Published in final edited form as:

Glob Public Health. 2016 March ; 11(3): 348–362. doi:10.1080/17441692.2015.1050049.

To ‘enable our legal product to compete effectively with the transit market’: British American Tobacco’s strategies in Thailand following the 1990 GATT dispute

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Abstract

The opening of the Thai tobacco market, following action brought by the US Trade Representative under the GATT, is seen as a key case study of the tensions between trade and health policy. Interpretations of the dispute cast it, either as an example of how trade agreements undermine national policy making, or how governments can adopt effective public health protections compliant with international trade rules. As a UK-based company, British American Tobacco has been regarded as peripheral to this dispute. This paper argues that its close monitoring of the illegal trade during this period, the role of smuggling in the company’s global business strategy, and its management of the relative supply and pricing of legal and illegal products after market opening provide a fuller understanding of the interests and roles of transnational tobacco companies and the government in this dispute. The findings have important policy implications, notably the role of effective governance in countries facing pressure to open their tobacco sectors, need to better understand corporate-level activities within an increasingly globalized tobacco industry, and need to address the intertwined legal and illegal trade in implementing the WHO Framework Convention on Tobacco Control Protocol to Eliminate Illicit Trade in Tobacco Products.

Keywords

Thailand; tobacco control; trade and investment; cigarette smuggling

Introduction

In May 1989, the United States Trade Representative (USTR) challenged restrictions under Thailand’s 1966 Tobacco Act on imported cigarettes as an unfair trade practice. The action followed a request by the United States Cigarette Exporters Association (USCEA), comprised of Philip Morris (PM), RJ Reynolds Tobacco Company (RJR) and Brown &

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Disclosure statement

No competing interests declared.

Williamson (B&W), under Section 301 of the 1974 US Trade Act. Given the USTR's previous success in opening access to markets in Japan, South Korea, and Taiwan, the companies sought a similar outcome in Thailand (MacKenzie & Collin, 2012). However, the Thai government resisted USTR pressure and the two parties entered a protracted process that was eventually referred to General Agreement on Tariffs and Trade (GATT) arbitration. In November 1990, GATT ruled that Thailand's restrictions violated the agreement's non-discrimination obligations. It also ruled that existing and future tobacco control measures were permissible if applied equally to the Thailand Tobacco Monopoly (TTM) and foreign companies (World Trade Organization, 1990).

Analyses of this dispute to date, and the implications for public health, have largely focused on legal cigarette imports. Interpretations of the ruling vary, with its outcome cited either as evidence that trade agreements can restrict national policy making (Chantornvong & McCargo, 2001; Shaffer, Brenner, & Houston, 2005), or that national governments may still adopt effective public health protections if compliant with international trade rules (Vateesatokit, 2003). The latter is supported by the Thai government's subsequent enactment of the strongest tobacco control measures in Southeast Asia and even globally. Thailand's experience has frequently been upheld as offering positive lessons for navigating the ongoing tensions between trade and health policy (Chitanondh, 2001).

We argue that understanding the public health implications of this dispute requires fuller analysis of the complex relationship between the legal and illegal tobacco trade in Thailand. At the time of the USTR action, the legal sale of imported cigarettes was officially limited to duty-free shops at Bangkok's Don Mueang Airport. In practice, however, leading brands produced by PM, RJR, and British American Tobacco (BAT) were widely available via smuggling (Collin et al., 2004). Indeed, following the removal of import restrictions under the 1990 GATT ruling, cigarette smuggling continued to be a significant problem. Today, it is estimated that up to 20% of cigarettes consumed in Thailand are smuggled (World Health Organization [WHO], 2011), a level comparable to before market opening.

In this paper we analyse the legal and illegal tobacco trade in Thailand leading up to, and immediately following, the 1990 GATT ruling, with a focus on BAT. As a United Kingdom-based company, BAT has been previously regarded as peripheral to the USTR-Thailand dispute. Based on analysis of internal tobacco industry documents, we demonstrate that BAT closely monitored the illegal trade and its market share, that illegal trade was an important component of the company's global business strategy to expand into Asian markets, and that coordination of legal and illegal trade was used to try and influence government policy. These findings have important policy implications for global tobacco control, notably the role of effective governance in countries facing pressure to open their tobacco sectors, the need to better understand corporate-level activities within an increasingly globalized tobacco industry, and the need to address the intertwined relationship between legal and illegal trade in the implementation of the illicit tobacco protocol adopted under the WHO Framework Convention on Tobacco Control.

