

Where are we with FCTC Achievement and Challenges

Prof. Prakrit Vathesatogkit, M.D, FRCP
Action on Smoking and Health Foundation, Thailand
August 19, 2013
The 10th APACT Conference
Chiba, Japan



Overview of presentation

The battle to fully implement
WHO FCTC: Article 11.

Case study on 85% Graphic
Health Warning on cigarette
package in Thailand



- 50% 2005/2007
- 55% 2010



From 50 → 55%



55%

Challenges by JTI

JTI call Ministry of Health

“Can you provide evidence that 55% GHW is more effective than 50%?”

MOH

“We believe 55% is more effective than 50% you show us the evidence that it is not so”

**Thank you
Uruguay for
taking the lead**

**we must try to
do the same**



20%

80%

Effective March 2010



2011-12: Thailand aimed to strengthen GHW

Committee on the implementation of FCTC Article 11

- Prepare new set of pictures
- Draft new regulation
- **Aiming for 80% size GHW**

Waiting for the right opportunity to propose to Minister of Health



Why 80% GHW?

- FCTC Article 11 : consider requiring the biggest GHW possible
- Tobacco industry seems to be **happy** with Brunei & Canada's 75% GHW (no court case was taken)
- Uruguay's 80% was taken to court but the industry lost
- 80% is unlikely to be taken to the WTO
- The industry lost the court case of plain packaging in Australia
- Existing Thai legislation can not require plain packaging

