



ADD Fact Sheet:
WTO/GATS, alcohol and development
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The issues with strongest relevance for alcohol policies within the WTO system are now covered by the discussions under the GATS; General Agreement on Trade in Services. These negotiations do not cover the products themselves (eg. alcohol), but the services related to the products (like sale and marketing).

Working Group on Domestic Regulations

A working group was established after the WTO meeting in Hong Kong last year with the task to develop so-called disciplines on domestic regulations. This is related to paragraph VI of the GATS agreement:

With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, inter alia:

- (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.

Terms used

Domestic regulations:

Any regulation of/restriction on the free trade in services implemented by national, regional or local governments.

Disciplines on domestic regulations:

A set of guidelines for how, when and why governments can impose regulations on the trade in services; eg. licensing procedures, state monopolies, limiting the number of suppliers or outlets, restrictions on advertising/promotion activities etc.

However, “restrictions” may be a more appropriate term than “disciplines”. The aim of the guidelines is definitely to avoid too much interference in the market by governments.

Consequences for national policies

A poor result in the negotiations on domestic regulations, may severely limit governments freedom to use the alcohol control policy measures that are proven to be the most effective by alcohol

research (ref. Babor et al). On the other hand, there are good possibilities to limit a possible damage by a few changes in the existing draft texts.

The development aspect

Many developing countries experience a rapid growth in alcohol consumption, as they increasingly become affected by cultural and economical globalization. This will in turn lead to an increase in alcohol-related problems.

In a WHO sponsored study (Alcohol in developing societies) the alcohol researcher Robin Room and a group of colleagues have studied the specific challenges facing developing countries. They describe the situation as follows (p. 48-49): “The evidence available suggests that among the many factors influencing national levels of alcohol use, a country’s economic fortunes and level of income are quite important. This implies that as economic development occurs, in the absence of mitigating influences such as religious prohibitions, alcohol consumption and resulting problems are likely to climb with rising incomes. ...this is likely to present developing nations with new or greater levels of alcohol-related problems, and new challenges to develop effective alcohol policies to reduce or prevent them”.

In other word; as developing countries manage to combat typical poverty diseases through economic development, alcohol will climb up the list of serious threats to the public health and welfare of people.

Government control over production, distribution, sale and marketing of alcohol have proved the most effective road to prevention of alcohol problems. A number of developing countries have had such regulations of the alcohol market, some of them dating back to the colonial period in the 17th century. The regulations have been imposed both to protect public health and law and order and to protect domestic production of alcohol.

It is also a fact that such regulations in many cases have not been effectively implemented and that many countries have not had any history of restrictions on the alcohol market.

Along with an increasing alcohol consumption in many developing countries, there has been a long-standing trend of shift from home-produced, local alcohol beverages towards industrial beer and liquor brands sold in a commercial market. These two trends are likely to continue and even increase. In such a future it is of great importance that governments in developing countries maintain the freedom to implement market regulations on alcohol for the benefit of health and welfare. This freedom is at stake in the present GATS negotiations on domestic regulations. If public health concerns are not taken seriously in the negotiations, the result may be that

- * present regulations have to be removed step by step;
- * introducing new regulations will be very difficult, even if it is a matter of re-introducing regulations from the past.

A fundamental conflict of interests

The basic idea behind the international trade treaties under the World Trade Organization is three-fold:

- Removal of regulations on the free trade in products and services;
- The removal of regulations shall be continued process towards more and more free trade;

- The process of trade liberalization shall be irreversible. Once trade restrictions have been lifted in a country the process towards a reintroduction of new regulations is very complicated.

In the WTO system alcoholic beverages are treated just like any other product sector, if a country does not present specific reservations for alcohol.

This approach is in strong conflict with the approach now taken by the international alcohol research and public health community, reflected in the WHO sponsored study by Thomas Babor et al; “Alcohol – No Ordinary Commodity. The same approach is the basis for the study “Alcohol in Developing Societies – A Public Health Approach” by Robin Room et al.

According to these reports alcoholic beverages have so many detrimental effects on public health that necessary steps must be taken to reduce the consumption and by that limit the negative burden on individuals and the society. Babor et al list in their report which measures are the most effective in preventing alcohol-related harm; under the headline “Best practises”. Among the interventions recommended are: Minimum legal purchasing age, government monopoly of retail sales, restrictions on hours or days of sale, outlet density restrictions and alcohol taxes.

Furthermore, while the aim of trade liberalization is an increase in sales and consumption, the paramount objective of alcohol control policies is to reduce the overall consumption and thereby reduce the harmful consequences.

This shows that there are a fundamental conflict of interests and objectives between a trade approach and a public health approach to trade in alcohol.

A long-term solution

This basic conflict of interests can only be solved by taking alcoholic beverages out of the WTO treaties and instead regulate these products under international agreements based on public health and social welfare interests.

Robin Rooms et al conclude, from a development perspective, that as the international trade treaties are formulated now (eg. GATS), they are not in the interest of public health, since they threaten the existence of national and local controls over the market.

In its General Assembly in 2005 the World Medical Association discussed strategies for prevention of alcohol-related harm and concluded: “Furthermore, in order to protect current and future alcohol control measures, advocate for consideration of alcohol as an extra-ordinary commodity and that measures affecting the supply, distribution, sale, advertising, promotion or investment in alcoholic beverages be excluded from international trade agreements.”

An opening for exceptions

In the WTO system (eg. the preamble to the GATS agreement) there is an opening for implementation of restrictions on the free trade in products and services, provided that regulations are implemented to protect important national policy objectives. Public health is one such legitimate objective.

In Article XIV of the agreement (General Exceptions) it is stated that the GATS Agreement shall not prevent Members states from adoption or enforcement of measures:

(a) necessary to protect public morals or to maintain public order;

(b) necessary to protect human, animal or plant life or health;

In a note paragraph (a) is commented as follows: “The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.”

However, we do not know much about how strong these exemption paragraphs will be in the long run. So far trade arguments seem to prevail over other considerations when cases have been tested.

A key problem: Necessity testing

The exemption rule in the preamble to the GATS agreement is balanced with a number of other rules to prevent too many regulations to be applied. In Article VI of the agreement it is said that domestic regulations

* shall not “constitute unnecessary barriers to trade in services”;

* shall not be “more burdensome than necessary to ensure the quality of the service”;

* “in the case of licensing procedures, not in themselves (be) a restriction on the supply of the service”.

These rules are the basis for the WTO system of “necessity testing”. Governments and companies that find any domestic regulation on trade in a specific country to be unnecessary and contrary to the rules of the WTO agreements and to the notion of free trade, may raise a complaint. The case is then judged by a panel of WTO experts.

Public health interests will face a number of problems when cases are to be judged by WTO panels, eg. cases on alcohol control policies:

- The panels will be composed of trade experts who primarily shall protect the WTO agreements and the notion of free trade;
- The panels will know the trade arguments well, but they will have less understanding of the health and social aspects of the alcohol trade, not to mention the broad evidence base for alcohol control policies;
- The burden of proof lies with the government that has implemented regulations on free trade. It will have to prove that the objective of the regulation is of national importance and that the regulations produce the intended result.
- A government will, furthermore, have to prove that other, less restrictive measures, would not serve the same purpose – which of course is very difficult, if not impossible.

References

Thomas Babor et al; “**Alcohol – No Ordinary Commodity**”

Robin Room et al.; “**Alcohol in Developing Societies – A Public Health Approach**”

Link to the full text of the GATS Agreement:

http://www.wto.org/english/docs_e/legal_e/26-gats.doc

The web site of World Trade Organizations:

<http://www.wto.org/>