Methods

We searched and analysed internal tobacco industry documents, made publically available through US litigation (Hurt, Ebbert, Muggli, Lockhart, & Robertson, 2009), stored in the Legacy Tobacco Documents Library (LTDL). Searching took place between September and December 2013, and March-April 2014. The provenance, value, relevance, and limitations of industry documents have been previously described (Bero, 2003; Carter, 2005; Anderson, McCandless, Klausner, Taketa, & Yerger, 2011). Keyword search terms, such as Thai*, USTR, GATT, Section 301 and trade, were initially generated from a literature review on tobacco control in Thailand, the USTR-Thai trade dispute and GATT ruling from scholarly works, government and non-governmental reports, and the media. The snowballing technique (Anderson et al., 2011) was applied to initial searches to generate additional search terms such as names of individuals, associated organizations, projects, and products. Code words and euphemisms, known to be used by the tobacco industry to describe smuggling activities (such as *transit*, *general trade [GT]*, and *duty not paid [DNP]*), were also searched. Keywords were combined, using Boolean operators, to generate more focused searches.

After excluding unrelated and duplicate documents, 74 were identified as relevant to this study and 29 documents were directly cited. Document analysis followed Forster's (1994) hermeneutic approach, which emphasizes reliability, contextualization, and validation, and reflects broader qualitative research methods (Mays & Pope, 1995). This process incorporates identification of meaning and categorization themes; interpretation and contextualization within geographical, temporal, and corporate culture contexts; triangulation with other resources to broaden understanding of issues described; and validation of findings (Forster, 1994). The documents were thus organized by date and company, and iteratively reviewed to build a narrative related to BAT interests in Thailand during the period of the GATT dispute. An analysis of additional primary and secondary sources was used to contextualize and triangulate industry documents, including industry publications and websites, tobacco control materials, media reports, scholarly journals, and policy documents related to Thailand, tobacco, and trade.

Background: Trends in cigarette smuggling in Thailand

Comprehensive and accurate data over time on the illegal tobacco trade are not readily available because of the inherent criminality of the activity. Globally, the illegal tobacco trade is estimated at 11.5% of total cigarettes consumed (Joossens & Raw, 2012). In Thailand, market analysts *Euromonitor International* (2013a) report contraband volumes at around 2.5% to 3.0% of total sales. However, a study of discrepancies between imports, exports and legal sales between 1992 and 2005 suggests 9.9% of cigarettes consumed in the country were illegal (Pavananunt, 2011). Annual figures range from less than 3% of total sales in the early 1990s to 17% in 1998, and from 7% in 2004 to 10% in 2005 (Pavananunt, 2011; Joossens, Merriman, Ross, & Raw, 2009). The WHO (2011) estimates that the illicit trade accounts for as much as 20% of the Thai tobacco market. This includes reported 'leaks' from duty free stock into the illegal market (Euromonitor International, 2013a). Regional variations within the country are substantial, with smuggling accounting for as

much as 21% of total sales in southern provinces bordering Malaysia (Ketchoo, Sangthong, Chongsuvivatwong, & Geater, 2013).

Tobacco smuggling is estimated to cost US\$40.5 billion in lost tax revenues to governments worldwide. In Thailand, tax revenues lost from tobacco smuggling were estimated at 4,508 million Baht (US\$104 million) in 2006 (Pavanant, 2011). Eliminating the illicit trade would result in an overall price rise of 3.9%. Based on evidence of consumption response to tax increases, this would lead to a decrease in tobacco consumption of 2.0%, which would translate into 164,000 fewer tobacco-related deaths annually by 2030 (Joossens et al., 2009).