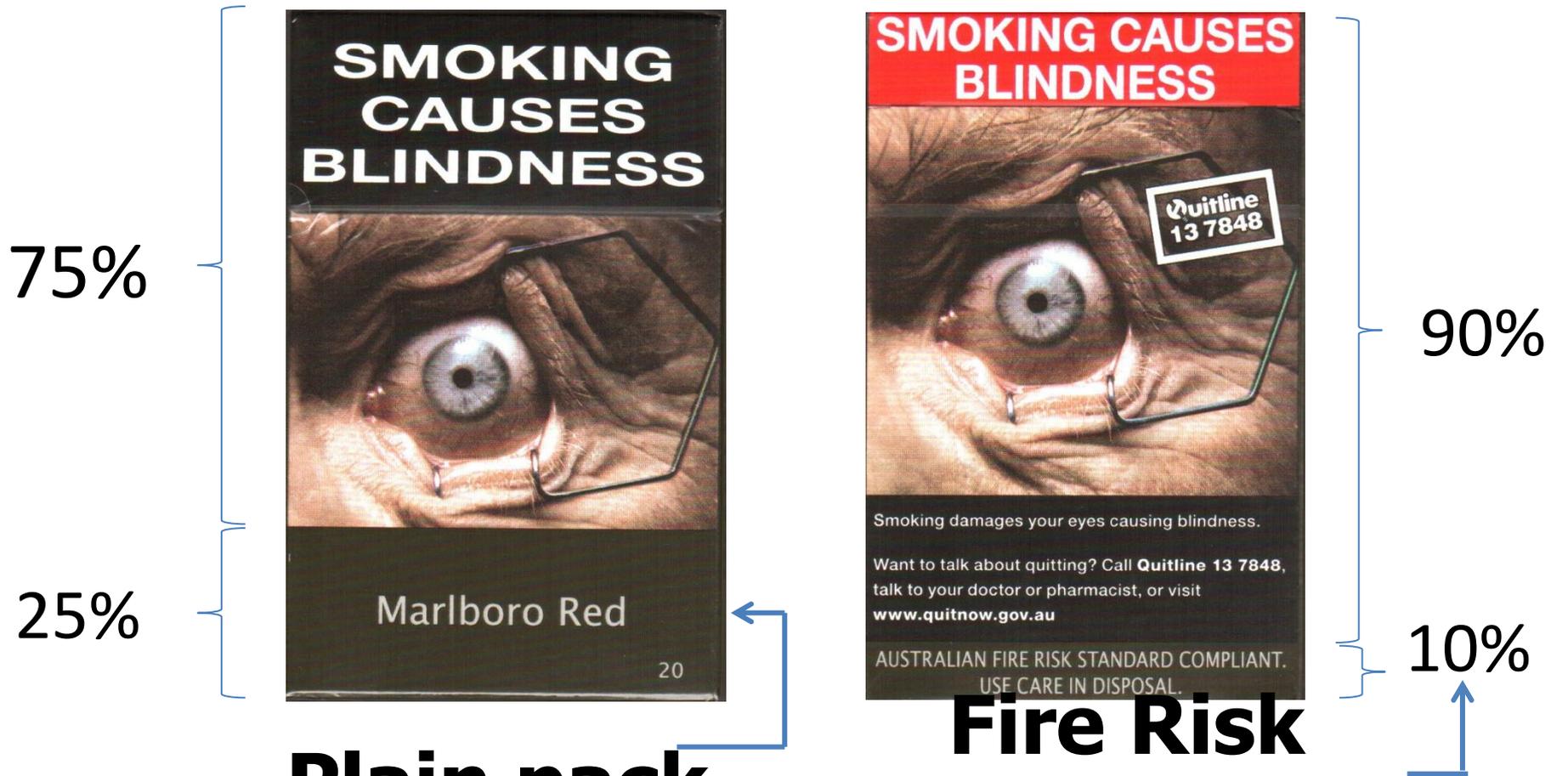


So If Thailand go to 80%

- We will be on a par with Uruguay but less stringent than Australia
- **The industry can sue us but most likely they will lose**
- If we propose 80% and our minister say 75% the same with Brunei and Canada
we can still live with it



Salute to Australia (December 2012)



Plain pack

Fire Risk

Standard

= 75 + 90 + 10 = 175% Average warning
= 87.5%

Even more strengthen our resolve for an 80% GHW

Key Milestones

November 2012

- New Minister of Health was appointed

December 2012

- Director of the Bureau of Tobacco Control and team met with the new minister

“It’s time to change our GHW regulation which has been used since 2010”



Explaining to our Minister

- Uruguay's GHW = 80% (2010)
- Australia's Plain packaging (2012)
Tobacco industries **sued to domestic court** in both cases and loss
- Sri Lanka's 80% GHW case pending Supreme Court's decision



Convincing our Minister

- Uruguay's case has not been challenged to WTO since 2010

It was challenged by Phillip Morris under Uruguay-Switzerland BIT

- Australia's case is now in WTO on the plain packaging issue
- **We should be OK with 80%**

Minister of Health :

We will go for 85%



February 1, 2013

- The National Committee for the Control of Tobacco approved proposal by Minister of Health to issue regulation to increase the size of GHW warning from 55% to 85%
- Thai Tobacco Trade Association came out to express strong opposition to the proposal

“violation of international law”



February 20, 2013

Health & youth groups gather to support minister of health



March 6, 2013

- Minister of Health signed the new regulation, awaiting to be gazetted
- Intense lobbying by tobacco companies and its allies to other cabinet ministers on “Trade Mark” / international trade issue.
Pressuring the minister of health to back down
- Health groups show full support to minister of health and for him to stand firm



The regulation was published in the Royal Gazette April 5, 2013

- Requiring 85% GHW on both principle surfaces of cigarette packs
- Effective date October 2, 2013 (6 months)



