

WHO, WTO and alcohol globalisation

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In May 2004 the World Health Organization adopted a resolution on health promotion that gave priority to action on alcohol, because of its contribution to the burden of injury and disease in both industrialised and developing countries (see box). There is an inherent tension, however, between this resolution and international trade treaties promoted by the World Trade Organization.¹

From a trade perspective, alcohol is a commercial ‘good’, or a service, or an investment having the right to establish anywhere. The General Agreement on Tariffs and Trade (GATT), the North American Free Trade Agreement (NAFTA), the ‘single market’ of the European Union and the new General Agreement on Trade and Services (GATS) have all been used to challenge the alcohol control policies of treaty members or prospective members.

These treaties open up domestic markets for global alcohol brands and constrain domestic public health policies in ways that policy makers – and even local alcohol industries – often did not anticipate when the treaties were signed. There is considerable concern about how free trade and aggressive marketing of products like alcohol, tobacco and pharmaceuticals will affect developing countries with low levels of regulation, little consumer information and limited health services.

Global free trade in goods

The GATT was agreed in 1947 as part of post-war negotiations. A major renegotiation in 1986-94 – the Uruguay Round – resulted in the establishment of the World Trade Organisation (WTO) in 1995. Unlike previous trade treaties, and unlike international health, labour and human rights conventions, new trade agreements under WTO are backed up by sanctions and a court system that can force non-complying governments to pay compensation or face retaliation in trade sensitive sectors.

The GATT promotes ‘free trade’ in goods. According to a 1989 GATT ruling, it requires ‘effective equality of opportunities for imported products’. For example, domestic quotas, taxes and regulations must not provide domestic alcohol protection against heavily marketed imports. The WTO applied this rule in forcing Japan to open its borders to vodka and other spirits because they were ‘like’ or ‘substitutable’ for *shochu*. State-owned retail monopolies have been challenged in Canada under GATT and in the Scandinavian countries under the EU treaties with little regard for public health objectives, on the grounds that they reduced competitive opportunities for private traders, both international and local. Alcohol taxes have been challenged and changed under GATT or WTO as ‘anti-competitive’ in Canada (including minimum pricing), Denmark, Finland, Chile and Korea.

Free trade in services, including distribution and advertising

In 1995, the General Agreement on Trade in Services (GATS) was established as one of the cluster of new agreements comprising the WTO. This treaty widens the scope of international treaties to address the ‘supply of a service’, which includes the production, distribution, marketing, sale and delivery of a service (GATS Article XXVIII (b)). This includes financial services, so despite the defeat of the MAI, the WTO has described GATS as the ‘world’s first multilateral agreement on investment’.² GATS covers services in all sectors except those exempted from governments’ ‘commitments’ under the Agreement, or ‘services supplied in the exercise of governmental authority’ (including local government).

The protective exemption of sectors is subject to ‘progressive liberalisation’ (GATS Part IV), however, as countries must participate in successive negotiations to ratchet markets open. Other countries may challenge their exemptions or whether domestic regulations are ‘anti-competitive’.

Moreover, ‘a service supplied in the exercise of governmental authority’ is defined as ‘any service which is supplied neither on a commercial basis, nor in competition with one or more service

suppliers' (GATS Article 1(3)). In countries that have followed standard neo-liberal economic advice in the 1990s to roll back the 'inefficient' state sector by corporatising, privatising and contracting out, there may not be many public-funded services that would still satisfy that definition. In New Zealand, for example, even some regulatory 'services' are now contracted out. When public services are required to compete on an equal footing with private sector companies, particularly global corporations, commercial imperatives are likely to replace public good objectives. This is often the first step to privatisation.

GATS and public health regulation

The provisions of WTO agreements and their implications for public health are often poorly understood by the public.³ Government assurances of protection for public health are generally narrow and do not apply to many aspects of the public health sector and its regulation.

