



HARRISON INSTITUTE FOR PUBLIC LAW
GEORGETOWN LAW

ZERO TOBACCO TARIFFS



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Summary

Leaders of the nine TPPA countries have called for the elimination of tariffs on all products. Initially, U.S. negotiators implied that tobacco might enjoy the same benefit,¹ but more recently, they appear to be considering their options.² There are good reasons for this shift. Tobacco is a lethal product, and research shows that eliminating tobacco tariffs can increase tobacco use. The impact would likely be greatest in Vietnam. To avoid this, the TPPA's tariff schedules should exclude all forms of tobacco. Furthermore, the benefits from maintaining current tariffs would be offset if tobacco companies could use other chapters of the TPPA to challenge tobacco regulations and increase market share. Negotiators should exclude tobacco from the TPPA altogether.

WTO tariff bindings already limit tobacco tariffs.

In 1994, all TPPA countries except Vietnam limited their ability to use tobacco tariffs by committing to country-specific tariff bindings upon joining the WTO.³ Vietnam limited its ability to impose tobacco tariffs when it joined the WTO in 2007.⁴ Nonetheless, TPPA countries generally have high WTO tariff bindings for tobacco. For instance, Singapore has a bound tariff for cigarettes of \$115/kg, and Vietnam has a bound tariff for cigarettes of 135%.⁵

The TPPA eliminates tariffs that are permitted under the WTO.

Today, applied tobacco tariffs are almost always well below WTO tariff bindings. Some countries, such as Singapore and Brunei, do not apply tariffs to tobacco products.⁶ Vietnam, Peru, New Zealand, Malaysia, and Chile each apply a tariff of at least 5% to cigarettes. Vietnam, Peru, Malaysia, and Chile apply a tariff of at least 5% to unmanufactured tobacco. As it stands, the TPPA would eliminate these altogether by binding countries to "zero" tariffs in their tariff schedules. It would also keep

Bound Tobacco Tariffs Among TPPA Countries

	Cigarettes with tobacco	Unmanufactured tobacco
Australia (2011)	\$2.44/kg	0 - 25% (AV)
Brunei (2010)	\$132/kg	\$66/kg
Chile (2011)	25% AV	25% AV
Malaysia (2010)	RM 270/kg 5% + RM 80/kg	5% + RM 150/kg
New Zealand (2009)	12.5% AV	0-8% AV
Peru (2009)	30% AV	30% AV
Singapore	\$115/kg	\$60/kg
United States (2011)	[\$0.42/kg+0.9%] [\$1.05/kg+2.3%] [\$1.50/kg+3.2%]	[\$0.38/kg] to [\$5.48/kg]
Vietnam (2012)	135% AV	80-90% AV

countries from raising tobacco tariffs in the future, even when it would be beneficial to their public health objectives. Members would not be able to apply tariffs to tobacco imported from other TPPA countries, even when doing so is consistent with their WTO commitments.

Eliminating tariffs can increase tobacco use and tobacco-related disease.

In 1999, the World Bank published a landmark report on global tobacco control entitled *Curbing the Epidemic: Governments and the Economics of Tobacco Control*.⁷ The report notes that trade liberalization, including the reduction or elimination of tariffs, can cause tobacco use to rise as much as 10%.⁸ Greater competition among companies lowers prices and increases advertising and product promotion, which leads to greater tobacco use overall.⁹ The report also confirms that trade liberalization has the greatest impact on tobacco use in low and middle-income countries.¹⁰ Other analysis shows that tobacco tariffs can reduce tobacco use in countries that import most of their tobacco products and in countries with significant competition between domestic and imported tobacco.¹¹

Applied Tobacco Tariffs Among TPPA Countries

	Cigarettes with tobacco	Unmanufactured tobacco
Australia (2011)	0	0
Brunei (2010)	0	0
Chile (2011)	6% AV	6% AV
Malaysia (2010)	[RM0.20/stk] [5%+RM14.50/kg]	5% + RM40/kg
New Zealand (2009)	5% AV	0
Peru (2009)	9% AV	9% AV
Singapore	0	0
United States (2011)	[\$1.05/kg+2.3%] [\$1.50/kg+3.2%] [\$0.417/kg+0.9%]	0 - 350% (AV) [\$5.48/kg] [\$0.375/kg] [0.397/kg]
Vietnam (2012)	100% AV	30% AV

Revenue from tobacco tariffs can support the fight against tobacco use.

