Congress of the United States
Washington, DC 20515

October 30, 2013

President Barack Obama
The White House
1600 Pennsylvania Ave NW
Washington, D.C. 20500

Dear President Obama,

We write to express our disappointment in the tobacco provisions proposed by the United States during the most recent round of Trans-Pacific Partnership (TPP) trade negotiations in Brunei. They are a step backward from the approach described by the United States last year, which included a clear "safe harbor" provision to preserve regulations that protect the public from the dangers of tobacco products. These weaker provisions, combined with concessions to lower tariffs on tobacco products, would likely lead to greater consumption of a deadly product, particularly in developing countries.

Tobacco companies have a history of using trade law to subvert 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 the World Trade Organization Agreement to challenge a provision in the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) that banned candy-like flavorings that appeal to youth smokers. Philip Morris International filed a Bilateral Investment Treaty dispute against Uruguay because of Uruguay'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 to use trade law to subvert public health measures are deplorable.

The language described by representatives of the Office of the United States Trade Representative (USTR) last year would provide some certainty that regulations implementing the Tobacco Control Act and other similar regulations throughout the TPP region would be protected from country-to-country challenges. But instead of providing this certainty, USTR put forth much weaker language stating that tobacco control measures are measures that "protect human health," and as such would be analyzed under the "general exceptions" chapter of the TPP, analogous to Article XX(b) of the General Agreement on Tariffs and Trade (GATT). The specific reference to tobacco is a positive development, but the new language does not provide the certainty of the prior proposal and its tobacco-specific safe harbor. For example, despite the new language, a tribunal may still take too narrow of a view as to what health measures are "necessary," second-guessing public health authorities and striking down a health measure where the tribunal is able to envision an alternative measure that may be less restrictive of trade. Surely, tobacco control measures addressed in the Framework Convention on Tobacco Control should be protected from challenge.

USTR also proposed that the health ministers of the two countries have an opportunity to discuss any challenged tobacco control measure. This is helpful, but it is not a substitute for the safe harbor language.

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We are also concerned that the USTR position be consistent with the letter and spirit of the Doggett Amendment, which prohibits the United States government from promoting tobacco exports. With tobacco tariffs subject to duty reduction, and with uncertainty as to whether tobacco control measures are adequately protected, the TPP could result in greater use of a deadly product. This is what happened in South Korea and other countries when tariff reductions opened local markets to imports of cigarettes by multinational tobacco companies. Vietnam is a particular concern. It is a developing country, currently has low rates of smoking among women, and is not prepared to combat Western-style tobacco marketing by the multinational tobacco companies.

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 direct USTR to reconsider its position.

Thank you for considering our views.

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Member of Congress

Lloyd Doggett
Member of Congress

Lois Capps
Member of Congress

Sander M. Levin
Member of Congress

Charles B. Rangel
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Frank Pallone, Jr.
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