Thailand's new regulation



85 %

15 %

Effective October 2, 2013



สูบแล้วทรมานจนตาย
จากถุงลมพอง



เลิกสูบบุหรี่ โทร 1600 www.thailandquittline.or.th

BRAND

สูบบุหรี่ทำให้เป็น
มะเร็งปาก



เลิกสูบบุหรี่ โทร 1600 www.thailandquittline.or.th

BRAND

สูบบุหรี่ทำให้หัวใจวาย



เลิกสูบบุหรี่ โทร 1600 www.thailandquittline.or.th

BRAND

โปรดงดสูบบุหรี่
ในบ้าน

ควันบุหรี่
ทำร้าย
คนใกล้ชิด



บ้านปลอดบุหรี่
Smoke Free Home

เลิกสูบบุหรี่ โทร 1600 www.thailandquittline.or.th

BRAND

ควันบุหรี่ฆ่าเด็กได้



เลิกสูบบุหรี่ โทร 1600 www.thailandquittline.or.th

BRAND

สูบบุหรี่ทำให้เป็นมะเร็งปอด



เลิกสูบบุหรี่ โทร 1600 www.thailandquittline.or.th

BRAND

สูบบุหรี่ทำให้เส้นเลือดสมองแตก



เลิกสูบบุหรี่ โทร 1600 www.thailandquittline.or.th

BRAND

สูบบุหรี่ทำให้เป็น มะเร็งกล่องเสียง



เลิกสูบบุหรี่ โทร 1600 www.thailandquittline.or.th

BRAND

สูบบุหรี่ทำให้
เชื้กซ์เสื่อม



เลิกสูบบุหรี่ โทร 1600 www.thailandquittline.or.th

BRAND

สูบแล้วปากเหม็นบุหรี่



เลิกสูบบุหรี่ โทร 1600 www.thailandquittline.or.th

BRAND

**Each carton must contain cigarette pack with
10 different GHW**



Tobacco industries filed lawsuit against MOH

- JTI filed suit : June 20, 2013
- PMI filed suit: June 26,2013
- TTTA and two smokers filed suit: July 5, 2013
- BAT filed suit: August 1, 2013

Request for

1. Court injunction

2. Rule that the law is illegal



Tobacco Company's claim

- Japan Tobacco International :
“disproportionate, infringe intellectual property”
- Phillip Morris : “infringe on trademark, ignored PM and retailer's voice”
- BAT : “unconstitution, trademark violation”



Japan Tobacco International (JTI)

- The US court's verdict “Pictorial health warning is **too threatening** to smokers”
- 85% is excessive, it will **effect smoker's feeling** and freedom, smokers will **hate and refuse to look at the cigarette pack**



Japan Tobacco International (JTI)

- It will deprive smokers **sense of relax and enjoyment of smoking**, this is a **threat to freedom** and way of life of smokers under the constitution
- **Compare to China's text only health warning**, Thailand's current 55% GHW is already **“bearable”**



A war room was established to support MOH



Law suit handle
By legal team

Media advocacy

85% PHW
implemented

Network
mobilization

Challenging TI

War Room Key strategies

We must win the Social Verdict

There are two verdicts

1. The social verdict
2. The court verdict

We must win the social verdict in order to win the court verdict

Take this opportunity to **denormalize** the industry

“strip off their clothes in front of the public”



June 26, 2013

Dear Minister Pradit.

The fact that the industries took the case to court means that **you are doing the right thing.**

Please be assured that the public is behind you.

Being a minister of health, there is nothing for which you can be more proud than being sued by the tobacco industry,

Prof. Prakrit Vathesatogkit, M.D.



Get help from our friends

Online / phone consultation

- Jonathan Liberman (Australia)
- Rob Cunningham (Canada)
- Mary Assunta (Malaysia)
- Yul Dorotheo (Philippines)
- CTFK: Monique Muggli (USA)
- WHO



Phillip Morris's argument

- Thailand's current 55% GHW rank 14th in the world already
- 85% GHW is excessive / unnecessary / **disproportionate**



Disproportionate to what?

Philip Morris International : Ever increasing net earning

	2010	2011	2012
USD Million	7,498	8,879	9,154

Ref. Philip Morris International, 2012 annual report, page 56



JTI's argument

Thailand **SimSmoke** model show that GHW was the least effective among the 4 measures (tax / TAPS ban / smoke free law / GHW)

There is no need to go to such extreme (85%)



FACT

Each tobacco control measures have **different objectives, are not replacable and are synergistic.**

We have to do the best for each one of them



Saying “Half truth” about FCTC

JTI

FCTC require only 30% GHW

FACT

FCTC is the floor and **FCTC Article 2** say

“Parties are encouraged to implement measures **beyond those required by**

FCTC”



FCTC Article 11 Guidelines

- Given the evidence that the effectiveness of health warnings and messages **increases with their size,**

Parties should consider using health warnings messages that cover more than 50% and **aim to cover as much of the principal display areas as possible**



