramel and invert sugar, produce catechol when heated. This is 'the major known co-carcinogenic in tobacco smoke', according to Dietrich Hoffman, associate director of the American Health Foundation.

THAILAND'S LAW ON INGREDIENT DISCLOSURE

Thailand passed the Tobacco Product Control Act (TPCA) in March 1992 and the law became effective from 5 June 1992.

Section 11 of this Act states that 'tobacco products to be sold shall have the composition in accordance with the standards prescribed in the Ministerial Rules.'

'In case where the composition of any product does not comply with the standards prescribed in paragraph one, the Minister shall have the power to order the prohibition of sale or import of such tobacco product.'

For violations of this section 11 the penalties are as follows:

Section 29 states that 'Any manufacturer or importer failing to inform the particulars or informing incomplete particulars or informing false particulars or selling or importing the tobacco products in violation of Section 11 shall be subject to an imprisonment not exceeding six months or a fine not exceeding one hundred thousand baht or both'. At the time of law enactment 100,000 Baht was equivalent to US\$4,000.

Usually the 'Ministerial Announcements' can be passed by the minister responsible for that law but the 'Ministerial Rules' must be submitted to the Juridical Council for legal scrutiny and to the cabinet for final approval. In the case of Tobacco Product Control Act 1992 the Ministerial Rules pursuant to Section 11 were withheld for more than 5 years due to TTCs' lobbying until 1997 when it was proposed and approved by the cabinet. The rules became effective on 13 February 1998 (Annex 11).

THE TOBACCO INDUSTRY'S RESISTANCE

The draft of TPCA was started in July 1989, finished in October 1990, scrutiny completed by the Juridical Council in December 1991, approved by the cabinet in February 1992 and enacted into law by the parliament on 13 March 1992. At every step the TTCs tried to block the law, especially the section on ingredient disclosure, at all cost.

At the Juridical Council

During September 12 to December 20, 1991 the Juridical Council scrutinized the draft law, the TTCs on October 25, 1991 sent a letter to one of the deputy premiers

asking to have a part in the scrutiny. The meetings were stalled for some time. When this was discovered I, as a representative of the Ministry of Public Health (MOPH) and chairman of the committee drafting the TPCA, asked the Council committee whether we should allow Khun Sa (the biggest drug war lord operating in the Golden Triangle) to participate in drafting a law suppressing drug trafficking or not if he asked. The committee then resumed the scrutiny meetings and finally finished the work.

Before the cabinet meeting

Before the draft law was sent to the cabinet the TTCs on January 24, 1992 sent a letter to a deputy premier complaining that they asked for 'cooperation' with the MOPH in the process of drafting the law but were not given an opportunity. The MOPH had to submit an explanation to the deputy prime minister.

At the cabinet meeting

At the time the draft law was presented to the cabinet on February 11, 1992 the TTCs again made a valiant effort to eliminate the section on ingredient disclosure. Dr. Prakrit Vatheesatokit and I were appointed by the MOPH to explain the draft law to the cabinet. Before the meeting started the deputy public health minister told us that a deputy prime minister asked to delete section 8 (total advertising ban) and section 11 (ingredient disclosure). The deputy health minister and Dr. Prakrit Vatheesatokit thought that in order to get the draft law approved by the cabinet it might be wise to sacrifice some portion of the draft law. I suggested that before yielding to the demand we should know their reasons and try our best to explain. When the cabinet's agenda came to the consideration of the draft law a deputy premier proposed to delete the 2 sections. After listening to our explanation of the significance of comprehensive advertising ban the cabinet approved this section. For the ingredient disclosure section the deputy premier said it would not be justified if the producers' trade secret would have to be revealed. I explained the health reasons and ended that even the U.S., home of several TTCs, had the law demanding producers to disclose the additives to the government. Right after the statement a minister opined that if the U.S. had this law why we could not have one. The cabinet became stunned and automatically

approved this section. Just before the lunch break the deputy premier asked to see the U.S. law. The prime minister asked me whether I had it . I answered that it was in my office. He asked me to go back and get it and concluded that if he receive the evidence the draft law would be approved (without being presented to the cabinet again) and sent to the National Assembly. I and Dr. Prakit rushed back to my office and searched the documents of GATT Thai Cigarette Case and found a statement of the U.S. party claiming that the U.S. had a law requiring cigarette producers to submit list of ingredients to the Secretary of the Department of Health and Human Services. It was photocopied and brought back to the government house and handed to the deputy health minister who passed it on to the premier. He approved and I was asked by the government spokesperson to announce the draft bill to the press in that afternoon, to everyone's excitement.

