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Economic Treaties and Alcohol in the Western Pacific Region

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Contents

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1. Introduction

Economic treaties – global, regional and bilateral – are of increasing importance in the Asia Pacific region. Their purpose is to facilitate international commerce in part by ensuring equal treatment of imported and domestically produced products, services and investments by governments of both industrialised and developing countries. The intended benefits of economic treaties are to support economic growth and prosperity through increased trade, to increase product availability and choice, and to reduce prices to consumers through increased competition.

From a trade perspective, alcohol is a commercial 'good'. The distribution, marketing and production of alcohol involves services and investments which increasingly have the right to establish anywhere.[1] From a public health perspective, however, alcohol is not a trade commodity like any other. Its use can involve adverse consequences. WHO estimate that alcohol is the most important factor in disability adjusted years of life lost in developing countries with low mortality (such as many countries in the Asia Pacific region). This means there are inherent tensions between trade goals and public health goals[1] which require careful consideration.

A new or larger alcohol industry in a developing country is often assumed to have positive effects on economic development. However, effects on public health and public order are negative and there are likely to be negative as well as positive impacts on employment and the economy as a whole.[2,3] In recognition of this the World Bank has issued a Note that it will invest in alcohol projects only where there are strong positive development impacts and consistency with public health and social policy concerns.[4]

Economic treaties facilitate the entry of global alcohol companies into new markets, particularly developing nations with relatively low current alcohol consumption and few alcohol control policies. The result is increased availability and increased marketing leading to higher alcohol consumption and higher levels of alcohol-related problems. This can particularly be an issue for developing countries in the Western Pacific region. These countries may lack relative power and resources in the negotiation stage of economic treaties and in raising and meeting challenges to their enforcement. Enforcement of agreements by the World Trade Organization (WTO) has weakened public health-based alcohol controls in a number of developed and developing countries.[1,2,5]

National and regional policies that run counter to trade treaty principles may therefore be necessary in the interests of public health.[6] Increased availability of alcohol and reduced prices to drinkers leads to heavier consumption and increased alcohol related harm.[7] Some economic treaties specifically allow exceptions or exclusions to protect human or environmental health. Nevertheless, there is growing concern that economic treaties now extend beyond international trade in goods and are framing and shaping the way governments may formulate domestic policies on alcohol.[1,8,9]

This paper sets out to describe in general terms the economic treaties affecting countries in the region, to detail the principles of the agreements and the way in which these may have implications for governments' ability to introduce or maintain policies which help minimise the harm experienced from alcohol. It illustrates the voices of competing interests in relation to the economic treaties and concludes with some relevant policy options.

2. Economic treaties in the region

WHO member countries in the Western Pacific Region belong to or are negotiating a wide range of economic treaties, both within this region and with countries in other regions. Membership of the different agreements is listed in the Appendix.

Many are members of the World Trade Organisation (WTO). Its General Agreement on Tariffs and Trade (GATT) covers trade in goods worldwide, including alcohol. The General Agreement on Trade in Services (GATS) extends GATT trade principles to services, including distribution and advertising. As this includes financial services, the WTO has described it as the 'world's first multilateral agreement on investment'. Other economic treaties, noted below, are regional or negotiated between two or more countries inside or outside the Western Pacific region.

The WTO's model for recent and future economic treaties is GATS. Similar principles, procedures and coverage are being implemented piecemeal through bilateral or regional agreements or requests, although the resulting variations may be sufficient to prevent eventual consolidation. The issues and implications raised by GATT and GATS in regard to alcohol, and experiences under similar trade treaties in other regions, are very relevant for countries in the Western Pacific region to consider as they enter into economic treaties.

3. Trade treaty principles and challenges to alcohol policies

This section explains principles contained in economic treaties such as GATT and issues arising from the expansion of agreements beyond trade in goods, in GATS and similar recent agreements. This is followed by examples from Europe and other regions, then from the Western Pacific Region, of challenges on non-compliance with trade agreements that required countries to alter their alcohol control policies.

3.1 Access, tariff reduction and equal treatment

The purpose of economic treaties between countries is to reduce restrictions in member countries' markets. Agreements vary in whether they are based on 'commitments' by trading partners or by 'negative lists' of excluded goods, sectors or services, but all require the progressive removal of barriers to trade and competition, and the inclusion of more products, services or sectors in successive rounds of negotiation.

Economic treaties allow some protection of local economic development, including local alcohol production, through the choices governments make in what sectors or services are committed or excluded. But these exclusions are subject to progressive liberalisation in further rounds of negotiations. Future governments can add but not withdraw commitments (although there are recent precedents under GATS, at the cost of negotiating a 'compensatory adjustment' in another area of trade)[10].

Typical barriers to trade in alcohol and other goods are import licensing systems and tariffs on imports, which economic agreements are generally designed to remove or progressively reduce. This can sometimes be done on a time frame that allows adjustment by domestic industries, provided products are made wholly or largely from domestically produced components ('rules of origin'). In small economies, this may not be the case. Beer production in Samoa and Tonga, for example, uses a high proportion of imported components.

The requirement in many treaties for governments to reduce tariffs on alcohol imports does not mean that alcohol cannot be taxed, provided that foreign and local products are taxed equally. Alcohol import tariffs make an important contribution to government revenue in small Pacific nations and other developing economies with limited revenue from company and personal taxes. Tariffs on alcohol products can be replaced with alcohol excise taxes at the same level on both imported and domestic products.[11] Alcohol taxes resulting in higher prices are a cost effective public health response to reduce alcohol-related harm.[12]

In practice, however, this ability to impose excise taxes can also be affected by the treaty requirement for governments to provide ‘effective equality of opportunities for imported products’. The key principle is government actions should not discriminate against imported goods to protect domestically produced ones, even if this differential treatment is indirect or unintentional. This principle applies to cross-border entry into the market and, increasingly, to many actions governments take that affect how their domestic markets operate.

