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CHAIRMAN

ONE HUNDRED EIGHTH CONGRESS

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RANKING MINORITY MEMBER

# Congress of the United States

## House of Representatives

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February 12, 2003

The President  
The White House  
Washington, DC 20500

Dear Mr. President:

The World Health Organization has recently estimated that 4.9 million people around the world will die this year from diseases caused by tobacco products.<sup>1</sup> This massive death toll will soon eclipse that of any single disease in the world.<sup>2</sup> Unfortunately, instead of leading international efforts to reduce tobacco use, your Administration has taken a string of actions to promote the sale of U.S. cigarettes and smokeless tobacco products abroad.

In Chile and South Korea, the U.S. Trade Representative (USTR) has negotiated reduced tariffs on U.S. cigarettes, paving the way for lower prices and new customers. From Pakistan to Greece and Moldova to China, federal agencies have provided export assistance to U.S. tobacco companies, raising serious questions of compliance with congressional prohibitions on the use of federal funds to promote tobacco. And in Geneva, Switzerland, our country's representatives at global tobacco treaty negotiations have fought efforts by the international community to combat the tobacco trade.

Your Administration is even failing in the fight against tobacco smuggling, which accounts for approximately one of every four cigarettes exported. Despite evidence that smuggling funds terrorism, the United States has opposed anti-smuggling litigation, has yet to support important changes to domestic law, and has failed to back strong anti-smuggling provisions in the global tobacco treaty.

At the same time that your Administration has taken these actions, the Republican Party has collected millions of dollars in contributions from the tobacco industry. Philip Morris, now

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<sup>1</sup>World Health Organization, *The Tobacco Atlas* (October 2002).

<sup>2</sup>C. Murray and A. Lopez, *Alternative Projections of Mortality and Disability by Cause 1990-2020: Global Burden of Disease Study*, *Lancet*, 1498-1504 (May 24, 1997).

known as Altria, the nation's leading cigarette exporter, is also the Republican Party's single largest campaign contributor.<sup>3</sup> Moreover, many senior Administration officials formerly worked for tobacco companies.<sup>4</sup> At a minimum, this creates a terrible appearance of special favors for the tobacco industry.

We call on you to adopt new policies on tobacco. Lower tobacco tariffs and increased imports of tobacco products are associated with rising tobacco consumption, disease, and death in developing countries.<sup>5</sup> This grim legacy is not worthy of the United States.

The rest of this letter spells out these issues in greater detail.

### **Trade Negotiations That Benefit Tobacco Companies**

Since you took office in January 2001, the United States has at least twice supported lower tariffs on cigarettes in trade negotiations. This paves the way for increased sales by multinational tobacco companies, since lower prices substantially increase consumption of cigarettes.

Most recently, the United States agreed to the complete elimination of tobacco tariffs as part of a bilateral trade agreement with Chile. At the start of talks, USTR staff told congressional

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<sup>3</sup>Center for Responsive Politics, *Blue Chip Investors: The Top 100 Donors to Federal Elections, 1989–2002* (October 2002). Philip Morris has contributed more than \$14 million to the Republican party since 1989, more than any other single donor.

<sup>4</sup>Karl Rove was a political consultant for Philip Morris. Other Administration officials with links to the tobacco industry include Presidential Envoy to the Americas Otto Reich, who has lobbied for British American Tobacco; Assistant Attorney General Ralph Boyd, who has represented the tobacco industry; and senior Federal Trade Commission officials Howard Beales and David Scheffman, who have testified for the industry. Former deputy director of the White House Office of Public Liaison Kirk Blalock was the director of external affairs for Philip Morris. *Political Adviser Rove: Texas' 'Prime Minister,'* Austin-American Statesman (July 21, 1996); *In Filling Latin Post, Bush May Reignite Feuds,* New York Times (Mar. 9, 2001); *Justice Department Profiles,* National Journal (June 23, 2001); Albert R. Hunt, *Going Into the Tank for Tobacco,* Wall Street Journal (Aug. 2, 2001); *Special Assistant to the President to Join Lobbying Firm,* National Journal's Congress Daily (Oct. 30, 2002).

