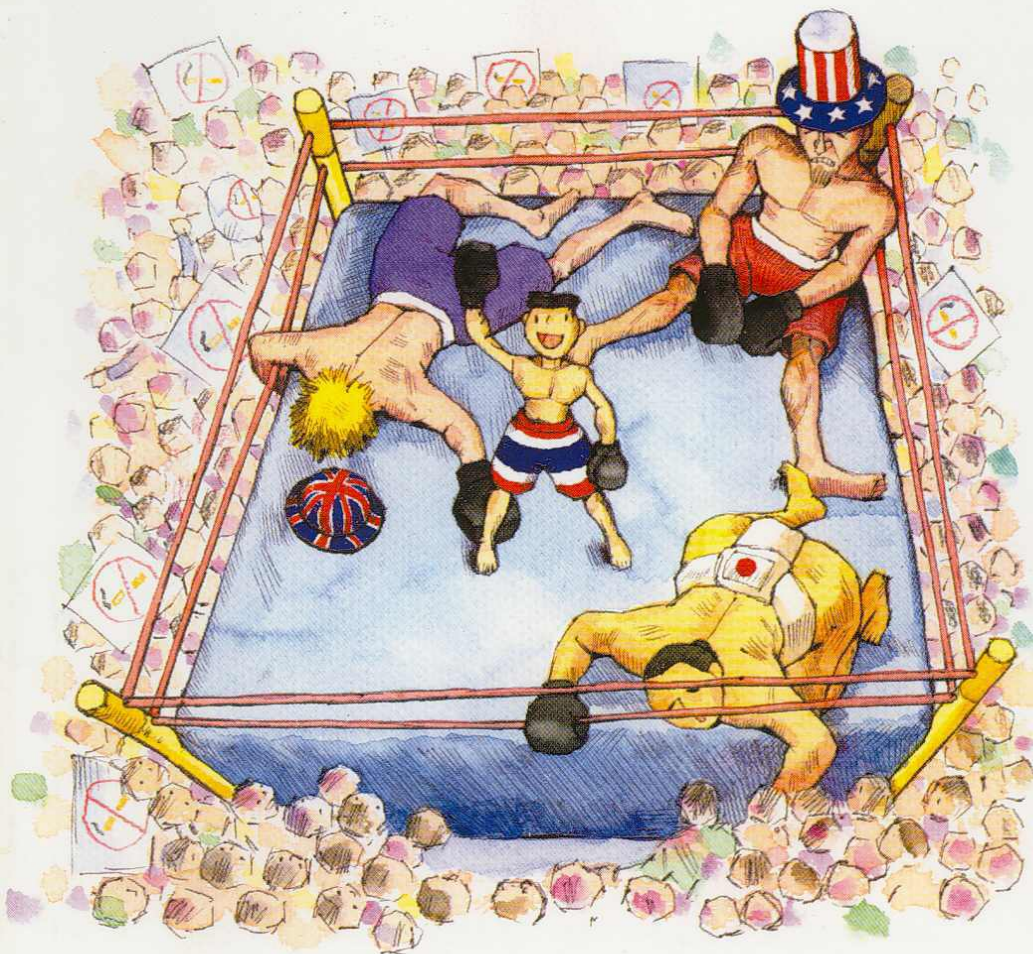


THE PASSAGE OF TOBACCO CONTROL LAWS



The Passage of **TOBACCO** **CONTROL LAWS:**

Thai Davids versus Transnational Tobacco Goliaths



Hatai Chitanondh

CHRONOLOGY

25 April 1989 – In the first meeting of the National Committee for Control of Tobacco Use (NCCTU) Dr. Hatai Chitanondh, the NCCTU secretary proposed and got approval to establish a subcommittee to draft laws for tobacco control.

Dr. Chitanondh formed the subcommittee by inviting people who were legal experts and officials from related government agencies.

28 July 1989 – The NCCTU chairman signed an appointment of the Tobacco Control Law Drafting Committee which had Mr. Prasert Naaskul, Deputy Secretary-General of the Judicial Council (JC), as chairman and members included medical Drs. Hatai Chitanondh, Prakit Vathesatogkit, Choochai Suphawongse, Director of the Consumer Protection Office, Secretary of the Excise Department, Mrs. Panta Siritwat, Legal Expert of the JC, and Chief of the Legal Division of the MOPH as the secretary of the subcommittee.

