

Congress of the United States

Washington, DC 20515

November 18, 2003

The President
The White House
Washington, DC 20500

Dear Mr. President:

This week top trade officials from 34 countries are meeting in Miami to begin the final phase of negotiations to establish the Free Trade Area of the Americas (FTAA). We urge you to insist that tobacco products, including cigarettes and smokeless tobacco, be excluded from this trade-promoting agreement.

Your Administration has a poor track record on international tobacco issues. You have lowered tariffs for tobacco companies in bilateral negotiations, provided extensive international marketing assistance, and opposed multiple provisions in a groundbreaking international tobacco-control agreement.

It would be an enormous mistake to continue along this path in the upcoming trade talks. The FTAA would include over 500 million people in Latin American and Caribbean countries. If the deal eliminates tobacco tariffs and provides new grounds for the tobacco industry to challenge tobacco control measures, the FTAA would risk a public health catastrophe. It would accelerate ongoing efforts by tobacco companies to recruit millions of new users in Latin American, particularly women and the young.

We know that you are under pressure from major tobacco companies to lower tobacco tariffs in the FTAA. According to an e-mail exchange that we have obtained, Philip Morris, the nation's largest tobacco company, has expressed its expectation that your Administration will take a different approach than the Clinton Administration and will support elimination of cigarette tariffs in trade agreements. We urge you to resist this pressure and make protection of health — not tobacco company profits — your paramount concern.

The rest of this letter explains these issues in more detail.

Administration Actions on Tobacco and Trade

Over the past three years, your Administration has taken a series of actions that encourage the sale of United States finished tobacco products abroad.

In 2001, South Korea proposed a 40% tariff on imports and several restrictions on foreign investment as part of a plan to end its government-run tobacco monopoly. Philip Morris

criticized the tariffs as too high and the restrictions as too stringent.¹ Soon after, the U.S. Trade Representative sought and obtained lowered tariffs on U.S. cigarettes and fewer restrictions on U.S. tobacco companies.²

In 2002, the United States negotiated a bilateral trade agreement with Chile that eliminated tariffs on tobacco. Going into the negotiations, the U.S. Trade Representative told congressional staff that due to concerns for public health, the Administration would not support the inclusion of tobacco products in the agreement. But the Administration abandoned this position in the last hours of the negotiation. The final trade accord, which was announced on December 12, eliminated tobacco tariffs.

Your Administration also weakened global efforts to reduce tobacco use through the Framework Convention on Tobacco Control. Under the Clinton Administration, the United States was one of the world leaders in promoting a strong tobacco control treaty. However, your Administration repeatedly intervened at crucial moments to weaken the treaty by supporting 10 of 11 deletions that Philip Morris suggested.³ At various points in the process, the Administration opposed a requirement that warning labels be written in the language of the country in which the tobacco products are sold;⁴ tried to weaken proposals to limit tobacco advertising;⁵ and even opposed a mandatory minimum smoking age of 18.⁶ In the final days of the negotiation, the United States sought the support of Saudi Arabia to oppose provisions that

¹Philip Morris, *Philip Morris' Position Paper on Issues Pertinent to the Proposed Amendments to the Presidential Decree of the TBA* (2001).

²Letter from Barbara Weisel, Deputy Assistant U.S. Trade Representative for Bilateral Asian Affairs, to Kim Byung-Ki, Director General, Treasury Bureau, Ministry of Finance and Economy, Korea (June 6, 2001); *U.S. Helps Tobacco in Trade Case*, Washington Post (June 26, 2001).

³Letter from Rep. Henry A. Waxman to HHS Secretary Tommy G. Thompson (Nov. 19, 2001).

⁴Rep. Henry A. Waxman, *The Future of the Global Tobacco Treaty Negotiations*, New England Journal of Medicine, 936–9 (Mar. 21, 2002). After much criticism, the United States reversed its position on this issue.

⁵*Id.*

⁶Letter from Rep. Henry A. Waxman to President Bush (Apr. 29, 2003).

would give the public health treaty priority over trade deals.⁷ Despite HHS Secretary Thompson's statement in favor of the adoption of the treaty, you have not signed it.⁸

There have also been questions of compliance with congressional prohibitions on promoting tobacco products abroad. The General Accounting Office found that the USDA's Foreign Agricultural Service has produced numerous foreign market reports that assist U.S. tobacco companies. These reports provided detailed information for tobacco companies. For example, one included advice on how to target younger smokers in Malaysia; and another recommended "lively package designs" to attract customers in South Korea.⁹ The reports appear to violate the Durbin Amendment's prohibition on the use of USDA funds to promote the sale or export of tobacco. In response to the GAO report, USDA has made several changes to its tobacco activities.¹⁰

