

December 5, 2013

Ambassador Michael Froman
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Froman:

We seek your explicit commitment that the U.S. will not propose or agree to any provisions in the Trans-Pacific Partnership Trade Agreement (TPP) that would undermine the domestic sovereign rights of participating countries to adopt or maintain measures to reduce tobacco use and to prevent the harm it causes to public health.

We call your attention to the compelling body of statements by major medical, public health, and public interest organizations in the United States, listed below, that consistently call on the U.S. to exercise leadership in the negotiations on the TPP to advance tobacco control measures that contribute to reducing the enormous burden of disease related to tobacco use, and prevent incursions by the tobacco industry against those measures.

We must remove tobacco control measures and tobacco products from trade agreements and assure that tobacco control measures will not be subject to challenge through the TPP and all future trade agreements. Malaysia, a TPP trading partner, has proposed carving out tobacco control measures, and tobacco products, from the agreement. This proposal, if accepted, would set a standard in trade law that would complement the global consensus on fighting the tobacco epidemic enshrined in the WHO Framework Convention on Tobacco Control, to which all TPP countries are signatories.

Tobacco use is the leading preventable cause of death, claiming over 6 million lives a year. Past trade agreements have provided cover for multinational tobacco corporations to make cigarettes cheaper and to launch massive marketing campaigns, and to challenge public health measures such as a U.S. ban on clove cigarettes, and plain packaging. The U.S. must lead the way towards policies that protect and improve the public's health.

Sincerely,

Ellen R. Shaffer, PhD MPH, Joseph E. Brenner, MA
Co-Directors
Center for Policy Analysis on Trade and Health (CPATH)



Laurent Huber, MSFD
Director
Action on Smoking and Health (ASH)

Statements by U.S. Medical and Public Health Organizations on TPP, Tobacco and Public Health

Click here for: [Full Packet of Medical and Public Health Documents](#). Individual letters below.

[American Academy of Pediatrics, California Chapter 1, November 12, 2013](#)

[Association of State and Territorial Health Officials \(ASTHO\), November 2013](#)

[California Conference of Local Health Officers \(CCLHO\), October 30, 2013](#)

[California Public Health Association - North \(CPHA-N\), October 18, 2013](#)

[Public Health Institute, Mary Pittman, DrPH, President & CEO, Oct. 3, 2013](#)

[American Public Health Association, October 2, 2013](#)

[Alameda County Public Health Commission, September 13, 2013](#)

[CPATH and 4 U.S. physicians' groups: American Academy of Family Physicians, American Academy of Pediatrics, American College of Physicians, and the American Congress of Obstetricians and Gynecologists, Sept. 11, 2013](#)

[Health Officers Association of California, representing the physician health officers who oversee public health in California's sixty-one city and county jurisdictions, September 6, 2013](#)

[Action on Smoking and Health, American Academy of Family Physicians, American Academy of Pediatrics, American College of Physicians, American Congress of Obstetricians and Gynecologists, American Heart Association, American Stroke Association, American Public Health Association, Center for Policy Analysis on Trade and Health, San Francisco Medical Society, San Francisco Tobacco Free Coalition, September 2013](#)

[Action on Smoking and Health, American College of Physicians, American Congress of Obstetricians and Gynecologists, Center for Policy Analysis on Trade and Health, Corporate Accountability International, Human Rights and Tobacco Control Network, International Association for the Study of Lung Cancer, American Medical Students Association, Boston Women's Health Book Collective/ Our Bodies Ourselves, Prevention Institute, Physicians for Social Responsibility, NextGenU, August 25, 2013](#)

[Citizen Trade Policy Commission - State of Maine, August 22, 2013](#)

[International Association for the Study of Lung Cancer, May 16, 2012](#)

[Society of Thoracic Surgeons, May 15, 2012](#)

[American Academy of Family Physicians, American Academy of Pediatrics, American College of Physicians, American College of Preventive Medicine, American Congress of Obstetrics and Gynecology, AMA, CPATH, May 15, 2012](#)

[Human Rights and Tobacco Control Network, May 8, 2012](#)

[American Academy of Pediatrics, September 14, 2011](#)

[American Academy of Family Physicians, American Academy of Pediatrics, American College of Preventive Medicine, American Society of Addiction Medicine, CPATH: Testimony Dec. 14, 2011: Exclude Tobacco from the TPP, Represent Public Health on Trade Advisory Committees](#)

[American College of Preventive Medicine Sept. 13, 2011](#)

[American Medical Association, May 8, 2011](#)

**TOBACCO CONTROL AND TRADE AGREEMENTS: HOW WE GOT TO
MALAYSIA'S HISTORIC PROPOSAL TO CARVE OUT TOBACCO FROM THE TPP**

Background: The Tension Between Trade and Health Policies. Both trade and public health policies purport to maximize the welfare of populations. But there are sharp differences in theory and practice regarding the value and effectiveness of "free" market forces, economic competition within and among communities and nations, and the optimum relationship between the rights of government and societies to regulate economic activity and the rights of corporations. At least since the 1980s, the U.S., Europe, Canada and Japan have been committed to policies favoring privatization, deregulation, and "liberalized" trade of goods and services across the globe. Challenges have emerged from: competing economic blocs, including Brazil, India, and China; domestic demands for social and economic equality; and periodic economic downturns. While both the World Trade Organization and the World Health Organization have the potential to achieve major advances in international diplomacy and communication, both face significant constraints. Among countries, there is variation in the relationship between health agencies and ministries, and those in finance and commerce.

Trade agreements aimed at challenging laws and regulations that could pose "barriers to trade" can undermine the right and obligation of democratically elected and appointed representatives at the national, state and local levels to protect, provide, and regulate goods and services, and can give economic interests priority over health.

Tobacco and Trade: Tobacco use is the leading preventable cause of death worldwide. Tobacco control measures are critical to reducing tobacco-related death in California, the nation, and the world.

Trade agreements negotiated by the United States with other nations provide foreign governments and all corporations with internationally enforceable rights. CPATH and others have documented that these rights increasingly supersede the rights and ability of domestic governments at the local, state and federal levels to regulate in the interests of the public and of public health.

The tobacco industry is acting in the trade arena to expand its influence on local, state, and national policy. Tobacco companies have accelerated their use of trade rules to attempt to delay and reverse tobacco control measures in the U.S., Australia, Uruguay, Norway, and Ireland. The industry has exercised trade rights in order to challenge and undermine the authority of the U.S. Food and Drug Administration (FDA) Center for Tobacco Products to oversee and regulate tobacco products, and to ensure compliance with the Family Smoking Prevention and Tobacco Control Act of 2009.

Understanding how the tobacco industry exerts its influence through trade rules and curtailing these loopholes is of the utmost urgency for safeguarding and strengthening the authority of the FDA Center for Tobacco Products, for securing and expanding California measures at the local and state levels to reduce environmental exposure to the toxic effects of tobacco smoke and residue, and to regulate nicotine and tobacco products.

Tobacco Industry Challenges: The Family Smoking Prevention and Tobacco Control Act of 2009 banned the sale of certain flavored cigarettes. This provision was enacted to reduce teen smoking, given evidence that youth smokers are more than three times more likely to smoke flavored cigarettes as adults. One year later, Indonesia—the world’s largest producer of clove cigarettes—alleged that the law was inconsistent with U.S. trade obligations under the WTO’s 1994 General Agreement on Trade and Tariffs (GATT). GATT mandates that member nations cannot discriminate between “like products”, and since the U.S. law did not prohibit the sale of menthol cigarettes, Indonesia declared that the law was unfair and biased.

In April 2012, a WTO dispute settlement panel ruled in favor of Indonesia, agreeing that menthol cigarettes are “like” clove cigarettes, and that the United States violated provisions of the General Agreement of Tariffs and Trade (GATT) by discriminating between the two products. The U.S. must now decide between several options to comply with the ruling. It can: (a) revise the Family Smoking Prevention and Tobacco Control Act to also ban the sale of menthol cigarettes; (b) revise the law to permit the sale of clove cigarettes; (c) pay a fine to Indonesia equaling the amount of trade lost, estimated at \$16 million per year; or (d) yield trade concessions to Indonesia for other goods or services.

In 2009, tobacco control legislation in Uruguay mandated: increasing warning labels from 50% to 80% of cigarette packages; placement of one of six selected health images on every package; and prohibiting the use of “brand families.” Philip Morris challenged Uruguay in global court over its new labeling requirements, using trade rules of an existing bilateral investment treaty which granted internationally enforceable rights to corporations to file trade charges directly against a nation. PMI alleged infringement of intellectual property, and demanded compensation. Through existing bilateral and regional trade agreements, to which the United States is a partner, PMI could challenge a host of tobacco control efforts in California, such as: reducing exposure to second-hand smoke, clean indoor air rules; restrictions on retail distribution networks for tobacco products; and advertising, promotion, sponsorship, and marketing restrictions.

In addition, the industry is actively contesting at every level of jurisdiction the right to enact and implement graphic warning labels and other marketing restrictions. A recent court ruling on July 11, 2012, overturned a New York City law requiring graphic warning labels. The Philip Morris attorney commented that the power to regulate is reserved to the federal government. But four of the five largest U.S. tobacco companies are suing the federal government saying the warnings violate their free speech rights. Tobacco industry use of trade rules to challenge federal authority to ensure compliance with the Tobacco Control Act of 2009 could have a significantly adverse effect on California.

Recently, Australia’s highest court upheld Australia’s cigarette plain-packaging laws that will require tobacco companies to remove branding and sell tobacco products in generic green packets. The High Court rejected a legal challenge by tobacco companies which argued that the value of their trademarks would be destroyed if they could no longer display their distinctive colors, brand designs and logos on packs of cigarettes. The issue of plain-packaging, however, can and is being challenged at the international level through intellectual property and other trade rules in existing trade agreements. Tobacco control efforts at the state and local levels in California are vulnerable to tobacco industry challenges under existing trade rules.

Trans-Pacific Partnership Agreement

The Trans-Pacific Partnership Agreement (TPP), a mega-trade agreement currently under negotiation by the United States with eleven Pacific Rim nations, provides a critical opportunity to curtail loopholes used by the tobacco industry, through informing and engaging local, state, and national decision-makers in California.

In 2010, during the early stages of negotiations of the TPP held in San Francisco, the San Francisco Board of Supervisors, working with the Center for Policy Analysis on Trade and Health (CPATH), unanimously passed a resolution calling for removing tobacco from TPP negotiations. At these negotiations, CPATH presented research findings, as a registered stakeholder, to trade negotiators from the negotiating nations, on how the tobacco industry has used trade rules to limit or curtail nations' tobacco control policies, and how the negotiators had the opportunity to create a 21st century trade agreement that reduces tobacco-related deaths.

During TPP negotiations in 2011, and in 2012, CPATH coordinated and joined in signing public statements by leading medical associations delineating the threats of TPP provisions to tobacco control measures, and calling to carve out tobacco and tobacco control measures from the jurisdiction of trade agreements. These medical societies included the American Medical Association, the American College of Family Physicians, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, and the American College of Physicians.

In July, 2012, Professor Stanton Glantz, from the Center for Tobacco Control Research and Education at UCSF, and CPATH presented to trade negotiators on trade rules, tobacco, and health, calling for the removal of tobacco from the TPP as the most effective remedy.

The United States, in the context of TPP negotiations, placed on indefinite hold its earlier proposal to discuss treating tobacco as a unique product, with the intent of safeguarding the Family Smoking Prevention and Tobacco Control Act from possible trade challenges by other nations and directly by tobacco corporations.

Following the 2012 TPP negotiations, the Vermont and Maine state trade commissions have written letters to U.S. Trade Representative (VT- 7/25/12) and U.S. TPP Chief Negotiator Barbara Weisel (ME- 8/1/12) calling for a carve-out of tobacco from the TPP and commenting on the deficiencies of the tobacco proposal offered publicly by the USTR.

At a TPP negotiating session in August, 2013, the U.S. presented an even weaker proposal, declared by the Maine State Representatives chairing the Citizens Trade Policy Commission as "without legal significance."

Malaysia made an historic proposal at the same meeting, to carve out tobacco from the TPP.

CPATH ♦ Center for Policy Analysis on Trade and Health

Bringing a Public Health Voice to Trade and Sustainable Development

TOBACCO CONTROL AND TRADE AGREEMENTS: STRATEGIES FOR POLICY CHANGE IN THE 21ST CENTURY

This statement reflects views and recommendations that emerged from a consortium meeting convened by the Center for Policy Analysis on Trade and Health (CPATH) and the Center for Tobacco Control Research and Education (CTCRE) at the University of California-San Francisco on February 19, 2013, in San Francisco. Participants identified strategies to advance tobacco control in California and the U.S., and to strengthen public health and medical voices to inform trade policy.

Public health and medical organizations in the U.S. and internationally are increasingly engaged in addressing the nexus between tobacco control and global trade. Trade rules and trade agreements, including present efforts to negotiate the Trans Pacific Partnership (TPP), present challenges to tobacco control, at local, state, and national levels. Tobacco companies have recently accelerated their use of trade rules to attempt to delay and reverse tobacco control measures in the U.S., Australia, Uruguay, Norway, and Ireland. ***In negotiating the TPP, a new agreement for the 21st century, the United States is presented with the opportunity to be a leader to safeguard public health and reduce the enormous burden of disease related to tobacco use.***

The following proposals articulate concerns, goals, and key strategies to achieve them, that were discussed during the consortium meeting. Many have been consistently advanced by the medical, health care, and public health communities.

Concerns:

- ♦ Tobacco is unique, the only legal consumer product that kills when used as intended. Causing six million deaths a year, tobacco use is the leading preventable cause of death worldwide, and a major contributor to the global pandemic of non-communicable diseases.
- ♦ Curtailing tobacco use must be a central element of policies to reduce preventable childhood morbidity and mortality, a key goal of the present U.S. Administration.
- ♦ Trade agreements and trade rules offer the tobacco industry powerful tools to undermine and supersede local, state, and national measures to implement and enforce tobacco control measures.
- ♦ The closed process of negotiating and adopting trade agreements uniquely privileges commercial interests, without the benefit of democratic public dialogue and debate, and review of evidence. Public health principles and perspectives are shut out.
- ♦ Current proposals for a TPP, and a trans-Atlantic U.S.-EU trade agreement, present particular and urgent threats to public health.

