



June 12, 2017

Re: Docket No. USTR-2017-0006

Mr. Edward Gresser
Chair of the Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street N.W.
Washington, D.C. 20508

Dear Mr. Gresser:

We are pleased to submit these comments in the above-designated docket. Our organizations are nonprofit public health and medical organizations which are actively engaged in efforts to eliminate the disease and death caused by the use of tobacco products in the United States and throughout the world.

As you prepare to renegotiate and modernize the North American Free Trade Agreement (NAFTA), we urge that you ensure that the revised agreement provides the protections necessary to enable all countries that are party to the agreement to adopt public health measures to protect their citizens from the death and disease caused by tobacco products without facing the risk of litigation by the tobacco companies.

It is essential that a modernized NAFTA acknowledges the unique harms tobacco products cause, and includes provisions to ensure that the United States and the other NAFTA parties do not face the threat of investor litigation from the tobacco industry. In the letter you submitted to the Congress announcing the President's intention to open negotiations to modernize the agreement, you noted that the agreement was negotiated 25 years ago and that many chapters of the current agreement do not meet current standards. We strongly share this view, and, as negotiations commence, we strongly encourage you to utilize this unique opportunity to achieve this important public health outcome.

Tobacco products are the only consumer products that kill when used exactly as intended. Each year more than 480,000 Americans die from tobacco use. Globally, tobacco kills nearly 6 million people annually, and without effective tobacco control policies to reduce consumption, one billion people will die from using tobacco products this century. For these reasons, tobacco products are the only consumer product subject to a UN treaty specifically designed to prevent and reduce their use -- the WHO Framework Convention on Tobacco Control.

Countries around the globe are implementing tobacco control policies from picture health warning labels to plain packaging. The tobacco industry has aggressively responded by using investor-state dispute settlement provisions in trade and investment treaties to both threaten and file legal challenges against countries' policies. Despite not prevailing on its investment claims, the tobacco industry has long used legal threats and challenges to intimidate governments from moving forward with policies to prevent or reduce tobacco consumption. The tobacco industry's behavior is a real and direct threat to public health.

Any Investor-State Dispute Settlement (ISDS) provision should not permit challenges from private tobacco companies to tobacco control measures to reduce tobacco use. Given the experience of the tobacco companies using the investor-state provisions in other treaties to challenge tobacco control measures, this protection is critical. It is also particularly important because the US is considering adopting graphic warning labels covering 50% of the front and back of a cigarette pack and because Canada is currently considering legislation requiring the plain packaging of cigarettes, which is the exact measure that Philip Morris sued Australia for under a bilateral investment treaty. Also note that the United States has previously defended a tobacco-related NAFTA claim in *Grand River v. United States*, which, despite the United States' prevailing on the seven-year long claim, cost the taxpayers millions of dollars to litigate. Protecting the right of the United States and other NAFTA parties to implement tobacco control policies free from the threat of a tobacco industry NAFTA challenge is critical for parties to protect the health of their citizens.

As you develop your negotiating objectives for a modernized NAFTA, we respectfully request that you recognize that a modernized NAFTA must set the example for a 21st century trade and investment agreement by, at a minimum, recognizing the unique harms caused by tobacco products and preventing the tobacco industry from using the agreement to challenge NAFTA parties' actions to reduce the use of tobacco products.

Sincerely,

Action on Smoking & Health
American Academy of Family Physicians
American Academy of Oral and Maxillofacial Pathology
American Academy of Otolaryngology—Head and Neck Surgery
American Academy of Pediatrics
American Association for Dental Research
American Association for Respiratory Care
American Cancer Society Cancer Action Network
American College of Physicians
American Heart Association
American Lung Association
American Psychological Association
American Public Health Association
Association of Schools and Programs of Public Health
Campaign for Tobacco-Free Kids
COPD Foundation
International Association for the Study of Lung Cancer
March of Dimes
National African American Tobacco Prevention Network
National Association of Pediatric Nurse Practitioners
National Network of Public Health Institutes
Oncology Nursing Society
Prevention Institute
Public Health Solutions
Society for Public Health Education
Society for Research on Nicotine & Tobacco
Students Against Destructive Decisions
The Society of State Leaders of Health and Physical Education