There is substantial evidence of the complicity of transnational tobacco companies (TTCs) in the illegal tobacco trade (Gilmore et al., 2013). This complicity has been revealed through analysis of internal documents, and substantiated by legal settlements between TTCs and the European Union (Tran, 2004), European Anti-Fraud Office (Sullivan & Radu, 2008), and Canadian government (Blackwell, 2012). Internal documents of BAT are particularly candid about smuggling because of how the company complied with discovery proceedings during US litigation (submitting large volumes of documents without prior review) and corporate culture on recordkeeping (Collin, Lee, & Gilmore, 2004; Collin, LeGresley, MacKenzie, Lawrence, & Lee, 2004; Lee, Gilmore, & Collin, 2004b). BAT complicity in contraband has been described in a UK House of Commons Select Committee report (United Kingdom, 2000), by investigative journalists (Center for Public Integrity, 2015) and in peer-reviewed articles on Africa (LeGresley et al., 2008), the Middle East (Nakkash & Lee, 2008) and Eastern Europe (Gilmore & McKee, 2004). In Asia, a regional study (Collin, LeGresley, MacKenzie, Lawrence, & Lee, 2004) has been accompanied by studies of Vietnam (Lee et al., 2008), Cambodia (MacKenzie, Collin, Sopharo, & Sopheap, 2004), China (Lee & Collin, 2006; Lee, Gilmore, & Collin, 2004a), and Taiwan (Wen et al., 2006). Findings suggest that smuggling was an integral component of BAT's corporate strategy to expand access to emerging markets worldwide from the 1980s onwards. These studies argue that, as well as a source of significant profits, the contraband trade allowed BAT to circumvent market restrictions, encourage consumer demand for its brands, assert policy influence to open access to closed markets, and undermine tobacco control measures such as higher taxation.

To date, there has been no detailed analysis of BAT's complicity in the illegal tobacco trade in Thailand. Findings from the present study are organized around three themes: BAT's monitoring of its share of the illegal tobacco trade in Thailand; illegal trade within BAT's global business strategy; and management of the supply and pricing of the legal and illegal trade after market opening.

Results

BAT monitoring share of illegal market in Thailand

Available documents from the mid-1980s suggest BAT was able to closely monitor the illegal tobacco trade including the company's own share of the contraband market (Table 1). In 1986, Trevor Ivey (BAT Communications Manager) estimated that smuggled cigarettes accounted for 360 million sticks (more than 10%) of the three billion sticks sold in Thailand

annually (Ivey, 1987). Three BAT brands (*State Express 555*, *Benson & Hedges*, and *Dunhill*) were reported to have 45% of the illegal market (162 million sticks), with PM's *Marlboro* and *Winston* brands holding the remaining 55% (Ivey, 1987). A year later, Michael Norsworthy of BAT's Corporate Planning Office in London (Anderson, 1992) described total smuggling volume as sharply increasing to an estimated 80 to 100 million cigarettes per month [1.2 billion sticks annually]. BAT's average monthly transit volume was thought to be approximately 22 million cigarettes per month [264 million annually], which he described as 'earning a total group trading profit of the order of £1 mn [million] p.a. [per annum]' (Norsworthy, 1988, p. 2). By 1989, total contraband sales had increased again, reaching 2-3 billion sticks or around 15% of the market.

While *State Express 555* was still 'probably [the] third largest [smuggled] brand' (Norsworthy, 1990, p. 1), BAT was reportedly losing market share to PM. *Marlboro* was cited as the leading transit brand, accounting for PM's 'GT share of approximately 40% compared with 33% for R J Reynolds, 15% for BATUK & E [BAT United Kingdom & Exports], 6% for Brown and Williamson, 5% for Rothmans and 1% for Japan Tobacco' (Benwell, 1990, p. 34). Minutes of a March 1991 meeting between representatives of BAT and Singapura United Trading Limited, a key regional distributor of legal and illegal cigarettes for BAT (Collin et al., 2004), noted that company smuggling volumes were a 'fairly constant 8-10 mns [million] per month,' but significantly behind *Marlboro* as the leading smuggled brand (Davidson, 1991, p. 8). BAT predictions that the total annual Thai cigarette market would grow to more than 50 billion cigarettes by 1995, following market opening, including 5 billion sticks (10%) of contraband (Benwell, 1990), proved overly optimistic. Nevertheless, BAT documents report that the illegal market remained steady after market opening at 1.95 billion sticks in 1994, with the company's share around 4.2%. The contraband market became heavily dominated by *Marlboro* (1.4 billion sticks), with BAT brands *State Express 555* and *Lucky Strike* accounting for 220 million sticks annually (British American Tobacco, 1995b).