Strategies for Creating a 21st Century Trade Agreement:

Incorporating Health-Related Concerns into Global Trade Negotiations and Agreements

We call on the United States to advance a trade proposal in the TPP negotiations that will safeguard public health, advance tobacco control measures that contribute to reducing the enormous burden of disease related to tobacco use, and prevent incursions by the tobacco industry against those measures.

1. Trade agreements must guarantee nations' rights to protect public health from tobacco use.

- **Incorporate reference to the Framework Convention on Tobacco Control (FCTC) in trade agreements.** Acknowledge deference to FCTC principles, as an expression of the international consensus on tobacco control, and affirm the right of nations to protect public health from tobacco and tobacco products in the text of all relevant chapters of trade agreements.
- **Incorporate in the text of each regional and bilateral trade agreement the World Trade Organization (WTO) Doha Declaration on countries' rights to protect public health.** The 2001 WTO Doha Declaration on the TRIPS Agreement and Public Health affirms that WTO members may use "to the full" the flexibilities in the Agreement on Trade-Related Aspect of Intellectual Property Rights (TRIPS) "to protect public health and, in particular, to promote access to medicines for all." This right can and should be extended to tobacco control measures. (Policy Coherence)
- **Strengthen the primacy of public health principles.** Strengthen adoption and implementation of FCTC recommendations within and across nations to protect the public's health from tobacco and tobacco products.

2. The TPP must not undermine the right and ability of participating countries from exercising their domestic sovereignty in order to adopt or maintain measures to reduce tobacco use and to prevent the harm it causes to public health.

- **Exclude tobacco control measures from existing and future trade agreements.** The medical, health care, and public health community has consistently supported removing tobacco, tobacco products, and tobacco control measures from trade agreements as the most effective solution.
- **Remove investor-state dispute settlement (ISDS) provisions.** Eliminate the rights of tobacco and other corporations to contest governments' domestic sovereignty over public health and other policies, and to sue nations directly for financial damages through the global trade arena.

3. We must set trade policy through a transparent process that involves the public.

- **Trade agreements and trade rules which may affect public health should be discussed and debated publicly, and in Congress,** including preventing disease and death from tobacco.
- **Include effective public health representation in setting trade policies** at the national, state, and local levels.

We further propose that advocacy for these goals can be strengthened by identifying and communicating with related constituencies concerned with trade: Labor, environment, access to medicines, sustainable agriculture, sustainable economic development, internet access; policy-makers at the local, state and national levels.

Establishing Endorsements

Organizational Endorsements:

Action on Smoking and Health, Laurent Huber, MSFD, Director; Chris Bostic, MSFS, JD, Deputy Director for Policy
American Academy of Family Physicians, Julie K. Wood, MD, FAAFP, Vice President, Health of the Public and Interprofessional Activities
American Academy of Pediatrics, Jonathan D. Klein, MD, MPH, FAAP, Associate Executive Director and Director, Julius B. Richmond Center of Excellence
American College of Obstetricians and Gynecologists, Barbara Levy, MD, Vice President for Health Policy
American College of Physicians
American Heart Association, American Stroke Association, Terry Sue Mock, Senior Health Systems Policy Director
American Public Health Association, Georges C. Benjamin, MD, FACP, FACEP (E), Executive Director
Center for Policy Analysis on Trade and Health (CPATH): Joe Brenner, MA, Co-Director; Ellen R. Shaffer, PhD MPH, Co-Director; Sohil Sud, MD, MA, Senior Fellow, CPATH, Senior Pediatric Resident, UCSF
San Francisco Medical, Society Steve Heilig, MPH
San Francisco Tobacco Free Coalition

Individual Endorsements:

Phillip Gardiner, Dr.PH, Program Officer, Policy and Regulatory Sciences, Tobacco Related Disease Research Program*
Stanton Glantz, PhD, Director, Center for Tobacco Control Research and Education, University of California, San Francisco*
Richard L. Barnes, JD, Health Sciences Clinical Professor; Eric Crosbie; Mariaelena Gonzalez, PhD; Heikki Hiilamo, PhD; Lauren Lempert, JD MPH
Holly Jarman, PhD, Research Assistant Professor, Center for Law, Ethics & Health / Department of Health Management & Policy, University of Michigan School of Public Health*
Wendy Max, PhD, Professor of Health Economics, Co-Director, Institute for Health & Aging, University of California, San Francisco*
Michael Ong, MD PhD, Associate Professor-in-Residence of Medicine, University of California, Los Angeles*
Marty Otañez, PhD, Assistant Professor, Anthropology Department, University of Colorado, Denver*
Heather Wipfli, PhD, Associate Director, USC Institute for Global Health, Assistant Professor, Department of Preventive Medicine and School of International Relations*
Donald Zeigler, PhD, Adjunct Associate Clinical Professor, University of Illinois at Chicago School of Public Health. Retired Director of Prevention and Healthy Lifestyles, American Medical Association*

* Organizations listed for identification purposes only

American Academy of Pediatrics



DEDICATED TO THE HEALTH OF ALL CHILDREN™

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President Barack Obama
The White House
1600 Pennsylvania Ave NW
Washington DC 20500

CC: Ambassador Michael Froman,
United States Trade Representative

November 12, 2013

Dear Mr President,

As California pediatricians, we write to support ongoing calls for the United States Trade Representative (USTR) to recognize tobacco as a dangerous product unworthy of the same protections that trade agreements confer to other goods and services. Accordingly, we ask that your administration and the USTR endorse efforts to exclude tobacco products from the Trans Pacific Partnership, a major trade agreement currently being negotiated between the US and many Pacific Rim nations.

In our clinics and hospitals, we see the devastating impact of tobacco on our nation's children every day. Babies exposed to tobacco smoke suffer from disproportionately higher rates of prematurity, birth defects, and sudden death. They grow up to become toddlers who endure asthma exacerbations, pneumonia, and ear infections far more frequently than their peers. Many of our teenage patients who experiment with cigarettes also face dire lifelong consequences: 90% of adult daily smokers initiated before the age of 18 years.

And although there is more work to be done, implementation of evidence-based health policies—including raising tobacco prices, banning candy- and fruit-flavored cigarettes, and restricting tobacco advertising—have played a role in curbing tobacco's plague on this nation. Over the past 50 years, we have cut the percentage of US adult smokers in half. Youth smoking has also declined significantly, from a peak in 1997 of 36% of high school students admitting to having smoked a cigarette in the past 30 days, to 18% in 2011.

However, tobacco companies and tobacco-producing nations are turning to global trade rules to block implementation of such policies. In the US, our ban on fruit-flavored cigarettes was found to violate World Trade Organization rules. Uruguayan laws that mandated placement of graphic warning labels on cigarette packages are being contested at a World Bank trade court; Philip Morris argues that the warning labels infringe upon the company's intellectual property rights guaranteed under a bilateral trade agreement. Philip Morris is also disputing Australia's plain packaging laws on similar grounds.

As the United States works toward crafting a new trade agreement, we request that it be built in a manner that protects domestic health laws. Explicitly excluding tobacco products from the Trans Pacific Partnership would achieve this goal by preventing tobacco companies from exploiting the TPP to undermine local tobacco control policies, reaffirming tobacco's status as a uniquely destructive substance undeserving of the same protections offered to other goods and services.



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We stand in strong support of the 56 United States Congressional Representatives (in their letter dated October 30, 2013) and countless medical and health advocacy organizations who remain excited about this golden opportunity to safeguard children around the world from the ills of tobacco and offer them a healthier life. On behalf of our patients and their families, we thank you for considering our perspective.

Sincerely,

Gena Lewis, MD
President

California Chapter 1, American Academy of Pediatrics, (CA1, AAP)
CA1, AAP represents over 2,000 pediatrician members who represent communities from the northern California border to the central San Joaquin Valley.



Association Of State And Territorial Health Officials
2231 Crystal Drive, Suite 450 | Arlington, Virginia 22202
(202) 371-9090 | www.astho.org

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

Dear President Obama:

We write today to express our deep concern regarding provisions being advanced by the United States Trade Representative (USTR) for the Trans-Pacific Partnership (TPP) Agreement regarding tobacco.

Tobacco use remains the leading preventable cause of death in the United States, accounting for approximately one of every five deaths (438,000) each year. More deaths are caused by tobacco use than from HIV/AIDS, illegal drug use, alcohol use, motor vehicle injuries, suicides, and murders combined. Each year, tobacco use results in \$157 billion in direct and indirect medical costs.


To most effectively combat tobacco-related morbidity and mortality and ensure significant program outcomes, tobacco use prevention and control programs must be fully integrated and supported within state health agencies. Infrastructure must be built and maintained for these programs, as well as adequate organizational and financial support.

The Association of State and Territorial Health Officials' (ASTHO) members have a strong history of supporting programs that improve tobacco prevention and control efforts in their states. ASTHO is the national nonprofit organization representing public health agencies in the United States, the U.S. Territories, and the District of Columbia. ASTHO members, the chief health officials of these jurisdictions, formulate and influence sound public health policy and ensure excellence in state-based public health practice. ASTHO members, along with our key public health partners and 20 affiliate organizations, represent the leaders in state, territorial, and local health departments.

We are deeply concerned that the language proposed by the USTR undermines the efforts of states and the nation to effectively address tobacco use, conduct tobacco control programs and enforce tobacco policies. We request your leadership to ensure that tobacco control measures and tobacco products are "carved out" of existing and future trade agreements, including the Trans-Pacific Partnership (TPP) currently being negotiated. The "carve out" language must be

broad in scope as it relates to tobacco prevention and control and unambiguous in its intent. It is critical that trade agreements protect the nation's health by not superseding current and future public health efforts.

Sincerely,

A handwritten signature in black ink that reads "Paul E Jarris, MD". The signature is written in a cursive style with a large initial 'P' and 'J'.

Paul Jarris, MD, MBA
Executive Director
Association of State and Territorial Health Officials



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Roberta Lawson
RDH, MPH
Executive Administrator

October 30, 2013

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Butte County

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San Bernardino County

Lynn Silver Chalfin, MD, MPH
Sonoma County

Dr. Ellen Shaffer
Co-Director, Center for Policy Analysis on Trade and Health/CPATH
San Francisco Presidio
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Phone 415-922-6204

Dear Dr. Schaffer:

In response to your request for advisement on tobacco control and the Trans-Pacific Partnership (TPP) agreement, the California Conference of Local Health Officers (CCLHO) recommends support for strong tobacco control measures in this agreement to protect the public's health.

In May 2012, the U.S. Trade Representative (USTR) announced a proposal that would protect a nation's sovereignty in carrying out tobacco control efforts and would recognize the unique, harmful effects of tobacco. It is disappointing that this proposal has since been abandoned. Instead, the new USTR proposal would leave the administration's commitment to reduce tobacco use and ability to implement the Family Smoking Prevention and Tobacco Control Act vulnerable to international trade challenges. Additionally, the new proposal would undermine the Framework Convention on Tobacco Control, the world's only public health treaty, and threaten the global health effort to reduce tobacco use worldwide.

Malaysia recently offered a proposal for a complete carve-out of tobacco control measures from the trade agreement, which would grant real protection for participating countries to enact and maintain tobacco use reduction efforts. We recommend encouraging the USTR to work with Malaysia and others to support a proposal that provides the greatest protection against future acts of subversion.

As you know, tobacco use continues to be the leading cause of preventable death in the U.S. and worldwide, accounting for six million deaths around the world every year. Tobacco use costs our nation \$96 billion in direct medical spending and \$97 billion in lost productivity annually. The TPP agreement provides us with the opportunity to lead the world in reducing the burden of tobacco use-related deaths and diseases here and abroad, and we recommend encouraging the administration to ensure that the strongest possible public health measures are included in the trade agreement.

CCLHO was established in statute in 1947 to advise the California Department of Health Services (now California Department of Public Health), other departments, boards, commissions, and officials of federal, state and local agencies, the Legislature and other organizations on all matters affecting health. CCLHO membership consists of all legally appointed physician health officers in California's 61 city and county jurisdictions.

Thank you for your request. If you have questions, please feel free to contact me at Muntu.davis@acgov.org or (510) 267-8010.

Sincerely,

Muntu Davis, MD, MPH
President, California Conference of Local Health Officers



California Public Health Association – North

An affiliate of the American Public Health Association

October 18, 2013

The Honorable Michael Froman
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Froman:

On behalf of the California Public Health Association-North (CPHA-N), I am writing to urge the administration to ensure that strong tobacco control measures to protect the public's health are preserved in the Trans-Pacific Partnership agreement.

CPHA-N supports the letter from our national organization, the American Public Health Association (APHA) dated October 2, 2013. APHA is a diverse community of public health professionals who have championed the health of all people and communities around the world for more than 140 years.

In May 2012, the U.S. Trade Representative announced a proposal that would protect a nation's sovereignty in carrying out tobacco control efforts and would recognize the unique, harmful effects of tobacco. It is disappointing that this proposal has since been abandoned. Instead, the new USTR proposal would leave the administration's commitment to reduce tobacco use and ability to implement the Family Smoking Prevention and Tobacco Control Act vulnerable to international trade challenges. Additionally, the new proposal would undermine the Framework Convention on Tobacco Control, the world's only public health treaty, and threaten the global health effort to reduce tobacco use worldwide.

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Tobacco use continues to be the leading cause of preventable death in the U.S. and worldwide, accounting for six million deaths around the world every year. Tobacco use costs our nation \$96 billion in direct medical spending and \$97 billion in lost productivity annually. The TPP agreement provides us with the opportunity to lead the world in reducing the burden of tobacco use-related deaths and diseases here and abroad, and we urge the administration to ensure that the strongest possible public health measures are included in the trade agreement.

I look forward to working with you on this important public health issue.

Sincerely,

Jacquolyn Duerr, MPH
President, CPHA-N

cc: American Public Health Association
Center for Policy Analysis on Trade and Health



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 Statesⁱ 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 annuallyⁱⁱ 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,ⁱⁱⁱ 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.^{iv} 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.^v 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.

