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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 o 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>