



Working Group of State Legislators for Health Reform

September 18, 2013

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

Re: State Legislators Urge U.S. Trade Policy that Supports State and Federal Policies to Reduce Tobacco Use and Promote Health

Dear Mr. President:

The Working Group of State Legislators for Health Reform consists of 115 state legislator members from 36 states who are working to move health reform forward in their states and at the national level. We are deeply involved with implementing the Affordable Care Act in our respective states, having strongly supported its passage. Many of us chair or have other leadership positions in the health committees in our legislatures, where we have been leading voices on public health and health access.

We write today to urge the your Administration, including the U.S. Trade Representative and the Department of Health and Human Services, to advocate strongly for policies within the 12-nation Trans-Pacific Partnership Agreement (TPP) and other pending trade and investment agreements to ensure that these agreement protect public health from the known and completely preventable diseases caused by tobacco use. Specifically, we strongly support carving out tobacco from the provisions of the TPP and explicitly recognizing the unique status of tobacco products from a health and regulatory perspective. We are aware that Malaysia, one of our TPP trading partners, has announced its commitment to carving out tobacco from this agreement, and we urge the U.S. to support this effort.

As state legislators, we are well aware that 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. Cigarette smoking is responsible for about one in five deaths annually² and smoking kills more people than alcohol, AIDS, car accidents, illegal drugs, murders, and suicides combined, with thousands more dying from spit tobacco use. Of all the children who become new smokers each year, almost a third will ultimately die from it. In

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.



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addition, smokers lose an average of 13 to 14 years of life because of their smoking.³

Particularly coming out of the Great Recession, state governments have struggled to adequately fund our Medicaid programs, which annually spend \$13.3 billion on smoking-caused payments, (out of \$30.9 billion for smoking-related Medicaid payments including the federal share). The total annual public and private health care expenditures caused by smoking in the U.S. is \$96 billion, and *these costs are preventable*.⁴

Our trade policies should support, not undermine, these efforts. Yet trade agreements and trade rules offer the tobacco industry powerful tools that in fact do undermine and even supersede local, state, and national measures to implement and enforce tobacco control measures. U.S. states – and the members of the Working Group of State Legislators for Health Reform - have been front and center in the fight against tobacco-related diseases. Let’s remember that 46 states and 5 territories sued the tobacco industry and entered into a global settlement that both provides ongoing funding to state tobacco cessation and prevention efforts, and also established the regulatory framework codified in the landmark Family Smoking Prevention and Tobacco Control Act that you signed into law on June 22, 2009.

Tobacco companies have recently accelerated their use of trade rules to attempt to delay and reverse tobacco control measures around the world. In recent years:

- Indonesia sued the United States in the World Trade Organization over a ban on clove cigarettes, which is part of a prohibition on flavored cigarettes that appeal to youth.
- Philip Morris International sued Uruguay under a bilateral investment treaty over its laws increasing the size of warning label on cigarettes and limiting the number of variations of each brand. Uruguay adopted these policies to counter the tobacco industry’s use of the deceptive terms “light,” “low tar” and “mild.”
- American business groups asked the Office of the United States Trade Representative to use the Trans-Pacific Partnership Agreement negotiations to prevent Australia from moving forward with a requirement for plain cigarette packaging.
- Philip Morris International sued Australia over its new plain-packaging law under an Australia-Hong Kong bilateral investment treaty.
- Philip Morris International has sued Norway and Ireland over legislation banning the retail display of tobacco products as a violation of European trade rules.

The United States risks having its own landmark law giving the Food and Drug Administration

³ See “*Toll of Tobacco in the United States*”, Tobacco Free Kids, http://www.tobaccofreekids.org/research/factsheets/pdf/0072.pdf?utm_source=factsheets_finder&utm_medium=link&utm_campaign=analytics

⁴ “*Toll of Tobacco in the United States*”, Tobacco Free Kids, http://www.tobaccofreekids.org/research/factsheets/pdf/0072.pdf?utm_source=factsheets_finder&utm_medium=link&utm_campaign=analytics



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the authority to regulate tobacco products undermined by tobacco industry lawsuits attacking its key provisions. Several elements of the FDA law, including the requirement for large, graphic cigarette warnings, marketing restrictions and flavoring ban, could be challenged under trade laws.

We are deeply concerned that U.S negotiators, rather than eliminating provisions in the TPP in order to protect public health from tobacco use, have put forward proposals that leave the door wide open for future challenges by large international tobacco corporations to overturn federal, state and local tobacco control measures.

We strongly believe that international trade and investment agreements should not be used by the tobacco industry to circumvent existing or evolving public health law. We note that tobacco control measures are a firmly established tenet of current U.S. law and continue to receive the broad support of elected officials on every level regardless of political affiliation. In addition, tobacco is the subject of the only international public health treaty, the WHO Framework Convention on Tobacco Control, to which 30 countries are signatories, *including all of the other countries participating in the TPP*. While the United States has not yet signed on to the Framework Convention, its trade negotiators are bound by provisions of the executive order issued by President Clinton that stated, "In the implementation of international trade policy, executive departments and agencies 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."

It is vital that tobacco be treated as a special case by our trade rules, and that any exception language be clear, broad in scope, and effective. Trade agreements such as the TPP must not preclude new policies in response to changes in our understanding of not only the science of addiction and health impacts, but also of marketing and psychology. Tobacco-related provisions in the TPP must be able to respond to the ever-evolving strategies and products of the tobacco industry as that global industry adapts to changing regulations and understanding. The only effective way to accomplish these goals is to act to *carve out* tobacco control measures and tobacco products from the TPP.

We appreciate your strong commitment to public health and access to healthcare, represented most notably in your ongoing advocacy for the Affordable Care Act. We look forward to continuing our work with your Administration to fully implement the provisions of the ACA across this country, and look to you to insure that the public health goals of that law are supported and not undercut by our trade policies.

Sincerely,



Working Group of State Legislators for Health Reform

Senator Karen Keiser, Washington State
Chair, Working Group of State Legislators for Health Reform

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