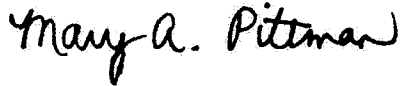
Proposals that allow dangerous loopholes to remain in the TPP would continue to jeopardize tobacco control, and could measurably and negatively affect public health. Permitting trade challenges such as Indonesia's on the basis of the product's country of origin, or offering a "safe harbor" for consideration 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 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

ⁱ 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.

ⁱⁱ 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.

ⁱⁱⁱ 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>

^{iv} 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

^v 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.bmjournals.com/cgi/reprint/14/suppl_2/ii19



American
Public Health
Association

PROTECT, PREVENT, LIVE WELL

800 I STREET, N.W. | WASHINGTON, DC | 20001-3710 | WWW.APHA.ORG
202-777-APHA (2742) | FAX: 202-777-2594 | comments@APHA.org

October 2, 2013

The Honorable Michael Froman
United States Trade Representative
Washington, DC 20508

Dear Ambassador Froman:

On behalf of the American Public Health Association, a diverse community of public health professionals who have championed the health of all people and communities around the world for more than 140 years, I write to urge the administration to ensure that strong tobacco control measures to protect the public's health are preserved in the Trans-Pacific Partnership agreement.

In May 2012, the U.S. Trade Representative announced a proposal that would protect a nation's sovereignty in carrying out tobacco control efforts and would recognize the unique, harmful effects of tobacco. It is disappointing that this proposal has since been abandoned. Instead, the new USTR proposal would leave the administration's commitment to reduce tobacco use and ability to implement the Family Smoking Prevention and Tobacco Control Act vulnerable to international trade challenges. Additionally, the new proposal would undermine the Framework Convention on Tobacco Control, the world's only public health treaty, and threaten the global health effort to reduce tobacco use worldwide.

Malaysia recently offered a proposal for a complete carve-out of tobacco control measures from the trade agreement, which would grant real protection for participating countries to enact and maintain tobacco use reduction efforts. We encourage the USTR to work with Malaysia and others to support a proposal that provides the greatest protection against future acts of subversion.

Tobacco use continues to be the leading cause of preventable death in the U.S. and worldwide, accounting for six million deaths around the world every year. Tobacco use costs our nation \$96 billion in direct medical spending and \$97 billion in lost productivity annually. The TPP agreement provides us with the opportunity to lead the world in reducing the burden of tobacco use-related deaths and diseases here and abroad, and we urge the administration to ensure that the strongest possible public health measures are included in the trade agreement.

I look forward to working with you on this important public health issue.

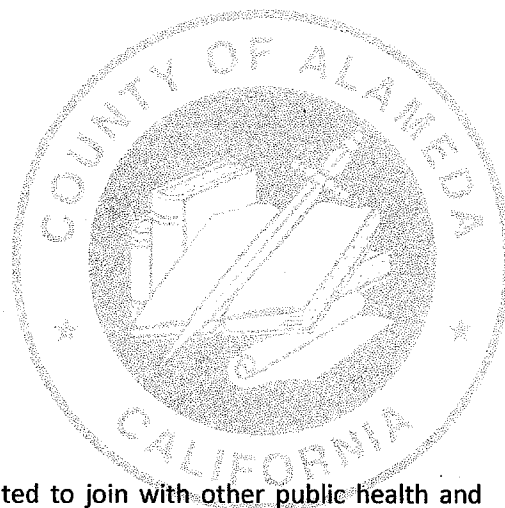
Sincerely,

A handwritten signature in black ink that reads "Georges C. Benjamin". The signature is written in a cursive, flowing style.

Georges C. Benjamin, MD, FACP, FACEP (E)
Executive Director

September 13, 2013

President Barack Obama
The White House
Washington, D.C.



Dear Mr. President:

The Alameda County Public Health Commission last night voted to join with other public health and medical professionals and organizations in urging the US Trade Representative dealing in the current Trans-Pacific Partnership (TPP) negotiations to adopt the Malaysian proposal concerning tobacco products.

Corporate interests are important but should be weighed against public interest, which we believe are paramount. Too many people here in the United States and worldwide suffer and die from the poison of tobacco products. No agreement should negate the efforts of local or national communities to limit or control the dissemination of disease, including the conditions that tobacco produces. Too many times, corporations have used provisions of Free Trade Agreements to challenge public health provisions in the name of profit; we are hoping that the TPP will not open the door to further such legal actions at the cost of human sickness and lives.

Thank you for giving your serious consideration to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Laurence J. Platt".

Laurence J Platt, MD, MPH
Chair, Tobacco Use Prevention Subcommittee,
Alameda County Public Health Commission

CC:

Center for Policy Analysis on Trade and Health
Health Officers Association of California
Alameda County Board of Supervisors
Representative Barbara Lee
Senator Barbara Boxer
Senator Diane Feinstein
State Senator Ellen Corbet
State Senator Loni Hancock
Assembly Member Rob Bonta
Assembly Member Nancy Skinner
Assembly Member Joan Buchanan
Assembly Member Bill Quirk

September 11, 2013

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

Dear Mr. President:

The Center for Policy Analysis on Trade and Health (CPATH) together with the American Academy of Family Physicians (AAFP), American Academy of Pediatrics (AAP), American College of Physicians (ACP), and the American Congress of Obstetricians and Gynecologists (ACOG) respectfully request your leadership to assure that tobacco control measures and tobacco products are “carved out” of existing and future trade agreements, including the Trans-Pacific Partnership (TPP), a 12-nation agreement currently under negotiation.

Tobacco use is the leading preventable cause of death in the United States¹ and worldwide, and the only legal substance that, when used as intended, kills people, causing 6.3 million deaths a year. In addition, cigarette smoking is responsible for about one in five deaths annually² and a major contributor to the global pandemic of tobacco-related non-communicable diseases. All of our organizations support the WHO Framework Convention on Tobacco Control, notably Article 5.3 on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry.

Curtailing tobacco use must be a central element of policies to reduce preventable childhood,³ adolescent and adult tobacco-related morbidity and mortality, a key goal of the Administration.

Trade agreements and trade rules offer the tobacco industry powerful tools to undermine and supersede local, state, and national measures to implement and enforce tobacco control measures. Tobacco companies have recently accelerated their use of trade rules to attempt to delay and reverse tobacco control measures in the U.S., Australia, Uruguay, Norway, and Ireland. Eliminating these loopholes is of the utmost urgency.

We call on the United States to support a trade proposal in the TPP negotiations that will safeguard public health, advance tobacco control measures that contribute to reducing the enormous burden of disease related to tobacco use, and prevent incursions by the tobacco industry against those measures. Trade agreements must guarantee nations' rights to protect public health from tobacco use. A country's own standards should be determinative, as they currently are in the case of national security.

The TPP must not undermine the right and ability of participating countries from exercising their domestic sovereignty in order to adopt or maintain measures to reduce tobacco use and to prevent the harm it causes to public health.

We are aware that Malaysia, one of our TPP trading partners, has announced its commitment to carving out tobacco.

Our organizations have consistently supported removing tobacco control measures and tobacco products from trade agreements and want assurance that tobacco control measures will not be subject to challenge through the TPP and all future trade agreements.

We urge the U.S. to exercise leadership in diplomacy and in public health by agreeing to carve out tobacco control measures and tobacco products from the TPP.

Sincerely,

Center for Policy Analysis on Trade and Health (CPATH)
American Academy of Family Physicians (AAFP)
American Academy of Pediatrics (AAP)
American College of Physicians (ACP)
American Congress of Obstetricians and Gynecologists (ACOG)

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

¹ 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.

² 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.

³ 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>



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Kat DeBurgh, MPH
Assistant Director

Dalia Navarro
Administrative Assistant

September 6, 2013

Ambassador Michael Froman
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Froman:

The Health Officers Association of California, which represents the physician health officers who oversee public health in California's 61 city and county jurisdictions, opposes the new text concerning tobacco and public health measures under consideration by the United States Trade Representative (USTR) for tabling in the Transpacific Partnership Agreement (TPPA) negotiations currently underway.

This proposal is a major retreat from the policy that was drafted and widely shared in great detail by USTR in 2012, which would have created a "safe harbor" for some tobacco control regulations, and which the USTR itself stated would "explicitly recognize the unique status of tobacco products from a health and regulatory perspective."

Instead, the current USTR proposal on tobacco as it relates to the TPPA is to reaffirm the existing language in the General Agreement on Tariffs and Trade (GATT), which establishes a nation's right to enact health and safety measures, including tobacco measures. This wording is too weak to be legally significant. It fails to cover the investment chapter - where the greatest litigation threat to tobacco-control measures is posed, as litigation against Uruguay and Australia demonstrates.

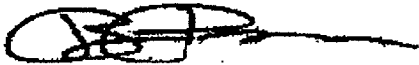
Current USTR proposal on tobacco for the TPPA leaves the door wide open for the future use of Investor-State Dispute Resolution (ISDR) mechanisms by large international corporations to challenge and overturn federal, state and local laws and regulations which govern tobacco control measures. It is our strongly held view that the tenants of the proposed TPPA should not be used by the tobacco industry to circumvent existing or evolving public health law - either

in the United States or in other TPPA member nations. Tobacco control measures are a firmly established tenant of U.S. national, state, and local law. These important public health measures continue to receive the broad support of elected officials on every level regardless of political affiliation.

Because of its unique relationship with both individual health and public health, tobacco should be carved out from the trade provisions of the TPPA. The efforts of individual nations to control tobacco and combat its adverse health effects should not be interfered or impeded in any way by provisions of the TPPA or any other international trade agreement.

Please feel free to call on us for further information regarding our position on this vitally important public policy issue.

Sincerely,

A handwritten signature in black ink, appearing to read "BP", with a long horizontal flourish extending to the right.

Bruce Pomer, MPA
Executive Director

cc President Barack Obama
David Agnew, Deputy Assistant to the President and Director of Intergovernmental Affairs
Senator Dianne Feinstein
Senator Barbara Boxer

U.S. Trade Proposal Caves to Big Tobacco

U.S. Medical, Public Health, Public Interest Groups Urge Protection for Health & Wealth

The U.S. Trade Representative intends to introduce a proposal on tobacco at negotiations to create the Trans Pacific Partnership (TPP), a trade agreement among 12 nations, at meetings in Brunei this week. The proposal capitulates to multinational tobacco corporations, jeopardizing the nation's health and economic welfare.

Tobacco companies have recently accelerated their use of trade rules to attempt to delay and reverse tobacco control measures that limit marketing in the U.S., Australia, Uruguay, Norway, and Ireland. Trade rules grant corporations rights to contest nations' public health and other policies. Countries that lose trade challenges face stiff financial penalties, payable to the complaining corporation.

Public health and medical advocates in the U.S. and abroad have urged the USTR to exclude tobacco control protections from trade challenges under the TPP. The USTR informally floated a policy in 2012 that could create a "safe harbor" for some tobacco control regulations. Many legal and medical experts noted that tobacco companies could easily exploit the remaining substantial loopholes.

But the tobacco industry marshaled opposition claiming that the U.S. proposal might actually reduce tobacco use, tobacco-related deaths, and tobacco sales. Other corporations backed up Big Tobacco, expressing concern that addressing the uniquely lethal effects of tobacco in trade agreements could set a precedent for reining in their own practices. On Aug. 15, USTR announced it would not advance that proposal.

The new proposal offers less than a fig leaf for trade rules that grant corporations rights over public health protections, and often eliminate them. It proposes simply to refer to the TPP the general health exception described in two multilateral agreements under the jurisdiction of the World Trade Organization (WTO): Article XX of the General Agreement on Tariffs and Trade (GATT), and Article XIV of the General Agreement on Trade in Services (GATS), and inserts a statement into the exception that repeats the self-evident observation that tobacco measures are health measures. These exceptions offer significant loopholes that favor companies asserting trade charges.¹ The exceptions do not apply to investment claims that tobacco companies could bring under the TPP. Even in trade disputes, the exceptions apply with great uncertainty in very limited situations. They require multi-year, multi-million-dollar litigation to mount a defense – a burden that many countries cannot afford. The tobacco industry exploits the cost and uncertainty of using the exceptions. (As a regional agreement, the TPP claims some latitude in varying from WTO rules.)

It also tacks on an additional layer of consultation among Health Ministers in the case of tobacco-related trade challenges between nations, added to the procedures and rules already provided. In effect, it conscripts health officials to consult in the context of trade rules they had no role in shaping, over trade challenges they did not initiate and have no power to adjudicate.

Tobacco use costs the U.S. far more in lives and health care expenses than tobacco farming or manufacturing contribute to the economy.

- Tobacco use kills 1,200 Americans daily. Cigarette smoking is responsible for an estimated \$193 billion in annual health-related economic losses in the U.S. (nearly \$96 billion in direct medical costs and an additional \$97 billion in lost productivity).²
- In contrast, total tobacco exports generate 0.10 percent (one tenth of one percent) of total U.S. annual exports (.07% unmanufactured, and .03% manufactured).³ Tobacco manufacturing has declined exponentially in the U.S., and tobacco farming is also in decline, due in part to U.S. programs intended to facilitate the transition to more sustainable crops.⁴

- Exports of cigarettes and other U.S.-manufactured tobacco products dropped from \$3.9 billion in 1999 to \$488 million in 2011, as large U.S. manufacturers sold off their international businesses or formed subsidiaries located abroad.⁵ Ninety-eight percent of exported U.S. cigarettes go to 5 countries, only one of which is a TPP partner (Japan).³ Lower tariffs would lower the price of tobacco products, resulting in cheaper prices and increased consumption and use, especially among younger people. For this reason, international health policy and U.S. law prohibit the U.S. from using trade agreements to promote the sale or export of tobacco products. Yet the U.S. proposes to eliminate tariffs on tobacco products. Other TPP partners can reasonably object to encouraging the import of U.S. brand cigarettes.

Tobacco is the only legal consumer product that kills when used as intended. Tobacco use is the leading preventable cause of death worldwide, accounting for 6 million preventable deaths annually,⁶ and is a major contributor to the global pandemic of non-communicable diseases, including childhood morbidity and mortality. As a unique product, it must be treated differently from other products and services that are traded across borders.

