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KRAFT PHILIP MORRIS Miller

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TOBACCO
FEDERAL GOVERNMENT AFFAIRS

32 Senators, 125 Representatives File Bi-Partisan Letters Opposing FDA Proposal To Regulate Tobacco

January 2 marked the conclusion of the public comment period on the Food and Drug Administration's (FDA) proposed regulation of the sale, distribution, advertising, and promotion of cigarettes and smokeless tobacco products. In addition to the Washington, D.C. press conferences held that day by the tobacco industry and anti-smoking forces to announce the filing of their comments with the FDA, two bi-partisan letters were hand-delivered by Congressional staff to the FDA headquarters in Rockville, Maryland. One letter was signed by 32 members of the Senate and the other by 125 members of the House of Representatives. Senators and Representatives signing the letters reached the same conclusion, stating: "So, while we stand steadfastly against tobacco use by minors, we strenuously object to the FDA's effort to expand its jurisdiction and the federal bureaucracy in dealing with a problem that Congress has already designated to the states. We therefore urge that you withdraw your claim of jurisdiction and terminate your proposed rulemaking."

The Senate letter was initiated by Senators Wendell Ford (D-KY) and Jesse Helms (R-NC). Joining them in signing the letter was the joint leadership of the Senate, including Majority Leader Bob Dole (R-KS), Minority Leader Tom Daschle (D-SD) and Majority Whip Trent Lott (R-MS). In a press statement releasing the letters, Senator Ford said: "When David Kessler began this Big Brother crusade against our tobacco farmers, he said it was vital that Congress provide clear direction to FDA on this issue. This letter, along with another from the House containing 125 signatures, ought to show him the right way to address teen smoking does not lie with FDA regulation of tobacco."

The House effort was led by Reps. Richard Burr (R-NC) and L.F. Payne (D-VA). House Majority Leader Dick Armey (R-TX), Majority Whip Tom DeLay (R-TX), and House Democratic Caucus Chairman Vic Fazio (D-CA) were among the bi-partisan group that signed the letter. At a press conference in Danville, Virginia, held by Rep. Payne to announce the filing of the letter, he said: "The members who signed this letter are from all regions of the country. They are Democrats and Republicans. They are liberals, conservatives, and moderates. What we do have in common is the conclusion that what the FDA is proposing is a serious threat to the legislative authority of the Congress."

Prolonged Negotiations Over Budget Continue To Create Uncertainty Over Possible Revisions To Tobacco Program

Whether any modifications to the tobacco program will be contained in a budget agreement remains uncertain due to the inability of the President and Congress to reach an accord over the larger parameters of a balanced budget package. In the deficit-reducing budget reconciliation package that was passed by Congress and subsequently vetoed by the President, $12.3 billion over seven years was cut from a wide range of crop programs, but the tobacco program was left untouched.

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Subsequent to the President's veto, the Administration developed its own budget plan which contained revisions to federal agricultural programs, including tobacco. Unfortunately, the Administration's agricultural provisions were developed by the Office of Management and Budget (OMB) and did not receive clearance by the U.S. Department of Agriculture. As a result, they were poorly drafted. The Administration's proposed budget extends the Tobacco Marketing Assessments (TMA) at the current level of assessment (1% of the price support rate) on the 1999 through 2005 crops. It would authorize the Secretary to collect an assessment from producers only to cover the administrative costs associated with operating the tobacco program. It would also appear to repeal some of the authority for No-Net-Cost assessments on importers.

In the Congress, Reps. Charlie Rose (D-NC) and Scotty Baesler (D-KY) are seeking to place in the potential budget agreement various reforms to the tobacco program recommended earlier by an industry-wide Tobacco Advisory Committee. The Rose/Baesler provisions would extend the TMA from 1998 to 2002 and authorize the Secretary of Agriculture to use the TMA to cover the administrative costs associated with the tobacco program not currently covered by the No Net Cost assessment.

It remains unclear at this date what revisions will occur to the tobacco program, if any, in the context of a possible budget agreement. Senate Minority Leader Tom Daschle (D-SD) recently stated that it was the position of the Senate Democrats to accept no change to any farm program in the budget.