JTI / PMI

85% GHW totally disrupt
trademark / market mechanism
irreparable damage



FACT



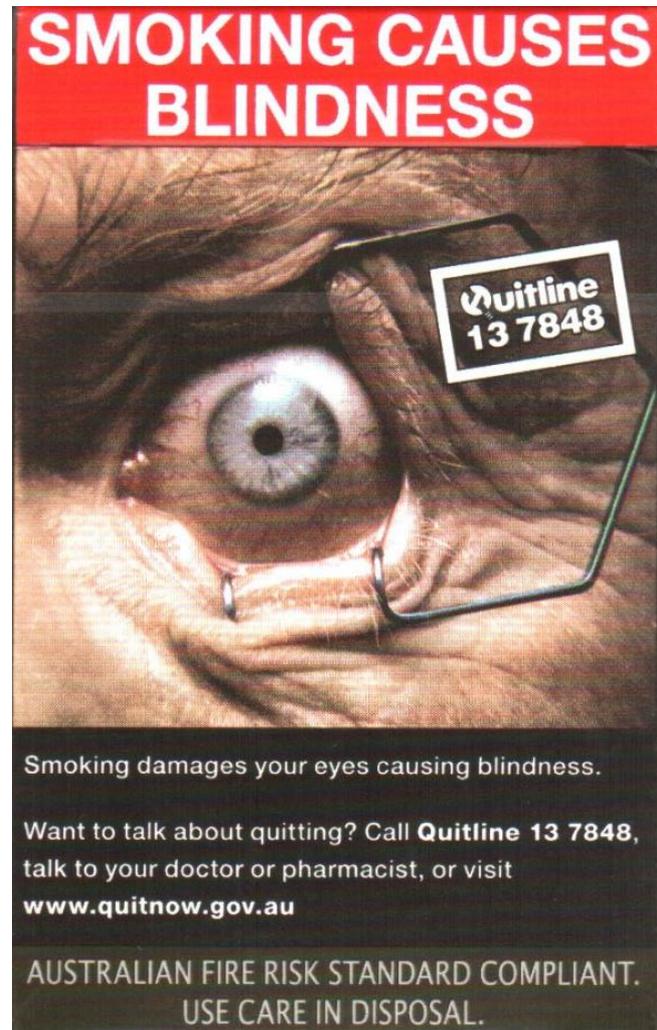
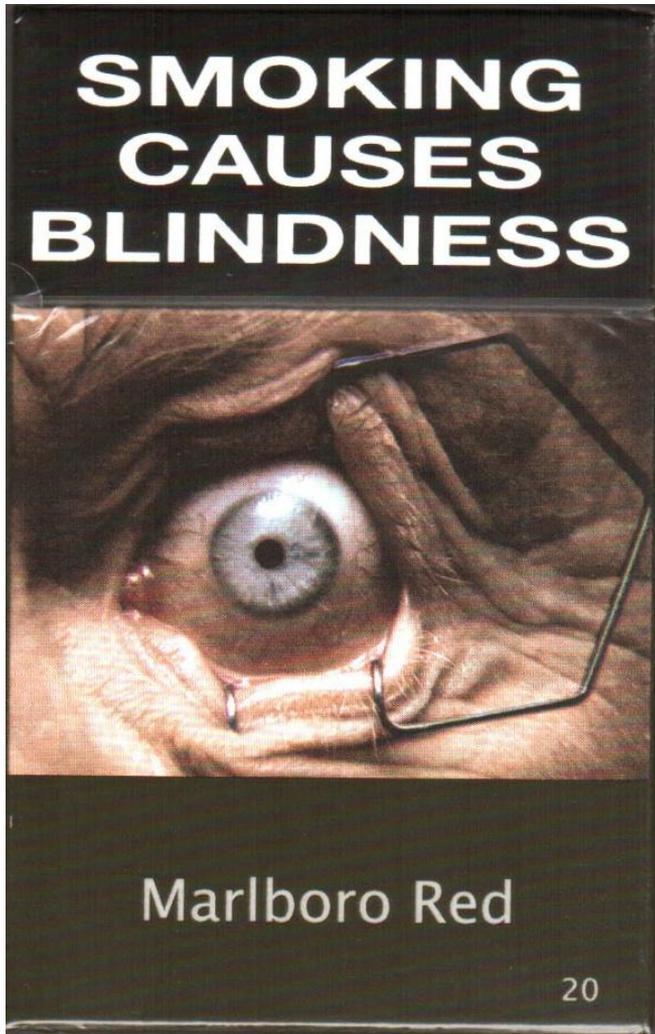
Trademark at front and back