Documents suggest that BAT United Kingdom & Exports (BATUKE), the UK-based BAT subsidiary responsible 'for the management of GT opportunities' (British American Tobacco, 1991a, p. 5), played an important role in the illegal trade into Thailand before and after market opening. Worldwide, the GT market was BATUKE's 'primary profit contributor,' accounting for 46% of sales volume in 1991 (Benwell, 1990, p. 7). As stated in 'secret' Group Strategy Review Data (Benwell, 1990), BATUKE markets were divided into three types: Duty Free, Domestic, and General Trade. The last, a euphemism for smuggled goods, is defined by BAT as:

exports made for onward sale to another market other than the market to where product was shipped, and where the packaging would normally be non market specific. Such products would often have substitute coding to identify the customer and therefore the intended end market. (O'Keeffe, 1994, p. 5)

Documents describe exports to Thailand as combining these three market types. For instance, a June 1989 report stated that 60 million cigarettes were exported from Singapore, of which 8 million were delivered to Bangkok for duty free sales and 16 million 'for Thailand Transit' (Thorpe, 1989, p. 4).

BAT documents also point to a range of local stakeholders whose interests stood to be significantly affected by market liberalization. Des Kennedy, a Bangkok-based businessman involved in the local tobacco industry, was amongst BAT's most important contacts. Kennedy had interests in one company that manufactured cigarette filters for the TTM and another involved in upgrading the monopoly's facilities, which gave him considerable insider knowledge of the local situation (Ross, 1989a), and which enabled him to facilitate political and business contacts for BAT (Kennedy, 1989). In 1989, he provided Norsworthy with a market report by Seagrams (Thailand) Limited, which described cigarette smuggling as operating predominantly on the East coast of the country, and involving 'some influential groups as well as policemen themselves' (Kennedy, 1989a, p. 3). Kennedy's contacts included TTM managing director General Panya Kwanyoo (Ross, 1989b), whose position as head of the monopoly reflected the convergence of military, political, and economic interests in Thailand's tobacco business. The TTM was traditionally managed by political appointees, many of who were promoted from the military. They included Panya, who regarded his appointment as being made by the armed forces rather than Minister of Finance (Downham, 1989). It was widely believed within BAT that Panya would do nothing to threaten the interests of the armed forces, which, according to BAT correspondence, 'benefit from the transit trade' (Norsworthy, 1988, p. 2). Panya thus opposed market opening, instead arguing for TTM modernization, which, according to BATUKE's Michael Downham, 'would have no effect on the transit business' (Downham, 1989, p. 3). Norsworthy (1988, p. 2) similarly noted that maintaining market restrictions would limit the availability of cigarette imports, which, in turn, 'would increase demand for transit (thereby increasing the vested interest of the Armed Forces)'. The alleged involvement of the Thai military in the contraband trade is also described by BAT marketing advisor JRV Winter Rose, who noted that, while prices for local brands ranged from 8 to 16 Baht for 20 cigarettes, '[t]ransit [of foreign brands] controlled by the Army retails between 23 Baht and 30 Baht' (Winter Rose, 1989, p.1).

Illegal trade within BAT's global business strategy

As well as being a substantial source of profits, documents suggest the illegal trade was central to furthering BAT's global business strategy from the early 1990s. Thailand was seen as one of five 'key Far East domestic markets' (along with Japan, Taiwan, South Korea and Vietnam) 'representing BATUKE's largest area for growth potential' (Benwell, 1990, p. 6). A 1991 BATUKE report on the Thai market emphasised opportunities within 'the increasing "globality" of the tobacco business,' with the 'liberalisation of trading arrangements, particularly within regions' as 'key to the international success' of parent company BATCo (British American Tobacco, 1991b, p. 7). Consistent with strategies pursued in Japan, Taiwan, South Korea, and Vietnam, the business plan in Thailand would be to gradually 'migrate from the GT [illegal] business category to the domestic [legal] market category' (British American Tobacco UK and Export, 1990a, p. 11). To achieve this, BAT attempted to engage the Thai government in negotiations to form a joint venture with the TTM, during the USTR action, in anticipation of market opening. Earlier, Norsworthy had noted that 'participation in the only private sector cigarette factory in Thailand could provide a unique advantage in subsequent stages of liberalization' (Norsworthy, 1988, p. 1). Thai government officials made it clear in preliminary discussions that a key condition of any joint venture was the production of foreign brands 'in order to combat smuggling' (Wichers, 1987, p.1).