We urge TPP Partner countries to advance proposals that promote public health and stem preventable deaths from diseases related to tobacco, by guaranteeing nations' sovereign domestic rights and abilities to adopt or maintain measures to reduce tobacco use and to prevent tobacco-related deaths and diseases:

1. **Exclude tobacco control measures from existing and future trade agreements.**
2. **Do not request or agree to lower tariffs on tobacco leaf or products.**
3. **Remove investor-state dispute settlement (ISDS) provisions; these grant tobacco corporations rights to contest nations' public health and other policies directly for financial damages through the global trade arena.**
4. **Set trade policy through a transparent public process.**

President Obama's 2013 State of the Union message promised to lead an economy for the 21st Century, to reduce preventable deaths among youth, and to conduct policy transparently. Trade negotiations that expand corporate rights and powers, while undermining the public's health, cannot advance sustainable economic growth or wellbeing.

Originating Organizations

Action on Smoking and Health (ASH), Chris Bostic, MSFS, JD, Deputy Director for Policy
American College of Obstetricians and Gynecologists, Barbara S. Levy, Vice President, Women's Health Policy

American College of Physicians

Center for Policy Analysis on Trade and Health (CPATH), Ellen R. Shaffer, PhD, and Joe Brenner, MA, Co-Directors

Corporate Accountability International, John Stewart, Campaign Director, Challenge Big Tobacco
Human Rights and Tobacco Control Network (HRTCN), Carolyn Dresler, MD, Chair

International Association for the Study of Lung Cancer, Mike Cummings, Chair, Tobacco Control Committee

Organizations 8-25-13**American Medical Students Association****Boston Women's Health Book Collective/ Our Bodies Ourselves.** Judy Norsigian, Executive Director**Prevention Institute,** Larry Cohen, Executive Director**Physicians for Social Responsibility,** San Francisco Bay Area Chapter, Robert Gould, MD, President**NextGenU,** Erica Frank, MD MPH, President

¹ R. Stumberg, Safeguards for Tobacco Control: Options for the TPPA. *America Journal of Law and Medicine*, 39 (213); 382-441.

² 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;57(45):1226–8 [accessed Aug. 17, 2013].

³ FDA, Report to Congress. United States Tobacco Product Exports That Do Not Conform to Tobacco Product Standards. 3/8/13.

⁴ <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=toba&topic=landing>

⁵ U.S. Government Accountability Office report, *"Illicit Tobacco: Various Schemes are Used to Avoid Taxes and Fees,"* accessed August 18, 2013, from www.gao.gov/assets/320/316372.pdf

⁶ Thomas H. Frieden. http://www.upi.com/Health_News/2012/06/14/US-smoking-related-diseases-cost-96B/UPI-56571339724113/#ixzz2cH5erl4c

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STATE OF MAINE

Citizen Trade Policy Commission

August 22, 2013

Ambassador Michael Froman
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Froman:

The Maine Citizen Trade Policy Commission (CTPC) is authorized by Maine State law [10 MRSA §11(3)]“... to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.” In carrying out its statutory mission, the CTPC has closely been following various developments relating to the proposed Transpacific Partnership Agreement (TPPA).

As chairs of the CTPC, we write to inform you of our deep concern about the new text concerning tobacco and public health measures under consideration by the USTR for tabling in the TPPA negotiations currently underway. This proposal is a major retreat from the policy that was drafted and widely shared in great detail by USTR in 2012, which would have created a “safe harbor” for some tobacco control regulations, and which the USTR itself stated would “explicitly recognize the unique status of tobacco products from a health and regulatory perspective”.

Based on our most recent understanding, the current USTR proposal on tobacco as it relates to the TPPA is to reaffirm that existing language in the General Agreement on Tariffs and Trade (GATT) which establishes a nation’s right to enact health and safety measures includes tobacco measures. While the Maine CTPC had reservations about the earlier USTR proposal, which failed to recognize and protect the central role of U.S. state governments in enacting and enforcing tobacco control regulations and which contained numerous loopholes, the new proposal is so weak that it fails to be legally significant.

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/opla/citpol.htm>

First, USTR's proposal is not legally significant because it simply states the obvious. As the WTO dispute panel noted in the Indonesia clove cigarettes dispute, "It is self-evident that measures to reduce youth smoking are aimed the protection of human health ...". Second, it is not legally significant because as a general exception, it does not cover the investment chapter – where the greatest litigation threat to tobacco-control measures is posed, as litigation against Uruguay and Australia demonstrates. Also, assuming that TPPA drafters follow the KORUS model, general exceptions do not apply to the chapter on intellectual property and perhaps other new chapters such as those on regulatory coherence and state-owned enterprises.

We want to particularly emphasize our grave concern that the current USTR proposal on tobacco for the TPPA leaves the door wide open for the future use of Investor-State Dispute Resolution (ISDR) mechanisms by large international corporations to challenge and overturn federal, state and local laws and regulations which govern tobacco control measures. It is our strongly held view that the tenants of the proposed TPPA should not be used by the tobacco industry to circumvent existing or evolving public health law – either in the United States or in other TPPA member nations. We note that tobacco control measures are a firmly established tenant of current U.S. law and continue to receive the broad support of elected officials on every level regardless of political affiliation.

Further, we are not impressed with the consultation provision proposed by USTR as we understand it. This provision has no teeth in that even if the consulting parties agree, consultation cannot block a challenge to a tobacco regulation. In any event, this consultation is irrelevant to an investor-state challenge, wherein lies the greatest threat to chill or prevent regulation. In addition, from a U.S. state perspective, this provision is useless in that state health or other sub-federal tobacco regulatory authorities are not included in any consultation.

Under the circumstances, it would be better to not offer this text at all than to give the false impression that the United States is serious about protecting government authority within the TPPA to regulate tobacco to protect health.

In a previous letter dated August 1, 2012, the CTPC wrote to your predecessor Ambassador Ron Kirk, regarding our strongly held convictions about how tobacco should be treated in the TPPA. Among other things, we stated the following:

- The CTPC favors a complete "carve out" of tobacco from the trade provisions of the TPPA; in other words, we would prefer that any regulations or laws pertaining to tobacco be completely excluded from the TPPA. The CTPC believes strongly that the efforts of individual nations to control tobacco and combat its adverse health effects should not be interfered or impeded in any way by provisions of the TPPA or any other international trade agreement;
- Absent a complete "carve out" of tobacco from the TPPA, the CTPC favors an approach which modifies the purported compromise proposal being made by the USTR; more specifically, the CTPC favors an approach which ensures that all federal and state laws and regulations pertaining to tobacco regulation are not subject to jurisdiction under the TPPA and further that any tobacco-related provisions of the TPPA embrace an approach which minimizes potential litigation be it through local, state or federal court and the possible use of 'investor-state' dispute settlement systems; and

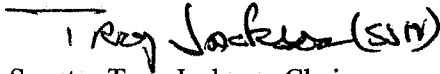
- Finally, the CTPC requests that the USTR develop a clear public statement on the specifics on the specific elements of a tobacco-related provision, as they are proposed by the USTR for consideration as a part of the TPPA.

In speaking for the CTPC, we can safely say that our position has not changed and that we are concerned that the current alternative being proposed by the USTR is woefully inadequate and may in fact be counterproductive towards achieving the goal of protecting the public health and welfare through our federal, state and local laws and regulations which govern tobacco control measures. Given the about-face represented by the USTR's current tobacco proposal, we urge you to consult widely before tabling any text on this topic, and suggest that a public hearing on the treatment of tobacco in the TPPA would be an effective way to convene the relevant parties and gather the information needed to draft an effective proposal that truly protects public health and in particular, the health of our youth.

In closing, at the very least, we favor returning to the earlier USTR "safe harbor" proposal as at least a starting point for further negotiations, although we would prefer a more comprehensive approach which goes further to exempt or "carve out" tobacco control measures from the proposed TPPA.

Please feel free to call on either of us for further information regarding our position on this vitally important public policy issue.

Sincerely,



Senator Troy Jackson, Chair



Representative Sharon Anglin Treat, Chair

c.c. President Barack Obama
Senator Susan Collins
Senator Angus King
Representative Michael Michaud
Representative Chellie Pingree
Maine Attorney General Janet Mills
David Agnew, Deputy Assistant to the President and Director of Intergovernmental Affairs

IASLC



INTERNATIONAL ASSOCIATION FOR THE STUDY OF LUNG CANCER

2011-2013
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**The Honorable Ron Kirk
United States Trade Representative
600 17th Street, NW
Washington DC 20508**

May 16, 2012

Re: Exclusion of Tobacco and its Products from Negotiations on the Trans Pacific Partnership Trade Agreement

Dear Ambassador Kirk:

On behalf of the members of the International Association for the Study of Lung Cancer (IASLC), I am writing to comment on the proposed Trans Pacific Partnership Agreement (TPP). The IASLC is the only organization with global reach representing all healthcare professionals involved in the treatment and research of lung cancer. Over 70% of all lung cancers are caused by smoking - and consequently, are preventable.

The IASLC strongly urges you to ensure that tobacco products are excluded from protection within the provisions of the TPP and any other Free Trade Agreements. Accordingly, tobacco control measures would be exempted from trade rules protecting intellectual property including trademarks as well as from any investor-state dispute resolution processes. Exclusion of tobacco would also not force trading partners to reduce or eliminate their current applied tariffs on these products. US trade negotiators should not ask any nation to weaken its current anti-smoking/tobacco control strategies in the interest of promoting free trade. Moreover, in order to help your office safeguard health while promoting economic growth, the medical profession and our colleagues in public health would benefit from being well informed about trade policy such as by full public health representation on trade advisory committees.

Tobacco currently claims almost 6 million lives per year to lung cancer alone, and this is predicted to climb to 13.1 million in 2030. Around 70% of these deaths will occur in developing economies. The United States is home to one of the leading transnational tobacco corporations. No country should be in the business of supporting and exporting a preventable cause of death and disease.

Thank you for consideration of these public health concerns.

Sincerely,


**Peter Goldstraw, MB, FRCS
President IASLC**

Enclosure

Background Information

The International Association for the Study of Lung Cancer (IASLC) is commenting on the proposed Trans Pacific Partnership Agreement (TPP), an Asia-Pacific regional trade agreement currently being negotiated among the United States and eight other partners. The United States' TPP negotiating partners are Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore and Vietnam. The US objective is to expand this initial group to include additional countries throughout the Asia-Pacific region.

IASLC strongly urges the US Trade Representative (USTR) to ensure that all tobacco products, including tobacco, cigarettes, cigars, smokeless tobacco, and other tobacco products are excluded from all provisions of this and any other Free Trade Agreement (FTA), that tobacco control measures be specifically exempted from any trade rules protecting intellectual property including trademarks and also exempted from any investor-state dispute resolution processes, and that our trading partners current applied tariffs on these products not be reduced or eliminated.

US trade negotiators should not ask any nation to weaken its current tobacco control strategies. This request is consistent with the policy that 'international trade agreements recognize that health and public health concerns take priority over commercial interests, and that trade negotiations be conducted in a transparent manner with full attention to health concerns and participation by the public health community. Other credible groups with whom the IASLC has worked share this concern, such as the Center for Policy Analysis on Trade and Health (CPATH).(1)

Cigarettes are the leading preventable cause of death and disease in the world. Smoking, and in particular teenage smoking, is a serious public health problem in developed and developing nations and contributes to the global burden of noncommunicable diseases (NCD). The World Bank estimates that the total health care cost from smoking typically constitutes between 1 and 1.5 percent of a country's GDP. The US and TPP partners all recognized this public health tragedy when each signed the world's first public health treaty, the Framework Convention on Tobacco Control (FCTC). These eight nations, but not yet the US, also have ratified the FCTC. It would be inconsistent with American support for the FCTC and with those nations' obligations under the FCTC for our country to negotiate a trade agreement with TPP partners that would lower tariffs on tobacco and increase the incidence of smoking.

Increased cigarette prices are the single most effective strategy for reducing smoking, particularly among teenagers and young adults. Indeed, the FCTC and all tobacco control evidence based documents have found that price and tax measures are an effective and critical means of reducing the tobacco consumption by various segments of the population, in particular young persons. The FCTC provides that its parties should maintain measures which may include tax and price policies on tobacco products so as to reduce tobacco consumption, and prohibit or restrict duty-free sales of tobacco products to travelers. Reducing prices for cigarettes by cutting tariffs on tobacco or cigarettes will only undercut this critical evidence-based health initiative.

Background Information

Several countries have experienced significant success in motivating current smokers to quit by using graphic warning labels. The FCTC supports international tobacco controls intended to reduce the demand for tobacco, including, bans on 'low tar' or 'mild' labeling, designs of warning labels, and restriction on mass-media advertising. Furthermore, Australia has proposed plain packaging on cigarette packages. However, the tobacco industry is using the investor-state dispute mechanisms available through trade agreements to challenge these effective tobacco control measures, relying on the intellectual property provisions related to trademarks enshrined in some existing bilateral investment treaties. The US has already exempted other harmful products such as firearms from coverage by intellectual property rules and investor-state challenges. This should be our consistent position with regard to tobacco products, leaf tobacco and to alcohol.

Finally, countries' strategies to limit tobacco use are likely to legitimately reflect conditions that vary among countries. One example is the U.S. ban on particular flavored cigarettes known to be gateway products for youths, including clove cigarettes. The World Trade Organization has found that the ban violates WTO rules insisting on equal treatment of local and foreign cigarette manufacturers. This case illustrates that WTO rules are currently unsuitable for evaluating and influencing domestic regulations related to tobacco control.

Removing trade barriers may be a desirable objective when the products being traded are beneficial, but tobacco is not a beneficial product. Cigarettes are the only legally available consumer product that kills through its intended normal use. Congress has enacted the Doggett Amendment in the United States Trade Representative's (USTR) since 1998 because it does not want the USTR to promote tobacco or cigarette exports. The Amendment and Executive Order 13193 also forbid government agencies, including USTR, from seeking to reduce or remove non-discriminatory restrictions on the marketing and advertising of tobacco products. Even though the USTR does not generally negotiate with other countries specifically to benefit United States tobacco sales, if tobacco and tobacco products are not excluded from the duty reductions in all future FTAs, duty reductions will have the effect of promoting sales of American tobacco and tobacco products.