17 August 1989 – The subcommittee had the first meeting. Subsequent meetings were held on 14 September 1989, 19 October 1989, 8 November 1989, 25 January 1990, 14 February 1990, and 3 May 1990.

28 May 1990 – Secretary of the NCCTU Dr. Hatai Chitanondh proposed the draft of the Tobacco Product Control Act (TPCA) to the committee for consideration and got approval.

30 September 1990 – Dr. Hatai Chitanondh retired from the government service but retained the position of secretary of the NCCTU.

15 October 1990 – The MOPH proposed the Draft TPCA to the cabinet and got approval in principle, pending the JC scrutiny.

17 October 1990 – The cabinet S-G sent the Draft TPCA to be scrutinized by the J.C.

2 November 1990 – The J.C. sent a letter to the MOPH asking to send officials to elaborate the Draft TPCA.

8 November 1990 – The MOPH sent officials to explain rationale of drafting the Draft TPCA. The explanation did not satisfy the JC commission and the case was not on hold.

21 March 1991 – Dr. Hatai Chitanondh, a retired health official, realized that the progress of the draft law was stalled because there were no knowledgeable health officials in this matter. He proposed to the Deputy Health Minister Prof. Athasit Vejjajiva that the MOPH must appoint a totally new drafting committee that had Dr. Hatai Chitanondh as the chairman.

28 March 1991 – The MOPH issued an order appointing The Tobacco and Health Law Drafting Committee (THLDC) having Dr. Hatai Chitanondh as its chairman and Dr. Siriwat Tiptaradol, the Director of the Office for Tobacco Consumption Control, as its secretary. This committee also took up a drafting of Nonsmokers' Health Protection Act (NHPA) and held meetings on 5, 11, 18, 26 April, 17, 24, 31 May, and 7 June and proposed to the MOPH to forward the result to the JC.

19 July 1991 - The MOPH sent a letter to the JC informing that it was ready for the deliberation of the Draft TPCA.

12 September 1991 – The J.C committee No. 6 started scrutiny in its first meeting. Further meetings were upheld because the group of transnational tobacco companies (TTCs) sent a letter to Mr. Meechai Ruechuphan, the deputy premier who supervise the JC, asking to have consultations on the draft law.

Dr. Hatai Chitanondh asked the J.C. not to stop the meeting because the TTCs would exercise delay tactics. They could send in their views for the committee 6 consideration

and get answers but definitely dialogues could not be permitted. The committee 6 then continued the meetings on 31 October, 5 November, 7 November. From the MOPH Dr. Chitanondh and 2 legal officers attended the JC meeting to explain the reasons of having various articles in the draft law.

26 December 1991 – The J.C. sent a letter to the MOPH informing that the draft TPCA was completely deliberated.

8 January 1992 – Dr. Hatai Chitanondh and Dr. Siriwat Tiptaradol attended the meeting of the Cabinet's Social and Law Scrutiny Committee to explain the Draft NHPA.

17 January 1992 – Dr. Hatai Chitanondh met a legal expert of the JC for consultation about the Draft NHPA.

24 January 1992 – The TTCs wrote to the deputy premier Mr. Meechai Ruchuphan expressing their concern about the draft laws and asked for a review which they would cooperate closely.

4 February 1992 – The draft NHPA was tabled for consideration in the cabinet meeting and was approved.

11 February 1992 – The draft TPCA was proposed to the cabinet. Drs. Hatai Chitanondh and Prakit Vathesatogkit were the MOPH representatives to answer queries. Before the meeting Deputy Minister of Health Prof. Athasit and Prakit had an information that a cabinet member asked for a deletion of Article 11 (mandating disclosure of the constituents of tobacco products). Both opined that we should sacrifice this in order to have the draft pass through. Dr. Chitanondh insisted that we should fight first by elaborating scientific reasons to support the rationale of having Article 11. If we have better reasons we will win. During the meeting a cabinet member complained that the total advertising ban would deprive the people of viewing good sports that were sponsored by tobacco. For this the cabinet decided to exempt live telecasts from abroad. A deputy

premier opined that Article 11 was against trade secret and should be dropped. Dr. Chitanondh explained that Canada had this article and the tobacco companies could live with it. Even the U.S. also has a law like this article. A cabinet member supported us by saying affirmatively that if the U.S. has this law why not Thailand? At this point it seemed we have won. Before the meeting closed the deputy premier who earlier requested for deletion of Article 11 asked to see the evidences referred to. The Prime Minister then asked Dr. Chitanondh to find the documents and that if he found them satisfactory the draft law would be approved without having to be tabled for consideration again. Dr. Chitanondh then hurried back to his office and took part of the U.S. rebuttal statement at GATT stating that the U.S. requires cigarette makers to submit the list of ingredients to the Health Secretary. The document was brought back and given to the Deputy Minister of Public Health who handed it to the Prime Minister, resulting in automatic approval of the draft law by the cabinet.