Before the laws were presented to the National Legislative Assembly

On February 25, 1992 the TTCs sent a letter to the president of the assembly asking to explain to him about the draft laws. The assembly president's response was not known.

At the National Legislative Assembly

The 2 draft bills, The TPCA and The Nonsmokers' Health Protection Act, were sent from the cabinet to the National Legislative Assembly which held meetings on Thursdays and Fridays. On 27 February they were placed at the end of the list of the agenda. On 28 February they moved up to be at the 10th place of the agenda. On 5 March they were at the last place again. It was realized that there was a suspicious man-made stall of the bills and I and Dr. Prakit had to call on the press denouncing the mysterious pull, resulting in leading news on the front pages of 2 most popular dailies on March 6. The prime minister saw the news and hastily ordered the draft bills to be put on top of the agenda and they passed through the first reading on that day.

When the drafts were sent for deliberation by the Assembly's Committee for Health and Environment the TTCs intervened again. On the first session of the committee meeting on 10 March two assembly members submitted proposals to delete

Section 4 (prohibition of sale to minors) and Section 11. One of the two brought along Philip Morris' country manager into the meeting room while the secret deliberation session was held. I sent a protest note to the chairman and he immediately announced that people who were not invited to the meeting must leave the room. The PM man tamely walked out. I notified the press and on the following day front page news appeared again, this time in every daily newspapers. The two assembly members gave up their proposals and the bills sailed through without any questions or debate in the final reading on 13 March, only one week before the end of the government term. If they were not enacted the whole process had to start from square one and it was very unlikely that they could be passed because the elected political parties could be bought easily.

After the passage of the bill

The TPCA 1992 became effective on 5 August 1992 but Section 11 had to have Ministerial Rules to be enforced. The Rules were drafted and proposed to the Public Health Minister but the group of cigarette importers tried to persuade the Minister to set the rules that they submit one collective list of ingredients while the technocrats who drew up the rules insisted that to really protect health brand-specific disclosure must be the rule.

The TTCs had been trying hard to resist the passage of the Ministerial Rules both by their own and by the help of their embassies and regional trade group. It could be summarized chronologically as follows:

- ◆ July 1992 – The draft Ministerial Rules was completed and proposed to the Minister of Public Health.
- ◆ 16 July 1992 – Japan Tobacco Inc. (JTI) sent a letter to the Minister of Public Health (Dr. Parote Ningsanond) expressing deep concern over the proposed regulations in Section 11 which were rumored to be based on Canadian regulations (*Annex 1*).

- ◆ 20 August 1992 – In response to the request, a meeting was held between the Minister and decision makers of the MOPH and the TTCs representatives. The MOPH insisted that the brand by brand disclosure must be made.
- ◆ 27 August 1992 – The TTCs sent a letter to the Prime Minister complaining that the disclosure by brands would be equivalent to giving up brand formulas for highly valuable global brands (*Annex 2*).
- ◆ 28 August 1992 – Another meeting between the MOPH and the TTCs representatives were held. The TTCs proposed that a collective list be mandated. The Minister seemed to be softened about the MOPH' previous strong stand although the permanent officials were consistently adamant. It was rumored that the Minister was likely be forced by a leader in the Revolutionary Council (formed after a coup de tat).
- ◆ 31 August 1992 – Letter of the TTCs group to Minister of Public Health expressing appreciation the Ministry's position that ingredients be disclosed by individual company composite list (*Annex 3*).

