Responses to Questions on Notice: Dr Deborah Gleeson, Public Health Association of Australia

Public Hearing for the Joint Standing Committee on Treaties: Trans-Pacific Partnership Agreement, Friday 7 October 2016, Melbourne

1) Question from Mr Wallace, transcript page 3: In submissions, the PHAA talked about leaked drafts and how the PHAA was concerned about food labelling provisions. You say that the bulk of your concerns in relation to food labelling has since been ameliorated, when the final version came out. Your submission concedes that the final draft has addressed some of those issues but not all. Which ones in the final draft are you not happy with from a food labelling perspective?

Response:

I presume that Mr Wallace is referring here to the general statement on page 13 of our submission that some of the provisions proposed for the TPP were mitigated or removed during its negotiation. This statement did not refer specifically to our concerns about food labelling. In fact, this statement is more relevant to the intellectual property provisions of the TPP, as several of the original US proposals were removed completely (for example, patents for diagnostic and treatment methods) or mitigated to some degree (e.g. the final patent term extension provisions were more flexible than the initial US proposals).

However, I will outline for the Committee our concerns regarding the implications of the final TPP text for food labelling. While there are a number of different aspects of food labelling that may be affected (including country-of-origin labelling), as a public health organisation we are most concerned about the implications for nutrition labelling.

I have already outlined our concerns about the Investor-State Dispute Settlement mechanism in the TPP and the lack of a solid public health carve-out that would exempt public health policies, such as nutrition labelling, from challenge. A large proportion of the world's transnational food companies are headquartered in the United States. Research has shown that these big transnational food companies are increasingly adopting tactics used by tobacco companies to undermine effective public health regulation[1]. It is quite conceivable that in the future we could see these transnationals using the threat ISDS to attempt to deter governments from implementing effective mandatory nutrition labelling schemes.

We are also concerned that several provisions in the TPP's Technical Barriers to Trade Chapter may infringe on domestic policy space to introduce more effective nutrition labelling schemes in future. The technical issues regarding particular provisions in the final text of this chapter are well covered in a publicly accessible article in *the International Journal of Health Policy and Management* by Ronald Labonte and colleagues,[2] which I commend to the Committee. Various provisions may increase the input of the processed food industry in policy-making processes, increase the burden of evidence required to defend nutrition labelling standards in the event of a dispute and drive international standards towards the lowest common denominator rather than allowing space for national innovation.[2] The TPP also includes a world-first annex on Proprietary Formulas for

[1] Moodie R et al (2013) Profits and pandemics: prevention of harmful effects of tobacco, alcohol, and ultra-processed food and drink industries. *Lancet* 381: 670–79.
[2] Labonte R et al (2016) The Trans-Pacific Partnership: Is it everything we feared for health? International Journal of Health Policy and Management, 5(x), 1-10. Available at: http://www.ijhpm.com/article_3186_0.html

Prepackaged Food and Food Additives (Annex 8-F) which could frustrate efforts to require companies to disclose information on proprietary formulas for food products.[2]

2) Question from Ms Marino, transcript page 4: One of the things that your submission raised was the concern about trade agreements extending into areas that have previously been matters for domestic policy making. I looked at your submission. What particular areas are you referring to here? […] One of the issues raised in PHAA's submission was about trade agreements that aim to extend into areas that have previously been matters for domestic policy making. I wonder if you could give me some practical examples. When I looked at the submission, it did not really go a lot further than that, so I wonder if you could expand on that.

Response:

Recently negotiated trade agreements such as the TPP have included an increasingly broad set of policy areas and provisions that go far beyond the traditional trade objectives of reducing tariffs and other barriers to trade at the border. This has been documented extensively in the literature.

One health-related example is the provisions for labelling of wine and distilled spirits in Annex 8-A, which are discussed in our submission and in the verbal evidence I provided to the Committee. Another example is the TPP's extremely prescriptive intellectual property settings for pharmaceuticals. The World Trade Organization's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), while setting minimum standards for intellectual property (such as 20-year patent terms), leaves a significant amount of room for countries to determine how they will interpret the principles in their domestic laws. The TPP settings limit the options available to nations to a far greater degree. A specific example is the TPP's requirement for data protection for biologic medicines – this is not required under the TRIPS Agreement, or in fact any other trade agreement to date.

3) Question from Senator McAllister, transcript page 5: Dr Gleeson, if you were able to provide the name of that report [by the United Nations High-Level Panel on Access to Medicines] to the secretariat it would assist us in reaching conclusions at the end of the process.

Response:

The document I referred to is the *Report of the United Nations Secretary-General's High-Level Panel on Access to Medicines: Promoting Innovation and Access to Health Technologies*, published September 2016 and available from http://www.unsgaccessmeds.org/final-report/

I particularly draw the Committee's attention to pages 7-9 and 19-20.

Thank you for the opportunity to give evidence to the Committee and to provide responses to these questions on notice.