

October 1, 2015

The Honorable Michael Froman  
United States Trade Representative  
600 17th Street, NW  
Washington, DC 20508

Dear Ambassador Froman:

As you continue to meet with trade ministers in Atlanta this week, I want to call your attention to the issue of how tobacco products will be treated in the Trans Pacific Partnership (TPP) agreement, which is a matter of significant concern to myself and many other Members of Congress and stakeholders.

Several TPP countries have conveyed that they do not support including tobacco in the scope of the agreement. These countries appear particularly concerned about the application of investor-state dispute settlement (ISDS) procedures to tobacco regulations that are designed to protect consumer health and safety.

As I have said in the past, I support ISDS as a critical tool to ensure that American companies, particularly small businesses who are the most frequent users of these protections, are able to get relief when their assets are taken or they are otherwise treated in a grossly unfair manner by foreign governments. At the same time, I have said that ISDS provisions in our trade agreements must include strong protections to ensure the fullest measure of transparency and due process, and do not afford companies any greater rights than they have in U.S. courts. The Trade Promotion Authority (TPA) legislation recently enacted by Congress included specific provisions directing the Administration to seek these protections in trade agreements such as TPP.

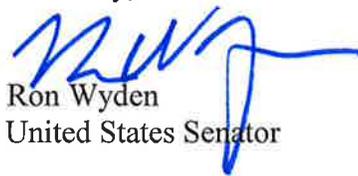
During our debates on TPA this year, I spent a great deal of time consulting with colleagues on both sides of this issue. It became clear to me that the recent conduct of tobacco companies in ISDS proceedings – proceedings pursuant to ISDS regimes that are different than those entered into by the U.S. – was the source of several Members' concern about ISDS. By repeatedly threatening small governments with litigation in order to compel them to abandon health-related regulations, tobacco companies tarnished the reputation of the ISDS system as a whole, even though ISDS regimes established by the U.S. protect the rights of countries to impose tobacco control measures that are aimed to promote public health.

Taking a page from their domestic playbook, Big Tobacco fought health-related regulations overseas using any means necessary. In light of that history, I believe it is entirely appropriate for the Administration to include a tobacco opt-out in TPP ISDS as some countries are

requesting. The Administration should not spend a dime of negotiating capital protecting the tobacco companies, and it is clear to me that several countries would insist on significant concessions from the United States were we to refuse to address their concerns in this area. While some business groups may argue that one industry should not be singled out, the fact of the matter is that the tobacco companies only have themselves to blame for being singled out, given their history. For that reason, I urge you to resolve this issue in a manner that ensures countries can opt out of ISDS procedures that could capture tobacco controls. As I stated in the Committee Report accompanying the TPA legislation, "it may be appropriate in some circumstances to limit the scope of remedies available to investors in certain sectors or products in the interest of public health, and the negotiating objectives in the bill with respect to investment do not exclude that possibility. This understanding is consistent with the overall negotiating objective in TPA, which requires negotiators to take into account legitimate domestic objectives such as the protection of legitimate health or safety."

I appreciate your careful consideration of this matter and look forward to close and continuous consultation on it as the negotiations progress.

Sincerely,



Ron Wyden  
United States Senator