

Do Trade Law Obligations Constrain Policy Options for Obesity Prevention?

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Objectives

- Identify potential trade law issues relevant to proposed interventions to prevent obesity (focusing on food and diet interventions)
- Identify factors influencing the potential for trade disputes
- Assess the risk of international trade disputes or successful challenges relating to proposed interventions, in order to inform policy decisions

Potential Policy Interventions to Influence Diet and Obesity

Food labeling and packaging

- Mandatory nutrition labeling
- Front-of-package labels and logos
- Packaging and labeling restrictions

Food advertising

- Restrictions on advertising to children

Taxation

- “Fat tax”, “junk food tax”

Subsidies

- “Thin subsidies”, fruit and vegetable subsidies

Regulation of product characteristics

- Trans fat or saturated fat limits
- Package size or volume regulations

Import bans, quotas, or tariffs

- Restrictions on importing “unhealthy” foods

Regulating food outlets

- Restricting fast food outlets in certain locations

Relevant Trade Agreements

- General Agreement on Tariffs and Trade (GATT)
- Agreement on Technical Barriers to Trade (TBT)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- General Agreement on Trade in Services (GATS)
- Agreement on Agriculture (AA)
- Agreement on Subsidies and Countervailing Measures (SCM)
- North American Free Trade Agreement (NAFTA)

Provisions Relevant to Policy Interventions

Food labeling and packaging

- GATT Arts. I and III: non-discrimination among foreign products, between domestic and foreign products
- TBT Art. 2: non-discrimination, least trade-restrictive measures, international standards
- TRIPS Art. 20: unjustifiable interference with trademarks

Food advertising

- GATS Art. II: non-discrimination among foreign providers; Art. III: transparency of regulations; Art. VI: administration of domestic regulations*
- GATT Arts. I and III: non-discrimination among foreign products, between domestic and foreign products

Taxation

- GATT Arts. I and III: non-discrimination among foreign products, between domestic and foreign products

Subsidies

- AA: Limits on aggregate and product-specific support
- SCM: Prohibited or actionable subsidies

Regulation of product characteristics

- GATT Arts. I and III: non-discrimination among foreign products, between domestic and foreign products
- TBT Art. 2: non-discrimination, least trade-restrictive measures, international standards

Import bans, quotas, or tariffs

- GATT Arts. II, XI, XIII: tariff binding; general prohibition on quantitative restrictions

Regulating food outlets

- GATS Art. II: non-discrimination among foreign providers; Art. III: transparency of regulations; Art. VI: administration of domestic regulations*
- NAFTA Ch. 11: expropriation of foreign investments

* Some GATS obligations depend on commitments undertaken by each state

Key Factors Influencing Vulnerability to Trade Disputes

Discrimination among foreign products or between foreign and domestic products (GATT, GATS, TBT)

- Do regulations or taxes have a discriminatory intent or effect?
- Are “like” products being treated differently?

International standards (TBT)

- Are measures based on or in accordance with international standards?

Least trade-restrictive measures (TBT)

- Do measures restrict trade more than necessary to achieve a legitimate public health objective?

Nature and impact of subsidies (SCM, AA)

- Do subsidies target export production or local content? (Prohibited – SCM)
- Do subsidies adversely affect foreign producers? (Actionable – SCM)
- Do subsidies on agricultural products exceed agreed amounts? (AA)

Exceptions for the protection of human health, enforcement of domestic regulations (GATT, GATS)

- Are measures necessary for the protection of health?
- Are measures necessary to prevent misleading or deceptive advertising?
- Would other reasonably available measures that do not restrict trade provide the same degree of protection?
- Are measures a disguised restriction on trade, or arbitrary or unjustifiable discrimination?

Conclusions

- Most disputes are avoidable if measures are carefully designed
- Adherence to international standards provides protection – importance of standards development
- Potential discriminatory effects should be considered
- Less trade-restrictive measures to achieve public health objectives should be considered if reasonable
- Process obligations: notice, consultation, transparency

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