(On 1 October 1992 Dr. Pairote left the MOPH after the general election without making final decision about the Ministerial Rule.

October 1992 – A new cabinet took in office and Mr. Boonpun Kaevatana became the new Minister of Public Health.)

- ◆ 8 September 1993 – Letter of the U.S. Ambassador (Mr. David E. Lambertson) to Minister Boonpun urging the MOPH to issue the Ministerial Rule to disclose ingredients by company, rather than by individual brand, as discussed and agreed upon with the former minister Dr. Pairote in August 1992 (*Annex 4*).
- ◆ 23 November 1993 – the U.S. Ambassador paid a visit to the Minister of Public Health Mr. Boonpun Kaevatana.

(Mr Boonpun's tenure started from 29 September 1992 and ended on 15 September 1993 without any progress of the Ministerial Rule. The bureaucrats withheld the draft and did not propose it.

On 23 September 1993 Dr. Arthit Urairat became the new Public Health Minister and the bureaucrats renewed the effort)

- ◆ November 1993 – Dr Supakorn Buasai, the deputy director of Health System Research Institute and a tobacco control advocate, sent an e-mail to John Bloom at the American Cancer Society (ACS) and Scott Ballin of the Coalition on Smoking OR Health (CSOH) reporting the U.S. Ambassador's move.
- ◆ 7 December 1993 – Letter from the CSOH to alert the USTR to disturbing reports that the U.S. Embassy in Thailand had been urging the Thai government to accept a tobacco industry-backed proposal to weaken health provisions relating to disclosure of cigarette additives. It said brand-specific information is necessary from a public health perspectives. The CSOH would appreciate confirmation that the U.S. did not oppose a law, applied equally to domestic and imported brands, in Thailand, Canada or any other nation (*Annex 5*).
- ◆ 30 March 1994 – A very carefully worded letter from the USTR Mickey Kantor to CSOH that offered a great deal of encouragement, but no definitive answers to the questions posed to him (*Annex 6*).
- ◆ 22 March 1995 – Public Health Minister Dr. Arthit proposed the draft Ministerial Rules, mandating brand specific disclosure, to the cabinet. As a matter of normal proceeding it was circulated to concerned ministries for comment. None were received, indicating that other ministries agreed in principle. The Ministry of Finance, which controls the Thailand Tobacco Monopoly, sent a letter dated 2 May 1995 stating support for the draft Ministerial Rule.
- ◆ 3 April 1995 – The TTCs group sent a letter to the Minister of Public Health, citing the former minister's agreement on a list by company and expressed concern about the MOPH's move of brand-specific ingredient disclosure being passed. They asked for a

meeting with the minister. The minister responded that the TTCs could meet the Committee for Control of Tobacco Use (CCTU).

◆ May 1995 – A press release from Ramathibodhi Faculty of Medicine was publicized, revealing a telephone survey of Bangkokians about their opinion on the disclosure of ingredients in tobacco products. The survey was carried out during 28 April to 3 May 1995. The 401 respondents consisted of 31.3% smokers and 57.5% nonsmokers, among which 86% agreed with the disclosure law and 96.7% believed that there were several chemicals in tobacco products that could cause cancers.

◆ 16 May 1995 – the Cabinet endorsed the Ministerial Rules which were subsequently sent to the Juridical Council for legal appropriation.

◆ 13 June 1995 – Mr. Patrick Rekart, regional Manager – Corporate Affairs of Philip Morris sent a letter to the Director General of Department of Economic Affairs, Ministry of Foreign Affairs expressing serious concern that the ministerial regulation, being reviewed by the Juridical Council, would raise serious legal, trade, and intellectual property issues. The D-G was asked to raise these issues with the council to enable them to include these crucial matters in their review of the proposed regulations
(Annex 7)

(The Juridical Council can not alter the substance of the laws or rules drafted by various ministries but as the government's legal advisor the council has the duty to correct the wording so that they would be legally appropriate.)

