

# ACCELERATING NUTRITION POLICIES IN THE CARIBBEAN: CREATING SUPPORTIVE ENVIRONMENTS FOR HEALTHY CHILDREN

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# TRADE POLICIES – BARRIERS TO AND OPPORTUNITIES FOR IMPLEMENTING NUTRITION POLICIES

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# HEALTH AND NUTRITION: WHAT'S TRADE GOT TO DO WITH IT?

20% SSB tax



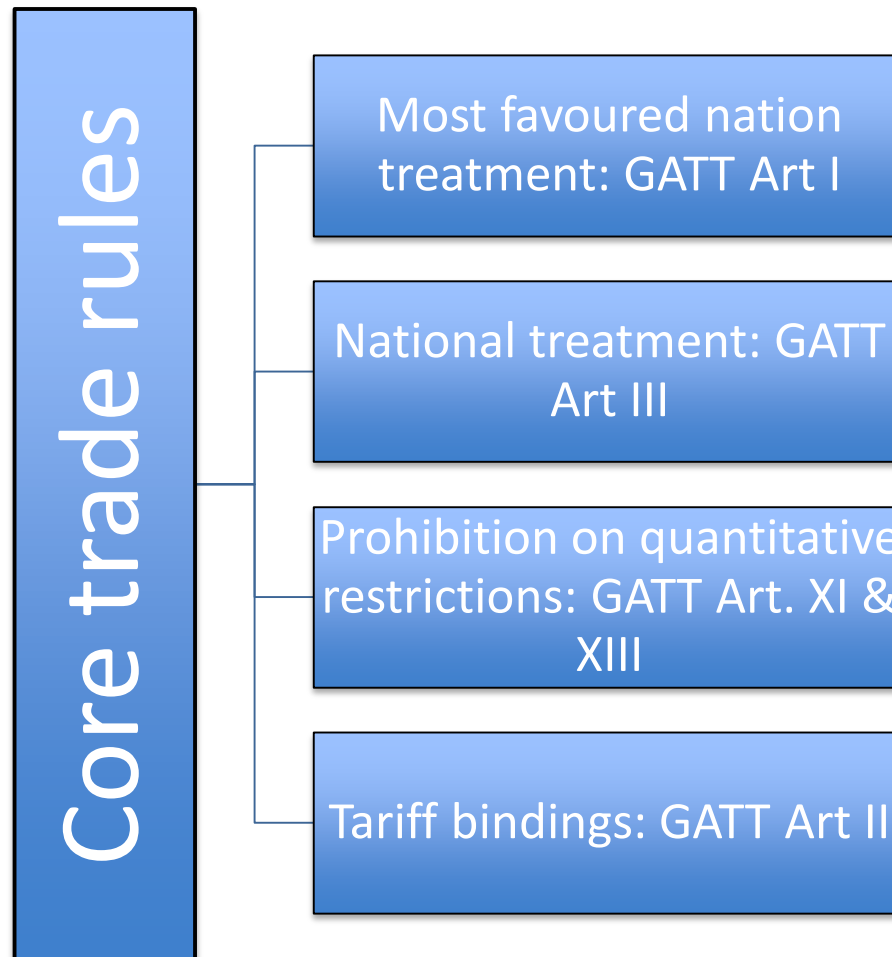
HEALTHY SCHOOL ZONES



FRONT OF PACK LABELLING



# THE WTO REGIME



# TRADE AND HEALTH IN THE WTO

- Key WTO agreements:
  - ✧ General Agreement on Tariffs and Trade 1994
  - ✧ General Agreement on Trade in Services
  - ✧ Agreement on Technical Barriers to Trade
  - ✧ Agreement on Sanitary and Phytosanitary Measures
  - ✧ Agreement on Trade-Related Aspects of Intellectual Property
  - ✧ Dispute Settlement Understanding

