

# How to combat efforts to overturn bans on electronic nicotine delivery systems: lessons from tobacco industry efforts during the 1980s to open closed cigarette markets in Thailand

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## ABSTRACT

Until 1990, it was illegal for transnational tobacco companies (TTCs) to sell cigarettes in Thailand. We reviewed and analysed internal tobacco industry documents relevant to the Thai market during the 1980s. TTCs' attempts to access the Thai cigarette market during the 1980s concentrated on political lobbying, advertising and promotion of the foreign brands that were illegal to sell in Thailand at the time. They sought to take advantage of the Thai Tobacco Monopoly's (TTM) inefficiency to propose licencing agreements and joint ventures with TTM and took advantages of unclear regulations about cigarette marketing to promote their products through advertising and sponsorship activities. After their initial efforts failed, they successfully lobbied the US to impose trade sanctions to liberalise Thailand's market. Similar to the situation for cigarettes in the 1980s, since 2017, Philip Morris International has worked in parallel with a pro-e-cigarette group to pressure Thailand's government to allow sales of electronic nicotine delivery systems (ENDS; including e-cigarettes and heated tobacco products), knowing the products were illegal under Thai law. Health advocates and government authorities should be aware of past TTCs' tactics for cigarettes and anticipate that TTCs will attempt to use international trade law to force markets open for ENDS if their domestic efforts fail.

## INTRODUCTION

By 2014, transnational tobacco companies (TTCs) started selling heated tobacco products (HTP; also called 'heat-not-burn') that heat a mixture of ground tobacco and additives to generate an inhaled nicotine aerosol.<sup>1</sup> Philip Morris International (PMI) introduced its HTPs to Thailand in 2017, knowing the products were illegal under Thai law and worked in parallel with a pro-e-cigarette group (ENDS Cigarette Smoke Thailand) in efforts to force the Thai market to open to electronic nicotine delivery systems (ENDS), including HTP and e-cigarettes, products that heat

## Summary box

- ▶ Since 2017, Philip Morris International has worked in parallel with a pro-e-cigarette group in efforts to force the Thai market to open to electronic nicotine delivery systems (ENDS).
- ▶ As of January 2021, ENDS were still illegal in Thailand.
- ▶ Tobacco industry's efforts to open ENDS markets are like their past efforts to liberalise closed cigarette markets during the 1980s.
- ▶ The transnational tobacco companies (TTCs) attempts to open Thailand's closed cigarette market in the 1980s started with domestic political lobbying, seeking joint ventures with Thailand's state-run tobacco monopoly and advertising and sponsorships.
- ▶ When these efforts failed, the TTCs convinced the US to use international trade sanctions to successfully open the Thai market.
- ▶ Understanding tactics TTCs used in the past to access Thailand's closed market for cigarettes will help policymakers recognise and reject similar approaches currently used by the TTCs in their efforts to introduce ENDS to Thailand and countries that currently ban them.
- ▶ While continuing to defend ENDS bans domestically, health advocates should take care to lay the foundation for fighting international trade claims as a future industry tactic to open markets to ENDS and other new tobacco products.

a nicotine solution to generate an inhaled nicotine aerosol.<sup>2</sup> Efforts to introduce these currently illegal products into Thailand's market is reminiscent of efforts in the 1980s to open the Thai market to international cigarettes. From 1939, when the Thai government created the Thai Tobacco Monopoly (TTM) under the Ministry of Finance Excise Department,<sup>3</sup> until 1990 when the US used trade sanctions under the General Agreement on Tariffs and Trade (GATT) to force open the

Thai cigarette market,<sup>4</sup> Thailand was closed to legal sales by TTCs. TTCs first tried to enter Thailand by seeking joint ventures and licencing agreements with the TTM<sup>5</sup> as well as sports sponsorship and monitoring cigarette smuggling.<sup>6,7</sup> After these local efforts failed, the TTCs successfully switched to lobbying the US government to use trade sanctions to force open the Thai cigarette market.

