



October 3, 2013  
President Barack H. Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

I am writing on behalf of the Public Health Institute (PHI), a nonprofit that generates and promotes research, leadership and partnerships to build capacity for strong public health policy, programs, systems and practices. I respectfully request that the US Trade Representative seek to “carve out” tobacco control measures and tobacco products from the Trans-Pacific Partnership (TPP), and remove Investor State Dispute Resolution language from the agreement.

Tobacco use is the leading preventable cause of death in the United States<sup>i</sup> and globally. Tobacco is also the only legal substance that, when used as intended, kills 6.3 million people per year. Cigarette smoking is responsible for about one in five deaths annually<sup>ii</sup> and a major contributor to the global pandemic of non-communicable diseases.

Curtailing tobacco use is a central element of policies to reduce preventable childhood,<sup>iii</sup> adolescent and adult tobacco-related morbidity and mortality, a key goal of your Administration. These important public health measures continue to receive the broad support of elected officials on every level regardless of political affiliation.

There are 176 nations that are party to the WHO Framework Convention on Tobacco Control, including our 11 potential TPP trading partners. The Convention’s Article 5.3 notably seeks to protect public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Medical and public health organizations have consistently supported removing tobacco control measures and tobacco products from trade agreements. Malaysia, one of the proposed states party to the TPP, has announced its commitment to carving out tobacco in the agreement.

The tobacco industry has relied on trade rules to challenge, delay and overrule a number of hard-fought tobacco control measures. In addition to the country-to-country dispute mechanisms available through the World Trade Organization (WTO), some existing trade agreements offer an Investor-State Dispute Resolution (ISDR) process that enables corporations to challenge government

actions directly.<sup>iv</sup> Tobacco companies have recently accelerated their use of these powerful tools to attempt to delay, undermine and reverse tobacco control measures in the United States, Australia, Uruguay, Norway, and Ireland.<sup>v</sup> There is a current U.S. proposal to include ISDR in the TPP. Eliminating such a back-door mechanism for attacking tobacco control in this country or in other states party to the TPP is of the utmost urgency. I ask that you convey the Administration's opposition to including ISDR in the TPP to the U.S. Trade Representative immediately.

The United States and California have made great strides in reducing tobacco use. We must take additional steps to assure that vulnerable communities, including people of color and LGBT populations, benefit equally. This is also the law of the land. According to the Doggett Amendment, and codified in Executive Order 13193, the U.S. Government "shall not promote the sale or export of tobacco or tobacco products, or seek the reduction or removal of foreign government restrictions on the marketing and advertising of such products..."

U.S. trade policy should protect our nation's efforts and those of our trading partners in lower-income countries, by refraining from reducing or eliminating tariffs on tobacco products. Recently, following a ban on clove cigarettes enacted by Congress, Indonesia (where most of these cigarettes are produced) filed and won a trade complaint through the WTO on flavored products attractive to new young smokers, imperiling progress on curbing teen smoking. We can and should provide global leadership on this issue.

Proposals that allow dangerous loopholes to remain in the TPP would continue to jeopardize tobacco control, and could measurably and negatively affect public health. Permitting trade challenges such as Indonesia's on the basis of the product's country of origin, or offering a "safe harbor" for consideration by trade tribunals in the case of some narrowly defined regulations, are not compromises; instead they contradict the intent and effect of exclusion. The U.S. and other countries have previously excluded products and services from trade agreements, for example to allow regulation of online gambling.

I further suggest that your Administration explore the links between global trade and global health generally, including the optimum treatment within trade agreements of other products exported from the United States that can be harmful to health, including alcoholic beverages and certain foods and drinks.

Trade agreements like the TPP should create jobs and further opportunities for businesses, while avoiding measurable adverse public health consequences. At this critical time the overwhelming preponderance of circumstances suggests the United States should support a complete exclusion of tobacco control measures and tobacco products from the TPP: flagrant use of trade rules to challenge, delay and overrule a number of hard-fought tobacco control measures including the in the U.S.; support for an exclusion among TPP trading partners; and existence of the unique Framework Convention on Tobacco Control.

I request that your Administration advance the proposal to carve out tobacco during TPP negotiations in order to safeguard public health, reduce the enormous burden of tobacco-related disease, and prevent incursions by the tobacco industry against U.S. and our trading partners' crucial tobacco control measures.

Sincerely,

*Mary A. Pittman*

Mary Pittman, DrPH  
President & CEO

cc:

Ambassador Michael Froman, U.S. Trade Representative  
Secretary Kathleen Sebelius, U.S. Department of Health and Human Services  
Secretary Penny Pritzker, U.S. Department of Commerce  
Commissioner Margaret A. Hamburg, U.S. Food and Drug Administration  
Director Thomas Frieden, U.S. Centers for Disease Control and Prevention  
Health Officer Dr. Dileep G. Bal, Kauai District Health Office

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<sup>i</sup> Centers for Disease Control and Prevention. Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000–2004. *Morbidity and Mortality Weekly Report* 2008.

<sup>ii</sup> U.S. Department of Health and Human Services. How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.

<sup>iii</sup> Remarks by the President in the State of the Union Address, February 12, 2013.  
<http://www.whitehouse.gov/the-press-office/2013/02/12/remarks-president-state-union-address>

<sup>iv</sup> Gary Fooks, Anna B Gilmore International trade law, plain packaging and tobacco industry political activity: the Trans-Pacific Partnership. *Tobacco Control* published online June 20, 2013

<sup>v</sup> Ellen R Shaffer, Joseph E. Brenner, Thomas P. Houston. International trade agreements: a threat to tobacco control policy. *Tobacco Control* 2005;14:ii19-ii25; BMJ Publishing Group Ltd; [http://tc.bmjjournals.com/cgi/reprint/14/suppl\\_2/ii19](http://tc.bmjjournals.com/cgi/reprint/14/suppl_2/ii19)