

REVIEW ARTICLE

# Compliance of comprehensive tobacco advertising, promotion and sponsorship control with the WHO-FCTC Article 13 and national legislation in Thailand 2016

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## Abstract

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This study aimed to assess Thailand's compliance with WHO Framework Convention on Tobacco Control (FCTC) on Tobacco advertising, promotion and sponsorship (TAPS). Using an assessment standardized tool following FCTC Implementation Guidelines and the 2014 FCTC Global implementation progress report, four scores ranging from 0-4 (0=no implementation-4=full implementation) were given to assess each topic on Thailand tobacco control. Composite scores were computed based on indicators of FCTC implementation and compliance reported in each topic. Secondary data was computed from a focused-group discussion consisting of partner sectors and stakeholders in tobacco control. Two assessment discussions were held in 2016 in Bangkok where experts, researchers and partner sectors used the assessment tool to review 18 items under 4 main recommendations on TAPS ban with TAPS report in Thailand as input for discussion. Findings were assessed for compliance with the FCTC Article 13 framework.

Thailand partially met the FCTC Article 13 recommendations on advertising and promotion tobacco control and has a complete ban on mass media advertising, promotion and POS display in fixed retail outlets. Thailand has put health warning messages as mandatory and prohibited descriptive labels. However, gaps still remained, the tobacco industry switched to indirect advertisement in some less explicit media and online/social media. Average score of Article 13 implementation in Thailand was 0.7 (out of 3.0) as scored by stakeholders which meant Thailand has compliance with FCTC Article 13 but not adequate in some areas.

This study suggested that the recent passage of Thailand Tobacco Control Act (2017) will be a key in enforcing advertising, promotion and sponsorship ban in all media including online media. Partnership working with law enforcer, media agencies and ICT agencies in responding to newer forms of indirect/online advertising and promotional activities are recommended.

**Keywords:** Tobacco Control, Law compliance, World Health Organization, Thailand

# การปฏิบัติตามข้อแนะนำมาตรา 13 ของกรอบอนุสัญญาว่าด้วยการควบคุมยาสูบขององค์การอนามัยโลก เรื่องการห้ามโฆษณา ส่งเสริมการขายและให้ทุนอุปถัมภ์ และการปฏิบัติตามกฎหมายในประเทศไทย พ.ศ.2559

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## บทคัดย่อ

ศรীরัช ลอยสมุทร ดวงกมล สีตบุตร และ ศิริวรรณ พิทยรังสฤษฏ์

การปฏิบัติตามข้อแนะนำมาตรา 13 ของกรอบอนุสัญญาว่าด้วยการควบคุมยาสูบขององค์การอนามัยโลก เรื่องการห้ามโฆษณา ส่งเสริมการขายและให้ทุนอุปถัมภ์ และการปฏิบัติตามกฎหมายในประเทศไทย พ.ศ.2559 ว.สาธารณสุขและการพัฒนา. 2561:16(1):89-97

การศึกษานี้มีวัตถุประสงค์ที่จะประเมินการปฏิบัติตามมาตรา 13 ของกรอบอนุสัญญาว่าด้วยการควบคุมยาสูบขององค์การอนามัยโลก เรื่องการห้ามโฆษณา ส่งเสริมการขายและให้ทุนอุปถัมภ์ และการปฏิบัติตามกฎหมายในประเทศไทย โดยใช้เครื่องมือประเมินที่จัดทำตามข้อแนะนำของกรอบอนุสัญญาและรายงานความก้าวหน้าขององค์การอนามัยโลก ค.ศ. 2014 เครื่องมือนี้มีเกณฑ์การประเมิน 4 ระดับ ระดับ 0 หมายถึงไม่มีการควบคุมและปฏิบัติ ระดับ 4 หมายถึงมีการควบคุมและปฏิบัติสูงสุด คะแนนรวมแปลผลตามข้อบ่งชี้ในการปฏิบัติตามกรอบอนุสัญญาในแต่ละประเด็น โดยผู้เกี่ยวข้องในการทำงานด้านการควบคุมยาสูบหลายภาคส่วนได้ประชุมร่วมกัน 2 ครั้งเพื่อร่วมประเมินการปฏิบัติตามมาตรา 13 ทั้งสิ้น 18 ประเด็น โดยใช้เครื่องมือดังกล่าวและข้อมูลจากงานวิจัยที่เกี่ยวข้อง