This study uses internal tobacco industry documents to analyse TTC activities and relationships with Thai government officials in the 1980s to learn how TTCs worked to gain access into Thailand's closed cigarette market. We searched the Truth Tobacco Documents Library (<https://www.industrydocuments.ucsf.edu/tobacco/>) between September 2019 and April 2020 for documents dated 1980–1990 with the keyword 'Thailand'. We found 4144 documents in British American Tobacco's (BAT) collection, 2162 documents in Philip Morris's (PM) collection and 1627 documents in RJ Reynolds's (RJR) collection. We then used standard snowball searches<sup>8</sup> using the names of individuals, organisations and key events mentioned in the documents, examining adjacent documents 'previous and next Bates' and 'more like this'. These searches resulted in 491 relevant documents (372 from BAT, 114 from PM, 4 from RJR and 1 from Tobacco Institute). We also reviewed TTM annual reports and news articles from Thai newspapers during the 1980s available from the National Library of Thailand's archive collections to verify relevant events.

The main limitation of this paper is it excludes opinions from Thai tobacco control experts because Thai tobacco control organisations formed during the Thai–US trade dispute around 1986. Thus, events before this period are generally unknown to Thai tobacco control experts.

We reviewed the documents using a chronological analysis and analysed the documents using the standard thematic analyses<sup>9</sup> to describe TTCs' strategies to access the Thai cigarette market. The specific major theme coded were: (1) TTCs' local efforts, (2) TTCs' international efforts through trade action and (3) TTCs' preparation for the market opening. Then, we applied these findings to discuss the current tobacco industry's efforts to open ENDS markets.

## STRATEGIES ADOPTED BY TTCS TO ACCESS THE THAI CIGARETTE MARKET

In the 1970s, TTM modernised its production facilities to compete with international brands<sup>10</sup> and started importing foreign cigarettes to stop smuggling and satisfy upper-class smokers and tourists.<sup>11</sup> TTCs responded with three concurrent strategies to access the Thai market: licencing agreements and joint ventures with TTM and, preferably, opening the Thai market to imported cigarettes.<sup>12,13</sup> After these three strategies failed, they successfully lobbied the US to impose trade sanctions to liberalise Thailand's market. [Table 1](#) documents four strategies used by TTCs between 1975 and 1991.

## Local efforts of TTCs to enter the Thai market

### Licencing agreements

TTCs sought licencing agreements with TTM that would allow it to produce their foreign cigarette brands, believing that licencing allowed the TTCs to pre-empt competition, increase the sale of leaf to TTM, secure an opportunity for a joint venture with TTM and ultimately legalise imports.<sup>13–15</sup> During the 1980s, BAT attempted to licence State Express 555<sup>16,17</sup> and PM attempted to licence Marlboro.<sup>13,15</sup> TTCs approached TTM board members and high-level government officials through surrogates, arguing that the licencing would benefit TTM by increasing usage of Thai leaf, provide access to modern production technology to internationalise TTM and profitability, reduce smuggled tobacco and increase in farmers' incomes.<sup>15,18</sup> However, licenced manufacture was deferred in late 1984 due to a currency devaluation and because the Thai government was under pressure to impose restrictions on the import of luxury goods.<sup>19</sup>

### Joint ventures with TTM

TTCs sought joint ventures with TTM between 1981 and 1987 when TTM considered building a new factory outside Bangkok to avoid union resistance towards multishift work and increase production from a non-union plant.<sup>20</sup> The Thai government was also interested in commercial ventures to modernise TTM and combat smuggling of foreign cigarettes.<sup>21,22</sup> TTCs tried to connect with cabinet members, business executives and other influential Thais and hired politically influential local agents to help them connect with TTM and the government.<sup>23–29</sup> All these attempts failed, mainly because TTM's union opposed foreign involvement out of concern that its inefficiencies would be uncovered and consumer preference would swing to foreign brands, causing further loss of business and overtime.<sup>30–32</sup>

### Legal import

Legal import was the TTCs' preferred option, and they made several attempts to achieve it.<sup>13</sup> TTCs' local efforts to liberalise Thailand's market failed because strong oppositions from TTM's union and Thai tobacco control advocates, led by the Thai Anti-Smoking Campaign Project (formed in 1986) and the National Committee for the Control of Tobacco Use, an entity appointed by the Cabinet under the 1988 National Tobacco Control Plan.<sup>4</sup> The tobacco control advocates successfully submitted letters to the prime minister opposing legal imports.<sup>4</sup>

