



# Public Health and International Economic Law: Alcohol Labelling, Obesity Prevention Laws and Beyond

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1. Regulation, Risks & Recommendations
2. Case Study: Thai Alcohol Labelling

- Two radical policies to control the labelling of alcohol from Thailand
- Compatibility of Thai policy with international investment law
- IIL-based recommendations for Thailand's labelling policy



# **Regulation, Risks & Recommendations**



## Non-communicable diseases (NCDs)

- Cardiovascular diseases
- Cancers
- Chronic Respiratory Diseases
- Diabetes

## Behavioural Risk Factors

- Tobacco Use
- Unhealthy Diet
- Physical Inactivity
- Harmful Use of Alcohol

## Regulatory Measures

- Taxation
- Advertising Restrictions
- Distribution Restrictions
- Packaging and Labelling Requirements



# MILLEFOGLIE D'ITALIA MiniSnack



ALTO EN  
AZÚCARES  
Ministerio  
de Salud

ALTO EN  
GRASAS  
SATURADAS  
Ministerio  
de Salud

ALTO EN  
CALORÍAS  
Ministerio  
de Salud

Con crema pasticcera

Con crema  
pasticcera  
alla vaniglia

**5** MiniSnack alla crema pasticcera incartati singolarmente  
Puff pastry rolls filled with pastry cream - Rouleaux feuilletés fourrés  
à la crème de pâtisserie - Blätterteiggebäck mit zarter heller Cremefüllung



## Assessment of Risks to Regulating States

Type of Risk	Consequences	Factors Increasing the Risk
<b>Use of Dispute Settlement</b>	<ul style="list-style-type: none"><li>- High legal fees</li><li>- Long timeframes</li><li>- Strain on human resources and expertise</li></ul>	<ul style="list-style-type: none"><li>- ISDS mechanisms</li><li>- Lack of procedural controls</li><li>- Poor signalling of commitment to measure, confidence in its legality, and capacity and intention to defend any challenge</li></ul>
<b>Adverse Finding or Outcome</b>	<ul style="list-style-type: none"><li>- Payment of compensation</li><li>- Repeal of the measure</li></ul>	<ul style="list-style-type: none"><li>- Explicitly/implicitly discriminate</li><li>- Restrict imports or foreign investments</li><li>- Restrict trademarks</li><li>- Lack of evidence</li><li>- Improper process</li></ul>





Australia World AU politics Environment World Cup 2018 Football More



## Revealed: \$39m cost of defending Australia's tobacco plain packaging laws

**Exclusive: Two years after an FOI claim was lodged, the price of the six-year fight with Philip Morris has been revealed**

**Gareth Hutchens and Christopher Knaus**

Sun 1 Jul 2018 19.00 BST

1. Review trade & investment **treaties**
  - sufficient regulatory autonomy, modification, termination
2. Participate in & promote the development of evidence-based regional & international **standards**
3. **Anticipate complaints** and litigation
  - counter-arguments, resources to defend
4. Follow best practice when **developing domestic measures**
  - process, evidence, non-discrimination
5. Manage future foreign **investment**
  - screening: review IIAs, domestic regulations, investment applications







# **Case Study:**

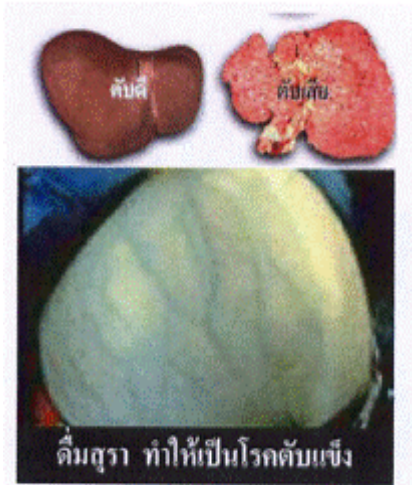
# **Thai Alcohol Labelling**



- Thai warning labels proposal introduced in 2010 but not given legal effect.
- Highly controversial in WTO TBT Committee: see O'Brien and Mitchell 'On the Bottle: Health Information, Alcohol Labelling and the WTO Technical Barriers to Trade Agreement' (2018) *Queensland University of Technology Law Review*.



# Alcohol Labelling and International Investment Law: Thai Warning Labels



- Content of the labels
  - drinking alcohol causes the hypertension and liver cirrhosis;
  - alcohol intoxication leads to the accident;
  - drinking alcohol leads to unconsciousness and even death;
  - drinking alcohol leads to inferior sexual performance;
  - drinking alcohol leads to adverse health effects and family problems;
  - alcohol is a bad influence on children and young people
- Alternative translation: ‘alcohol *could* cause....’