In April 2001, the U.S. Commercial Service of the Commerce Department prepared a report for a U.S. smokeless tobacco company on the market for smokeless tobacco in Pakistan.¹¹ This report included a series of photographs of businesses, including street vendors, where smokeless tobacco is sold. As the Commerce Department subsequently recognized, this report may have violated the Doggett Amendment, which prohibits the Departments of Commerce, State, and Justice from spending to promote the international tobacco trade.¹²

⁷Letter from U.S. Embassy to Ministry of Foreign Affairs of the Kingdom of Saudi Arabia (Feb. 8, 2003).

⁸*Tobacco Control Pact Set for Adoption*, Financial Times (May 20, 2003).

⁹U.S. General Accounting Office, *Tobacco Exports: USDA's Foreign Agricultural Service Lacks Specific Guidance for Congressional Restrictions on Promoting Tobacco* (May 30, 2003) (GAO-03-618); Letter from Sen. Richard J. Durbin and Rep. Henry A. Waxman to Secretary of Agriculture Ann M. Veneman, U.S. Department of Agriculture (July 1, 2003) (online at http://www.house.gov/reform/min/pdfs_108/pdf_inves/pdf_tobacco_veneman_FAS_july_1_let.pdf).

¹⁰U.S. Department of Agriculture, *Statement of Action on the U.S. General Accounting Office Final Report* (Sept. 10, 2003) (GAO-03-618).

¹¹U.S. Commercial Service, *Flexible Market Research (FMR) Prepared for United States Tobacco International Inc. Country: Pakistan* (Apr. 30, 2001).

¹²Letter from Assistant Secretary of State Paul V. Kelly to Rep. Henry A. Waxman (May 2, 2002).

The Free Trade Area of the Americas

The next major international talks affecting tobacco are the upcoming negotiations over the FTAA treaty. This week's meeting of ministers of trade marks the penultimate step of a process begun in 1994, when the heads of state of these nations met at the first Summit of the Americas and agreed to work towards building an FTAA.¹³ The plan was to incrementally remove barriers to investment and trade between the countries of the region, with the ultimate goal of "advanc[ing] the prosperity, democratic values and institutions, and security" of the Western Hemisphere.¹⁴

From 1994 to 1998, ministers of trade established principles and goals for negotiating the terms of the FTAA, and the negotiations themselves began at the Second Summit of the Americas in Chile in 1998.¹⁵ There are nine areas of negotiation: market access, investment, services, government procurement, dispute settlement, agriculture, intellectual property rights, subsidies, antidumping and countervailing duties, and competition policy.¹⁶ The final phase of negotiations begins in Miami this week and will conclude in Brazil in 2004.

The FTAA holds the potential for major economic benefits for participating countries. The benefits of free trade do not extend to finished tobacco products:

- **Tariffs:** For other products, the reduction or elimination of tariffs provides economic benefits by enhancing trade and consumption. For tobacco, however, existing tariffs protect the public health. High prices have been shown to decrease consumption of cigarettes.¹⁷ The World Bank has estimated that if cigarette prices were raised 10% worldwide, 40 million people would stop smoking, and 10 million fewer people would die from tobacco-related disease.¹⁸

¹³Free Trade Area of the Americas, *Antecedents of the FTAA Process* (online at http://www.ftaa-alca.org/View_e.asp).

¹⁴First Summit of the Americas, *Declaration of Miami* (Dec.19–11, 1994) (online at http://www.ftaa-alca.org/ministerials/miami_e.asp).

¹⁵Free Trade Area of the Americas, *supra* note 13.

¹⁶Free Trade Area of the Americas, *Negotiations Groups* (online at http://www.ftaa-alca.org/ngroup_e.asp).

¹⁷World Bank, *Curbing the Epidemic: Government and the Economics of Tobacco Control*, Chapter 4: Measures to Reduce the Demand of Tobacco (1999) (online at <http://www1.worldbank.org/tobacco/reports.asp>).

