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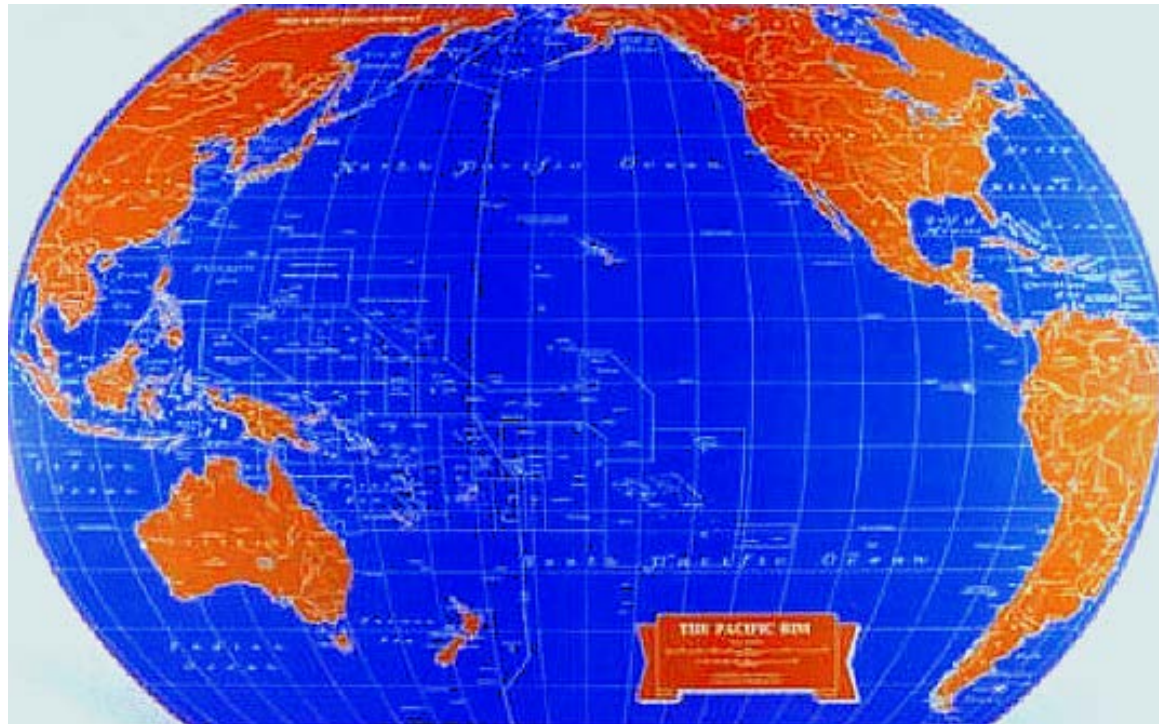
The Trans-Pacific Partnership Agreement

Tobacco Carve-Out

January 2016

What is the Trans-Pacific Partnership Agreement?

- The Trans-Pacific Partnership Agreement (TPP) is a multi-country agreement that includes twelve countries in the Pacific region--Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, Mexico, Canada, Japan and the United States.



Tobacco & The TPP – Timeline

Since the beginning of the TPP negotiations, there has been an effort to “carve out” or treat tobacco differently in the TPP Agreement.

- 2011/2012: US and Malaysia indicate they want a carve out of tobacco products and tobacco leaf from the TPP (i.e. no tariff reductions). This idea was quickly dismissed. Malaysia’s proposal not credible.
- 2012-2014 – A “safe harbor” for tobacco regulations is proposed by US; meaning all non-tariff related protections would be taken away from the industry.
- 2014-Spring 2015 – USTR tells Members of Congress they were no longer pursuing a carve out in order to secure tobacco state support for TPA.
- Spring – September 2015– USTR goes back on their word and pushes forward with a tobacco carve out (core protections of the agreement) despite Capitol Hill opposition. The US is the only country pursuing.
- October 5, 2015 -- the U.S. officially proposes tobacco carve out language to other TPP countries after misleading Congress and stating that other countries were forcing them to move forward.

