

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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Majority (202) 225-2927  
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May 22, 2012

Ambassador Ron Kirk  
United States Trade Representative  
Executive Office of the President  
600 17th Street NW  
Washington, DC 20508

Dear Ambassador Kirk:

I write to welcome the release of the United States Trade Representative's (USTR) Trans-Pacific Partnership (TPP) Tobacco Proposal (Proposal). This initiative recognizes the unique harm posed by tobacco products and would create a safe harbor for health authorities in TPP member countries to adopt tobacco control regulations designed to safeguard the public's health. The Proposal reflects President Obama's strong commitment to tobacco control efforts domestically and abroad. I expect it will be well received by our TPP partners.

No matter where they are made or where they are consumed, cigarettes -- and their primary component, tobacco -- are addictive and deadly. According to the World Health Organization (WHO), tobacco use kills nearly six million people worldwide each year<sup>1</sup> and is the leading preventable cause of death.<sup>2</sup> Tobacco was the cause of 100 million deaths in the 20<sup>th</sup> century. And, if current trends persist unchecked, tobacco use will result in up to one billion deaths in this century.<sup>3</sup>

Creating a broad tobacco exemption in the TPP is consistent with the Framework Convention on Tobacco Control (FCTC), an evidence-based treaty empowering countries to counter the effects of global marketing and trade liberalization on tobacco use.<sup>4</sup> To date, there

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<sup>1</sup> World Health Organization, Media Centre: Tobacco (online at [www.who.int/mediacentre/factsheets/fs339/en/](http://www.who.int/mediacentre/factsheets/fs339/en/)) (accessed May 21, 2012).

<sup>2</sup> World Health Organization, Tobacco Free Initiative: Why Tobacco is a Public Health Priority (online at [www.who.int/tobacco/health\\_priority/en/](http://www.who.int/tobacco/health_priority/en/)) (accessed May 21, 2012).

<sup>3</sup> *Supra* note 1.

<sup>4</sup> World Health Organization, *WHO Framework Convention on Tobacco Control* (entered into force on Feb. 27, 2005).

are 174 parties and 168 signatories to the FCTC.<sup>5</sup> It is especially fitting to introduce this tobacco exemption in the TPP negotiations where each of our eight partner countries<sup>6</sup> has signed and ratified the FCTC and the United States (U.S.), as a treaty signatory, continues working toward ratification.

As you well know, this exemption is critical to ensure the U.S. Food and Drug Administration (FDA) has the ability to exercise its authority under the *Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act)*<sup>7</sup> to regulate tobacco products. Unfortunately, the recent World Trade Organization (WTO) ruling in *United States-Clove Cigarettes*<sup>8</sup> raised serious concerns about whether tobacco control measures adopted under the *Tobacco Control Act* could be vulnerable to challenge under international trade rules. The WTO tribunal in the case ruled that the *Tobacco Control Act*'s ban on flavored clove cigarettes is discriminatory even though the intent of the U.S. law is to reduce youth tobacco use and its provisions do not distinguish between domestic and imported products. Australia, a TPP partner, has similarly faced challenges in the WTO to its tobacco control initiative that will require more visible health warnings and so-called plain packaging on tobacco products.

Although I support the U.S. Proposal as an important starting point for the TPP negotiations, I continue to have strong reservations about two key issues:

- In light of recent trade challenges to U.S. and Australian tobacco control laws, I am concerned that the exemption contemplated in the U.S. proposal emphasizes regulatory measures and fails to also explicitly exempt statutory tobacco control measures that otherwise meet the origin-neutral and science-based criteria set forth in the Proposal. In my view, it is essential to safeguard countries' sovereign authority to take the most appropriate and most feasible action to protect the health of their citizens.
- I am deeply troubled that the U.S. Proposal fails to exclude tobacco products from tariff schedule reductions. This element of the Proposal is contrary to the intent and the spirit of the "Doggett Amendment" and Executive Order 13193 issued by President Clinton,<sup>9</sup> both of which prohibit the U.S. government from promoting the sale or export of tobacco products.

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<sup>5</sup> World Health Organization, Parties to the WHO Framework Convention on Tobacco Control (online at [www.who.int/fctc/signatories\\_parties/en/index.html](http://www.who.int/fctc/signatories_parties/en/index.html)) (accessed May 21, 2012).

<sup>6</sup> The Trans-Pacific Partnership negotiation includes Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, and the United States.

<sup>7</sup> Pub.L.No. 111-31.

<sup>8</sup> WTO Dispute Settlement DS406: *United States — Measures Affecting the Production and Sale of Clove Cigarettes*, (WT/DS406/AB/R) (Apr. 24, 2012).

<sup>9</sup> Exec. Order No. 13193, *Federal Leadership on Global Tobacco Control and Prevention* (Jan. 18, 2001).

Overall, however, I see the U.S. Proposal as a vital step to make certain that TPP partners can pursue tobacco control initiatives consistent with the objectives and principles of the FCTC. In the case of the United States, this would safeguard the implementation of the *Tobacco Control Act*, legislation that is critically important in addressing our country's ongoing problem with tobacco addiction. I look forward to working with you to strengthen the Proposal as it moves forward as part of the TPP negotiations.

Sincerely,



Henry A. Waxman  
Ranking Member  
Committee on Energy and Commerce