BAT pursued this proposal in correspondence with the Thai Ministry of Finance, suggesting that foreign brands produced by a joint venture ‘would be priced to compete effectively with the smuggled supplies. Such a move would substantially increase the excise revenue of the Ministry of Finance’ (British American Tobacco, 1988, p. 2).

During negotiations, despite the involvement of its US subsidiary B&W, BAT sought to distance itself from the ‘confrontational nature’ of the USCEA (Ross, 1989b, p. 2). BAT employees feared that to be ‘openly identified as an intrinsic part of the USCEA approach’ (Downham, 1989, p. 2) would limit access to senior government officials. Ian Ross of BAT’s Singapore subsidiary cautioned, ‘for internal political reasons...[to] stay well clear of visible involvement with the USCEA’ (Ross, 1989b, p. 4). He advised that ‘timely and comprehensive two way communication is important to safeguard our positions’ with ‘Thai power brokers’ (Ross, 1989b, p. 4). Ultimately, the shifting internal balance of political power in Thailand, in part influenced by strong domestic opposition to external trade pressures, led the Thai government to put joint venture talks on hold in 1989 (Downham, 1989).

With negotiations stalled, corporate strategy shifted to increasing the volume and promotion of BAT brands. A 1986 *Washington Post* article described cigarette smuggling into Thailand as primarily a means of building brand recognition prior to market opening. However, the article’s estimate of the trade, as little more than ‘smuggled packs sold under the table by small-time street vendors’ (Frankel, 1986, p. AO1), is challenged by internal documents suggesting large-scale smuggling. The scale may explain the widespread promotion of foreign brands in Thailand during the 1980s despite the import ban, including billboards, branded merchandise and sponsorship (MacKenzie, Collin, & Sriwongcharoen, 2007). Marketing intensified prior to market opening, with BAT’s sponsorship budget rising 25% between 1989 and 1990 (Norsworthy, 1990), to promote an international snooker tournament in Bangkok and a tour by Manchester United Football Club (MacKenzie et al., 2007). This rapid increase prompted a note of caution:

A smokescreen of health concern is being used to justify pressure for a total ban on cigarette advertising. The real motive is to limit as far as possible imports’ market penetration. The current high level of advertising for international brands which are only available through transit is a particularly prominent windmill for the proponents of this to joust at. [John] Dollison [PM] has suggested that all companies moderate their advertising activities over this sensitive period. (Ross, 1989a, p. 4)

Managing the supply and pricing of legal and illegal trade after market opening

While joint venture negotiations proved unfruitful for BAT, the 1990 GATT ruling opened the market to legal imports, albeit delayed until August 1991 over decisions on import duties, excise, and administrative arrangements (Aitken, 1991a). Documents suggest that BAT shifted attention to managing the legal and illegal trade simultaneously. An immediate task was arresting falling sales in the contraband market. Mike Scott (BATUKE Marketing Manager) believed that, if the illicit trade continued at current levels, PM’s *Marlboro* would benefit most from market opening given high consumer awareness and demand in the illegal

market (Scott, 1990). BAT's leading brand *State Express 555*, in contrast, was 'declining in prominence in the black market and would rapidly deteriorate as our competitors establish effective legal distribution should BATUKE decline to participate in legal entry' (British American Tobacco, 1991b, p. 2). David Aitken, who worked in BATUKE's Bangkok Office, agreed that BATUKE brands were 'suffering a share decline in the face of Marlboro's growth' and suggested that company's interests were best served by entering 'this market legally as soon as possible before our share position erodes even further' (Aitken, 1991a, p. 3).

By being first to enter the legal market, 'we will have the opportunity to establish pricing levels which should enable our legal product to compete effectively with the transit market' (Aitken, 1991a, p. 3). It was thus agreed that the 'key to success in this new market' was to compete in the legal market despite initial 'upfront negative commercial returns' (British American Tobacco, 1991b, p. 2). He argued that the 'newly liberalised Thai market offers BATUKE an excellent opportunity to achieve its stated aim of increasing the importance of domestic end markets as against the more volatile G.T. business' (British American Tobacco, 1991b, p. 2). The relative pricing of legal and illegal cigarettes was seen as critical to achieving 'in the longer term a profitable market share' (British American Tobacco, 1991b, p. 2).