- Design of the labels
  - four colours and six fonts
  - 50% of the largest side of a square container or 30% of the surface area of the entire package for other shapes
  - six labels were to be rotated every 1000 units of production.





- Part 1: ban on messages which are ‘unfair to consumers’ or lead to ‘bad effects to the society as a whole’.
- Part 2: ban on messages which ‘directly or indirectly persuade [people] to consume’ alcohol or which ‘pretentiously exaggerate ... the benefit or quality of alcoholic beverages’.





- Part 2 ban includes messages which:
  - suggest that drinking can lead to social and sexual success;
  - are about or include pictures of athletes, artists, singers, movie stars, actors;
  - use cartoons;
  - use the promise of a donation to charity from the purchase or consumption of alcohol; and
  - encourage participation in activities such as music, sports, contests or recreation



# Alcohol Labelling and International Investment Law: Thai Marketing Ban



**Carabao 2011**  
คาราบาว (means buffalo) thai rock music

- Are the warnings reasonably related to a rational policy and is their impact proportionate to their objective?
- ‘Margin of appreciation’ & ‘deference’
- International basis
- Scientific evidentiary basis





- Thailand's warnings are generally consistent with the traditional international investment obligations
- Risk that the content of certain labels may be found excessive?



- Tighten the wording of the warnings from 'cause' to 'can cause'.
- See, eg, Yukon Territories in Canada: 'alcohol can cause cancer'





