

Globalization of the Tobacco Industry and Implications for Tobacco Control – One Economist's Perspective

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Behaviour of Tobacco Manufacturers
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Overview

- Globalization of tobacco industry
 - Trade agreements
 - FDI & Privatization
 - Consolidation
- Implications for tobacco control
 - Challenges to national tobacco control policies
 - Responses?

Globalization of the 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

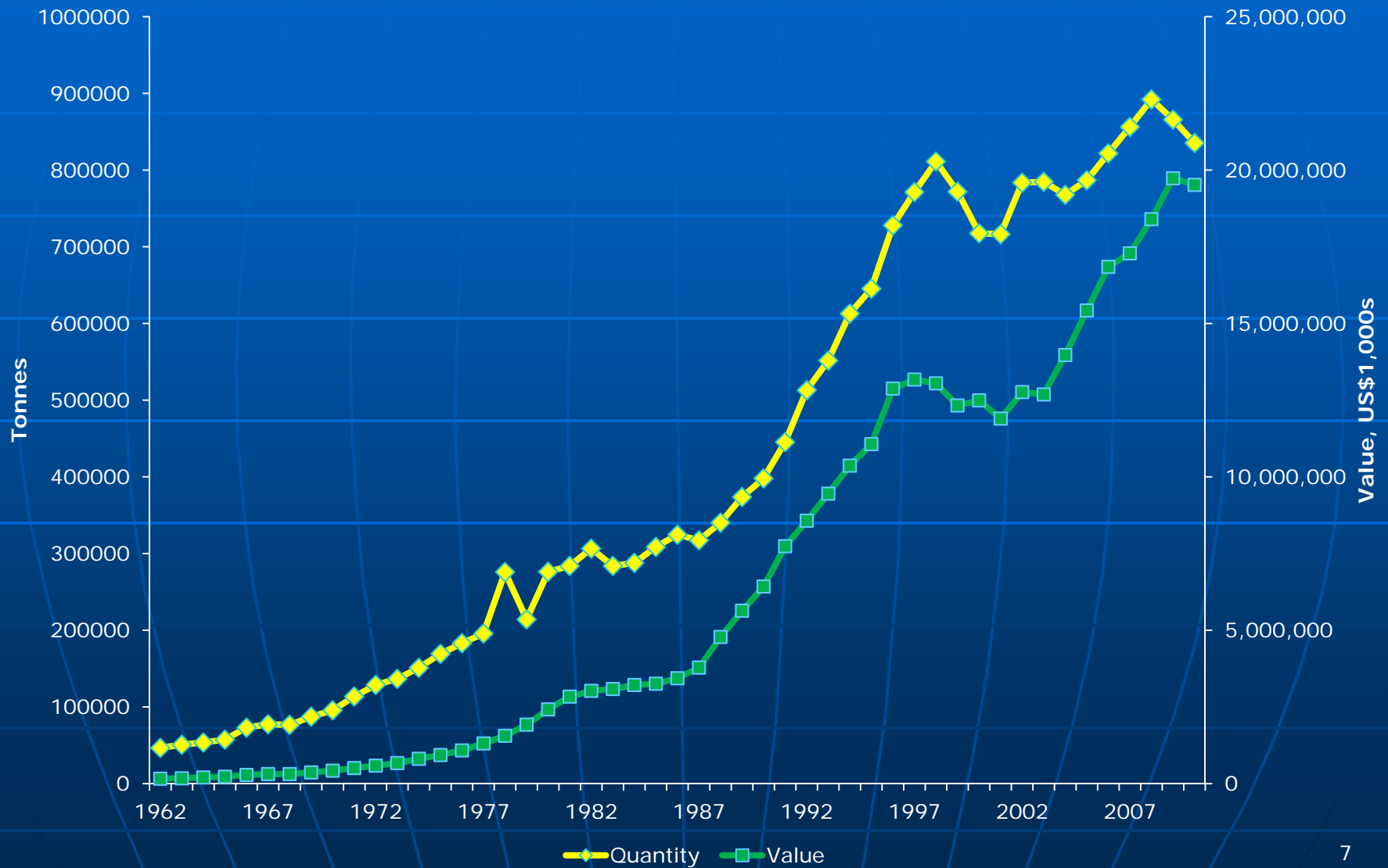
Trade Agreements and Tobacco

Global Trade in Cigarettes Exports 1962-2009



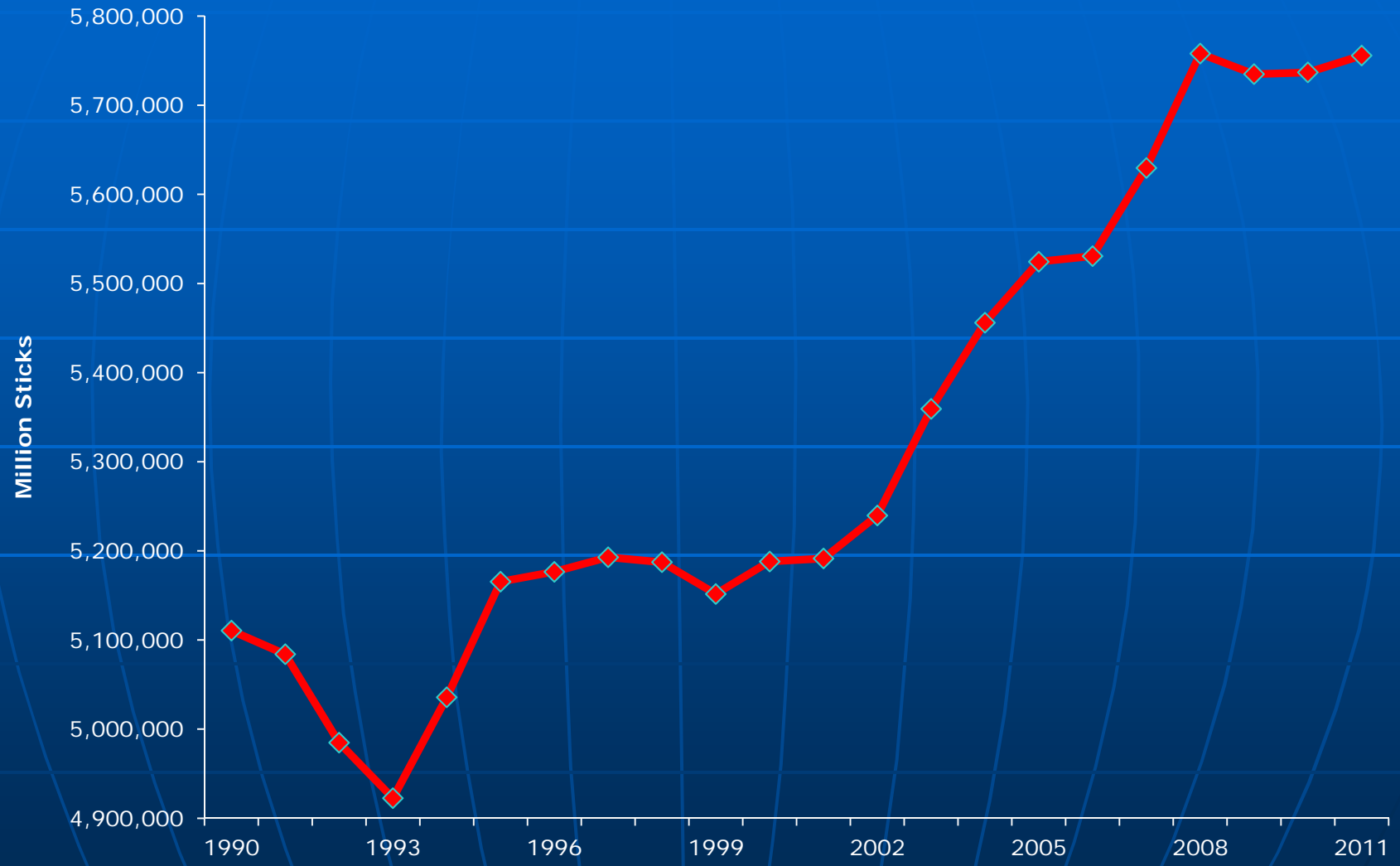
Source: FAOSTAT 2012

Global Trade in Cigarettes Imports, 1962-2009



Source: FAOSTAT 2012

Global Cigarette Sales 1990-2011



Source: ERC, 2012; Euromonitor, 2013

Trade in Tobacco Products

- Increase in trade in late 20th century result of global, regional, and bilateral trade agreements
- Global/Multilateral treaties:
 - General Agreement on Tariffs and Trade (GATT)
 - Require participating countries to reduce tariff and non-tariff barriers to trade
 - Initial round of GATT – 1947
 - Covered trade in limited goods and services
 - 23 countries (11 LMICs)
 - Subsequent rounds
 - Expanded ranges of goods/services
 - Increasing number of participating countries, including LMICs

Trade in Tobacco Products

- Global/Multilateral treaties:
 - 1994, Uruguay round significantly overhauled GATT
 - 124 countries (98 LMICs)
 - Creates the World Trade Organization (originally called for in 1947 agreement, but never formally established)
 - Includes many separate agreements addressing tariff and non-tariff barriers to trade in variety of goods and services
 - WTO currently:
 - 153 members; 30 observers (those seeking to join)
 - Covers 97% of global trade
 - Doha round talks began in early 2000; greater emphasis on trade in agricultural products and services
 - Ongoing with no clear end in sight

Trade in Tobacco Products

■ GATT/WTO:

- Basic principles include:
 - Commitment to achieving free trade, fair competition
 - Limits on and eventual elimination of tariff and non-tariff barriers to trade
 - Non-discriminatory treatment of trading partners
 - Non-discriminatory treatment of domestic and foreign products
 - Predictability against arbitrary trade barriers
 - Negotiated elimination of trade barriers
 - Dispute resolution process
 - Opposition to retaliatory trade sanctions