ผลจากการประเมินระบุว่า ประเทศไทยมีการปฏิบัติตามข้อแนะนำตามมาตรา 13 ในบางส่วน ประเด็นที่มีการควบคุมและปฏิบัติสูงสุดมี 4 ประเด็น คือการห้ามโฆษณาและส่งเสริมการขายในสื่อมวลชนแบบเบ็ดเสร็จ การห้ามแสดงชื่อ ณ จุดขายในสถานจำหน่ายบางประเภท การห้ามใช้คำสื่อคุณสมบัตินและการแสดงข้อความคำเตือนบนบรรจุภัณฑ์ ประเด็นที่ควบคุมได้น้อย คือ การโฆษณาแฝงของธุรกิจยาสูบในสื่อออนไลน์ การโฆษณาแนวรับผิดชอบต่อสังคมและการแฝงข่าวของธุรกิจยาสูบในสื่อบางประเภท ผลคะแนนรวมการปฏิบัติตามมาตรา 13 นั้นได้คะแนนรวม 0.7 (จาก 3.00) แปลผลได้ว่าประเทศไทยมีการปฏิบัติตามมาตรา 13 ของกรอบอนุสัญญาบ้าง แต่ยังไม่ดีพอในบางส่วน

การศึกษานี้ชี้ให้เห็นว่า พระราชบัญญัติควบคุมผลิตภัณฑ์ยาสูบของประเทศไทย พ.ศ.2560 มีเนื้อหาที่ครอบคลุมการควบคุมการโฆษณาในสื่อสมัยใหม่ ซึ่งจะสามารถช่วยแก้ปัญหานี้ได้ รวมทั้งต้องเร่งให้มีการทำงานร่วมกันกับหน่วยงานสารสนเทศ สื่อมวลชน และเจ้าหน้าที่ผู้บังคับใช้กฎหมายให้มากขึ้น

คำสำคัญ: การควบคุมยาสูบ การปฏิบัติตามกฎหมาย องค์การอนามัยโลก ประเทศไทย

## Introduction

Thailand has become a party to the World Health Organization Framework Convention on Tobacco Control (WHO-FCTC) since 2005. The WHO FCTC Article 13 Tobacco advertising, promotion and sponsorship restriction calls for parties to mandate comprehensive ban on tobacco commercial communications. Under this Article, parties must undertake a comprehensive ban on all forms of tobacco advertising, promotion and sponsorship or TAPS, including internet and cross border advertising and marketing. POS or point-of-sale and tobacco product display must be highly restricted<sup>1-3</sup>.

In Thailand considerable tobacco control efforts have been implemented for many years, especially laws and regulation bans on cigarette display and advertising<sup>4-6</sup>. When compared to other countries in Southeast Asia, Thailand has banned all forms of advertising, promotion and sponsorship while other countries faced major difficulties in overcoming advertising problems e.g. China, Japan and Cambodia<sup>6-9</sup>. There were many progresses of tobacco control measures since 2005 regarding to FCTC article 13 such as the increased size of pictorial warning and national communication campaign to raise social awareness and tobacco advertising ban in national media, whereas tobacco advertising in online and new media showed up since terms and definition of new media in the previous law was still ambiguous. However, gaps still remain since tobacco companies used CSR activities as indirect and corporate advertising and the advertising ban does not include all cross-border advertisement. The purpose of this paper is to describe compliance situation and assess implementation and drawing on an action needed

for effective tobacco control activities of Article 13 implementation in Thailand.

