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January 27, 2014

Ambassador Michael Froman
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20208

Dear Ambassador Froman:

The undersigned Attorneys General write to request that the United States Trade Representative act to preserve the ability of state and local governments to regulate tobacco products to protect the public health. This request is prompted by the negotiations currently underway with respect to the Trans-Pacific Partnership agreement (TPP), but it applies generally to all international trade and investment agreements that the United States is considering or will consider entering into. In particular, we request that any such agreement explicitly provide that it does not apply to trade or investment in tobacco or tobacco products.

While discussion of the TPP's impact on tobacco regulation has focused primarily on regulation by federal agencies under such legislation as the 2009 Family Smoking Prevention and Tobacco Control Act, states and localities also engage in regulation of tobacco products to protect their citizens and their treasuries from the toll of death and disease that those products cause. Indeed, a full decade before the Tobacco Control Act, state Attorneys General entered into the Master Settlement Agreement (MSA) (as well as earlier settlements in four states) with the major tobacco companies, and a number of other domestic and foreign companies are now also parties to the MSA. As a result of the MSA, States enacted new statutes and regulations to enforce certain of the Agreement's terms. The public health achievements in the MSA should not be subject to backdoor attacks on the very legislation used to make those gains.

In addition to the legislation relating to the MSA, existing state and local tobacco regulation includes such areas as tobacco marketing that targets children; taxation; licensing; the minimum age for purchase of tobacco products; Internet sales; advertising (including health) claims and promotional methods; retail display; fire safety standards; minimum prices; and indoor smoking restrictions. Such regulation is specifically recognized and preserved by Congress in the Tobacco Control Act, and plays an important role in combating the health and financial consequences of tobacco use.

An example of this kind of state regulation is the recently settled case that Vermont brought against R.J. Reynolds Tobacco Company, alleging that advertisements for the company's Eclipse cigarette falsely claimed, among other things, that the cigarette "may present less risk of cancer, chronic bronchitis, and possibly emphysema." The trial court held that this claim was

2030 M Street, NW
Eighth Floor
Washington, DC 20036
Phone: (202) 326-6000
<http://www.naag.org/>

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deceptive because it was not sufficiently supported by competent and reliable scientific evidence, and therefore violated the MSA and the Vermont consumer fraud statute. The Court enjoined any similar future claims. The parties have settled the case, leaving the trial court's judgment and permanent injunction in place.

As the chief legal officers of our states, we are concerned about any development that could jeopardize the states' ability to enforce their laws and regulations relating to tobacco products.

Experience has shown that state and local laws and regulations may be challenged by tobacco companies that aggressively assert claims under bilateral and multilateral trade and investment agreements, either directly under investor-state provisions or indirectly by instigating and supporting actions by countries that are parties to such agreements. Such agreements can enable these tobacco companies to challenge federal, state, and local laws and regulations under standards and in forums that would not be available under United States law.

A recent example of such a challenge is a NAFTA investor arbitration brought by Grand River Enterprises Six Nations Ltd., a Canadian cigarette manufacturer that challenged certain MSA-related laws in 45 states – laws that have been upheld in every challenge to them in a United States court, including several by Grand River itself. The NAFTA challenge was rejected by an arbitration panel, but only after extensive litigation that consumed significant state and federal time and resources to defend. Other examples include Indonesia's successful challenge to the Tobacco Control Act's ban on flavorings as applied to clove cigarettes, and tobacco companies' challenges to cigarette package warnings in Uruguay, Australia, and Thailand. In sum, provisions in agreements that set forth vague standards and that are left to arbitration panels to interpret can undermine public health regulation by reducing the certainty and stability necessary to such regulation.

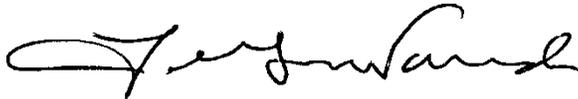
Unfortunately, the "Elements of Revised TPP Tobacco Proposal" that the Trade Representative announced this past August would not adequately protect state and local regulation from these potential adverse consequences of the current draft TPP agreement. As we understand from publicly available information, the August USTR proposal has two elements: first, an "understanding" that a general exception in the TPP agreement for "matters necessary to protect human life or health" applies to "tobacco health measures," and second, a requirement that there be non-binding consultations between the respective public health officials of the concerned parties before formal consultations are initiated with respect to any challenged measure. The USTR proposal, however, fails to recognize the unique status of tobacco as a harmful product; would not eliminate the need for arbitration to determine whether a measure falls within the exception; and in any event would apparently apply only to the TPP trade provisions and thus would have no impact on investor-state arbitration that the tobacco industry uses as a tool to challenge and stymie legitimate measures that countries (including their federal, state, and local governments) adopt to reduce tobacco use.

