



U.S. CHAMBER OF COMMERCE

August 20, 2014

Mr. Alexander Erwin (Chairperson)
DS Registry (Office No. 2047)
World Trade Organization
Centre William Rappard
Rue de Lausanne 154
CH-1211 Geneva 21
Switzerland

Re: *Australia – Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging (WT/DS434)* and *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging (WT/DS435, WT/DS441, WT/DS458, WT/DS467)*

Dear Mr. Chairman:

1. The Emergency Committee for American Trade, the National Association of Manufacturers of the United States, the National Foreign Trade Council, the Paperboard Packaging Council, the Printing Industries of America, AICC -- The Independent Packaging Association, the United States Chamber of Commerce, and the United States Council for International Business wish to present their views regarding the WTO Dispute Settlement cases concerning Australia's plain packaging requirements. It is our request that these views be considered in the deliberations and recommendations in the dispute and that these views be circulated to the Parties and Third Parties to the dispute. The Associations support the protection of trademarks globally and urge the WTO to find that Australia's Tobacco Plain Packaging Law and Regulations are inconsistent with the WTO Agreements for the reasons stated below.
2. The Associations are a coalition of not-for-profit organizations that promote free markets, international trade, and the protection of intellectual property. The Associations represent companies that will be affected by the WTO's decision, and own trademarks that could become subject to national restrictions, and therefore have a direct interest in the resolution of this dispute.
3. This submission is both pertinent and useful. The Associations represent a diverse cross-section of rights holders that invest heavily in creating, using and protecting trademarks associated with their brands. The Associations represent commercial interests that will be affected by the resolution of this dispute.
4. The measure at issue is Australia's Tobacco Plain Packaging Act 2011 and its implementing Tobacco Plain Packaging Regulations 2011.¹ The measure provides that "[n]o trademark may appear anywhere on the retail packaging of tobacco products" or on tobacco products.² Australia's measure allows only the name of the brand in specific font, size, color and placement on the retail packaging of tobacco products. Accordingly, the measure requires that product packaging be in a special form

that removes all distinctive elements of packaging, including trademarks, colors, texture and general form of the package.

5. Australia did not examine individual trademarks to determine if they were objectionable under applicable international standards prior to imposing its plain packaging measures. Instead, Australia imposed stringent requirements on the use of any trademark at all on a specific type of product.

6. Australia's measure adversely affects the use of all types of trademarks: word marks, non-word marks, and a combination of these, that is, combination marks. The use of word marks is limited in color, size, font, placement, shape and presentation. The limitations are so severe that word marks alone cannot serve the core trademark function of distinguishing goods in the marketplace. Combination marks and non-word marks cannot be used on any relevant product or retail packaging. Prior to Australia's measure, all three types of trademarks were used commercially throughout Australia.

7. Trademarks play a critical role in the global economy as a means of facilitating competition in new and existing markets and contributing to consumer education about branded products. Given that it is likely that plain packaging laws will not ultimately be limited to tobacco products in Australia if the WTO upholds such measures, such restrictions will have serious consequences for the export and competition strategies for many producers of a wide variety of products. Moreover, such laws could subject the trading system to abuse through disguised import protection, making it more difficult for imported brands to compete with local products that are entrenched in the market. Such national or local laws would also make it easier to dilute well-known foreign brands to protect emerging local competition.

8. Trademarks are often the most valuable asset a manufacturer possesses and are at the center of the global economy. Given this importance and manufacturers' reliance on the international obligations that governments have undertaken to protect these trademarks around the world, companies both large and small make significant investments to develop, promote and protect their trademarks.

9. A trademark is a mark used by manufacturers to distinguish their goods from similar wares of other firms, particularly a distinctive device or figure, or a fancy name.³ Trademarks enable the public to identify and recognize goods or services as originating from a particular company and being a particular known product. Through trademarks, companies associate their reputations with their products and promise a consistent level of quality. This widespread brand-based competition allows consumers to know that certain products are produced by recognized companies at a consistently high quality. By signaling superior quality and a distinct product experience, trademarks enable producers to establish a loyal consumer base and consumers to establish a long-term relationship with their preferred product. As part of the source-identifying function, trademarks are also an effective mechanism to protect against counterfeiting. A trademark also helps to ensure that a trademark owner reaps the rewards associated with his or her product, rather than that of a competitor.