Access to domestic alcohol markets may also be affected by policies on foreign investment or regulations requiring joint ventures with local partners. An increasing number of bilateral and regional agreements constrain governments by granting new legal rights for investors.[13] Global alcohol companies are increasingly using joint ventures, part-ownerships or direct investment in new plant to establish a major presence in new markets, rather than relying on sales of imported alcohol products. These new arrangements reflect changing logistics, but also the lifting of constraints on trade or local regulation as a result of economic treaties. That is, access to investment has become as important to global alcohol companies as access through trade in goods.

3.2 Distribution, advertising and domestic regulation

‘Non-tariff barriers to trade’ can also be challenged under economic treaties. These include alcohol control policies within the domestic market that may discriminate between products or restrict competition – such as policies on where some types of alcoholic beverage may be sold or may be advertised. Trade in services under GATS now includes distribution and advertising. Following the Hong Kong talks on GATS, the USA and EU are together making ‘plurilateral’[14] requests to trading partners that particularly target distribution as a priority sector.[15] This includes distribution of alcohol. Other bilateral agreements now also include services such as advertising and distribution,

Although advertising ‘services’ are covered by GATS, the WTO also viewed advertising as ‘trade goods’ covered by GATT in a decision against Canada. This means that membership of GATT as well as membership of GATS could endanger regulations restricting advertising, if these can be argued to be unequal treatment that affects competition between imported and domestic alcohol products.[13] It has been argued under other agreements that policies that restrict alcohol advertising are a non-tariff barrier to trade, in that they inhibit imported brands and new products from being introduced into the market.

Many of the legal arguments that supported challenges to alcohol regulations described below have been formalised in GATS.[1,8] Moreover, GATS specifically addresses domestic regulation. ‘Technical standards and licensing requirements’ must not present unnecessary barriers to trade in services. While GATS allows ‘reasonable, objective and impartial’ regulation, it lays down rules about what this is. 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.’

The WTO has more than 900 pages of rules on permissible and non-permissible non-tariff barriers, including domestic policies on environmental protection, food safety and health services. The WTO encourages governments to harmonise a diverse range of technical standards with implications for public health – at the level least restrictive to trade.[16] Some bilateral and regional agreements, such as the North American Free Trade Agreement (NAFTA), have disputes rules more extensive than WTO’s that increased the likelihood of regulations being challenged by allowing companies to directly challenge governments of other countries.[13]

GATS applies to government at all levels – national, state, local or regional – but excludes ‘services supplied in the exercise of governmental authority’ provided this is ‘supplied neither on a commercial basis, nor in competition with one or more service suppliers’. However, it is difficult to define and protect government services in policy environments, where public and private service provision often overlap and commercial and public interests are intertwined.[9] In New Zealand and Australia, there are now few services related to public health that do not include at least some degree of competition with private providers, including alcohol health promotion and local government regulatory ‘services’. As a result, these services appear not to be protected by the governmental authority exclusion.

3.3 Challenges to alcohol policies under economic treaties in other regions

Exclusions, delays, non-compliance and regulatory regimes may be challenged under economic treaties by partner governments through the WTO court system. Compliance is backed by financial sanctions or the risk of retaliation in sensitive sectors by trading partners.[1,17] The GATT, NAFTA, the 'single market' of the European Union and wider European Economic Area, and GATS have all been used to challenge the alcohol control policies of treaty members or prospective members in a variety of ways. Changes are being required that may not have been anticipated by policy makers or by local alcohol industries[13,18] – as the USA found when the WTO ruled that its policies to curb internet gambling denied the tiny islands of Antigua and Barbuda legitimate access under trade agreements.[19]

Under economic treaties, import tariffs can be replaced with excise taxes on both imported and domestic products, the level at which rates are set can be an important public health tool.[7,20,21] However, the European Union's single market led to downward harmonisation of alcohol excise tax rates across Europe, and changes to longstanding Nordic tax policies to reduce alcohol consumption.[22] Alcohol tax rates dropped 45% in Denmark in October 2003 and 40% in Finland in March 2004, with marked increases in alcohol consumption levels within weeks of the change.[1,23] Sweden is struggling to maintain its high alcohol tax regime, because of the 'access' principle. The single market of the EU allows a very high personal alcohol allowance across borders, and low alcohol taxes and prices in Germany and Estonia have resulted in very high cross-border shopping by Swedes. A recent study tries to predict whether this, or a reduction in the Swedish alcohol tax rate to prevent it, will have the greatest adverse effect on total consumption and on alcohol related harm.[24]

The 'equal treatment' principle can be invoked if a foreign companies feels that policies disadvantage one type of alcoholic beverage compared to another. Sweden found itself in the EU courts because it used 'discriminatory' tax rates to encourage Swedes to drink medium beer rather than the higher potency strong beer, wine and spirits.[25]