However, the capacity to do so was directly affected by the Thai government's duty and excise tax rates. Aitken underlined the difficulties of pricing, arguing that the 55% excise rate and 30% import duty adopted by the Thai government 'will not enable us to price our products competitively against the existing transit products in the market' (Aitken, 1991a, p. 2). To address this issue as a priority, BATUKE resolved 'to persuade the Thai Government over time to reduce the duty structure to stimulate legal sales and therefore tax revenues' (British American Tobacco UK and Export, 1990a, p. 22). However, Scott noted that, because the USTR was unsuccessful at gaining concessions on duty and excise, PM and RJR planned to strategically set prices high on their legal imports 'at 40 Baht in order to demonstrate that the legal business will be minimal, GT will continue and therefore revenue lost. The belief is that the Thais will then reduce the Duty' (Scott, 1990, p. 5). To compensate for lost sales on higher priced legal products, BAT documents alleged that PM and RJR would 'continue with transit to supply demand' (Davidson, 1991, p. 7). It was reported that RJR had indicated a 'clear preference to use current [illegal] routes into the Thai market unless major taxation concessions were forthcoming' while PM, still 'gaining in market share under current [illegal] market conditions,' apparently had nothing to lose by holding out for lower import duties (Aitken, 1991a, p. 4).

Aware of the strategies of its competitor, documents suggest BAT executives followed suit and considered two options: (a) set prices lower to compete with local brands which would mean lower profit margins but higher volume and market share, or (b) set prices at a level that would provide a reasonable profit margin but would also 'result in minimal legal sales and a continuation of the GT business, the objective being to persuade the Thai government over time to reduce the duty structure to stimulate legal sales and therefore tax revenues' (British American Tobacco UK and Export, 1990a, p. 28).

The latter, following the practice of PM and RJR, would encourage ‘increased transit’ (Davidson, 1991, p. 7), and convince the Thai Excise Department ‘to consider potential impact of transit products on both legal imports and local cigarettes due to high excise rate’ (British American Tobacco, 1995b, p.15). Differences in profit margin were a further consideration, estimated at 1.75 Baht per pack for legal and 5 Baht for illegal imports (Trairatanobhas, 1992). BAT eventually set prices for legal imports at 26-30 Baht per pack, with BATUKE Thailand warning headquarters that, if ‘forced to raise our price to the 35 baht level (for brand image reasons) transit will once again dominate behind a legal “front” and our market share will suffer as we are weak in this area’ (Aitken, 1991c, p. 3). Overall, managing the supply of both legal and illegal products was central to BAT’s strategy, with levels of each determined by ‘the price and margin differentials between legal and GT’ (Norsworthy, 1990, p. 2). This practice by TTCs in Thailand was reported in the Thai media (Aitken, 1991c), industry reports (Zimmerman, 1990), and later allegations of price-fixing (Anonymous, 2001).

Despite TTC efforts, the Thai government proved intransigent on lowering excise and duty rates, in large part because of awareness of the TTCs’ role in the illegal trade. Aitken reported that Thai officials believed, ‘despite our denials, that the multinational cigarette companies can control transit. They therefore have little sympathy with our arguments that they need to lower taxes in order to enable us to compete effectively with transit’ (Aitken, 1991a, p. 3). Similarly, Viroj Trairatanobhas (BATUKE Bangkok) described the Thai Excise Department as acknowledging that contraband had ‘expanded tremendously under the legal cover front,’ and suggested that its distribution involved a network of local retailers and ‘Mafia godfathers with back up from police and military, who have vested interest’ (Trairatanobhas, 1992, p. 4). He reported that ‘China Town, right in the heart of Bangkok, is out of bound [sic] for excise police,’ that ‘[s]ome overly active Excise police have been assassinated by the crooks’ and that the department was ‘quite desperate to the point of contemplating to ask manufacturers of major brands to control transit supply’ (Trairatanobhas, 1992, p. 4).