- Has significantly reduced tariff and non-tariff barriers to trade in tobacco and tobacco products
- Efforts to develop comparable “Multilateral Agreement on Investments” stalled, withdrawn

Trade in Tobacco Products

- Regional Agreements: similar efforts that lead to more significant reductions in trade barriers among countries in given region:
 - European Union
 - North American Free Trade Agreement
 - Association of South East Asian Nations
 - Common Market of East and Southern Africa
 - Economic Community of Western African States
 - Organization of American States
- 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
 - Chaloupka & Laixuthai (1996) – examined impact of Section 301 agreements on tobacco use, market share
 - Fixed effects models for data from 10 Asian countries, 1970-1991; trade agreement indicators, GDP
 - Market share of US firms up 600% by 1991 compared to what it would have been had markets remained closed
 - Per capita cigarette consumption 10% higher in 1991 than had markets remained closed
 - Why higher consumption?
 - More competition, lower prices, more extensive marketing
 - Confirmed by other country specific studies (e.g. Hsieh and Hu, 1997, for Taiwan; Sessler, 1993, and Hagihara and Takeshita, 1995, for Japan)

Trade in Tobacco Products

- Impact of freer trade on tobacco use
 - Taylor, et al. (2000)
 - Fixed effects models for data from 42 countries, 1970-1995; trade openness measures, GDP; separately for high, middle, and low-income countries
 - Positive impact of openness on tobacco consumption, with greatest impact in low-income countries, no significant impact in high-income countries
 - Perucic, et al., (in press)
 - Similar approach, 125-141 countries, 1970-2003 or 1990-2004 depending on data;
 - Comparable findings that impact of freer trade was higher tobacco consumption; greatest impact on low-income countries

FDI, Privatization and Tobacco

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

Direct Investment & Privatization

- Case Study - Ukraine

- Privatization of domestic monopoly after the collapse of the Soviet Union

Manufacturer Market Share, 2000-2006							
	% Volume						
	2000	2001	2002	2003	2004	2005	2006
Philip Morris Ukraine	22.6	28.5	27.2	32.5	32.8	33.4	33.6
Reemtsma-Ukraine	34.0	23.0	27.2	21.7	19.5	18.7	18.7
Gallaher	*	2.4	7.5	11.6	14.5	16.2	16.6
A/T BAT-Prilucky	16.8	22.0	18.8	16.5	17.0	16.2	15.1
JTI	8.6	8.6	11.2	12.5	12.3	12.9	13.7
Others	18.0	15.5	8.1	5.2	3.9	2.6	2.3

