

Alcohol policy
and the
World Trade Organization (WTO)

Addressing new challenges in Europe

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Main themes:

Look beyond European integration

- WTO negotiations pose new challenges for alcohol policy in Europe and elsewhere
- Expanded efforts, different approaches needed
- EC position is key
- Useful examples from elsewhere

What is the WTO?

- World Trade Organization
 - 1994
 - 140+ members (US, EU, Japan, Canada)
 - 15 separate agreements, including ...
General Agreement on Trade in Services (GATS)
 - Rules extend into new areas
 - Strong, legally binding dispute settlement process
 - 2001 **Start of “Doha Round” of negotiations**

What is the WTO?

- World Trade Organization
distinct from
- Regional treaties
(EC treaty; planned Free Trade Area of the Americas)
- Bilateral treaties
(EU-Mexico; US-Singapore)

What is the WTO?

Features

- WTO rules separate from EC, Member States' laws and courts
- no “proportionality” principle
- Different culture of
 - Negotiations
 - Accountability
 - Dispute resolution

Underlying tension ...

between

- Alcohol policies for health
and
- Freer flow of goods, services and
investments

Potential conflicts with alcohol

- Government alcohol monopolies
- Restrictions on alcohol imports/exports
- Taxation
 - different rates for foreign alcohol
 - different rates for different types of beverages
- Alcohol regulations
 - restrictions on outlet number
 - conditions on licenses to sell alcohol
 - restrictions on alcohol promotion, advertising

How effective are WTO safeguards for alcohol?

Under international law, exceptions are interpreted narrowly.

- General exceptions for public health;
- GATS ‘governmental authority’ exclusion;
- country-specific exemptions;
cannot be relied upon to fully protect alcohol policies from WTO rules.

What is the General Agreement on Trade in Services (GATS)?

- WTO treaty on services

“Services are associated with everything we need and everything we elect governments to do.”

Sinclair, 2000

What is the General Agreement on Trade in Services (GATS)?

“Services underpin all forms of international trade and all aspects of global economic activity”

Global Services Network, 1999

What is the General Agreement on Trade in Services (GATS)?

The GATS ...

“has an extremely wide scope of application”

WTO Secretariat Training Package
December, 1998

What is the General Agreement on Trade in Services (GATS)?

The GATS ...

extends “into areas never before recognized as trade policy”

WTO Director General Ruggiero
June 2, 1998

What is the General Agreement on Trade in Services (GATS)?

The GATS ...

*“is the world’s first multilateral
agreement on investment...”*

WTO Secretariat, WTO website
December, 1998

What is the General Agreement on Trade in Services (GATS)?

- Some general rules apply to all service sectors
- Some rules apply only to those service sectors that are listed by countries in their schedule
 - Market Access
 - National Treatment
- Prior commitment to repeated re-negotiation

Negotiations to expand the GATS are now underway

GATS re-negotiation underway

- Requests and offers for new, more extensive commitments
- Negotiations on Domestic Regulation

EC GATS requests leaked

- Distribution Services
Wholesale and Retail services

*“The distribution of [alcohol] is not committed...
Take full commitments, i.e. schedule ‘none’”*

EC GATS requests to many other countries
Available at www.polarisinstitute.org and
www.GATSwatch.org

What does “take full commitments” mean?

- GATS Article XVI (Market Access)

No limits on ...

- “number of service suppliers ”
- “number of service operations”
- “value of service transactions”
- “participation of foreign capital”

What does “take full commitments” mean?

- GATS Article XVII (National Treatment)
For “all measures affecting the supply of services” ... **treat foreign services and suppliers “no less favourably”** than like domestic services and suppliers

“Conditions of competition” must not be less favourable

What does “take full commitments” mean?

Accepting request would involve choice:
either

- Eliminate practices that restrict the availability and access to alcohol
 - public alcohol monopolies;
 - restrictions on outlet density

OR

- Risk GATS challenges and trade sanctions
until you do

EC GATS requests

Practical impact

- *Explicitly place alcohol policies on the GATS negotiating table*
- *Increase pressure on public alcohol monopolies and policies ... in Europe and elsewhere in the world*

EC GATS requests

Practical impact

- Pressure to eliminate public alcohol monopolies

EC position:

“WTO negotiations are not concerned with defining the mission of public services, their organisation or their financing. Nor does it concern deregulation or privatisation.”

- European Commission
IP/04/622, 10 May 2004

GATS re-negotiation underway

- Requests and offers for new, more extensive commitments
- Negotiations on Domestic Regulation

GATS re-negotiation underway

Proposed restrictions on Domestic Regulation include:

- “Necessity test”
 - Regulations must not be more restrictive than *necessary*
 - Measures must be *necessary* to achieve a specified legitimate objective

GATS re-negotiation underway

Governments would have to prove non-discriminatory regulations ...

- are “necessary” to achieve a legitimate objective,

AND

- no alternative measure is available that is less commercially restrictive.

GATS re-negotiation underway

If agreed to, likely to affect:

- Licensing of alcohol facilities
- Controls on number of outlets in any area
- Regulations on hours of operation
- Regulations on training/qualification requirements of servers

Fettering governments' regulatory ability

Position of Canada:

“Does the GATS threaten our right to regulate?”

“No. WTO Ministers have affirmed the right of countries to regulate, and to introduce and amend regulations to meet national policy objectives. This right is enshrined in the GATS.”

International Trade Canada website

http://strategis.ic.gc.ca/epic/internet/instp-pcs.nsf/en/h_sk00149e.html#q6

Fettering governments' regulatory ability

Position of EC:

“GATS fully safeguards the ability of governments to enact domestic regulations, legislation and other measures to protect public interest.”

European Commission website

http://europa.eu.int/comm/trade/issues/sectoral/services/index_en.htm

GATS commitments in Distribution Services

- Poland (1994) excluded beverages, advertising
- Sweden (1994) excluded alcohol
- Switzerland (1994) extensive, excl. advertising
- Czech Republic (1994) extensive
- Estonia (1999) **full**
- Latvia (1999) **full**
- Lithuania (2001) **full**

GATS commitments in Distribution Services Practical impact

- Establishing new public alcohol monopolies...
- Establishing new alcohol controls...
made more complex and difficult

Countries must

- Modify GATS commitment
(Notify WTO; consult WTO members;
negotiate trade-related “compensatory adjustment”)

EC is already using this procedure

Recent GATS efforts to protect alcohol

Government of Canada ...

“is not considering, and will not make, any GATS requests to other member countries affecting the supply, distribution, sale, advertising, promotion or investment in alcoholic beverages during the current round of negotiations.”

Written question to Canadian Trade Minister
confirmed by Cdn GATS Negotiator Robertson
June 12, 2003

Recent GATS efforts to protect alcohol

Request that Canada ...

- *“seek formal recognition...of alcohol as a unique and potentially harmful commodity.”*
- *“ensure...government agencies retain the unfettered right...to regulate domestic alcohol markets to ensure public health and safety.”*

CAMH letter to Canadian government
April 11, 2003

Recent GATS efforts to protect alcohol

U.S. Government should

“reject” EC request “to make commitments in alcohol- and tobacco-related services in the current round of negotiations and exclude these services in its requests to other countries.”

Resolution of 13th Alcohol Policy Conference
Boston, March 2003

Initiatives to protect alcohol policy flexibility

- In current GATS negotiations
 - Withdraw problematic requests and offers
 - Reject proposals on Domestic Regulation
- Change problematic GATS commitments
- Seek 'carve-outs' for alcohol
- Framework treaty on alcohol

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