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September 8, 2011

The Honorable Ron Kirk
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Exclusion of Tobacco and Alcohol and Their Products from Negotiations on the Trans Pacific Partnership Trade Agreement

Dear Ambassador Kirk:

On behalf of the physician and medical student members of the American Medical Association (AMA), I am writing to comment on the proposed Trans Pacific Partnership Agreement (TPP).

The AMA strongly urges you to ensure that tobacco products and alcoholic beverages are excluded from all provisions of the TPP and any other Free Trade Agreements. Accordingly, tobacco control measures would be exempted from trade rules protecting intellectual property including trademarks as well as from any investor-state dispute resolution processes. Exclusion of tobacco and alcohol would also not force trading partners to reduce or eliminate their current applied tariffs on these products. US trade negotiators should not ask any nation to weaken its current anti-smoking or alcohol control strategies in the interest of promoting free trade. Moreover, in order to help your office safeguard health while promoting economic growth, the medical profession and our colleagues in public health would benefit from being well informed about trade policy such as by full public health representation on trade advisory committees.

Our request is consistent with longstanding AMA policy that "international trade agreements recognize that health and public health concerns take priority over commercial interests, and that trade negotiations be conducted in a transparent manner and with full attention to health concerns and participation by the public health community." The AMA has expressed similar concerns to your predecessors regarding the proposed agreements with Malaysia (2006) and Korea (2007).

Thank you for consideration of these public health concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara", is written over a horizontal dotted line.

James L. Madara, MD

Enclosure

ATTACHMENT

The American Medical Association (AMA) is commenting on the proposed Trans Pacific Partnership Agreement (TPP), an Asia-Pacific regional trade agreement currently being negotiated among the United States and eight other partners. The United States' TPP negotiating partners are Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. The US objective is to expand this initial group to include additional countries throughout the Asia-Pacific region. The seventh round of negotiations begins on September 6, 2011 in Chicago with a goal of reaching the outlines of an agreement before leaders of the Asian-Pacific Economic Cooperation meet in Honolulu this November.

The AMA strongly urges the USTR to ensure that all tobacco products, including tobacco, cigarettes, cigars, smokeless tobacco, and other tobacco products, and also all alcoholic beverages, are excluded from all provisions of this and any other Free Trade Agreement (FTA), that tobacco control measures be specifically exempted from any trade rules protecting intellectual property including trademarks and also exempted from any investor-state dispute resolution processes, and that our trading partners current applied tariffs on these products not be reduced or eliminated.

US trade negotiators should not ask any nation to weaken its current anti-smoking or alcohol control strategies. This request is consistent with longstanding AMA policy that "international trade agreements recognize that health and public health concerns take priority over commercial interests, and that trade negotiations be conducted in a transparent manner and with full attention to health concerns and participation by the public health community."¹ Other credible groups with whom the AMA has worked share this concern, e.g., the Center for Policy Analysis on Trade and Health (CPATH)² and the Campaign for Tobacco Free Kids (CTFK).³ Moreover, the AMA has expressed strongly worded concerns to your predecessors regarding the proposed agreements with Malaysia (2006) and Korea (2007).

Cigarettes are the leading preventable cause of death and disease in the world. Smoking, and in particular teenage smoking, is a serious public health problem in developed and developing nations and contributes to the global burden of noncommunicable diseases (NCD). The World Bank estimates that the total health care cost from smoking typically constitutes between 1 and 1.5 percent of a country's GDP. The US and TPP partners all recognized this public health tragedy when each signed the world's first public health treaty, the Framework Convention on Tobacco Control (FCTC). These eight nations, but not yet the US, also ratified the Convention. It would be inconsistent with American support for the FCTC and with those nations' obligations under the FCTC for our country to negotiate a trade agreement with TPP partners that would lower tariffs on tobacco and increase the incidence of smoking.

¹ Report 18 of the Board of Trustees (A-04), International Trade Agreements, (Resolution 219-A-03), 2004.