10. Trademarks come in different forms, but the more distinctive a trademark is, the easier it is for consumers to distinguish and differentiate products of competing manufacturers. Consumers can often distinguish products at a glance. In this way, fanciful designs, colors, images and logos have come to be essential to assist consumers in quickly identifying the source of a product. Where elements of different trademarks appear similar, the distinguishing function is eroded.

11. Trademarks protect the reputations of companies and their products and prevent consumer confusion and deception. Manufacturers invest heavily and over many years to develop their trademarked brands and the associated reputations for providing quality goods and services. Consumers rely on trademarks the world over, and anywhere a trademark is present, a manufacturer

stands behind it to vouch for authenticity and quality. In this way, trademarks serve as vital motivators for businesses to invest in quality maintenance, value creation and responsibility. It also allows businesses to invest in product improvement and innovation. Consumers reward these activities with repeat purchases and high levels of reputation. As the importance of trademark in the marketplace is diminished, the market-based reputational incentives are skewed against consumers.

12. A governmental act restricting or prohibiting the use of trademarks impairs one of their essential functions -- to ensure fair and effective competition for the benefit of producers and consumers. Trademarks hold manufacturers accountable to competitive forces in the marketplace and represent a promise to consumers that those qualities associated with a product will in fact be present or absent, as appropriate. They encourage manufacturers to maintain and to improve the quality of their products in order to compete.

13. Trademarks are also critical to product diversification across many different consumer goods markets, from food and beverages to luxury products and cars. Trademarks merit protection as a fundamental means for producers to create value for their products and differentiate them from competitors. This enables consumers to find a product that matches their unique needs and desires. Matching consumers to products creates value in the broader economy.

14. Consumers are best served by access to information that enables decisions about which products to purchase. Australia's plain packaging law inherently limits the information available to consumers. Moreover, it significantly undermines the value of trademarks by diminishing the ability of brand owners to use their marks in commerce.

15. Government measures affecting product labeling have typically involved adding information to the label, enabling consumers to receive more information, not less. Moreover, nutritional information labels are accepted as generally consistent with WTO rules and identify fat and salt content, again providing more information to consumers to inform their purchasing behavior. However, plain packaging takes information away from the consumer and limits the communicative value of the label. A label is the first aspect of a product viewed by a consumer and is also the last means of communication before purchase and consumption. Plain packaging limits and distorts the information and disconnects prior and future associations made between trademarks and the branded products they represent.

16. Premium products are associated with particular qualitative characteristics and consumers are willing to pay more for them. When a market functions properly, premium products are easily identified by consumers by their trademarked logo, packaging colors, name, fancy fonts, packaging material or shape and other characteristics. Consumers that rightly associate these product characteristics with quality are willing to pay more. They tend to remain loyal to the product in question, because it best satisfies their needs, compared to competing offerings in the market. As these identifying marks, symbols and colors are removed, so too are consumer loyalty and willingness to pay because consumers are likely to perceive plainly packaged products as increasingly similar in terms of quality and characteristics. Consumers are less able to purchase based on premium characteristics, which has a disproportionate impact on producers of premium products. Manufacturers and consumers are no longer able to communicate differentiating product properties in the marketplace.

17. The WTO's primary function is to safeguard the predictability and security of the international trading system. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) was agreed upon by all WTO Members,

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to

ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade⁴

18. The negotiators recognized that new rules and disciplines set forth in the TRIPS Agreement were needed regarding “the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights.” Section 2 of the TRIPS Agreement provided detailed obligations in relation to the protection of trademarks, building on the extensive protections already provided in the Paris Convention for the Protection of Industrial Property (1967) (the Paris Convention).

19. The first sentence of Section 2 under Article 15.1 of the TRIPS Agreement provides that “[a]ny sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark.”⁵ Such signs include “words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs. . . .”⁶ Every WTO Member is obligated to ensure that such signs “shall be capable of constituting a trademark” and “shall be eligible for registration as trademarks.” If a Member adopts a measure that carves out a group of distinguishing signs from constituting a trademark or from being eligible for registration, such measure would violate Article 15.1 of the TRIPS Agreement.

20. Article 15.4 of the TRIPS Agreement further explains that “[t]he nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.” This provision has its origins in the Paris Convention and reinforces the principle that the protection of trademarks cannot be based on the nature of the goods or services to which such trademarks are applied. In other words, trademark protections do not vary by product or industry, and are equally strong in the tobacco context as any other. The WTO does not view trademarks as good or bad based on the nature of the product. It is a fundamental principle of international intellectual property law that the trademark is independent of the product.