Distribution of alcohol has also come under pressure. Norway's state monopoly system allowed only beer to be distributed by grocery stores, but was required under the European Economic Area agreement to allow similar strength ready-to-drink spirits mixes to be distributed in the same way. A survey of 15 and 20 year olds three months after the change showed consumption of these ready-to-drinks increasing from 0.4 litres of pure alcohol per person to 1.4 litres. Although this was expected to stabilise, it appeared to be *additional* to beer consumption, not a substitute.[26] When Canada, Sweden, Norway and Finland joined GATS, they all excluded their state-owned bottle stores from their commitments on distribution services.[1] Research shows state retail monopolies to be an effective alcohol control strategy.[7] Some US states also sell alcohol by the bottle through state stores. As GATS applies to governments at all levels, the EU requested 17 US state governments (including Utah) to reduce their state monopolies and other restrictions on the distribution of alcohol. This request has stalled, along with GATS itself. However, exclusions of state alcohol stores are likely to come under pressure again from the EU-USA plurilateral request process[14] to address 'unnecessary trade distortive barriers' in distribution services.[1,27]

Policies regulating alcohol advertising have also been challenged as non-tariff barriers to trade and competition within the importing country. In early 2003, Denmark dropped its ban against alcohol advertising on television for this reason. Swedish and French bans on alcohol advertising been challenged in the EU courts, but both governments have succeeded in maintaining strongly restrictive policies to meet public health goals (see section 5.2).

Almost all alcohol regulation, even if non-discriminatory, could be argued to be 'non-tariff barriers to trade' because it seeks to curb or influence commercial activities to meet other public interest objectives. Although economic treaties such as GATS recognise the right to regulate and to protect public and environmental health, these rights must be exercised in ways that do not conflict with the treaties' rules. Under GATS Article VI(4), for example, even though public health goals are acknowledged in the treaty, the means used to achieve them could be eventually challenged as 'more burdensome than necessary'.[15]

3.4 Challenges to alcohol policies under economic treaties in the Western Pacific Region

Trade liberalisation has enabled the importation and marketing of cheaper alcohol in the region. For example, because tariffs are set lower between members of the Asian Free Trade Area, scotch whisky is being bottled in the Philippines before being imported into Malaysia and Thailand. The result is lower end prices to drinkers – and price is a key factor affecting consumption levels, particularly among young people.[28-30] In Thailand, investment in local production of ready-to-drink spirits mixes enabled one brand to reduce its price by 60%, contributing to increased drinking among women aged 20-24. Thailand joined the Asia Free Trade Agreement in 2003 and the following year the value of spirits imports from ASEA countries, mainly the Philippines and Indonesia, went up by 525%.[31]

Under economic treaties, challenges on alcohol access and tariffs or alcohol taxes have affected availability and price, which are key factors in levels of consumption and of alcohol related harm.

Under the GATS rule of equal access for ‘like’ or ‘substitutable’ products, Japan was required by the WTO to open its borders to the importation of vodka and gin because they were ‘like’ the traditional spirits drink *shochu.*[32] This greatly increased international access to Japanese drinkers and the availability of distilled spirits in Japan. Through partnership arrangements, Japan’s two alcohol giants now distribute and promote international beer and spirits brands in addition to local and traditional alcoholic beverages. This is likely to have contributed to the rise in alcohol consumption in Japan. In the last 30 years, the proportion of drinkers and the number of alcoholics in Japan has increased by almost 250%.[33] Like Canada and Scandinavian countries, Japan excluded its alcohol distribution services when it joined GATS, and this can be expected to come under pressure in the future.

New Zealand is an example of a country with open access to alcohol importation and to foreign investment, although local production of some spirits types is still protected by low tariffs. Ready-to-drinks or spirits for ready-to-drinks are now imported. Cheap cask wine now often bears the label ‘Product of New Zealand, Australia and Chile’ – meaning any or all. Open access, partnerships between New Zealand and global alcohol companies, supermarket ownership by Australian chains and changes in regulation that allow supermarket sales of beer as well as wine have led to a recent notable increase in the volumes and brands from many countries now offered to grocery shoppers at prices that dropped markedly from late 2005. Alcohol consumption had been falling since the early 1980s, but regulatory changes that increased alcohol availability and price competition have contributed to increased drinking by teenagers and the per capita rate of pure alcohol consumed is rising again.[34-36]

Economic treaties mean that alcohol excise regimes and other domestic policies may be challenged by trading partners on grounds of unequal treatment. Korean and Japanese alcohol tax rates considered to favour local products over imported ones have been challenged and changed, as have alcohol tax policies in Chile, Canada (including minimum pricing), Denmark and Finland. Japanese alcohol tax rates reflect ingredients rather than alcoholic content, so was challenged as unequal treatment of imported beers. When the government adjusted the low rate on happoshu, a traditional low malt beer, Japanese breweries developed ‘third generation’ beers brewed from peas. These are taxed at a ¥22 lower rate per can, and the resulting lower retail prices have created a boom in this product category.[37] China taxes domestic alcohol production and increased the rate on spirits in 1998 as part of policy to encourage consumption of beer and other lower alcohol products. The removal of tariffs on imported spirits and wine when China joined the WTO led to increased availability of imported spirits city supermarkets and hypermarkets and by 2006 'booming sales' were reported.[38,39] This has undercut Chinese policy to reduce the total alcohol consumed.[39]

In 2003, New Zealand came under pressure from the European Commission not only to widen the goods and services under their economic treaty but also on the way New Zealand conducts its domestic regulation.[40] In regard to alcohol, New Zealand's Sale of Liquor Act is already consistent with Article VI (4)[15], in that its licensing system requires responsible management but no longer restricts the number of alcohol outlets. This has greatly increased alcohol availability. Provisions similar to Article VI (4) were also included in the Local Government Act 2002, which governs planning for the location of alcohol outlets and local policies related to licensing and other alcohol issues.[41] Alcohol advertising policy is currently under review, however, and this pressure to adhere to WTO 'disciplines' may be used as an argument.

