

# **The Globalization of the Tobacco Industry And Implications for Tobacco Control**

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# Globalization of Tobacco Industry

# Factors Contributing to Globalization

- Opening of markets through bilateral, regional, and global trade agreements
- Loosening of restrictions on foreign direct investment
- Privatization of government run tobacco companies
  - A few significant exceptions
- Consolidation among multinational tobacco companies

# Trade in Tobacco Products

## ■ Global/Multilateral treaties:

- General Agreement on Tariffs and Trade (GATT)
  - Require participating countries to reduce tariff and non-tariff barriers to trade, including in tobacco & tobacco products
  - Non-discriminatory treatment of trading partners and of foreign and domestically produced goods
  - Led to creation of World Trade Organization (WTO)
- WTO currently:
  - 159 members; 25 observers (those seeking to join)
    - Mostly LMICs
  - Covers more than 97% of global trade

# Trade in Tobacco Products

## ■ Regional Free Trade Agreements

- Association of South East Asian Nations
- European Union
- North American Free Trade Agreement
- Common Market of East and Southern Africa
- Economic Community of Western African States
- Organization of American States
- Ongoing negotiations for Regional Comprehensive Economic Partnership (RCEP) and Trans-Pacific Partnership (TPP)
- Have further reduced tariff/non-tariff barriers to trade in tobacco and tobacco products

# Trade in Tobacco Products

- Bilateral Agreements: similar efforts that lead to more significant reductions in trade barriers between two countries:
  - China- ASEAN free trade market
    - Facilitates trade in tobacco/tobacco products between China and ASEAN
    - Zero tariffs and elimination of other barriers by 2015
  - US-Kazakhstan bilateral agreement
    - Reduced barriers to investments
    - Led to considerable PM investment in new production capacity
  - Section 301 “agreements” between US and Japan, Taiwan, South Korea and Thailand (1986-1990)
    - Forced open cigarette markets in these countries given threat of retaliatory trade sanctions from US

# Trade in Tobacco Products

- Impact of freer trade on tobacco use
  - Growing evidence that reduction in barriers to trade increase tobacco use
  - Impact greater on lower income countries
  - Results from increased competition, lower prices, and increased use of sophisticated marketing strategies by multinational tobacco companies



# Direct Investment & Privatization

- Opening of markets has also resulted in increased openness to direct investment
  - Investment in new production facilities/capacity owned and operated by multinational tobacco companies
    - By far the most widespread
  - Privatization of former government owned/operated tobacco companies
    - for example, Turkish TEKEL acquired by BAT in 2008 after being on the market for many years)
    - Partial privatization of Egypt Tobacco Company (government still retains controlling interest)
  - Joint ventures between local monopoly and multinational tobacco companies
    - For example, PMI and China National Tobacco company



