

**Breaking Barriers: Trade, Economics &
Human Rights Considerations in Shaping
Obesity Prevention Policies in the Caribbean**

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KEY QUESTION

Can the region's obesity prevention policies (SSB taxes, FOPWL, school nutrition policies) be accommodated within its existing WTO/international trade obligations?

CARICOM INTERNATIONAL TRADE UNIVERSE

- Revised Treaty of Chaguaramas 2001
- Bilateral trade agreements (Cuba, Costa Rica, Colombia Dominica Republic)
- Caribbean Basin Economic Recovery Act (US preferential arrangement)
- CARIBCAN (Canadian preferential agreement)
- CARIFORUM/EC Economic Partnership Agreement
- WTO Agreements
 - The foundation of everything above.

THE WTO REGIME

Core trade rules

Most favoured nation
treatment: GATT Art I

National treatment:
GATT Art III

Prohibition on
quantitative restrictions:
GATT Art. XI & XIII

Tariff bindings: GATT
Art II

TACKLING PUBLIC HEALTH CONCERNS WITHIN THE WTO



- Article XX, General Agreement on Tariffs and Trade 1994
- Article XIV, General Agreement on Trade in Services
- Article 2, Agreement on Technical Barriers to Trade

GATT ARTICLE XX / GATS ARTICLE XIV

- Allows for otherwise WTO-inconsistent measures provided they are:
 - **necessary** to protect human, animal or plant life or health;
 - are not applied in a manner which would constitute a means of **arbitrary or unjustifiable discrimination** between countries where the same conditions prevail, or a **disguised restriction on international trade**.

TRADE-RESTRICTIVENESS/ REASONABLY AVAILABLE ALTERNATIVES

- Is the given measure more trade-restrictive than necessary?
 - how important are the public health interests that the measure is designed to meet?
 - **EC-Asbestos Appellate Body Report:** preservation of human life and health through the elimination or reduction of well-known and life-threatening health risks (asbestos fibres) was a value both “vital and important to the highest degree”
 - What contribution does the measure make to the public health objective being pursued? (evidence important here also)
 - Are there less trade-restrictive alternatives that would as effectively secure the public health objective being pursued?

TBT AGREEMENT

- Preamble recognises Members' right to implement measures to protect health *at the level they consider appropriate* provided:
 - they are not applied in a manner that amounts to **arbitrary or unjustifiable discrimination** or **a disguised restriction on international trade**.
- Technical regulations **must not be more trade-restrictive than necessary to fulfil a legitimate objective**, taking account of the risks non-fulfilment would create.
- Legitimate objectives specifically mentioned in TBT Agreement Art. 2 include “**protection of human health or safety**”.

TBT AGREEMENT

- There is a rebuttable presumption that a technical regulation does *not* create an unnecessary obstacle to international trade if it:
 - falls within the scope of one of the explicitly mentioned legitimate objectives; and
 - is in accordance with relevant international standards.

TBT AGREEMENT

- Annex 3 Code of Best Practice:
 - International standards shall be used as a basis for standard development where they exist or their completion is imminent;
 - Expressly preserves Member States' right/ability to take action not based on an international standard where said international standard would be ineffective or inappropriate.