Thailand has arranged to assess FCTC Article 13 compliance and implementation in 2016<sup>10</sup>, using a standardized tool following WHO-FCTC 2014 guidelines to assess 16 TAPS topics in Article 13, each TAPS topic was given scores based on levels of implementation and compliance,

## Methods

Tobacco Control Research and Knowledge Management Center (TRC) working group has referred to WHO Framework Convention on Tobacco Control<sup>1</sup>, Guidelines for implementation<sup>11</sup> and Global progress report on implementation of the WHO framework convention on tobacco control, 2014<sup>5</sup> to construct an assessment tool. levelsred to The status of implementation was scored into 4 levels; 0 means “no implementation”, 1 means “present but not adequate implementation”, 2 means “adequate implementation”, and 3 means “highly adequate implementation”.

Nine representatives from related government sectors and stakeholders or experts from public health sectors, healthcare providers, partner organizations in tobacco control and other organizations were invited to participate in an FCTC discussion and review meeting. Input data was given to each participant prior to meeting as background information, input data included TAPS present situation, FCTC implementation score guidelines and desk research. In this meeting, 18 items under 4 main recommendations of FCTC article 13 guideline were reviewed and discussed, after shared discussion, each participation scored each item. Scoring depended on indicators of strength of tobacco control of each item, 0 showed

lowest control and 4 showed full tobacco control. At the end, implementation scores were calculated as summation of scores across the total number of 18 items and reported this as a percentage of the score of strength of tobacco control.

The assessment meeting was conducted in June 28-29, 2016 at Holiday Inn Hotel in Bangkok. A TAPS research study presentation<sup>12</sup> was shown to 9 participants before discussion to provide the present situation data. Each participant committee was committed to share and generate available information to discussion groups according to TAPS topics<sup>13</sup>. Shared information from the discussion were collected by group moderators and analyzed with regard to TAPS topics in Thailand. A subsequent meeting to brainstorm for actions needed was held on October 10-11, 2016.

## Results

### Thailand TAPS achievements and problems

Thailand has a distinctive tobacco control model based on close cooperation between the Ministry of Public Health (MoPH), the Thai Health Promotion Foundation (ThaiHealth) and a very active coalition of tobacco control nongovernmental organizations guided by a unique generation of creative civil society leaders.<sup>14</sup> This allows the country to implement several stringent measures on TAPS. The implementation level score of Article 13 implementation in Thailand was 0.7 (out of 3.0) as scored by stakeholders which meant Thailand has compliance with FCTC Article 13 but not adequate. The existing laws were not comprehensively ban of TAPs and were limited to ban all types of cross border tobacco advertising, promotion and sponsorship (see Table 1).

Thailand achievements on TAPS are as follows;

- 1) Point-of-sale Control: Thailand has a complete ban of POS display in fixed retail tobacco outlets. (Fixed retail outlets mean outlets which are controlled by Retailing and Wholesaling Act, i.e., supermarket and all types of modern trade stores). At present, Thailand is successful in seeing convenient stores keep cigarette packs behind shelters and POS has been totally banned. Thailand became the first Asian country to implement a complete ban on the display of cigarettes and other tobacco products at point-of-sale in 2005.<sup>12</sup>
- 2) Advertising control: Thailand has a complete ban of tobacco advertising in mass media (traditional/national broadcast, print media and motion picture media).
- 3) Warning message: Thailand has graphic health warning which occupies 85% of the total pack front space.
- 4) Misleading information: convincing and misleading terms e.g. 'light' 'cool' 'classic' or 'low tar' are prohibited from cigarette pack.
- 5) Promotion control: Thailand has a complete ban on tobacco product promotion via mass media; product promotional activity is also prohibited.

### TAPS Problems<sup>12</sup>

*Corporate Social Responsibility (CSR):* CSR, sponsorship and charity/sports events sponsored by tobacco industry is allowed in media with some conditions. CSR activities, however, are guised form of corporate advertising. Publicity news from tobacco industry still appears in newspaper, magazine and TV programs as social news.