21. Similarly, Articles 16 and 20 of the TRIPS Agreement highlight the importance of the use of trademarks and the disciplines applicable to any measures that affect such use. Article 16 requires Members to ensure that the owner of a registered trademark, including well-known marks, can prevent the use of identical or similar marks on identical or similar goods (or even non-similar goods for well-known marks) in the course of trade if such use would create a likelihood of confusion or indicate a connection with, and likely damage the interest of, the owner of the well-known trademark. The severe limitations on the use of trademarks under Australia’s measure undermine this right in violation of Australia’s WTO obligations. Clearly, well-known marks will no longer be well-known when they are no longer visible in the market place. The strength of any trademark, and thus its scope of protection from infringing use, is inevitably also adversely affected by a measure that prevents their use in the marketplace and in the eyes of the average consumer. Some trademarks that are not inherently distinctive but gain distinctiveness only through use will lose their protected status when they are no longer allowed to be used, leading the owner of such a trademark to be unable to protect the mark from infringement. Plain packaging thus directly affects the minimum enforcement rights guaranteed by Article 16 of the TRIPS Agreement.

22. Article 20 of the TRIPS Agreement confirms that the negotiators contemplated the protection of the use of trademarks, given that such use is presumed by the text of the provision. Article 20 would make no sense if a Member could impose the ultimate encumbrance (*i.e.*, a prohibition on the use of trademarks) but could not impose more limited restrictions. Article 20 states: “The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings.”⁷

23. At the core of Article 20 is the protection of the essential function of trademarks to guarantee the origin of goods and communicate with consumers by distinguishing goods of competitors. However, it is these very functions that Australia's Plain Packaging Law undermines.

24. Given that its measure constitutes a special requirement that encumbers (either substantially or ultimately) the use of a trademark in the course of trade, Australia must meet a substantial burden to demonstrate that the measure is justified. If a measure will not contribute materially to the permitted objectives, its restrictive effect on international trade and intellectual property rights cannot be justified. If less restrictive means of securing the desired objective are available, they must be preferred.

25. In making its assessment, the WTO must examine whether the measure itself is justified, not whether the policy supporting the measure is justified. To this end, the measure must actually be demonstrated to be apt to materially contribute to this health protection objective and to do so in a manner that is not disproportionate or more trademark restrictive than necessary.

26. The benefits of protecting intellectual property, particularly trademarks, merit a robust evidentiary foundation for any measure that restricts these rights. Mere good intentions without objective evidence cannot justify a measure, whether based on beliefs about public health or otherwise. Some evidentiary foundation is necessary, and the evidence should be sufficient and reliable.⁸ The imposition of regulatory burdens without true scientific underpinnings has no place in an open and rules-based trading system.

27. The TRIPS Agreement (and the Paris Convention) provide governments some ability to limit the registration and use of trademarks, provided such limitations are consistent with the Agreement.⁹ An objective examination requires the WTO to determine if Australia has fundamentally disturbed the careful balance under the TRIPS Agreement by ignoring its obligations in relation to a category of trademarks for a particular product in an effort to regulate indirectly the underlying product for public health reasons.

28. The TBT Agreement limits technical regulations and standards to prevent unnecessary obstacles to trade and provides that measures like the Australian one "shall not be more trade-restrictive than necessary to fulfill a legitimate objective. . . ."¹⁰ Australia's Plain Packaging Law requires precise technical compliance with highly restrictive labeling provisions that eviscerate almost all aspects of trademarks. The measure constitutes an unnecessary obstacle to trade, is more trade restrictive than necessary to fulfill any legitimate objective, is inefficient at best and is not supported by any scientific evidence or record.

29. The Associations recognize that Australia could prohibit the sale of tobacco or any other product within its border if it advanced legitimate objectives through credible evidence in conformity with the WTO Agreements. In fact, much of the evidence introduced to support the Australian measure is directed at arguing that tobacco should not be available for purchase, rather than that trademarks on tobacco products should be restricted. However, tobacco products remain legal to sell in Australia. Instead of imposing a ban, Australia mandates severe encumbrances on the use of trademarks.