<sup>5</sup>World Health Organization, *Confronting the Tobacco Epidemic in an Era of Trade Liberalization* (2001); Allyn Taylor et al., *The Impact of Trade Liberalization on Tobacco Consumption,* in Prabhat Jha and Frank J. Chaloupka, eds., *Tobacco Control in Developing Countries* (2000).

staff that because of health considerations, the United States would not support the inclusion of manufactured tobacco products in the agreement. In discussions with congressional staff, USTR maintained that this was the U.S. position up until the afternoon of December 11, 2002. At the last moment, however, the United States reversed course. The trade accord, announced on the next day, December 12, included provisions to end tobacco tariffs entirely. In a letter to Rep. Doggett explaining this sudden reversal, the U.S. Trade Representative Robert B. Zoellick wrote that the idea for lower prices on U.S. cigarettes came from Chile and not the United States. He added, "The National Security Council subjected Chile's request to a review by all relevant departments and agencies, including the Department of Health and Human Services, and reported to USTR that the request should be accepted."<sup>6</sup>

The Chilean negotiation was not the first time your Administration acted to reduce cigarette tariffs. In April 2001, the U.S. government urged the South Korean government to reduce duties on imported tobacco, adopting the position urged by Philip Morris. The Korean government had just voted to end its national tobacco monopoly and permit foreign investment in domestic tobacco production. Along with this change, Korea proposed new rules for companies interested in manufacturing cigarettes domestically and a 40% tariff on imports. These proposals were opposed by Philip Morris, which took the position that the rules for investment were too restrictive and that the tariff was imposed too quickly.<sup>7</sup>

Philip Morris complained to your Administration. According to documents obtained from the U.S. Trade Representative, the United States essentially acted as Philip Morris's advocate in negotiations with Korea. For example:

- Philip Morris objected to Korea's proposal that domestic plants be capable of all manufacturing processes.<sup>8</sup> The U.S. Trade Representative wrote to Korea that the measure was "both unnecessary and extremely onerous and . . . should be eliminated."<sup>9</sup>

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<sup>6</sup>Letter from U.S. Trade Representative Robert B. Zoellick to Congressman Lloyd Doggett (January 2003).

<sup>7</sup>Philip Morris, *Philip Morris' Position Paper on Issues Pertinent to the Proposed Amendments to the Presidential Decree of the TBA* (2001).

<sup>8</sup>*Id.*

<sup>9</sup>Letter 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).

- Philip Morris requested a three-year grace period before the imposition of tariffs.<sup>10</sup> The U.S. Trade Representative explained to Korea that “U.S. industry estimates that it would take about three years” to adjust to the new rules and asked for a “two-year grace period . . . and that the initial rate should be increased by no more than 10 percent per year thereafter.”<sup>11</sup>

The U.S. efforts were successful. Under pressure, South Korea agreed to relax its rules on foreign investment and phase in its tariff. The result will be more Malboros in Korea at cheaper prices, with predictable and dire health consequences.

Currently the U.S. Trade Representative is negotiating the Free Trade Area of the Americas agreement, which would involve 34 nations and create the world’s largest free trade zone. We understand that the United States may again support the reduction of tariffs on both leaf tobacco and manufactured tobacco products. We urge you not to take this position.

### **Market Assistance to Tobacco Companies**

Since 1998, Congress has prohibited the Departments of Commerce, State, and Justice from spending funds to promote “the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.” This prohibition is known as the Doggett Amendment. Since 1994, Congress has prohibited the Foreign Agricultural Service, the international arm of the U.S. Department of Agriculture (USDA), from spending funds to promote “the sale or export of tobacco or tobacco products.” This prohibition is known as the Durbin Amendment.

