

Congress of the United States

Washington, DC 20515

February 26, 2003

The President
The White House
Washington, DC 20500

Dear Mr. President:

We have just become aware that one week prior to the final negotiating session on the global tobacco treaty, the United States sent a letter to Saudi Arabia asking for Saudi help in weakening the international tobacco agreement. We strongly object to this action. We urge you to renounce this position before the close of negotiations on Friday.

According to a letter sent from the U.S. Embassy in Riyadh to the Ministry of Foreign Affairs of the Kingdom of Saudi Arabia, dated February 8, 2003, the United States recognizes that the relationship between health and trade will be “one of the most vigorously debated issues” in the negotiations on the Framework Convention on Tobacco Control (FCTC).¹ The letter, which is attached, then explains the U.S. position.

First, the letter asserts that there is no conflict between existing trade rules and the FCTC. In fact, there is a long history of countries and companies using trade arguments to fight tobacco control measures. Most recently, for example, Philip Morris has argued that Canada’s plan to bar the use of misleading descriptors for cigarettes, including “light” and “mild,” would violate trademark protections in the North American Free Trade Agreement and the World Trade Organization’s Technical Barriers to Trade Agreement.² As many trade experts recognize, the enormous harm tobacco causes justifies treating it differently than other products.

Second, the letter states that “the United States will work to include recognition in the FCTC of fundamental trade principles, such as nondiscrimination.” The effect of such language would be to allow countries and companies to use “nondiscrimination” as a cover to attack effective tobacco control measures that have different effects on different products. Poor countries might not want to pursue tobacco control policies that would risk an expensive legal battle, even one that would be winnable. The result would be the deterring and delaying of life-saving measures.

Third, the letter states that the United States encourages “trade and agriculture ministry participation in developing government positions for the February FCTC session.” These are the ministries most likely to represent the interests of the tobacco industry. The unspoken implication is that health ministries need to be countered in negotiating the treaty.

This diplomatic overture to the Saudis just one week prior to the final negotiating session can only be understood as an attempt to weaken the treaty. It comes just one week after Rep. Waxman and

¹Letter from U.S. Embassy to Ministry of Foreign Affairs of the Kingdom of Saudi Arabia (Feb. 8, 2003).

²Robert Weissman, *Philip Morris’ Trade Card*, Multinational Monitor (Apr. 1, 2002).

The President
February 26, 2003
Page 2

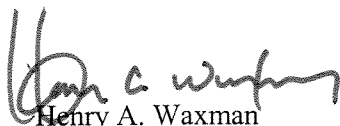
Sen. Durbin disclosed numerous instances of your Administration promoting tobacco abroad in trade deals and other actions that raise serious questions of compliance with congressional prohibitions.³

Over a year ago, Rep. Waxman wrote to you protesting efforts by your negotiators to weaken the tobacco treaty.⁴ We have just obtained a copy of Philip Morris's internal analysis of this letter and your Administration's actions on the FCTC, a copy of which is attached. According to Philip Morris:

In general, PMI [Philip Morris International] and PM USA have taken positions on the WHO treaty that, if anything, are to the left of the Bush Administration [W]e are supporting a treaty that would have many mandatory provisions to obligate signatory nations to minimum standards. The Administration, in contrast, appears to favor a voluntary approach in most areas.⁵

It is revealing that Philip Morris, the nation's largest cigarette exporter, says that your positions are even less protective of public health than its own. We urge you to reverse course immediately and support a strong tobacco treaty.

Sincerely,



Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
U.S. House of Representatives



Richard J. Durbin
Ranking Minority Member
Subcommittee on Oversight of Government
Management, Restructuring, and the
District of Columbia
Committee on Governmental Affairs
U.S. Senate



Lloyd Doggett
Member
U.S. House of Representatives

³Letter from Rep. Henry A. Waxman and Sen. Richard J. Durbin to the President (Feb. 12, 2003).

⁴Letter from Rep. Henry A. Waxman to the President (Nov. 19, 2002).

⁵E-mail communication from Mark Berlind to David Tovar et al. (Nov. 19, 2001).

No. 0250

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Kingdom of Saudi Arabia. The Embassy would appreciate the Ministry of Foreign Affairs' assistance in forwarding the attached points of concern to the appropriate officials in the Ministry of Commerce and the Ministry of Health prior to their departures for the 6th Intergovernmental Negotiating Body (INB6) on a Framework Convention on Tobacco Control (FCTC) to be held in Geneva, Switzerland, February 17-28, 2003.

The Embassy point of contact in this matter is Dalia Elsoudani. Ms. Elsoudani may be reached at telephone 488-3800, ext. 1253.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs the assurance of its highest consideration.