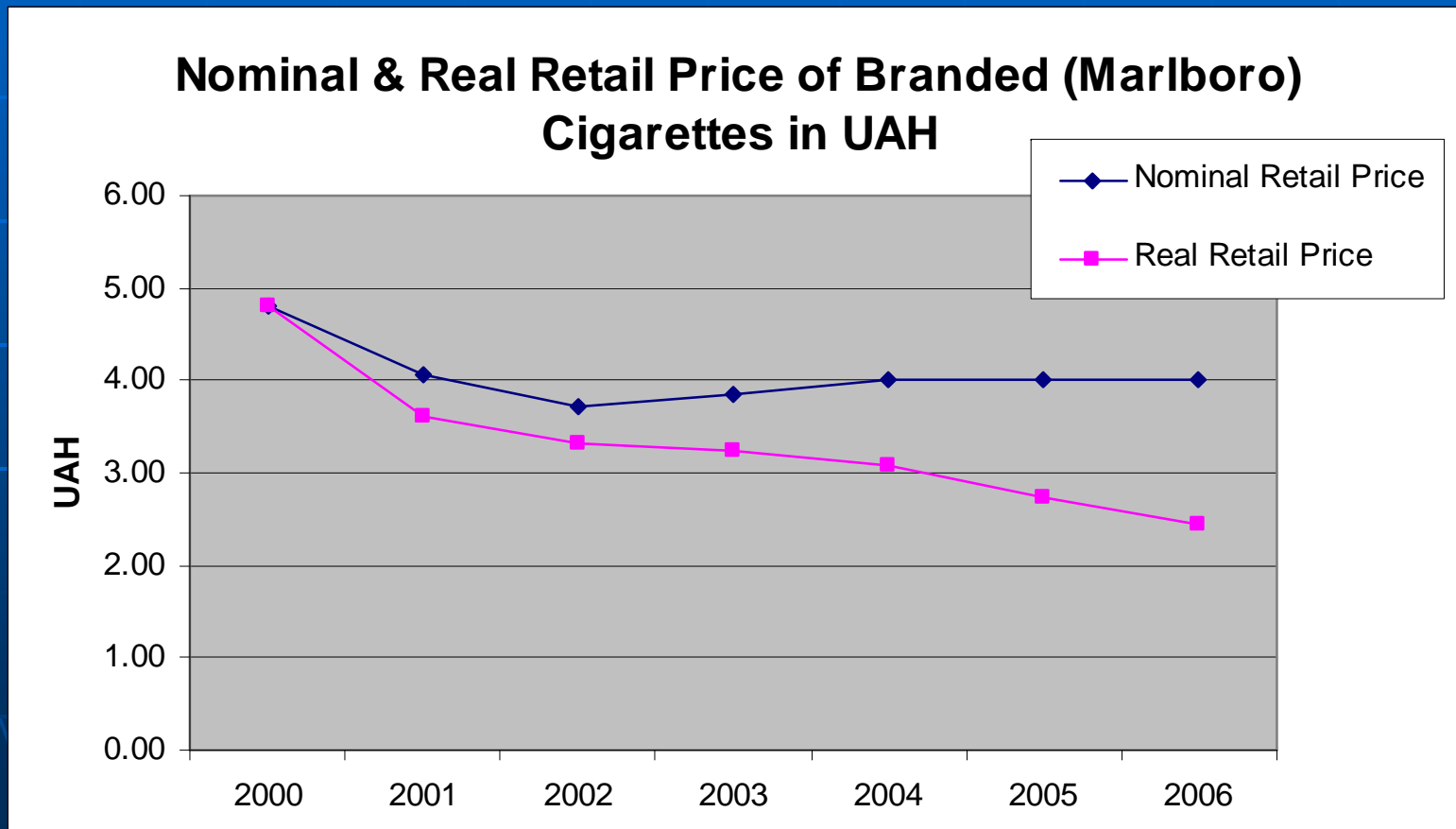
Direct Investment & Privatization

■ Case Study - Ukraine

- Weak tobacco control policies in years following privatization:
 - No real increases in tobacco taxes
 - Voluntary code of conduct with respect to advertising and promotion
 - Weak, partial limits on advertising (broadcast)
 - Minimum purchase age law
 - Very weak smoke-free policies (do not cover restaurants, bars, private workplaces)
- Ratified FCTC in 2006
 - Until recently, no progress in adoption & implementation of tobacco control measures

