

LAW AND NON-COMMUNICABLE DISEASES: INTERNATIONAL AND DOMESTIC REGULATION OF FOOD AND ALCOHOL SPECIAL ISSUE - EDITORIAL

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The articles in this special issue examine the relationship between international economic law and effective evidence-based regulation to address public health challenges associated with food and alcohol consumption in interacting domestic, regional and international frameworks of law, politics and policy.

In September 2015, the United Nations General Assembly adopted 17 global Sustainable Development Goals ('SDGs') pursuant to an agenda to be implemented by 2030.¹ Effective, evidence-based regulation of public health challenges associated with food and alcohol within domestic, regional and international settings is crucial to achieving the SDGs. Goal 2 is 'End hunger, achieve food security and improved nutrition and promote sustainable agriculture'. Goal 3 is 'Ensure healthy lives and promote well-being for all at all ages'. These aspects of the SDGs build on the General Assembly's 2011 resolution identifying non-communicable diseases ('NCDs') as a 'challenge of epidemic proportions', and noting that the 'most prominent' NCDs are linked to common risk factors including tobacco use, harmful alcohol use, an unhealthy diet, and physical inactivity.² In 2013, the World Health Assembly (the decision-making body of the World Health Organization ('WHO')) endorsed a global action plan to prevent and control NCDs to 2020.³ In September 2018, the Third United Nations General Assembly High-level Meeting on the Prevention and Control of Non-communicable Diseases is being held with the aim of scaling up interventions, including around food and alcohol, to prevent and control NCDs.⁴

The emphasis of the SDGs on sustainable development is mirrored in the context of international investment law, with the United Nations Conference on Trade and Development promoting an Investment Policy Framework for Sustainable Development. That document

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¹ UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, UN Doc A/RES/70/1 (21 October 2015 following adoption of resolution on 25 September 2015) 16/35.

² UN General Assembly, Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases, UN Doc A/RES/66/2 (22 January 2012 following adoption of resolution on 19 September 2011) 3.

³ Sixty-sixth World Health Assembly, Follow-up to the Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases, WHO doc WHA66.10 (27 May 2013) annex.

⁴ 'Time to Deliver: Third UN High-level Meeting on Non-communicable Diseases' (World Health Organization, undated) 2-3.



recognises the link between international investment law and sustainable development, as well as the particular significance of investment for areas such as food security and health. International trade and investment, as governed by international economic law, have the potential to contribute positively to global food security, and also to impact negatively on public health by contributing to the unhealthy consumption of food and alcohol. Measures regulating food and alcohol may face challenges under international trade and investment law. In order to pursue health objectives at the domestic and international levels, public health law and policy must therefore be developed with an understanding of international economic law. Conversely, international economic law requires an appreciation of domestic and international public health priorities and approaches.⁵

This special issue begins with two articles investigating the interaction between international economic law and domestic regulation to promote eating practices that are both healthy and sustainable. Christine Parker and Hope Johnson argue in their article, ‘Sustainable Healthy Food Choices: The Promise of ‘Holistic’ Dietary Guidelines as a National and International Policy Springboard’ that international and national policy action should promote dietary guidelines that act as a springboard for regulatory developments that harness the synergies between human and environmental health. The second article in this two-fold investigation is by Tania Voon and Hope Johnson. Their article, ‘Sustainable Healthy Food Choices: Dietary Guidelines and International Economic Law’ examines the potential for holistic dietary guidelines to be challenged under the dispute settlement system of the World Trade Organization (‘WTO’) or under investor–state dispute settlement, and how they might be buttressed against such challenge. The third article in this special issue turns to a specific policy option for promoting more healthy eating practices, namely voluntary or mandatory reformulation to reduce salt, sugar, fat or overall calorie content of processed foods. Jenny Claire Kaldor’s article, ‘Food Reformulation for NCD-Prevention: Regulatory Options and Potential Barriers’ examines the advantages and disadvantages of voluntary and mandatory approaches to reformulation in terms of regulatory technique and whether mandatory approaches might constitute technical barriers to trade under WTO rules.

The next two articles concern the regulation of alcohol marketing and consumption. Belinda Reeve’s article, ‘Regulation of Alcohol Advertising in Australia: Does the ABAC Scheme Adequately Protect Young People from Marketing of Alcoholic Beverages?’ critically examines current industry-based self-regulation of alcohol marketing in Australia and proposes an alternative phased or ‘responsive’ approach for creating a regulatory regime to protect young people from harmful alcohol marketing. Paula O’Brien and Andrew D. Mitchell consider mandatory health information on alcohol labels. Their article, ‘On the Bottle: Health Information, Alcohol Labelling and the WTO Technical Barriers to Trade Agreement’, analyses how the alcohol industry contests and opposes proposed mandatory labels while promoting voluntary labels and the potential for mandatory labels to be challenged in the WTO as technical barriers to trade.

The final two articles in this special issue critically examine ways in which international governance can help or hinder legal action on NCDs. Anita George critically examines the potential for conflict of interest between the food industry and public health bodies in relation to regulatory standard setting in her article, ‘An Unwelcome Seat at the Table: The Implications of Public and Private Standard-Setting and its Implications for NCD Regulations’. In particular,

⁵ See, for eg, Corinna Hawkes, Delia Grace and Anne Marie Thow, ‘Trade liberalization, food, nutrition and health’ in Richard Smith et al, *Trade and health: building a national strategy* (WHO, 2015) 92.

she examines the possibilities and potential for international standards to address the possibility of undue influence by ‘big food’ in public health standard setting, drawing on a comparison with Big Tobacco. In the final article, Suzanne Zhou directly addresses the issues underlying all the articles in this special issue: the fragmentation between health and international trade and investment law in the context of regulating food and alcohol as NCD risk factors. Her article, ‘Managing Fragmentation between International Trade and Investment Law and Global Priorities for Noncommunicable Disease Prevention in Food and Alcohol’ assesses the advantages and disadvantages of three strategies for managing fragmentation: modifying or overriding trade and investment obligations, affecting interpretation and fact finding, and establishing cooperative inter-institutional processes. The article concludes on a positive note by identifying possibilities and potentials for the evolution of the trade and investment regimes through case law to better integrate public health policy goals to address NCDs.

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