

Alcohol Labelling in the Global Food System: Implications of Recent Work in the Codex Committee on Food Labelling

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Occupying the dual space of psychoactive substances and food, alcohol has to date escaped the international labelling standards required of either category. Following growing consumer concern focused on ingredient and energy labelling, the issue of alcohol labelling has been brought to the Codex Committee on Food Labelling (CCFL). Russia led the development of a discussion paper on the labelling of alcohol beverages, which was debated in May 2019. The discussion paper presented five policy options, ranging from doing nothing to initiating open-ended work on a new Codex standard. The progression of alcohol labelling through the CCFL raises a number of issues for public health advocates, as placing alcohol within the scope of the Codex clearly places labelling within the food system and has the potential to side-line health labelling concerns. This paper will first describe the process leading to the consideration of alcohol labelling at the CCFL and then consider the health and advocacy implications of the different options proposed to progress the work plan.

I. BACKGROUND

1. Food labelling as an intervention to address alcohol-related harm

Alcohol is a widely traded and used substance. Globally, 43% of the population are defined as current drinkers, and in 2016 the total per capita consumption amounted to 15.1 litres among drinkers.¹ As a result of being widely consumed, alcohol-related harm is a subsequent public health issue. Globally, the harmful use of alcohol accounts for about 5% of morbidity and mortality,² placing alcohol as the seventh leading cause of ill-health and premature death, with more than three times higher rates in men than women.³ The health impact of alcohol, which includes both chronic and acute conditions, results both from individuals' own drinking and from other

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¹ WHO, "Global Status Report on Alcohol and Health 2018" (2018) <<https://apps.who.int/iris/bitstream/handle/10665/274603/9789241565639-eng.pdf?ua=1>> (last accessed 27 March 2020).

² *ibid.*

³ GBD 2016 Alcohol Collaborators, "Alcohol use and burden for 195 countries and territories, 1990–2016: a systematic analysis for the Global Burden of Disease Study 2016" (2018) 392(10152) *The Lancet* 1015.

people's alcohol use.⁴ The latter, alcohol's "harm to others", ranges from non-aggressive impact such as being kept awake to physical harm.⁵

Despite the accumulating evidence for the impact of alcohol on health, such as the risk of developing cancer,⁶ awareness of health and social harms is low. Research has indicated low levels of awareness of alcohol as a risk factor for developing chronic conditions⁷ alongside a lack of knowledge of what constitutes a standard drink or official drinking guidelines.⁸ Public health and consumer advocates have therefore called for mandatory labelling for alcohol content, nutrition and warnings regarding health and social risk.⁹ Research from the European Union (EU) has shown that consumer support for nutrition declaration, energy value and ingredients is high,¹⁰ and Australian research has indicated high support for health warning labels on alcohol products.¹¹ The low level of awareness, but evident high level of support, justifies product labelling as an aid to inform consumers of the number of standard drinks/units, nutritional value and potential health risks within a chosen product.

Despite the evidence base supporting labelling of alcohol products, no international standards currently exist for alcohol labelling. Alcohol is not treated like other packaged foods under the Codex food labelling system, nor does it fall under the labelling requirement for psychoactive drugs under the International Drug Control Conventions.¹² This results in a vacuum in which there are no international labelling standards that are applied to alcohol products, leading to a lack of consistency across jurisdictions.

Informing consumers about aspects of the product they consume, alongside other evidence-based policy interventions, can promote healthy lifestyles and reduce health risks that may lead to non-communicable diseases (NCDs).¹³ A review of the literature for the effectiveness of the labelling of alcoholic products found that providing a list of ingredients, calorific content, standardised measures of drink sizes and serving sizes, official drinking guidelines and health warnings are aspects that

⁴ J Rehm et al, "The relation between different dimensions of alcohol consumption and burden of disease: an overview" (2010) 105 *Addiction* 817.

⁵ C Beynon et al, "Alcohol-related harm to others in England: a cross-sectional analysis of national survey data" (2019) 9 *BMJ Open* e021046.

⁶ J Rehm et al, "Does Alcohol Use Affect Cancer Risk?" (2019) 8 *Current Nutrition Reports* 222.

⁷ JK Scheideler and WMP Klein, "Awareness of the link between alcohol consumption and cancer across the world: a review" (2018) 27(4) *Cancer Epidemiology, Biomarkers & Prevention* 429; P Buykx et al, "Public support for alcohol policies associated with knowledge of cancer risk" (2015) 26(4) *International Journal of Drug Policy* 371.

⁸ WC Kerr and T Stockwell, "Understanding standard drinks and drinking guidelines" (2011) 31 *Drug and Alcohol Review* 200.

⁹ Alcohol Health Alliance, "Our Right to Know How Alcohol Labelling is Failing Consumers" (2018) <<https://12coez15v41j2cf7acjzaoth-wpengine.netdna-ssl.com/wp-content/uploads/2018/09/OUR-RIGHT-TO-KNOW-final.pdf>> (last accessed 29 March 2020).

¹⁰ GfK, "Consumer insights study – Report for the Brewers of Europe by GfK Belgium" (2016) <<http://www.beerwisdom.eu/downloads/GfK-Consumer-Insights-Study.pdf>> (last accessed 29 March 2020).

¹¹ FARE, "2019 Annual Alcohol Poll – Attitudes & Behaviours" <<http://fare.org.au/wp-content/uploads/FARE-Annual-Alcohol-Poll-2019-FINAL.pdf>> (last accessed 27 March 2020).

¹² United Nations, "The International Drug Control Conventions – Schedules of the Convention on Psychotropic Substances of 1971, as at 11 November 2018 (ST/CND/1/Add.2/Rev.4)" <<https://undocs.org/ST/CND/1/Add.2/Rev.4>> (last accessed 30 September 2019).