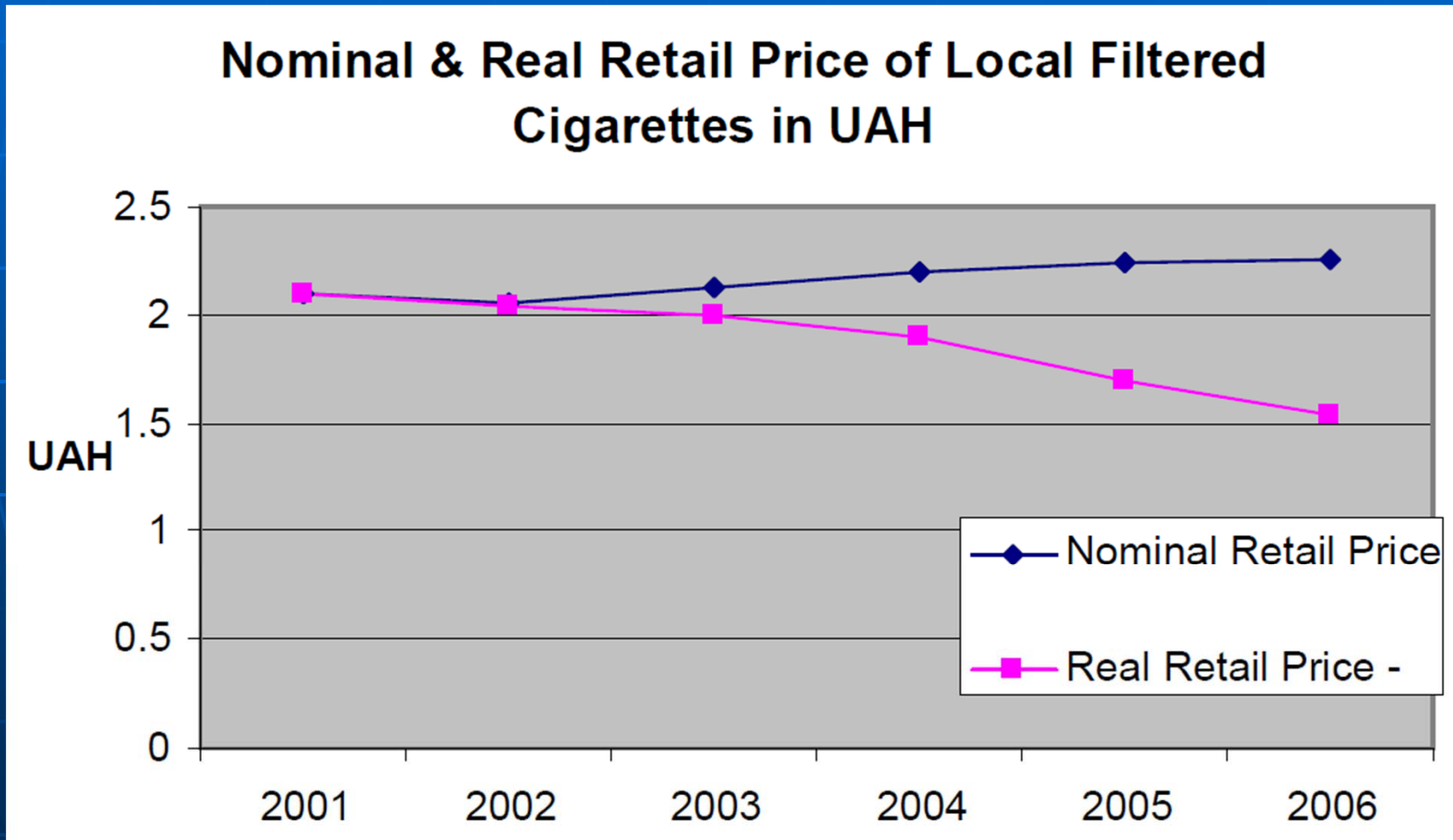
Direct Investment & Privatization

Cigarette Prices, Ukraine, 2000-2006



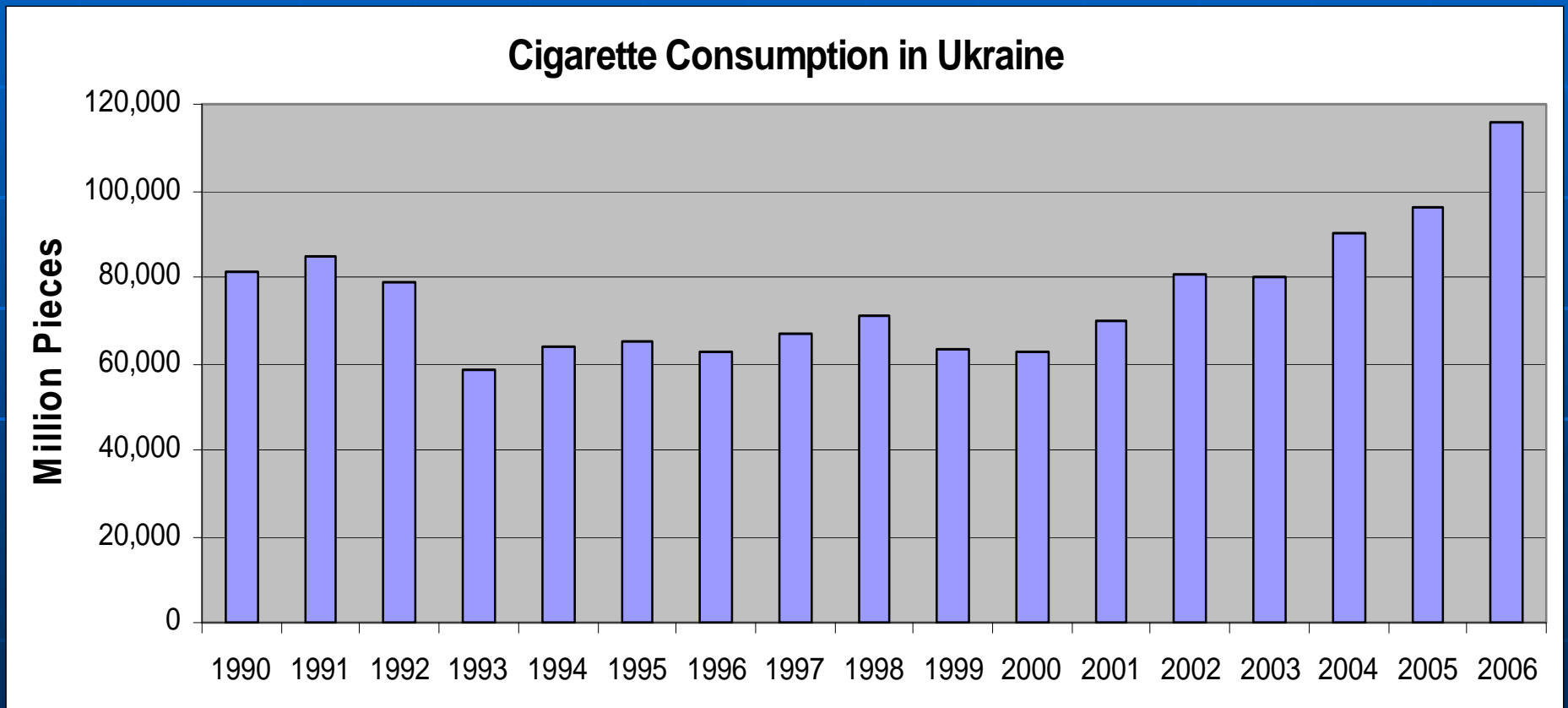
Direct Investment & Privatization

Cigarette Prices, Ukraine, 2000-2006



Direct Investment & Privatization

Cigarette Consumption, Ukraine, 1990-2006



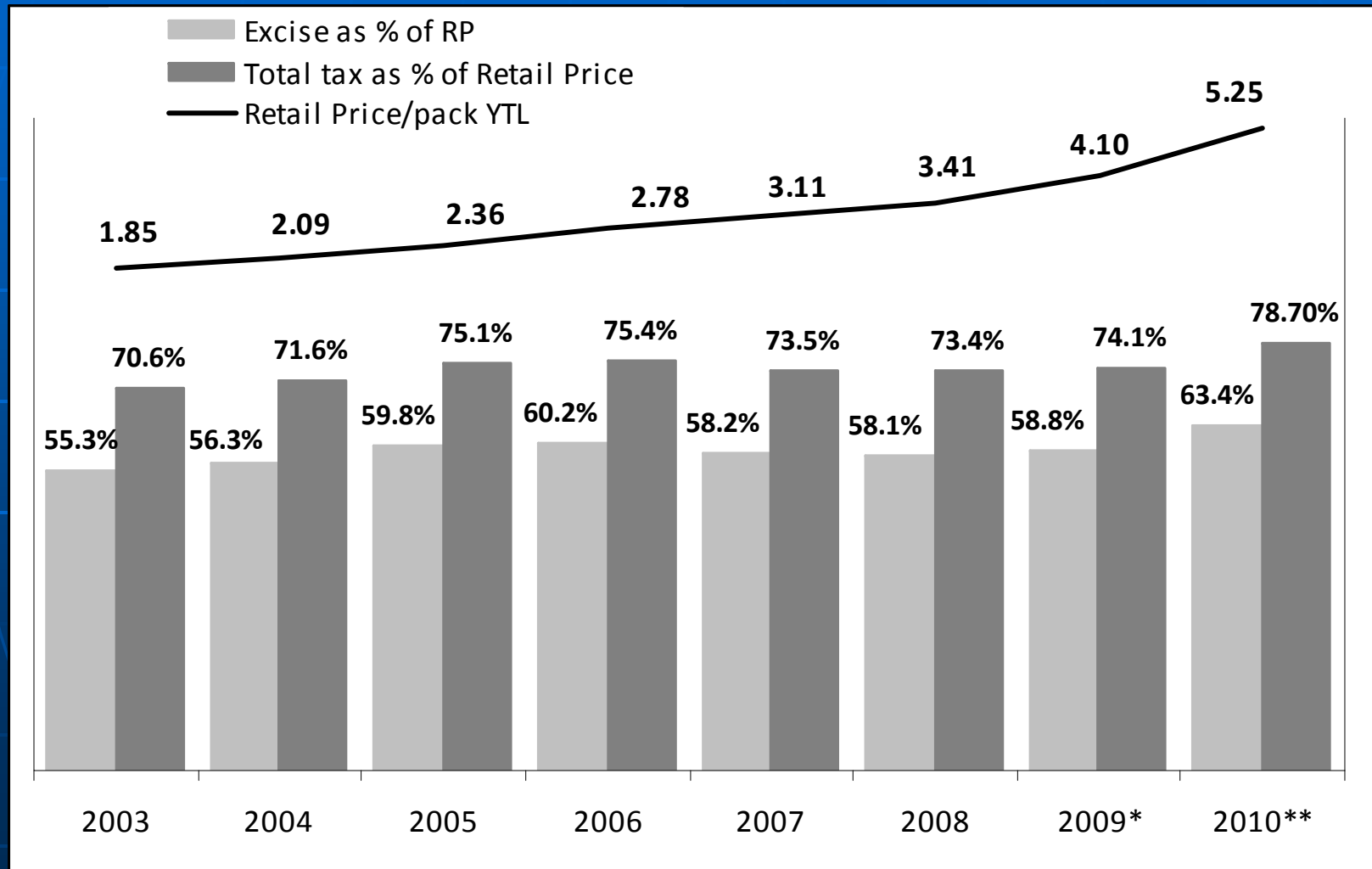
Case Study - Turkey

- Government monopoly – TEKEL – completely controlled market until 1984
 - 1984 – allowed for sale of foreign cigarettes, but had to go through TEKEL which controlled pricing and distribution
 - 1991 – allowed multinationals to sell directly, without going through TEKEL
 - 1994 – allowed direct investment by multinational companies
 - Gain 30% market share by 1997
 - TEKEL passed by Philsa in 2005
 - 2003, 2005 – initial efforts to sell TEKEL
 - 2008 – TEKEL sold to BAT
 - 2008 structure: Philsa 41%, BAT 35%, JTI 18%, limited others

Tobacco Control in Turkey

- Limited control policies until recently
 - Partial advertising ban; weak warning labels; some smoking restrictions; limits on youth access
- WHO Framework Convention on Tobacco Control
 - Signed in April 2004; ratified in December 2004
- Tobacco Control and Prevention of Hazards Caused by Tobacco Products Law (number 5727)
 - Enacted in January 2008
 - Expanded smoke-free policies to make several venues 100% smoke free
 - Since July 2009 includes hospitality sector
 - MoH and TAPDK enforce smoke-free policy
 - Requires televised antismoking advertising
 - Graphic, pictorial warnings – spring 2010