Based on the history to date with respect to such challenges to regulatory authority, we believe that the only way to avoid the damage to public health posed by a multilateral agreement like the TPP is to carve tobacco out of the agreement entirely, as the Government of Malaysia and others have proposed. Any "slippery slope" argument against such a carve-out should be rejected. Tobacco is the only product that, when used as intended, causes fatal diseases in many of its

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users without providing any nutritional or other health benefits. It kills 440,000 Americans every year and, at present rates, will kill more than one billion people worldwide in this century. There is no policy justification for including tobacco products in agreements that are intended to promote and expand trade and investment generally.

Sincerely,



Lawrence Wasden
Idaho Attorney General



Luther Strange
Alabama Attorney General



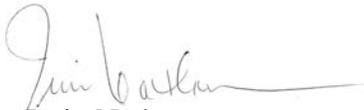
Tom Horne
Arizona Attorney General



Kamala Harris
California Attorney General



George Jepsen
Connecticut Attorney General



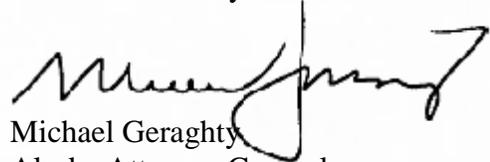
Irvin Nathan
District of Columbia Attorney General



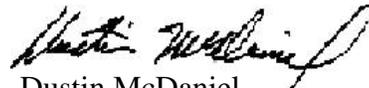
Lenny Rapadas
Guam Attorney General



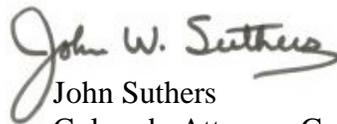
William H. Sorrell
Vermont Attorney General



Michael Geraghty
Alaska Attorney General



Dustin McDaniel
Arkansas Attorney General



John Suthers
Colorado Attorney General



Joseph R. "Beau" Biden III
Delaware Attorney General



Samuel S. Olens
Georgia Attorney General



David Louie
Hawaii Attorney General



Lisa Madigan
Illinois Attorney General



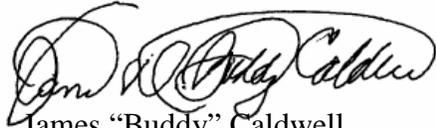
Greg Zoeller
Indiana Attorney General



Tom Miller
Iowa Attorney General



Derek Schmidt
Kansas Attorney General



James "Buddy" Caldwell
Louisiana Attorney General



Janet Mills
Maine Attorney General



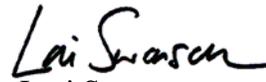
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Maryland Attorney General



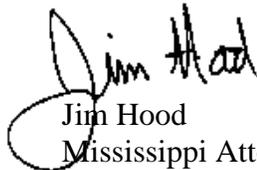
Martha Coakley
Massachusetts Attorney General



Bill Schuette
Michigan Attorney General



Lori Swanson
Minnesota Attorney General



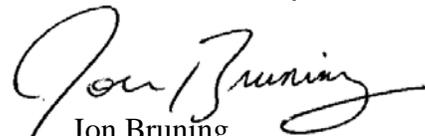
Jim Hood
Mississippi Attorney General



Chris Koster
Missouri Attorney General



Timothy Fox
Montana Attorney General



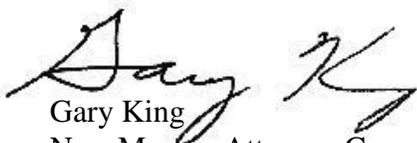
Jon Bruning
Nebraska Attorney General



Catherine Cortez Masto
Nevada Attorney General



Joseph Foster
New Hampshire Attorney General



Gary King
New Mexico Attorney General



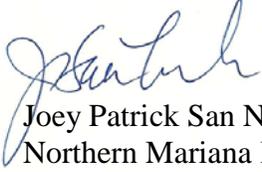
Eric T. Schneiderman
New York Attorney General



Roy Cooper
North Carolina Attorney General



Wayne Stenehjem
North Dakota Attorney General



Joey Patrick San Nicolas
Northern Mariana Islands Attorney General



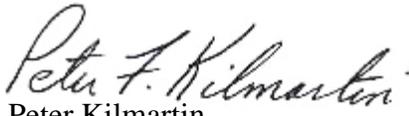
Scott Pruitt
Oklahoma Attorney General



Ellen Rosenblum
Oregon Attorney General



Kathleen Kane
Pennsylvania Attorney General



Peter Kilmartin
Rhode Island Attorney General



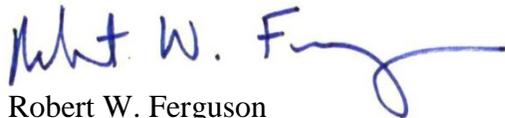
Alan Wilson
South Carolina Attorney General



Marty J. Jackley
South Dakota Attorney General



Sean Reyes
Utah Attorney General



Robert W. Ferguson
Washington Attorney General



J.B. Van Hollen
Wisconsin Attorney General



Peter K. Michael
Wyoming Attorney General