◆ 19 June 1995 – Mr. David Moran, Economic Counselor of the Embassy of the U.S.A. sent a letter to the D-G of the Ministry of Foreign Affairs' Department of Economic Affairs stating that the Embassies of the U.S., Japan and the U.K. had sent letters of concern to the responsible officials of the MOPH but had not received any response. The D-G was asked to forward Philip Morris' submission to the Council of State (Juridical Council) for consideration (Annex 8).

- ◆ 27 June 1995 – Mr. Taro Ishibashi, Minister of the Embassy of Japan, sent a letter to the Ministry of Foreign Affairs' D-G of the Department of Economic Affairs asking to submit the issues to the Juridical Council.

(Dr. Arthit's tenure as Public Health Minister ended after the general election and the new minister, Mr. Sanoh Thienthong took office on 18 July 1995)

- ◆ 15 August 1995 – The cabinet secretary-general sent the draft Ministerial Rules, which had been appropriated by the Juridical Council, to the MOPH for consideration.
(As a matter of procedure if the MOPH was satisfied it would propose to the Cabinet for final approval and the Rules would be signed by the Minister of Public Health and sent to be published in the Royal Gazette)

- ◆ 30 August 1995 – the Minister of Foreign Affairs sent a letter to the cabinet secretary-general asking to consider the TTCs and embassies' request to submit the case to the Juridical Council.

- ◆ 5 September 1995 – the cabinet secretary-general sent a letter to the Minister of Public Health asking to consider the petition.

- ◆ 13 October 1995 – the Minister of Public Health proposed the draft Ministerial Rules (that had been appropriated by the Juridical Council) to the cabinet. It apparently was not put on the agenda.

- ◆ 14 December 1995 – the cabinet secretary-general sent a letter to the permanent secretary of MOPH to reconsider the draft Ministerial Rule because of the petition by the TTCs.

- ◆ 3 September 1996 – the cabinet approved the Ministerial Rule proposed by the MOPH.

(There was no progress during Mr. Snoh' tenure as the Public Health Minister from 18 July 1995 to 28 November 1996)

(With the change to a new government Mr. Montri Pongpanich became a new public Health Minister from 29 November 1996)

- ◆ 30 April 1997 – Mr. David R. Moran, Economic Counselor of the U.S. Embassy sent a letter to Dr. Varabhorn Bhumisawasdi, Director of the Institute of Tobacco Consumption Control, asking for the text of the Ministerial Rules (*Annex 10*).
- ◆ 8 August 1997 – the Minister of Public Health, Mr. Montri Pongpanich, signed the Ministerial Rule B.E. 2540 (1997), to be effective 180 days after being published in the Royal Gazette.
- ◆ 13 August 1997 – The Ministerial Rule B.E.2540 (1997) was published in the Royal Gazette, to be effective from 1 February 1998.

(As a result of cabinet reshuffle Mr. Rakkiat Suthana became Public Health Minister from 14 November 1997 until his resignation on 15 September 1998)

- ◆ 2 December 1997 - G. Lohan, Head of EC TBT Enquiry Point at Brussels sent a fascimile to Thai Industrial Standards Institute (TISI), Ministry of Industry asking the testing methods required to measure the quantity of DDT in cut tobacco and criteria to be used and testing methods to determine the amounts of additives (*Annex 12*).The TISI sent a letter to the D-G of the Department of Medical Services (DMS) asking for the answers. The TISI asked the DMS for a meeting on 26 January 1998 to discuss the answers.
- ◆ 15 December 1997 – The Confederation of European Community Cigarette Manufacturers Ltd. (CECCM) sent a letter to Mrs. Marie-Pierre Piriou, Directorate General III EA-1, E.C. complaining that the regulations were excessively onerous. This would needlessly intrude into areas of commercial sensitivity, infringe on basic property rights as protected by the WTO, introduce an unwarranted and unnecessary barrier to international trade and set a menacing precedent for other countries. They

asked the E.C. to make representations to the Thai authorities, both direct to the Thai Government and through the TBT Committee in Geneva.