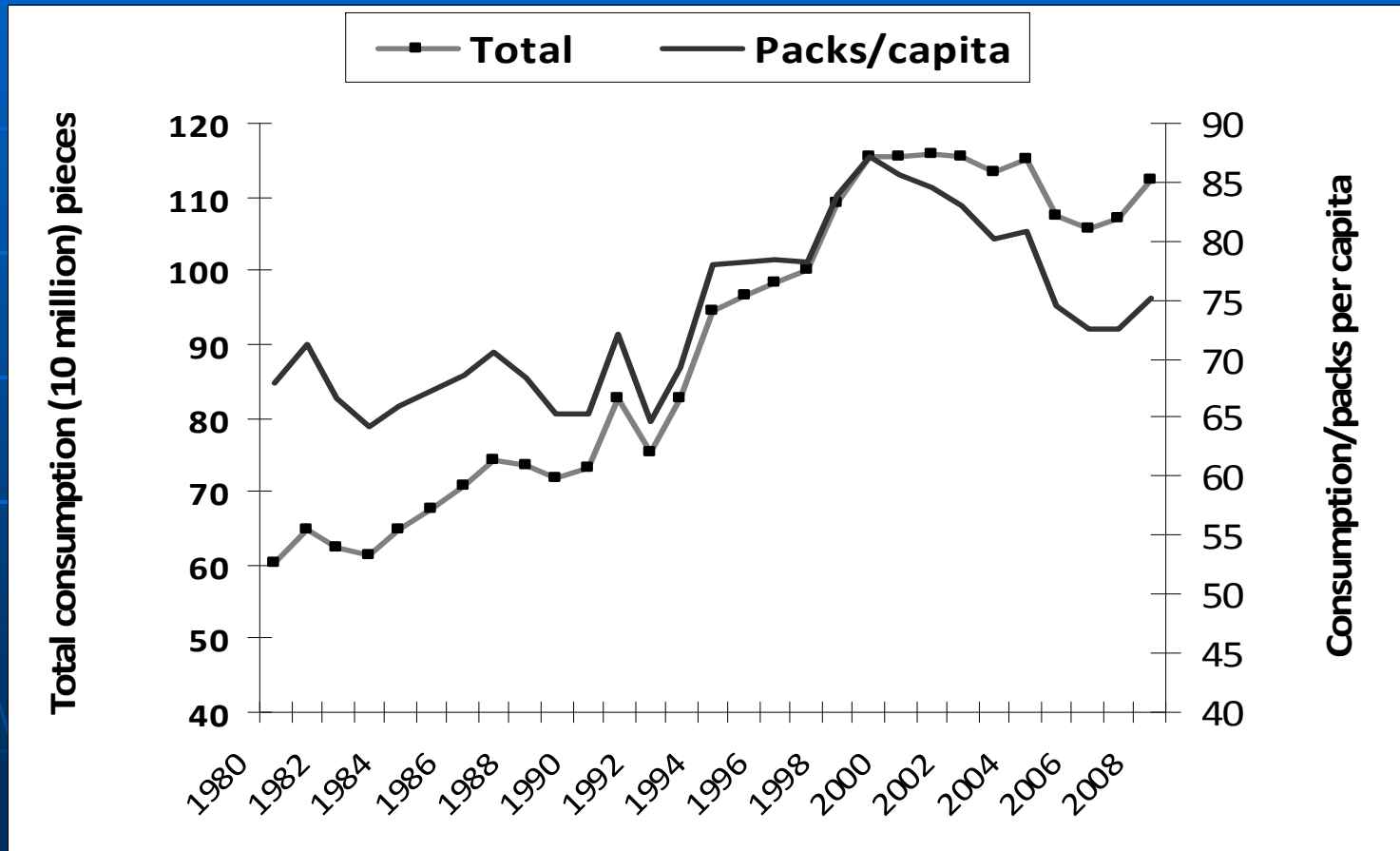
Cigarette Taxes and Prices 2003-2010



Source: TAPDK; MoF; Yürekli, et al., 2010

Direct Investment & Privatization

Cigarette Consumption, Turkey, 1980-2008



Source: Yurekli, et al., 2010

Direct Investment & Privatization

- Can be good or bad for public health – depends on how it's done; “best practices” for public health
 - Make no agreements with multinational tobacco companies that would inhibit government's ability to adopt strong tobacco control policies
 - Ratify FCTC, adopt comprehensive tobacco control policies
 - Regular tax increases that reduce the affordability of tobacco products
 - Strong, comprehensive smoke-free policies
 - Comprehensive ban on tobacco product marketing
 - Other effective policies/programs

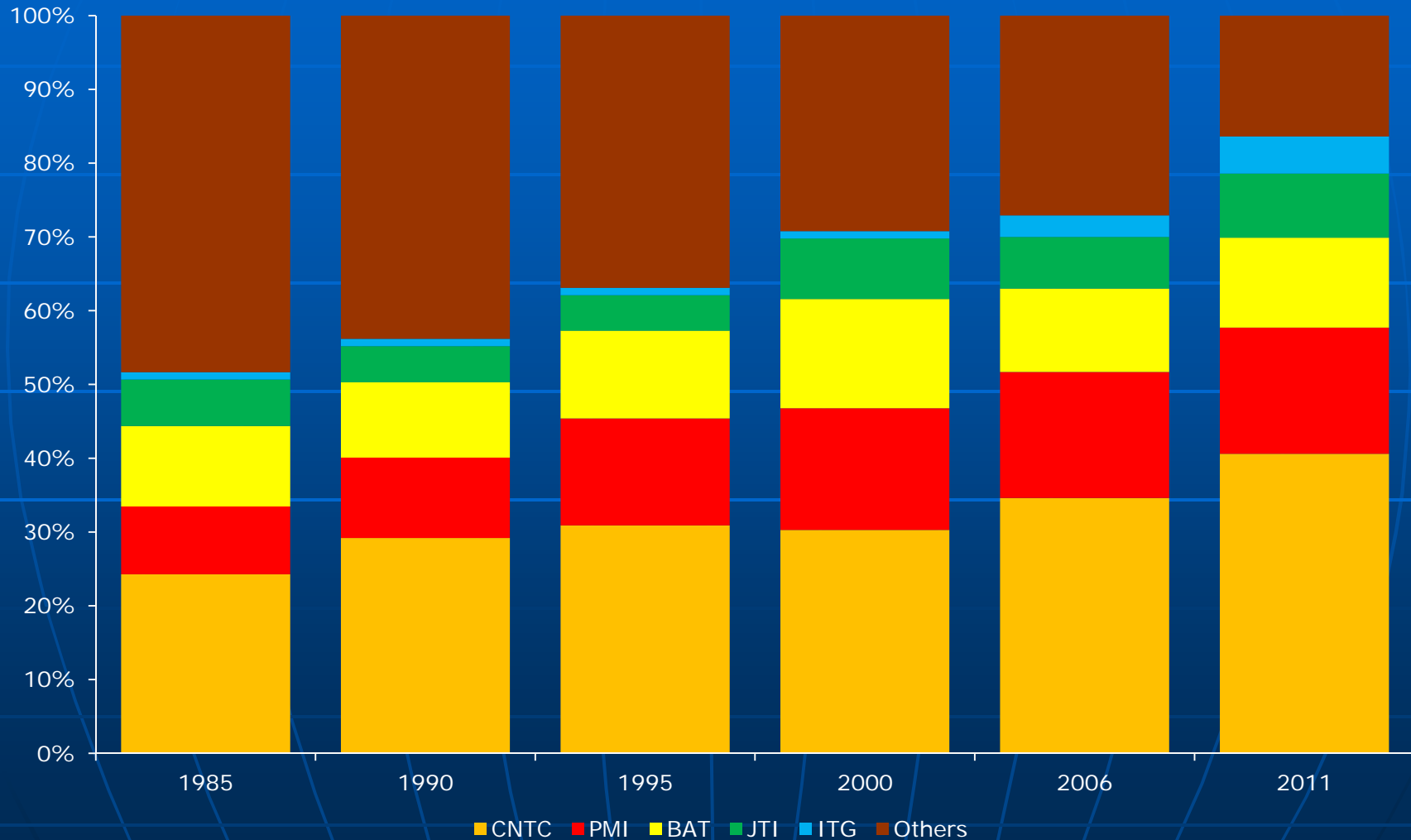
Mergers & Acquisitions

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 - 2nd 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

- Increasingly, consolidation across products
 - Altria, US' largest cigarette company, acquisition of US Smokeless Tobacco Company in 2008, largest smokeless company in the US
 - 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

Mergers & Acquisitions

- Combined with development and marketing of new products
 - Altria, RJR and others develop and market variety of dissolvable products, extending brands across products
 - 2011 - BAT creates Nicoventures to develop reduced risk tobacco products, other nicotine delivery products
 - 2012 - Altria markets Verve – a non-tobacco, nicotine lozenge
 - 2012 – Swisher launches e-cigarettes, e-cigars

Marlboro



Camel



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TUNE IN. SMOKE OUT.