The GATS formalises many of the legal arguments that supported challenges to alcohol regulations under earlier or other trade agreements. Most controversially, GATS specifically addresses domestic regulation. While it allows 'reasonable, objective and impartial' regulation, it lays down rules about what this is. 'Technical standards and licensing requirements' must not present unnecessary barriers to trade in services (GATS Article VI(4)). Regulations must be no more restrictive than necessary and measures must be necessary to achieve a specified legitimate policy objective. Governments are required to 'develop any necessary disciplines' to ensure under Article VI (4) that domestic regulation is:

- “(a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.”

Article VI(4)(c) could apply to liquor licensing, for example. There is a growing body of research that links levels of alcohol related harm to the density and location of alcohol outlets. Will local politicians and other decision-makers who act on this research find themselves having to justify their policies to other governments and to a WTO tribunal? Will they have to provide legal arguments and research evidence that the measure was necessary, that there was no less 'burdensome' way of achieving the particular goal, and show that it was objectively effective in meeting that goal. This is no easy task when developing policies to address social issues with complex causes. GATS constraints are likely to influence policy development at the very beginning, by narrowing the thinking of public servants and policymakers about what is possible.

The Precautionary Principle

The GATS principles 'extend far beyond trade and reach into the very heart of domestic government authority'⁴ They will already be familiar concepts perceived as norms of policy making in many countries. As Canadian researcher Jim Grieshaber-Otto told the inaugural conference of the Global Alliance on Alcohol Policy, WTO rules now cast a deep chill on policy experimentation, freeze existing alcohol regulation and begin to roll back current measures so as to comply with increasingly restrictive and comprehensive international treaties.⁵ Government decisions about GATS may bind future governments, restrict the kinds of policies and legislation that can be adopted, or lock in liberalised policies that are having adverse effects on public health.

Decision-makers need to balance available evidence against the need for a precautionary approach to public health and the protection of young people, for example. Policies that run counter to free trade principles may be necessary in the interests of public health⁶ Alcohol is just not a commodity like any other, it has a downside – particularly for young people, who are not always aware of the risks and who experience disproportionate harm from drinking.

It could be possible to ignore challenges or WTO rulings, and accept any resulting sanctions, but the issue would probably be revisited in future negotiations. For example, documents for GATS negotiations between New Zealand and the European Union includes the statement;

“The European Commission reiterates its commitment to promote regulatory disciplines in accordance with Article VI(4) of the GATS. The EC, however, reserves the right to address at any time to New Zealand specific requests concerning regulatory issues.”⁷

Challenges to developing countries

The question for liberal democracies is not just what GATS challenges we are facing, but what challenges our own governments may be making to other, perhaps more vulnerable, countries. This is not easy to monitor because the negotiation process is largely secret and documents that do emerge are complex and opaque.

Requests under GATS for ‘full commitment’ on distribution and advertising may reverse or block important and effective policies that can help reduce alcohol related harm. For example, European negotiators are challenging Canada and some US states to remove limitations in its Distribution Services commitments that protect alcohol – that is, state-owned alcohol retail monopolies. These have been ranked as effective policies for reducing alcohol related harm.¹⁰

In 2002 29 draft documents were leaked⁸ that showed European Union negotiators are being very aggressive in demanding full concessions from developing countries which will make it much more difficult to address looming alcohol problems in the future. There an urgent need for development agencies, unions and public health organisations to analyse these requests and understand their implications for communities in each country. In India, for example (see box), the EU is demanding the opening up of wholesale and retail services. This includes the distribution and sale of alcohol. Restrictions on marketing, advertising and promotion would also be affected. Note that the EU asserts that it is only willing to discuss very limited exceptions— for example, ‘arms, ammunitions and explosives’.

Global alcohol companies are seeking to expand their sales in developing countries. In developing countries experiencing greater prosperity, alcohol is already a leading risk factor for the global burden of injury and disease. This makes the inclusion of alcohol in trade negotiations, whether as a goods or services, a vital issue for the Global Alliance on Alcohol Policy to address.