It is imperative that the United States play a leadership role to reduce tobacco use and its devastating consequences around the world. Accordingly, notwithstanding any language to the contrary, nothing in the TPP should block, impede, restrict, or modify the ability of any party to take or maintain any action, including tariffs or domestic content requirements, relating to tobacco agriculture and/or manufactured tobacco that is intended or expected by the trading party to prevent or reduce tobacco use or its harms or that is reasonably likely to prevent or reduce use or harms. Moreover, if there occurs a conflict between provisions of this TPP agreement and any party's efforts to comply with the FCTC, the terms of the FCTC must prevail. Trade liberalization should not trump the goal of saving lives and promoting and protecting public health.

Background Information

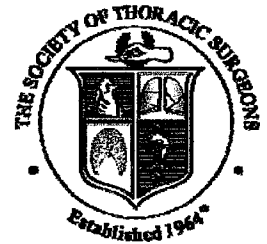
Finally, the medical profession and our colleagues in public health would benefit from being well informed about trade policy, and are well-positioned to advise the USTR on policies and measures that would safeguard health while promoting economic growth. We continue to advocate for full public health representation on trade advisory committees.

In conclusion, the USTR should exclude tobacco products from the TPP and from all future free trade agreements.

- 1. Joseph Brenner and Ellen Shaffer, co-directors, Center for Policy Analysis of Trade and Health (CPATH), Comments to USTR: Proposed United States-Trans-Pacific Partnership Trade Agreement (Docket: uSTR-2009-0041] (January 25, 2010), available at;
<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a83af2>**

THE SOCIETY OF THORACIC SURGEONS

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May 15, 2012

The Honorable Ron Kirk
United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

JEFFREY B. RICH, MD
President

MidAtlantic Cardiothoracic
Surgeons, Ltd.
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Dear Ambassador Kirk:

The Society of Thoracic Surgeons (STS) urges the complete exclusion of tobacco products from trade agreements, including the Trans-Pacific Partnership (TPP) Agreement the United States is currently negotiating with eight other countries. I also write to support what has been reported as the Administration's effort to take a major step forward to protect public health. Published reports indicate that at the upcoming round of TPP negotiations in Dallas, the United States Trade Representative (USTR) will propose language that has been described as protecting the authority of countries to enact measures to reduce tobacco use. If this description is correct, this proposal rightly recognizes that tobacco products are uniquely lethal, that there is a global consensus that nations should act to reduce tobacco use, and that trade agreements should not undermine the authority of governments to do so.

We strongly support language stating that nothing in the agreement shall prevent the countries involved from adopting or maintaining measures to reduce tobacco use and the harm it causes to public health. We urge the U.S. and the other countries involved to fight for this principle as the minimum that should be included in the TPP agreement with regard to tobacco products.

There is an urgent need for this action in the Trans-Pacific Partnership. Tobacco companies increasingly have abused existing trade and investment agreements to challenge legitimate tobacco control measures adopted by the United States, Australia, Uruguay, and other countries. A USTR proposal that would protect tobacco control measures from challenges from private tobacco companies as well as governments under the Trans-Pacific Partnership Agreement would be a major step forward to address the unique harms caused by tobacco. Such a proposal would recognize the sovereignty of nations to determine how to best protect their citizens against tobacco and can be done without undermining the broader trade goals of the Trans-Pacific Partnership. If published reports are accurate, we applaud the Administration for standing up to the tobacco industry and supporting worldwide efforts to reduce tobacco use and save lives.

Tobacco products are unlike any other legal consumer product as they are highly addictive, cause disease and death, and are the number one preventable cause of death in the world. There is a global consensus that governments should be doing everything possible to reduce consumption of tobacco products and the resulting harms from that consumption. This consensus is reflected in the world's first public health treaty, the World Health Organization's Framework Convention on Tobacco Control, under


The Honorable Ron Kirk
May 15, 2012
Page 2

which 174 countries have made legally binding commitments to enact effective tobacco control measures. Thus, the global goal with regard to tobacco is in contrast to the usual free trade goal of expanding access to and consumption of products.

Tobacco products killed 100 million people in the 20th century and will kill one billion people in the 21st century unless governments take urgent action to stop adults and children from smoking. Trade agreements should not promote or increase use of these deadly products, nor should they stop any nation from taking effective action to reduce tobacco use and save lives.

Thank you for your intelligent consideration and for supporting our future generations. If you have any questions regarding our position in this matter, please contact Phil Bongiorno at 202-787-1221 or pbongiorno@sts.org.

Sincerely,



Jeffrey B. Rich, MD

May 15, 2012

The Honorable Ron Kirk
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20509

Dear Ambassador Kirk:

We are gratified to learn that the Obama Administration plans to modify its proposals on how tobacco control measures should be treated during negotiations this week on the Trans-Pacific Partnership (TPP), a trade pact with nine Pacific Rim nations. Tobacco use is the leading preventable cause of death worldwide, and the only legal substance that, when used as intended, kills people. It is a scourge unlike any other. Tobacco companies have recently accelerated their use of trade rules to attempt to delay and reverse tobacco control measures in the U.S., Australia, Uruguay, Norway, and Ireland. Curtailing these loopholes is of the utmost urgency.

The Administration's proposal, as we understand it, offers commendable changes to trade policy, but might be improved even more as TPP negotiations continue.

On the very positive side, if the reports are accurate, the proposal affirms that tobacco is a unique product. The proposal offers some affirmative defense against disputes by other countries, or by tobacco companies themselves, by creating a "safe harbor" for evidence-based tobacco control measures approved through regulatory public health agencies. In the event that a trade violation is asserted, the country's own standards for judging the necessity of the measure would have preponderant weight.

There are weaknesses in this proposal, however, that we hope the trading partners will address this week in Dallas. First, the language of the proposal should be made public. Second, measures adopted by legislatures are not included, and they should be. Third, a country's own standards should be determinative, as they currently are in the case of national security, not just "strongly considered." Fourth, tobacco control measures should not be subject to the "investor-state" rules that enable challenges by tobacco companies.

Finally, the U.S. must discontinue pressure to eliminate tariffs on tobacco leaf and tobacco products, a practice dating back only to 2002. Raising the price of tobacco products is an effective strategy for discouraging initiation of use and encouraging quitting. A healthy trade policy must not tie nations' hands on the use of tariffs. For these and other reasons, we have a long history of supporting the removal of tobacco, tobacco products, and tobacco control measures from trade agreements.

As health care and public health professionals, we have come a long way since the 1964 Surgeon General's report on smoking and health. It is now part of our clinical training

and practice to counsel our patients and the public not to smoke and to help them quit. Similarly, we believe that responsible representatives of the business community can find grounds for supporting changes in trade policy that have the potential to save countless lives as well as public and private health-related expenditures.

We commend the Administration on advancing this important proposal in the TPP negotiations, which may contribute to reducing the enormous burden of disease related to tobacco use.

Sincerely,

American Academy of Pediatrics
American Academy of Family Physicians
American College of Obstetricians and Gynecologists
American College of Physicians
American College of Preventive Medicine
American Medical Association
Center for Policy Analysis on Trade and Health

cc:

Dr. Howard Koh, U.S. Department of Health and Human Services. howard.koh@hhs.gov

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The Honorable Ron Kirk
United States Trade Representative
600 17th Street, NW
Washington DC 20508

8 May 2012

Re: Exclusion of Tobacco and Alcohol and their Products from Negotiations on the Trans Pacific Partnership Trade Agreement

Dear Ambassador Kirk:

On behalf of the members of the Human Rights and Tobacco Control Network (HRTCN), I am writing to comment on the proposed Trans Pacific Partnership Agreement (TPP).

HRTCN strongly urges you to ensure that tobacco products are excluded from all provisions of the TPP and any other Free Trade Agreements. Accordingly, tobacco control measures would be exempted from trade rules protecting intellectual property including trademarks as well as from any investor-state dispute resolution processes. Exclusion of tobacco would also not force trading partners to reduce or eliminate their current applied tariffs on these products. US trade negotiators should not ask any nation to weaken its current anti-smoking or tobacco control strategies in the interest of promoting free trade. Moreover, in order to help your office safeguard health while promoting economic growth, we and our colleagues in public health would benefit from being well informed about trade policy such as by full public health representation on trade advisory committees.

Tobacco currently claims almost 6 million lives per year and this is predicted to climb to 10 million around 2025, with about 70% of these deaths in developing economies. The United States is home to one of the leading tobacco transnational tobacco corporations. We should not be in the business of supporting and exporting a preventable cause of death and disease.

Thank you for consideration of these public health concerns.

Sincerely,

Carolyn M Dresler, MD, MPA
Human Rights and Tobacco Control Network
19 Indian Trail
Little Rock, AR 72207

Enclosure

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™



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Tampa, FL

September 14, 2011

The Honorable Ron Kirk
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Kirk:

On behalf of the American Academy of Pediatrics (AAP), a professional organization of 60,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults, I write to ask that you exclude tobacco products from all provisions of the Trans Pacific Partnership Agreement (TPP) and all other free trade agreements.

Tobacco use is a major cause of death and illness across the globe, causing more than 438,000 deaths in the United States alone each year. Usage most often begins in youth, resulting not only in early addiction, but also increased probability of adult diseases. The Academy is strongly committed to reducing the number of children and adolescents who begin to smoke. Smoking and exposure to second-hand smoke among pregnant women causes low-birth weight babies, preterm delivery, perinatal deaths and sudden infant death syndrome. Other effects may include childhood cancer, childhood leukemia, childhood lymphomas and childhood brain tumors.

Higher cigarette prices are an enormously effective strategy for reducing smoking, particularly among price-sensitive teenagers and young adults. By excluding tobacco from free trade agreements, including the Trans Pacific Partnership Agreement (TPP), tariffs and other price controls designed to decrease tobacco use will remain in effect. New intellectual property rights would also not be extended to tobacco manufacturers, which they could otherwise use to challenge effective product controls on marketing and packaging such as warning labels. Hard fought victories in tobacco control must not be sacrificed the interest of promoting free trade.

Thank you for your consideration of the health of all children worldwide.

Sincerely,

A handwritten signature in black ink that reads "O. Marion Burton MD".

O. Marion Burton, MD, FAAP
President

OMB/jdb

**Testimony to the Trade Subcommittee
Ways and Means Committee
U.S. House of Representatives**

for:

**Hearing on the Trans-Pacific Partnership Agreement
December 14, 2011**

by:

**American Academy of Family Physicians
American Academy of Pediatrics
American College of Preventive Medicine
American Society of Addiction Medicine
Center for Policy Analysis on Trade and Health (CPATH)**

**Exclude Tobacco From Trade Rules
To Protect Public Health;
Represent Medicine and Public Health on Trade Advisory
Committees**

Testimony to the Trade Subcommittee, Ways and Means Committee,
U.S. House of Representatives
Trans-Pacific Partnership Agreement:
Implications for Tobacco Control, and Comment on Trade Advisory Committees
Submitted December 28, 2011

On behalf of the American Academy of Family Physicians, the American Academy of Pediatrics, the American College of Preventive Medicine, the American Society of Addiction Medicine and the Center for Policy Analysis on Trade and Health, we thank Subcommittee Chair Kevin Brady (R-Texas), Ranking Member Jim McDermott (D-Wash.), and members of the Trade Subcommittee of the Committee on Ways and Means for the opportunity to provide comments regarding the Trans Pacific Partnership Agreement (TPPA). Representing the perspective of medical and public health experts nationwide,^{1 2 3} we ask the Subcommittee to recommend that Ambassador Kirk and the office of the United States Trade Representative (USTR) ensure that all tobacco products, including tobacco, cigarettes, cigars, smokeless tobacco, and other tobacco products are excluded from all provisions of this and any other Free Trade Agreement (FTA), that tobacco control measures be specifically exempted from any trade rules protecting intellectual property including trademarks and also exempted from any investor-state dispute resolution processes, and that our trading partners' current applied tariffs on these products not be reduced or eliminated.

Trade-based challenges to health policies represent a growing threat against efforts to curb tobacco use. Ongoing trade-based tobacco arbitration and contemporary U.S. trade agreements challenge health principles by treating tobacco—a lethal and addictive product—the same as any other good.

Our comments convey the following:

1. Tobacco is a deadly product.
2. Countries around the world are enacting increasingly strong and effective tobacco control policies that are proven to reduce tobacco use.
3. Such measures are being contested as violations of international trade agreements.
4. To reduce worldwide tobacco consumption, tobacco must be carved out from all protections afforded under the TPPA.

1. Tobacco is a deadly product

The scourge of tobacco-related morbidity and mortality is a present and persistent threat. Tobacco use remains the world's leading preventable cause of death and disease. Teenage smoking is a serious public health problem in developed and developing nations and contributes to the global burden of noncommunicable diseases (NCD), extending into adulthood. Tobacco use accounts for 5.2 million deaths worldwide each year, or one in ten adults.⁴ There are 438,000 tobacco-related deaths each year in the U.S., more than deaths from HIV, illegal drugs, alcohol, motor vehicle injuries, suicides, and murders combined.⁵ On average, American adult smokers die 14 years earlier than nonsmokers.⁶

Use most often begins in youth. Exposure to tobacco smoke in childhood is correlated with increased asthma attacks, respiratory infections, and a higher incidence of Sudden Infant Death Syndrome.⁷ Kids who smoke are more likely to consume alcohol and use illicit drugs; they also have a higher likelihood of suffering from mental illnesses including anxiety and depression.⁸

Global tobacco consumption is rising. Almost 80 percent of the world's tobacco consumers live in low- and middle-income countries.⁹ Many TPPA partners are low- and middle-income countries.

The World Bank estimates that the total health care cost from smoking typically constitutes between 1 and 1.5 percent of a country's GDP.

2. Countries around the world are enacting increasingly stronger and more effective tobacco control policies that are proven to reduce tobacco use.¹⁰

The US and TPP partners all recognized the prospect for concerted action to address the public health tragedy of tobacco use when each signed the world's first public health treaty, the Framework Convention on Tobacco Control (FCTC), a function of the World Health Organization (WHO). The FCTC supports international tobacco controls intended to reduce the demand for tobacco, which also represent the democratic will of the people in free societies around the world.