¹³ World Cancer Research Fund International, "Driving action to prevent cancer and other non-communicable diseases - a new policy framework for promoting healthy diets, physical activity, breastfeeding and reducing alcohol consumption" (2018) <<https://www.wcrf.org/sites/default/files/driving-action.pdf>> (last accessed 29 March 2020).

could guide public health policy to ensure that consumers have the information they need to make informed choices.¹⁴ The most recent data on policy implementation, collected by the World Health Organization (WHO) in 2016, showed that while three-quarters of countries require information about alcohol content on the label, only a quarter require basic consumer information and 5% require information about standard drinks. The proportions of countries with established requirements are similar for beer, wine and spirits, but there are some geographical variations, and alcohol content is more commonly required on the label in high- and low-income countries than in middle-income countries.¹⁵

a. Nutritional labels

Nutrition information on products is valuable to consumers, which was evidenced in a systematic review by Campos et al.¹⁶ Findings from 120 studies showed that nutrition labels on food products are perceived as credible sources of information that can have a positive impact on a healthy diet. Simplified messages, where graphics and traffic light systems are incorporated, appear to help consumer direct themselves to healthier products. However, there are subgroup differences, and women are more likely to use nutrition labels than men, which also influence their behaviour; people with lower levels of education and lower incomes are less likely to use and have knowledge of nutrition labels. Those with knowledge of the link between nutrition and disease were more likely to use nutrition labels.¹⁷ The WHO Global Strategy on Diet, Physical Activity and Health states that for consumers to make informed decisions about products that are beneficial to their health, information provided on product labels may be required in relation to key aspect of nutritional content “as proposed in the Codex Guidelines on Nutrition Labelling.¹⁸ Similarly, the Global Action Plan to Reduce Noncommunicable Diseases 2013–2020 (Global NCD Action Plan) proposes that, along with product reformulation to make products healthier, information about nutritional content should be provided through product labelling.

There is an increased interest in the contribution of alcohol to calorie intake. From a nutrition perspective, alcohol is calorie-dense, at 7.1 kilocalories (kcal) per gram,¹⁹ which varies by type of drink, where 25 ml of 40% alcohol by volume (ABV) of whisky contains 60 kcal and a 175ml glass of wine at 13% ABV contains 160 kcal.²⁰ An overall high level

¹⁴ JA Martin-Moreno et al, “Enhanced labelling on alcoholic drinks: reviewing the evidence to guide alcohol policy” (2013) 23(6) *European Journal of Public Health* 1082.

¹⁵ WHO, *supra*, note 1.

¹⁶ S Campos, J Doxey and D Hammond, “Nutrition labels on pre-packed foods: a systematic review” (2011) 14(8) *Public Health Nutrition* 1496.

¹⁷ *ibid.*

¹⁸ WHO, “Global Strategy on Diet, Physical Activity and Health” (2004) p 8 <https://www.who.int/dietphysicalactivity/strategy/eb11344/strategy_english_web.pdf> (last accessed 19 September 2019).

¹⁹ Eurocare, “What’s in this drink – Eurocare’s position on ingredients and nutritional information” (2018) <<https://www.eurocare.org/media/GENERAL/docs/reports/2018whatisinthisdrinkeurocarepositiononingredientsandnutritionalinformation.pdf>> (last accessed 20 September 2019).

²⁰ WHO Europe, “Alcohol labelling – A discussion document on policy options” (2017) <<http://www.euro.who.int/en/health-topics/disease-prevention/alcohol-use/publications/2017/alcohol-labelling-a-discussion-document-on-policy-options-2017>> (last accessed 19 September 2019).

of alcohol consumption appears to increase the risk of weight gain, whereas evidence does not support an increase in body weight or adiposity from low to moderate consumption.²¹ A study of adults in England and Scotland, however, indicated that the likelihood of being obese has a bell-shaped trend, where individuals who drank frequently (more than five times per week) or had never drunk had the lowest likelihood of being obese. Those who drank a few times per month and one or twice per month had the highest odds of being obese.²² One factor that may play part is the lack of compensation for alcohol consumption by reducing other nutrition intake, as a systematic review showed that overall calories consumed were higher in participants who consumed alcohol with food compared to participants who consumed a beverage not containing alcohol or did not consume any beverage with the food.²³ In young people, alcohol may contribute to an excess intake of calories and is suggested to be an overlooked contributing factor to obesity in younger age groups.²⁴

There are limited data on the proportions of calorie intake at a population level that come from alcohol. Data from the National Diet and Nutrition Survey in England show that, among adults aged 19–64 years, on average 8.4% of their total calorie intake comes from alcohol.²⁵ Research from Canada has estimated that, on average, drinkers in the adult population get about 250 calories per day (11.2%) of the estimated energy recommendation (EER) from alcohol. Frequent drinkers got a higher proportion of their EER from alcohol, and those reporting heavy episodic drinking got about a quarter of their EER from alcohol.²⁶ Considering the significant contribution alcohol makes to overall calorie intake, nutrition labels of alcohol are important sources of information for increasing consumer awareness. Research has indicated that when provided with information on the calorie content of alcoholic beverages, around half of respondents reported that they believed that calorie content should be provided on the container and 16% would reduce their alcohol intake based on information on calorie content.²⁷

b. Health warnings

The primary purpose of health warning labels on alcohol products is to communicate information about the harms that can result from alcohol use.²⁸ A review of the

²¹ G Traversy and JP Chaput, “Alcohol Consumption and Obesity: An Update” (2015) 4(1) *Current Obesity Reports* 122.

²² G O’Donovan, E Stamatakis and M Hamer, “Associations between alcohol and obesity in more than 100 000 adults in England and Scotland” (2018) 119 *British Journal of Nutrition* 222.