European free trade in alcohol

The European Union is in essence a free trade agreement within a 'common market'. National alcohol policy differences considered to impede the free flow of trade have come under pressure. Downward harmonisation of alcohol taxes and liberalisation of cross-border personal allowances are key issues for the Nordic countries. For example, cross-border shoppers can now bring 230 litres of cheap alcohol home to Sweden, affecting consumption levels. Downward harmonisation caused Denmark to reduce its tax rate on spirits by 44 percent in October 2003. Finland reduced its tax on alcohol by 33% overall and on spirits by 44% in March 2004 as neighbouring Estonia, where vodka could be bought at a third the price, was scheduled to join the EU on 1 May. In April 2004 Finnish take-away alcohol sales by volume were 50 percent higher than January sales, with content pure alcohol 55 percent higher. Earlier relaxation of Nordic control policies showed increases in consumption and harm across all drinkers, not just heavy drinkers. These recent changes are also expected to have adverse impacts for public health.⁹

Restrictive alcohol advertising policies have also been considered 'anti-competitive' under the European Treaty. In early 2003, Denmark permitted alcohol advertising on television for this reason. Swedish and Norwegian policies on alcohol advertising have been challenged under European Union rules. Sweden's law was challenged and annulled by the courts, but has since been rewritten.¹⁰ Norway's advertising policy is about to go before its Supreme Court.

These examples show that European treaty rules about 'goods' and 'services' are affecting governments' ability to restrict the availability and promotion of alcohol products, unless they can refute legal challenges and justify policies against the overriding commercial imperatives of the trade treaties. These Scandinavian policies were long-standing, considered effective, and were acceptable to both industry and the voting public. It appears that political will and a public mandate is no longer a sufficient basis for domestic policy. Member states are entitled to maintain domestic regulations provided these can be justified as necessary to achieve treaty-sanctioned policy goals. Restrictions on availability and excise tax levels are among the most effective policies for reducing alcohol related harm. There is also a growing body of evidence that shows how alcohol advertising and other marketing influences young people.¹¹

These policy challenges under EC trade rules are in marked contrast with the European Health Ministers' 2001 Declaration on Young People and Alcohol, which focused on the need to protect children and young people from exposure to alcohol promotions and specifically target products. The Declaration called for availability controls by addressing access, minimum age and economic measures, including pricing, which influence under-age drinking.

On 18 June 2004, a new constitution for a European Union of 25 countries was agreed. A section on public health allows the EU to complement member states' action in reducing drugs-related health damage, including information and prevention and developing measures to protect public health regarding tobacco and the abuse of alcohol, but 'excluding any harmonisation of the laws and regulations of the member states'.

Some new European Union states had already made full GATS commitments which include alcohol distribution. This will make it difficult for them to address their alcohol problems in future. There are recent precedents for such commitments to be withdrawn, by negotiating a trade-related 'compensatory adjustment'.¹²

“Alcohol consumption raises complex issues. Some evidence attests to beneficial effects of moderate consumption of alcohol but, overwhelmingly, data show its high contribution to the global burden of disease through its damaging effects across all sectors of society as the direct or underlying cause of many illnesses and accidents, violence and impaired health. Young people are particularly likely to abuse alcohol. Special attention needs to be paid to the messages conveyed in information relating to alcohol, including marketing and advertising, in particular on the impact of alcohol on the health and well-being of young people.”

Executive Board, World Health Organization, 20.1.2004
'Health Promotion and Healthy Lifestyle

The 57th World Health Assembly urges member states:...

To include harmful use of alcohol in the list of lifestyle-related risk factors as stated in *The world health report 2002*, and to give attention to the prevention of alcohol-related harm and promotion of strategies to reduce the adverse physical, mental and social consequences of harmful use of alcohol, especially among young people and pregnant women, in the workplace, and when driving.