20 February 1992 – The Prime Minister Mr. Anan Panyarachun sent the 2 draft laws to the chairman of the National Legislative Assembly for consideration and approval.

25 February 1992 – The TTCs sent a letter to the Parliament President informing him that the draft laws were defective.

From 20 February on the Parliament would have only 6 sessions before it closed out until a new government took office. All draft laws waiting to be tabled for consideration would be null and void when the Parliament closes.

Friday 28 February 1992 – The 2 draft laws were placed at no 10 in the agenda.

Thursday 5 March 1992 – The 2 draft laws were realigned to be at the last place. If they remained h so they would not be able to pass the Parliament. In the early afternoon Drs. Chitanondh and Vathesatogkit gave a strong press interview denouncing the government for the mysterious realignment of the agenda which favored the TTCs over the plight of Thai young people.

Friday 6 March 1992 - Two of the three most popular Thai language newspapers of the country and both English language newspapers published the news on the front pages. The Prime Minister urgently called the Health Minister to the government house and ordered him to go to the parliament demanding that both tobacco draft laws be moved up and put through to the first stage deliberation.

10 March 1992 – The draft laws were put for deliberation by the Parliament's Committee for Health and Environment. Two parliament members – Mr. Osoth Kosin and Mr. Dusit Siriwan asked for deletion of the articles 4 (ban of sales to individuals aged less than 18) and Article 11 (the manufacturers or importers must disclose the ingredients). It was found that the country manager of Philip Morris co. was sitting besides Mr. Dusit Siriwan at the close-door meeting. Dr. Hatai Chitanondh then sent a note informing the illegal incident to the vice chairman who in turn consult with the chairman. The chairman subsequently announced that those who had no permission to attend the meeting leave the room. The PM manager then walked out. Dr. Hatai Chitanondh informed the meeting that the man who just walked out was the Philip Morris manager. Afterwards Dr. Hatai Chitanondh sent out press release describing PM manager's attempt to weaken the law, with the help of a parliament member.

12 March 1992 – Many newspapers headlined the notorious parliament member - PM conspiracy to water down the law.

13 March 1992 – The parliament approved the 2 laws in 3 successive agenda without appropriation.

It was a really beautiful Black Friday for Thailand tobacco control.

Details of the chronology are described in the book "The Passage of Tobacco Control Laws: Thai Davids versus Transnational Tobacco Goliaths" by Hatai Chitanondh, supported by The International Development Research Centre, Canada.

From Roemer R. A brief history of legislation to control the tobacco epidemic. In: Boyle P, Gray N, Henningfield J, Seffrin J, Zatonski W, eds. *Tobacco and Public Health: Science and Policy*. Oxford: University Press, 2004.

The experience of Thailand ¹

The assault of the transnational tobacco companies on Thailand in the 1990s set in motion a series of events that led to Thailand's enactment in 1992 of two laws: the Tobacco Products Control Act and the Nonsmokers' Health Protection Act (Chitanondh 2000). When Thailand was charged with violation of international agreements by its attempt to exclude foreign tobacco companies (and their advertising) from the country, a panel of the General Agreement on Tariffs and Trade (predecessor of the World Trade Organization) ruled that Thailand was in violation but, under a clause allowing protection of the health of the people, Thailand could restrict the sale and promotion of tobacco on condition that the restrictions applied to all tobacco, both domestic and imported.

Following this decision, the Minister of Public Health appointed a committee to draft legislation, using the model of the Tobacco Control Act of Norway. Throughout this process and as the legislation went before the Parliament, the tobacco companies criticized and opposed the legislation on the grounds that it duplicated existing laws, it interfered in business operations, it opened the way to abuse of power, and it failed to give an opportunity to the business affected by the legislation to express its opinion. During a meeting of the Standing Committee on Health and the Environment, the manager of Philip Morris of Thailand, in violation of Parliamentary rules, entered a closed door meeting of the committee considering the legislation (Chitanondh 2000).