- ◆ 19 December 1997 – European Cigar Manufacturers Association (ECMA) sent a letter to the E.C. Directorate General requesting her to make ECMA's objection known to the WTO as well as to the Thai MOPH.
- ◆ 16 January 1998 – the TISI answered that enquiries should be addressed directly to Dr. Chakradharm Dharmasakti, Deputy-D.G., Department of Medical Sciences, MOPH.
- ◆ 20 January 1998 – Mr. Leonidas Tezapsidis, Counsellor, Delegation of the European Commission to Thailand sent a letter to Dr. Chakradharm, asking for the answers requested in the letter of 2 December.
- ◆ 22 January 1998 – Mr. Robert Fitts, Economic Counselor, U.S. Embassy sent a letter to Mr Karun Kittisataporn, D-G of the Department of Business Economics (DBE), asking to review a document regarding proprietary information. On the same day he sent another letter of similar content to the D-G of DMS.
- ◆ 23 January 1998 – Mr. Sean P. Murphy of the USTR Office of Asia and the Pacific sent a fascimile to Minister Kanissorn of the Royal Thai Embassy asking to coordinate Thailand's response to the demarche that the U.S. Embassy in Bangkok delivered to the Thai Government officials (*Annex 13*).
- ◆ 27 January 1998 – Siam Premier International Law Office Ltd. sent a photocopy of a letter of ECMA, petitioning the E.C. to relay its objection to WTO and MOPH, to the deputy-secretary of the prime minister.
- ◆ 28 January 1998 – Letter of Asia Pacific Regional General Counsel of British American Tobacco to Director General, Ministry of Public Health asking to meet for further discussion (*Annex 14*).

- ◆ 6 February 1998 – TISI sent a fascimile to Mr. G. Logan, EC WTO-TBT Enquiry Point informing about methods of determining DDT and additives.
- ◆ 6 February 1998 – The issue of Ministerial Rule was put in an agenda of the meeting of the Committee on International Economic Policy with a resolution that the matter should be in conformity with the WTO regulations. The Department of Business Economics (DBE) was given the responsibility to consider the case. The Department of Medical Services (DMS) was invited to a consultative meeting on 13 February. Another meeting was held on 27 February. I and Dr. Varabhorn Bhumiswasdi represented the DMS, explaining the rationale of the Ministerial Rule. The meeting concluded that cigarette manufacturers were wellcome to propose written comments for consideration, the DBE would answer the U.S. Embassy and E.C. that the deadline could not be extended since it had become the law, there was no discriminatory practice among the domestic and foreign producers, and the MOPH would strictly keep the secret.
- ◆ 6 February 1998 – Mr. Robert Fitts, Economic Counselor, U.S. Embassy, sent a letter to D-G of DBE stating that the U.S. Government formally requested a postponement in the Thai Government's implementing of the regulation.

(10 February 1998 was the deadline for submitting the list of ingredients in each brand of tobacco products, i.e. cigarettes and cigars to the MOPH)

- ◆ 10 February 1998 – BAT sent a letter to the Minister of Public Health requesting that two week relaxation period be granted so that the government had the opportunity to comprehensively address the concerns raised about the content. These concerns had been voiced by tobacco manufacturers, the E.C.and the USTRs.
- ◆ 11 February 1998 – I sent out a message through the Globalink informing the members that although February 10 was the deadline the TTCs defied the law and had been lobbying hard to extend the due date. The USTR and the E.C also intervened.

- ◆ 11 February 1998 - John Bloom of Tobacco-Free Kids and Robert Weissman of Essential Action responded by asking for the USTR letter. They received the letter copy by fax and were asked to analyze the USTR's move.
- ◆ 12 February 1998 – John Bloom answered that he would send contacts to sound out the U.S. intention.
- ◆ 13 February 1998 – Robert Weissman sent an e-mail saying that after acquiring the USTR letter they would produce them there for distribution to the media. They would do everything they could to call attention to what USTR was doing and to force them to back down.
- ◆ 20 February 1998 – BAT, RJR, JTI and Rothmans (PM's letter dated 3 March) sent a letter, with exactly the same wording, to the Minister of Public Health asking a grant of 60 days extension so that they could continue to import because their products were detained by the customs when clearance was sought on February 19.