## International efforts through trade action to open the Thai cigarette market

After many years of unsuccessful efforts to gain access to the Thai market, TTCs turned to lobbying the US government through the US Trade Representatives (USTR) to levy trade sanctions against Thailand and force its market open.<sup>33,34</sup> TTCs were confident they could open the Thai market. The executive vice president of PMI stated at a PM board meeting in August 1989, 'We anticipate

**Table 1** TTCs' local efforts to enter the Thai market: timeline of key events

Date	Event
1975–1979 (L)	BAT proposed a licencing agreement with TTM for State Express 555, but the project was shelved in August 1979 after the prime minister, who was to be the signatory, lost his office. <sup>16 17</sup>
September 1978 (I)	The cabinet proposed legal imports to solve foreign cigarette smuggling but disapproved imported cigarettes by private parties and allowed TTM to solely import foreign cigarettes and modernise the production to complete with international brands. <sup>10</sup>
March 1981 (J)	BAT proposed a manufacturing company to TTM with 50% Thai government ownership (BAT would provide free shares and benefits to the government) with BAT returning all assets to the Thai government after 15 years. <sup>20</sup>
July 1981 (J)	TTM's board rejected BAT's proposal. <sup>16</sup> BAT believed TTM opposed foreign involvement because it was concerned that its inefficiencies would be uncovered and consumer preference would swing to foreign brands, causing further loss of business. <sup>30</sup>
August 1982 (L)	The Deputy Secretary of the General Office of the Prime Minister and Chairman of the Milk Board approached BAT about TTM producing BAT's State Express 555 brand under a licencing agreement and with technical assistance from BAT. <sup>14 17</sup> BAT responded to the Deputy Secretary that it expected to secure this licencing deal by 1983. <sup>16 17</sup>
January 1983 (L)	BAT approached TTM board members through surrogates to convince them of the benefits of 555 licenced manufacture. <sup>18</sup>
November 1983 (L)	BAT regularly visited the new TTM Chairman (and also an Undersecretary in the Ministry of Finance) and managing director, believing they were open to foreign involvement. <sup>68</sup>
January 1984 (L)	BAT offered 10 million 555 sticks to TTM to help it meet a market shortage due to a prolonged strike of TTM's union and strengthen TTM's negotiating position. <sup>69</sup> BAT also offered technical support to improve manufacturing, including expertise in producing low-tar cigarettes. <sup>70</sup>
February 1984 (J)	PM Chairman Hamish Maxwell had dinner in New York with the Thai Ambassador to the United Nations to discuss how the ambassador could help PM enter the Thai market. <sup>71</sup> The president of PM Asia told Maxwell that PM was willing to export Marlboro to Thailand but that PM thought this option would not be possible and was willing to licence a PM trademark to TTM, proposing a joint brand with TTM which, if successful, would lead to legal imports of Marlboro and, if sales goals were met, move to licencing TTM to manufacture Marlboro. <sup>13 15</sup>
March 1984 (J)	RJR submitted a proposal for licencing and joint venture with TTM to the Thai government. <sup>47</sup>
May 1984 (J)	PM submitted a proposal to the Thai government for a joint brand <sup>21</sup> followed by licencing TTM to manufacture Marlboro. <sup>15</sup>
June 1984 (J)	BAT submitted a proposal to the Thai government for licencing and a joint venture with TTM. <sup>47</sup>
1984–1985 (J)	PM connected with cabinet members, business executives and other influential Thais <sup>23–26</sup> but was unable to open the Thai market. In 1985, PM spent \$150 000 to sponsor Ambassadors of Opera in many Asian countries including Thailand to gain 'PM high visibility' and direct access to top-level government officials and other influential Thais. <sup>27</sup> During PM's 1985 board meeting, PM International Executive Vice President Richard Snyder emphasised PM's success in approaching key policymakers: 'As regards Thailand, we have had a number of corporate affairs successes this year, including sponsorship of "Ambassadors of Opera" in Bangkok, and acting as host for a day to the Queen during a recent visit to New York. We have met many prominent government members and our challenge is now to make the best use of these contacts to establish a business in Thailand'. <sup>28</sup>
December 1984 (I)	The director general of the Excise Department recommended legal imports to the Ministry of Finance by appointing distributors independently of TTM to handle sales. <sup>72</sup> The recommendation on legal imports was stalled due to currency devaluation in late 1984 as well as the government being under pressure to impose restrictions on the import of luxury goods. <sup>19</sup>
January 1985 (J)	All TTC proposals for joint ventures were turned down because the Minister of Finance preferred state-owned business, joint-brand cigarettes contradicted the 'Buy Thai' campaign, and because TTM worker opposition to foreign investment in the domestic market. <sup>73 74</sup>
December 1986 (I)	US delegates (led by Congressman Lester Wolff) came to Thailand and met with the Prime Minister to pressure Thailand to purchase US-made cigarettes and to enter into a bilateral trade agreement similar to those the USA had concluded with Japan, South Korea and Taiwan. <sup>75 76</sup>
1987–1988 (J)	US government pressure on Thailand to open its market caused the Thai Minister of Finance to announce a new TTM cigarette factory would be built in Chiang Mai as a joint venture with a foreign manufacturer. <sup>77 78</sup> TTCs resubmitted joint venture proposals to the Thai government. <sup>79 80</sup> To enhance the opportunity for this joint venture, TTCs hired politically influential local agents to help them connect with TTM and the government. <sup>29</sup> BAT hired Des Kennedy of the White Group, <sup>81</sup> who had a long-term business relationship with TTM. <sup>82</sup> BAT also hired Verapaul Mudamura, a member of the Thai House of Representatives (who had a close connection with the Deputy Comptroller-General in the Ministry of Finance who was his co-owner of a small firm of tobacco dealers near Chiang Mai) <sup>83 84</sup> , as a consultant. <sup>81</sup> According to BAT, PM appointed the family of a Deputy Prime Minister and RJR appointed a family of a private bank in Thailand (Thai Danu) whose Chairman was an ex-prime minister and whose son was a deputy prime minister. <sup>29 81</sup>