²³ A Kwok et al, “Effect of alcohol consumption on food energy intake: A systematic review and meta-analysis” (2019) 121(5) *British Journal of Nutrition* 481.

²⁴ K Battista and ST Leatherdale, “Estimating how extra calories from alcohol consumption are likely an overlooked contributor to youth obesity” (2017) 37(6) *Health Promotion and Chronic Disease Prevention in Canada: Research, Policy and Practice* 194.

²⁵ Public Health England, “NDNS results from year 7 and 8 (combined): data tables (table 4.1)” (2017) <<https://www.gov.uk/government/statistics/ndns-results-from-years-7-and-8-combined>> (last accessed 27 September 2019).

²⁶ A Sherk et al, “Calorie Intake from Alcohol in Canada: Why New Labelling Requirements Are Necessary” (2019) 80 *Perspectives in Practice* 111.

²⁷ TNS European Behaviour Studies Consortium, “Study on the Impact of Food Information on Consumers’ Decision Making” (2014) <https://ec.europa.eu/food/sites/food/files/safety/docs/labelling_legislation_study_food-info-vs-cons-decision_2014.pdf> (last accessed 27 September 2019).

²⁸ WHO Europe, *supra*, note 20.

effectiveness of health warning labels shows that in the USA the implementation of health warnings has resulted in increased awareness of the health messages used on such labels. Awareness of the health warning labels was highest among groups deemed to be at high risk of alcohol-related harm, such as young people and heavy drinkers. Recall was highest for the message about the risk of birth defects resulting from alcohol consumption during pregnancy. Exposure to labels was also found to stimulate conversations about the risks of alcohol consumption, and this was particularly the case where respondents remembered seeing the label. Respondents also reported that they were less likely to have driven “when they probably should not have”.²⁹

From a health policy perspective, labelling has been identified as a strategy that, along with other policy options, can contribute to the reduction of harmful alcohol use.³⁰ A recent interrupted time series study from Canada showed a reduction in population alcohol consumption when new alcohol warning labels were introduced.³¹ However, the control and sales of alcohol products are not only health issues, but also operate within an international trade issue, in which the public health aspect may not be given precedence for setting regulations and standards.

Internationally, at 47 WHO Member States have introduced mandating health warning labels on alcohol products. The most common message is a general warning that alcohol is harmful; others are that alcohol increases the risk of liver cirrhosis, liver cancer and injury and violence, impairs driving ability, is addictive, is harmful to young people and can endanger the family of the drinker.³² Labels indicating that alcohol should not be consumed during pregnancy are mandatory in 27 Member States.³³ Mandatory pregnancy warning labels are currently being reviewed by the Food Standards Australia New Zealand (FSANZ) after the Australia and New Zealand Ministerial Forum on Food Regulation requested that the developed draft by FSANZ, following extensive consultation, was to be reviewed in relation to colour and wording. One objection from the alcohol industry to the proposed standard was that the signal wording “would be inflammatory or would alarm consumers”.³⁴

The following sections of this paper explore recent moves to progress alcohol labelling standards through the Codex Committee on Food Labelling (CCFL) and the implications of this from a public health perspective.

²⁹ T Stockwell, “A Review of Research into the Impacts of Alcohol Warning Labels on Attitudes and Behaviour” (2006) <<https://www.uvic.ca/research/centres/cisur/assets/docs/report-impacts-alcohol-warning-labels.pdf>> (last accessed 19 September 2019).

³⁰ T Babor et al, *Alcohol: No Ordinary Commodity – Research and Public Policy* (2nd edn, Oxford, Oxford University Press 2010).

³¹ J Zhao et al, “The Effects of Alcohol Warning Labels on Population Alcohol Consumption” (2020) 81(2) *Journal of Studies on Alcohol and Drugs* 225.

³² WHO, *supra*, note 1.

³³ WHO, “Global Information System on Alcohol and Health (GISAH)” <<https://apps.who.int/gho/data/node.gisah.A1305?lang=en&showonly=GISAH>> (last accessed 27 March 2020).

³⁴ FSANZ, “Approval report – Proposal P1050 Pregnancy warning labels on alcoholic beverages” (2020) p 27 <<https://www.foodstandards.gov.au/code/proposals/Documents/P1050%20Approval%20Report.pdf>> (last accessed 31 March 2020).

II. INTERNATIONAL FOOD LABELLING REGULATIONS

Currently, there is no single body or process that oversees rules for the labelling of alcohol products at the international level. Instead, there are a number of bodies and agreements that impose obligations on national governments in relation to labelling content. As a result, information on alcohol containers is lacking in many jurisdictions and diverts from standards of the product information and labelling of other products. From a public health perspective, alcohol has long been rejected as an “ordinary commodity” due to the health risks associated with consumption.³⁵ From an international trade and food standard perspective, however, alcohol is inconsistently equated with other food products, which creates issues for the clear application of standards.

1. Regional arrangements

The most significant regional group to have seriously worked on labelling is the EU. In the EU, alcoholic products over 1.2% ABV are exempt from ingredient and nutritional value listing on packaging under Regulation 1169/2011.³⁶ Public health advocates have for a long time argued for alignment of Regulation 1169/2011 to alcohol products and making labelling requirements mandatory rather than voluntary.³⁷

In 2017, the European Commission published a report acknowledging the increasingly salient difference in the requirements of labelling of alcoholic products compared to most food products. The report also noted that the industry has shown increasing commitment to putting voluntary schemes in place and invited the industry to further expand on such schemes to cover all alcoholic beverages.³⁸ The alcohol industry provided a proposal committed to providing “meaningful” information on and off label through “traditional and/or innovative” tools. While acknowledging that labels should align with EU or national regulations, the industry strongly argued that responsibility is for “food business operators” to decide how the information is displayed. The industry also committed to report to the Commission on the implementation by 2021.³⁹ In 2019, SpiritsEUROPE signed a memorandum of understanding (MoU) in which the spirits sector committed to providing energy labelling on products and lists of ingredients online in an accessible manner for consumers. In their commitment, the spirits sector set targets to provide energy information on 25% of products by the end of 2020, 50% by 2021 and 66% by 2022.⁴⁰ European brewers have also supported

³⁵ Babor, *supra*, note 30.