(The dates on which tobacco products producers submitted lists of ingredients:

10 February 1998 – Thailand Tobacco Monopoly (20 brands)

19 " " - Reemstma International Far East Ltd.,(Brands - Davidoff classic)

5 March " - Hi Life Wale Holdings Ltd. (Brands – Duorou, Nice 11)

- ◆ 7 March 1998 – The MOPH postponed the deadline of submission of the ingredients from 10 February to 10 April.
- ◆ 9 March 1998 – I wrote to the Prime Minister asking him not to yield to the U.S. pressure to repeal the ingredient disclosure law and not to approve the TTCs' request to invest in Thailand.

- ◆ 10 March 1998 - Dr. Supachai Panitchpakdi, the Deputy Premier and concurrently Minister of Commerce, gave an interview to newspapers that the the first issue to be discussed during Prime Minister's U.S.visit would be the Ministerial Rules.
- ◆ 11 –17 March 1998 – Thai Prime Minister and entourage made an official visit to the U.S.
- ◆ 12 March 1998 – The Prime Minister and his party met American businessmen in New York.
- ◆ 12 March 1998 – I gave a special interview to the newspapers Bangkok Post, to coincide with the premier's visit.
- ◆ 13 March 1998 – Thailand's leading English language newspaper headlined "*US attacked over tobacco – Bid to defend internal Thai health policy*", with some part of the content "*The United States should not bring up Thailand internal health policies, which have affected the business of transnational tobacco companies, as a bargaining counter in its financial assistance, anti-smoking activist Hatai Chitanondh said. Deputy Premier Supachai Panitchpakdi earlier said in an interview with reporters that one of the issues to be discussed with US President Bill Clinton during Prime Minister Chuan Leekpai's official visit to the US was the enforcement of the tobacco products control law....Despite being in effect from February 10, the Thailand Tobacco Monopoly is the only tobacco company to have informed the ministry of the ingredients of its cigarettes. Other transnational companies have however petitioned the ministry, asking to extend the deadline.....Dr. Hatai said the law was issued for benefit of the public...*"

The news was faxed to Dr. Surin Pitsuwan, the Minister of Foreign Affairs who was travelling with the premier, via the Royal Thai Embassy in Washigton D.C. In an accompanying note I asked Dr. Pitsuwan to urge the premier and deputy premier not to discuss the health rule with their American counterparts. Dr. Surin Pitsuwan was one of the three Thais (the others were Dr. Prakit and myself) who presented Thailand's position at the public hearing on the 301 case held by the USTR in 1989.

- ◆ 14 March 1998 – The premier's party arrived in Washington, D.C. to meet President Clinton. (the Bangkok Post's news of 13 March reached Washington in time for the premier's visit).

Because there was no more progress in political and economic pressures to repeal the Ministerial Rule all the foreign cigarette importers yielded and submitted the list. Further delay could not be tolerated since new batches of their products could not be cleared from the port without approval (of having compliant to the Ministerial Rules) from the MOPH.

17 March 1998 - S.K.S. Purity Ltd. (Brands – Nouvo)

24 " - R.J.Reynolds (Thailand) Ltd. (Brands – Camel, More, Salem, Winston, Yves Saint Laurent)

31 " - Philip Morris (brands – Marlboro, L&M)

2 April 1998 - Japan Tobacco International (Brands - Castor Mild, Mild Seven)

3 April 1998 - Universal Consumer Products (Brands – Benson & Hedge, John Players Special, Lucky Strike, 555)

9 April 1998 - Rothmans of Pall Mall (Singapore)Ltd. (Brands – Cartier Vendome, Dunhill, Rothmans)

- ◆ 10 April 1998 – the deadline for compliance of the Ministerial Rule.

DISCUSSION

A law requiring brand-specific disclosure of the ingredients faces a very strong resistance from the TTCs, with all out effort in lobbying the politicians, the regional organizations and the governments of the home companies.