# Direct Investment & Privatization

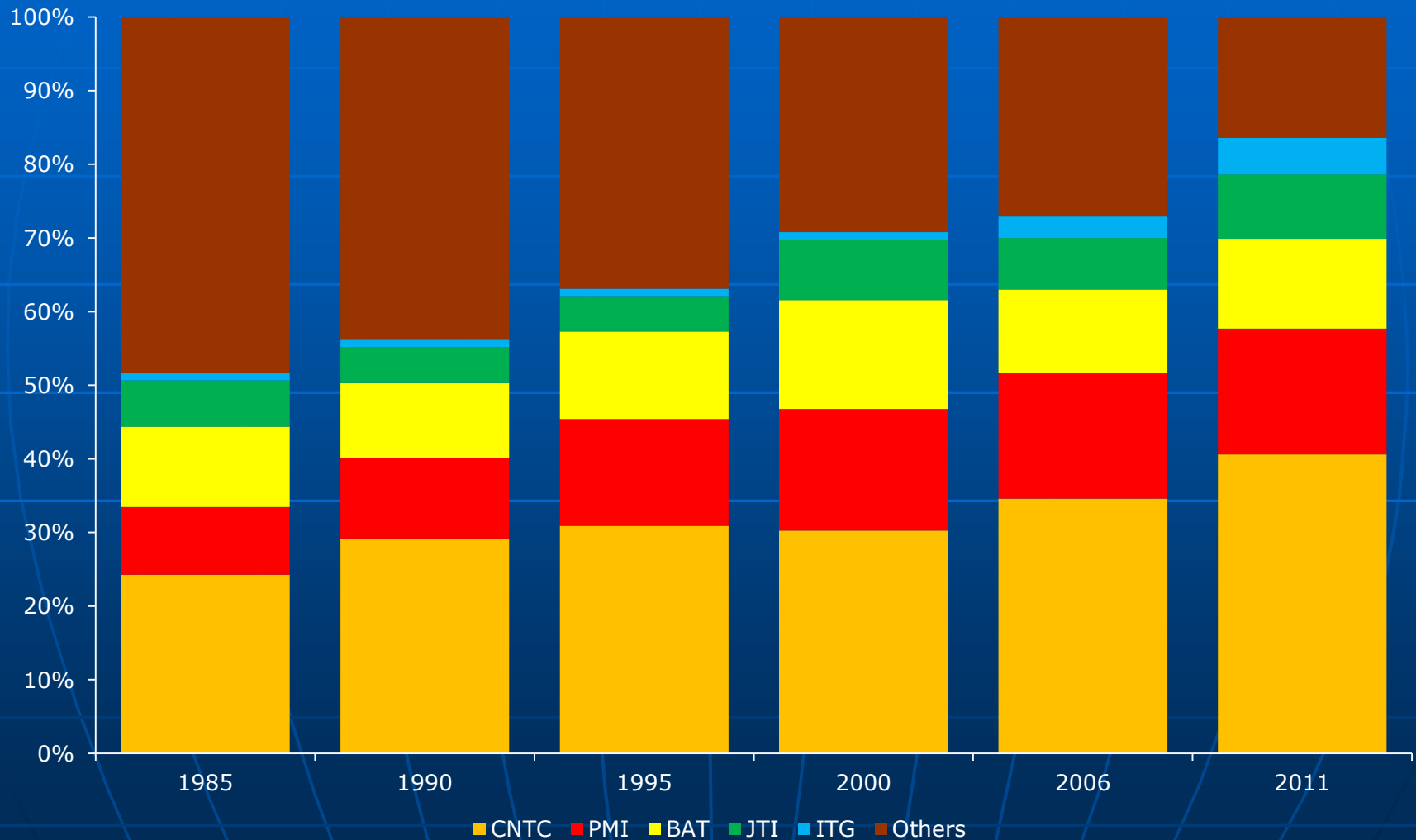
- Public health concerns about FDI and privatization
  - Government efforts to attract investors/buyers can lead to agreements that government won't adopt higher taxes, strong tobacco control policies
  - Increased presence of multinationals will lead to widespread use of sophisticated marketing practices
  - Tobacco use will be higher than it would be otherwise
- Public health benefits of privatization
  - Eliminates conflict of interest between revenues generated from production/sale of tobacco and health/economic benefits of tobacco control

# Mergers & Acquisitions

- Considerable consolidation among tobacco companies
  - Acquisition of local cigarette companies by MTCs
    - Acquisition of popular local brands
    - For example, BAT acquisition of Protabaco - 2<sup>nd</sup> largest Colombian company - in 2011
  - Mergers between local tobacco companies and MTCs
    - For example, Philip Morris International and Fortune Tobacco Company merge in 2010, creating Philip Morris Fortune Tobacco Company that nearly monopolizes Philippine cigarette market
  - Acquisition of one MTC by another MTC
    - For example, Imperial Tobacco Group's acquisition of Altadis in 2008

# Cigarette Company Market Shares

1985-2011, Selected Years



Source: *Maxwell Tobacco Fact Book*, various years; Euromonitor, 2013; note: PMI includes Philip Morris International and Altria Group Inc.