We have obtained information suggesting that both of these statutory prohibitions have been violated during your Administration. In January 2002, in response to a request from Rep. Waxman, the State Department surveyed 231 diplomatic and consular posts about activities on behalf of the tobacco industry. The responses raise serious concerns.

The survey revealed that in April 2001, the U.S. Commercial Service of the Commerce Department prepared a report on the market for smokeless tobacco in Pakistan for United States Tobacco International Incorporated, which is a wholly owned subsidiary of United States Tobacco, Incorporated (UST). UST is the largest smokeless tobacco manufacturer in the United States. The report reviewed information on the use of tobacco products in Pakistan, listed brands of cigarettes and smokeless tobacco available in the country with their prices, explained

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<sup>10</sup>Philip Morris, *supra* note 7.

<sup>11</sup>Letter from Barbara Weisel to Kim Byung-Ki, *supra* note 9.

distribution and sales channels, reviewed taxation, tariffs and trade regulations, and even assessed the “legal climate” for sales of tobacco products.<sup>12</sup> Also included for UST’s nominal fee of approximately \$3,000 were a series of 35 mm photographs, presumably taken by U.S. government personnel, of locations around Pakistan where tobacco products are sold. Copies of some of these photos are attached to this letter.

The creation of this report for a major smokeless tobacco manufacturer using federal funds and equipment appears to promote tobacco in violation of the Doggett Amendment. The U.S. Commercial Service, whose motto is “Your Global Business Partner,” exists to help U.S. businesses expand their markets, exactly what Congress prohibited in the case of tobacco. Even the Commerce Department, shortly before the State Department responded to Mr. Waxman’s request, recognized this legal problem. The Department “determined that the preparation of these reports raised serious concerns with respect to the restrictions on promoting the sale or export of tobacco products or assisting U.S. firms to do so.”<sup>13</sup> Commerce Department officials then cabled diplomatic posts with guidance and advised that “flexible market reports” should not be prepared for tobacco companies.

Even if effective, the new Commerce guidance does not reach other agencies. The State Department survey also uncovered examples of Foreign Agriculture Service officials providing market assistance to tobacco companies, raising questions of compliance with the Durbin amendment.<sup>14</sup> For example, in China, Foreign Agriculture Service staff spent time and resources objecting to new restrictions on tobacco mold on behalf of U.S. companies. In Greece and Pakistan, Foreign Agriculture Service offices assisted a U.S. tobacco seed company’s efforts to increase exports. In Moldova, Foreign Agriculture Service personnel “prepared a list of potential importers and distributors of tobacco products for a U.S. tobacco company.”<sup>15</sup>

Foreign Agriculture Service officials have also assisted the U.S. Trade Representative during trade negotiations on tobacco. To the extent that these negotiations expanded access for U.S. tobacco companies to foreign markets, this assistance may be construed as a violation of the Durbin amendment.

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<sup>12</sup>U.S. Commercial Service, *Flexible Market Research (FMR) Prepared for United States Tobacco International, Inc. Country: Pakistan* (Apr. 30, 2001).

<sup>13</sup>Letter from Paul V. Kelly, Assistant Secretary for Legislative Affairs, Department of State, to Rep. Henry A. Waxman (May 2, 2002).

<sup>14</sup>*Id.*

<sup>15</sup>*Id.*

Finally, it is our understanding that USDA has failed to fully communicate the requirements of the Durbin Amendment to its overseas staff and instead relies on the State Department's guidance on implementation of the Doggett amendment. This is improper. The guidance under the Doggett Amendment permits activities to overcome discriminatory trade practices, while such an exception does not exist in the Durbin amendment.

### **Framework Convention on Tobacco Control**

In just a few days, representatives from more than 150 countries will meet in Geneva, Switzerland, to finalize the text of the Framework Convention on Tobacco Control (FCTC). The goal of this landmark treaty is to reduce worldwide tobacco use by obtaining international agreement on the marketing, labeling, and taxation of tobacco products. So far, however, your Administration has obstructed the development of a strong tobacco control treaty.