¹⁸*Id.*

- Intellectual Property Rights: For other products, trademark protection and other protections of intellectual property rights can facilitate their successful distribution across borders. But extending broad new protections to tobacco companies creates an opportunity to forestall effective health regulation. For example, evidence indicates that “light” and “mild” cigarettes are no safer than other cigarettes.¹⁹ However, in Canada, Philip Morris has argued that restrictions on the use of these deceptive descriptors constitute a violation of trademark protections under NAFTA and the World Trade Organization’s Technical Barriers to Trade Agreement.²⁰
- Investor Rights: The investment provisions of the FTAA are intended to give companies the right to challenge unfair trade practices.²¹ The proposed language parallels NAFTA’s Chapter 11, which has already been used by multiple corporations to bring cases protesting national, state, and local public health and environmental policies and judicial decisions.²² If applied to tobacco products, this language would allow manufacturers to challenge anti-smoking measures in other countries, potentially delaying and jeopardizing these important initiatives. Furthermore, unlike other provisions of the FTAA that allow countries to remedy violations before facing sanctions, the investment provision establishes immediate rights of compensation for companies. This is especially troubling for poorer countries, which lack the resources to counter an aggressive campaign by the tobacco industry.

The health risks of expanded trade are not theoretical. Countries encompassed by the FTAA currently have tariffs on tobacco products, some as high as 100%.²³ Evidence demonstrates that increasing the trade in tobacco products with low- and middle-income

¹⁹Institute of Medicine, *Clearing the Smoke: Assessing the Science Base for Tobacco Harm Reduction* (2001).

²⁰Robert Weissman, *Philip Morris’ Trade Card*, Multinational Monitor (Apr. 1, 2002).

²¹Free Trade Area of the Americas, *Second Draft Agreement*, Draft of Chapter on Investment, Article 15, Investor-State Disputes (Nov. 1, 2002) (online at http://www.ftaa-alca.org/ftaadraft02/eng/draft_e.asp).

²²U.S. Department of State, *NAFTA Investor-State Arbitrations* (online at <http://www.state.gov/s/l/c3439.htm>).

²³Campaign for Tobacco-Free Kids, *Public Health and International Trade Volume II: Tariffs and Privatization*, Appendix 3 (Oct. 2002) (online at http://www.tobaccofreekids.org/campaign/global/framework/docs/campaign_Tariffs.pdf).

countries increases tobacco use.²⁴ For example, U.S. pressure on Japan, South Korea, Taiwan, and Thailand to open their markets to foreign cigarettes in the mid to late 1980s raised average cigarette consumption in those countries by nearly 10%, representing millions of new smokers.²⁵

The public health consequences from similar actions in Latin America would be enormous. The combined population of the Latin American and Caribbean nations in the FTAA is 545 million.²⁶ Rates of smoking are already on the rise in Latin America and the Caribbean. Projected increases in smoking rates from 1998 to 2008 are 40.2% for Brazil, for example, and above 20% for Peru, Uruguay and Venezuela.²⁷ Additionally, the vast majority of smokers become addicted before adulthood,²⁸ and in Latin America and the Caribbean, 40% of the population is under 20, compared to 28% in the United States.²⁹

The U.S. tobacco industry is aware of the potential of this vast market. The Pan-American Health Organization commissioned a study of over one thousand internal tobacco-industry documents that relate to Latin America and the Caribbean.³⁰ Investigators found that in the 1990s, tobacco executives in Latin America worked to oppose tax increases and marketing restrictions, attempted to maintain the social acceptance of smoking, and not only were aware of but participated in the illegal smuggling of tobacco products.³¹ Their strategies for tapping into and expanding the market included:

²⁴A. Taylor et al., *The Impact of Trade Liberalization on Tobacco Consumption*, Tobacco Control in Developing Countries, 343 (2000).

²⁵F. Chaloupka and A. Laixuthai, *U.S. Trade Policy and Cigarette Smoking in Asia*, National Bureau of Economic Research Working Paper (Apr. 1996); *U.S. Aided Cigarette Firms in Conquests Across Asia*, Washington Post (Nov. 17, 1996).

²⁶U.S. Bureau of the Census, International Data Base (online at <http://www.census.gov/ipc/www/idbnew.html>).

²⁷World Health Organization, *The Tobacco Atlas: Section 31 — Projections by Industry* (2002) (online at <http://www.who.int/tobacco/en/atlas37.pdf>).

²⁸World Health Organization, *The Tobacco Atlas: Section 5 — Youth Smoking* (2002) (online at <http://www.who.int/tobacco/en/atlas7.pdf>).

²⁹U.S. Bureau of the Census, *supra* note 26.

³⁰Pan-American Health Organization, *Profits over People* (Nov. 2002) (online at http://www.paho.org/English/HPP/HPM/TOH/profits_over_people.pdf) (hereinafter “PAHO”).