# Mergers & Acquisitions

- Increasing consolidation across products and development/marketing of new products
  - Altria's 2008 acquisition of US Smokeless Tobacco Company, 2012 marketing of Verve (non tobacco nicotine lozenge), 2013 marketing of Mark Ten (e-cigarette)
  - Lorillard Inc. acquisition of Blu, a leading e-cigarette company
  - JTI's acquisition of Gryson, a leading RYO/MYO manufacturer in Western Europe
  - PMI's purchase of Jed Rose's patent for a nicotine inhaler
  - BAT's 2011 creation of Nicoventures to develop reduced risk tobacco products and other nicotine delivery products

# Implications for Tobacco Control

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## Challenges to National Tobacco Control Policies

# Trade Disputes

## ■ US-Thailand and GATT/WTO

- Key issues:
  - Near total ban on cigarette imports
  - Differential taxes on foreign and domestically produced cigarettes
  - Comprehensive ban on advertising and promotion
- Dispute brought before GATT in 1990
  - Ban, differential taxes are violations of agreement
  - Ad/promo ban is allowable
  - Decision depends on whether or not measures are applied equally to domestic and foreign products
  - ***nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures...necessary to protect human ....health***

# Trade Disputes

- Trade dispute between Indonesia and US over clove cigarettes
  - US FDA banned flavored cigarettes (except menthol) under the US Family Smoking Prevention and Control Act
  - Indonesia leading exporter of clove cigarettes (kreteks) brought challenge saying ban is discriminatory and unnecessary
  - Sept. 2011 – WTO rules that the ban is discriminatory, but not unnecessary given evidence that availability of flavored cigarettes contributes to youth smoking uptake
    - Calls on US to bring policy into compliance with trade agreements
    - US appealed, lost; unclear how it will comply