The TPP Tobacco Language

- *A claim challenging a tobacco control measure shall not be subject to arbitration under section B (Investor-State Dispute Settlement) of Chapter II (Investment) if a Party has elected to deny the benefit to that claimant or to all potential claimants with respect to such claims. If a party has not elected to deny benefits to the claimant or all potential claimants, when there is a submission of a claim to arbitration, they may elect to deny benefits during the proceedings. For greater certainty, where a Party elects to deny benefits with respect to such claims, any such claim shall be dismissed.*
- **A tobacco control measure** is defined as a measure adopted or maintained by a Party related to the production or consumption of manufactured tobacco products (including products made or derived from tobacco), their distribution, labeling, packaging, advertising, marketing, promotion, sale, purchase, or use, as well as enforcement measures, such as inspection, recordkeeping, and reporting requirements. A measure with respect to tobacco leaf that is not in the possession of a manufacturer of tobacco products or that is not part of a manufactured tobacco product is not a tobacco control measure.

What Does This Mean?

- Tobacco companies would be prohibited from challenging any regulations under the core protections of the agreement even if the regulations are discriminatory.
- This language is unprecedented. It is the first time the U.S. has proposed excluding a single product from the protections of an agreement. It is politically motivated and pushed by anti-tobacco advocates.
- This approach is contrary to the most basic American principles to ensure fair treatment, property protections and non-discrimination in government activities -- a principle that the U.S. has included in international agreements for decades.
- Countries in the TPP region would have free reign to call any tobacco measure a “public health” measure – even if it is non-science based, discriminatory or takes property without compensation.
 - Anything goes so long as it’s a “tobacco control measure” – science based regulations take a back seat

Specific Examples

- This language allows discrimination based on nationality or by company under the TPP agreement.
 - A country could ban imports of tobacco products from specific countries, like the U.S.
 - A country could ban inputs for such products (like paper) for use in local production by a specific manufacturer, while allowing domestic manufacturers to import the same manufacturing inputs.
 - A country could expropriate a tobacco manufacturing facility or receiving station in the name of public health.
 - This language allows for the creation of an environment where the tobacco farmer would have no place to sell his leaf and allows for discrimination among products.
 - It could also allow a ban on cigarette sales but permit cigar sales or ban flue cured tobacco in products.

Our View

- This language isn't needed. Trade Agreements have long permitted public welfare regulations as long as these regulations don't violate the most fundamental rights to which all property and products are due.
- This proposal will put a wide range of manufactured goods on the next chopping block. Examples: GMO's, environmental, alcohol, government deemed unhealthy foods.
- Most fundamentally, it will unravel decades of U.S. progress in exporting values of fairness and equal opportunity for all.

Our View

- Under this – tobacco companies face a “do not enter” sign.
- This is nothing more than an assault on the tobacco sector wrapped in a false flag of protecting public health.
- The White House and Public Health Groups are applauding this language as reigning in “big tobacco.”
- The White House is promoting discrimination against a U.S. crop and sector that employs thousands of people in manufacturing, farming and suppliers.

The Leaf Exception

The language references “leaf not in the possession of a manufacturer”. This is our government’s (cynical) attempt to claim tobacco growers will not be affected by measures that harm their customers.

- Governments could impose confiscatory tax measures (like an extraordinary excise tax on cut filler) would be permitted with an inevitable impact on prices paid for leaf.
- A country could require only burley leaf be used in cigarettes presumably to make them taste harsh and less palatable.
- No one could say it isn’t a “tobacco control measure” since the provision is self-judging.
- Tariff reductions that matter have a 25 year phase in.

Important Points

- Let's be clear: The Obama Administration's TPP doesn't even require a public welfare objective in order to qualify for the carve-out nor must a measure be necessary or contribute to the stated health objective of tobacco control. The definition far exceeds measures intended to reduce smoking.
- Irrespective, the White House believes it is "the right thing to do for the country."
- Just because the White House keeps saying that the TPP tobacco carve out won't hurt tobacco farmers doesn't mean it's true. In fact, it's not.
- This is just the beginning. This carve-out will be part of the TTIP agreement and will likely broaden for tobacco and to other products (GMO, environmental, alcohol...)

Important Points

- Our View: The need for this exclusion doesn't make sense.
 - Trade agreements already give substantial latitude for regulation.
 - Tobacco has been treated as equal to other commodities and products in prior trade agreements.
- This exclusion concerns the broader business & agriculture communities because of the precedent.
- Deeming tobacco “unique” could lead to countries deeming other products or regulations “unique”.

The Roadmap Ahead

- While the TPP has been “concluded” by the 12 trade ministers of the TPP countries, it is NOT yet approved by the 12 countries. There is a long process ahead.
- We believe we have a window of opportunity to influence the TPP process.
- There is precedent for renegotiating parts of a trade agreement after a government says it is concluded. This occurred in the early years of the Obama Administration with Korea and other agreements.



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Thank You