Increased cigarette prices are the single most effective strategy for reducing smoking, particularly among teenagers and young adults. Indeed, the Framework Convention on Tobacco Control (FCTC) states that "price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons." The FCTC provides that its parties should maintain measures which may include tax policies and price policies on tobacco products so as to reduce tobacco consumption, and prohibit or restrict duty-free sales of tobacco products to travelers. Reducing prices for cigarettes by cutting tariffs on tobacco or cigarettes will only undercut this evidence-based health initiative.

Several countries have experienced significant success in discouraging smoking and motivating current smokers to quit by using graphic warning labels, that also include toll-free phone lines that support quitting. The U.S. has taken steps in that direction. Furthermore, Australia has proposed plain packaging on cigarette packages.

The FCTC also supports bans on "low tar" or "mild" labeling, designs of warning labels, and restriction on mass-media advertising. The United States and over 120 other countries have instituted limits including bans on ad campaigns, particularly marketing that targets younger people. These measures are effective. A systematic review of research indicates that nonsmoking adolescents who were more aware of or receptive to tobacco advertising were more likely to become smokers later, compared with who are less exposed to tobacco ads.¹¹

Public health research demonstrates that warning labels on cigarette packages increase awareness of the harms of tobacco use, and increase the likelihood of attempting to quit smoking.¹² To date, more than 100 countries have placed warning labels on cigarette packages.

3. However, such measures are being challenged as violations of international trade agreements.

Unless explicitly excluded, tobacco products are subject to all trade rules, which have implications for tobacco control measures on distribution of tobacco products, trademarks, and advertising. Provisions regarding intellectual property as they relate to advertising, trademarks and labeling, services rules on product regulation and distribution, and rules on market access, and national treatment, could all interfere with tobacco control measures. Tobacco control measures have been subject to trade challenges in the past, under the investment provisions, and continue to be vulnerable since they are not explicitly excluded.

Around the world, tobacco corporations are using trade rules to file charges against effective tobacco control measures. Phillip Morris International is using the investor-state dispute mechanisms available through trade agreements to challenge these effective tobacco control measures, relying on the intellectual property provisions related to trademarks enshrined in some existing bilateral investment treaties. Trade-based lawsuits are ongoing in Uruguay and Australia, where arbitration focuses on whether cigarette packaging regulations impinge upon trademark displays. In Norway and Ireland, trade-based lawsuits question the governments' ability to enact retail display bans.

Trade agreements also reduce tariffs on tobacco products, making them less expensive. The agreements therefore promote and facilitate greater tobacco consumption.

Eight of the TPPA partner nations, but not yet the US, have ratified the FCTC. It would be inconsistent with American support for the FCTC and with those nations' obligations under the FCTC for our country to negotiate a trade agreement with TPP partners that would lower tariffs on tobacco and increase the incidence of smoking.

4. To reduce worldwide tobacco consumption, tobacco must be carved out from all protections afforded under the TPPA.

Unless tobacco products are excluded from all of its provisions, the TPPA has the potential to validate trade-based challenges to tobacco control measures and limit the ability of sovereign governments to use proven tactics of discouraging tobacco use. If tobacco products are granted protections under the TPPA, there is a serious prospect for losing ground and exacerbating current tobacco use around the globe. The Trans Pacific Partnership Agreement (TPPA) has the potential to undermine much of the progress made in tobacco control by limiting the ability of sovereign governments to use proven measures to discourage tobacco use.

The U.S. has the opportunity to forge a trade agreement for the 21st century, that promotes progress in public health. We should lead the way forward by eliminating the prospect for tobacco companies to manipulate trade rules in order to thwart the sovereign authority and obligation of states to protect health.

To reaffirm America's position as a global leader in tobacco control, we ask that the U.S. exclude tobacco products from all provisions of the TPPA. US trade negotiators should not ask any nation to weaken its current anti-smoking or alcohol control strategies.

In this event tariffs and other price controls designed to decrease tobacco use will remain in effect. New intellectual property rights would also not be extended to tobacco manufacturers, which they could otherwise use to challenge effective product controls on marketing and packaging such as warning labels. Hard fought victories in tobacco control must not be sacrificed the interest of promoting free trade.

It is imperative that the United States play a leadership role to reduce tobacco use and its devastating consequences around the world. Accordingly, notwithstanding any language to the contrary, nothing in the TPPA should block, impede, restrict, or modify the ability of any party to take or maintain any action, including tariffs or domestic content requirements, relating to manufactured tobacco that is intended or expected by the trading party to prevent or reduce tobacco use or its harms, or that is reasonably likely to prevent or reduce its use or harms. Moreover, if there occurs a conflict between provisions of this TPPA and any party's efforts to comply with the Framework Convention on Tobacco Control, the terms of the FCTC must prevail. Trade liberalization should not trump the goal of saving lives and promoting and protecting public health.

The US has already exempted other harmful products such as firearms from coverage by intellectual property rules and investor-state challenges. This should be our consistent position with regard to tobacco products and leaf tobacco.

Finally, the medical professions and public health would benefit from being well informed about trade policy, and are well positioned to advise the US Trade Representative on policies and measures that would safeguard health while promoting economic growth. We continue to advocate for full public health representation on trade advisory committees.

In conclusion, USTR should exclude tobacco and tobacco products from the TPPA and from all future free trade agreements.

Thank you for your consideration. We look forward to continued discussion on this important topic.

Robert Block, MD, FAAP, President
American Academy of Pediatrics
Department of Federal Affairs
601 13th Street, NW
Suite 400 North
Washington, DC 20005
202-347-8600

The American Academy of Pediatrics is an organization of 60,000 primary care pediatricians, pediatric medical subspecialists and pediatric surgical specialists dedicated to the health, safety and well-being of infants, children, adolescents and young adults.

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ACPM is the national medical society for nearly 2,500 preventive medicine physicians who are uniquely trained in both clinical and population-based medicine and are committed to disease prevention and health promotion.

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¹ Report 18 of the Board of Trustees, American Medical Association, (A-04), International Trade Agreements, (Resolution 219-A-03), 2004.

² Joseph Brenner and Ellen Shaffer, co-directors, Center for Policy Analysis on Trade and Health (CPATH), Comments to USTR: Proposed United States-Trans-Pacific Partnership Trade Agreement [Docket: USTR-2009-0041] (January 25, 2010), available at:

<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a83af2>

³ Matthew Meyers, President of Campaign for Tobacco Free Kids, Comments to USTR: Proposed United States -Trans-Pacific Partnership Trade Agreement [Docket USTR-2009-0041] (January 25, 2010), available at:

<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a831a4>

⁴ <http://www.who.int/mediacentre/factsheets/fs310/en/index2.html>

⁵ http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/

⁶ http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/

⁷ http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/

⁸ <http://www.nlm.nih.gov/medlineplus/smokingandyouth.html>

⁹ World Health Organization (2011). Tobacco Fact Sheet. Available at www.who.int/mediacentre/factsheets/fs339/en/index.html

¹⁰ http://whqlibdoc.who.int/publications/2011/9789240687813_eng.pdf

¹¹ <http://summaries.cochrane.org/CD003439/does-tobacco-advertising-and-promotion-make-it-more-likely-that-adolescents-will-start-to-smoke>

¹² http://www.who.int/tobacco/global_report/2011/en/index.html



American College of Preventive Medicine
physicians dedicated to prevention

September 13, 2011

The Honorable Ron Kirk
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Exclusion of Tobacco and Alcohol and Their Products from Negotiations on the Trans Pacific Partnership (TPP) Trade Agreement

Dear Ambassador Kirk:

The American College of Preventive Medicine (ACPM) is pleased to provide comment on the proposed Trans Pacific Partnership Agreement (TPP), an Asia-Pacific regional trade agreement currently being negotiated among the United States and eight other partners. ACPM is the national medical society for nearly 2,500 preventive medicine physicians who are uniquely trained in both clinical and population-based medicine and are committed to disease prevention and health promotion.

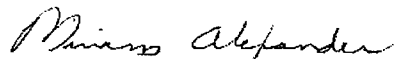
As a result of the clear scientific evidence that illustrates the harmful effects of tobacco and alcohol use, ACPM has long worked to support public health policies that limit use of tobacco and alcohol products across all populations. As such, we strongly urge that you exclude alcohol and tobacco products, including cigarettes, cigars, and smokeless tobacco from all Free Trade Agreements including the TPP. With the significant progress achieved to date in the U.S. to enact and maintain strong anti-tobacco and alcohol use policies, U.S. trade negotiators should work to support such strong policies abroad and not ask any nation to weaken its current anti-smoking or alcohol control strategies.

Removing trade barriers may be desirable when the products being traded are beneficial, but tobacco is not a beneficial product. Cigarettes are the leading preventable cause of death and disease in the world.^{1,2} The U.S. and TPP partners all recognized this when each signed the world's first public health treaty, the Framework Convention on Tobacco Control (FCTC). The FCTC, states that "price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons."³ Cutting tariffs on tobacco products is contrary to FCTC policies to reduce tobacco consumption. Negotiating a trade agreement with TPP partners that would lower tariffs on tobacco and increase the incidence of smoking would be inconsistent with US' support for the FCTC and with those nations' obligations under the FCTC.

Harmful use of alcohol is also one of the main factors contributing to premature deaths and avoidable disease burden worldwide and is causally related to more than 60 types of disease and injury.^{4,5,6} To protect and advance alcohol control, the U.S. should consider alcohol as “no ordinary commodity” in trade negotiations.⁷ Trade liberalization should not trump the goal of saving lives and promoting and protecting public health.

Excluding tobacco and alcohol products from the TPP and from all future free trade agreements is sound policy that is grounded in science and will protect the lives of our trading partners around the world.

Sincerely,



Miriam Alexander, MD, MPH, FACPM
President

¹ Singer MV, Feick P, Gerloff A. Alcohol and smoking. *Dig Dis*. 2011;29(2): 177-83. Epub 2011 Jul 5.

² World Health Organization. *Top Ten Causes of Death*. Accessed at <http://www.who.int/mediacentre/factsheets/fs310/en/index2.html>.

³ World Health Organization. *WHO Framework Convention on Tobacco Control*. WHO 2003. Accessed at http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf.

⁴ World Health Organization. *Strategies to reduce the harmful use of alcohol*. WHO 20 Mar 2008. Accessed at http://apps.who.int/gb/ebwha/pdf_files/A61/A61_13-en.pdf.

⁵ Parry C, Patra J, Rehm J. *Alcohol consumption and non-communicable diseases: epidemiology and policy implications*. *Addiction*. 2011 Aug 5. Epub.

⁶ Murray CJ, Lopez AD. *Global mortality, disability, and the contribution of risk factors: Global Burden of Disease Study*. *Lancet*. 1997 May 17;349(9063):1436-42.

⁷ Alcohol and Public Policy Group. *Alcohol: no ordinary commodity--a summary of the second edition*. *Addiction*. 2010 May;105(5):769-79. Epub 2010 Mar 19.



James L. Madara, MD
Executive Vice President, CEO

American Medical Association
515 N. State Street
Chicago, Illinois 60654

ama-assn.org

(p) 312.464.5000

(f) 312.464.4184

September 8, 2011

The Honorable Ron Kirk
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Exclusion of Tobacco and Alcohol and Their Products from Negotiations on the Trans Pacific Partnership Trade Agreement

Dear Ambassador Kirk:

On behalf of the physician and medical student members of the American Medical Association (AMA), I am writing to comment on the proposed Trans Pacific Partnership Agreement (TPP).

The AMA strongly urges you to ensure that tobacco products and alcoholic beverages are excluded from all provisions of the TPP and any other Free Trade Agreements. Accordingly, tobacco control measures would be exempted from trade rules protecting intellectual property including trademarks as well as from any investor-state dispute resolution processes. Exclusion of tobacco and alcohol would also not force trading partners to reduce or eliminate their current applied tariffs on these products. US trade negotiators should not ask any nation to weaken its current anti-smoking or alcohol control strategies in the interest of promoting free trade. Moreover, in order to help your office safeguard health while promoting economic growth, the medical profession and our colleagues in public health would benefit from being well informed about trade policy such as by full public health representation on trade advisory committees.

Our request is consistent with longstanding AMA policy that "international trade agreements recognize that health and public health concerns take priority over commercial interests, and that trade negotiations be conducted in a transparent manner and with full attention to health concerns and participation by the public health community." The AMA has expressed similar concerns to your predecessors regarding the proposed agreements with Malaysia (2006) and Korea (2007).

Thank you for consideration of these public health concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara", is written over a horizontal dotted line.

James L. Madara, MD

Enclosure

ATTACHMENT

The American Medical Association (AMA) is commenting on the proposed Trans Pacific Partnership Agreement (TPP), an Asia-Pacific regional trade agreement currently being negotiated among the United States and eight other partners. The United States' TPP negotiating partners are Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. The US objective is to expand this initial group to include additional countries throughout the Asia-Pacific region. The seventh round of negotiations begins on September 6, 2011 in Chicago with a goal of reaching the outlines of an agreement before leaders of the Asian-Pacific Economic Cooperation meet in Honolulu this November.

The AMA strongly urges the USTR to ensure that all tobacco products, including tobacco, cigarettes, cigars, smokeless tobacco, and other tobacco products, and also all alcoholic beverages, are excluded from all provisions of this and any other Free Trade Agreement (FTA), that tobacco control measures be specifically exempted from any trade rules protecting intellectual property including trademarks and also exempted from any investor-state dispute resolution processes, and that our trading partners current applied tariffs on these products not be reduced or eliminated.

US trade negotiators should not ask any nation to weaken its current anti-smoking or alcohol control strategies. This request is consistent with longstanding AMA policy that "international trade agreements recognize that health and public health concerns take priority over commercial interests, and that trade negotiations be conducted in a transparent manner and with full attention to health concerns and participation by the public health community."¹ Other credible groups with whom the AMA has worked share this concern, e.g., the Center for Policy Analysis on Trade and Health (CPATH)² and the Campaign for Tobacco Free Kids (CTFK).³ Moreover, the AMA has expressed strongly worded concerns to your predecessors regarding the proposed agreements with Malaysia (2006) and Korea (2007).