- Review the evidence base for the warnings

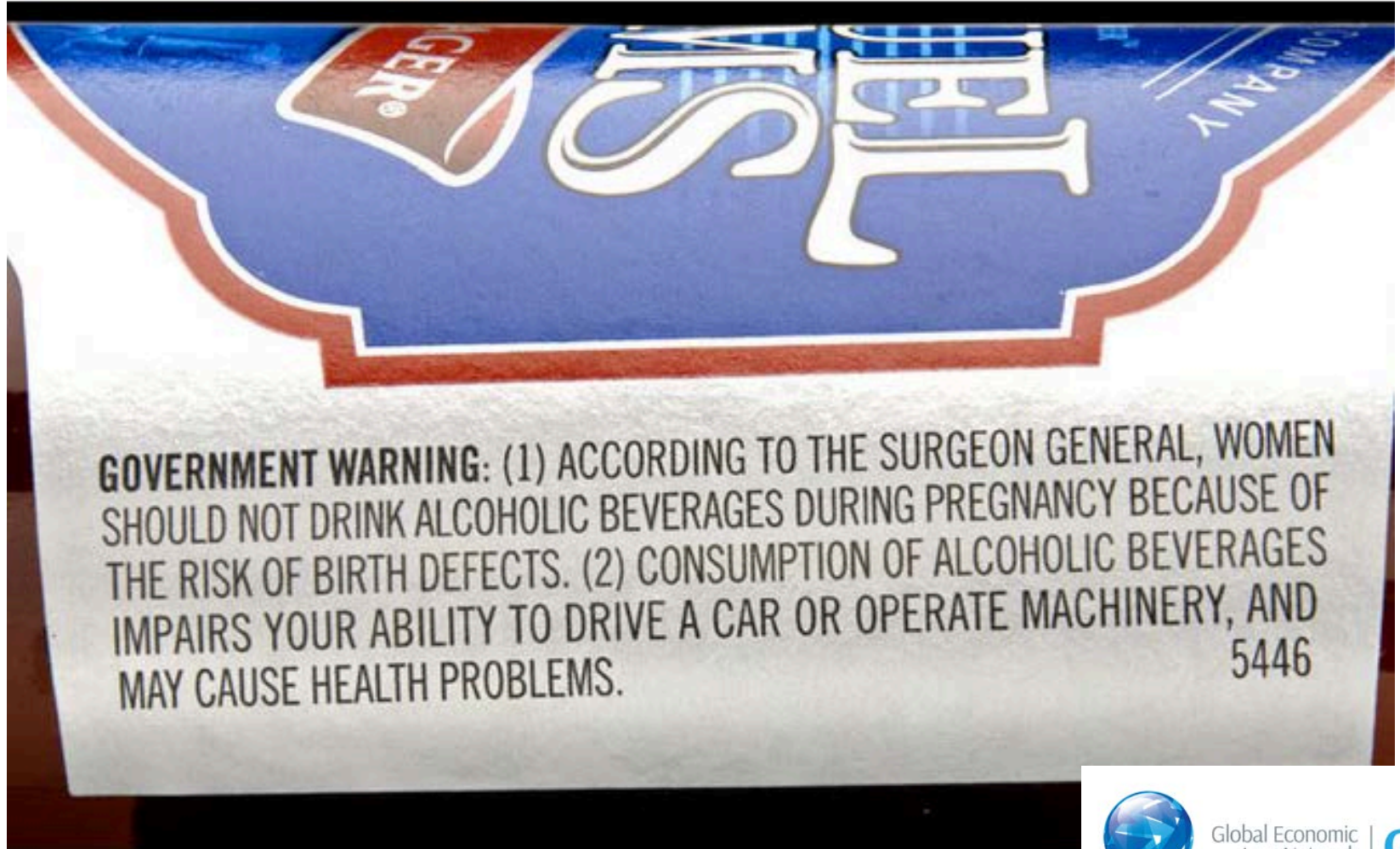




- Studies on US labels introduced in 1989: no behaviour change; some effect on intervening variables (intention to change, conversations about alcohol, willingness to offer to drive someone home if they are affected by alcohol)
- No studies of other labelling schemes





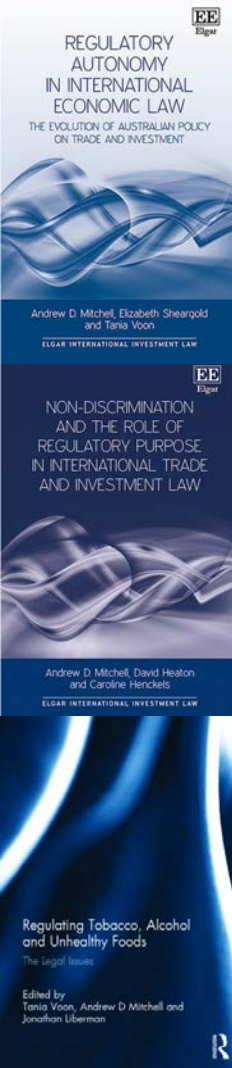


- Evidence for design, presentation and rotation requirements:
  - Supported by emerging evidence from prototype alcohol labels (Valance et al, Hobin et al, Miller et al, Pettigrew et al)
  - Also evidence borrowed from tobacco graphic health warnings (Noar et al)
- But advisable to follow Yukon lead and support research:
  - pre-studies of label content and design that is likely to be salient to Thai population
  - Implementation studies



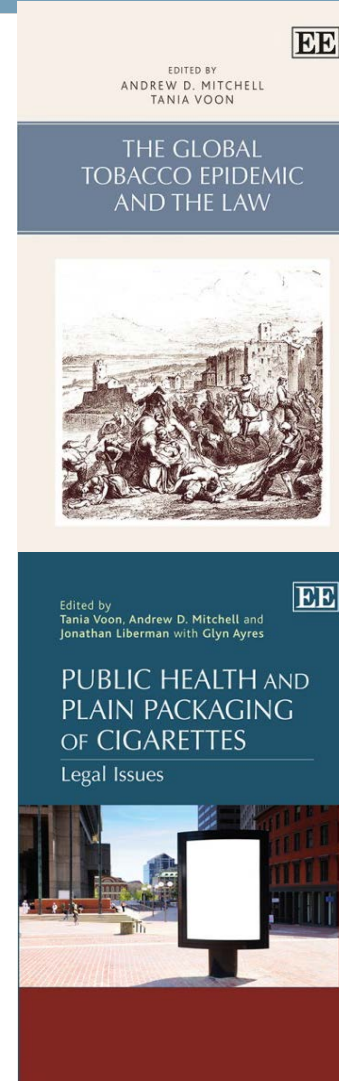
- Marketing rule:
  - Review wording
  - But even more important for Thailand to support research on impact of alcohol labelling on consumption
  - Little existing evidence on impact of label on consumption: see Gates et al (2007); Purves, Stead and Eadie (2014)
  - Thailand would need to rely on evidence about impacts of *other forms of alcohol marketing on under-age consumption*: see systematic reviews from Smith and Foxcroft (2009); Anderson et al (2009); Jernigan (2017)





## Further References

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- 'Plain Packaging of Tobacco Products in Australia: A Novel Regulation Faces Legal Challenge' (2012) 307(3)





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