30. The TRIPS Agreement provides for ample room for domestic regulatory autonomy to "protect public health,"¹¹ without eroding trademark protections. Products or services may be regulated and banned if necessary to protect public health. Moreover, misleading advertising or signs can be refused, health warnings can be mandated and disclosure of product characteristics can be required. However, no general health exception for limiting the use of trademarks is envisioned in the TRIPS Agreement. Therefore, if the product is lawfully available, then trademarks must not be subject to adverse regulations that affect the scope of their protection or unjustifiably encumber their use. If the WTO finds Australia's plain packaging measures inconsistent with WTO rules, such a

ruling will do nothing to limit the myriad other alternative actions that are available to Australia to pursue legitimate public health goals.

31. Limiting the use of trademarks does not make any meaningful contribution to legitimate public health goals. In fact, in one decision, the WTO can erode over a century of progress in creating a coordinated international approach to the protection of trademarks. A trademark by its very nature is intended to be used in commerce. It makes little sense to provide registration and protection for a trademark and then to prohibit its use on a lawfully available product or its retail packaging, especially where such use is necessary to serve the core functions of trademarks. Trademarks are not harmful to public health and their use does not per se prevent regulation of the products they distinguish in the marketplace.

32. International law recognizes the important contribution that trademarks make in indicating the origin, quality, and characteristics of a product, in ensuring fair competition, and in reducing counterfeiting and illicit trade. International law protects these functions for all products without regard to the nature of the product.

33. Australia's actions are also inconsistent with global efforts to combat the illicit trade of counterfeit goods and with the Preamble to the TRIPS Agreement, which specifically recognizes the need for a multilateral framework to address international trade in counterfeit goods. Plain packaging laws facilitate counterfeiting and other forms of illicit activity. Through the homogenization of all tobacco packaging, counterfeiters can create a single "template" that is then used to produce fake plain packs for all brands. This saves on production costs, while making detection by enforcement authorities less likely. In addition, the illicit market will supply consumers that still prefer branded packs with branded counterfeit and contraband. Moreover, by effectively shifting the market to price-based competition, plain packaging will make the black market more appealing as the cheapest alternative.

34. Australian consumers will be subject to an expanding black market of unregulated products, while the regulated community of producers has vital property expropriated and trade restricted. The increasingly prevalent black market can harm the reputations of legitimate producers, as their reputations become associated with products they do not produce. Consumers may not know whether they are consuming genuine or counterfeit products.

35. The resolution of this dispute will have far-reaching impacts. The magnitude of this dispute is unprecedented, with at least thirty-five (35) countries joining as third-party observers.¹²

36. The potential destruction of trademark rights in the tobacco context will have ramifications globally across other industries. One commenter rightly observed that "[e]verything that happens to tobacco eventually happens to food."¹³ Australia's measure is the first of its type in the world, but other interest groups and governments are watching in wait as the consistency of this measure is determined according to rules of the international trading system.¹⁴ This is a test case for plain packaging broadly and any WTO member will be able to cite the Australian plain packaging precedent to justify similar or more restrictive measures that will undermine the foundations of trademark protection.

37. Other consumer and food products are already being targeted by international and national regulatory bodies for stricter controls, including measures similar to plain packaging. India has suggested that the World Health Organization should create regulations for alcohol products based on WHO tobacco regulations.¹⁵ Questions about whether plain packaging for tobacco products could be expanded to "other consumer products that may be damaging to health, such as fast food or alcohol" have been raised before the United Kingdom's House of Commons Health Committee.¹⁶ South Africa's Health Minister has indicated his goal of using Australian and other tobacco control measures for tobacco, alcohol and processed foods.¹⁷ Thailand and Kenya have proposed graphic

health warnings for all alcoholic beverages.¹⁸ Chile has proposed “STOP” signs on fatty, salty and sugary foods to discourage consumption.¹⁹ Finally, certain countries in Asia and the Middle East are taking action to restrict the use of certain trademarks on infant formula labels.²⁰ 

38. The WTO has the opportunity to emphasize the importance of the protection of trademarks, for all industries, services and products alike. As reflected in the Paris Convention and the TRIPS Agreement, trademark protection is independent from the nature of the product. How the WTO interprets the protections afforded to trademarks by the TRIPS Agreement will affect not only tobacco companies, but manufacturers across diverse sectors globally.