Trademark at top



Trademark at bottom



Australian court even uphold law banning the use of trade mark on cigarette package

The law is unconstitutional

- **Phillip Morris**
- The regulation is unconstitutional because there was no public hearing

FACT

- The regulation does not fall into the category of law that require public hearing



They want to be consulted

Phillip Morris / JTI

- Tobacco industry was not consulted on the law

FACT

- We act according to FCTC Article 5.3 Guidelines



Article 5.3 Guidelines

Recommendation

2.1 Parties should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products.

(we will meet with you “Down Stream” or to “regulate” you only)



Press conference July 2, 2013



Press conference by health groups July 19, 2013



Press briefing July 25, 2013



On TV



The two ladies from opposite camps



หน้าแรก | เรื่องเด่น | เกาะติดสถานการณ์ | หมดจดหมดจด | คนในข่าว | เหลียวหลัง | แลหน้า | บุคคล | คลังข้อมูล | เกี่ยวกับเรา

[Home](#)

มุมมองต่าง "บุหรี" NGO vs สมาคมยาสูบ “ปกป้องสุขภาพ หรือละเมิดสิทธิ”

Sun, 2013-07-21 11:00 -- hfocus

[Print version](#) [Send e-mail to friend](#)

บั้งอร ฤทธิภักดี “หัวใจของภาพคำเตือนจึงอยู่ที่การยับยั้งนักสูบหน้าใหม่เป็นหลัก ซึ่งแน่นอนว่าบริษัทบุหรีก็ทราบดีและจะทำทุกอย่างเพื่อเพิ่มจำนวนนักสูบหน้าใหม่ให้มากกว่าผู้ที่เสียชีวิตในแต่ละปี หากทำไม่สำเร็จก็จะทำให้วงจรการสูบบุหรีขาด”



วราภรณ์ นะมาตร์ “ทันทีที่กฎหมายใหม่จะบังคับใช้ ภาระของผู้ค้าเพิ่มขึ้นทันที ...ซึ่งแน่นอนว่าบุหรีแต่ละซอง แต่ละยี่ห้อมีราคาที่ไม่เท่ากัน หากมีการขยายภาพคำเตือนจนเบียดบังตราสินค้า ย่อมมีโอกาสสยบผิดหรือขายผิด ซึ่งก็คือเงินที่ต้องสูญเสีย”

Saving life VS Guarding profit

Youth challenged TI in front of PMI office August 1, 2013



Press release by SEATCA

“This court case against the Thai Ministry of Health (MOH) is absurd, as it challenges the sovereignty of the Thai government which is acting to protect public health.”



Bungon Ritthiphakdee,
Director of SEATCA.



Same old tactic

Tobacco companies issue a press release calling for a meeting between MOH and the industry to **settle the case**

August 7, 2013

No thank : Let the court decide



Lessons learned on size of GHW

1. Country can go to 75% size without being challenged by tobacco industry in court
2. 80% GHW is unlikely to be challenged to WTO but may be challenged under BIT
3. Plain packaging is likely to be challenged to WTO, BIT



Lessons learned on size of GHW

4. 85% GHW probably will not be challenged to WTO
5. If your law can not mandate plain packaging at present, go to 80 - 85% size
6. If they sue you, get help from our friends



And we've got friends

Heartiest thanks to :

- Jonathan Liberman (Australia)
- Rob Cunningham (Canada)
- Mary Assunta (Malaysia)
- Yul Dorotheo (Philippines)
- CTFK: Monique Muggli (USA)
- WHO