Canadian researchers have made documents publicly available[42] that show that EU negotiators have been aggressively seeking concessions from developing countries that would make it difficult to address alcohol problems in the future. For example, the opening up of Indian wholesale and retail services would include the distribution and sale of alcohol. Restrictions on marketing, advertising and promotion would also be affected. The EU position asserts that the EU would discuss only very limited exceptions to the EU requests, for such things as 'arms, ammunitions and explosives'. When the EU was extended to include Eastern European countries in 2004, the new constitution included a public health section on protective measures for tobacco and alcohol, but this specifically excluded harmonisation of laws and regulations. Some new EU states already had full GATS commitments which included alcohol distribution.

Researchers consider that WTO rules are 'casting a deep chill on policy experimentation', freezing existing alcohol regulation and beginning to roll back existing policies so as to comply with restrictive and increasingly comprehensive international treaties. The ratchet mechanism of progressive liberalisation means future governments may not be free to pursue certain health promoting policies or to reinstate 'non-tariff' restrictions that a previous government had removed, even to address cases of market breakdown or implications not anticipated at the time of negotiation.[1,8,13]

4. Impacts of economic treaties on alcohol industry

The removal of barriers to international trade under economic treaties has contributed to the global reach of large alcohol corporations that began as breweries, distilleries or wine companies in countries with traditions of drinking and 'mature' alcohol markets. Companies consolidated nationally in the 1970s, expanded internationally in the 1980s and, with changes in transport, communications and trade arrangements, went global in the 1990s. This expansion has been facilitated by regional and international economic treaties that are designed to reduce import restrictions and allow investments and the acquisition of local alcohol companies.

"Companies with a global footprint will benefit from the economies of scale that consolidation will bring," said the CEO of SABMiller, a South African/US beer company that is now second largest in China, India and the world. He gave the lowering of trade barriers, as well as economic development and 'converging consumer tastes', as reasons to expect further global consolidation of the alcohol industry. The UK company Diageo, now world leader in spirits and wine, says the 'single market' of the European Union has been 'a fantastic lever, with great price harmonisation across Europe, moving prices as we haven't been able to do in the last couple of years'.[43]

For global alcohol companies, recent growth and profitability has been highest in first Eastern Europe and now in Asia, particularly China. In 2004, the total volume of beer sold in China – but not its per capita consumption – overtook that of the USA, making it the world's largest and fastest growing market. Volumes in Asian as a whole are beginning to match those of Europe.[44] Recent reports to shareholders and investors promise further growth from targeting countries with growing or recovering economies, growing youth populations, and low current alcohol consumption. A clear expectation is expressed that marketing strategies in these countries will increase consumption.

For example, Carlsberg, which now has 20 breweries in West China and part-owns others in Laos, Malaysia, Singapore and now Cambodia, says that 'the potential for growth in the Cambodian beer market is significant as the beer consumption per capita is only about 6 litres per year, which is below the level in the neighbouring countries'.[45] Anheuser Busch (Budweiser), which owns or part-owns 64 breweries in China, notes that China's 'current per capita consumption levels are only 20% of the levels of many developed countries'.[46] The Japanese corporation Kirin is focusing expansion on Asia and Oceania, noting that beer consumption growth rates in Asia are the highest in the world.[44] It already has joint ventures with Heineken, Budweiser and global spirits brands now owned by Pernod Ricard, and owns 41% of the No.2 Australasian brewery Lion Nathan.

Company reports reveal strategies in common. As well as importing global ‘premium’ brands into new markets or producing them locally, they are buying or acquiring a share of local companies with the best selling lower priced brands. The greatest profitability comes from owning the top global and local brands in each market. Local production in developing countries allows lower costs and lower prices better matched to local disposable income levels.[5] Acquisitions also provide local production facilities, distribution systems and cultural know-how. Economies of scale from global and local consolidation free funds for brand marketing. In 2005 many alcohol corporations – including major companies operating in this region – were planning increased ‘investment’ behind their brands to ensure growth in sales.

To support the growth of the global market, alcohol companies and industry organisations have been quietly active in encouraging trade liberalisation. For example, in 2003 the World Spirits Alliance met in Geneva to agree on a unified international trade strategy of open markets. Its position paper on GATS states the industry’s priority objectives as significant liberalisation and, where possible, elimination of tariffs and non-tariff barriers, including barriers to distribution and advertising. In mid 2004 its representatives met with the WTO in Geneva.

At the 2005 G8 Summit on international trade, world poverty and climate change, Diageo had a strong presence as an official sponsor. Diageo reports paying £125,000 for this opportunity, including a cash donation to the host, the British government. The Summit was held at a Diageo-owned hotel in Scotland. Diageo gave the 4,000 government delegates and journalists a complimentary bottle of Johnny Walker and operated the bar, with profits and a corporate donation going to water projects in Uganda.

5. Concern among NGOs and governments in the region

In September 2004, non-government organisations and public health agencies from the Cook Islands, Fiji, Kiribati, Niue, Samoa, Tonga, China, Japan and Sri Lanka met in Auckland to discuss concerns about alcohol marketing. The meeting was funded by the New Zealand Ministry of Health. Participants reported on issues related to alcohol supply and marketing in each of the countries represented. Participants shared a growing concern about drinking by young people. Although proportions of drinkers are low in Pacific and Asian populations, those who do drink tend to do so heavily.[47] The issue of including alcohol and tobacco in the Pacific Island Countries Trade Agreement was raised at this meeting – see the PICTA case study below – and participants resolved to advocate on the likely social and health implications of this before the 2005 Pacific Forum meeting that would consider inclusion.