Data on market share in Thailand since the mid-1990s suggest that competition among TTCs for the legal import market was convincingly won by PM. While the TTM still controlled the majority of the Thai cigarette market (Ross, Driezen, Sirirassamee, & Kin, 2009), legal imports grew to 30% market share by 2012, with PM accounting for 93% (Euromonitor International, 2013b). BAT Thailand captured no more than 3% of the legal import market and ceased operations in 2010 (Euromonitor International, 2013a). BAT brands, including *Dunhill*, *State Express 555*, and *Benson & Hedges*, are currently legally available only as duty-free sales at international airports, a reversion to the pre-1991 situation.

However, documents suggest that TTCs, including BAT, relied heavily on the illegal trade to supply the Thai market (Aitken, 1991b). For example, a 1997 table of ‘Estimates of transit volumes’ states that 1290 million sticks were shipped to Thailand, with the cited figure ‘from our end markets and...used in negotiations with Governments’ (Bishop, 1997, p. 3). The continued importance of this market to BAT, even after the company’s withdrawal from legal operations, may explain BAT’s participation in an unsuccessful legal challenge by the

industry of the government's increase of graphic health warnings, from 55% to 85% of cigarette pack surfaces (Lieberman, 2013; Lefevre, 2014).

Discussion

The longer term implications of the USTR-Thailand tobacco dispute for public health continue to be debated. One interpretation is that the GATT ruling undermined national policy making by compelling the Thai government to remove restrictions on legal imports. This, in turn, increased domestic competition, tobacco consumption and thus adverse health impacts. The TTM responded by giving more attention to marketing and product development, joining TTCs in challenging the adoption of stronger tobacco control measures, and developing export markets in Southeast Asia and the Middle East (MacKenzie & Collin, 2012). An alternative interpretation is that the ruling led Thailand to adopt stronger tobacco control measures, applied to domestic and foreign companies, than it would otherwise have (Mackenzie & Collin, 2012). The comprehensive 1992 Tobacco Products Control Act restricted large-scale advertising and promotional campaigns seen in other countries following market opening (MacKenzie, Collin, Sriwongcharoen & Muggli, 2004), and paved the way for Thailand to become a 'world leader in tobacco control' (Vathesatogkit & Nimpitakpong, 2011, p. 3).

This article argues that assessment of the ruling on the Thai tobacco market must include fuller analysis of the complex relationship between the legal and illegal tobacco trade. Prior to market opening, large-scale smuggling undermined the import ban. When imports became legal in 1991, rather than reducing the illegal trade, smuggling remained buoyant and even increased. Our findings suggest that TTCs managed the relative supply and pricing of the legal and illegal trade in order to influence government policy. Because the Thai government did not respond by, for example, reducing excise and duty rates, TTCs appear to have set the price of legal products artificially high while continuing to supply the illegal market. Allegations of price-fixing have since emerged, not only in Thailand, but also in many countries where TTCs have sought to influence tobacco tax policies (Anonymous, 2001; Gilmore, Branston, & Sweanor, 2010). These findings support evidence elsewhere that smuggling has been a core component of global business strategy by TTCs (Lee & Collin, 2006; Gilmore et al, 2013), and challenge persistent arguments that high cigarette taxes induce smuggling (Zhang & Schwartz, 2015)

Thailand's experience since market opening raises important implications for tobacco control policy. First, the complicity of TTCs in the illegal tobacco trade in Thailand has been enabled by weak governance. The fractured nature of Thai politics, characterized by frequent power struggles and changes in government, has been accompanied by reports of vested interests by the military, customs, and other officials in sustaining the illegal trade (Joossens & Raw, 2012). On the Corruption Perceptions Index of Transparency International (2014), Thailand scored 35 (and ranked 102 of 177 countries) on a scale of 0 (highly corrupt) to 100 (very clean). Neighbouring countries of Vietnam (31), Laos (26), Myanmar (21) and Cambodia (20), from where the contraband trade historically enters Thailand, scored even lower. The illegal tobacco trade, in other words, is symptomatic of the need for better governance to regulate internal and external stakeholders.

Second, the findings illustrate the need to understand the diversity of corporate activities and strategy within an industry seeking to adapt to globalization. The government's protection of the TTM served domestic political and economic interests, rather than public health concerns, and further research on the company's aspirations to become a significant regional operator is needed. The strategies of TTCs in Thailand also reflected different approaches to global expansion, pursued through competition and cooperation prior to and after market opening. Governments seeking to strengthen regulation of their domestic tobacco industry should be wary of the motives of TTCs seeking, for example, joint ventures or policy concessions in return for economic gains or regulatory compliance.