³¹*Id.*

- Targeting young nonsmokers. A Brand-Strategies Report for Argentina from 1992 stated: “Starters are an important part of the target.”³²
- Targeting women. A marketing plan for Latin America for Virginia Slims stated that “[t]here are currently no major cigarette brands which have established a female brand position in Latin America” and provided a detailed plan to “determine appeal for female-positioned product.”³³
- Delaying and avoiding regulation. Philip Morris’s 1994 to 1996 strategic plan for Latin America states as an objective: “To prevent the passage of unfavorable legislation aimed at restricting or banning advertising or promotion of our products.”³⁴
- Manipulating public opinion. Philip Morris attempted to collaborate with public health authorities to minimize public perception of the risk of smoking; in a 1990 presentation, the company’s Latin America Manager said, “We expect the results of the survey [of medical school deans] will demonstrate that the concern with smoking in Latin America as a public health hazard is the result of outside pressure and not a primary item of concern among the medical community. If the study confirms our suspicion, we expect the Interamerican College of Physicians and Surgeons to amply publicize these findings.”³⁵

The tobacco industry’s push for free trade is an attempt to further exploit a prime market. It would be wrong for the United States to accelerate this epidemic in the name of free trade, instead of supporting our neighbors in their attempts to stem the tide of tobacco-related disease and death.

Philip Morris’s Role

In prior negotiations, the Administration has consistently placed the interests of tobacco giant Philip Morris ahead of public health. As mentioned above, U.S. negotiators supported

³²Nobleza-Piccardo, *Brand Strategies 1992* (Mar. 5, 1992) (cited in PAHO, at 11).

³³Leo Burnett Company, *Virginia Slims: Opportunities in Latin America* (Jun. 2, 1994) (cited in PAHO, at 65).

³⁴Philip Morris, *Philip Morris 1994-1996 Strategic Plan for Latin America* (cited in PAHO, at 11).

³⁵Philip Morris Latin America Manager Marc Goldberg, Presentation (1990) (cited in PAHO, at 11).

many of the company's positions at talks on the Framework Convention on Tobacco Control and supported the company's international interests in bilateral negotiations.

We have obtained e-mails indicating that Philip Morris has continued to ask the Administration to intervene on its behalf in trade negotiations. In July 2002, a Philip Morris executive engaged in an extended e-mail exchange with an official at the USDA, covering topics including Chile's existing import duty on cigarettes. When the USDA official reported that the duty was 11%, the Philip Morris executive responded:

11% is not a high duty. But if every other duty on every other product except cigarettes is going to zero in an FTA [Free Trade Agreement], we have a BIG problem. I know that all of chapter 24 was left out of the Jordan agreement, but that was in the last administration. I'm hoping that this won't happen again — because if it happens in this FTA, it bodes ill for FTAA and the Doha Round! Many thanks for your help.³⁶

As this e-mail indicates, Philip Morris expects your Administration to be more sympathetic to its concerns than the Clinton Administration was. Philip Morris viewed the Chile agreement as a precedent for the FTAA. The Chile agreement opened up a market of 15 million people by eliminating Chile's tobacco tariff. The FTAA would risk exposing hundreds of millions more from Latin America and the Caribbean to increased risk of death from tobacco.

Conclusion

At the Third Summit of the Americas in Quebec City two years ago, attending ministers and heads of state announced in their Declaration of Principles:

We emphasize that good health and equal access to medical attention, health services and affordable medicine are critical to human development and the achievement of our political, economic and social objectives.³⁷

Yet by spreading consumption of a deadly and addictive product, the inclusion of manufactured tobacco products in the FTAA would undermine the very principles and goals that the agreement seeks to promote.

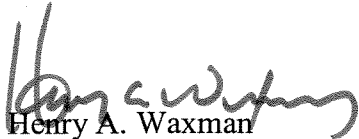
³⁶Email from Donald Nelson, Philip Morris, to Pete Burr, USDA Foreign Agricultural Service (Jul. 19, 2002).

³⁷Free Trade Area of the Americas, *Third Summit of the Americas: Declaration of Quebec City April 20–22, 2001* (online at http://www.ftaa-alca.org/ministerials/Quebec/declara_e.asp).

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Mr. President, the tobacco companies expect you to help promote the tobacco trade throughout the hemisphere. We urge you to reject these entreaties and instruct U.S. negotiators to create an affirmative exclusion of tobacco products from the FTAA.

Sincerely,



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



Lloyd Doggett
Member
Committee on Ways and Means
U.S. House of Representatives



Richard J. Durbin
Subcommittee on Oversight of Government
Management, the Federal Workforce,
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Committee on Governmental Affairs
U.S. Senate