The issue of including alcohol in trade agreements was then raised by public health officials from 17 Pacific countries at a meeting co-organised by WHO and the Secretariat of the Pacific Community (SPC) in Noumea. Officials from the different Island nations shared concerns about drinking by young people and the role of alcohol in domestic violence and other crime. They undertook to gather further information on alcohol issues and policies for country reports.[48] Their concerns, including PICTA, were taken up by Pacific Health Ministers reviewing the Healthy Islands commitments on non-communicable diseases. The Health Ministers' recommendations fed into the meeting of Forum Trade Ministers two months later. In June 2005 the New Zealand's Ministry of Health, once again provided funding support for a SPC and WHO-WPRO co-organised meeting of Pacific Ministry of Health officials and NGOs to work on a draft framework to minimise harm from alcohol in the Pacific.

The second regional workshop of the Pacific Drug and Alcohol Research Network, meeting in Fiji in July 2006, acknowledged the decision taken by Trade Ministers to exclude alcohol and tobacco from PICTA and urged governments to continue the exclusion of alcohol and tobacco when it came up for reconsideration in 2007.

In Australia, the effect of economic treaties on domestic alcohol policies has been noted by policy makers. In May 2006 the Australian Ministerial Council on Drug Strategy endorsed a National Alcohol Strategy for 2006-2009, developed through state- and sector-wide consultations. The Strategy notes that:

> International trade agreements have served to weaken national level alcohol controls, which has raised public health concern and led to calls for an international framework convention or treaty on alcohol. Concern has also arisen from the possible inclusion of alcohol in the Pacific Island Countries Trade Agreement (PICTA). As a significant exporter of alcohol, Australia has a responsibility and is in a position to provide leadership to regional neighbours to minimise the social and public health risks associated with increased availability of alcohol.

The Strategy states that Australia is well positioned to advise on the health and social impacts arising from the inclusion of alcohol in free trade agreements, and should continue to build international partnerships with the aim of reducing alcohol related harm in the region.[49]

A March 2006 report from the Victorian parliamentary committee on Drugs and Crime Prevention questioned whether alcohol can be viewed as an ordinary commodity for the purposes of deregulation and competition. The committee saw a need for coherent alcohol control frameworks at international level, as well as national, state and local level. It recommended that Australia advocate for an international convention on alcohol through the World Health Organization to establish an 'over-arching policy framework'. It cited WHO regional agreements such as the Declaration on Young People and Alcohol as useful models for national approaches to addressing alcohol consumption and alcohol-related harm. It also recommended that the Victorian liquor licensing legislation be amended to express harm minimisation as the *primary* aim and objective in all licensing matters.[50]

Tonga and Thailand have expressed their concern about alcohol issues in this region and globally by playing a key role in successfully promoting a Resolution on Public Health Problems Caused by Harmful Use of Alcohol to the 58th World Health Assembly in 2005.[51]

Concern at an international level has also been expressed by the World Medical Association, whose 2005 conference recommended that its member organisations:

> 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.[52]

In August 2006 the inaugural meeting of the Asia Pacific Alcohol Policy Alliance (APAPA) was held in Bangkok. Participants at the Bangkok Alcohol Policy Conference included the following comments concerning economic treaties in their conference statement (http://apapaonline.org/policy_tools/Policy_Documents/Bangkok_response_to_alcohol_strategy.pdf)

> **Economic Treaties and Agreements**
> Participants discussed experiences in the region in which economic agreements and treaties had dramatically increased availability of imported commercial alcohol with increased marketing and decreased price. This had contributed to the very fast increases in consumption, particularly among young people, and an increase in alcohol-related harm. Participants

therefore wished to see clear reference to the need for regional co-operation in order to exclude all alcohol goods and services from economic agreements and treaties. Where alcohol has already been included in trade agreements and treaties governments may be urged to use alcohol excise taxes to compensate for reduced import tariffs and to specify public health objectives clearly in order to protect controls on marketing and distribution which may otherwise be challenged under the conditions of the economic agreements and treaties.

The WPRO Strategy was acknowledged for its inclusion of mention of economic treaties (4.3.3). However, participants felt that these statements did not reflect strongly enough the importance of the issue for the region. It was noted that the exclusion of alcohol from an economic agreement in the region (PICTA) was strongly supported by the NGO community in the region and that the strategy should reflect this as an appropriate measure.

It was felt that it was essential to stress that economic treaties and agreements should not lead to increased alcohol related harm by diluting existing control polices or preventing the implementation of new evidence based policies. This can be achieved by not treating alcohol as an ordinary commodity.

6. Bracketing alcohol out of economic treaties

In order to protect effective domestic policies to reduce alcohol related harm, some countries, and some regions, have excluded alcohol products, alcohol distribution or alcohol advertising from coverage by the economic treaties to which they belong.

6.1 A case study: The Pacific Island Countries Trade Agreement

When the Pacific Island Countries Trade Agreement (PICTA) was negotiated, alcohol and tobacco were excluded for a two year period from implementation. PICTA commenced when six of the potential members had ratified the agreement, making this aspect of it due for review by Trade Ministers in 2005. Eight years after the commencement of PICTA, New Zealand and Australian – both alcohol producing and exporting countries with open markets on alcohol – may negotiate to join.

At the September 2004 meeting of Pacific and Asian NGOs and public health agencies mentioned above, a participant circulated an unreleased 2003 report (‘the Narsey report’[11]) commissioned by the Pacific Forum Secretariat on the inclusion of alcohol and tobacco in PICTA, together with an issues paper summarising its contents for Ministers.

