

## **U.S. Trade Proposal Caves to Big Tobacco**

### **U.S. Medical, Public Health, Public Interest Groups Urge Protection for Health & Wealth**

The U.S. Trade Representative intends to introduce a proposal on tobacco at negotiations to create the Trans Pacific Partnership (TPP), a trade agreement among 12 nations, at meetings in Brunei this week. The proposal capitulates to multinational tobacco corporations, jeopardizing the nation's health and economic welfare.

Tobacco companies have recently accelerated their use of trade rules to attempt to delay and reverse tobacco control measures that limit marketing in the U.S., Australia, Uruguay, Norway, and Ireland. Trade rules grant corporations rights to contest nations' public health and other policies. Countries that lose trade challenges face stiff financial penalties, payable to the complaining corporation.

[Public health and medical advocates in the U.S. and abroad have urged the USTR to exclude tobacco control protections](#) from trade challenges under the TPP. The USTR informally floated a policy in 2012 that could create a "safe harbor" for some tobacco control regulations. Many legal and medical experts noted that tobacco companies could easily exploit the remaining substantial loopholes.

But the tobacco industry marshaled opposition claiming that the U.S. proposal might actually reduce tobacco use, tobacco-related deaths, and tobacco sales. Other corporations backed up Big Tobacco, expressing concern that addressing the uniquely lethal effects of tobacco in trade agreements could set a precedent for reining in their own practices. On Aug. 15, USTR announced it would not advance that proposal.

The new proposal offers less than a fig leaf for trade rules that grant corporations rights over public health protections, and often eliminate them. It proposes simply to refer to the TPP the general health exception described in two multilateral agreements under the jurisdiction of the World Trade Organization (WTO): Article XX of the General Agreement on Tariffs and Trade (GATT), and Article XIV of the General Agreement on Trade in Services (GATS), and inserts a statement into the exception that repeats the self-evident observation that tobacco measures are health measures. These exceptions offer significant loopholes that favor companies asserting trade charges.<sup>1</sup> The exceptions do not apply to investment claims that tobacco companies could bring under the TPP. Even in trade disputes, the exceptions apply with great uncertainty in very limited situations. They require multi-year, multi-million-dollar litigation to mount a defense – a burden that many countries cannot afford. The tobacco industry exploits the cost and uncertainty of using the exceptions. (As a regional agreement, the TPP claims some latitude in varying from WTO rules.)

It also tacks on an additional layer of consultation among Health Ministers in the case of tobacco-related trade challenges between nations, added to the procedures and rules already provided. In effect, it conscripts health officials to consult in the context of trade rules they had no role in shaping, over trade challenges they did not initiate and have no power to adjudicate.

**Tobacco use costs the U.S. far more in lives and health care expenses than tobacco farming or manufacturing contribute to the economy.**

- Tobacco use kills 1,200 Americans daily. Cigarette smoking is responsible for an estimated \$193 billion in annual health-related economic losses in the U.S. (nearly \$96 billion in direct medical costs and an additional \$97 billion in lost productivity).<sup>2</sup>
- In contrast, total tobacco exports generate 0.10 percent (one tenth of one percent) of total U.S. annual exports (.07% unmanufactured, and .03% manufactured).<sup>3</sup> Tobacco manufacturing has declined exponentially in the U.S., and tobacco farming is also in decline, due in part to U.S. programs intended to facilitate the transition to more sustainable crops.<sup>4</sup>

- Exports of cigarettes and other U.S.-manufactured tobacco products dropped from \$3.9 billion in 1999 to \$488 million in 2011, as large U.S. manufacturers sold off their international businesses or formed subsidiaries located abroad.<sup>5</sup> Ninety-eight percent of exported U.S. cigarettes go to 5 countries, only one of which is a TPP partner (Japan).<sup>3</sup> Lower tariffs would lower the price of tobacco products, resulting in cheaper prices and increased consumption and use, especially among younger people. For this reason, international health policy and U.S. law prohibit the U.S. from using trade agreements to promote the sale or export of tobacco products. Yet the U.S. proposes to eliminate tariffs on tobacco products. Other TPP partners can reasonably object to encouraging the import of U.S. brand cigarettes.

Tobacco is the only legal consumer product that kills when used as intended. Tobacco use is the leading preventable cause of death worldwide, accounting for 6 million preventable deaths annually,<sup>6</sup> and is a major contributor to the global pandemic of non-communicable diseases, including childhood morbidity and mortality. As a unique product, it must be treated differently from other products and services that are traded across borders.

We urge TPP Partner countries to advance proposals that promote public health and stem preventable deaths from diseases related to tobacco, by guaranteeing nations' sovereign domestic rights and abilities to adopt or maintain measures to reduce tobacco use and to prevent tobacco-related deaths and diseases:

- 1. Exclude tobacco control measures from existing and future trade agreements.**
- 2. Do not request or agree to lower tariffs on tobacco leaf or products.**
- 3. Remove investor-state dispute settlement (ISDS) provisions; these grant tobacco corporations rights to contest nations' public health and other policies directly for financial damages through the global trade arena.**
- 4. Set trade policy through a transparent public process.**

President Obama's 2013 State of the Union message promised to lead an economy for the 21st Century, to reduce preventable deaths among youth, and to conduct policy transparently. Trade negotiations that expand corporate rights and powers, while undermining the public's health, cannot advance sustainable economic growth or wellbeing.

### **Organizations**

Action on Smoking and Health (ASH), Chris Bostic, MSFS, JD, Deputy Director for Policy  
American College of Obstetricians and Gynecologists, Barbara S. Levy, Vice President, Women's Health Policy

American College of Physicians

Center for Policy Analysis on Trade and Health (CPATH), Ellen R. Shaffer, PhD, and Joe Brenner, MA, Co-Directors

Corporate Accountability International, John Stewart, Campaign Director, Challenge Big Tobacco  
Human Rights and Tobacco Control Network (HRTCN), Carolyn Dresler, MD, Chair

International Association for the Study of Lung Cancer, Mike Cummings, Chair, Tobacco Control Committee

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<sup>1</sup> R. Stumberg, Safeguards for Tobacco Control: Options for the TPPA. *America Journal of Law and Medicine*, 39 (213); 382-441.

<sup>2</sup> 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;57(45):1226–8 [accessed Aug. 17, 2013].

<sup>3</sup> FDA, Report to Congress. United States Tobacco Product Exports That Do Not Conform to Tobacco Product Standards. 3/8/13.

<sup>4</sup> <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=toba&topic=landing>

<sup>5</sup> U.S. Government Accountability Office report, *"Illicit Tobacco: Various Schemes are Used to Avoid Taxes and Fees,"* accessed August 18, 2013, from [www.gao.gov/assets/320/316372.pdf](http://www.gao.gov/assets/320/316372.pdf)

<sup>6</sup> Thomas H. Frieden. [http://www.upi.com/Health\\_News/2012/06/14/US-smoking-related-diseases-cost-96B/UPI-56571339724113/#ixzz2cH5erl4c](http://www.upi.com/Health_News/2012/06/14/US-smoking-related-diseases-cost-96B/UPI-56571339724113/#ixzz2cH5erl4c)