



**Submission of Philip Morris International in Response to the Request for
Comments Concerning the Proposed Trans-Pacific Partnership Trade
Agreement**

Pursuant to the *Federal Register* notice of December 16, 2009, the Office of the United States Trade Representative (USTR) announced its intention to enter into negotiations on a Trans-Pacific Partnership (TPP) trade agreement and invited comments on all elements of the proposed agreement in order to develop U.S. negotiating positions. According to the notice, the U.S.' initial TPP negotiating partners will include Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore, and Vietnam. The U.S. objective is to expand this initial group to include additional countries throughout the Asia-Pacific region.

Philip Morris International Inc. appreciates the opportunity to submit these comments in response to the December 16 *Federal Register* notice.

Philip Morris International Inc. (PMI)

PMI is a publicly traded U.S. holding company incorporated in the Commonwealth of Virginia and headquartered at 120 Park Avenue, New York, New York. PMI subsidiaries, affiliates and licensees are engaged in the manufacture and sale of cigarettes and other tobacco products in markets outside the United States.

PMI is the leading international tobacco company, with seven of the world's top 15 cigarette brands including *Marlboro*, the number one cigarette brand worldwide. PMI has more than 75,000 employees and its products are sold in over 160 countries. The company held a 15.6% share of the international cigarette market outside of the United States in 2008.

PMI is a significant purchaser of U.S. grown tobacco, with 100% of purchases exported to PMI's global operations. In 2009, PMI purchased approximately 30% of the total U.S. tobacco crop. High quality, U.S. grown tobacco is key to the success of PMI's brands.

PMI operates in all of the countries that will be involved in the initial TPP negotiations.

General Comments

As a company heavily engaged in international trade on a constant basis, PMI supports bilateral, plurilateral, and multilateral negotiations that promote freer trade in goods, services and investment; encourage uniform rules of origin; foster harmonization of legitimate, science-based regulations; increase the efficiency of moving goods, services and investment across national borders; and protect investor and intellectual property rights. We understand these objectives will be

central U.S. goals in the TPP negotiations. On that basis, we strongly support U.S. participation in the TPP negotiations, and welcome the future expansion of this initiative to include additional countries in the Asia-Pacific region.

Specific Comments

Comprehensive Coverage: The negotiations should be comprehensive and lead to the complete elimination of all tariffs on all goods. There are tools – such as longer phase-out periods and temporary special safeguards – that can be used to mitigate the impact on products deemed “sensitive” by participating national governments.

Restrictions on Use of Trademarks: PMI is becoming increasingly concerned about government-sponsored initiatives that would effectively cancel or expropriate valuable trademark rights. PMI supports the inclusion of a comprehensive “TRIPs-plus” intellectual property chapter that includes a high standard of protection for trademarks and patents.

Trade restrictive legislation and regulations of the type currently being considered by several countries within the TPP ignore the rights of trademark holders under domestic legislation as well as the obligations of those countries under the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Implementation of these measures would have serious implications for all intellectual property rights holders. Such legislation may also be in violation of the WTO Agreement on Technical Barriers to Trade (the TBT Agreement).

We discuss in further detail below two examples of government-sponsored initiatives that would severely impact PMI’s valuable trademark rights.

Australia:

A Technical Working Group of the Preventative Health Taskforce (“the Taskforce”) was created to provide Australia’s Minister for Health and Ageing with recommendations on reducing smoking incidence. In the final report released to the public in September 2009, the Taskforce recommended that the Government of Australia mandate plain packaging of cigarettes.

In a separate development, on August 20, 2009, a *Plain Tobacco Packaging (Removing Branding from Cigarette Packs) Bill 2009* was introduced in the Australian Senate by Senator Steve Fielding. This Bill requires all tobacco product packaging to be matt brown and prohibits the use of any brand imagery, colours or graphics on tobacco packages, other than the brand name itself in 12-point Helvetica font. It requires that all tobacco product packages be the same size and contain the same number of cigarettes. On November 26, 2009, the Australian Senate referred this Bill to the Senate Community Affairs Legislation Committee for inquiry and report by March 17, 2010.