³⁶ European Commission, Regulation (EU) No. 1169/2011 on the provision of food information to consumers (2011) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32011R1169>> (last accessed 20 March 2020).

³⁷ Eurocare, *supra*, note 19.

³⁸ European Commission, Report from the Commission to the European Parliament and the Council regarding the mandatory labelling of the list of ingredients and the nutrition declaration of alcoholic beverages, COM(2017) 58 (2017) <https://ec.europa.eu/food/sites/food/files/safety/docs/fs_labelling-nutrition_legis_alcohol-report_en.pdf> (last accessed 20 September 2019).

³⁹ European Alcoholic Beverages Sector, “Self-regulatory proposal from the European alcoholic beverages sectors on the provision of nutrition information and ingredients listing” (2018) <https://ec.europa.eu/food/sites/food/files/safety/docs/fs_labelling-nutrition_legis_alcohol-self-regulatory-proposal_en.pdf> (last accessed 20 March 2020).

⁴⁰ SpiritsEUROPE, “Memorandum of Understanding on the provision of nutrition information & ingredients listing of spirit drinks sold in the EU” (2019) <[https://spirits.eu/upload/files/publications/CP.MI-098-2019-MoU-Final%](https://spirits.eu/upload/files/publications/CP.MI-098-2019-MoU-Final%202020.pdf)

nutritional labelling, while the wine industry has been unable to reach internal agreement and has applied to the EU to resolve a standard.⁴¹

As well as regional groupings, regional trade agreements are also growing sources of rules around alcohol labelling. The Wine and Distilled Spirits annex for the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), for example, provides guidance on alcohol labelling, including specific minimum requirements for labels for wine and spirit products. Key consumer information such as product name, country of origin, net contents and alcohol content need to be clearly displayed within a “single field of vision” on the bottle.⁴² The agreement includes provision on supplementary labelling in the Wine and Spirit Annex. The issues of “off-label” consumer information, such as information available on a website after scanning a QR code, is increasingly being incorporated into trade agreements, though not restricted to alcohol. For example, the EU negotiating position on technical barriers to trade (TBTs) for the Australia–EU free trade agreement provides that “the Party shall endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product”.⁴³ Power imbalances between countries and the dominance of industry in domestic negotiation may tilt these agreements in favour of preferred industry labelling flexibilities rather than those favoured by public health. The incorporation of provisions in regional trade agreements can also lead to countries having overlapping standards from multiple agreements, often substantially constraining policy responses.

2. International bodies

a. *The WHO*

The WHO is the principle international body concerned with public health. There are currently 191 Member States of the WHO, whose delegations attend the World Health Assembly, the primary decision-making body.⁴⁴ Alcohol labelling is addressed in a number of adopted policies and plans. The Global NCD Action Plan, which includes implementing the Global Strategy to Reduce the Harmful Use of Alcohol (the Strategy), recommends “regulating the drinking context and providing consumer information”.⁴⁵

Labelling has been identified as one option under action area “Reducing the negative consequences of drinking and alcohol intoxication” in the Strategy. Within the action

[20Version%20on%20website%20without%20signature-%204%20June%202019.pdf](#) > (last accessed 27 September 2019).

⁴¹ Eurocare, *supra*, note 19.

⁴² “Comprehensive and progressive agreement for trans-pacific partnership” <<https://www.iilj.org/wp-content/uploads/2018/03/CPTPP-consolidated.pdf>> (last accessed 27 March 2020).

⁴³ European Commission, “EU–Australia Trade Agreement negotiations – Technical Barriers to trade” (2018) p 7 <https://trade.ec.europa.eu/doclib/docs/2018/july/tradoc_157195.pdf> (last accessed 28 March 2020).

⁴⁴ WHO, “World Health Assembly” <<https://www.who.int/about/governance/world-health-assembly>> (last accessed 28 March 2020).

⁴⁵ WHO, “Global Action Plan for the Prevention and Control of Noncommunicable Diseases 2013–2020” (2013) Appendix 3, p 67 <https://apps.who.int/iris/bitstream/handle/10665/94384/9789241506236_eng.pdf?sequence=1> (last accessed 19 September 2019).

area, consumer information and labelling of alcohol products is emphasised as important aspects, specifically “providing consumer information about, and labelling alcoholic beverages to indicate, the harm related to alcohol”.⁴⁶ Labelling is also included in the European Action Plan to Reduce the Harmful Use of Alcohol 2012–2020 (the European Action Plan). The European Action Plan contains more detailed recommendations compared to the Strategy, with recommendations for alcohol products to include health warnings, alcohol content and drinking guidelines and nutritional content.⁴⁷ WHO Member States have reporting requirements on their progress according to the Strategy, but no obligations to implement the policy recommendations.

b. The World Trade Organization

The other key international organisation before which alcohol labelling issues have been discussed is the World Trade Organization (WTO). The WTO deals with the rules of trade between nations, with the goal of ensuring that trade flows as smoothly, predictably and freely as possible. The WTO administers the General Agreement on Tariffs and Trade (GATT) and other agreements, including the Agreement of Technical Barriers to Trade (TBT). The issue around the product labelling of alcohol products is relevant to the WTO and its related activities on the basis of ensuring that trade is not obstructed by national regulations that may interfere with trade.⁴⁸