In May 2001, your delegation to the international negotiations reversed numerous positions taken by the Clinton Administration, including those on secondhand smoke and tobacco taxes.<sup>16</sup> Philip Morris had requested 11 deletions to the draft text. Your negotiators backed 10 of these deletions. Your negotiators did not even support a provision for labeling cigarettes in the language of the country where they are consumed.<sup>17</sup>

After international criticism for such extreme views, the U.S. delegation moderated some of its positions at subsequent negotiating sessions.<sup>18</sup> One position that remains inexcusable, however, deals with trade in tobacco products.

Many national delegations are concerned that international trade agreements could be used to undermine the FCTC. Already, the tobacco industry and allied governments are using trade agreements in an effort to stop important measures that are justified on the grounds of public health, such as large health warning labels and bans on misleading descriptors such as "light" and "low tar." To protect the FCTC from these tactics, many delegations favor language that would clarify that the FCTC is intended to govern the issues it addresses, and that other international agreements should be interpreted in a manner consistent with the FCTC. Rather than support such an effort, however, the United States has sought the reverse. At the third

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<sup>16</sup>Letter from Rep. Henry A. Waxman to the President (Aug. 2, 2001).

<sup>17</sup>Letter from Rep. Henry A. Waxman to the President (Nov. 19, 2001).

<sup>18</sup>Henry A. Waxman, *The Future of Global Tobacco Treaty Negotiations*, *New England Journal of Medicine*, 936–939 (Mar. 21, 2002).

negotiating session in November 2001, the United States proposed that “Parties agree that measures to control tobacco shall be transparent, non-discriminatory, and implemented in accordance with their international obligations.”<sup>20</sup> This language would explicitly give every other international agreement priority over the tobacco treaty, ensuring that trade deals take precedence over life-saving tobacco control measures.

When the negotiations resume later this month, we urge you not to pursue this unacceptable position. Health concerns should take precedence over “free trade” concerns when the commodity is as dangerous as tobacco and leads to such enormous suffering and death.

### **Smuggling**

No discussion of tobacco trade can be complete without consideration of smuggled tobacco products, which account for one-quarter of all tobacco exports.<sup>21</sup> Tobacco smuggling is often run by organized crime, with the proceeds at times supporting terrorism. A recent case in North Carolina found that smuggling proceeds were funding terrorists associated with Hezbollah.<sup>22</sup> Reputable news accounts indicate that R.J. Reynolds Tobacco Company knowingly supplied cigarettes to be smuggled into Iraq to the financial benefit of Saddam Hussein’s family.<sup>23</sup> Smuggling also causes governments to lose millions in tax revenues and encourages smoking by lowering prices.<sup>24</sup> Despite all of these harms, however, your Administration has consistently failed to adequately address smuggling at home and abroad.

The European Union and Canada have sued U.S. tobacco companies in federal court to recoup tax losses from smuggling under the Racketeer Influenced and Corrupt Organization Act. These lawsuits are based on a documentary record showing that tobacco executives knew about the diversion of their product to the illegal market. Yet rather than support this litigation or even take a neutral position, your Administration has fought it in Congress and the courts. During

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<sup>20</sup>Minority Staff, Committee on Government Reform, *U.S. Positions on Selected Issues at the Third Negotiating Session of the Framework Convention on Tobacco Control* (Mar. 5, 2002).

<sup>21</sup>Prabhat Jha and Frank J. Chaloupka, eds., *Tobacco Control in Developing Countries* (2000).

<sup>22</sup>*Cigarette Smuggler Helps Federal Agents Follow Money Trail to Islamic Group Hezbollah*, Tribune (Fort St. Lucie/Fort Pierce) (Nov. 18, 2002).

<sup>23</sup>*Tobacco Is Gold on Black Market*, Baltimore Sun (Nov. 24, 2002); *Bound for Baghdad: Despite Restraints, Iraq Gets Winstons; Who's to Blame?* Wall Street Journal (Oct. 30, 2002).

