

**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.

Miriam Alexander, MD, MPH, FACPM, President
American College of Preventive Medicine
455 Massachusetts Avenue NW, Suite 200
Washington, DC 20001
202-466-2044
info@acpm.org

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.

American Society of Addiction Medicine
4601 N. Park Avenue, Upper Arcade #101
Chevy Chase, MD 20815
301-656-3920
Alexis Geier-Horan <ageier@asam.org>

Ellen R. Shaffer PhD MPH and Joe Brenner MA, Co-Directors
Sohil Sud MD, Senior Fellow
Center for Policy Analysis on Trade and Health (CPATH)
San Francisco Presidio
P.O. Box 29586
San Francisco, CA 94129-0586
415-922-6204
cpath@cpath.org

American Academy of Family Physicians
11400 Tomahawk Creek Parkway
Leawood, KS 66211-2672
913-906-6000, ext. 3110
PMcGarry@aafp.org

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:

³ <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a83af2>

⁴ 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:

⁵ <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a831a4>

⁶ <http://www.who.int/mediacentre/factsheets/fs310/en/index2.html>

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

⁸ http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/

⁹ http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/

¹⁰ <http://www.nlm.nih.gov/medlineplus/smokingand youth.html>

¹¹ World Health Organization (2011). Tobacco Fact Sheet. Available at www.who.int/mediacentre/factsheets/fs339/en/index.html

¹² http://whqlibdoc.who.int/publications/2011/9789240687813_eng.pdf

¹³ <http://summaries.cochrane.org/CD003439/does-tobacco-advertising-and-promotion-make-it-more-likely-that-adolescents-will-start-to-smoke>

¹⁴ http://www.who.int/tobacco/global_report/2011/en/index.html