² Joseph Brenner and Ellen Shaffer, co-directors, Center for Policy Analysis on Trade and Health (CPATH), Comments to USTR: Proposed United States-Trans-Pacific Partnership Trade Agreement [Docket: USTR-2009-0041] (January 25, 2010), available at: <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a83af2>

³ Matthew Meyers, President of Campaign for Tobacco Free Kids, Comments to USTR: Proposed United States - Trans-Pacific Partnership Trade Agreement [Docket USTR-2009-0041] (January 25, 2010), available at: <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a831a4>

Increased cigarette prices are the single most effective strategy for reducing smoking, particularly among teenagers and young adults. Indeed, the FCTC states that "price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons." The FCTC provides that its parties should maintain measures which may include tax policies and price policies on tobacco products so as to reduce tobacco consumption, and prohibit or restrict duty-free sales of tobacco products to travelers. Reducing prices for cigarettes by cutting tariffs on tobacco or cigarettes will only undercut this evidence-based health initiative.

Several countries have experienced significant success in motivating current smokers to quit by using graphic warning labels. The FCTC supports international tobacco controls intended to reduce the demand for tobacco, including bans on "low tar" or "mild" labeling, designs of warning labels, and restriction on mass-media advertising. Furthermore, Australia has proposed plain packaging on cigarette packages. However, the tobacco industry is using the investor-state dispute mechanisms available through trade agreements to challenge these effective tobacco control measures, relying on the intellectual property provisions related to trademarks enshrined in some existing bilateral investment treaties. The US has already exempted other harmful products such as firearms from coverage by intellectual property rules and investor-state challenges. This should be our consistent position with regard to tobacco products and leaf tobacco and to alcohol.

Removing trade barriers may be a desirable objective when the products being traded are beneficial, but tobacco is not a beneficial product. Cigarettes are the only legally available consumer product that kills through its intended normal use. Congress has enacted the Doggett Amendment in the United States Trade Representative's (USTR) appropriations since 1998 because it does not want the USTR to promote tobacco or cigarette exports. The Amendment and Executive Order 13193 also forbid government agencies, including USTR, from seeking to reduce or remove nondiscriminatory restrictions on the marketing and advertising of tobacco products. Even though the USTR does not generally negotiate with other countries specifically to benefit United States tobacco sales, if tobacco and tobacco products are not excluded from the duty reductions in all future FTAs, duty reductions will have the effect of promoting sales of American tobacco and tobacco products.

The World Health Organization (WHO) recognizes harmful use of alcohol as a major contributor to premature deaths and avoidable disease burden worldwide and is causally related to more than 60 types of disease and injury, including traffic fatalities. Alarming, 4% of the total global burden of disease is attributable to alcohol, about as much death and disability globally as is to tobacco or hypertension. The United Nations, with support from the global health community, will hold a special General Assembly session in September 2011 to address the epidemic of noncommunicable diseases. The WHO's proposed plan gives equal prominence to alcohol, tobacco, unhealthy eating and physical inactivity as the major contributors to NCDs.

Following the recommendation of the World Medical Association, we believe that, in order to protect and advance alcohol control, the US should consider alcohol as "no ordinary

commodity” in trade negotiations. Therefore, measures affecting the supply, distribution, sale, advertising, promotion, or investment in alcoholic beverages should be excluded (carving alcohol out) from trade agreements without balancing the economic impact with health and social consequences.⁴

It is imperative that the United States play a leadership role to reduce tobacco use and alcohol misuse and their devastating consequences around the world. Accordingly, notwithstanding any language to the contrary, nothing in the TPP should block, impede, restrict, or modify the ability of any party to take or maintain any action, including tariffs or domestic content requirements, relating to manufactured tobacco or alcoholic beverages that is intended or expected by the trading party to prevent or reduce tobacco or alcohol use or their harms or that is reasonably likely to prevent or reduce use or harms. Moreover, if there occurs a conflict between provisions of this TPP agreement and any party’s efforts to comply with the Framework Convention on Tobacco Control, the terms of the FCTC must prevail. Trade liberalization should not trump the goal of saving lives and promoting and protecting public health.

Finally, the medical profession and our colleagues in public health would benefit from being well informed about trade policy, and are well positioned to advise the US Trade Representative on policies and measures that would safeguard health while promoting economic growth. We continue to advocate for full public health representation on trade advisory committees.

In conclusion, USTR should exclude tobacco and alcohol and their products from the TPP and from all future free trade agreements.

⁴ World Medical Association. Statement on reducing the global impact of alcohol on health and society. 56th WMA general assembly. Santiago, Chile. 15 October 2005. Available at: <http://www.wma.net/e/policy/a22.htm>.