Universal Leaf Tobacco Company, Inc.

Richmond, Virginia 23260

May 10, 2013

VIA ELECTRONIC SUBMISSION

Mr. Douglas Bell
Chair, Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Comments on the *Proposed Transatlantic Trade and Investment Partnership*, per 78 FED. REG. 19566-19568 (April 1, 2013)

Dear Mr. Bell:

I. INTRODUCTION

On behalf of Universal Leaf Tobacco Company, Inc. ("Universal"), I respectfully write in response to the above-referenced Federal Register Notice. In that Notice, the Office of the U.S. Trade Representative ("USTR") solicited public comments on the proposed Transatlantic Trade and Investment Partnership ("TTIP"), an agreement to be negotiated with the European Union ("EU"). Universal appreciates the opportunity to submit comments on this important matter.

Universal understands that USTR is seeking comments to inform its development of U.S. negotiating positions in the TTIP. Universal further understands that USTR is interested in learning about U.S. companies' experiences with particular measures that should be addressed in the negotiations. Given this context, Universal's key points for consideration are as follows:

1. The EU allocation under the U.S. tariff-rate quota ("TRQ") for tobacco, as set forth in Additional U.S. Note 5(a) to Chapter 24 of the Harmonized Tariff Schedule of the United States ("HTSUS"), should be updated to reflect all EU member states.

2. The "safe harbor" proposal relating to tobacco, rumored to be put forward by USTR in the Trans-Pacific Partnership negotiations, is a flawed idea and should not be proposed in the TTIP negotiations.

3. Given the Administration's laudable goal of enhancing the trade and investment relationship between the United States and the countries of sub-Saharan Africa, and the need to make the African Growth and Opportunity Act ("AGOA") as effective as the EU's "Everything but Arms" program, the United States should exempt AGOA tobacco imports from the TRQ, or, in the alternative, create an AGOA-specific quota allocation.

II. BRIEF BACKGROUND ON UNIVERSAL

Universal was founded in 1918 and is headquartered in Richmond, Virginia. The company's business is based on its core function as a reliable, service-oriented international link between tobacco growers and manufacturers. Universal operates facilities in Africa, Asia, Europe, and South, Central, and North America. The company employs approximately 1,500 people in the United States and thousands more around the world.

Universal's team of sales administrators, located in the corporate office in Richmond, oversees the logistics of moving tobacco from the point of sale (generally a Universal processing facility or the port of origin) to customers around the world. Not surprisingly, international trade is critical to Universal's business.

III. COMMENTS FOR CONSIDERATION

A. The EU Allocation Under the U.S. Tobacco TRQ

A TRQ permits a specified quantity of goods to be entered at a reduced duty rate during a particular period; quantities imported in excess of the quota are subject to substantially higher rates of duty. Chapter 24 of the HTSUS contains a TRQ that is applied to nine tariff lines of burley and flue-cured leaf tobacco. The over-quota duty rate for most countries is 350 percent *ad valorem*.

The tobacco TRQ was established by Presidential Proclamation 6821, issued by President Clinton on September 12, 1995. Annex I to the Proclamation set forth the in-quota amounts for specified countries. The EU[1] was granted an allocation of 10,000 metric tons per year. The allocation, as crafted in 1995 and still today, is for the "aggregate of Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom."

Thus, the allocation is apparently restricted to 15 countries, even though multiple countries have joined the EU since 1995. This means that, if Universal wants to import burley or flue-cured leaf tobacco from, for example, Bulgaria or Poland, it must presumably do so under the diminutive "Other" category, which constitutes just 2 percent of the total and, not surprisingly, always fills quickly. This denies a U.S. company freedom of operation and results in unequal treatment among EU member states.

[1] The allocation actually refers to the "European Community," which was one of the predecessor organizations to the EU. Additional U.S. Note 5(a) to Chapter 24 of the HTSUS continues to refer to the European Community, even though that organization has effectively been replaced by the EU.

USTR has the authority to update Additional U.S. Note 5(a) to Chapter 24 of the HTSUS so that it reflects all EU members in the EU quota allocation. The Annex to Presidential Proclamation 6821 provides that "The quantitative limitations under [Additional U.S. Note 5(a)] are subject to regulations as may be issued by the United States Trade Representative or its designated agency." That authority was also emphasized in a summary Federal Register notice.[2] Thus, the tobacco TRQ, when created, granted USTR the express authority to modify the allocations. Chapter 24 still contains that empowering language.