Under the leadership of Dr Hatai Chitanondh, Deputy Permanent Secretary of the Ministry of Health, both bills passed the Parliament. The Tobacco Products Control Act (the supply side law) prohibits the sale of tobacco products to persons under 18, the sale of tobacco products in vending machines, use of tobacco products for entry to games or shows, and distribution of free samples. Most importantly, the legislation prohibits

¹ Based on Hatai Chitanondh, *The Passage of Tobacco Control Laws: Thai Davids versus Transnational Tobacco Goliaths*, Thailand Health Promotion Institute, the National Health Foundation, Bangkok, 2000.

advertising and sponsorship and sale of tobacco products without required labels and health warnings. It requires one of ten warnings with white background and black letters.

The Nonsmokers' Health Protection Act (the demand side law) bans smoking in a wide range of public places designated by the Minister of Public Health. Strict enforcement has followed enactment of the laws.

The tobacco control program of Thailand has resulted in a decline in smoking prevalence for men from 63.2% of the population in 1981 to 42.2% in 1999; for women from 5.4% in 1981 to 2.6% in 1999, and for both sexes from 35.2% in 1981 to 22.4% of the population in 1999.

From Chapter XII lessons in legislation: case studies from nine countries. In: *Tools for advancing tobacco control in the 21st century: Tobacco control legislation: an introductory guide*. Geneva: WHO, 2004.

Thailand

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“Thailand has developed an extensive body of strong, innovative and proactive laws that have made it a world leader in tobacco control. These laws take numerous forms.”

These laws take numerous forms. Some have been created through acts of legislative bodies and the King; others have been created through declarations of the Ministry of Public Health and cabinet resolutions; and still others are municipal legislation. Officials have also used existing laws in imaginative new ways. Most recently, Thailand’s depth of experience has served to inform discussions in the formulation of the WHO FCTC.

Thailand’s tobacco control legislation dates from 1974, when the Thai Government issued an executive order requiring the Thai Tobacco Monopoly to print a single health warning on Thai cigarette packages. Two years later, the City of Bangkok passed an ordinance prohibiting smoking in cinemas and buses. In 1986 the Ministry of Communication banned smoking on interprovincial public buses. Without seeking new legislation, Thai authorities greatly expanded the scope of regulation in 1989 by reinterpreting the 10-year-old Consumer Protection Act to classify tobacco as a “dangerous sproduct.” This provided the basis for the Government to mandate warning labels on all cigarette packs and to ban tobacco promotion in all media.

“In 1990, multinational tobacco companies mounted an assault on Thailand that was to have the unintended effect of spurring Thailand to the forefront of global tobacco control.”

Then, in 1990, multinational tobacco companies mounted an assault

² Discussion of the Thai legislation is taken from materials prepared by Ruth Roemer, drawing on earlier work by Dr Hatai Chitanondh, and from materials prepared by James Hodge. See Note on Contributors and Sources

on Thailand that was to have the unintended effect of spurring Thailand to the forefront of global tobacco control. In an action brought against Thailand by the United States of America, a panel of the General Agreement on Tariffs and Trade (predecessor of the World Trade Organization) ruled that Thailand had violated international trade agreements by excluding foreign tobacco from the country. The panel ruled, however, that under a clause allowing protection of health, Thailand could continue to restrict the sale and promotion of tobacco if the restrictions were applied equally to all tobacco, both domestic and imported.

This decision prompted prominent physicians in the medical and public health systems of Thailand to address the high rates of smoking in the population---rates that were increasing with the modernization of Thailand. Already, in 1983, the first National Conference on Tobacco or Health had been held. In 1986, the NGO Action on Smoking and Health had been formed. Most importantly, in 1989 the Minister of Public Health had appointed the Law Subcommittee of the National Committee for the Control of Tobacco Use---an action viewed as essential for drafting legislation---composed of both public health professionals and lawyers, in recognition that “those knowledgeable about smoking and health needed to inform and assist those writing the law.”³

From the start of the meetings on the legislation, Dr Hatai Chitanondh, Deputy Permanent Secretary of the Ministry of Health, fought for a ban on all forms of advertising and sales promotion. The Subcommittee’s proposal interpreted “advertising” broadly, banned the free distribution of cigarettes, prohibited the sale of tobacco to persons under 18 (originally 16), and prohibited sales through vending machines. Although the Law

³ Chitanondh H. *The Passage of Tobacco Control Laws: Thai Davids versus Transnational Tobacco_Goliaths*, Thailand Health Promotion Institute, The National Health Foundation, Bangkok, 2000, at 13.