**Table 1** Assessment scores of FCTC article13 implementation, Thailand 2016

Items	Scores
<p><b>1 Comprehensive ban on advertising, promotion and sponsorship</b></p> <p>1.a Retail sale and display; at points of sale, including fixed retail outlets. 2.00</p> <p>1.b Retail sale and display; of tobacco products sold by street vendors and in any market. 2.00</p> <p>1.c Packaging and product features 2.00</p> <p>1.d Internet and social media sales of tobacco 1.00</p> <p>1.e Brand stretching, display items and brand sharing 1.00</p> <p>1.f Corporate social responsibility; the Parties should ban contributions from tobacco companies to any other entity for socially responsible causes, as this is a form of sponsorship. Publicity given to socially responsible business practices of the tobacco industry should be banned, as it constitutes advertising and promotion 0.33</p> <p>1.fi contributions from tobacco companies to any other entity for socially responsible causes (traditional CSR) 0.00</p> <p>1.fii Publicity given to socially responsible business practices of the tobacco industry should be banned, as it constitutes advertising and promotion (media news) 0.00</p> <p>1.fiii Sponsorship targeting youth (school activity, sports activity, entertainment &amp; leisure activity, educational activity or any activity involving children/school/students/youth) 1.00</p> <p>1.g Legitimate expression; Parties should, however, take measures to prevent the use of journalistic, artistic or academic expression or social or political commentary for the promotion of tobacco use or tobacco products. 0.00</p> <p>1.h Depictions of tobacco in entertainment media ; 2.00</p> <p>1.i Depiction of action of smoking, cigarette packs, stick and any equipment or products related to smoking in entertainment media 0.50</p> <p>1.j Communication within the tobacco trade; any exception to a comprehensive ban on tobacco advertising, promotion and sponsorship for the purpose of providing product information to actors within the tobacco trade should be defined and applied strictly. Access to such information should be restricted to those persons who make trading decisions and who consequently need the information 2.00</p>	<p><b>1.28</b></p>
<p><b>2 A Party not in a position comprehensively ban tobacco advertising, promotion and sponsorship due to its constitutions and constitutional principles nevertheless must apply restrictions on all tobacco advertising, promotion and sponsorship that are as comprehensive as legally possible.</b></p>	<p><b>0.00</b></p>
<p><b>3 Prohibit all promotion of a tobacco product by any means</b></p> <p>3.a Prohibit all promotion of a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression, 3.00</p> <p>3.b Mandate health or other appropriate warning or message 3.00</p> <p>3.c Require regular disclosure by the tobacco industry to authorities of any advertising, promotion and sponsorship in which it engages 0.00</p> <p>3.d Disclosed information readily available to the public. 0.00</p>	<p><b>1.50</b></p>
<p><b>4 The comprehensive ban (or restriction where applicable) should apply to both domestic and cross border tobacco advertising, promotion and sponsorship</b></p>	<p><b>0.00</b></p>
<p><b>Average of main items (1,2,3,4)</b></p>	<p><b>0.70</b></p>

**Note:** Figures with underscore are calculated from subcategories

*Online advertising:* Despite a national TAPS ban in mass media but Thailand has ineffective enforcement in new media. Violations are in the form of internet/social media tobacco product advertising, selling and marketing. Electronic tobacco products are smuggled into the country and are advertised in social media.

*Point-Of-Sale in some markets:* Despite full and successful control in modern trade stores, there are some loopholes in other forms of stores, e.g. old-style grocery stores, stalls, weekend market, night markets, vendors, peddlers and road-side booths, do not comply with the law prohibiting tobacco product display. POS and product display can be seen in these markets.

*Brand stretching and promotion:* Violation of Section 6 and 9 can be seen in the form of brand stretching and using of brand trademark as a marketing means. Brand/pack color and PG Girls are used in brand stretching as a means to advertise.

*Health warning:* Thailand has been successful in mandating graphic and verbal warnings on cigarette packs. However, since there are problems of smuggled tobacco products into the country, smuggled packs do not carry any pictorial or verbal messages according to Thai law.

*Sponsorship:* Tobacco industry is reported of having engaged in contributing support to other social groups, sports events and concerts.

*Depiction of tobacco in entertainment media:* Study showed that depiction of tobacco/ smoking/ tobacco brand appeared in some famous television series aired during the year 2016. Tobacco industry has used product placement strategy in TV series as a means to advertise.

