

November 12, 2013

Ambassador Michael Froman

Office of the United States Trade Representative 600 17th Street NW

Washington, DC 20208

Dear Ambassador Froman:

We write to express our concerns about the tobacco provisions proposed by the United States during the most recent Trans-Pacific Partnership (TPP) trade negotiations in Brunei. While we would prefer an exclusion for all tobacco products from the TPP, we strongly believe TPP should, at the very least, include language that recognizes tobacco as a unique consumer product and ensures TPP nations are able to fully implement and enforce strong nondiscriminatory tobacco control legislation to protect public health and reduce tobacco-related deaths.

Tobacco use is the leading preventable cause of deaths worldwide, taking 6.3 million lives a year, including 1,200 Americans daily. The United States spends nearly

\$200 billion a year for tobacco-related illness and injury, and lost productivity. Unless serious, urgent action is taken, tobacco will kill one billion people worldwide this century.

Tobacco companies and governments supporting tobacco companies have a history of aggressively using trade law to subvert domestic tobacco control measures. Indonesia, on behalf of Kretek International, an Indonesian tobacco company that sells a clove-flavored cigarette that is attractive to children, used provisions in several World Trade Organization agreements to challenge a provision in the Family Smoking Prevention and Tobacco Control Act that bans candy-like flavorings that appeal to youth smokers. Philip Morris International filed a Bilateral Investment Treaty dispute against Uruguay because of the country's graphic warning labels. The company is also using Australia's Bilateral Investment Treaty with Hong Kong to challenge an Australian ban on color and images on tobacco packages. These efforts by tobacco companies and governments supporting tobacco companies to use trade laws to subvert public health measures are deplorable and a serious threat to global public health.

The current tobacco proposal states that tobacco control measures are measures "to protect human health," and as such would fall under a "general exceptions" chapter of the TPP analogous to Article XX(b) of the General Agreement on Tariffs and Trade (GATT). It has long been assumed that tobacco control measures fall under this provision, and yet, we have seen repeated legal challenges to these measures. The provisions proposed by the United States would not exempt tobacco control measures from other TPP obligations and do not prevent nations, on behalf of tobacco companies, from using TPP as a basis for threatening or following through with legal action to prevent the enforcement of nondiscriminatory tobacco control legislation.

We appreciate that the current tobacco proposal allows the health ministers of the two countries to have an opportunity to discuss any challenged tobacco control measure before legal action commences. However, even if the consulting parties agree, consultation cannot block a challenge to tobacco control regulation. We are concerned that this provision will simply delay, but will not prevent, tobacco companies and governments supporting tobacco companies from using TPP as a basis for preventing domestic enforcement of sensible non-discriminatory tobacco control legislation.

We also appreciate efforts to find consensus on this issue. However, tobacco companies and governments supporting tobacco companies have proven they are willing to use trade laws as a basis to challenge domestic tobacco control legislation. The final TTP language should recognize this dangerous trend and prevent further abuses of trade laws related to domestic tobacco control legislation.

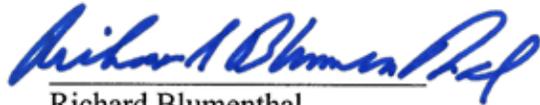
The United States should be leading the fight against death and disease from tobacco products, which are a uniquely dangerous threat to public health. We urge you to work with TPP participating nations to include language in TPP that recognizes tobacco

as a unique consumer product and ensures TPP nations are able to fully implement and enforce strong non-discriminatory tobacco control legislation to protect public health and reduce tobacco-related deaths.

Sincerely,



Richard J. Durbin
United States Senator



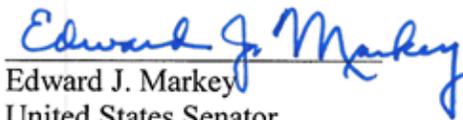
Richard Blumenthal
United States Senator



Tom Harkin
United States Senator



Heidi Heitkamp
United States Senator



Edward J. Markey
United States Senator



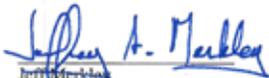
Dianne Feinstein
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Benjamin L. Cardin
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United States Senator



Al Franken
United States Senator



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