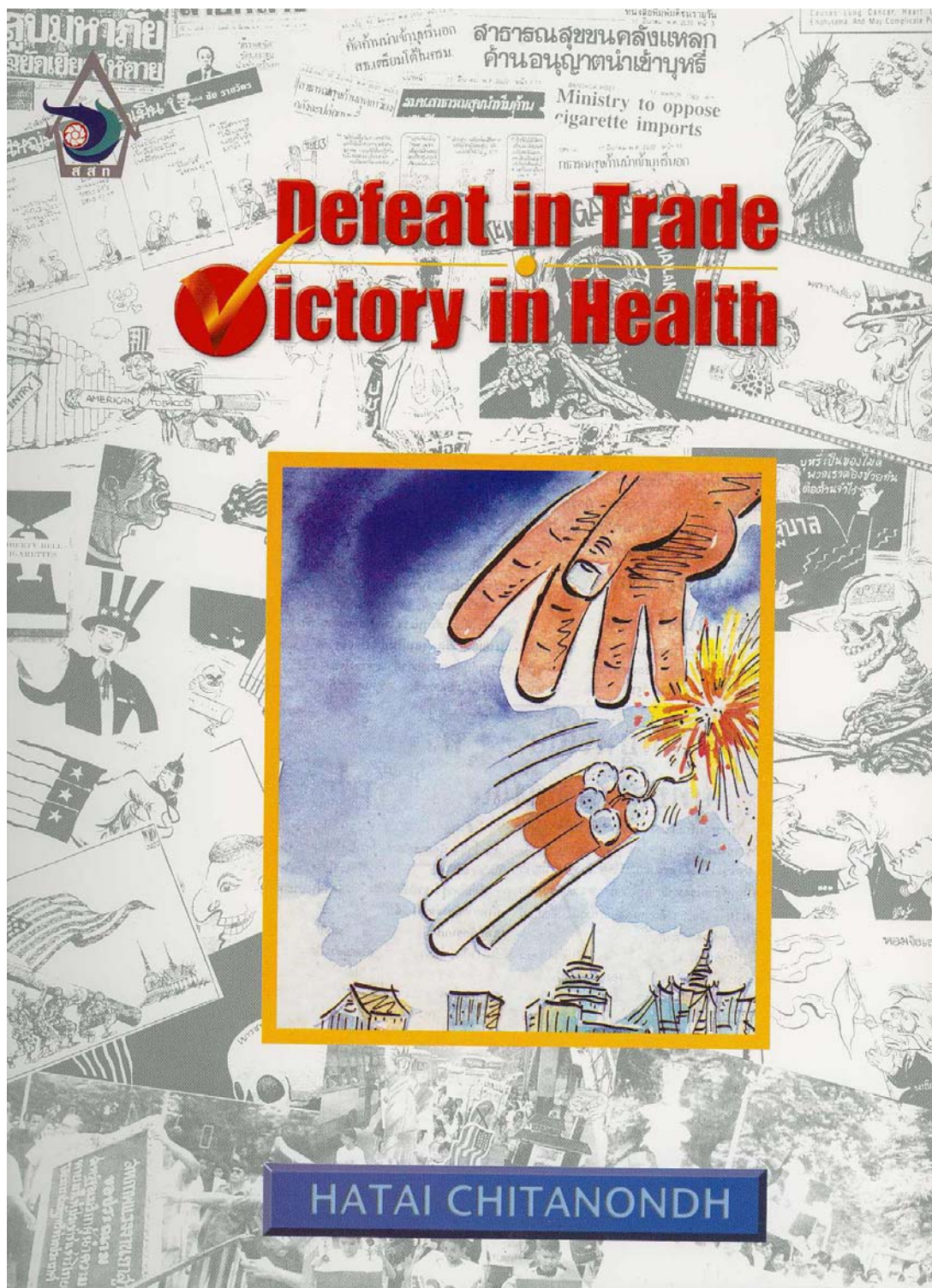


THE WORLD LANDMARK CASE:  
THE THAI – U.S. CIGARETTE DISPUTE



Dr. Hatai Chitanondh, while being Deputy Permanent Secretary of Public Health took the lead in opposing foreign cigarette import to Thailand. This had evolved into The World Landmark Case when the U.S. utilized The 301 Section of the Trade Bill to refer the matter into consideration of GATT. The battle went on for 1 year and 8 months. Even Thailand was defeated in trade and forced to open its cigarette market, what we gained is victory in health as under GATT's consideration Thailand could formulate measures for tobacco control.

Thailand has only one Act which relates to cigarette which was the Tobacco Act B.E. 2506 (1963) with one of its provisions stipulated that the government tobacco factory was the sole producer and distributor of cigarettes. Therefore import of foreign cigarettes has been prohibited.

But the transnational tobacco companies had attempted to penetrate The Thai cigarette market.

Transnational tobacco companies have attempted to communicate with politicians and high level administrators for years to have foreign cigarettes imported and distributed in Thailand, until.....

**13 March 1989** – Dr. Hatai Chitanondh, Deputy Permanent Secretary of Public Health and secretary of The National Committee for Control of tobacco Use (NCCTU) gave a press interview that foreign tobacco companies were going to penetrate The Thai cigarette market. This might lead to lose of sovereignty in tobacco and a great impairment of health.

**14 March 1989** – H.E. Pramuan Sphavas, Finance Minister answered the question asked by the press about free market for foreign cigarettes that he was preparing the list of foreign tobacco companies to consider importing foreign cigarettes as smuggling could not be subdued. Meanwhile he will request for Cabinet's approval within the coming 2-3 weeks.

(Remark: The press conducted the interview before the Finance Minister attended the Cabinet meeting while the Minister had not seen news about foreign tobacco in the newspaper that morning)