In Thailand case it took a long seven years to pass the Ministerial Rule. During this period the foreign companies successfully lobbied some politicians to hold out the passage. The bureaucrats and advocates fought with shrewd tactics, avoiding corrupt politicians and supporting clean ones.

The issues

There have been several issues that the TTCs raised against brand-specific disclosure regulations.

1. The public health perspective

The TTCs rarely mentioned about public health perspective. In the US ambassador's letter (Annex 4) it stated that "we feel that it is possible to address public health concerns without needlessly compromising individual brand formulas". In PM's letter (Annex 7) it argued that " alternative method of disclosure such as company ingredient lists would have been considered without jeopardizing the MOPH's objectives" The Coalition on Smoking OR Health, in a letter to the USTRs (Annex 5), asserted that " Brand-specific information is necessary from a public health perspective not only to identify brands that may include dangerous additives, but to identify brands with additives that may be dangerous in combination with other additives in the same brand. Moreover, we believe the public has a basic right to know the ingredients of any product they consume". On the other hand, the EU in the *Note Verbale* (Annex 17), stated that the Commission's concerns " are not questioning the general public health objective of the Regulation".

2. Trade secret – Violation of Thailand's obligations under the Agreement on Trade Related Aspects of Intellectual Property Right ("Agreement on TRIPS")

This was mentioned in several letters of the TTCs and the embassies (annex 8 and 15). In the analysis (Annex 7) the TTCs insisted that regulations which require brand disclosure are equivalent to giving up brand formula for highly valuable global brands and "while countries are permitted under GATT to introduce statutory measures regulating cigarette ingredients, they may not require the disclosure of trade secrets with no assurance of confidential treatment. No other country in the world has done so, and the regulations if gazetted could be subject to challenge before the WTO".

Each of the accusers', the TTCs' and Embassies', international legal arguments could be convincingly refuted.

The issue was not whether Thailand's disclosure law could be challenged before the WTO – for its potential effectiveness ensures that it would – but whether the law was

defensible. All of the international trade and intellectual property law treaties, cited by the accusers, and those additional treaties relevant for the interpretation of the treaties the accusers relied upon, contain sufficiently broad exemptions to include non-discriminatory measures undertaken for a *bona fide* public health reasons.

Most importantly not only do States have the legal *right* to require disclosure of ingredients in harmful consumer products, many also have an international legal *obligation* to insist on such disclosure in fulfilment of the State's obligations under international human rights law. For those States that have a legal duty under international human rights law to take preventative steps to control diseases the State has a legal obligation to put before the consumer all information available which permits fully-informed consumer choice with respect to the various competing tobacco products, some of which are more likely than others to cause disease. Only with information can preventative steps be taken. And that, of course, would necessitate brand by brand disclosure of ingredients in tobacco products.

2. *Analytical technique*

One of the letters (Annex 2) mentioned that “ The Minister also noted that the Ministry does not now have the capability to conduct useful or valid research on cigarette ingredients and, would be unable to do so for many years to come. Under these circumstance, we fail to understand how disclosure by brand will satisfy health objectives any more than the comprehensive list we have already disclosed” The TTCs proposed that “ we will assist in establishing a testing program within the ministry” and “At the meeting on the 20th, the industry offered the services of its scientists to provide information and assistance on the technical aspects or ingredient regulation”. All these were parts of the TTCs' delay tactic.

The TTCs claimed that the Ministerial Rule had “technical standards so vague and ambiguous so as to leave an importer with no ability to determine what product testing will satisfy the regulations and demonstrate compliance”.

In fact the Ministerial Rule requires additive names and amount in one cigarette and this should be enough. It does not have to mention the test method since world standard laboratories would be responsible for the tests.