This regulatory authority is confirmed by two applicable statutes. First, 19 U.S.C. § 3601(d)(3) provides that the President "may allocate the in-quota quantity of a tariff-rate quota for *any* agricultural product among supplying countries or customs areas and may modify *any* allocation as determined appropriate by the President" (emphasis added). Second, 19 U.S.C. § 2483 provides that the President shall embody in the HTSUS provisions "affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction." Regulatory action under this statute has been delegated to USTR.[3] Moreover, this statute has already served as the basis for administrative adjustments to TRQs. For example, President Clinton relied on 19 U.S.C. § 2483 in modifying the import quotas for certain cheeses.[4]

For the reasons explained above, Universal respectfully requests that USTR update Additional U.S. Note 5(a) to Chapter 24 of the HTSUS so that the EU quota allocation encompasses all EU members.

B. <u>Safe Harbor Proposal</u>

In the ongoing Trans-Pacific Partnership ("TPP") negotiations, USTR has allegedly considered tabling a "safe harbor" proposal relating to tobacco. Universal understands that the purported basis of the proposal is to ensure that departments within TPP governments (e.g., the U.S. Food and Drug Administration) can carry out regulatory activities pursuant to national legislation, without fear of violating the trade agreement.

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[2] *See* 61 FED. REG., at 6333 (Feb. 20, 1996).

[3] *See* Presidential Proclamation 6969 (Jan. 27, 1997).

[4] *See* Presidential Proclamation 6914 (Aug. 26, 1996). That Proclamation also reiterated the delegation of authority, to USTR, to make changes to country-specific quota allocations.

Respectfully, Universal submits that the safe harbor proposal is unnecessary and would establish a dangerous precedent in international trade policy. First, there is a longstanding assumption that trade agreements inherently offer governments sufficient leeway to issue regulations to protect public health. The safe harbor proposal is therefore superfluous, and its adoption would call into question that assumption. Second, the proposal could restrict the ability of some companies from mounting investor-state arbitration claims under a TPP agreement. Third, special treatment of tobacco would open the door to trade-limiting provisions on other products, such as alcoholic beverages or genetically modified organisms. That could undermine future U.S. trade negotiating positions to the detriment of American companies.

Universal hopes that USTR will not table the so-called safe harbor proposal in the TPP negotiations, and further hopes that USTR will not table any such proposal in the TTIP negotiations.

C. <u>Related Trade Policy Issue</u>

As noted above, Chapter 24 of the HTSUS contains a TRQ that is applied to nine tariff lines of burley and flue-cured leaf tobacco. That is the type of tobacco grown in Africa, yet Malawi and Zimbabwe are the only African countries with an allocation under the TRQ. The in-quota allocation for the rest of the world is just 3,000 metric tons: two percent of the total.[5] Thus, all AGOA beneficiaries besides Malawi are effectively shut out of this market because of allocations established in 1995 (Zimbabwe is not an AGOA beneficiary). This is an unfavorable contrast to the access the EU provides to most African exporters. The EU's "Everything but Arms" program provides duty-free, quota-free treatment for all imports from least-developed countries (with the exception of armaments), including agricultural products such as tobacco.

Tobacco imported under AGOA should be exempt from the TRQ. Alternatively, USTR or Congress should create an AGOA-specific allocation, akin to the EU allocation. Five reasons explain why such action is in the economic and policy interests of the United States.

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[5] *See The Economic Effects of Significant U.S. Import Restraints*, USITC Inv. No. 332-325, Seventh Update, at 2-17 n. 42, Pub. 4253 (August 2011) (stating that "[t]he 'other countries' allotment generally fills soon after the beginning of the quota year, as these suppliers compete among themselves for the relatively small allocation").

First, an increase in AGOA tobacco imports would not lead to more smoking or cigarette production in the United States[6] or the African exporting nations.[7] Rather, it would just facilitate supply chain adjustments, such as decreased imports from countries with allocations and increased imports from Africa. *Second*, applying the TRQ to AGOA beneficiaries conflicts with the U.S. policy objective of spurring development in that region, and undercuts the effectiveness of this important trade program.[8] For economic and diplomatic reasons, AGOA should be just as robust as the EU's "Everything but Arms" program.

Third, much has changed since the TRQ was established: in 2004 the United States terminated the price support system for domestic growers,[9] and many quota holders ship only a *de minimis* amount of tobacco to the U.S. market.[10] In light of these developments, there is little justification for prohibiting AGOA beneficiaries from utilizing unused allocations.

