

Joint Standing Committee on Treaties
PO Box 6021
Parliament House
Canberra ACT 2600

18 April 2018

To the Joint Standing Committee on Treaties,

Thank you for the opportunity to make a submission to your inquiry into the proposed *Free Trade Agreement between Australia and the Republic of Peru* (Peru FTA).

We have undertaken research examining the Trans Pacific Partnership (TPP) annex on wine and spirits (Annex 8-A: Wine and Distilled Spirits), which has been incorporated in its entirety into the proposed Peru FTA as *Annex 7-A Wine and Distilled Spirits*. This annex contains a novel set of provisions for wine and spirits that require parties to allow suppliers to place country-specific labelling information on a supplementary label. These provisions potentially create challenges for countries wishing to introduce effective health warning schemes and other types of health information (e.g. energy content) on alcohol containers.

The global burden of alcohol-related harm is considerable and there is a strong rationale for better health information on alcohol containers as an important element of a comprehensive strategy to reduce it. In Australia, as in many other countries, alcoholic beverages have historically been exempted from many labeling requirements for other comestibles - e.g., listing of ingredients, disclosure of kilojoule content. There are also no mandated explicit warnings about risks of injury and to health from consumption, such as exist in the U.S.

As scientific knowledge improves and public sentiment changes about these risks, it is likely that a future Australian government will want to move on these matters. But it may find this policy more difficult to pursue or blocked by treaty provisions reserving for producers and bottlers control over label 'real estate'. In this context, it is important that a state's right is preserved to introduce evidence-based alcohol health information to educate, change drinking behaviour and send the message that alcohol is no ordinary commodity.

The enclosed papers published in the journals *Melbourne University Law Review* and *Alcohol and Alcoholism* set out our arguments in detail, and we summarise the key elements of our arguments below.

The best available evidence suggests that, to be effective in influencing behaviour change or variables associated with behaviour change (such as intention to change), warning labels should: comprise both text and symbol; be placed on the front of product containers, horizontally oriented and separated by a prominent black border; consist of at least five different health warning messages, used in rotation between containers, including one relating to risks of drinking during pregnancy; and occupy a specific percentage of the container's surface.

As they stand, the rules on supplementary labelling in TPP Annex 8-A and Peru FTA Annex 7-A create some uncertainty as to whether the Parties retain the right to mandate these presentation and placement features for warnings (and other health information) provided on supplementary labels.

Paragraph 5 states that if a Party requires a supplier to indicate some information on a spirits label, the Party shall permit the supplier to indicate that information on a supplementary label affixed to the spirits container. Paragraph 10 creates the same obligation for the Parties in relation to labelling of wine containers. The uncertainty about the Parties' rights arises in two ways.

Firstly, there is no definition of 'supplementary label' in the Annex. One possibility is that the 'supplementary label' will be defined as meaning an additional label that fits into some unused space on the container (ie, down the side of a wine bottle between the two main labels). If this definition were accepted, a Party would be in breach of paragraphs 5 and 10 if it set presentation and placement requirements for supplementary labels that meant that the label could not be placed in unused space on the container. In other words, if a Party set presentation and placement requirements in accordance with the evidence referred to above, it would potentially be in breach of the supplementary labelling rule.

Secondly, paragraphs 5 and 10 affirm the right of the Parties to ensure that any information indicated on a supplementary label meets the requirements in paragraph 4, which includes the requirement that statements on labels be 'legible' (paragraph 4(b)). There is an argument that these provisions have the effect of removing the right of the Parties to impose any presentation or placement requirements beyond legibility.

We see two possible courses of action to address these problems with the supplementary labelling rules.

- (1) In the Peru FTA or in the negotiation of future trade agreements where the supplementary labelling rules are being considered for inclusion, the best course for the protection of public health would be to explicitly exclude health information from the supplementary labelling rules. There would be two options for achieving this exclusion.
 - a. The existing text of Peru FTA Annex 7-A paragraph 5 could be amended to include the italicised text: 'If a Party requires a distilled spirits label to indicate information other than information about human health, it shall permit the supplier to indicate that information on a supplementary label...'. The comparable amendment for paragraph 10 would read: 'If a Party requires a wine label to indicate information other than ... (e) information about human health, it shall permit the supplier to indicate that information on a supplementary label...'.

OR
 - b. Alternatively, an additional paragraph could be added to the Annex: 'The obligation in paragraphs 5 and 10 for a Party to permit information to be indicated on a supplementary label does not apply to information about human health required by the Party. For certainty, nothing in this Annex prevents a Party from requiring that information about human health be indicated on the main label.'
- (2) Alternatively, at the very least, the text should be amended to affirm that a state may prescribe the presentation and placement features for information it requires to be included on wine and spirits containers, including on supplementary labels. The amendment to paras 5 and 10 could be in the following terms:

'For greater certainty, a Party may require that the information indicated on a supplementary label meet the requirements in paragraph 4 and any other requirements determined by the Party with respect to the presentation and placement of the information. Further, the Party may impose the same presentation and placement requirements for information indicated on a supplementary label or on the main label.'

As it is currently drafted, the proposed Peru FTA Annex 7-A lacks these explicit public health safeguards and creates an unnecessary impediment to Australia using health information labelling to minimise the considerable harms from the consumption of alcohol.

We would be very happy to discuss this matter with you.

Yours sincerely,

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Dr Deborah Gleeson, Senior Lecturer, School of Psychology and Public Health, La Trobe University,

Ms Paula O'Brien, Senior Lecturer, Melbourne Law School

Professor Robin Room, Director of the Centre for Alcohol Policy Research, La Trobe University;
Professor, Centre for Social Research on Alcohol and Drugs, Stockholm University

Ms Claire Wilkinson, Research Officer, Centre for Alcohol Policy Research, La Trobe University;
NHMRC Postdoctoral Research Fellow, Drug Policy Modelling Program, National Drug and Alcohol Research Centre, University of New South Wales

Contact details: E: d.gleeson@latrobe.edu.au T: 03 9479 3262