By imposing severe restrictions – restrictions tantamount to expropriation - on the use of long-held and extremely valuable intellectual property rights, plain packaging

would unduly limit the freedom of commercial speech, significantly restrict competition and breach Australia's obligations under the WTO TRIPs Agreement.¹ Given, on the one hand, the lack of evidence that plain packaging will achieve its intended public health objectives² and, on the other hand, the wide range of effective measures to reduce smoking incidence, plain packaging is neither an appropriate nor proportionate step to address smoking related issues.³

The consequences of the introduction of plain packaging in Australia are far-reaching and should be examined in the broader context of U.S.-Australia trade relations and in the upcoming TPP negotiations.

Singapore:

On November 25, 2009, Singapore issued a notification to the WTO as mandated by the TBT Agreement concerning the proposed amendments to the *Smoking (Control of Advertisements & Sale of Tobacco) Act*.

Included in the numerous amendments were the following changes:

- Broad language that provides the Minister discretionary power to ban any and all tobacco products, based on his concept of levels of harm, rather than evidence-based analysis. As outlined by the Singapore Health Promotion Board in its public consultation paper dated August 3, 2009, it is likely that snus⁴ will be included among the prohibited products.
- Broad language that provides the Minister with extensive discretionary power to ban a certain term, without stipulating the basis upon which this may be done.

While having the discretionary authority to implement certain legislation does not necessarily mean that the Minister's decisions will not be objective or science-based, such a broad legislative delegation of authority, without proper and objective guidance, creates uncertainty for importers and trading partners. Overly broad interpretations could lead to violations of the TBT Agreement. In this sense, lack of proper implementation of this measure may impact trade and violate the spirit and letter of the TBT Agreement.

¹ These conclusions are supported by various organizations, including: the International Trademark Association, the U.S. Chamber of Commerce, and economiesuisse. Please refer to the following link for copies of documentation issued by these organizations in relation to plain packaging: <http://www.plain-packaging.com/DocumentsAndStudies>.

² Reference is made to the following study undertaken for PMI by LECG – “A Critical Review of the Literature on Generic Packaging for Cigarettes” (18 November 2008). This study can be accessed at the following link: http://www.plain-packaging.com/downloads/LECG_Literature_Review_on_generic_packaging.pdf. Further, the UK Government has conceded that no such sound evidence exists: UK Department of Health. “Consultation on the future of tobacco control” (31 May 2008).

³ For a more detailed analysis of this issue, please refer to PMI's submission to the Taskforce, which can be accessed at the following link: [http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/submissions-public-cnt-op/\\$File/D270-2008.pdf](http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/submissions-public-cnt-op/$File/D270-2008.pdf).

⁴ Snus is a form of moist tobacco powder that is ingested by placing it in the mouth.

Notwithstanding PMI's general support for the TPP initiative, we are very concerned about the excessive legislative proposals pending in Australia and Singapore that threaten to violate existing bilateral and multilateral agreements with the U.S. Legislative efforts that undermine international investment, TBT and IP rights in these countries, could complicate the task of negotiating a high-standard, 21st century agreement that provides economically significant market access opportunities to America's workers, farmers and businesses.

Investor-state dispute settlement mechanism: PMI has made significant investments in many countries, including the identified U.S. TPP partners. For that reason, we believe strong investor protections must be a critical element of the TPP and any future U.S. Free Trade Agreements.

PMI supports the inclusion in the TPP of an investor-state dispute settlement mechanism. The strong investment chapter of the yet-to-be ratified U.S.-South Korea Free Trade Agreement should be used as a model for negotiating a similar chapter in the TPP.

PMI considers the availability of an investor-state dispute settlement mechanism, including the right for investors to submit disputes to independent international tribunals, a vital aspect of protecting its foreign investments.

Conclusion

We are grateful for the opportunity to provide these comments. We appreciate the outreach undertaken by USTR on this initiative, and look forward to additional updates as the negotiations proceed.