AMA Calls For Federal Ban On Exports Of Tobacco Products As Administration Review Of U.S. Tobacco Trade Policy Continues

At its recent interim meeting in Washington, the American Medical Association (AMA) pledged to work for enactment of federal legislation that would prohibit the exportation of U.S. tobacco products to other countries. Pending enactment of this legislation, the AMA stated that it would strongly urge the U.S. government to alter trade policies and practices "which currently serve to promote the world smoking epidemic." The AMA also announced that it will continue to support legislation requiring health warning labels in native languages to be on packages of exported cigarettes and requiring foreign advertising by U.S. cigarette manufacturers to be at least as restrictive as advertising permitted in the U.S.

While similar legislation has been introduced in the past, no such legislation has been introduced in the current Congress relating to cigarette exports. However, Rep. Henry Waxman (D-CA) recently attacked U.S. tobacco exports on a CNN broadcast aired December 27 where he said: "I think it's important for this country to represent certain values around the world. Values of human rights, democracy... and it's inconsistent with those values to be the leading exporter of a product that's going to kill millions and millions of people."

The U.S. tobacco trade policy remains under review by an Interagency Task Force, co-chaired by representatives of the U.S. Trade Representative's Office (USTR) and the Department of Health and Human Services (HHS). Created in November 1993, the group is currently circulating a draft white paper through the relevant U.S. agencies for comment. In a recent interview, USTR Mickey Kantor indicated that the draft report rejects a central claim of the anti-smoking forces; namely, that U.S. cigarette exports increase smoking abroad. As the Clinton Administration continues its review of the U.S. tobacco trade policies, Members of Congress from tobacco growing regions continue to argue in favor of a fair policy for tobacco exports. Representative of those efforts is a recent letter the Ranking Minority Member of the House International Relations Committee, Lee Hamilton (D-IN), wrote to Ambassador Kantor, stating: "In the absence of evidence that American tobacco products are somehow worse for health than those produced by international competitors, I urge you to complete the task force's work and proceed with your efforts to pursue fair and open trade for American tobacco products abroad."

SAMSHA Regulations

The Secretary of Health and Human Services (HHS) has forwarded to the Office of Management and Budget (OMB) for final clearance the SAMSHA regulations, designed to implement the

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"Synar amendment" prohibiting tobacco sales to minors. Reports are that such final regulations will be issued once HHS's budget appropriations for 1996 are resolved. The major changes between the proposed regulations issued in 1993 and the final rule are thought to be increased flexibility for states in complying with the standards as well as flexibility for the Secretary of HHS in penalizing a state for non-compliance through reduction of its substance abuse funds.

ASH Sues OSHA On Smoking Ban

On December 22, 1995 Action on Smoking and Health (ASH) filed its sixth petition against the Occupational Safety and Health Administration (OSHA) in the D.C. Court of Appeals seeking to force OSHA to issue a workplace standard on environmental tobacco smoke (ETS). The five prior petitions were opposed by OSHA and dismissed by the Court. ASH also filed a petition for expedited review of its petition. Since OSHA has been affected by the overall government shutdown, it has been unable to file a response to either petition at this juncture. However, OSHA is expected to oppose such petitions once the Department of Labor reopens. Judicial resolution of these proceedings is expected to last from five to ten months.

New FET Bill Introduced

Rep. David Obey (D-WI) introduced, shortly before the December holiday break, a bill that would raise cigarette excise taxes by $.75 per pack. The revenues raised from the tax would provide funding to states for the operation of comprehensive state health insurance plans. No action is scheduled on the measure.

CORPORATE

Clinton Submits Balanced Budget - Government Shutdown Ends

On January 6, President Bill Clinton met the conditions of a Republican-sponsored measure and submitted his version of a CBO-certified, seven-year balanced budget plan. The action temporarily reopened the federal government and refueled the budget talks that were stalled for several days. Under the terms of the bill, all government employees were returned to work until January 26 when Congress will review the progress made in the budget negotiations and reconsider further government funding.