Finally, the findings reinforce evidence elsewhere of the intertwined nature of the legal and illegal tobacco trade. This paper shows that the illegal tobacco trade in Thailand was fuelled by the globalization ambitions of TTCs, as they competed for market share in emerging markets. At the same time, there is evidence of cooperation among TTCs to shape regulatory regimes in ways that favour their interests via USCEA's lobbying of the USTR, and controlling the relative price of legal and illegal products. Recognition of the global challenges faced by the public health community prompted agreement of the WHO Framework Convention on Tobacco Control (FCTC) Protocol to Eliminate Illicit Trade in Tobacco Products in November 2012. The FCTC protocol focuses on controlling the supply chain including tracking and tracing products, increasing enforcement measures and legal instruments, and improving international cooperation. TTCs have publicly welcomed the protocol, with BAT calling on 'regulators, law enforcement authorities and the tobacco industry to work together' to combat 'smugglers, counterfeiters and tax evaders' (British American Tobacco, 2015). Our findings question the degree to which the legal and illegal tobacco trade can be so readily addressed as separate concerns.

Acknowledgments

Funding

This research is funded by the National Cancer Institute, National Institutes of Health [grant number R01-CA091021]. The funder played no role in the decision to submit the article or in its preparation.

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Table 1

Legal and illegal cigarettes sales in Thailand, 1986-2006.

Year	Total legal sales (millions of sticks)	Estimates of contraband sales in millions of sticks (percentage of total sales)	British American Tobacco estimates
1986	29,473	1000 - 2000 (3.4% - 6.8%)	Total legal sales: 30 billion cigarettes Contraband: 360 million (12%) [estimate of total contraband] (Ivey 1987, Davidson 1991)
1987	31,155	1000 - 2000 (3.2% - 6.4%)	
1988	31,780	1000 - 2000 (3.1% - 6.2%)	Total transit volume: 80-100 million per month, "and possibly substantially more." (800 - 1200mn) BAT's monthly transit volume: 22 million cigarettes (264mn) (Norsworthy 1988)
1989	32,250	1,000 - 2,000 (3.1% - 6.2%)	Total transit: 2-3 billion cigarettes annually BAT: 249 mn (Norsworthy, 1990)
1990	32,730	1,000 - 2,000 (3.0% - 6.0%)	Total sales: 41 billion Transit: 1 billion [estimate of total contraband] (Benwell, 1990)
1991	38,960	1,000 - 2,000 (3.0% - 6.0%)	BAT transit volume: 8-10 million cigarettes per month (Davidson, 1991)
1992	40,680	1,057 (2.6%)	
1993	42,580	1,490 (3.5%)	
1994	46,520	1,953 (4.2%)	Transit: 1.95 billion (4.2% of total market) (British American Tobacco, 1995a)
1995	43,420	3,690 (8.5%)	Total sales: 50.3 billion Contraband: 5 billion (Benwell, 1990)
1996	49,260	6,058 (12.3%)	
1997	48,320	7,199 (14.9%)	
1998	39,020	6,555 (16.8%)	
1999	36,180	5,499 (15.2%)	
2000	36,480	5,362 (14.7%)	
2001	34,600	4,567 (13.2%)	
2002	34,800	3,514 (10.1%)	
2003	38,080	2,399 (6.3%)	

Year	Total legal sales (millions of sticks)	Estimates of contraband sales in millions of sticks (percentage of total sales)	British American Tobacco estimates
2004	42,200	2,911 (6.9%)	
2005	43,680	4,368 (10.0%)	
2006	36,020	2,629 (7.3%)	

Notes:

'Sticks' refers to individual cigarettes.

Column 1: Figures for total legal sales of cigarettes taken from Thailand Ministry of Public Health (2011) and Euromonitor International (2013a).

Column 2: Indicates estimated volume of contraband sales in millions of cigarettes with percentage of total (legal plus contraband) sales in brackets. Estimates from Hayes (1988) are for the years 1985-1990, and from Pavananunt (2009, 2011) for 1990-2011.

Column 3: Indicates BAT estimates of contraband sales by selected years located in company documents. These are for total contraband and/or BAT contraband as indicated. Name of document author and year are listed in brackets.