In an analysis of the minutes of the TBT Committee, O’Brien and Mitchell found that since the publication of the WHO Strategy in 2010, alcohol labelling proposals have been the most recurring alcohol control measure on the agenda of the TBT Committee. The authors used the Strategy as the starting point, as that set the agenda for alcohol policy at the global level and promoted consumer information and product labelling as part of a wide range of policy options. Major wine and/or spirits exporters, such as the EU, the USA, Chile, Mexico, Australia and New Zealand, repeatedly raised questions about other members’ alcohol labelling proposals.⁴⁹ While the TBT Agreement allows for countries to impose requirements on international trade if this is necessary for the protection of human, animal or plant life or health, there is an obligation that these measures are not more trade restrictive than necessary to ensure the purpose of the burden or to achieve a legitimate objective.⁵⁰

Discussions around regulation proposals have included both those focusing on various product information and on health warnings, for which there were 14 notifications to the TBT Committee since the launch of the Strategy. Overall, the concerns raised regarding governments’ attempts to introduce mandatory labelling requirements have been focused

⁴⁶ WHO, “Global Strategy to Reduce the Harmful Use of Alcohol” (2010) <https://www.who.int/substance_abuse/publications/global_strategy_reduce_harmful_use_alcohol/en/> (last accessed 22 March 2020).

⁴⁷ WHO Regional Office for Europe, “European Action Plan to Reduce the Harmful Use of Alcohol 2012–2020” (2012) <http://www.euro.who.int/__data/assets/pdf_file/0008/178163/E96726.pdf> (last accessed 22 March 2020).

⁴⁸ WTO, “Agreement on Technical Barriers to Trade” (1994) <https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm> (last accessed 22 March 2020).

⁴⁹ P O’Brien and AD Mitchell, “On the Bottle: Health Information, Alcohol Labelling and the WTO Technical Barriers to Trade Agreement” (2018) 18(1) QUT Law Review 1.

⁵⁰ WTO, *supra*, note 48.

on specific aspects of labelling, of which some will be of more or less concern to the alcohol industry. Six areas where objections have been raised were identified:

1. The content of the warning messages;
2. Graphic imagery forming part of the warning messages;
3. Design requirements being mandated for the labels;
4. Rotation requirements being mandated for the labels;
5. Governments' refusal to allow stickers or supplementary labelling; and
6. Restrictions on the industry marketing images and messages on the label space.⁵¹

The focus of objections made to the TBT Committee have been clearly identified as relating to having strong and graphic messages about the risk of health harm from alcohol, along with objections to more specific issues around the rotation of messages, supplementary labelling and bans on messages that frame alcohol use in a positive manner.⁵²

To date, the majority of objections have been in relation to Article 2.2, which provides that "technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create".⁵³ The "protection of human health or safety" is specified as a legitimate object. Warning labels are *prima facie* a measure to protect health; however, as O'Brien and Mitchell note, there are several grounds of challenge that have been raised in the TBT Committee, including the contribution of the measure (which includes questions of the scientific basis for claims and expected effects), the level of trade restrictiveness and legitimate alternatives.⁵⁴ As these claims progress, it will be interesting to see how the TBT Committee balances effectiveness with trade restrictiveness, as many of the more effective characteristics from a health perspective, such as high rotation or large size, are also those that are arguably more trade restrictive and so are those that are most likely to be challenged by industry.

It should be acknowledged that the WTO is facing challenges at the moment. However, it is still the key international body for settling trade disputes, and successful action at the WTO, or even the threat of a complaint at the WTO, can be enough to stop health interventions such as warning labels from proceeding.

c. The Codex Alimentarius Commission

Most recently, alcohol labelling has been discussed at the Codex Alimentarius Commission (Codex), which has a primary purpose of maintaining the Codex Alimentarius, a set of international food standards, guidelines and codes of practice that inform the international food trade.⁵⁵ Established in 1963 to protect consumers' health and to ensure fair practices in the food trade, Codex exists under the joint

⁵¹ O'Brien and Mitchell, *supra*, note 49.

⁵² *ibid.*

⁵³ WTO, *supra*, note 48.

⁵⁴ O'Brien and Mitchell *supra*, note 49.

⁵⁵ FAO, "About Codex Alimentarius" <<http://www.fao.org/fao-who-codexalimentarius/about-codex/en/#c453333>> (last accessed 28 March 2020).

auspices of the WHO and the Food and Agriculture Organization of the United Nations (FAO), which is the specialised body within the UN dedicated to issues around food policy and agriculture, including food safety and food labelling.⁵⁶ The structure of Codex means that the primary work on issues of food labelling (now including alcohol labelling) occur in the CCFL, which has 181 Member States, as well as a number of non-state observers.

The Codex Guidelines on Nutritional Labelling (CAC/GL 2-1985) sets out recommendations for nutrition labelling, which in 2012 were revised to state that labelling should be mandatory for pre-packaged food where nutrition or health claims are made, as well as all other food “except where national circumstances would not support such declarations”.⁵⁷ It has, however, been unclear as to whether the definition of pre-packaged food included alcohol.⁵⁸ The Codex nutrition labelling refers to (1) nutritional declaration, (2) nutrition and health claims and (3) supplementary nutrition information.⁵⁹ While Codex sets international standards, this does not mean that there is total compliance in domestic markets. The WHO Global Nutrition Review 2016–2017 showed that despite the fact that nutritional labelling should be mandatory, only 81% of the 167 countries included in the review reported having nutrition labelling. The proportion with nutrition labelling varies across WHO regions, with the highest in the European Region (100%) and the lowest in the South-East Asian Region (55%). Overall, 50% of countries have labelling included in their nutritional policies for the promotion of healthy diets and the prevention of overweight and obesity.⁶⁰

III. PROGRESSION OF THE LABELLING AGENDA WITHIN THE CCFL

The discussion of alcohol labelling at recent meetings of the CCFL is the latest milestone in an ongoing process of addressing alcohol labelling from an international trade perspective. In 2012, the WHO organised a side event to the 40th session of the CCFL in which the harm caused by alcohol regarding chronic disease as well as health and social harms beyond the drinker were emphasised. The session spoke to the need for action, as noted within the Strategy, the Global NCD Action Plan and the UN Sustainable Development Goals (SDGs).⁶¹ These messages were further emphasised in 2017 at the 44th session of the CCFL, when the WHO provided their

⁵⁶ FAO, “About FAO” <<http://www.fao.org/about/en/>> (last accessed 27 September 2019).