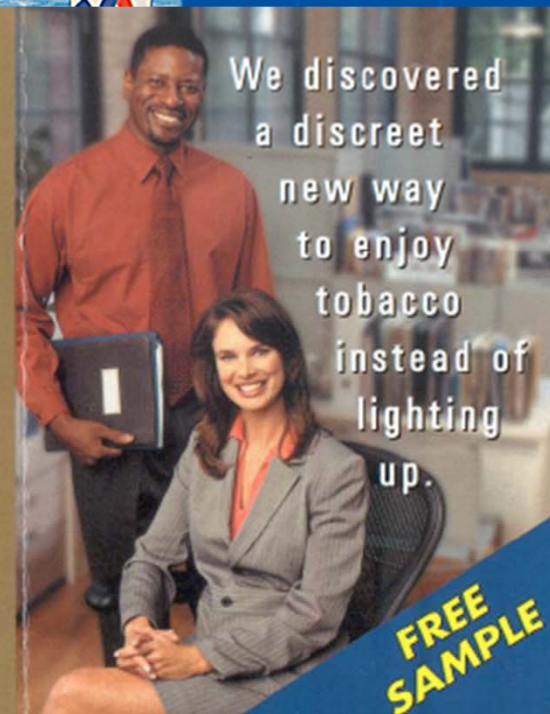
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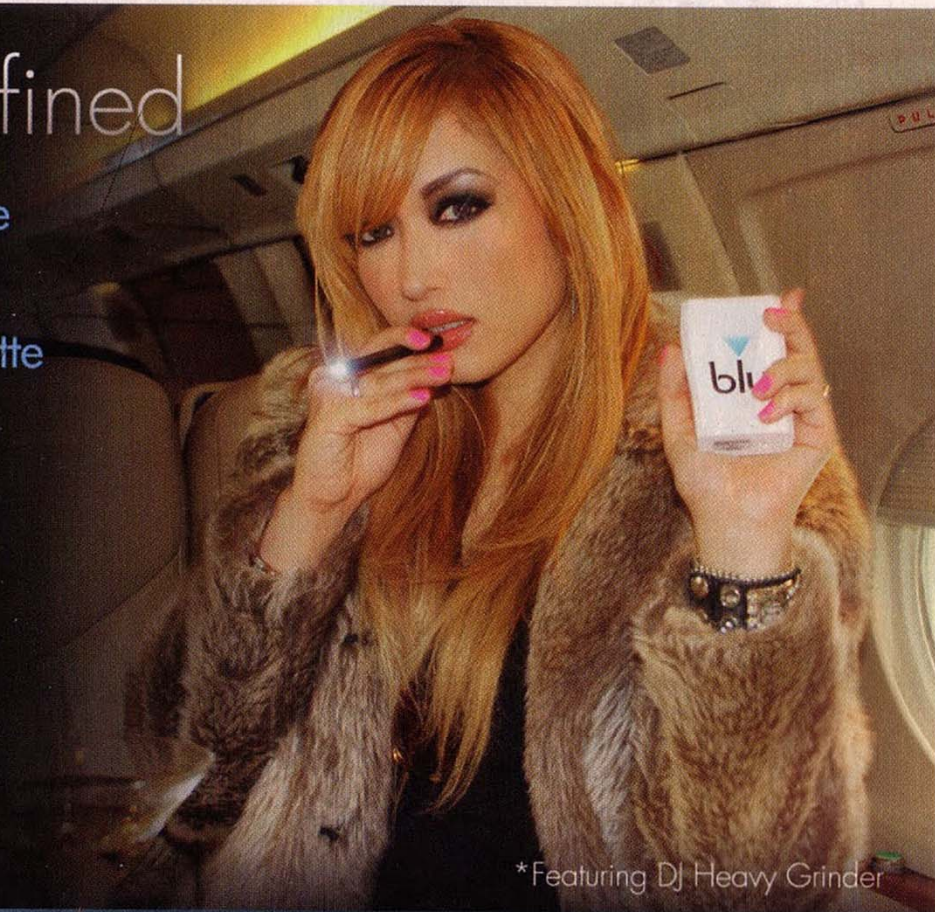
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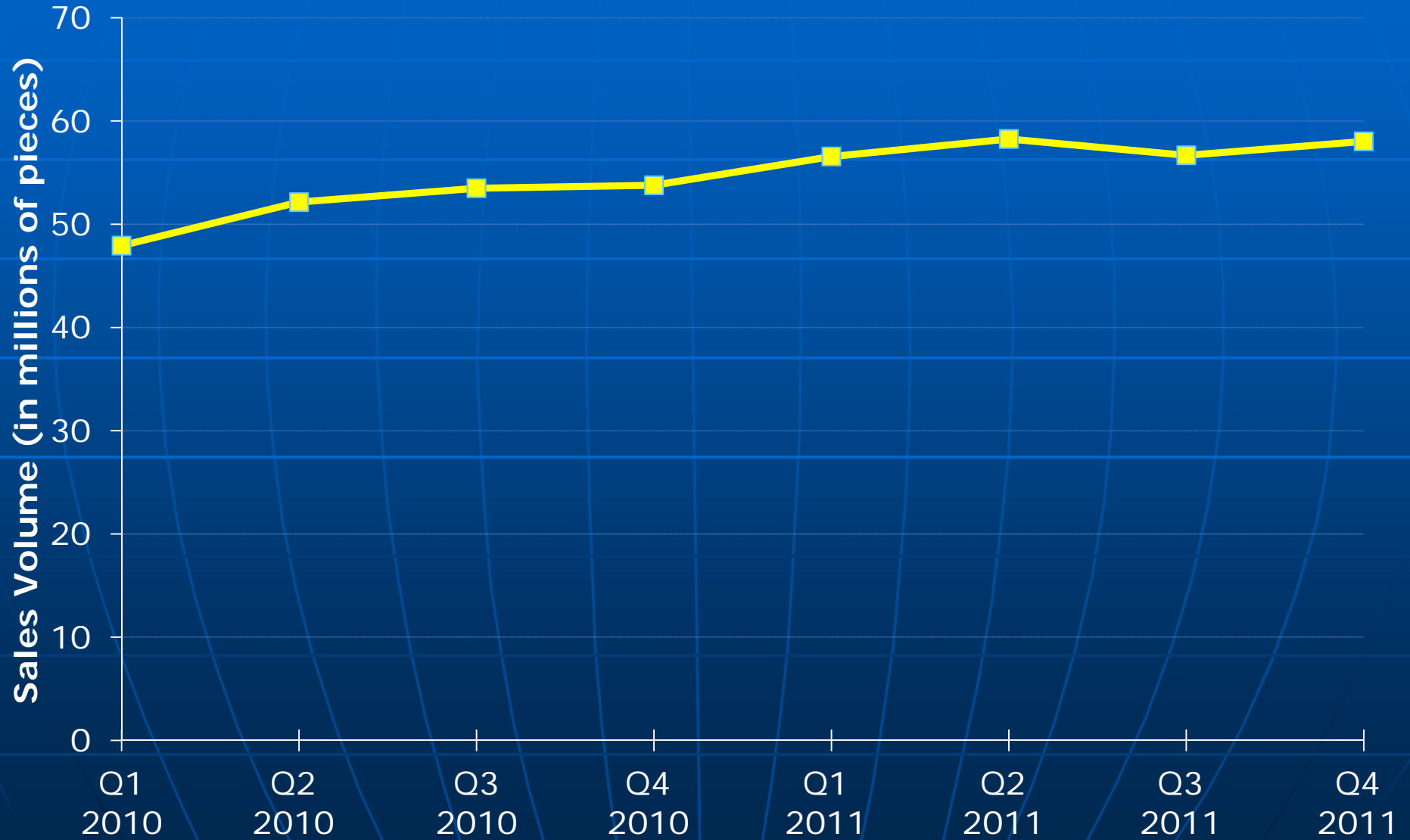
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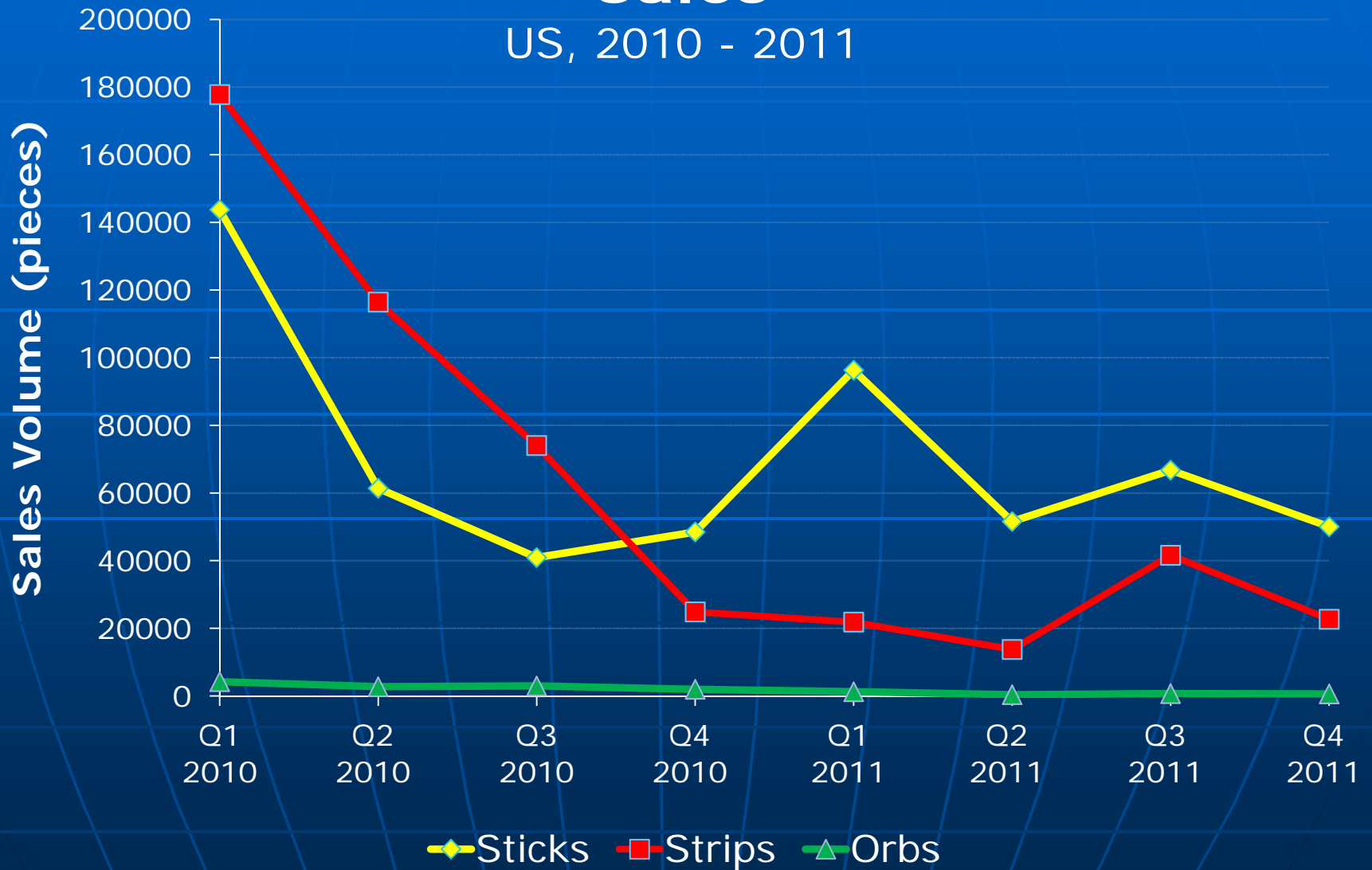
Dissolvable Lozenge: Sales Volume US market 2010 – 2011