Continued

Table 1 Continued

Date	Event
January 1988 (J)	The cabinet authorised the Ministry of Finance and TTM to select a foreign company to build a cigarette plant with the condition that all its production be sold to TTM. <sup>85</sup> Despite allowing a new cigarette factory to be built, the prime minister asked the Ministry of Public Health (MOPH) to launch a plan for tobacco control and the first National Tobacco Control Plan (drafted by Dr Hatai Chitanondh, deputy director general of the Department of Medical Services in the MOPH <sup>4</sup> ) was approved by the cabinet in April 1988, <sup>4 81 85</sup> including an advertising ban to protect Thailand from future TTC invasions. <sup>4</sup>
July 1988 (J)	The joint venture for the new cigarette factory was delayed due to a general election and later shelved after the new prime minister and his new government came to power in July 1988, because they did not want to deal with the TTM union, who feared losing overtime. <sup>31 32</sup>
August 1988 (I)	The Thai Excise Department recommended the Minister of Finance to allow imports of foreign cigarettes to safeguard Thailand's Generalized System of Preferences privileges. <sup>86</sup>
March 1989 (I)	The Minister of Finance and some cabinet members, including the deputy prime minister, announced their support to freely import and distribute foreign cigarettes. The Minister of Finance said, 'Of course, we have tried to discourage smoking. But the fact is that people all around the world still smoke'. <sup>87</sup> The deputy prime minister added, 'Many people are smoking foreign brands. They are here and have a market share already'. <sup>87</sup> Thai public health sector and TTM's union opposed this announcement immediately, and the Ministry of Finance withdrew the market-opening proposal. <sup>88</sup>
April 1989 (I, T)	The US Cigarette Export Association (USCEA), formed by three major US cigarette companies (PM, RJR and Brown & Williamson (which was part of BAT)) in 1981, <sup>33</sup> filed a Section 301 petition against Thailand on unfair trade practices for foreign cigarettes to the US Trade Representatives (USTR), the US agency responsible for US bilateral and multilateral trade policy. <sup>33 34</sup> USCEA and USTR have close relationships; for example, the head of the USTR (Clayton Yeutter), who helped the USCEA open markets in Japan, Taiwan, Korea and Thailand between 1985 and 1989 later became a director of BAT in 1993. <sup>33 89</sup>
May 1989 (I, T)	The USTR initiated an investigation that the USCEA filed against Thailand for trade discrimination. <sup>34</sup>
July 1989 (I, T)	The USTR initiated the first consultation with the Thai government in Bangkok. <sup>34</sup>
September 1989 (I, T)	The USTR held a public hearing in Washington, but the two parties did not reach mutual agreement because Thailand viewed the dispute as a health and political issue, but the US viewed it as a trade action. <sup>34</sup>
December 1989 (I, T)	The USTR referred the case to the GATT arbitration panel. <sup>34</sup>
October 1990 (I, T)	GATT ruled that Thailand's import ban violated GATT but that non-discriminatory tobacco control legislation was permissible as long as the laws applied to both domestic and foreign products. <sup>4 33</sup>
August 1991 (I, T)	The Thai market opened to foreign cigarettes. <sup>33</sup>