DIPLOMATIC NOTE



Embassy of the United States of America,

Riyadh, February 8, 2003.

--The sixth and final negotiating session for a Framework Convention on Tobacco Control (FCTC) is scheduled for February 17-28 in Geneva.

--These are groundbreaking discussions; the result will form the first ever global health treaty.

--Although the Convention will focus on domestic tobacco control measures, there are several areas where FCTC proposals touch upon international trade policy.

--One of the most vigorously debated issues is whether or not a relationship clause is needed to clarify how the FCTC relates to other international agreements - with specific focus on the trade-health nexus.

--There has also been discussion on whether or not to include recognition of fundamental trade principles in the Convention, such as nondiscrimination.

--Also, several countries have called for the FCTC to discipline agricultural subsidies to tobacco farmers.

--The United States believes that there is no inherent conflict between trade and health policies. They are not mutually exclusive - and can be mutually supportive.

--And there is no necessary trade off between having a rules-based international trading system, and strong domestic tobacco control measures or a health-based Framework Convention that commits countries to strong measures for the control of tobacco.

--The FCTC should not create such a conflict where it does not exist, as an excuse merely to weaken the general disciplines of the World Trade Organization (WTO) or to create wholesale exclusions to its rules.

--The United States believes that the trade rules provide wide and ample scope to pursue health policies, including those related to tobacco products.

--We further believe that there is no conflict with WTO rules raised by the current Chairman's draft FCTC text. And we should work to keep it that way.

--Based on these observations, and a text that is mutually supportive of health and trade policies, the Chairman's approach may offer a way forward by remaining silent on the issue of the FCTC's relationship to other international agreements.

--However, we will continue to watch as the obligations

further develop during the final negotiating session.

--In addition, the United States will work to include recognition in the FCTC of fundamental trade principles, such as nondiscrimination. We believe that nondiscrimination is a mutually supportive concept. Nondiscriminatory tobacco control measures can protect public health, as well as the international trading system.

--We want to work with delegations that have concerns regarding trade-related rules and obligations, and their relationship to the health-related measures contained in the FCTC.

--We would be interested in your views on the new Chairman's text.

--We believe that the competent forum to address agricultural subsidies - including for tobacco - is the WTO, where negotiations are underway to discipline such subsidies.

--The United States opposes efforts to discipline tobacco subsidies under the FCTC and is pleased with the new Chairman's text in this regard.

--We would be interested in your views on the new Chairman's text.

--We encourage trade and agriculture ministry participation in developing government positions for the February FCTC session.

--We welcome the opportunity to meet with your delegation to discuss trade-related issues prior to or during the sixth negotiating session in Geneva.

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-----Original Message-----

From: Berlind, Mark
Sent: Monday, November 19, 2001 9:09 AM
To: Tovar, David; Scruggs, John; Roberts, Peggy; Poole, Jay; Parrish, Steve; Davies, David; Macauley, Jack; Nelson, Donald (WashDC); Hurwitz, Even; Merlo, Ellen; Pfeil, Michael E.; Desel, Paula
Subject: RE: L.A. Times article

The letter referred to in this article does not appear yet on Waxman's web site (do we have a copy yet?); when we do obtain it there can be more extensive analysis. In the meantime, here are some factual reactions based on Waxman's allegations as reported in the article:

- In general, PMI and PM USA have taken positions on the WHO treaty that, if anything, are to the left of the Bush Administration. Because we believe that there is substantial common ground between ourselves and the public health community, and because we're convinced that regulation is good for our tobacco businesses, we are supporting a treaty that would have many mandatory provisions to obligate signatory nations to minimum standards. The Administration, in contrast, appears to favor a voluntary approach in most areas.
- For example, we are supporting *mandatory* marketing restrictions, minimum age to purchase laws, measures to combat cigarette smuggling and counterfeiting, and public smoking restrictions. We would also like the treaty to empower WHO to work with national governments to develop global standards in such critical areas as cigarette ingredient assessment and disclosure, measurement of smoke constituents, and claims relating to potentially reduced risk products.
- Waxman's letter, as reported in the *LA Times*, misstates our position in several respects. For example, as noted above, we support standards in several product-related areas. Moreover, we support -- not oppose -- regulation of brand descriptors such as "light" to ensure that they are neither false nor misleading.
- Waxman is correct that we do not support the FCTC proposed provisions on exports, tax harmonization, advertising expenditure disclosure and abolition of duty free. All of these measures would in our view be counterproductive, as explained in detail at http://www.pmfctc.com/content/submissions/mar-15-2001_submission.htm.