(millions pieces)



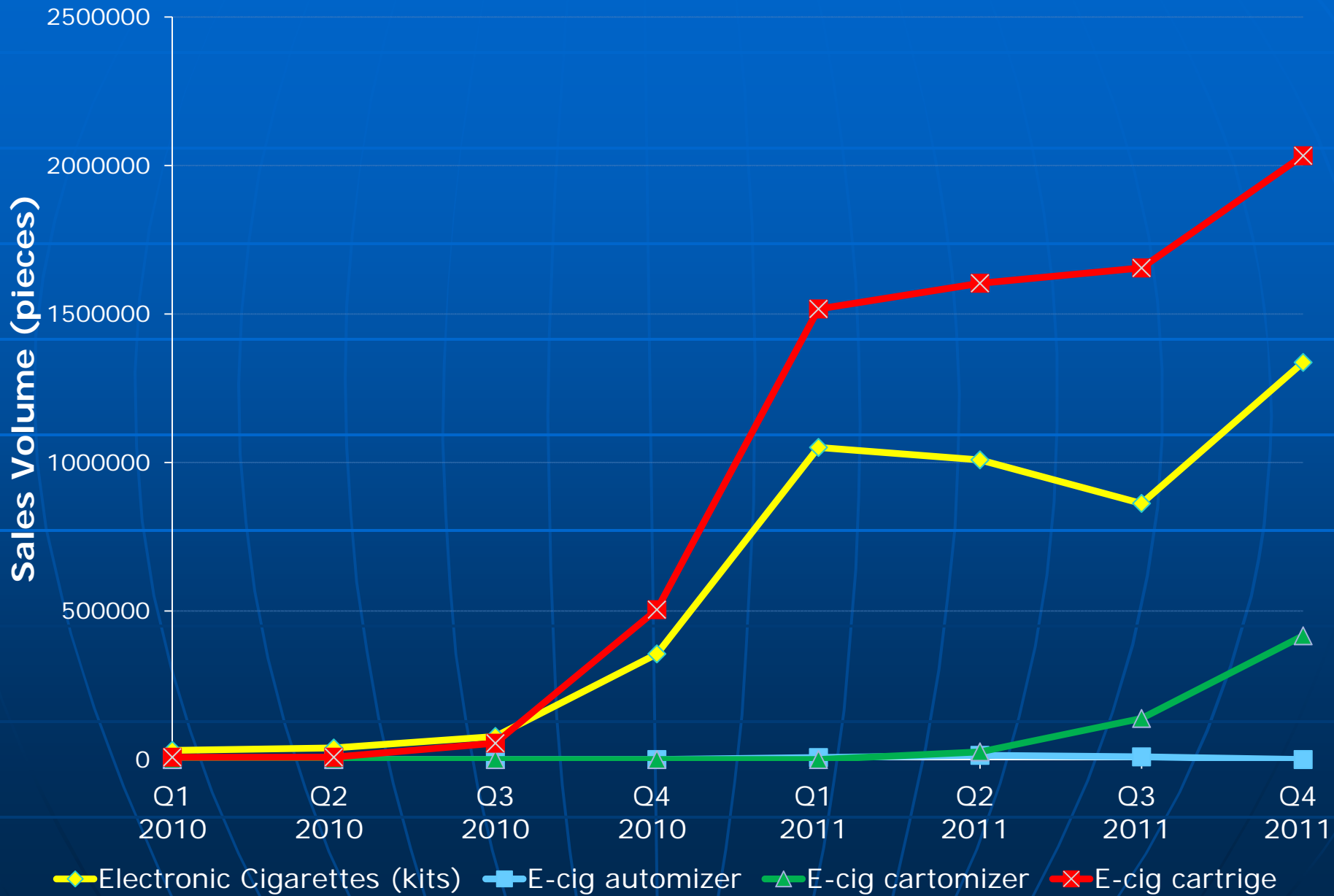
Dissolvable Tobacco Product Sales

US, 2010 - 2011



E-Cigarette Sales

US 2010 - 2011



Implications for Tobacco Control

-

Challenges to National
Tobacco Control Policies

Trade Disputes

■ US-Thailand and GATT/WTO

- After relatively easy success in Japan, Taiwan, and South Korea, US tried to open Thai cigarette markets
- Thai government fought back
- 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

Trade Disputes

■ US-Thailand and GATT/WTO

- Article XX of GATT allows for protection of public health over interests in trade:
- “Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary and unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, *nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures...necessary to protect humanhealth (or) necessary to secure compliance with the laws or regulations which are not inconsistent with the provisions of this Agreement*”

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 displays of tobacco products
 - Legislation adopted 2009, effective 1/1/10
 - Philip Morris Norway challenged
 - Argued that display ban violated Article 11 of the European Economic Area by 'hindering the free movement of goods'
 - October 2010 – Oslo District Court asked European Free Trade Agreement Court (EFTA) for opinion

Trade Disputes

- Norway's display ban

- EFTA response:

- On question of whether or not the display ban was a restriction on free trade:

“A visual display ban on tobacco products, imposed by national legislation of an EEA State, such as the one at issue in the case at hand, constitutes a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 11 EEA if, in fact, the ban affects the marketing of products imported from other EEA States to a greater degree than that of imported products which were, until recently, produced in Norway.”

Trade Disputes

- Norway's display ban

- EFTA response:

- On question of whether or not the display ban, if it did restrict traded, "based on the objective of reduced tobacco use by the public in general and especially amongst young people, would be suitable and necessary having regard to public health" was a restriction on free trade:

"It is for the national court to identify the aims which the legislation at issue is actually intended to pursue and to decide whether the public health objective of reducing tobacco use by the public in general can be achieved by measures less restrictive than a visual display ban on tobacco products."

Trade Disputes

- Norway's display ban
 - Case went to trial June 2012 in Oslo District Court
 - Philip Morris argued
 - No evidence that display ban had any effect on tobacco use
 - Less restrictive approaches to achieve same goal
 - Norway responded
 - Display ban extended existing ban on tobacco company marketing
 - Marketing impacts tobacco use
 - Display ban necessary for further constraining tobacco company marketing

Trade Disputes

- Norway's display ban

- September 14, 2012 decision upholding display ban:

As the District Court sees it, there exist no other measures that will have an effect equivalent to that of the Display Ban.

It is a key objective for the authorities that as few as possible youngsters begin to smoke, to prevent them from developing tobacco dependency.

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.

- Philip Morris Norway decides not to appeal

Trade and Investment Disputes

- Australia's Plain Packaging Policy
 - Announced April 29, 2010
 - Legislation introduced April 7, 2011
 - Passed House August 24, 2011, Senate November 2, 2011
 - Phased in by December 1, 2012
 - Prohibits use of trade marks, symbols, graphics or images on pack
 - Allows brand, business/company name, variant name in standard font/position
- Coupled with other provisions
 - Graphic warnings expanded (75% front, 90% back)
 - Pack/cigarette specifications
 - Similar details for other tobacco products

**SMOKING CAUSES
BLINDNESS**



Brand
Variant

25

WARNING
The toxic chemicals in tobacco smoke damage your blood vessels, damage your body's cells and attack your immune system.

**SMOKING CAUSES
MOUTH AND THROAT
CANCER**



Mouth cancer

Brand
Variant

25

WARNING
The toxic chemicals in tobacco smoke damage your blood vessels, damage your body's cells and attack your immune system.

**DON'T LET
CHILDREN BREATHE
YOUR SMOKE**



Brand
Variant

25

WARNING
The toxic chemicals in tobacco smoke damage your blood vessels, damage your body's cells and attack your immune system.

Plain Packaging

- Multiple challenges from tobacco industry
 - Constitutional challenge brought by BAT, PMI, ITG, JTI and others
 - Claimed government was taking intellectual property without proper compensation
 - Government responded that it was regulating packaging, not acquiring trademarks
 - Case heard in Australia high court, Spring 2012
 - August decision dismissed tobacco company challenge, 6-1 decision
 - Found that plain packaging controlled tobacco company marketing and did not involve acquisition

Plain Packaging

- Multiple challenges from tobacco industry
 - Ongoing WTO challenges brought by Ukraine, Dominican Republic and Honduras
 - Trade-Related aspects of Intellectual Property Rights (TRIPS) Agreement
 - Technical Barriers to Trade (TBT) Agreement
 - Harm to domestic industry due to commoditization of product, falling prices, and increased illicit trade
 - 1993 Hong Kong – Australia Bilateral Investment Treaty challenge
 - PM-Asia acquisition of PM-Australia in Feb. 2011

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

Trade in Tobacco Products

- Considerable controversy remains over whether or not public health interests take precedence over trade
 - FCTC gives prominence to public health concerns
 - GATT decision in US/Thai case suggests that public health concerns trump trade
 - My view – governments should not use trade restrictions in efforts to reduce demand for tobacco products; better to implement comprehensive tobacco control policies and programs that apply evenly to all tobacco products, regardless of origin

Trade in Tobacco Products

- Controversy over whether or not public health interests trump trade 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 on Philip Morris challenge to 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

Globalization of Tobacco Control: WHO FCTC

- Gives priority to public health
- Recognizes need for international action and cooperation
- Evidence-based
- Mindful of potential social and economic impact of tobacco control efforts
- Concerned about role of industry



Globalization of Tobacco Control: MPOWER Framework

- MPOWER Framework
 - “Monitor” the tobacco epidemic
 - “Protect” non-smokers
 - “Offer” help to quit
 - “Warn” about the harms
 - “Enforce” marketing bans
 - “Raise” taxes
- Most cost-effective components of WHO FCTC