The terms of reference for the study did not include health effects of free trade in these products; just the impacts of inclusion on local economies and government revenues from tariffs. Tobacco sales in the Pacific Islands were already dominated by one producer, British American Tobacco, using a small amount of local leaf. Beer and spirits were both imported from Australia and New Zealand and produced in some islands, with the larger breweries in Fiji, Papua New Guinea, Samoa and Tonga and the Fiji distillery part-owned by the Carlton Foster group. The report noted that including alcohol in PICTA was likely to lead to some change in the location of Pacific production, with greater impacts expected under PACER. The Narsey report recommended that both tobacco and alcohol be included in PICTA, and that tariff protections be replaced by alcohol excise taxes at a similar level on both imported and domestic products, so as to protect government revenues and price levels. Options included putting alcohol and tobacco on an ‘excepted’ or ‘negative’ list – which means a slower time frame for tariff reduction.

There was considerable concern among the NGOs and public health agencies that the social and public health implications of free trade in alcohol and tobacco, and the economic consequences of these, were omitted from the report. While converting tariffs into excise taxes addressed price, the entry of regional and global companies into these small markets was anticipated to greatly increase alcohol availability and marketing. Participants undertook to raise awareness among NGOs and health and trade Ministers in their home country, and to ensure that advice on social and health impacts was available for the Pacific Trade Ministers meeting in May 2005.

Some participants were on their way to Noumea for a meeting between the Secretariat of the Pacific Community (SPC), the World Health Organization and Pacific health agencies on Alcohol and Health in the Pacific. They raised their concerns about the inclusion of alcohol and tobacco in PICTA. The issue was mentioned in the final communiqué, which recommended that:

> The Pacific Island Countries and Territories and regional organisations should work to ensure that regional and global trade agreements such as the Pacific Islands Countries Trade Agreement (PICTA) do not limit the capacity of signatory countries to utilize taxation or other policy measures to prevent the public health and social disorder consequences of alcohol;

In the course of NGO advocacy on the issue, the need for improved communication between the ‘silos’ of government became clear. There was limited awareness in health ministries of the state of play on the PICTA trade negotiations. Trade officials had little background on the health issues. The effects of smoking are well known and they were aware of the Framework Convention on Tobacco, but tended to see alcohol as fairly unproblematic. It is likely that the small size of Pacific Islands public services assisted communication once the issue had been raised.

The SPC played a strong role by commissioning an investigation of the likely impacts on population health of including tobacco and alcohol in PICTA.[53] This report looked at the costs and economic benefits of tobacco and alcohol consumption, as well as pricing and other regulatory strategies to control use. It gave brief information on consumption and policies in each Pacific Island member country and reviewed alcohol policy recommendations at the international level. It recommended that alcohol and tobacco continue to be excluded from the entire PICTA.

This report was released in Apia, Samoa in March 2005 on the occasion of a meeting of Pacific Health Ministers to review their commitment to Healthy Islands programmes on non-communicable diseases. Although not on the agenda, it prompted considerable debate, leading to a recommendation in the Samoa Commitment to ‘seek broad government support to resist the inclusion of tobacco and alcohol into trade agreements’.[54]

This recommendation then fed through departmental and political processes to be considered at the Pacific Forum of Trade Ministers two months later in Nadi. That meeting:

- noted the findings of the SPC study and the recommendations taken by the Joint WHO /SPC Pacific Ministers of Health Meeting in Apia in March 2005 regarding the health implications of integrating Alcohol and Tobacco into PICTA;
- noted the need for the FICs to discuss the Narsey and SPC studies further at the national level and that the Secretariat and the SPC have offered to assist with those consultations as much as possible;
- agreed to defer a decision on the integration of Alcohol and Tobacco into PICTA for another two years to allow further time to assess all the implications of such possible inclusion.[55]

That is, the inclusion of alcohol and tobacco in PICTA will need to be considered again in May 2007.

6.2 Other examples of taking alcohol out of economic treaties

PICTA is not the only regional economic treaty to exclude alcohol and tobacco. Economic treaties in the Commonwealth of Independent States (CIS) – the former Soviet republics – also exclude alcohol and tobacco products.[56]

As mentioned in section 3.3, Japan, Canada, Sweden, Norway and Finland excluded alcoholic beverages from their GATS commitments on distribution services, at the wholesale and/or retail level, and have so far retained these exclusions against pressure from trading partners.

Both France and Sweden have retained restrictive policies on alcohol advertising, despite challenges in the EU courts. Sweden's policy banned all alcohol advertising, except for print advertisements in hospitality trade magazines only. This exception was challenged by a cuisine magazine under the EU trade treaty and ruled to be discriminatory. However, in new legislation from January 2005 Sweden retained its ban against alcohol advertisements on radio and television, including satellite, and alcoholic beverages more than 15% absolute alcohol (i.e. spirits) may not be advertised in any periodicals or other journals, except point of sale materials. The legislation also made the public health purpose of the policy more explicit.

France's Loi Evin prohibits alcohol advertising on television, radio and cinemas, as well as alcohol sports sponsorship. Permitted forms of alcohol advertising may depict product characteristics only, and not use emotive or 'lifestyle' images. This legislation has been challenged in French and EU courts. In July 2004, the European Court of Justice ruled that it was a restriction of freedom to provide services, but was justified by the aim of protecting public health.[57]

Countries in the region already exclude particular sectors and services about which they have concerns. For example, in the new 'P4' agreement between New Zealand, Singapore, Brunei and Chile, New Zealand has put health, education and welfare services on its 'negative list' and its trading partners have reserved the right to restrict capital movements. New Zealand has also kept publicly-funded health care services out of its GATS commitments. In Canada, the Ontario Public Health Association persuaded Canadian trade negotiators not to make any GATS commitments – or requests of other countries – related to alcohol. Canada also decided not to join the EU-US plurilateral request to other countries on distribution.