⁵⁷ Codex Alimentarius, “Guidelines on Nutritional Labelling” (CAC/GL 2-1985) <http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXG%2B2-1985%252FCXG_002e.pdf> (last accessed 28 March 2020).

⁵⁸ FAO, “Report on the 44th Session of the Committee on Food Labelling” (REP18/FL) (2017) Codex Committee on Food Labelling <http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fmeetings%252FCX-714-44%252FREPORT%252FREPI8_FLe.pdf> (last accessed 22 March 2020).

⁵⁹ Codex Alimentarius, *supra*, note 57.

⁶⁰ WHO, “Global Nutrition Policy Review 2016–2017 – Country Progress in Creating Enabling Policy Environments for Promoting Healthy Diets and Nutrition” (2018) <<https://apps.who.int/iris/bitstream/handle/10665/275990/9789241514873-eng.pdf?ua=1>> (last accessed 22 March 2020).

⁶¹ FAO, “Should the Codex set standards for alcoholic beverages?” (2017) <<http://www.fao.org/fao-who-codexalimentarius/roster/detail/en/c/1025617/>> (last accessed 22 March 2020).

position on the potential work of the Committee to step up the action on alcoholic beverages, as this has previously not been addressed within existing Codex documents. The WHO submitted a discussion paper that argued that since the wider objective of Codex guidelines and standards relating to labelling is to protect consumer health, then alcoholic beverages should therefore be included within the aims of such documents.⁶²

The discussion paper by the WHO also emphasised how labelling has been identified as an important tool for the prevention strategy within the Strategy, as well as within Appendix 3 of the Global NCD Action Plan and as also noted within the European Action Plan. As a result, the WHO recommended that the CCFL would discuss new work on alcohol labelling that would address the aim of consumer information and protection of health through a new additional section of CODEX STAN 1-1985. Specifically, amendments were suggested to include: a definition of alcoholic beverages in relation to minimum alcohol content; product information health warnings; and restrictions on information and packaging presenting risk to health. Amendment to CAC/GL 23 (Guidelines for Use of Nutrition Claims) was also suggested for restriction on nutritional labelling and health claims, as well as a new Codex guideline that restricts information and packaging presenting risks to health (other than nutrition labelling and health claims).⁶³ Under the discussion of future work of the CCFL, the Committee agreed upon the development of a discussion paper on the issue, led by the Russian Federation along with the EU, Ghana, India and Senegal.⁶⁴

Following the 44th session, a questionnaire was sent out, which received responses from 19 Codex Member Countries, three observer organisations and the Codex Organization. The responses included support for the CCFL to initiate work around labelling, as well as suggestions that no work would need to be initiated due to perceptions that current Codex documents are applicable to alcoholic beverages.⁶⁵ On the back of the responses received, five options were proposed regarding the General Standard for the Labelling of Prepacked Foods (CXS 1-1985) and Guidelines on Nutrition Labelling (CXG 2-1985):

- To initiate new work on a new Codex standard of labelling of alcoholic products due to CXS 1-1985 and CXG 2-1985 being too broad to apply to alcoholic products.
- To initiate work to provide clarity for CXS 1-1985 and CXG 2-1985 and their applicability to alcohol in regards to alcohol content and nutritional information (including energy value), as they currently apply to alcohol products but do not contain sufficient information specifically regarding alcohol content.

⁶² FAO, *supra*, note 58.

⁶³ FAO, "Guidelines for Use of Nutrition Claims" CAC/GL 23-1997, amended in 2001 <<http://www.fao.org/3/Y2770E/y2770e07.htm>> (last accessed 29 March 2020).

⁶⁴ FAO, *supra*, note 58.

⁶⁵ FAO, "Joint FAO/WHO food standards programme codex committee on food labelling 45th session. Discussion paper on the labelling of alcoholic beverages" (CX/FL 19/45/10) (2019) <http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FMeetings%252FCX-714-45%252Fdocuments%252Ffl45_10e.pdf> (last accessed 22 March 2020).

- To initiate work to provide clarity on the existing Codex documents in their applicability to alcohol in regards to labelling of alcohol content.
- To initiate work to provide clarity of the existing Codex documents in their applicability to alcohol (in general).
- Not to initiate work related to the labelling of alcoholic products based on the notion that current guidance is clear enough regarding its applicability to alcoholic products.⁶⁶

Following feedback that more time was needed for consultation, the Committee concluded the 45th session by stating they would issue a circular letter for comments on the discussion paper and that a further discussion paper would be drafted by the Russian Federation, the EU and India in response to the circular letter for consideration at the 46th CCFL session.

