



To: U.S. Representative Ami Bera
Date: February 12, 2015
Re: Public Health Opposes “Fast Track” on Trade

We write in strong opposition to current attempts to grant the President “fast track” trade promotion authority. Fast track authority would allow complex trade agreements with sweeping implications for the public’s health to leapfrog customary legislative protocol, and be put to a rapid “up or down” vote without public hearings or amendments, including those in the interest of protecting the health and safety of the American people.

The scope of modern trade agreements has expanded well beyond tariffs to include public health and access to health care, and other issues with a direct impact on domestic policy. The U.S is now engaged in negotiating major multi-party agreements affecting a significant percentage of the U.S. and the global economy, including the Trans-Pacific Partnership Agreement (TPP) with 11 Pacific Rim nations, and with the European Union,

Removing Congress’s power and authority to consider trade agreements would set a dangerous standard for public health and for our democracy. To the contrary, current circumstances call for intensified transparency and involvement by the public and our elected representatives in Congress at every stage of trade negotiations. Congress must retain the ability to ensure that our trade obligations do not undermine the ability of governments to protect legitimate public welfare objectives, including public health and the environment.

Safeguard Public Health

Health is a universal aspiration of all peoples and governments. People’s health must be the highest priority in determining trade policies. Public health measures have been responsible for creating and monitoring the conditions that maintain a healthy population. The safety of our living spaces, work places, prescription drugs, food and water, and consumer products, and protection from biohazards and the burden of tobacco-related diseases, are all products of government action, legislation and regulation, not the result of unregulated market forces.

Previous trade agreements negotiated under “fast track” rules, without Congressional ability to discuss, debate, and revise provisions in the public interest, have prohibited parallel importation (reimportation of pharmaceuticals to increase their affordability)¹, and weakened the ability of local, state and national governments’ procurement contracts to specify standards for medical and financial privacy, quality and performance, local economic development, and environmental protection.

The TPP proposes to facilitate international trade by private corporations, and to reduce regulation, in a number of sectors: agriculture, government procurement, investment, services, and intellectual property rights. It also proposes rules for market access, subsidies, settlement of trade disputes, and competition policy. The TPP has been negotiated without public knowledge, input, or debate.

Protect Tobacco Control

Tobacco use continues to be the leading preventable cause of death in the United States and worldwide, and is the only legal substance that, when used as intended, kills people, causing 6.3

¹ Australia-U.S. Free Trade Agreement, Article 17.9.4.
http://www.ustr.gov/sites/default/files/uploads/agreements/fta/australia/asset_upload_file469_5141.pdf.

million deaths a year.² Cigarette smoking is responsible for about one in five deaths annually³ and a major contributor to the global pandemic of tobacco-related non-communicable diseases.

Countries continue to tackle this public health crisis with sound policies designed to curb smoking and combat deceptive industry practices. Such regulations include bans on flavored cigarettes, increases in tobacco taxation, restrictions on tobacco advertisements, and placement of graphic warning labels on cigarette packages. Although all of these policies are supported by a robust body of scientific evidence, each has been contested in recent trade agreements and by trade-related challenges. Tobacco companies have accelerated their use of trade rules to attempt to delay and reverse tobacco control measures in the U.S., Australia, Uruguay, and Norway.

The extent to which the TPP will further destabilize existing tobacco control policies is unknown, largely because negotiation of trade rules and tobacco industry activity in the trade arena occur in secret, outside of public scrutiny. Analysis of the Intellectual Property Chapter draft of the TPP that was made public in 2014 found multiple potential threats to tobacco-control measures, and the sovereign ability of nations to protect public health from tobacco-related disease and death.⁴

Only through appropriate Congressional oversight will we ensure that the TPP does not undermine the right and ability of the U.S. or participating countries from exercising their domestic sovereignty in order to adopt or maintain measures to protect public health, including reducing tobacco use and to prevent the harm it causes to public health.

Ensure a Significant Role for Congress to Promote Democratic, Transparent, and Accountable Trade Negotiations

As trade agreements today address a broad range of policy areas, there must be effective mechanisms for informing and soliciting advice from the public, organizations representing the public's interests, and Congress, in the development and oversight of trade negotiations and trade agreements. We note several mechanisms proposed by U.S. Rep. Sander Levin, ranking Democrat on the House Ways and Means Committee, in this regard:

- USTR should publicly release summaries of its negotiating proposals and provide opportunities for public comment.
- Congress should have a role in determining the trading partners we negotiate with. The views of Committees within Congress should be sought as to how the negotiations affect matters within their jurisdiction. At the conclusion of negotiations, Congress must have a stronger role in determining whether the negotiating objectives have been met.
- USTR must make available to all Members of Congress and all staff with the necessary security clearance the text of the negotiations, including the proposals of our trading partners.
- Issues directly related to public health which have been the subject of recent and pending negotiations of Free Trade Agreements, and for which several Congressional committees have jurisdictional responsibility, include:
 - Trademark and patent protections, and other trade rules giving the tobacco industry powerful tools to challenge, delay, and reverse tobacco control measures taken by nations and communities to protect public health from tobacco-related disease and death;

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.

³ 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.

⁴ Center for Policy Analysis on Trade and Health. Intellectual Property Chapter of Trans-Pacific Partnership Trade Agreement, Tobacco, and Public Health, November 25, 2013. http://www.cpath.org/sitebuildercontent/sitebuilderfiles/TPP_IP_TobaccoNov25_2013.pdf

- Patents and other trade rules affecting access to affordable prescription drugs;
- Rules on how governments procure goods and services, undermining our ability to moderate the costs of prescription drugs, biologic drugs and medical devices for seniors and veterans, and in public programs such as Medicare and Medicaid;
- State and local standards for public health, and access to health care;
- Standards for the safety of plants and food, affecting food programs;
- Environmental protection and resource utilization and conservation.

Congressional Committees in the House of Representatives with areas of jurisdiction which relate to the promotion of health of individuals, communities, and populations, and access to health-related services and products, and trade include, for example: Ways and Means; Appropriations; Agriculture; Education and Labor; Energy and Commerce; Foreign Affairs; Judiciary; Oversight and Government Reform; and Veterans' Affairs.⁵

Congressional Committees in the Senate with areas of jurisdiction which relate to the promotion of health of individuals, communities, and populations, and health-related services and products include: Finance; Appropriations; Agriculture; Commerce, Science and Transportation; Energy and Natural Resources; Environment and Public Works; Foreign Relations; Health, Education, Labor and Pensions; Judiciary; Special Committee on Aging; and Veterans' Affairs.⁶

We recommend that Congress:

- Conduct hearings, solicit public comment, and take other appropriate investigatory and oversight action in all relevant Committees in Congress, to assess the impact of past, pending, and current trade agreements on population health, and assure based on such assessment that these agreements do not have an adverse impact on health.
- Mandate the appointment to all relevant trade advisory committees representatives of organizations that work to assure equitable access to affordable health-related services and products, and promote the health of individuals, communities and populations.

We strongly urge you not to abdicate your power and authority concerning trade agreements negotiated by the United States, and to retain your rightful authority for review, discussion, and revision of the TPP and all future trade agreements in the interest of protecting the health and safety of the American people. We strongly urge you to oppose the Trade Priorities Act.

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⁵ Rules of the House of Representatives, 113th Congress, Rule X. <http://clerk.house.gov/legislative/house-rules.pdf>

⁶ Standing Rules of the Senate, Rule XXV, Standing Committees, <http://www.rules.senate.gov/public/index.cfm?p=RuleXXV>;
<http://www.aging.senate.gov/about/rules>