Country specific exceptions cannot be considered permanent, however. They will come under pressure in each round of renegotiation. Exclusion of alcohol in the economic treaty itself is likely to be a longer term solution.

6.3 A precautionary stance

Most effective alcohol control strategies other than taxation are inconsistent with progressive liberalisation under the economic treaties. Many countries in the Western Pacific Region report limited development of alcohol control policies, and often little enforcement of current alcohol laws.[5,48] This is why the examples above of bracketing alcohol out of economic treaties altogether are of particular interest.

While there is inherent tension between trade liberalisation and alcohol policies this does not mean that restrictions on alcohol availability and marketing are impossible for countries who are party to economic treaties as the above examples of France and Sweden show. Where alcohol is covered by economic treaties, governments can make alcohol control legislation less vulnerable to treaty challenges by ensuring that the legislation explicitly states that the goal of the policy is to reduce alcohol related harm and protect human health. A government seeking to reduce treaty conflicts needs to be carefully even-handed in treatment of domestic and foreign companies, and of different alcohol product categories and outlet or media categories, so as to avoid charges that it unfairly restricted competition within it’s domestic market. The objective and transparent criteria on which policies are based will include research evidence on which policies will be most effective in achieving the government’s public health goals.

Given the experiences outlined in this paper, governments may decide, individually or together, to take a precautionary stance in regard to international trade treaties, alcohol policy and public health.[1] To protect much-needed regulatory flexibility on alcohol from the constraints of economic treaties, governments will need to carry out thorough reviews of existing commitments and negotiating positions affecting alcohol policy, make no commitments in alcohol related services and refrain from seeking alcohol related commitments from other countries.

7. Policy options

7.1 The need for collective action on alcohol

Alcohol products are ‘special goods’ that have adverse effects on public health and wellbeing and public order. It is very difficult for individual governments to use existing treaty exclusions, exceptions, limitations and other protection clauses to protect public health alcohol policy – effectively and permanently – from the treaties’ substantive obligations. However, governments need to be free, without risking sanctions or forfeiting membership in economic partnerships, to adopt policies, restrictions and other interventions to control the price, availability and marketing of alcohol in order to reduce alcohol related harm. Such freedom will be more easily established and maintained if it is done on a regional basis, rather than by individual countries attempting to exclude all relevant alcohol goods, distribution services and regulations and defending those exclusions in successive rounds of negotiations or against challenges. Small or developing economies have fewer resources for such matters than some of their larger trading partners.[5]

Increasing the access of international alcohol products through economic treaties can be expected to increase alcohol availability, advertising and marketing and price competition in the domestic market – that is the purpose of trade treaties. It is therefore appropriate that alcohol policy be excluded from international economic treaties by incorporating broad protective exclusions for alcohol and alcohol-related services and investment into the agreements themselves. The adoption of a Framework Convention on Alcohol would support this aim.

7.2 Public health objectives and evidence

Recent economic treaties, such as GATS, allow exceptions for policies that run counter to trade principles where these are ‘necessary to protect human, animal or plant life or health’, but set restrictive criteria that shape the use of these exceptions. Governments’ chances of successfully invoking these exceptions may be improved if their legislative and policy objectives are clearly stated as being to protect public health and reduce alcohol related harm. Existing regulatory legislation may need to be amended to make public health objectives explicit.

Challenges and ruling under trade law in Korea and Japan were about discriminatory access and discriminatory alcohol taxes, not the level of taxes on all alcohol. Sweden retained bans on alcohol advertising by making its legislation less discriminatory. Norway was required to allow grocery distribution of products of similar alcohol content, but not all alcohol products. The available examples of challenges and ruling are complex, however. They go beyond even-handed treatment of foreign and domestic companies and are interpreted to include unintentional or indirect discrimination. Further challenges on state monopolies on alcohol distribution are likely. Economic treaties give rise to challenges in many product and service areas on market access, increasing areas of commitment, technical and performance requirements and domestic regulation.

Economic treaties are now ‘reaching into the heart of domestic regulation’. WTO’s ‘necessary disciplines’ for domestic regulation include objective and transparent criteria for control decisions and not being more ‘burdensome’ than required to meet the objective. These criteria have become common parlance among policy writers. Under the auspices of WHO, there is now ample evidence about the contribution that alcohol makes to the burden of injury and disease, and there is now international evidence ranking the kinds of control policies that are most effective in reducing alcohol related harm.[7,58] International-level statements and recommendations by Health Ministers of WHO member countries are also available.

7.3 Precautionary principle suggests exclusion of alcohol from treaties

GATS’ third ‘discipline’ – licensing procedures that are ‘not in themselves a restriction on the supply of the service’ – is being applied not only to import licensing but to the licensing of alcohol outlets. Economic treaties increasingly cover distribution and other services, as well as goods. This was the basis of unanticipated challenges to government or state monopolies on alcohol retail sales. It is also being written into policies liberalising the licensing of alcohol outlets.

As restrictions on alcohol availability are among the most effective policies for reducing alcohol related harm, this third ‘discipline’ is an important reason why the preferred option may be to apply the Precautionary Principle[59] and exclude all alcohol goods and services from economic treaties. This may be the best course where local data on alcohol related harm is limited or until best practice alcohol policies can be put in place.

This is most likely to be achieved and sustained if it can be done collectively, in the writing of the trade treaty itself, rather than through individual lists of commitments or exclusions subject to further negotiation. This has been achieved in PICTA.