In the current economic climate, governments are cutting public health programs that target tobacco.¹² Yet the World Health Organization has called for an increase in government programs such as media campaigns and subsidies for products that help smokers quit.¹³ While important for public health, these programs cost money. A corresponding increase in domestic taxes to substitute lost tariff revenue can be difficult, particularly in low- and middle-income countries. Middle-income countries generally recover only 45- 60% of lost tariff revenue through other sources. Low-income countries recover 30%.¹⁴ Retaining the flexibility to generate revenue from tobacco tariffs can help governments keep needed public health programs and increase efforts to reduce tobacco-related disease.

Eliminating tariffs poses a significant danger to tobacco control in Vietnam.

Vietnam retained its high tobacco tariffs while opening its economy to increased international trade in recent years. Upon joining the WTO, Vietnam set high tariff bindings for both manufactured and unmanufactured tobacco.¹⁵ Vietnam also placed tobacco on its General Exceptions List when signing the ASEAN Free Trade Agreement (AFTA),¹⁶ thereby removing tobacco from its ASEAN tariff reductions. In line with these steps, Vietnam continues to apply substantial tariffs that limit the import of foreign-manufactured cigarettes to the country.¹⁷

Bound and applied tobacco tariffs in Vietnam (2012)

	Partly or wholly stemmed tobacco	Cigars, cheroots and cigarillos with or without tobacco	Cigarettes with tobacco	Chewing tobacco and other forms of manufactured tobacco
WTO bound rate	80-90% AV	100% AV	135% AV	100% AV
MFN applied rate	30% AV	100% AV	100% AV	30% AV

Source: WTO Tariff Analysis Online and Vietnam Customs

Removing these tariffs may subject Vietnam to increased competition and advertising, with women as a likely target. The smoking rate in Vietnam is disproportionately high for men (47.4%) compared to women (1.4%).¹⁸ This disparity is ripe for exploitation by foreign tobacco companies through direct marketing of tobacco products to women. Aggressive gender-based marketing was used in Japan, South Korea, and Taiwan after trade restrictions were lifted in these countries.¹⁹ In 2000, the government of Vietnam publicly declared its intention to reduce the smoking rate for women to less than 2% by 2010.²⁰ This goal was achieved.²¹ However, removing tobacco tariffs through the Trans-Pacific Partnership may increase smoking by women in Vietnam well beyond this low level.

The solution: carve tobacco out of the TPPA.

In light of the potential damage from eliminating tobacco tariffs, the TPPA's tariff schedules should exclude tobacco. Even locking in current applied rates would deny TPPA countries the choice to set higher WTO-consistent tariffs on tobacco in the future. The agreement must also make clear that the general obligation to eliminate tariffs on goods traded between TPPA countries does not apply to tobacco products.

While excluding tobacco from the TPPA's tariff schedules is important, it is not a complete solution. Tobacco companies can use other parts of the agreement to penetrate new markets and challenge public health regulations. The solution that accounts for tobacco benefits in other chapters is to exclude tobacco from the TPPA altogether.

Endnotes

¹ The ministers are calling for "comprehensive market access" including the "eliminate[ion of] tariffs and other barriers to goods and services, trade and investment." *Outlines of the Trans-Pacific Partnership Agreement*, Office of the United States Trade Representative (Nov. 12, 2011). When asked if tobacco would be included in the TPPA, Deputy U.S. Trade Representative Demetrios Marantis said that the USTR wanted the same standards "across the board." *Notes on the House Ways and Means Subcommittee on Trade December 14 Hearing on the TPP*, <http://infojustice.org/archives/6556> (last accessed February 13, 2012).

² On February 29, 2012, U.S. Trade Representative Ron Kirk testified before the U.S. House Committee on Ways and Means regarding the TPPA. When asked about the possibility of a tobacco carve-out, he said the U.S. was seeking "the proper balance on tobacco". Inside U.S. Trade, *Kirk Seeks 'Proper Balance' On Tobacco Treatment In TPP Proposal*, <http://insidetrade.com/201203052392104/Inside-Trade-General/Short-Takes/kirk-seeks-proper-balance-on-tobacco-treatment-in-tpp-proposal/menu-id-176.html> (last accessed April 27, 2012).

