

United States Senate

WASHINGTON, DC 20510

April 21, 2015

Ambassador Michael Froman
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20208

Dear Ambassador Froman:

The ability of countries to fight against death and disease from tobacco products must be protected. TPP should, at the very least, include language that recognizes tobacco products as unique consumer products and protect TPP nations' ability to fully implement and enforce strong non-discriminatory tobacco control measures to protect public health and reduce tobacco-related deaths without the threat of challenge from the tobacco industry.

Tobacco product use is the leading preventable cause of deaths worldwide, taking 6.3 million lives a year, including nearly 500,000 Americans a year. The United States spends nearly \$200 billion a year for tobacco-related illness and injury and lost productivity. The use of tobacco products is a major driving force behind the spread of non-communicable diseases such as cancer, heart disease and chronic lung disease, which have now overtaken infectious diseases as the world's leading killers. Without strong tobacco control efforts globally, one billion people will die prematurely this century.

Tobacco products are unique because they are the *only* products that when used as intended kill one out of two of its consumers, and the *only* products where the global consensus has been incorporated into an international public health treaty, the World Health Organization Framework Convention on Tobacco Control (FCTC). This treaty has been ratified by 180 nations including 11 of the 12 countries participating in TPP negotiations, demonstrating a global commitment to reducing harmful tobacco use.

As countries act to protect the health of their citizens with strong tobacco product control policies, tobacco companies are aggressively using trade law to subvert these public health measures. For instance, at least 64 countries now require health messages to comprise at least 50 percent of the overall package. Several of these countries, including Australia and Uruguay, require warnings to cover at least 80 percent of cigarette packaging. Smoking rates in Australia fell at their fastest pace in more than two decades following passage of Australia's law that bans color and images on all tobacco packages in the interest of public health. After the highest court in Australia upheld the constitutionality of the law, Philip Morris Asia challenged the country's law under its bilateral investment treaty with Hong Kong. Uruguay's law requiring graphic labels warning users about the health effects of tobacco has led to a country-wide substantial decrease of 4.3 percent in per-person consumption of cigarettes. After losing in Uruguay's courts, Philip Morris International filed a suit challenging Uruguay's law under its bilateral investment treaty with Switzerland.

These two cases are not isolated incidents; tobacco companies and their allies have threatened countries across the globe with expensive trade disputes to block, weaken, or delay policies intended to reduce the use of tobacco products and protect public health. Even if these challenges are not pursued, the threat of an expensive legal battle has already forced several countries – from New Zealand to Namibia – to reconsider or delay implementing policies to reduce tobacco product use. No provision of the TPP should be used as a basis for legal action to prevent participating nations from enacting nondiscriminatory tobacco control legislation that it considers appropriate to protect the health of its citizens.

These efforts are a serious threat to global public health and are clearly intended to bully countries that implement or even consider policies that reduce tobacco use and protect public health. These threats may be more effective in low- and middle-income countries where 80 percent of the world's smokers now live because these countries may not have the resources to engage in an expensive legal battle while the tobacco industry spends billions to market their deadly products, including in TPP countries. Furthermore, when a legal threat delays implementation of these policies it affords the industry more time to addict consumers in new and growing markets for tobacco products.

The United States should lead 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 products as unique 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 without the threat of trade disputes initiated by the tobacco industry.

Sincerely,

Devin Dunbar

Richard Blumenthal

Sharon Brown

Jack Reed

Brian Schatz

John Cornyn

Heidi Heitkamp Elizabeth Warren

Ben Cardin

Jeffrey A. Merkley

Al Franken

Patty Murray

Edward J. Markey

Donna Perle