BAT, British American Tobacco; GATT, General Agreement on Tariffs and Trade; I, legal imports: a policy that allows foreign tobacco companies to import their tobacco products to Thailand; J, joint ventures: a business arrangement between a foreign tobacco company and the TTM to invest in a new tobacco factory in Thailand; L, licencing agreements: an agreement granted to the TTM to produce foreign cigarette brands; PM, Philip Morris; RJR, RJ Reynolds; T, trade sanctions: a TTC's international effort to open the Thai market via international trade organisations; TTC, transnational tobacco company; TTM, Thai Tobacco Monopoly.

resistance but expect to prevail'.<sup>35</sup> PM USA's chair added, 'Thailand is a big market. The Thai monopoly currently sells 35 billion units. Add those units to those sold in Japan, Taiwan, and Korea, and you have a market almost as large as the US'.<sup>36</sup>

The USTR's position was that Thailand's restrictions aimed at protecting its monopoly rather than protecting public health.<sup>33</sup> However, the Thai government raised concerns about the impact on public health via increased cigarette consumption from aggressive advertising and the resulting growth in preference for foreign cigarette brands, particularly among youth and women as had occurred in Japan and Taiwan following opening those markets to TTCs.<sup>4</sup> These arguments were backed by several health organisations in the US and the region.<sup>4</sup>

When Thailand was forced to open the market by GATT in 1990 (with the first legal imported cigarettes arriving in August 1991),<sup>33</sup> the Thai government established the Tobacco Consumption Control Office in the Ministry of Public Health to oversee all tobacco products and in

1992 passed two comprehensive tobacco control laws (the Tobacco Products Control Act and the Nonsmokers' Health Protection Act).<sup>37</sup>

### TTCs' preparation for market opening

In November 1988, while waiting for the market to open during the USTR trade dispute, BAT focused on the possibility of a joint venture with TTM for manufactured cigarettes in Thailand. (BAT believed PM and RJR were unlikely to pursue joint ventures and instead concentrate on legalising imports) and supported cigarette smuggling with 'internal promotion' to raise brand awareness.<sup>32</sup> BAT had monitored and sponsored several sport events to promote smuggled brands.<sup>6 7</sup> BAT also continued supporting US pressure to legalise imports.<sup>32</sup> BAT's director of BAT's Corporate Planning in London recommended that BAT 'Lobby for legal imports ..., but in a low key manner. PM is already spending a great deal of time and money on this, which BAT could not match'.<sup>32</sup>