The EC (Annex 12) asked for testing methods required to measure the quantity of DDT and additives. This was answered by TISI, which quoted the Department of Medical Science of the MOPH, and the EC did not pursue the matter further. On the contrary the TTCs kept on complaining and did not ask a specific question for a specific answer. In the critical analysis attached to the letter dated June 13, 1995 (Annex 7) it criticised that the MOPH does not specify the DDT test method. It is strange that this was contradictory to the earlier TTCs' letter of August 31, 1992 (Annex 3) which said "We have asked our company scientists to review the international standards for DDT residues in tobacco products. We have confirmed that the existing international standards for DDT residues are consistent with the Deputy Permanent Secretary's suggestion that Section 11 require that DDT residues in cigarettes sold in Thailand not exceed 15 parts per million. We believe a standard for DDT residues of a maximum of 15 parts per million is acceptable".

4. Unfairly discrimination against foreign international manufacturers

The TTCs (Annex 7) accused that "by brand regulations unfairly discriminate against international manufacturers of cigarettes in favor of the domestic manufacturer. An international manufacturer may sell a flagship brand worldwide in addition to selling that brand in Thailand. If the ingredient formula is publicly released then rival manufacturers would utilize the formula to manufacture nearly identical competing products stealing market share from the original brand...."

5. Confidentiality

Both the TTCs and their government organizations complained that their trade secret would not be treated confidentially. The critical analysis (Annex 7) stated "...they apparently provide no guarantee that the trade secrets will be treated confidentially. In fact, there are indications that the trade secrets submitted may be released to the public. Further, the Ministry may not be able to ensure confidentiality as there is the possibility of unintentional release or other leakage of the information to the public and competitors". The USTR's comment (Annex 13) said "Every precaution will be taken by Thailand to ensure that proprietary information and ingredient specifications will be treated as strictly confidential and will not be disclosed beyond select RTG officials

responsible for maintaining confidentiality of disclosed information. In addition, we would appreciate understanding what manner of 'fire wall' or precautions will be established to ensure that officials with the Thai Tobacco Monopoly (TTM) do not have access to the proprietary information regarding foreign cigarette ingredients..”.

All these complaints were raised without asking specific question to responsible persons or organization. As a matter of fact the ITCC and the DMS are responsible and they have not been asked.

6. The political economy

The TTCs apparently asked for help from their governments – the US, UK and Japan, as well as E.C. in this case. The US Ambassador contacted the Public Health Minister long before the passage of the Ministerial Rule (Annex 4). The USTR, in a letter to Coalition on Smoking OR Health (Annex 6) said “This Administration will respect legitimate, science-based measures taken by a foreign government to protect the health or safety of its nationals”. On the other hand, in another letter of USTR (Annex 13) to the Royal Thai Embassy it asked several questions, e.g., how the measure would be fully consistent with Thailand’s international obligations with the WTO, how the US would obtain clarification of the decision-making process and cost/benefit analysis indicating the measure was the most advantageous, and how ingredient specification would be treated confidentially.

It should be noted the U.S. did not take action against Canada for its law (Annex 5). One reason they never say was that they were afraid of the domino effect.. Once a country could enact such law others would follow suit.

CONCLUSION

For Thailand, passage of law requiring brand-specific disclosure of ingredients was vociferously objected by the TTCs. The transnationals tried hard to obstruct the whole law during the 1 year and 8 months period of drafting process. They lobbied cabinet ministers to delete the disclosure section at the cabinet meeting and lobbied Assembly

Members at the deliberation session of Legislative Assembly. After the law enactment the TTCs persuaded the Ministry of Health for a collective list of ingredients. During the tenure of pro-tobacco public health ministers tobacco control bureaucrats and advocates held off the process of passing the Ministerial Rule but proceeded when a clean minister took office. When the draft rule was in the Juridical Council the TTCs made an all out fight to derail it by petitioning the Prime Minister, the Ministries of Foreign Affairs and Commerce. When the deadline came they made a last ditch effort by planning to negotiate with the Prime Minister and his party during an official visit to the U.S. to ask an assistance in alleviating Thailand's economic crash. With advocates' moves and friends' help the TTCs could not derail the Ministerial Rule until the time expired.

The passage of such law and regulation is not an easy task, especially in developing countries. An exceptionally strong advocates and international help can defeat the formidable tobacco merchants. Thailand case story is a good lesson to be learned.

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