**16 March 1989**-H.E. Suthat Ngernmuen, Deputy Minister of Public Health, Dr. Hatai Chitanondh, CCTU secretary and Dr. Chuchai Supawong NCCTU assistant secretary gave a press interview opposing foreign cigarette import.

**20 March 1989** –

- Labor union of the Thai Tobacco Monopoly opposed foreign cigarette import
- Local tobacco growers joined in the opposition

- Finance Minister said the foreign cigarette import issue is pending and not yet summarized.
- The Prime Minister said The cigarette issue is not that important
- Prof. Dr. Praket Vateestakit, secretary – general of The No-Smoking Campaign Program submitting an opposing letter to the Prime Minister and sending enormous size cigarette to Finance Minister with the caption, “To one who open arms embracing death”.

**24 March 1989** – Finance Permanent Secretary said importing foreign cigarettes is a policy ??????????/issue.

**3 April 1989** – Sources from Finance Minister said that the Ministry is preparing for Cabinet proposal submission towards importing foreign cigarettes at 2 million packs per brand within The first three months

**4 April 1989** – Finance Minister said he will be forwarding the foreign cigarette issue to be considered by The International Economic Relation Policy Board.

**5 April 1989** – Mr. Krajang Poonpipat, Deputy Director –general of The Excise Department said that the foreign cigarette case is not related to trade influence of the United States.

,,,When realizing that foreign cigarettes could not be imported in Thailand, the U.S. cigarette export Association attempted to force this through Section 300 provisions...

**10 April 1989** – The U.S Cigarette Export Association (USCEA) presented an allegation to USTR alleging that the Thai government protects it State Tobacco Monopoly by:

- (1) Preventing foreign cigarette import
- (2) Unfair tax collection
- (3) Not facilitating distribution
- (4) Prevent cigarette advertising

It is, therefore, counteracted by exercising Section 301 of U.S. Trade Bill

**12 April 1989** – The Thai tobacco Grower Associations in five northern provinces oppose foreign cigarette import.

**25 April 1989** – First meeting of the National Committee for Control of Tobacco use (NCCTU) passed a resolution against foreign cigarette import.