**Table 2** Philip Morris (PM) action plan for the Thai market's opening, 1990–1992<sup>38</sup>

Objective	Action plan
1. Achieve market access	1. Implement media relations plan (briefing the media, developing contacts, releasing information and inviting journalists to sponsorships throughout the region).
	2. Partner with Thailand's Generalized System of Preferences beneficiaries such as jewellery and furniture associations to pressure the Thai government on opening the market (to avoid the US trade sanctions).
	3. Support Thai government officials (on legalising imports) where appropriate and possible.
	4. Support the US Trade Representative's efforts in negotiating market access.
	5. Promote the US Cigarette Export Association's activities on regional and local publications.
	6. Arrange reporters to visit PM's headquarters in Richmond, Virginia.
	7. Publicise (the PM poll of December 1989) on public attitude towards allowing cigarette imports on 'freedom of choice' and benefits of free trade to economic development.
	8. Publicise evidence that TTM's brands had higher tar than foreign brands.
2. Counter advertising ban	1. Collect data and publicise benefits of advertising and sponsorship, covering the number of sponsorship events held in Thailand.
	2. Identify, develop and nurture local sports, arts or community organisations.
	3. Continue and increase invitations to journalists and other relevant parties to PM sponsored regional events.
	4. Hold at least one corporate sponsorship each year (if necessary though Kraft/General Foods (KGF) International, PM's food subsidiary).
	5. Develop PM's corporate image in the Thai financial community.
	6. Identify farmers' groups and encourage membership in the International Tobacco Growers' Association (a tobacco industry front group). <sup>90 91</sup>
	7. Develop and implement PM's plan through KGF to become involved in Green E-Sarn (the Northeastern region of Thailand) development plan (because this plan had received priority attention from the Thai government).
3. Counter public smoking restriction	1. Extend the Asia ETS (Environmental Tobacco Smoke or secondhand smoke) consultants' programme, which aimed to influence policymakers, media and the public on secondhand smoke and was supervised by the Covington & Burling law firm in support of PM, RJR, BAT and JTI <sup>48</sup> to Thailand and recruit local scientists.
	2. Arrange for an ETS study to be conducted in Thailand.
	3. Support pollution studies on indoor air quality in Bangkok.
	4. Release information supportive to the industry to press.
	5. Monitor the antismoking activists' activities.
	6. Maintain social acceptability of smoking by publicising the benefits of accommodation (creation of smoking and non-smoking sections) <sup>92</sup> and courtesy.

BAT, British American Tobacco; JTI, Japan Tobacco International; PM, Philip Morris; RJR, RJ Reynolds; TTM, Thai Tobacco Monopoly.

PM integrated planning activities for changes in the marketing and policy environment for cigarettes in Thailand into its broader plan for opening Asian markets.<sup>38</sup> In December 1989, PM launched PM Asia's Corporate Affairs Plan for 1990–1992, which included its action plans for market access, marketing restrictions and public smoking restrictions in Thailand (table 2).<sup>38</sup> PM planned to approach all relevant stakeholders, including media, other industries that could be affected by the US trade sanctions, tobacco farmers, scientists and government officials. It prepared advertising and sponsorship activities to raise brands awareness and public acceptance, particularly with the government's projects through its food subsidiary to avoid criticism.

Advertising and sports sponsorships to raise brand awareness prior to market opening

TTCs initiated sports sponsorships in Thailand even though they knew advertising was illegal and their products could not be legally sold.<sup>6</sup> PM and RJR outstripped BAT in advertising and sponsorships in Thailand.<sup>39</sup> PM had included Thailand in its 'Come to Marlboro Country' advertising campaign since 1976.<sup>40</sup> Between 1986 and 1988, Marlboro sponsored badminton, motor racing, golf and Marlboro Country tours, and Winston involved with Thai boxing, golf, football, motor racing and badminton, which allowed them to advertise on TV, newspapers and billboards.<sup>39</sup> Prior to 1987, BAT was reluctant to initiate any sponsorships to avoid jeopardising its joint venture negotiations with TTM.<sup>6</sup>

In 1987, BAT began accelerating sponsorship activities as BAT's competitors were gaining wide market exposure for their brands through sponsorships.<sup>41</sup> For example, Marlboro and Winston spent £9000 annually for their billboard advertising on the main highway to/from the airport, and Marlboro paid \$700 000 for TV coverage in Thailand and surrounding countries of the Thomas Cup badminton and \$2.4 million for TV advertising of Marlboro Country tours.<sup>29 41</sup> BAT sponsored the 555 World Cup Badminton tournament in November 1987 and allocated £200 000 for the 1988 advertising and sponsorship activities.<sup>6 41 42</sup>