Subcommittee had agreed on the law, there was no action to move the legislation forward for five months, for “lack of responsible persons who would push for proceeding.”⁴

After this delay, the Minister of Public Health appointed a Tobacco and Health Law Drafting Committee, chaired by Dr Chitanondh, to prepare two laws: the Tobacco Products Control Act and the Non-Smokers’ Health Protection Act. The drafting committee considered all relevant Thai laws and the model of the Tobacco Control Act of Norway. When completed, the legislation prepared by the committee was submitted to the Juridical Council, where minor changes were made, and then to the Cabinet, which approved the legislation, including a provision requiring tobacco companies to disclose the constituents of tobacco products to the Government. Extensive notices of the Cabinet’s approval of the new laws were carried in the newspapers.

Throughout this process, and as the legislation went before the National Legislative Assembly, multinational tobacco companies criticized and opposed the legislation. They argued that it duplicated existing laws, intervened unnecessarily in business operations, opened the way to abuse of power, and had been prepared without giving affected businesses adequate opportunity to comment. Industry opposition was so adamant that the manager of Philip Morris in Thailand was even seen to enter a closed-door meeting of the committee considering the legislation, in violation of parliamentary rules.⁵ Despite last-minute fears that the legislation was being undermined, the National Legislative Assembly passed both landmark bills. The Rural Doctors’ Society expressed its support. Headlines praising the legislation emblazoned newspapers. Children presented flowers to tobacco control advocates.

Both 1992 laws employ a strategy of delegated authority, maximizing flexibility by using broad language to empower regulatory authorities to prescribe finely detailed requirements as necessary. The first of these laws, the Tobacco Products Control Act of 1992, B.E.2535:

⁴ Chitanondh H. *The Passage of Tobacco Laws: Thai Davids versus Transnational Tobacco_Goliaths*, Thailand Health Promotion Institute, The National Health Foundation, Bangkok, 2000, at 35.

⁵ Chitanondh H. *The Passage of Tobacco Laws: Thai Davids versus Transnational Tobacco_Goliaths*, Thailand Health Promotion Institute, The National Health Foundation, Bangkok, 2000, at 119.

- prohibits sale of tobacco products to persons under 18 years of age;
- forbids the sale of tobacco products in vending machines;
- prohibits giving tobacco products as add-ons to other products, and vice-versa;
- prohibits using tobacco products for the right of entry to games or shows or in exchange for other services;
- prohibits giving free samples of tobacco products;
- prohibits print, radio and television advertising and event sponsorship, except for live broadcasts or printed matter from abroad;
- prohibits advertising non-tobacco products bearing cigarette names or logos;
- prohibits the manufacture, importation for sale, distribution, or advertisement of any products looking like cigarettes or cigars or packages of tobacco products;
- requires manufacturers and importers of tobacco products to inform the Ministry of Public Health of their composition in accordance with criteria specified in Ministerial Rules, and requires tobacco products to have a composition consistent with standards prescribed by Ministerial Rules;
- prohibits sale of tobacco products without the required labels and health warnings; and
- provides for stringent enforcement by imprisonment and fines.

The second law, the Non-Smokers' Health Protection Act of 1992, B.E. 2535:

- grants authority to the Minister of Public Health to designate the public places where the health of non-smokers shall be protected, to designate any part or all of public places as a smoking or non-smoking area, and to prescribe the condition, nature, or standard of non-smoking or smoking areas with respect to ventilation;
- requires the operator of any public place to comply with the prescription of the Minister and to post signs in the smoking and non-smoking areas;
- prohibits smoking in a non-smoking area;

- authorizes entry to public places for inspection and supervision of implementation of the Act; and
- provides for enforcement by fines and imprisonment.

As noted, these laws confer broad authority on the Ministry of Health to adopt detailed regulations in many areas---for example, to set standards for smoke-free public places and to specify stringent standards for the composition and quality of tobacco. Rules also prescribe detailed requirements for health warning labels---setting innovative new standards in the process. For example, these rules made Thailand the first country to require package warning about the link between smoking and sexual impotence.