39. Manufacturers around the world invest heavily in their trademarks, which represent one of the greatest assets any company has. Where trademarks are prohibited or severely restricted from use on lawful products, producers’ and consumers’ interests alike are negatively affected. The TRIPS Agreement protects trademarks from the types of restrictions imposed by Australia’s measure. While the TRIPS Agreement and other WTO rules provide governments the ability to take measures necessary to protect public health, they do not condone actions that violate core rules based on good intentions. Plain packaging is simply not consistent with the provisions of the TRIPS Agreement. Consumers rely on trademarks to perform their core function of distinguishing products sold in the market. Any restrictions, particularly those as substantial as the Australian measures, must be effectively disciplined to preserve the international trademark protection on which our global system is based. We therefore support the challenges in WT/DS434, WT/DS435, WT/DS441, WT/DS458, and WT/DS467 to Australia’s measure and respectfully request that the WTO find that the measures are not consistent with Australia’s commitments to protect trademarks under the TRIPS Agreement.

Sincerely,

AICC -- The Independent Packaging Association
Emergency Committee for American Trade
National Association of Manufacturers of the United States
National Foreign Trade Council
Paperboard Packaging Council
Printing Industries of America
United States Chamber of Commerce
United States Council for International Business

Attachment

AICC -- The Independent Packaging Association, represents more than 500 independent manufacturers of corrugated boxes, point of purchase displays, folding cartons and set-up boxes in North America and overseas. AICC's member companies help their customers promote their brands through high-quality, high-graphic packaging, display work and retail visual appeal. AICC is headquartered in Alexandria, Virginia.

Founded in 1967, the Emergency Committee for American Trade (ECAT) is an organization of the heads of leading U.S. international business enterprises representing all major sectors of the American economy, with annual worldwide sales exceeding \$2.8 trillion and with employment exceeding 6.6 million workers. ECAT's purpose is to promote economic growth through the expansion of international trade and investment.

The National Association of Manufacturers of the United States ("NAM") is the United States' largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Its membership includes both large multinational corporations and small and medium-sized manufacturers. NAM members are strong supporters of the global system of trade and investment rules that promote trade on a level playing field, where all countries abide by core principles, including the protection of intellectual property ("IP") rights.

The National Foreign Trade Council ("NFTC") is the premier U.S. business organization advocating a rules-based economy. Founded in 1914 by a group of American companies, NFTC and its affiliates now serve more than 250 member companies.

Now in its 85th year, Paperboard Packaging Council (PPC) is the leading industry association serving suppliers and converters of all forms of paperboard packaging. PPC works to grow, promote, and protect the paperboard packaging industry while providing its members with resources and tools to compete effectively and successfully in the marketplace.

Printing Industries of America is the largest graphic arts trade association, representing an industry with approximately one million employees and serving the interests of thousands of member companies through advocacy, education, research, technical information, and cost-saving resources.

The Chamber of Commerce of the United States ("Chamber") is the world's largest business federation. It represents three-hundred thousand direct members and indirectly represents an underlying membership of more than three million businesses and professional organizations of every size and in every sector and geographic region of the country. An important function of the Chamber is to represent its members' interests in matters before legislative, executive and judicial bodies. To that end, the Chamber regularly files amicus curiae briefs in courts throughout the United States on issues of national concern to the business community.

The United States Council for International Business ("USCIB") is a major business advocacy and policy development group representing a broad range of global companies, accounting firms, law firms and business associations. USCIB represents the U.S. business community in a range of international business organizations and advocates on behalf of open market, pro-competitive economic policies in the United States and around the world.