### ***Existing & Enforcement TAPS measures & regulations***

Thailand has several laws that lend support to TAPS control;

1) Tobacco Control Act B.E. 2535<sup>15</sup> Sections 8: Traditional/National broadcast media (TV+radio), print media (newspaper+magazine), motion picture media (film+movie commercials) and road-side billboard are free from tobacco advertising. Section 6 regulates all types of tobacco product promotion and Section 9 states no using of any marks which might be related to tobacco trademark.

2) The new Tobacco Product Control Act B.E. 2560<sup>16</sup>. This Act will outlaw sponsorship activity, social activity supported by tobacco industry. It restricts the means of selling tobacco product and the sale of tobacco product, including via the internet, via electronic media and social media, peddling, giving samples, discounting and bulk promotion.

3) Notification of The Ministry of Public Health A.D. 2007/2011/2012 prescribes health warning message, graphic health warning on packs and misleading statements on packs.

4) The Ministry of Public Health Ban of POS.

5) National Broadcasting and Telecommunication Commission or NBTC has issued a guideline of TV rating for TV producers and TV channels, this guideline stated that scenes depicting tobacco/alcohol/drug can be aired under conditions and must be rated 'not suitable for children'. Depiction of smoking/drinking scenes and showing alcohol bottle/cigarette/puff must be blurred when the scene is broadcasted. Although there are some regulations from NBTC, but there is little enforcement in entertainment media.



In conclusion, assessment results of Article 13 Thailand suggested inadequate regulations and Thailand still needs a stronger enforcement by related government agencies.

### Discussion and Conclusions

Thailand has met the WHO-FCTC Article 13 recommendations on direct advertising and tobacco promotion control in national mass media and fixed retail outlets. Thailand national legislation also prohibits some TAPS control, regulates packaging and allows a comprehensive ban of advertising and promotion in all mass media. However, the existing laws were outdated to cover the new marketing strategy; CSR and tobacco sponsorship appeared as disguised social news and corporate advertising. The 2017 Tobacco Control Act, which is a more FCTC-compliant law, will be the key instrument in TAPS control in these areas; comprehensive CSR control/ban, sponsorship and disguised charity event/news used as corporate advertising will be banned. Online/internet/social media marketing and advertising including hookah/electronic cigarette marketing/advertising will be given clearer definitions and banned, Use of IMC marketing means/brand stretching/use of brand imagery as marketing means will be prohibited and product placement and any other form of marketing/advertising innovative tactics will be banned.

Assessment results also showed weak law enforcement in some areas, law enforcement agencies must be more well-prepared to deal with these remaining problem; (1) illicit outlets (weekend market/night market/road-side booth) selling smuggled cigarette, hookah and electronic cigarette, apart from

being illegal trade, cigarette advertising and promotion can be found in these outlets which are easy to find in Bangkok. (2) online/web marketing, ICT agencies and the Ministry of Public Health must deal with this problem and have to keep up with innovative marketing techniques via online media. Partnership working with entertainment media is needed since tobacco industry has already set itself in entertainment business and has innovative tactics to mislead people and younger generation through appealing media content. Partnership working with National Broadcasting and Telecommunication Commission is a must. Partnership working with Royal Thai Police is also needed since police is the key law enforcer. Despite the existence of various laws and regulations controlling TAPS in Thailand, the country is challenged by weak enforcement and the rising of new media which open ways to online advertising and marketing and innovative advertising tactics made by the tobacco industry.

In fulfilling the FCTC requirements, the new Act<sup>16</sup> will ensure full coverage TAPS control and can deal with new marketing techniques the country has faced. Since the new law gives a clearer and wider definition of marketing communication”as an act undertaken by any means, including promotion, advertisement, news reporting, dissemination of news, sales promotion, exhibition or demonstration at point of sale, direct selling, sales or sales promotion by a specific person and cyber marketing, for the purpose of selling goods or services or image/brand creation, clearer than the previous definition given in the former Act.

## Recommendations

1) Enforcing the recent passage of Thailand Tobacco Control Act (2017) is a key instrument for implementing the ban on tobacco advertising, promotion and sponsorship in all media, including online and social media.

2) Urgent call for actions to establish a partnership working group with entertainment media, National Broadcasting and Telecommunication Commission, Royal Thai Police, and the Ministry of Health to strengthen enforcement in new media tobacco advertising.

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