**28 April 1989** – H.E. Mr. Chuan Leekpai, NCCTU Chairman, submitted a letter to the Prime Minister requesting him to notify Vice President Dan Quail (to be visited Thailand during 3-4 May) tht Thailnd is against foreign cigarette import.

**16 May 1989** – Dr. Hatai chitanondh, Deputy Permanent Secretary and NCCTU secretary, as deputy chief of Thai delegation in the annual World Helth Assembly, delivered and address in the assembly informing

about the case that the U.S. Has exercise Section 301 of its Trade Bill forcing Thailand to pen its cigarette market.

**17 May 1989-** H.E. Mr. Chuan Leekpai, Minister of Public Health and chief of Thai delegation in the World Health Assembly submitted a letter to U.S. Health Secretary, Head of U.S. delegation, to assist Thailand regarding the Section 301 case.

**10-12 June 1989** – Prof. Dr. Prakrit Vateesatokit, secretary general of the Anti Smoking Campaign protect and NCCTU members joined in AFACT meeting at Taipei. The meeting passed a resolution supporting Thailand's stance not to open the cigarette market for the U.S. and sending a letter of notification to U.S. trade representative and President Bush.

**11 July 1989** – The Cabinet approved the NCCTU's resolve against foreign cigarette import.

**31 July – 1 August 1989** – Thai – U.S. representative met for the First time at Pataya. The Thai delegation included the health sector's members namely Dr. Hatai Chitanondh, Deputy Permanent Secretary and NCCTU secretary-general and Prof. dr. Prakrit Vateesatokit from RamaThibodi Medical School.

Representative of 17 health NGOs submitted a letter of protest to U.S. representative.

**19 August 1989** – Deputy Prime Minister Pong Sarasin said he will invite representative of Gen Exporter Association to meet Economic Policy Committee to discuss the foreign cigarette case.

**3-6 September 1989** – Sources form Chamber of Trade said that the Chamber's director, president of Textile Industry Association, vice president of Gen Exporter Association, representative of Furniture Industry Association and representative of Food Production Association, all agreed with foreign cigarette import.

**10 September 1989** – Mr. Patraporn Jungsomijanepaisarn, vice president of Siriraj Medical Student Club, said 300 medical students will endorse the letter opposing foreign cigarette to be sent to USTR.

**15 September 1989** – Dr. Hatai Chitanondh, Dr. Prakrit Valeesatokit and Dr. Surin Pitsuwan who is Democrat Party is Democrat Party M.P. of Nakhon Si Thammarat province gave a press conference abject their visit to give evidence in the U.s. during 19-20 September

- Dr. Chuchai Supawong, assistant secretary of NCCTU said that the news about Thailand's participation in the establishment of cigarette production factory in Laos is, in fact, the matter under initiative of a private company whereby its manager is the brother of an M.P. of the opposing party.

**16 September 1989** -

- The 3 Thai delegation left Bangkok for the U.S., with news agent from the press and television join in news released
- Dr. Virawat Phankrut, chairman of Rural Doctor Association, with 70 members went to U.S. Embassy to submit heir letter protesting the U.S. force for opening the cigarette market.

**18 September 1989** – The 3 Thai delegation attend a meeting with the U.S. Health Group at Washington D.C.

**19 September 1989** – The 3 Thai delegation attend the USTR session. Those who gave evidences constituted Prof. Dr. Prakrit Vateesatokit and Dr. Surin Pitsuwan. In the meeting 21 persons gave evidences in support of the Thai case while 8 accorded for punishment.

**20 September 1989** – Fifty medical students from 3 medical schools went to the U.S. Embassy to submit their letter of withholding the case of cigarette Section 301.