Endnotes

- ¹ Tobacco Plain Packaging Regulations 2011, Select Legislative Instrument 2011 No. 263 as amended, consolidated on 13 March 2012, including amendments up to SLI 2012 No.29.
- ² Tobacco Plain Packaging Act 2011, C2011A00148, Act No. 148 of 2011, *An Act to discourage the use of tobacco products and for related purposes*, 1 December 2011, Section 20(1).
- ³ Oxford English Dictionary, 2013 (“A mark (secured by legal registration or, in some countries, established by use) used by a manufacturer or trader to distinguish his goods from similar wares of other firms; usually a distinctive device or figure, a fancy name or trade name, or the name of an individual or firm, marked or impressed on the article or upon the package, etc., in or with which it is sold.”).
- ⁴ TRIPS Agreement, Preamble.
- ⁵ Agreement on Trade-Related Aspects of Intellectual Property Rights, Art. 15(1), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 320 (1999), 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) [hereinafter TRIPS].
- ⁶ *Id.*
- ⁷ TRIPS Agreement, *supra*, at Art. 20.
- ⁸ See Appellate Body Report, *Brazil – Retreaded Tyres*, para. 149 - 151.
- ⁹ See, e.g., Article 15.3 of the TRIPS Agreement (permitting the denial of registration on grounds that do not derogate from the provisions of the Paris Convention); Article 6*quinquies* of the Paris Convention (permitting the denial of registration or invalidation based on, inter alia, such signs being contrary to morality or public order or of such a nature to deceive the public); Article 10*bis* of the Paris Convention (prohibiting all acts of such a nature as to create confusion and misleading uses).
- ¹⁰ Technical Barriers to Trade Agreement, Art. 2.2.
- ¹¹ TRIPS Agreement, *supra* at Art.8.
- ¹² As of September 2013 the following countries have joined the dispute as third parties: Argentina; Brazil; Canada; Chile; China; Chinese Taipei; Cuba; the Dominican Republic; Ecuador; Egypt; European Union; Guatemala; Honduras; India; Indonesia; Japan; Korea, Republic of; Malawi, Malaysia; Mexico; Moldova, Republic of; New Zealand; Nicaragua; Nigeria; Norway; Oman; Peru; Philippines; Singapore; Thailand; Turkey; United States; Uruguay; Zambia; and Zimbabwe.
- ¹³ Helen Sloan, “‘Everything that happens to tobacco, eventually happens to food’: the brands view on plain packaging” (citing Carla Michelotti from Leo Burnett Worldwide), (October 23, 2012), available at: <http://www.worldtrademarkreview.com/daily/detail.aspx?g=bd0bf9c6-08b9-4ec4-b1a0-404f17d2de8e>
- ¹⁴ Currently, there are tobacco plain packaging measures adopted and pending implementation or otherwise being developed in various jurisdictions, including New Zealand, Ireland, the United Kingdom, and the European Union. New Zealand, in particular, has openly acknowledged that it is awaiting the outcome of these WTO proceedings before implementing its similar tobacco plain packaging law. See e.g. Benn McGrady, “New Zealand moving forward with Plain Packaging of Tobacco Products,” Feb. 19, 2013, available at <http://www.oneillinstituteoftradeblog.org/new-zealand-moving-forward-with-plain-packaging-of-tobacco-products/>.
- ¹⁵ Kounteya Sinha, “India urges WHO to set target to reduce alcohol consumption,” *Times of India*, May 23, 2012, available at <http://timesofindia.indiatimes.com/india/India-urges-WHO-to-set-target-to-reduce-alcohol-consumption/articleshow/13402728.cms>.
- ¹⁶ UK Department of Health, “Consultation on the future of tobacco control,” May 31, 2008, available at http://www.plain-packaging.com/downloads/UK_DOH_consultation_paper.pdf; UK Parliamentary Health Committee, “Government’s Alcohol Strategy,” March 26, 2012, available at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/news/12-03-26-alcohol-torcfe/>.
- ¹⁷ IOL BUSINESS REPORT, DRINKS MAKERS OPPOSE AD BAN, APRIL 17, 2013, AVAILABLE AT: <http://www.iol.co.za/business/business-news/drinks-makers-oppose-ad-ban-1.1277265>; Sipokazi Fokazi, “Put graphic images on alcohol,” *IOL Lifestyle*, May 21, 2012, available at <http://www.iol.co.za/lifestyle/put-graphic-images-on-alcohol-1.1301088>.
- ¹⁸ WTO, “Technical Barriers to Trade: Tobacco and alcohol again among members’ trade concerns,” June 23 and 24, 2010, available at http://www.wto.org/english/news_e/news10_e/tbt_23jun10_e.htm; Philip A. Pfeffer, “Graphic Health Warnings for Alcohol Products...” *The Lawyer*, October 21, 2011, available at <http://www.thelawyer.com/1009910.article>.

¹⁹ WTO, “Technical Barriers to Trade: Members discuss guidelines for trade-friendly regulation and STOP sign for ‘junk food’,” March 5-7, 2013, available at http://www.wto.org/english/news_e/news13_e/tbt_13mar13_e.htm.



²⁰ Lawrence Kogan on Hong Kong's Draft Infant Formula & Complementary Foods Marketing Code Violates WTO Law, available at <http://www.lexisnexis.com/legalnewsroom/international-law/b/international-law-blog/archive/2013/08/06/lawrence-kogan-on-hong-kong-39-s-draft-infant-formula-amp-complementary-foods-marketing-code-violates-wto-law-part-3-of-3.aspx>. “DOH wins breastmilk case vs multinationals” available at <http://www.abs-cbnnews.com/business/06/13/12/doh-wins-breastmilk-case-vs-multinationals>.