Although the federal government is back as full strength, significant political and financial differences must be ironed out between the President and the Republicans if a budget accord is to be reached. For example, the President's package contains defense and non-defense discretionary spending cuts of $295 billion while Republicans seek to cut future funding in those areas by $398 billion. On Medicare, Medicaid and welfare, three of the most politically-charged issues under review, the Clinton budget reduces future mandatory spending in each of the programs by only half of what Republicans have put on the table - $102 billion and $52 billion in Medicare and Medicaid, respectively, as compared to the Republican cuts of $200 billion and $117 billion in the respective programs. The Administration's package also added the federal food stamps and the Earned Income Tax Credit (EITC) programs to the welfare area and proposed to reduce it by $45 billion over 7 years while the Republican plan treats the food stamps and EITC programs separately and reduces welfare spending by $82 billion. Moreover, a major political difference confronts the negotiators in this area: Congressional Republicans, working with a number of their fellow Governors, seek to overhaul current federal welfare policy by requiring the states to manage the program with funds provided through a formula-driven block grant mechanism. The Administration, however, proposed to keep welfare under federal control and cap future individual expenditures to achieve the projected budget savings.

In the area of tax cuts, the Administration lays out a two-stage approach that cuts taxes by $87 billion over the first four years of the agreement and adds an additional $60 billion to the pot should economic growth exceed the CBO's predictions. The Administration would offset $60 billion of the cuts by eliminating an unspecified number of items on the so-called "corporate welfare" list of tax breaks. Republicans, on the other hand, cuts taxes by $245 billion - $18 billion from corporate welfare - but do not link the cuts to economic performance. As of this writing it is highly unclear if the two sides can bridge the deep political and financial differences and prevent another government closing on January 26.

Congress Overrides President's Veto of Securities Litigation Reform Bill - Measure Becomes Law

In a major defeat for the securities class action plaintiffs' bar, Congress in late December overrode the President's veto of the Private Securities Reform Act of 1995. The House easily mustered the two-thirds vote necessary to overcome the President's veto while the Senate voted 68-30 to reject the President's action. This action marked the first successful override of a Clinton veto in the 104th Congress.

The legislation seeks to limit the filing of frivolous securities lawsuits by creating a "safe harbor" for companies making forward looking statements; imposing tightened class action, pleading and discovery requirements in such actions; limiting the doctrine of joint and several liability and otherwise curtailing excessive damage claims; and requiring the imposition of sanctions against plaintiffs and their attorneys who make frivolous pleadings. A hastily-filed and frivolous securities fraud suit against Philip Morris brought immediately after "Marlboro Friday" - which was ultimately dismissed - where plaintiffs' attorneys alleged Philip Morris was in the toy manufacturing business was held up as an example by reform proponents during Congressional debate as to why such legislation was necessary.

Conference Committee Convenes On Tort Reform/Product Liability Legislation, Moving Process For Federal Legal Reform Forward

House and Senate conferees met for the first time on December 15, 1995 in an attempt to resolve differences between the House-passed and Senate-passed legal reform bills. The House bill, H.R. 956, would cap punitive damages at the greater of $250,000 or three times economic damages and limit joint and several liability in a broad range of civil actions. In the Senate, however, there was insufficient support for such broad reforms. The Senate version of the legislation is limited to products liability actions. Although the Senate bill contains many of the same reforms as the House with respect to product liability actions, such as limits on joint and several liability, it does not contain a hard cap on punitive damages in actions against large businesses. Instead, the Senate opted for a presumptive cap set at the greater of $250,000 or two times compensatory damages, and permits a judge to award punitive damages in excess of that cap in cases of egregious misconduct.

Conferees are expected to resume their work in late-January, and proponents hope to see a conference report issued early this year. If the conferees reach an agreement, the final version of the legislation is expected to conform closely to the Senate bill. It is unclear whether the President will sign any reform bill that emerges from conference, especially in light of his veto of the securities reform litigation bill in December.