Agenda item 12.8: *Health Promotion & Healthy Lifestyles*, 22 May 2004

“Public health policies concerning alcohol need to be formulated by public health interests, without interference from commercial interests.”

Declaration of European Health Ministers on
Young people and alcohol, Stockholm, 2003

DISTRIBUTION SERVICES

EC REQUEST TO INDIA

This sector has not been committed. **EC request:** Take commitments as follows:

- A. COMMISSION AGENTS' SERVICES (CPC 621, 6111+6113+6121)
- B. WHOLESALE TRADE SERVICES (CPC 622, 6111+6113+6121)
- C. RETAILING SERVICES (CPC 631+632, 6111+6113+6121+613)
- D. FRANCHISING (CPC 8929)

For each of the above sub-sectors:

- Modes 1, 2, 3: Take full commitments, i.e. schedule 'none' under MA and NT.
- Mode 4: Commit as referred to in the section "Horizontal commitments".

Note: The EC is prepared to discuss exceptions for a very limited number of extremely sensitive goods, such as arms, ammunitions and explosives.

Polaris Institute website, <http://216.18.14.226/India.htm>

References

Many thanks to Jim Grieshaber-Otto for his comments.

- ¹ J. Grieshaber-Otto, S. Sinclair and N. Schacter (2000) Impacts of international trade, services and investment treaties on alcohol regulation. *Addiction* 95 Supplement 4: S491-504; J. Grieshaber-Otto and N. Schacter (2001) The GATS: Impacts of the international 'services' treaty on health based alcohol regulation. *Nordic Studies on Alcohol and Drugs*, 3. www.stakes.fi/nat/nat01/nr.3/english/gats.htm; Ferris, J., R. Room and N. Giebrecht (1993) Public health interests in trade agreements on alcoholic beverages in North America. *Alcohol Health & Research World* 17(3): 235-243.
- ² WTO Secretariat website, December 1998, cited in Grieshaber-Otto (2004).
- ³ M. Sanger (2001) Reckless abandon: Canada, the GATS and the future of health care: Executive Summary. Centre for Policy Alternatives. www.policyalternatives.ca
- ⁴ Grieshaber-Otto, J. and D. Jernigan (2001) Trade treaties, alcohol and public health. *The Globe*. 2. www.ias.org.uk. David Jernigan is also the author of WHO's *Global Status Report: Alcohol and Young People*, 2001.
- ⁵ Grieshaber-Otto, J. (2000) Trade Agreements. *Towards a Global Alcohol Policy*: Proceedings of the Global Alcohol Policy Advocacy Conference, Syracuse, NY. 52-54.
- ⁶ Ferris, J., R. Room and N. Giebrecht (1993); Edwards, G., & Holder, H. (2000). The alcohol supply: Its importance to public health and safety and essential research questions. *Addiction*, 95(Supplement 4), S621-668.
- ⁷ Kelsey, J. (2003) Serving whose interest? A guide to NZ commitments under the WTO General Agreement on Trade in Services. Arena. www.arena.org.nz.
- ⁸ Available at <http://www.polarisinstitute.org/gats/Main.html>.
- ⁹ Esa Österberg (2004) The impact of the major tax reduction on Finnish alcoholic beverages, 1 March 2004. 30th Kettil Bruun Society Conference, Helsinki 31 May-4 June; Robin Room (2004) Effects of alcohol controls: Nordic research traditions. *Drug & Alcohol Review*, 23: 43-53.
- ¹⁰ Ulstein, A. (2003) Alcopops in Norway. [and] Swedish court removed ban on alcohol advertising. *The Globe* 1: 15-16.
- ¹¹ Babor, T. et al. (2003) *Alcohol: No ordinary commodity: Research and public policy*. WHO/Oxford University Press.
- ¹² J. Grieshaber-Otto (2004) Alcohol policy and the World Trade Organization: New challenges for Europe. Eurocare 'Bridging the Gap' conference, Warsaw, 16-19 June.