IV. IMPLICATIONS FOR HEALTH AND ADVOCACY

1. Codex as a forum for setting standards on alcohol

Codex is a primarily a state-based organisation, although groups may apply for observer status that allows them to see all of the papers and to have a voice in meetings. There are currently 229 observers, which comprise 57 intergovernmental organisations (IGOs), 156 non-governmental organisations (NGOs) and 16 UN organisations.⁶⁷ Despite its status in regulation setting relating to labelling, as well as in other trade issues, the CCFL is simply not on the radar for many key alcohol and health organisations. Thow and colleagues found a lack of awareness and knowledge of Codex by the NCD-related public health community in relation to front-of-pack (FoP) labelling of food, which was a reason for its limited influence in this forum.⁶⁸ Meanwhile, key alcohol stakeholders, including the Organisation internationale de la vigne et du vin (OIV), the Fédération internationale des vins et spiritueux and the International Council of Grocery Manufacturers Association (ICGMA), have sophisticated knowledge of the Codex system and are willing to speak up on matters that affect their members. These three organisations were the only NGOs that responded to the questionnaire resulting from the 44th session, which means that the document contains no comments from public health NGOs.⁶⁹ In contrast, health stakeholders interviewed about their experience of Codex in relation to FoP food labelling found that relevant public health actors were not familiar with Codex governance structures and avenues for engagement.⁷⁰ At the 45th Codex meeting, the minutes note that in addition to the

⁶⁶ *ibid.*

⁶⁷ FAO, “Codex Observers” (2019) <<http://www.fao.org/fao-who-codexalimentarius/about-codex/observers/observers/about/en/>> (last accessed 22 March 2020).

⁶⁸ AM Thow et al, “Global Governance of Front-of-Pack Nutrition Labelling: A Qualitative Analysis” (2019) 11(268) *Nutrients* 268.

⁶⁹ FAO, *supra*, note 65.

⁷⁰ Thow et al, *supra*, note 70.

countries bringing forward the discussion paper, the organisations who commented on the subject were the WHO and the OIV.⁷¹

The key decision-making actors are, of course, Member States. Stakeholder engagement varies from country to country; however, in many countries, Codex contact points sit within departments of agriculture or industry rather than health.⁷² Industry groups are often highly involved in reference groups and consultations. The net result of industry engagement at both the international and national levels means that the alcohol industry's ability to influence Codex decisions is probably higher than that of public health. This is a concern regarding both the difficulty of achieving a decision and also the effectiveness of any decision made. The 45th Codex meeting saw strong positioning for a delay in the decision-making from industry groups. Health member consultation groups at the national level likewise report that alcohol industry representatives pressured national decision-makers to postpone any decisions on labelling, citing a lack of time to properly consider the discussion paper and options presented. As the CCFL only meets every 18 months, a decision postponed from one meeting to the next can mean substantial delay, even though it is possible for matters to be considered out of session. This poses another challenge for the public health sector, which may find it difficult to justify the resource commitment to staying engaged in processes that have no real prospect of immediate conclusion. For industry, however, there is a clear financial benefit from staying engaged with the process, especially as a lack of action may be considered the optimal outcome.

Industry strength in negotiations is also a concern when it comes to implementing the most effective labelling standards. Industry groups have strongly objected to mandatory minimum standards for nutrition and health labelling in various forums around the world. In cases where they have, under some duress, produced a standard on nutrition labelling, this is likely to be the least effective option from public health and consumer rights perspectives. The industry proposal for nutritional labelling in the EU allows the use of "off-label" information,⁷³ despite it being least preferred by consumers. Considering the ability for an ineffective standard to set international norms, the public health community should weigh carefully whether no standard is better than a low standard and take a realistic view of the level of standard that is likely to emerge from any discussions.

2. Interaction with the WTO

Within the WTO system, Codex is the official standards-setting body for the purposes of the sanitary and phyto-sanitary (SPS) agreement.⁷⁴ Codex's relationship with the TBT Committee is less clear; however, it seems clear that it would be regarded as an international standard. Article 2.4 of the agreement provides that

⁷¹ FAO, *supra*, note 65.

⁷² *ibid.*

⁷³ European Alcoholic Beverages Sector, *supra*, note 39.

⁷⁴ WTO, "The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)" <https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm> (last accessed 28 March 2020).

Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.⁷⁵

Although the application of Codex standards to alcohol has been unclear, they have already been used to argue against measures. When India implemented labelling requirements, including nutritional information, it refused applications to allow this information to be provided by way of “stickering”. The EU claimed that “stickering” is provided for under an international standard, namely the Codex General Standard for the Labelling of Pre-packaged Food.⁷⁶ If specific alcohol standards are created, it can be assumed that they would be considered as the relevant international standards for the purposes of Article 2.4. While this does not preclude countries going further than what is covered under the standard, such as by implementing cancer warnings should the standard only cover nutrition, industry is likely to argue that the standard is a ceiling rather than a minimum. It may also be harder for Member Countries to argue that their measures are not the least trade-restrictive options under Article 2.2.

Disputing regulations or policies as a trade issue is not isolated to alcohol. Barlow and colleagues⁷⁷ analysed trade challenges to the TBT Committee for food, beverages (including alcohol) and tobacco that were brought before the Committee between 1995 and 2016. The findings showed that 93 challenges were brought forward as argued to be in violation with the TBT Agreement, which corresponded to 38% of all challenges relating to public health. Only one case, which was that on plain tobacco packaging in Australia, went forward to a dispute. Importantly, about three-quarters of challenges were raised by high- or upper-income countries against low- or middle-income countries, indicating a power imbalance whereby low- and middle-income countries, to a greater extent, might be prevented from implementing health policies. The study also shows that through bringing challenges to the WTO, policies have been delayed, stalled or abandoned, reflecting the “chill effect” that can be inflicted on policymakers.⁷⁸ Whilst processes such as trade disputes represent clear evidence of hindrance to developing more restrictive health policy, it is evident that there are softer approaches that may discourage countries from introducing new measures due to the potential threat of a dispute. As such, any negative interactions between a new Codex standard and the success of challenges to health measures in the WTO are serious concerns.

⁷⁵ WTO, *supra*, note 48.

⁷⁶ O'Brien and Mitchell, *supra*, note 49.

⁷⁷ P Barlow et al, “Trade challenges at the World Trade Organization to national noncommunicable disease prevention policies: A thematic document analysis of trade and health policy space” (2018) 15(5) PLoS Medicine e1002590.