<sup>24</sup>World Bank, *Curbing the Epidemic* (1999).

consideration of the USA PATRIOT Act in 2001, your Administration insisted on the removal of a provision — crafted to combat terrorism — that would have expanded the definition of money laundering and assisted anti-smuggling lawsuits.<sup>25</sup> Your Administration then filed an amicus brief with the Supreme Court, urging the rejection of Canada’s case.<sup>26</sup>

We are also concerned by your Administration’s reluctance to embrace new authority to fight smuggling. Rep. Lloyd Doggett authored the Tobacco Smuggling Eradication Act in the House, with 90 cosponsors in the last Congress. This bill would allow for better product tracking and finally permit U.S. officials to share details of tobacco shipments with other countries to assure that products destined for a particular port and customer actually arrive. Your Administration, however, has not backed this legislation or even offered an alternative.

The proposed Framework Convention on Tobacco Control offers the promise of a coordinated international response to tobacco smuggling. In July 2002, the Bureau of Alcohol, Tobacco, and Firearms hosted an international meeting to work on smuggling language for the treaty. While this meeting was an important step, the United States has inexplicably refused to support what may be the most important anti-smuggling measure: a system of tracking and tracing for cigarette packs, which would assist law enforcement in pinpointing where tobacco products are diverted to the black market. Moreover, rather than pledging to investigate fully all allegations of smuggling by U.S. companies, the Director of the Bureau of Alcohol, Tobacco and Firearms, Bradley A. Buckles, said in his opening remarks that “[t]he U.S. tobacco industry as a whole has been responsive and aggressive in efforts to prevent illegal diversion of their products.”<sup>27</sup>

### Conclusion

By promoting the tobacco trade, your Administration is undermining the health of men, women, and children around the globe. The fact is, tobacco imports are associated with significant increases in tobacco consumption, placing women and children especially at risk.<sup>28</sup> The United States government should not be party to such a legacy of disease and death.

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<sup>25</sup>Mark Schapiro, *Big Tobacco*, *The Nation* (Apr. 18, 2002).

<sup>26</sup>*Supreme Court Won’t Hear Canada’s Cigarette Smuggling Suit*, *Tobacco Industry Litigation Reporter* (Nov. 15, 2002).

<sup>27</sup>Bradley A. Buckles, *Opening Statement of Director Bradley A. Buckles to the International Conference on Illicit Tobacco Trade* (July 30, 2002).

<sup>28</sup>World Health Organization, *supra* note 5; Allyn Taylor et al., *supra* note 5.



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February 12, 2003  
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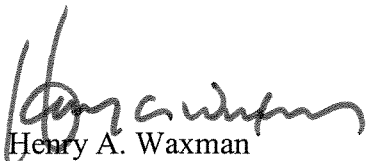
Because it is so clearly not in the interest of the United States or our allies, your Administration's tobacco policy requires an explanation. We request information on any contacts between the tobacco industry and White House staff related to the matters discussed in this letter, including the dates and times of meetings and phone conversations, notes, e-mails, and any documents exchanged. We also request information on whether any members of the White House staff have ever recused themselves from discussions of tobacco policy.

In addition, we urge you to take four steps to reverse Administration policy on tobacco exports:

- Pledge not to negotiate lower tobacco tariffs as part of the Free Trade Area of the Americas or any other ongoing or upcoming bilateral and multilateral trade negotiations.
- Assure Congress that the Doggett and Durbin Amendments will not be violated again.
- Instruct U.S. negotiators to support language in the Framework Convention on Tobacco Control that puts health concerns ahead of trade.
- Aggressively investigate, and act to stop, tobacco smuggling and the lawlessness and terrorism it encourages.

These measures would make an enormous difference for public health around the world. Thank you for your prompt response to our concerns.

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 Government Affairs  
U.S. Senate

Enclosure

Samples of Photographs Prepared by the U.S. Commercial Service for UST (Pakistan)



Photo 1



Photo 2



**Photo 3**