Cigarettes are the leading preventable cause of death and disease in the world. Smoking, and in particular teenage smoking, is a serious public health problem in developed and developing nations and contributes to the global burden of noncommunicable diseases (NCD). The World Bank estimates that the total health care cost from smoking typically constitutes between 1 and 1.5 percent of a country's GDP. The US and TPP partners all recognized this public health tragedy when each signed the world's first public health treaty, the Framework Convention on Tobacco Control (FCTC). These eight nations, but not yet the US, also ratified the Convention. It would be inconsistent with American support for the FCTC and with those nations' obligations under the FCTC for our country to negotiate a trade agreement with TPP partners that would lower tariffs on tobacco and increase the incidence of smoking.

¹ Report 18 of the Board of Trustees (A-04), International Trade Agreements, (Resolution 219-A-03), 2004.

² Joseph Brenner and Ellen Shaffer, co-directors, Center for Policy Analysis on Trade and Health (CPATH), Comments to USTR: Proposed United States-Trans-Pacific Partnership Trade Agreement [Docket: USTR-2009-0041] (January 25, 2010), available at:

<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a83af2>

³ Matthew Meyers, President of Campaign for Tobacco Free Kids, Comments to USTR: Proposed United States - Trans-Pacific Partnership Trade Agreement [Docket USTR-2009-0041] (January 25, 2010), available at: <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a831a4>

Increased cigarette prices are the single most effective strategy for reducing smoking, particularly among teenagers and young adults. Indeed, the FCTC states that “price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons.” The FCTC provides that its parties should maintain measures which may include tax policies and price policies on tobacco products so as to reduce tobacco consumption, and prohibit or restrict duty-free sales of tobacco products to travelers. Reducing prices for cigarettes by cutting tariffs on tobacco or cigarettes will only undercut this evidence-based health initiative.

Several countries have experienced significant success in motivating current smokers to quit by using graphic warning labels. The FCTC supports international tobacco controls intended to reduce the demand for tobacco, including bans on “low tar” or “mild” labeling, designs of warning labels, and restriction on mass-media advertising. Furthermore, Australia has proposed plain packaging on cigarette packages. However, the tobacco industry is using the investor-state dispute mechanisms available through trade agreements to challenge these effective tobacco control measures, relying on the intellectual property provisions related to trademarks enshrined in some existing bilateral investment treaties. The US has already exempted other harmful products such as firearms from coverage by intellectual property rules and investor-state challenges. This should be our consistent position with regard to tobacco products and leaf tobacco and to alcohol.

Removing trade barriers may be a desirable objective when the products being traded are beneficial, but tobacco is not a beneficial product. Cigarettes are the only legally available consumer product that kills through its intended normal use. Congress has enacted the Doggett Amendment in the United States Trade Representative’s (USTR) appropriations since 1998 because it does not want the USTR to promote tobacco or cigarette exports. The Amendment and Executive Order 13193 also forbid government agencies, including USTR, from seeking to reduce or remove nondiscriminatory restrictions on the marketing and advertising of tobacco products. Even though the USTR does not generally negotiate with other countries specifically to benefit United States tobacco sales, if tobacco and tobacco products are not excluded from the duty reductions in all future FTAs, duty reductions will have the effect of promoting sales of American tobacco and tobacco products.

The World Health Organization (WHO) recognizes harmful use of alcohol as a major contributor to premature deaths and avoidable disease burden worldwide and is causally related to more than 60 types of disease and injury, including traffic fatalities. Alarming, 4% of the total global burden of disease is attributable to alcohol, about as much death and disability globally as is to tobacco or hypertension. The United Nations, with support from the global health community, will hold a special General Assembly session in September 2011 to address the epidemic of noncommunicable diseases. The WHO’s proposed plan gives equal prominence to alcohol, tobacco, unhealthy eating and physical inactivity as the major contributors to NCDs.

Following the recommendation of the World Medical Association, we believe that, in order to protect and advance alcohol control, the US should consider alcohol as “no ordinary

commodity” in trade negotiations. Therefore, measures affecting the supply, distribution, sale, advertising, promotion, or investment in alcoholic beverages should be excluded (carving alcohol out) from trade agreements without balancing the economic impact with health and social consequences.⁴

It is imperative that the United States play a leadership role to reduce tobacco use and alcohol misuse and their devastating consequences around the world. Accordingly, notwithstanding any language to the contrary, nothing in the TPP should block, impede, restrict, or modify the ability of any party to take or maintain any action, including tariffs or domestic content requirements, relating to manufactured tobacco or alcoholic beverages that is intended or expected by the trading party to prevent or reduce tobacco or alcohol use or their harms or that is reasonably likely to prevent or reduce use or harms. Moreover, if there occurs a conflict between provisions of this TPP agreement and any party’s efforts to comply with the Framework Convention on Tobacco Control, the terms of the FCTC must prevail. Trade liberalization should not trump the goal of saving lives and promoting and protecting public health.

Finally, the medical profession and our colleagues in public health would benefit from being well informed about trade policy, and are well positioned to advise the US Trade Representative on policies and measures that would safeguard health while promoting economic growth. We continue to advocate for full public health representation on trade advisory committees.

In conclusion, USTR should exclude tobacco and alcohol and their products from the TPP and from all future free trade agreements.

⁴ World Medical Association. Statement on reducing the global impact of alcohol on health and society. 56th WMA general assembly. Santiago, Chile. 15 October 2005. Available at: <http://www.wma.net/e/policy/a22.htm>.

United States Senate

WASHINGTON, DC 20510

November 12, 2013

Ambassador Michael Froman
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20208

Dear Ambassador Froman:

We write to express our concerns about the tobacco provisions proposed by the United States during the most recent Trans-Pacific Partnership (TPP) trade negotiations in Brunei. While we would prefer an exclusion for all tobacco products from the TPP, we strongly believe TPP should, at the very least, include language that recognizes tobacco as a unique consumer product and ensures TPP nations are able to fully implement and enforce strong nondiscriminatory tobacco control legislation to protect public health and reduce tobacco-related deaths.

Tobacco use is the leading preventable cause of deaths worldwide, taking 6.3 million lives a year, including 1,200 Americans daily. The United States spends nearly \$200 billion a year for tobacco-related illness and injury, and lost productivity. Unless serious, urgent action is taken, tobacco will kill one billion people worldwide this century.

Tobacco companies and governments supporting tobacco companies have a history of aggressively using trade law to subvert domestic tobacco control measures. Indonesia, on behalf of Kretek International, an Indonesian tobacco company that sells a clove-flavored cigarette that is attractive to children, used provisions in several World Trade Organization agreements to challenge a provision in the Family Smoking Prevention and Tobacco Control Act that bans candy-like flavorings that appeal to youth smokers. Philip Morris International filed a Bilateral Investment Treaty dispute against Uruguay because of the country's graphic warning labels. The company is also using Australia's Bilateral Investment Treaty with Hong Kong to challenge an Australian ban on color and images on tobacco packages. These efforts by tobacco companies and governments supporting tobacco companies to use trade laws to subvert public health measures are deplorable and a serious threat to global public health.

The current tobacco proposal states that tobacco control measures are measures "to protect human health," and as such would fall under a "general exceptions" chapter of the TPP analogous to Article XX(b) of the General Agreement on Tariffs and Trade (GATT). It has long been assumed that tobacco control measures fall under this provision, and yet, we have seen repeated legal challenges to these measures. The provisions proposed by the United States would not exempt tobacco control measures from other TPP obligations and do not prevent nations, on behalf of tobacco companies,

from using TPP as a basis for threatening or following through with legal action to prevent the enforcement of nondiscriminatory tobacco control legislation.

We appreciate that the current tobacco proposal allows the health ministers of the two countries to have an opportunity to discuss any challenged tobacco control measure before legal action commences. However, even if the consulting parties agree, consultation cannot block a challenge to tobacco control regulation. We are concerned that this provision will simply delay, but will not prevent, tobacco companies and governments supporting tobacco companies from using TPP as a basis for preventing domestic enforcement of sensible non-discriminatory tobacco control legislation.

We also appreciate efforts to find consensus on this issue. However, tobacco companies and governments supporting tobacco companies have proven they are willing to use trade laws as a basis to challenge domestic tobacco control legislation. The final TPP language should recognize this dangerous trend and prevent further abuses of trade laws related to domestic tobacco control legislation.

The United States should be leading the fight against death and disease from tobacco products, which are a uniquely dangerous threat to public health. We urge you to work with TPP participating nations to include language in TPP that recognizes tobacco as a unique consumer product and ensures TPP nations are able to fully implement and enforce strong non-discriminatory tobacco control legislation to protect public health and reduce tobacco-related deaths.

Sincerely,



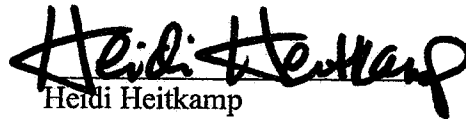
Richard J. Durbin
United States Senator



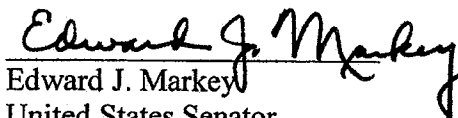
Richard Blumenthal
United States Senator



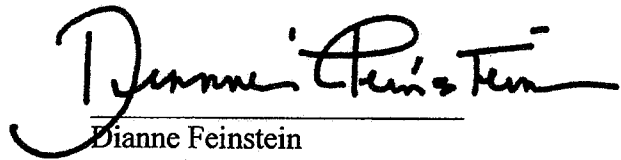
Tom Harkin
United States Senator



Heidi Heitkamp
United States Senator



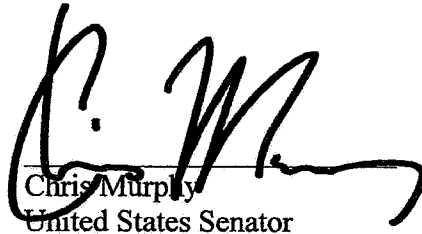
Edward J. Markey
United States Senator



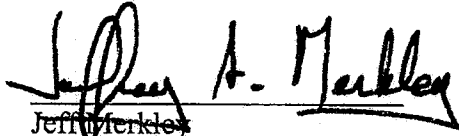
Dianne Feinstein
United States Senator



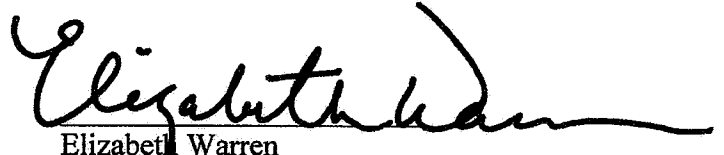
Benjamin L. Cardin
United States Senator



Chris Murphy
United States Senator



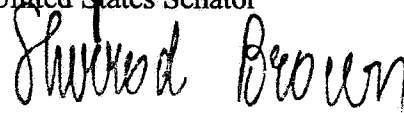
Jeff Merkley
United States Senator



Elizabeth Warren
United States Senator



Al Franken
United States Senator



Sherrod Brown
United States Senator

Congress of the United States

Washington, DC 20515

October 30, 2013

President Barack Obama
The White House
1600 Pennsylvania Ave NW
Washington, D.C. 20500

Dear President Obama,

We write to express our disappointment in the tobacco provisions proposed by the United States during the most recent round of Trans-Pacific Partnership (TPP) trade negotiations in Brunei. They are a step backward from the approach described by the United States last year, which included a clear “safe harbor” provision to preserve regulations that protect the public from the dangers of tobacco products. These weaker provisions, combined with concessions to lower tariffs on tobacco products, would likely lead to greater consumption of a deadly product, particularly in developing countries.

Tobacco companies have a history of using trade law to subvert tobacco control measures. Indonesia, on behalf of Kretek International, an Indonesian tobacco company that sells a clove-flavored cigarette that is attractive to children, used provisions in the World Trade Organization Agreement to challenge a provision in the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) that banned candy-like flavorings that appeal to youth smokers. Philip Morris International filed a Bilateral Investment Treaty dispute against Uruguay because of Uruguay’s graphic warning labels. The company is also using Australia’s Bilateral Investment Treaty with Hong Kong to challenge an Australian ban on color and images on tobacco packages. These efforts by tobacco companies to use trade law to subvert public health measures are deplorable.


The language described by representatives of the Office of the United States Trade Representative (USTR) last year would provide some certainty that regulations implementing the Tobacco Control Act and other similar regulations throughout the TPP region would be protected from country-to-country challenges. But instead of providing this certainty, USTR put forth much weaker language stating that tobacco control measures are measures that “protect human health,” and as such would be analyzed under the “general exceptions” chapter of the TPP, analogous to Article XX(b) of the General Agreement on Tariffs and Trade (GATT). The specific reference to tobacco is a positive development, but the new language does not provide the certainty of the prior proposal and its tobacco-specific safe harbor. For example, despite the new language, a tribunal may still take too narrow of a view as to what health measures are “necessary,” second-guessing public health authorities and striking down a health measure where the tribunal is able to envision an alternative measure that may be less restrictive of trade. Surely, tobacco control measures addressed in the Framework Convention on Tobacco Control should be protected from challenge.


USTR also proposed that the health ministers of the two countries have an opportunity to discuss any challenged tobacco control measure. This is helpful, but it is not a substitute for the safe harbor language.

We are also concerned that the USTR position be consistent with the letter and spirit of the Doggett Amendment, which prohibits the United States government from promoting tobacco exports. With tobacco tariffs subject to duty reduction, and with uncertainty as to whether tobacco control measures are adequately protected, the TPP could result in greater use of a deadly product. This is what happened in South Korea and other countries when tariff reductions opened local markets to imports of cigarettes by multinational tobacco companies. Vietnam is a particular concern. It is a developing country, currently has low rates of smoking among women, and is not prepared to combat Western-style tobacco marketing by the multinational tobacco companies.