**24 September 1989** - the 3 member of Thai delegation came back from Washington and a press interview reporting the success of their visit to give evidences in the U.S

**3-4 October 1989** – Thai-American representatives made a second round discussion without the health sector represented in the Thai delegation ...The U.S. side, after realizing that there have heavy protests from US senators, The U.S representatives then decided not to exercise Section 301 and refer the matter to GATT which acts like world trade court...”

**22 October 1989** –USTR submitted the cigarette issue to GATT (general Agreement on Tariff and Trad), Originally out of the 4 USCEA's allegations, there were only two which are under decision-making power of GATT, namely:

(1) Forbidding of import

(2) Unfair taxation

**1-9 December 1989** – Officials of GAO (U.S. General Accounting Office), upon request of 13 U.S. senators, came to Thailand to collect information concerning how market penetration of U.S cigarette would affect health of the local people and whether or not this move will affect the dignity of the U.S.A. GAO representative also attended meetings with Health Ministry's offices and health concerned NGO's and received additional information from them.

**5-6 February 1990** – the 7<sup>th</sup> World Conference on “Tobacco or Health” held at Perth, Australia passed a resolution-

- Requesting all countries not to exercise trade measures upon other nation suppressing them to reorient taxation, production, import, distribution or advertising of cigarettes. Special emphasis was made towards U.S.A not to exercise trade measure upon Thailand or other country.

**3 April 1990** – GATT appointed its juries comprising representatives from Switzerland, New Zealand and Finland

**3 May 1999** – Prof. Dr. Prakrit Vateesatokit, secretary general of the Anti-Smoking Campaign Project went to present evidences to U.S Senate Commission on Labors and Human Resources in Washington, U.S.A

14 May 1990 – Dr. Hatai Chitanondh, Deputy – Permanent Secretary of Public Health and NCCTU Secretary – General, as Thai delegation presented report and resolutions of the 7<sup>th</sup> World Conference on Tobacco or Health the World Health Assembly plenary for consideration.

17 May 1990 – Prof. Dr. Prakrit Vateesatokit, NCCTU secretary general of the Anti-Smoking Campaign Project went to Washington to further gave evidences to Senate Sub-committee on Health and Environment.

24 May 1990 – U.S. submitted document No.1 o GATT juries alleged that the reason why Thailand prohibited foreign cigarette import was to protect its Tobacco Monopoly and not for health reason.

22 June 1990 – Thailand submitted document No.1 defended the U.S.'s charge. The content on health was written by Dr. Hatai Chitanondh. Chief of The Thai delegation was Mr. Karoon Kitisathaporn, deputy director general of the ??????????????????????

2 July 1990 – First plenary meeting in Ganeva comprising the juries and representatives of both side., Thai health sector representatives constituted Dr. Hatai Chitanondh and Prof. Dr. Prakrit Vateesatokit.

U.S. representative opposed The Thai proposal requesting the juries to consult WHO in this mater.  
...the juries did consult WHO...

19 July 1990 - Three WHO representative (Dr. ????????????, chief of Tobacco and Health Office, Mrs.?????????? Of Tobacco and Health Office and Dr. Gregory Connolly, WHO consultant ) gave evidences by world to the juries with written documents submitted.

23 July 1990 – The Thai delegation drafted the document to be submitted to the juries with Dr. Hatai written the health related part.

27 July 1990 – Second plenary meeting in Geneva, Dr. Hatai Chitanondh and Prof. Dr. Prakrit were the health sector representative in the there delegation.

27 July 1990 – The European Community submitted a letter to the juries expressing their opinion That Thailand is guilty not granting permission for foreign cigarette import.

31 July 1990 – USTR proposed to the juries that it is against the opinion of the World Health Organization.

8 August 1990 – The juries sent their report to be considered by both parties and gave them a chance to resubmit the issues which were found incorrect.