7.4 Economic treaties and alcohol taxes

Many countries in the region may already be party to economic treaties from which alcohol was not excluded, or was perhaps not considered at the time of negotiation. It may be possible to withdraw commitments on alcohol, at the cost of concessions in other areas. Inclusion will require a lowering of tariffs on alcohol imports, on a timetable that may reflect the level and vulnerability of domestic production. This is a particularly important issue for small economies, such as the Pacific Islands, that have relied on import tariffs for government revenue. The advice given to the Pacific Forum was to replace tariffs on alcohol with alcohol excise taxes on both imported and domestic products.[11]

To reduce the risk of future challenges, excise tax regimes should not discriminate between similar products. A 'volumetric' graduated tax scale based on the pure alcohol content of each beverage type or product is non-discriminatory. And directly addresses public health objectives in relation to alcohol consumption and intoxication. A graduated scale should be designed with a good number of steps. Large gaps between the alcohol by volume rate at which the next tax rate is incurred may encourage the production of products close to the threshold to achieve lower taxes and lower prices. Tax and price anomalies can also have unintended effects on consumers' choice of drink. In order for alcohol taxes to be effective, governments will need to develop or review regulatory and enforcement systems to ensure that all alcohol is legally imported or legally produced and subject to alcohol taxation, and to ensure that the level of taxation is not eroded by inflation.

Taxes affecting price are an effective policy option and are particularly cost-effective where a system of alcohol excise is already in place. Young drinkers and heavy drinkers are particularly sensitive to price, and price can help restrain moderate drinkers from increased per occasion drinking. The level at which alcohol excise taxes are set affects retail prices to drinkers and, with or without consideration of economic treaties, is an important public health tool for reducing levels of alcohol consumption and harm.[12] However, at present, government revenue from alcohol tariffs or taxes seldom balances out the fiscal or other direct costs of alcohol related harm (morbidity, emergency, alcohol treatment, health services, policing). Health economists are just beginning to assess the social and economic externalities affecting families, communities, employment and the wider economy. Recent research recommends that alcohol excise taxes affecting price of alcohol be used as a public health tool to reduce alcohol related harm.[12]

8. Benefits

Ensuring that alcohol is not treated as an ordinary commodity in economic treaties will benefit governments by supporting the use of effective strategies to reduce alcohol-related harm thereby preventing the escalation of costs associated with managing these problems. This is particularly relevant to countries with current low average consumption that are experiencing increases in heavy drinking and alcohol related harm.

For the alcohol industry, both domestic and international, equal treatment and the removal of barriers to fair competition are important issues. Even-handed alcohol policies can help achieve this. Improved border controls and monitoring systems can address unfair competition from illegal importation or production. Socially responsible alcohol corporations recognise that public health is a priority for governments, as is sustainable economic development.

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Appendix: Membership of economic treaties

Australia, Brunei, Cambodia, China, Fiji, Hong Kong, Indonesia, Japan, South Korea, Malaysia, Mongolia, New Zealand, Papua New Guinea, Philippines, Singapore, Solomon Islands, Taiwan and Thailand are members of the World Trade Organization. Vietnam has applied for membership. In conjunction with Taiwan's bid to join in 2002, prohibitions on alcohol advertising were lifted on television in 1995 and in print in 1996, under pressure from trading partners, particularly the USA.[60]

Australia has Free Trade Agreements with the USA, Singapore, Thailand and New Zealand, and is negotiating with Asean, China, Malaysia, and Japan.

New Zealand has ratified GATT and GATS, and is a member of the OECD and APEC. It has had a Joint Declaration on Relations with the EU since 1999. It has economic treaties with Australia, Thailand, Singapore, and Brunei/Chile/Singapore and is negotiating agreements with China, Malaysia, HongKong and maybe Korea, and (with Australia) to join ASEAN (Association of Southeast Asian Nations).

There are few remaining tariffs on alcohol imports in New Zealand and Australia. The Closer Economic Relations (CER) agreement contributed to increased trade and industry ownership across the two countries, including their beer industries. CER also led to the formation of a joint Australian and New Zealand food standards authority. Decision-making based on the perspectives of six jurisdictions has blocked New Zealand proposals to require health warning labels on alcohol containers.

Japan has a free trade agreement with Singapore and is negotiating bilateral agreements with Korea, Malaysia, Thailand and the Philippines, as well as with ASEAN by 2010. Korea has free trade agreements with Singapore and Chile. Thailand has a free trade agreement with India.

In 1981 the South Pacific Regional Trade and Economic Agreement (SPARTECA) was signed between Australia and New Zealand and the Forum Island countries. It allowed access to Australia and New Zealand for Pacific Islands goods that complied with complex 'rules of origin'.

The 2001 Pacific Island Countries Trade Agreement has been ratified by Pacific Islands Forum members Fiji, Tonga, Samoa, Cook Islands, Niue, Nauru and Vanuatu. It covers goods, but not services, labour or investment, and requires the reduction of tariffs. The Federated States of Micronesia, Kiribati, the Marshall Islands, Palau, Papua New Guinea, Solomon Islands, Tuvalu, Australia and New Zealand are also members of the Pacific Islands Forum. Under the PACER agreement, Australia and New Zealand will be able to negotiate to join PICTA from 2011.

The Association of Southeast Asian Nations or ASEAN was established in 1967 in Bangkok by Indonesia, Malaysia, Philippines, Singapore and Thailand, and has been joined by Brunei Darussalam, Vietnam, Laos, Myanmar and Cambodia. It has an ASEAN free trade agreement.

APEC (Asia Pacific Economic Cooperation) which promotes free trade and investment, has a wider group of main Pacific and Pacific Rim member countries: Australia, Brunei Darussalam Canada, Chile, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei, Thailand, United States, Viet Nam.