THE WTO TOBACCO PLAIN PACKAGING DISPUTE: LESSONS LEARNT



Nicole D. Foster, June 30, 2023

LESSONS LEARNT / UTILIZING THE EXISTING WTO POLICY SPACE

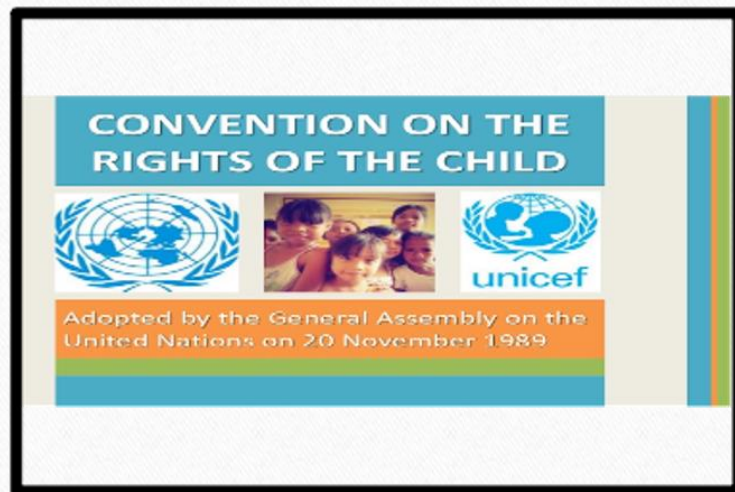


- Clearly defined public policy objective
 - Evidence validating this public health objective i.e. substantiating that there is in fact a public health problem
- Contribution of measure to the public health objective
 - Evidence substantiating the contribution of the particular measure to meeting the public health objective
- No reasonably available less trade-restrictive alternatives
- Non-discriminatory
- Due process

OTHER TRADE & HEALTH PLAYERS: CODEX ALIMENTARIUS

- Joint body of FAO and WHO
 - Its standards fall within the scope of Article 2.5 of the TBT Agreement i.e. presumed to be WTO-consistent.
 - Current work on-going on nutrition labelling but these discussions will take some time to produce a definitive outcome. Outcome will also necessarily be a compromise (minimum) position.
 - The national experiences and evidence can make a useful contribution to these discussions i.e. the two processes do not have to conflict.

OBESITY PREVENTION POLICIES: A HUMAN RIGHTS ISSUE



State Obligations

RESPECT: States to refrain from interfering with or curtailing enjoyment of human rights

PROTECT: State to prevent third parties from interfering with the right, particularly re marginalised and vulnerable groups.

FULFIL: state to take action to facilitate, provide and promote the conditions in which the right can be fully realised.

FRONT OF PACK WARNING LABELS: A HUMAN RIGHTS ISSUE

- FOPWL schemes very much in line in particular with the right to information since they aim to:
 - enable consumers to make informed, healthier food choices by providing simple, easy to understand nutritional information;
 - raise consumers' awareness of foods that are high in sugar, salt and saturated fat;
 - discourage consumption of food high in sugar, salt and saturated fat (in light of established linkage between poor diet/obesity and NCDs).

FRONT OF PACK WARNING LABELS: A HUMAN RIGHTS ISSUE

- **Statement by the UN Special Rapporteur on the right to health on the adoption of front-of-package warning labelling to tackle NCDs (July 27, 2020):**

Where States have effectively adopted front-of-package warning labelling regulations to promote public health, some companies have resorted to or threatened litigation. They have also drawn on other campaigns and tactics to delay and/or block implementation of these regulatory measures, to overturn them or diminish their effect. This constitutes an undue influence of corporations on government decision-making that should be addressed by States to ensure that regulations to prevent harm to people's health, derived from the consumption of unhealthy foods and beverages, are driven by human rights and scientific evidence free from conflicts of interest....

The adoption and implementation of front-of-package warning labelling is a rights-compliant response. By delivering clear and complete information in a simple way, it encourages consumers to make informed decisions about their diets, without making additional efforts or requiring qualified knowledge. This allows individuals to decide what they want to eat according to their preferences, tastes and health status. At the same time, front-of-package warning labelling promotes healthy decisions, discourages the consumption of food products that can have a detrimental impact on health, and counteracts the effects of living in an obesogenic environment.

CONCLUDING COMMENTS

- While CARICOM Member States do not have a ‘blank cheque’ when it comes to formulating and implementing public health policies, **WTO rules are *not* a barrier** to implementing their obesity prevention policies.
- Effective inter-Ministry dialogue and coordination (between Health and non-Health Ministries particularly Foreign Affairs, Foreign Trade and International Business) in this space is critical.

THANK YOU!!!

THE END