27 August 1990 – Thailand and the U.S sides proposed for amendments.

11 September 1990 – The juries sent the amended reports to both parties.

21 September 1990 – the juries disclosed their report which could be summarized as follows:

- (1) Import sanction violated GATT's provision
- (2) It is not necessary for Thailand to close its cigarette market to protect its citizen's health but could use other health protection measures such as:
  - Establish import tax and excise tax
  - enforce the use words of warning on health

- enforce disclosure of cigarette ingredients
- prevent advertising

Howere, all these must be exercised on both local and foreign cigarettes without any discrimination.

...Under GATT's judgments the U.S gains only one thing , that is the opening of cigarette market, but for the opening of cigarette market, but for the rest they do not have, most particularly all the health related measures.

...The U.S. side is extremely displeased and has began to suppress bi-laterally through using Section 301 as their time runs short...

**21 September 1990** – The U.S. prepared the list of import goods for counteracting (This is through increasing Impart tax, Should any Thai goods appear on the list, American importers shall cancel orders as they are hot sure about the percentage of increase of import tax)

**9 October 1990** – The Thai Cabinet approved the Ministry of Trade's proposal to open the cigarette market for foreign cigarette.

**12 October 1990** – Dr. Hatai Chitanondh, NCCTU secretary-general gave a press interview that USTR will not stop at market penetration but it will seek for open advertisement grant through exercising Section 301.

**13 October 1990** – H.E. Kentucky Senator Larry Hawkin said, "Merely reperlaling the prohibition of foreign cigarette import without getting rid of other obstructive measures is not acceptable. By this he means that eventhough the Thai cabinet has proclaimed its decision for opening the cigarette market there are still counteracting measures such as the 55% excise tax, prohibition of cigarette advertising and enforce warning statements on cigarette pack or carton.

**15 October 1990** – News from Washington disclosed that USTR is preparing for announcing its counteract under Section 301 to Thailand in the U.S. gazette on 16-17 October 1990.

- USTR executive, Ms. Clara Hill gave a satellite interview to Beijing, Tokyo, Hong Kong, Jakarta and Thailand on GATT issues. When asked about the U.S attempt for cigarette advertising, she said, "...This we have not enforced but the reason why Thai cigarette authority do not have to advertise is because it's a monopoly ...we deem it is difficult for foreign cigarette to penetrate Thai market when the only way to make it known is through word of mount..."

**17-19 October 1990** – Thai and the U.S representatives met in Washington Prof. Dr. Prakit Vateesatokit represents the health sector in the Thai delegation. We refused to repeal the 30% in –coming tax an also reduction of 55% excise tax.

Dr. Hatai Chitanondh, NCCTU secretary –general gave an interview to the Nation newspaper that the U.S's position to the 17-19 October meeting will set fire on cigarette issue again and will cause damage to Thai-U.S. bi-lateral relationship. It's like the case of the wolf and the little lamb.

**25 October 1990** – Mr. Pam Phungsujarit, history teacher of Srinakharin- dhanavirot university, chairman of “Bangkok Cigarette Party” announces his intention to set up an action group to imitate the “Boston Tea Party” operation.

**7 November 1990**- The report of the juries was agreed by GATT council

**7 November 1990** – Mr. Tek Bunnak, Permanent Representative of Thailand to the U.N. read the declaration to the GATT council, “...The Thai government does not have the pleasure that the U.S. government deems appropriate to claim for Thailand pursuant to the Section 301 provision...”

**7-9 November 1990** – Thai and the U.S representatives discussed in details the pending issues such as the set up of ??????????????warehouse, etc.

**15 November 1990** – The National Council for International Health submits a letter to chairman of the Section 301 committee to request USTR executive to repeal the actions to be excised upon Thailand.

**23 November 1990** – Ms. Clone Hill, USTR executive sent a letter to H.E. the Ministry of Trade to Thailand notifying that the Thai investigation under section 301 provision has ended.

**28 September 1990** – Dr. Hatai Chitanondh, NCCTU secretary – general gave a press conference that eventhough Thailand is seemingly defeated in trade we really receive great victory in health.

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