The Thai government attempted to ban cigarette advertising in 1988 under the Consumer Protection Act of 1979.<sup>43</sup> In April 1988, BAT UK's legal counsel confirmed with a Thai local law firm that the Consumer Protection Act was unclear, and there was no specific laws in Thailand prohibiting cigarette advertising on billboards or via sponsorships.<sup>44</sup> During the negotiations between Thailand and the USTR between 1989 and 1990, TTCs continued advertising, especially through sports sponsorships and billboards.<sup>6</sup>

#### LESSONS FOR TOBACCO INDUSTRY'S EFFORTS TO OVERTURN BANS ON ENDS

TTCs' attempts to access the Thai cigarette market during the 1980s concentrated on political lobbying, as they then did in other Asian state monopoly-controlled markets.<sup>45</sup> Like Korea, TTCs' attempted to enter Thailand through licencing agreements and joint ventures with the Thai government and switched to lobbying the US government to exert the trade sanction for market liberalisation after their local attempts failed.<sup>45</sup> To increase market visibility and pressure the Thai government, TTCs also took advantage of unclear regulations about cigarette advertising to promote their products through advertising and sponsorship activities.

In Thailand, different TTCs used different approaches to lobby the government. BAT used its historic connections with TTM as the first TTC to manufacture cigarettes in Thailand during the 1930s,<sup>11</sup> which made BAT more cautious than other companies. BAT's risk-averse behaviour was also observed when it sought to re-enter China where it had been the largest foreign cigarette manufacturer before the country's market closed during the 1950s.<sup>46</sup> In Thailand, BAT delayed advertising its products on Thai media several years after PM and RJR to avoid jeopardising its joint venture and licencing negotiations with TTM. BAT's local agents were not in top positions in politics or government officials. In contrast, PM approached people in high places such as the family of the deputy prime minister.<sup>29</sup> PM also had a strong connection with high-level politicians through its tobacco leaf business.<sup>47</sup>

While BAT was focusing on entering the Thai market to sell its products, PM's 1990–1992 action plan for obtaining access was more comprehensive and designed

to impact the overall cigarette use environment. It had established strong relationships with reporters and relevant government officials, supported tobacco farmer groups, expanded the industry's International ETS Consultants Program<sup>48</sup> to Thailand and used its food subsidiary to engage the government.<sup>38</sup> PM's action plan continued after the market opened in 1992. After it added Thailand to the Asia ETS consultants programme in 1990,<sup>48</sup> it established close connections with the Chulabhorn Research Institute (a WHO Collaborating Centre for Capacity Building and Research in Environmental Health Science) during 1991–1999.<sup>49</sup> PM's comprehensive plans and continuity resulted in the continuing growth in PM's market share since it legally entered the country<sup>50</sup> compared with other TTCs. As of 2019, PM held the largest market share of cigarettes in Thailand (50%), whereas TTM held 43% of the share and other TTCs held only a minuscule market share.<sup>51</sup>

Lessons learnt from TTCs' attempts to penetrate Thailand's closed market are pertinent in 2021 as the TTCs pressure governments to allow sales of e-cigarettes and HTPs in countries where they are currently banned.<sup>52–54</sup> Since Thailand banned e-cigarettes and HTPs in 2015, TTCs (particularly PM) and pro-e-cigarette groups (particularly ENDS Cigarette Smoke Thailand) have been lobbying the government to lift the ban.<sup>2 54</sup> They are repeating past strategies to open the cigarette market for the new tobacco products.<sup>2</sup> Similar to earlier battles to open the cigarette market during the 1980s, non-health government agencies and ministries were sympathetic to overturning the ban on e-cigarettes and HTPs. PM Thailand's managing director told the media in July 2019 that he had met with the Ministry of Commerce and the Excise Department and stated, 'We will continue to present fact-based, non-ideological studies and results from other countries [about e-cigarettes and HTPs] with the government. It would be silly to make an electric vehicle regulation without consulting automotive manufacturers, so there should be dialogue with the tobacco industry when crafting tobacco regulation'.<sup>54</sup>