Other rules require manufacturers to report the chemical composition and emission properties of each tobacco product, to report chemical additives and to measure tar and nicotine levels. Implementation of these disclosure requirements was repeatedly delayed because of the strong opposition of multinational tobacco companies and their governments. In 1998 and 1999, the United States Trade Representative lobbied the Thai Government on behalf of the tobacco industry to eliminate these requirements, claiming that disclosure of product ingredients would reveal tobacco companies' trade secrets, in alleged violation of intellectual property rights guaranteed by international trade agreements. Ultimately, the dispute was resolved through compromise: the tobacco companies agreed to disclose their ingredients to the Government, which agreed to keep the information confidential.

The Ministry of Public Health has mobilized substantial resources for enforcement of these important laws. It established a Tobacco Consumption Control Office to coordinate the country's tobacco control activities and appointed officials from the central and local governments to enforce the laws, in cooperation with the police. The NGO Thai Action on Smoking and Health and the Thailand Health Promotion Institute play important roles in enforcement by serving as watchdogs, especially of the multinational tobacco companies.⁶

⁶ Professor Parkit Vateesatokit, Executive Secretary, Action on Smoking and Health, Bangkok, Results of a Legislative Approach: Thailand's Experience. Lu R et al. eds., In: *The Growing Epidemic, Proceedings of the 10th World Conference on Tobacco or Health*, Beijing, China, 1997, at 621-623.

Efforts to achieve full compliance continue. Some of the recurring violations of these laws have involved indirect advertising using tobacco names and logos on non-tobacco products. Also, owners of some air-conditioned restaurants, especially in smaller provinces, have failed to provide no-smoking areas as required by the law. Enforcement of the ban on sales of cigarettes to minors remains a challenge, but compliance has improved with an intensive campaign.⁷ Among the factors limiting enforcement efforts are: an inadequate number of enforcement officials; officials' lack of knowledge of the provisions of the law; insufficient funding for training; and an inadequate surveillance system "to keep up with the endless tactics and tricks of the tobacco industry."⁸ Thai experts offer two lessons from their country's enforcement experience:

"Thailand's tobacco control programme has produced a significant decline in smoking. For men, smoking prevalence declined from 63.2% in 1981 to 42.6% in 1999. For women, prevalence has declined from 5.4% in 1981 to 2.6% in 1999. For both sexes, prevalence has

declined from 35.2% in 1981 to 22.4% of the population in 1999."

a) Adequate funding is essential for public campaigns for awareness of the law, training of law enforcement officials, rewards for law enforcement officers, and campaigns for public compliance with the law; and

b) Where the government owns broadcast media, these media should provide free broadcast time for campaigns to encourage compliance with the law.

Thailand's tobacco control programme has produced a significant decline in smoking. For men, smoking prevalence

⁷ Buasai S and Supawongse C. *Smoking Behavior of Thai Youths: A National Survey*. 1997.

⁸ Srisangnam U, Deputy Minister of Public Health, *Tobacco Advertising Legislation: Thailand's Experience*, October 12, 1994.

declined from 63.2% in 1981 to 42.6% in 1999. for women, prevalence has declined from 5.4% om 1981 to 2.6% in 1999. for both sexes, prevalence has declined from 35.2% in 1981 to 22.4% of the population in 1999.⁹

| | 1981 | 1986 | 1988 | 1991 | 1993 | 1996 | 1999 |
|-------------------------------------|------|------|------|------|------|------|------|
| Both sexes | 35.2 | 31.3 | 28.4 | 29.0 | 25.5 | 25.9 | 22.4 |
| Male | 63.2 | 58.6 | 52.7 | 55.3 | 48.5 | 49.2 | 42.6 |
| Female | 5.4 | 4.8 | 3.0 | 4.3 | 2.8 | 2.8 | 2.6 |
| <i>Source: Dr Hatai Chitanondh.</i> | | | | | | | |

Thailand's tobacco control legislation and its achievements are impressive, but the country's tobacco control champions have further improvements in mind. Among the new measures they envision are:

- a stronger ban on smoking by children and adolescents;
- generic packaging;
- a ban on sponsorship by company name, and
- a ban on the sale of non-tobacco products with cigarette logos.

These are ambitious goals, but if the history of Thailand's initiatives is a guide, they are not beyond reach.

⁹ The Thailand Health Promotion Institute has calculated the steady decline in smoking rates in Thailand for persons over 15 as follows.