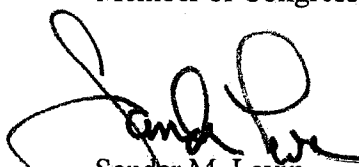
The United States should be leading the fight against death and disease from tobacco products, which are a uniquely dangerous threat to public health. We urge you to direct USTR to reconsider its position.


Thank you for considering our views.



Henry A. Waxman
Member of Congress



Lloyd Doggett
Member of Congress



Lois Capps
Member of Congress

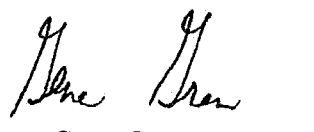

Sander M. Levin
Member of Congress



Charles B. Rangel
Member of Congress


Frank Pallone, Jr.
Member of Congress



John Lewis
Member of Congress


Allyson Y. Schwartz
Member of Congress



Gene Green
Member of Congress


John Conyers, Jr.
Member of Congress


Earl Blumenauer
Member of Congress


Adam B. Schiff
Member of Congress


Janice D. Schakowsky
Member of Congress


Jim McDermott
Member of Congress


Chris Van Hollen
Member of Congress

Rush Holt
Member of Congress

Donna M. Christensen
Member of Congress

Paul Tonko
Member of Congress

Sam Farr
Member of Congress

Louise McIntosh Slaughter
Member of Congress

James P. Moran
Member of Congress

Doris O. Matsui
Member of Congress

Betty McCollum
Member of Congress

James P. McGovern
Member of Congress

Anna G. Eshoo
Member of Congress

Rosa L. DeLauro
Member of Congress

Peter Welch
Member of Congress

George Miller
Member of Congress

Adam Smith
Member of Congress

Jerrold Nadler
Member of Congress

Peter A. DeFazio
Member of Congress

John Garamendi
Member of Congress

Zoe Lofgren
Member of Congress

Carolyn B. Maloney
Member of Congress

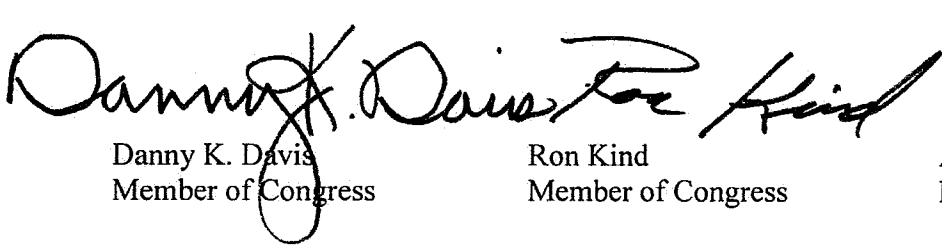
John P. Sarbanes
Member of Congress

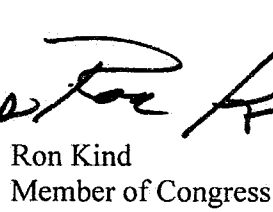
David Loebsack
Member of Congress

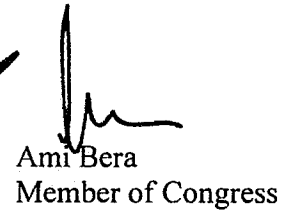
Michael H. Michaud
Member of Congress

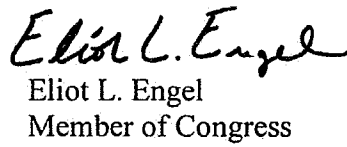
Barbara Lee
Member of Congress

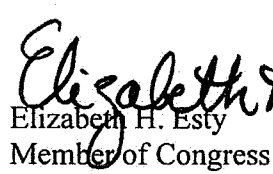
Bill Pascrell, Jr.
Member of Congress

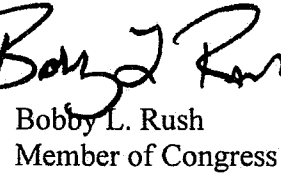

Danny K. Davis
Member of Congress

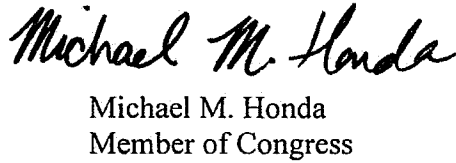

Ron Kind
Member of Congress

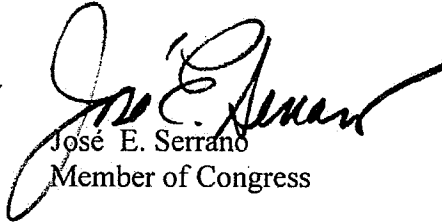

Ami Bera
Member of Congress


Eliot L. Engel
Member of Congress

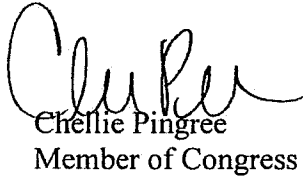

Elizabeth H. Esty
Member of Congress

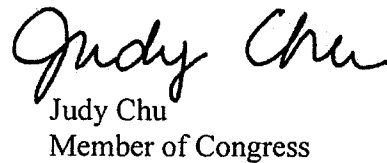

Bobby L. Rush
Member of Congress

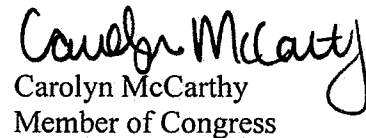

Michael M. Honda
Member of Congress

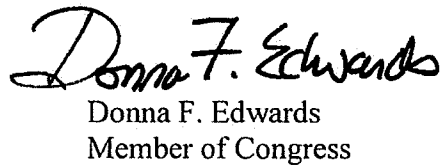

José E. Serrano
Member of Congress

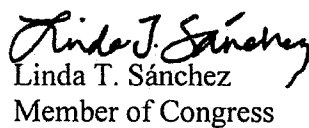

Steve Cohen
Member of Congress

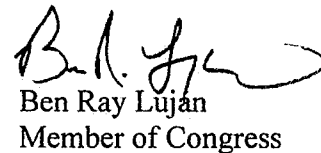

Chellie Pingree
Member of Congress

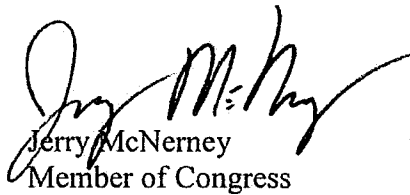

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August 31, 2013

The Hazard of Free-Trade Tobacco

By THE EDITORIAL BOARD

Give thanks to Malaysia for heading off, at least temporarily, an American effort to weaken the ability of countries to impose stiff rules on the sale of cigarettes and other tobacco products within their own borders. The Malaysian proposal to preserve that ability led to a stalemate at a Trans-Pacific Partnership trade meeting in Brunei last week and forced the deferral of the issue to future meetings.

The United States and 11 countries bordering the Pacific Ocean had been engaged in the latest round of negotiations over a treaty intended to lower tariffs and other barriers to commerce. One of the issues was whether tobacco should be included in such a treaty or “carved out” so that health considerations could take precedence over expanded trade. The issue pits health advocates against the tobacco industry and other commercial interests.

On public health grounds, tobacco ought to be excluded from whatever rules are designed to increase trade in agricultural products. Reducing trade barriers to tobacco, a uniquely dangerous product, would serve to increase tobacco consumption and lead to many additional deaths on top of an already high total. Tobacco killed an estimated 100 million people in the 20th century and is projected to kill 1 billion people in this century unless strong action is taken to mitigate the damage. A carve-out from trade rules is only one tactic, but it could save millions of lives, especially in developing countries vulnerable to the industry’s pressure.

The United States, which in advance of the meeting had favored a relatively strong proposal to protect a nation’s tobacco control measures from being challenged as violations of trade agreements, offered a weaker proposal in Brunei. The American proposal simply refers to other international agreements that allow exceptions for public health and requires health officials from the 12 Trans-Pacific Partnership countries to consult each other before making trade challenges. It would not prevent the challenges from moving forward.

Mayor Michael Bloomberg, a strong advocate of tobacco control in this country and abroad, rightly denounced the American proposal as “weak half-measures at best.” The proposal leaves the door open for multinational tobacco companies to challenge legitimate tobacco control measures, as they already have in several countries in recent years.

Malaysia countered by proposing a complete carve-out of tobacco control measures that would protect a country’s ability to set its own rules for marketing, advertising, banning

or taxing various tobacco products, among other control measures. The Campaign for Tobacco-Free Kids and several other medical and patient advocacy groups, including the American College of Obstetricians and Gynecologists, applauded the Malaysian proposal. It would protect countries from the burdens and costs of fending off trade challenges and from potentially stiff financial penalties if they lose. And it would remove the danger that some countries might not enact strong tobacco control measures in order to avoid any possibility of challenges.

American trade officials need to toughen their stance when Trans-Pacific Partnership negotiations resume. They should be siding with the public and those concerned about public health, not the makers of products known to be lethal and highly addictive.

U.S. must take tobacco out of global trade talks

Eric Mar, San Francisco Supervisor

September 16, 2013

<http://www.sfgate.com/opinion/openforum/article/U-S-must-take-tobacco-out-of-global-trade-talks-4819528.php>

Tobacco companies continue to aggressively market their deadly products across the country and around the world, through insidious ad campaigns that target communities of color, low-income communities and the LGBTQ community. And they have found a new arena to exploit their deadly products: international trade agreements.

Tobacco companies recently have accelerated their use of global trade rules to attempt to delay and reverse tobacco control measures that limit marketing of tobacco in the United States, Australia, Uruguay, Norway and Ireland.

Public health and medical advocates in the United States and abroad have urged the U.S. trade representative, a presidential appointee who negotiates trade agreements on behalf of the United States, to preserve existing protections on advertising, selling and using tobacco products as rules are worked out in a mega trade pact of 12 Pacific Rim nations including the United States, known as the Trans-Pacific Partnership Agreement. And they are right.

San Francisco and California have led the way for years on policies designed to reduce smoking and save lives, including raising cigarette taxes, banning smoking in public areas, limiting the advertising and promotion of tobacco products, and reducing youth access to tobacco.

Trade rules, however, grant corporations rights to contest local, state and nations' public health policies and tobacco control efforts. Countries that lose trade challenges face stiff financial penalties, payable to the complaining corporation.

Tobacco is the only legal consumer product that kills when used as intended. Tobacco use is the leading preventable cause of death worldwide, accounting for 6.3 million preventable deaths annually, including 1,200 Americans a day, at a cost of almost \$200 billion a year in health care costs and lost productivity. It must be treated differently from other products and services that are traded across borders.

Unless our negotiators change course, the trans-pacific agreement may extend the worst of existing trade agreements. Philip Morris has urged U.S. trade negotiators to eliminate all tariffs to make tobacco products cheap and widely consumed, and to expand tobacco corporations' rights to challenge and eliminate existing protections on advertising, selling and using tobacco products. Philip Morris should not get to use trade rules to erase local tobacco controls.

The U.S. trade representative will discuss proposals on tobacco in Washington, D.C., with the trans-Pacific trade partners this week. The U.S. proposal offers less than a fig leaf for trade rules that grant multinational tobacco corporations rights over public health protections, and often eliminate them.

Americans concerned about health have the opportunity to take a stand now to stem the reach of Big Tobacco, and protect the public's health from tobacco-related disease and death. Recently, Malaysia, one of the trading nations negotiating the new pact, has called for taking tobacco off the negotiating table and out of trade talks altogether.

The San Francisco Board of Supervisors unanimously passed Resolution 297-10 urging our trade leaders to change course to protect our health by excluding tobacco and tobacco products from the Trans-Pacific Partnership Agreement and from all future trade agreements.

The United States should support our city and our state and take tobacco off the negotiating table and out of trade talks.

Eric Mar represents District 1 on the San Francisco Board of Supervisors.

Snuffing out a tobacco exemption in Trans-Pacific Partnership trade deal

By Editorial Board, September 17, 2013

Tobacco sickens and, eventually, can kill if consumed as intended. Every country, the United States included, should be taking every effective step to prevent smoking.

The costs and benefits of free trade are clear, but, as recent presidents, Republican and Democratic, have recognized, the long-term gains to society outweigh the short-term losses to particular groups. Thus, the United States has wisely pursued pacts to expand free trade with partners around the world.

What to do, however, when free trade and tobacco control seem to be in tension? The question arises in the context of the Trans-Pacific Partnership (TPP), a proposed trade agreement that would link the United States, Canada, Mexico, Japan, Australia, South Korea, Vietnam and five other countries as never before — spurring global growth and bolstering the United States geopolitically.

Initially, the Obama administration favored a TPP provision exempting individual nations' tobacco regulations — such as those banning advertising or requiring warning labels — from legal attack as “non-tariff barriers” to the free flow of goods. The idea was that, when it comes to controlling a uniquely dangerous product, there's no such thing as “protectionism.”

Alas, the United States softened its position at a public meeting of TPP negotiators last month. The new proposal simply specifies that tobacco is included in an existing exemption for policies necessary to protect human life or health, and requires governments to consult before challenging each other's tobacco rules.

While better than the status quo, in that it might constrain governments from going to bat for domestic tobacco producers, this suggestion would leave tobacco companies free to mount legal challenges to various nations' policies.

The office of U.S. Trade Representative Michael Froman explained the new stance reflected “consultations with Congress and with a wide range of American stakeholders” — a polite reference to pushback from farm-state legislators, farm lobbies and other interest groups that feared a tobacco exception would expand to a health-related excuse for protectionism against many other products.

Though Asian countries have, in the past, discriminated against U.S. beef on trumped-up health grounds, U.S. agriculture's fears this time are overblown. Tobacco is unique, and everyone knows it. Surely that can be enshrined in an enforceable agreement — which would be easier if all “stakeholders” worked toward an effective compromise instead of attacking Mr. Froman's attempt as insufficiently protective of U.S. interests, as business interests continue to do.

Tom Bollyky of the Council on Foreign Relations suggests that the office of the trade representative could formally reassure U.S. businesses that supporting tobacco control in the TPP cannot serve as precedent under other circumstances. It could also make an exemption from legal challenge for tobacco-control measures applicable only to those measures that treat domestic and imported products equally. All concerned should strive for a TPP that addresses legitimate concerns of U.S. business — but reflects the unique dangers of smoking both here and abroad.