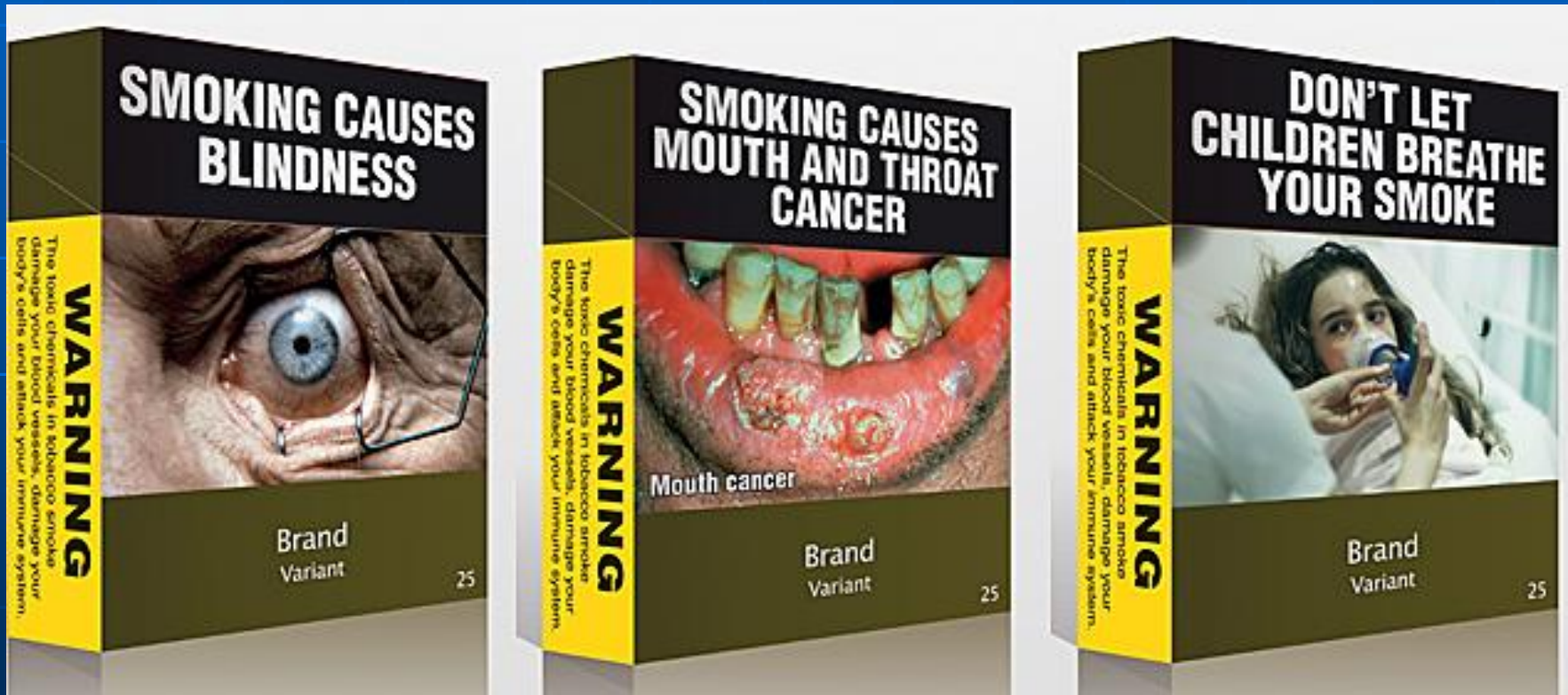


# Trade Disputes

- Norway's ban on retail tobacco product displays
  - Challenged by Philip Morris Norway arguing that display ban violated Article 11 of European Economic Area by 'hindering the free movement of goods'
  - European Free Trade Agreement court ruled that the ban effectively restricted imports, but left it to Norway's court to determine whether or not the public health objective was likely to be met and could not be achieved by less trade restrictive measure
  - September 14, 2012, Oslo district court upheld ban:
    - "there exist no other measures that will have an effect equivalent to that of the Display Ban."
    - "Absence of visible tobacco products in shops will be vital both in terms of the absence of advertising effect, and as a part of de-normalisation."

# Trade and Investment Disputes

## Australia's Plain Packaging Policy



# Trade and Investment Disputes

- Multiple challenges from tobacco industry to Australia's plain packaging policy
  - Constitutional challenge brought by BAT, PMI, ITG, JTI and others
    - August 2012 High Court decision that plain packaging controlled tobacco company marketing and did not involve acquisition of trademarks
  - Ongoing challenge by Philip Morris Asia under 1993 bilateral investment treaty between Hong Kong and Australia
  - WTO challenges pending from Ukraine, Honduras, Dominican Republic, and Cuba

# Investment Disputes

- PMI 2012 challenge to Uruguay tobacco control law under bilateral investment treaty between Uruguay and Switzerland
  - Three regulations at issue:
    - Health warnings covering 80% of cigarette pack
    - “Repulsive and shocking” images used in graphic warnings
    - Permission to sell only one variation per brand
  - PMI argues that these “deprive the company of its ability to use its legally-protected trademarks and brands”
  - Uruguay argues that these are necessary to protect public health



# Trans-Pacific Partnership

- Trade agreement in negotiation since 2010
- Multiple positions regarding inclusion of tobacco products and/or tobacco control policies
  - Some want tobacco products excluded entirely and strong language included that gives priority to public health objectives
  - Others want tobacco leaf and tobacco products included and subject to reductions in tariffs and other barriers to trade, including elimination of subsidies for tobacco growing
  - Tobacco industry pushing for strong provisions protecting intellectual property, trademarks, etc.
  - Some want harmonization of tobacco control policies – key question is on a 'ceiling' vs. a 'floor'
  - US had been pushing for language that would protect domestic tobacco control policy to “create a safe harbor for FDA tobacco regulation”

# Trade/Investment Disputes

Controversy over whether or not public health interests take precedence over trade and/or investment interests

- GATT decision in US/Thai case indicates that public health concerns trump trade issues
  - Key is uniform application to all tobacco products regardless of origin, even if effect may be uneven
- Recent decisions suggest that this principle is being applied in other decisions
  - European Free Trade Association Court and Oslo District Court decisions on Norway's tobacco products display ban
  - WTO panel decision in Indonesia case
  - Australia High Court decision on industry challenges to plain packaging legislation

# What to Do?



# Globalization and Tobacco

## ■ My view

- Governments should not impose unilateral trade restrictions in efforts to reduce demand for tobacco products
  - Can negotiate exclusion of tobacco and tobacco products from trade agreements as part of international, multilateral, and bilateral trade agreements (e.g. ongoing negotiations for the Trans-Pacific Partnership agreement)
- Instead, adopt comprehensive tobacco control policies and programs that apply evenly to all tobacco products, regardless of origin
  - Higher taxes; comprehensive restrictions on advertising, promotion, and sponsorship (including display bans, plain packaging); comprehensive smoke free policies; graphic warning labels; mass media public education campaigns; support for cessation; and other evidence-based policies and programs

**For more information:**

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[www.tobacconomics.org](http://www.tobacconomics.org)  
(coming soon)