³ World Trade Organization, *Goods Schedules: Members' Commitments*, http://wto.org/english/tratop_e/schedules_e/goods_schedules_e.htm (last accessed February 28, 2012).

⁴ World Trade Organization, *Current Situation of Schedules of WTO Members*, http://wto.org/english/tratop_e/schedules_e/goods_schedules_table_e.htm (last accessed February 28, 2012).

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- ⁵ World Trade Organization, *WTO Tariff Analysis Online*, <http://tariffdata.wto.org/> (last accessed February 28, 2012).
- ⁶ Singapore, however, does levy excise duties on imported tobacco. *Singapore Customs: List of Dutiable Goods*, <http://www.customs.gov.sg/leftNav/trad/val/List+of+Dutiable+Goods.htm>, last accessed February 21, 2012. New Zealand, Australia, Brunei, and Singapore do not charge customs duties on unmanufactured tobacco. *World Trade Organization Tariff Analysis Online*, last accessed February 6, 2012.
- ⁷ The World Bank, *Curbing the Epidemic: Governments and the Economics of Tobacco Control* 14, available at www.usaid.gov/policy/ads/200/tobacco.pdf. According to Professor Frank Chaloupka's research, cigarette consumption per person in Japan, South Korea, Taiwan, and Thailand was nearly 10 percent higher after the elimination of tariffs and non-tariff trade barriers than they would have been if these measures had remained in place.
- ⁸ *Id.* See also Chaloupka and Laizuthai, *US Trade Policy and Cigarette Smoking in Asia*, National Bureau of Economic Research (1996); Taylor, et al, *The Impact of Trade Liberalization on Tobacco Consumption* (2004).
- ⁹ The World Bank, *supra* note 3 at 14.
- ¹⁰ The World Bank, *supra* note 3 at 2, 14-15.
- ¹¹ Campaign for Tobacco-Free Kids, *Public Health and International Trade Volume II: Tariffs and Privatization* 7-8 (2002).
- ¹² See e.g., *States called on to restore anti-smoking funds*, *The Wall Street Journal* (February 25, 2012), <http://online.wsj.com/article/AP78f5c536312b40d3b5cf4d67c0ca490d.html>.
- ¹³ World Health Organization Regional Office for Southeast Asia, *Innovative Financing from Tobacco Taxation for Health Promotion*, (2011).
- ¹⁴ Baunsgaard and Keen, *Tax Revenue and [or?] Trade Liberalization* (June 2005), IMF Working Paper, <http://www.imf.org/external/pubs/ft/wp/2005/wp05112.pdf>.
- ¹⁵ World Trade Organization, *WTO Tariff Analysis Online*, <http://tariffdata.wto.org/> (last accessed April 22, 2012).
- ¹⁶ *Tariff Schedule for ATIGA – Vietnam*, <http://www.aseansec.org/26184.htm> (last accessed April 23, 2012).
- ¹⁷ Vietnam Customs, *Online Customs Services: Tariff Search*, <http://www.customs.gov.vn/English/Lists/Tariff/Search.aspx> (last accessed April 22, 2012). In 2009, Vietnam imported just 93,494 kilograms of cigarettes, compared with total cigarette exports of 8.9 million kilograms. World Health Organization, *Country Profile: Vietnam* (2011).
- ¹⁸ World Health Organization, *WHO Report on the Global Tobacco Epidemic, 2011: Country Profile: Viet Nam*.
- ¹⁹ U.S. General Accounting Office, *Dichotomy Between U.S. Tobacco Export Policy and Antismoking Initiatives* (May 1990). Targeting women has been particularly notable in Japan, where an industry-backed pledge against tobacco advertising to women replaced a government prohibition when the market was liberalized. Since then, the tobacco industry has introduced new brands and major advertising targeting women. Kaori Hanjo and Ichiro Kawachi, *Effects of Market Liberalization on Smoking in Japan*, *Tobacco Control* Vol. 9 No.2 (June 2000).
- ²⁰ Socialist Republic of Vietnam, Cir. No. 12/2000/NQ-CP, *National Tobacco Control Policy 2000 – 2010* (August 2000), www2.wpro.who.int/NR/.../0/vn_tobacco_control_policy_en.pdf (last accessed April 23, 2012).
- ²¹ World Health Organization, *WHO Report on the Global Tobacco Epidemic, 2011: Country Profile: Viet Nam*.