Elimination Of Federal Employee Commute Mandate Clears House And Senate

On December 12, the House of Representatives approved by voice vote legislation authored by Rep. Don Manzullo (R-IL) eliminating the 1990 Clean Air Act mandate that employers in key metropolitan areas put in place programs to move employees out of single occupancy motor vehicles during primary commuting hours. Following House action, the Senate cleared the Manzullo bill by unanimous consent, sending it on to the President who signed the measure on December 23.

Rep. Manzullo's bill allows states, which have primary responsibility for most implementation decisions under the Clean Air Act, to also make decisions regarding whether commuter restrictions are appropriate in communities within their states. Most states have already rejected these unpopular restrictions. Under existing law, significant numbers of PM employees in southern California and the greater New York, Chicago, Milwaukee, and Houston metropolitan areas could have seen their daily commute disrupted. The WRO was an active participant in coalition activities to encourage action on the Manzullo bill.

FOOD
FEDERAL GOVERNMENT AFFAIRS

Kraft Refutes Charges Over Daytime TV Talk Show Advertising

Empower America Co-Director and former Education Secretary William Bennett joined U.S. Senators Joe Lieberman (D-CT) and Sam Nunn (D-GA) at a press conference on December 7 to unveil a television commercial denouncing the "degrading material" presented on a number of daytime television talk shows and challenging major advertisers to refuse to sponsor "this cultural rot." Bennett, Lieberman and Nunn identified ten talk shows that in their view contain offensive material on a regular basis. Philip Morris was one of several advertisers specifically called upon to take a stand against these talk shows. Kraft Foods is a large advertiser on daytime programming.

In a statement released at the press conference, Kraft Vice President for Media Services David Braun noted Kraft's long standing policy of not advertising in programs that make gratuitous use of sex or violence or that demean human dignity. Braun also pointed out that Kraft had voluntarily and entirely withdrawn its advertising two years earlier from seven of the ten daytime talk shows identified at the press conference because they had routinely failed to meet Kraft's high standards. Compliance with Kraft's advertising policy on other shows is enforced through a rigorous episode by episode advance review process. Kraft advertisements are only placed on suitable individual episodes. "Virtually no other advertiser we know of makes a greater effort to evaluate the program environment for its advertising," commented Braun.

Meetings have taken place between senior Kraft executives and Mr. Bennett and the Senators to educate and further clarify for these individuals Kraft's commitment to programming that is compatible with the wholesomeness and quality associated with its brands.

Dairy Program Debate Continues In Budget Negotiations

Key House members are working hard on an alternative dairy plan for possible inclusion in any budget deal between the White House and Congress. The dairy plan is based on a proposal agreed to by the National Milk Producers Federation on November 30 which is strongly opposed by Kraft. Rep. Steve Gunderson (R-WI), chairman of the House Livestock, Dairy and Poultry Subcommittee has expanded the 8-point proposal to meet his concerns and those of Reps. Collin Peterson (D-MN), Richard Pombo (R-CA) and Pat Roberts (R-KS). Among its most objectionable provisions, the proposal would remove butter and nonfat dry milk powder from the price support program while leaving cheese on support. This would result in subsidized dumping of dairy products in overseas markets, reducing domestic supplies and driving up prices for cheese producers. A broad coalition of dairy processors, free market organizations and consumer groups are continuing their efforts to prevent the inclusion of this proposal in any budget agreement.

FOOD
STATE GOVERNMENT AFFAIRS

Kraft Leads Food Industry Great Lakes Initiative Effort

Kraft Foods is leading an ongoing federal and state food industry effort to gain relief from the Great Lakes Water Quality Initiative (GLI), a regulation promulgated by the federal EPA in March, 1995, which establishes new water quality standards for the 8 states which are in the Great Lakes Basin. Although the food industry does not use any of the organic chemicals or metals which are restricted under the GLI, some of these pollutants are found at very low levels in our facilities' intake water. Kraft has facilitated the involvement of the Food Industry Environmental Council (FIEC) to promote food company awareness of the potential costly impact of the GLI. An educational workshop was held during December in which over 15 major food companies participated. Kraft also organized meetings with federal EPA officials and state political and regulatory personnel to seek specific guidance which will limit the application of the GLI to the food industry. Additional meetings with regional EPA officials will occur this month.