Although TTCs persistently lobbied the Thai government to lift the e-cigarette ban, as of January 2021, they had not succeeded.<sup>2</sup> Lessons from the past suggest that if health advocates continue to prevail in these domestic policy debates, TTCs may turn to international trade pressure to force the government to open the market. The establishment of Foundation for a Smoke-Free World in 2017 by PMI initiated such international pressure, particularly fostering a strong connection between ENDS Cigarette Smoke Thailand and international vaping networks to intensify lobbying activities in Thailand.<sup>2</sup> PM also used decisions from US government's Food and Drug Administration that allowed PM's HTPs (IQOS) to sell and market as a 'modified risk product' in the US to promote the products in other countries.<sup>55</sup>

As in the past when TTCs exerted trade sanctions to open state monopoly cigarette markets (Japan, Taiwan, South Korea and Thailand) during the 1980s and early

1990s,<sup>55</sup> the next phase of opening closed markets for e-cigarettes and HTPs is possibly through international trade agreements. A former international trade manager of Japan Tobacco International and a current managing director of Trade Pacts (international consultant firm on international trade and investment) told the 2017 Global Forum on Nicotine (a pro-e-cigarette organisation) that a general ban on e-cigarettes was a highly trade restrictive measure and could be challenged under a number of World Trade Organization (WTO) provisions as these products and cigarettes may be ‘like’ under WTO law, and health justification was unlikely given good evidence on reduced risk to health.<sup>56 57</sup> Moreover, in January 2017, pro-vaping advocates, led by Clive Bates (a founder of consultancy and advocacy practice Counterfactual and attendee of the industry-funded Global Tobacco and Nicotine Forum since 2014<sup>58</sup>) offered eight proposals to the US to promote alternative or reduced risk tobacco products, and one of the proposals was to initiate complaints under WTO agreements about unjustified prohibitions of e-cigarettes outside the US.<sup>59</sup>

Trade agreements allow TTCs to pre-empt domestic authority over tobacco control policies where TTCs are weaker than public health advocates and transfer it to jurisdictions where business concerns dominate and TTCs’ influence is strong.<sup>60</sup> After market liberalisation in the 1980s, TTCs have exploited international trade agreements on several occasions such as interfering in tariff rates and excise taxes<sup>61 62</sup> and trying to block tobacco standardised packaging in many countries.<sup>63</sup> (Other industries, including alcohol, pharma and food have adopted similar strategies to use international trade to oppose public health measures.<sup>60 64–66</sup>) It is likely that TTCs may turn to this venue to open Thai and other closed markets to e-cigarettes and HTPs if their local attempts fail.

## CONCLUSION

TTCs attempted to penetrate Thailand’s closed market beginning in the early 1980s using licencing agreements, joint ventures and legal imports combined with political lobbying along with heavy advertising, promotions and sponsorships by brands that could not be sold legally in Thailand at the time. Health advocates were able to block these efforts, assisted by tobacco worker union opposition to the TTCs getting involved with the TTM. After these domestic efforts failed, the TTCs used international trade law to force the Thai market open. Rather than simply capitulating to the TTCs, the Thai government established the Tobacco Consumption Control Office in the Ministry of Public Health to oversee all tobacco products and in 1992 passed two comprehensive tobacco control laws (the Tobacco Products Control Act and The Nonsmokers’ Health Protection Act).

Mirroring these efforts in the 1980s and 1990s for cigarettes, as of 2021, TTCs were currently seeking to expand the market for e-cigarettes and HTPs through similar

local pressure.<sup>2</sup> While health advocates and government authorities succeeded in resisting domestic pressure, they should anticipate that the TTCs will attempt to use international trade law to force markets open for new tobacco products. Promoting and prioritising health both domestically and internationally to non-health and international trade agencies is important as these agencies generally prioritise trade over health.

As the tobacco companies continue to press into more LMIC, more attention should be given to past industry use of legal and administrative influences/measures to prevent this influence and establish science-based regulatory frameworks in LMIC. Health advocates should also persuade non-health agencies to maintain policies keeping new products out of these countries (especially low-income and middle-income countries) in accordance with recommendations of the International Union Against Tuberculosis and Lung Disease to prevent a new generation of addiction.<sup>67</sup>

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