# 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**.

# IN THE SPOTLIGHT: TBT AGREEMENT

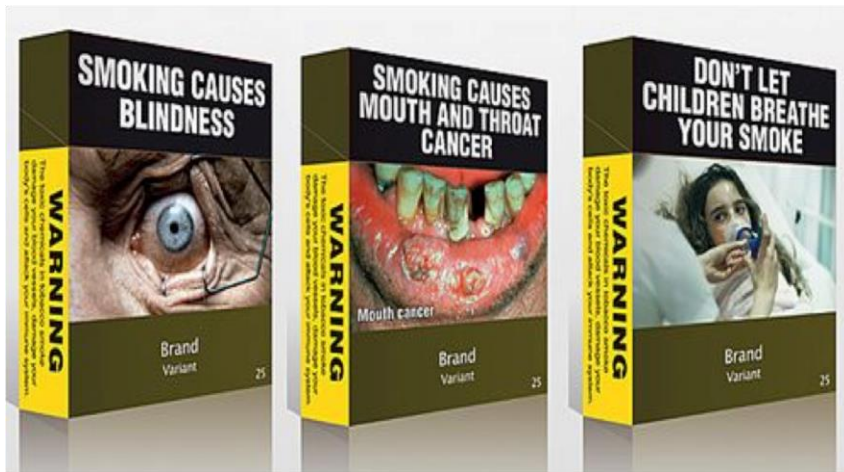
- Preamble recognises Members' right to implement measures to protect health at the level they consider appropriate provided:
  - they are not applied in a manner that amounts to **arbitrary or unjustifiable discrimination** or **a disguised restriction on international trade**.  
i.e. Is the measure rationally connected to the objective? Is it justifiable in light of risk sought to be mitigated?



# IN THE SPOTLIGHT: TBT AGREEMENT

- 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**”.
- 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.

# THE PROOF OF THE PUDDING IS IN THE EATING: WTO PLAIN PACKAGING CASE



# 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

# DEFINING THE PUBLIC HEALTH OBJECTIVE

- Care has to be exercised in articulating the public health policy objective (i.e. ‘framing’): needs to be measurable and achievable.
  - Plain packaging case: improvement of public health by reducing the use of, and exposure to, tobacco products.
- May be achieved through a suite of tools/interventions vs any one isolated action.
  - Plain packaging case: PP was complemented by other measures such as education, social marketing etc
- There has to be a rational connection between any given measure being implemented and this public health policy objective.

# DEFINING THE PUBLIC HEALTH

## OBJECTIVE: SSB TAX

20% SSB TAX



- NCD mortality levels in the region.
- Linkage between NCDs and unhealthy diets /obesity.
- Alarmingly high levels of consumption of SSBs in the region.
- Objective: to reduce consumption of SSBs; increase consumption of safe, drinking water.

# DEFINING THE PUBLIC HEALTH OBJECTIVE: BAN ON SALE & MARKETING OF SSBs IN SCHOOLS

## HEALTHY SCHOOL ZONES



- NCD mortality levels in the region.
- Linkage between NCDs and unhealthy diets /obesity.
- Alarmingly high (and rising) levels of childhood obesity in the region driven by unhealthy diets and inadequate physical activity.
- Levels of consumption of SSBs in particular by school-aged children.
- Levels of marketing of SSBs within schools and the impact of marketing.
- Objective: to reduce SSB children's consumption of, and exposure to SSBs in schools. Increase consumption of safe, drinking water in schools.

# DEFINING THE PUBLIC HEALTH OBJECTIVE: FOPL

## FRONT OF PACK LABELLING



- NCD mortality levels in the region.
- Linkage between NCDs and unhealthy diets /obesity.
- Levels of consumption of foods high in salt, sugar, saturated fat.
- Objective: enable consumers to make informed, healthier food choices by providing simple, easy to understand nutritional information; to raise consumers' awareness of foods that are high in sugar, salt and saturated fat; to discourage consumption of food high in sugar, salt and saturated fat.

# 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?



# NON-DISCRIMINATORY & DUE PROCESS

- Is the measure discriminatory (in fact or in effect)?
  - Clove Cigarettes dispute (de facto discrimination)
- Have to be very careful when articulating exceptions, if any - must be based on a legitimate regulatory distinction.
- Must abide by the notification/transparency requirements set by the WTO.
- Should have robust consultative processes.

# CONCLUDING COMMENTS

- While WTO 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 effective nutrition policies in schools.
- What is required is the **political will** to take the necessary action coupled with carefully drafted, **evidence-based policies.**

# CONCLUDING COMMENTS

“States should also address obesity in children, as it is associated with hypertension, early markers of cardiovascular disease, insulin resistance, psychological effects, a higher likelihood of adult obesity, and premature death. Children’s exposure to “fast foods” that are high in fat, sugar or salt, energy-dense and micronutrient-poor, and drinks containing high levels of caffeine or other potentially harmful substances should be limited. The marketing of these substances – especially when such marketing is focused on children – should be regulated and their availability in schools and other places controlled.”

United Nations Committee on the Rights of the Child General Comment on the right to health under Art. 24

THANK YOU!!!