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[6] There is a finite amount of tobacco required to meet demand for manufactured tobacco products; the extent of smoking and cigarette production is not contingent on where tobacco originates. U.S. demand for cigarettes is steadily declining and will continue to do so. *See Economic Effects of Significant U.S. Import Restraints*, USITC Inv. No. 332-325, Seventh Update, at 2-15-17, Pub. 4253 (Aug. 2011).

[7] There is a cultural aversion to smoking in countries such as Malawi and Mozambique, despite the economic importance of tobacco cultivation to those economies. Indeed, Malawi is the world's most tobacco-dependent country (in terms of foreign exchange earnings from such exports), yet it has one of the lowest smoking rates in the world. Over 98 percent of Malawi's tobacco is exported, and the figure is similar for other countries in the region. *See* Helmut Geist, Marty Otanez, John Kapito, "The Tobacco Industry in Malawi: A Globalized Driver of Local Land Change," published as Chapter 14 in *Land Change Science in the Tropics*, W. Jepson and A. Millington, eds. (2008).

[8] One of the stated goals of AGOA was to "help millions of African families find opportunities to build prosperity." Yet, aside from textiles and apparel, the majority of exports under AGOA are primary commodities such as crude oil and minerals. Such trade generates little "value added" in Africa and thus creates minimal economic benefits for ordinary Africans. According to the World Bank, approximately 65 percent of Africa's labor force works in the agriculture sector. The percentage of Africa's rural poor who work in agriculture is even higher. A commonsense way for the United States to help those people is to provide increased access to the U.S. market for African agricultural exports. Many have recognized this important link between agricultural trade and poverty alleviation. In fact, *The Guardian* states that Universal's agriculture investments "ha[ve] probably done more to reduce poverty in Mozambique than any donor action – without subsidy and without grabbing any land." *The Guardian*, "Mozambique's agricultural fortunes rest on a choice between Obama and Annan," July 31, 2012.

[9] *See* Pub. L. No. 108-357 (2004). Known as "The Tobacco Reform Act," the law is Title VI of the American Jobs Creation Act of 2004.

[10] Nearly 45,000 metric tons go unused annually. *See* U.S. Customs and Border Protection, "Commodity Status Report for Tariff-Rate Quotas," available at http://www.cbp.gov/xp/cgov/trade/trade_programs/textiles_and_quotas/commodity/ (last visited May 8, 2013).

Fourth, WTO policies permit, and indeed encourage, reforming TRQs to facilitate increased trade (particularly from least-developed countries), and the requested reform would complement the pending proposal of the G-20 regarding TRQ administration.[11] *Fifth*, modifying the tobacco TRQ would not violate the so-called Doggett or Durbin Amendments: those laws concern only the sale or export of U.S. tobacco overseas and the restrictions that foreign countries place on marketing of tobacco products; the present request concerns only the importation of tobacco into the United States.

For these reasons, Universal respectfully requests that USTR modify Chapter 24 of the HTSUS to either (a) exempt AGOA tobacco imports from the TRQ, or (b) create an AGOA-specific allocation akin to that of the EU allocation.

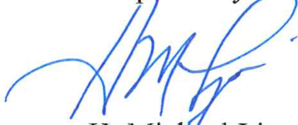
IV. CONCLUSION

Universal respectfully requests that USTR update Additional U.S. Note 5(a) to Chapter 24 of the HTSUS so that the EU quota allocation encompasses all EU members. Such action would promote freedom of operation for U.S. businesses and would provide equal treatment among EU member states. USTR also submits that the so-called "safe harbor" for tobacco is a flawed idea and should not be proposed in the TPP or TTIP negotiations.

On a related note, Universal requests that the United States exempt AGOA tobacco imports from the TRQ, or, in the alternative, create an AGOA-specific allocation. Such action would complement the White House's laudable *Strategy Toward Sub-Saharan Africa* and strengthen the important AGOA trade program. It would also help make AGOA more commensurate with the EU's "Everything but Arms" program, thereby advancing U.S. economic and diplomatic interests.

Universal appreciates the opportunity to submit these comments. Should USTR have any questions, please feel free to contact the undersigned at the coordinates below.

Respectfully submitted,



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[11] The requested action would also be consistent with previously espoused U.S. positions. In a November 14, 2000, submission to the WTO's Committee on Agriculture, the United States argued that "reform of TRQs [is] integral to further agricultural trade reform." The U.S. submission promoted "quota expansion" as a means of ensuring that TRQs do not "diminish the market access they were designed to afford."