



January 28, 2015

Ms. Cecilia Malmström
 European Commission
 Rue de la Loi/Wetstraat 200
 1049 Brussels
 BELGIUM

Dear Commissioner Malmström,

We are writing as EU and US based public health organisations dedicated to ending the global tobacco epidemic. We warmly congratulate you on your recent appointment as Trade Commissioner.

As you know, the recent public debate about investment protections in trade agreements, most notably the investor-state dispute settlement (ISDS) mechanism, has particular relevance for tobacco control. We strongly support steps recently taken by the European Commission to address concerns with the ISDS mechanism in the Trans-Atlantic Trade and Investment Partnership (TTIP). We are deeply

concerned about the potential for the tobacco industry to misuse international trade and investment agreements to infringe on the ability of sovereign governments to enact effective non-discriminatory tobacco control policies, including those related to packaging, to protect the health of their citizens. Without such policies, tobacco will kill one billion people in this century.

We write specifically to address statements made by Philip Morris International (PMI) in its December 8, 2014 letter on ISDS and its use of this mechanism to challenge tobacco control measures. PMI's letter seeks to diminish its abuse of trade and investment agreements, with reference to its proceedings against Uruguay and Australia. While PMI makes only passing reference to its case against Uruguay, it makes misleading statements about the Australian case, and seeks to obscure the chilling effect of these cases on efforts by nations to reduce the number of their citizens who die from tobacco use and the number of their youth who become addicted to tobacco, issues that directly impact public health.

First, PMI asserts that its unsuccessful constitutional challenge to Australia's law in the High Court somehow supports its subsequent ISDS challenge under the Hong Kong – Australia bilateral investment treaty. It does not. The Australian government comprehensively won the High Court case. PMI brought the ISDS challenge against the government notwithstanding its loss in a robust, respected and independent judicial system.

Secondly, PMI seeks to evade legitimate public criticism of its treaty shopping to bring its ISDS case against Australia. In its letter, PMI states that its subsidiary, Philip Morris Asia (PM Asia) made its so-called 'investment' in Australia in 2011, pre-dating the passage of the plain packaging law through Parliament. The fact is that prior to its 'investment' in February 2011, PM Asia had no interest in Australia; rather, a Swiss company, Philip Morris Brands Sàrl, owned the relevant shares. The 'investment' was made *after* Australia's announcement on 29 April 2010 of its decision to implement plain packaging, and in the context of a pre-existing debate between PM Asia and the Australian Government about the merits of the policy.

Finally, PMI cannot escape from the fact that these cases, in addition to threats to use ISDS against countries seeking to implement non-discriminatory tobacco control policies, cause regulatory chill and harm public health. For example, New Zealand has expressly announced that it will defer plain packaging until the Australian case is resolved, while many other countries closely watch the proceedings and may not be acting due to PMI's pending litigation. Further, tobacco companies and their allies send bullying letters to countries where they aim to grow their market, like Namibia, successfully delaying and/or weakening tobacco control efforts. Even delay is a benefit to the tobacco industry, giving it additional time to recruit a new generation to its addictive and deadly product.

We welcomed your recent statements regarding ISDS and the need to address weaknesses to prevent cases like those against tobacco plain packaging.ⁱ More generally, we urge the Commission to protect efforts to improve public health and to ensure that the TTIP cannot be used to challenge non-discriminatory policies, including those aimed at tackling the significant harms caused by tobacco.

Sincerely,



Mervie Hara, Executive Director
ASH Finland



Dr. Wendy Yared, Director
Association of European Cancer Leagues



Dr. Ross Morgan, Chairperson
ASH Ireland



Georges C. Benjamin, MD, Executive Director
American Public Health Association



Sheila Duffy, Chief Executive Officer
ASH Scotland



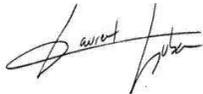
Dr. Janet Atherton, President
Association of Directors of Public Health



Deborah Arnott, Chief Executive Officer
Action on Smoking & Health - UK



Luk Joosens, Tobacco Control Advocacy Officer
Association of European Cancer Leagues



Laurent Huber, Executive Director
Action on Smoking & Health - US



Sharon Cosgrove, Chief Executive Officer
Asthma Society of Ireland



Elen de Lacy, Chief Executive Officer
ASH Wales



Luc Van Haute, General Director
Foundation Against Cancer, Belgium



Sandra G. Hassink, MD, FAAP, President
American Academy of Pediatrics



Matthew L. Myers, President
Campaign for Tobacco-Free Kids



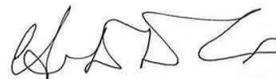
Christopher W. Hansen, President
American Cancer Society Cancer Action Network



Gerry McElwee, Head of Cancer Prevention
Cancer Focus Northern Ireland



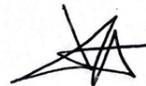
Nancy A. Brown, Chief Executive Officer
American Heart Association



Alison Cox, Director
Cancer Research UK



Harold Wimmer, National President and CEO
American Lung Association



Yves Martinet, President
Comité National Contre le Tabagisme
French National Committee for Tobacco Control

Leif Vestergaard Pedersen, Managing Director
Danish Cancer Society

Kim Høgh, Chief Executive Officer
Hjerteforeningen
Danish Heart Foundation

Michael Rudolphie, Chief Executive Officer
KWF Kanker Bestrijding
Dutch Cancer Society

Floris Ialianer, Chief Executive Officer
Hartstichting
Dutch Heart Foundation

Michael Rutgers, Chief Executive Officer
LONG FONDS
Dutch Lung Foundation

Caroline Costongs, Managing Director
EuroHealthNet

Paul De Raeve, Secretary General
European Federation of Nurses

Susanne Løgstrup, Director
European Heart Network

Peggy Maguire, Director General
European Institute of Women's Health

Francis Grogna, Secretary General
European Network for Smoking and Tobacco Prevention

Peggy Maguire, President
European Public Health Alliance

Jean Baptiste Mollet, Director
La Fondation du Souffle
The Foundation of the Breath

M. Yves Bur, President
L'Alliance Contre le Tabac
French Alliance against Tobacco

Lisa Surtees, Acting Director
Fresh

John McCormack, Chief Executive Officer
Irish Cancer Society

Prof. Aurelijus Veryga, President
Lithuanian Tobacco and Alcohol Control Coalition

Gérald Audureau, President
Les Droits des Non-Fumeurs
Non-Smokers Rights Association

Nicola Wilson, Senior EU Health Specialist
North of England EU Health Partnership

Andrew Dougal, Chief Executive Officer
Northern Ireland Chest, Heart and Stroke

Anne Lise Ryel, Secretary General
Norwegian Cancer Society

Sofia Belo Ravara, MD
ONG portuguesas
Pelo controlo do tabagismo
Portuguese Tobacco Control Movement

Derek Bell, President
Royal College of Physicians of Edinburgh

Florence Berteletti, Director
Smoke Free Partnership

Scott Crosby, Regional Tobacco Policy Manager
Smoke-Free Yorkshire and Humber

Dr. Leandro Plaz Celemin, President
Fundacion Espanola del Orazon
Spanish Heart Foundation

Christine Cars-Ingels, General Manager
Riksförbundet HjärtLung
The Swedish Heart and Lung Association

Kristina Sparreljung, Secretary General
Swedish Heart Lung Foundation

Chair Secretary General
Tobaksfakta Independent Think Tank, Sweden

Andrea Crossfield, Chief Executive Officer
Tobacco-Free Futures

John Britton, Director
UK Centre for Tobacco and Alcohol Studies

Jan Peloza, President
Youth Network No Excuse Slovenia