

Meehan Calls on Bush to Exclude Tobacco Products from Central American Free Trade Agreement

June 2, 2004

Dear President Bush,

We are writing to urge that tobacco products be excluded from the Central American Free Trade Agreement and the series of bilateral and regional trade and investment agreements that the United States is negotiating with trading partners around the globe.

There is abundant evidence that including tobacco products in trade agreements undermines sound tobacco control policies in the U.S. and abroad, stimulates higher smoking rates in low income nations, and has a profound negative impact on global public health. It is simply not true, as the tobacco industry claims, that including tobacco products in these agreements would merely shift consumer demand from foreign brands to U.S. brands.

The best econometric analysis has concluded that the opening of Asian tobacco product markets in the late 1980s and early 1990s led to a 10 percent increase in overall smoking rates by 1991. This was an overall increase in smoking -- translating ultimately into a major spike in tobacco-related mortality and morbidity -- not merely a change in consumer preferences to foreign brands. The increases were most notable among women and children; smoking rates among teenage girls in South Korea more than quintupled in the single year after the market was opened to foreign cigarettes.

While increased trade may offer a range of benefits for importers and exporters alike, those benefits do not apply to tobacco products. There is nothing desirable about achieving greater efficiency in the production and distribution of products that kill when used as intended. Reducing tariffs on cigarettes and other tobacco products, or removing public health measures that may run afoul of trade agreement rules on non-tariff barriers, will result in increased smoking rates and needless, preventable death and disease.

The tobacco industry has, on numerous occasions, used trade agreements to threaten countries considering appropriate tobacco control measures. Recently, for example, Philip Morris argued that Canadian efforts to ban the use of misleading descriptors for tobacco products (terms like "mild" and "light") would violate Canada's obligations under NAFTA and WTO. Philip Morris argued such a ban would violate Canada's obligations under the agreements' intellectual property, investment and technical barrier to trade rules. Philip Morris is maintaining this position even though the U.S. National Cancer Institute has found that "light" and "low-tar" products offer no health benefits, and concluded that consumers falsely believe that using such products does offer them a safer alternative to other cigarettes.

We are particularly concerned that U.S. and foreign tobacco control rules might conflict with investment agreements, such as those contained in NAFTA's Chapter 11. Under Chapter 11-style agreements, companies -- including the members of the tobacco industry -- can directly sue governments, often claiming very large damages. In contrast, other trade agreement provisions

permit governments only to challenge other governments' policies. This feature provides a modest political check on challenges to sound public health policy -- but it is wholly absent in the case of investment agreements. The prospect of facing endless litigation and potentially enormous damage awards is certain to chill governments from enacting sound, life-saving tobacco control policies.

The United States recently supported the adoption of the World Health Organization's Framework Convention on Tobacco Control (FCTC). The FCTC has as its stated mission the protection of "present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke..." The commitment on the part of the United States and other nations as embodied in this treaty would be wholly inconsistent with negotiations of trade and investment provisions that interfere with these public health priorities.

The United States has recently finalized, is now negotiating or has announced plans to start negotiating trade agreements with Central American countries (CAFTA), Panama, the Dominican Republic, the Andean nations, all of the Western hemisphere (the Free Trade Area of the Americas), the Southern African Customs Union, Morocco, Thailand and Australia, and has signaled a clear intent to negotiate others, as well.

Tobacco products must be excluded from all of these agreements, including both their tariff and nontariff provisions. Such an exclusion is easily achievable and has been done in the past. Tobacco products were excluded from the tariff schedules in the U.S.-Jordan and U.S.-Vietnam free trade agreements. Tobacco products were included in the U.S.-Chile agreement only at the last-minute behest of Philip Morris -- an unfortunate turn of events that must not be repeated.

At this time, we are particularly concerned with CAFTA. We wish to emphasize that unless tobacco products are specifically excluded from the agreement, we will find it very difficult to support the adoption of this agreement. At stake are thousands and thousands of lives.