⁷⁸ *ibid.*

3. Interaction with trade treaties

International standards, such as the Codex standards, can be referenced specifically in bilateral and multilateral trade treaties or may be incorporated through the incorporation of WTO Agreements, which themselves reference international standards. This raises interesting possibilities as to whether a standard set at the CCFL could help guide, or even override, treaty language around alcohol labelling. International treaties are already influencing domestic policymaking, with Australian government representatives quoting trade agreements as a reason why FoP warnings for alcohol and food cannot be mandated, although this is an arguable interpretation.

With the increased focus on alcohol labelling, especially the ability for industry to use supplementary labels, a strong Codex standard that mandated information to appear on the main label may both shift industry towards standardised information on a label and also strengthen public health arguments that supplementary labelling not be used for health warnings. Conversely, a weak Codex standard would be used by industry to argue against any domestic legislation with more ambition.

4. Bringing alcohol more firmly within the global food governance system

Codex has concern for health and safety, balanced against other interests relating to trade restrictions, meaning that public health is not a prominent feature of these processes. It is also an organisation strongly focused on the scientific method and reasoning. As seen in challenges to the TBT Agreement, arguments are often made about the scientific evidence underpinning decisions to, for example, develop graphic warning labels.⁷⁹ There is a paucity of evidence as to whether labelling is the least trade-restrictive way to achieve legitimate health aims, since regulations do not exist to be universally applied across the world (eg health warnings for cancer). While Codex sits under the joint auspices of the FAO and WHO, the WHO has had limited influence in progressing health priorities related to alcohol, as is clear from the inability to progress health warnings as part of Codex's current alcohol work. The strong industry involvement, including the provision of experts, means that industry interests may have stronger sway in the technical development of standards. Industry involvement is likely to end up with weaker, rather than stronger, alcohol labelling options.

The future work of Codex raises questions for public health agents as to how best to progress in this area of alcohol control. The WHO Framework Convention on Tobacco Control (FCTC) has been a key driver for preventing tobacco-related harm and has provided the public health community with effective policy measures.⁸⁰ In relation to the options provided in the Codex discussion paper on alcohol labelling, it can be argued that the last option (not to initiate work to clarify or provide a new Codex document) may be preferable to the alcohol industry. In contrast, the first option of initiating work to provide a specific Codex document for alcohol would be the most

⁷⁹ O'Brien and Mitchell, *supra*, note 49.

⁸⁰ WHO, "WHO Framework Convention on Tobacco Control" (2003) <<https://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf?sequence=1>> (last accessed 22 March 2020).

beneficial for public health advocates. Such a document might emphasise alcohol's status as a drug rather than a food, and might open the way towards a framework convention for alcohol. A paper by Taylor and Dhillon argued, however, that the way to achieve a framework convention on alcohol would be to promote softer strategies and non-binding regulations.⁸¹ A commentary on Taylor and Dhillon's paper pointed out that such strategies are commonly promoted by the alcohol industry, and that "non-binding codes of practice are a prophylactic measure intended both to build goodwill and to hold off anything more effective – in which they often succeed".⁸² If future work of Codex, on the other hand, would progress in the direction of either not initiating new work or of initiating work to clarify existing documents, this could enhance alcohol's status as a food rather than a drug and, in the long run, prevent the establishment of an alcohol framework convention.

The current moves at Codex may also reflect a shift in approach from the WHO. While labelling was a key measure in the Strategy, more recent initiatives have not included labelling. The SAFER initiative was launched in 2018 by the WHO together with the United Nations Office for Project Services (UNOPS), the UN Interagency Task Force on NCDs, IOGT International, the NCD Alliance, Vital Strategies and the Global Alcohol Policy Alliance. The initiative is a new package of effective measures to support Member States in tackling alcohol-related harm and in achieving targets set for reducing NCDs in line with the SDGs.⁸³ This initiative notably does not include labelling strategies. With the WHO due to report on the Strategy in 2020, a clearer picture of progress and priorities may emerge with further details of the future of alcohol labelling as an intervention to reduce alcohol-related harm.

V. CONCLUSIONS

The significant health and social impacts of alcohol, documented for decades and with continuing growing evidence of its effects on limiting the prevention of NCDs, are clear imperatives not to treat alcohol as an ordinary commodity in trade and investment law. There is a need for coordinated action to reduce alcohol-related harm at the global, regional and national levels. This article has described the progression of alcohol labelling as a specific intervention to reduce alcohol-related harm within the global trade context at Codex. We have demonstrated that current international processes are not designed to prioritise health, and we highlighted again the need for trade agreements to be drafted in a way that protects the rights of domestic governments to introduce public health measures for the benefit of their citizens.

While there are substantial opportunities to advance health warning labels on alcohol at Codex, there are also significant risks. There appears to be a lack of public health

⁸¹ AI Taylor and IS Dhillon, "An international legal strategy for alcohol control: not a framework convention – at least not yet" (2013) 108 *Addiction* 450.

⁸² R Room, "Healthy is as healthy does: Where will a voluntary code get us on international alcohol control? Commentaries on Taylor & Dhillon" (2013) 108 *Addiction* 456.

⁸³ WHO, "SAFER: Preventing and Reducing Alcohol-Related Harms Harmful Use of Alcohol: A Health and Development Priority" (2018) <https://www.who.int/substance_abuse/safer/msb_safer_framework.pdf?ua=1> (last accessed 28 March 2020).

organisations represented within Codex, which has led to missed opportunities for promoting public health and suggests the risk that standards agreed to in the forum may be suboptimal from a health perspective. Finally, this article also highlights the risks in the interaction between Codex and the WTO, but also the potential benefits of those interactions, dependant on the quality of the standard set within Codex.