

earnings than in imports, and as such were driven by what he terms ‘mercantilist’ motives to attempt to stem gold outflows. He rejects the oft-stated premise that ‘competitive devaluations’ were undertaken in an effort to improve countries’ competitiveness, and instead argues that devaluations (and increased tariffs) were chosen because of reserve losses.

Irwin believes that there was much less increase in protectionism in the Great Recession than there had been in the Great Depression, although some have questioned that conclusion pointing to non-tariff protective measures having become increasingly prominent because WTO rules precluded tariff changes. However, Irwin attributes what he believes to be less protectionism to the fact that many fewer countries’ exchange rates were pegged in the Great Recession. He also notes the increased importance of intra industry trade, direct foreign investment, an increased share of services in employment and WTO rules, making it harder for countries to adopt protectionist measures.

If Irwin’s conclusions are accepted, there still remains the political economy question: What factors led to the choices of policy instrument made by different countries? Why did Germany and the central European bloc choose exchange control? And what were the different pressures leading to tariff increases or abandonment of gold? Analysis of that question must await yet another contribution to our understanding of the political economy of the Great Depression.

Both books are eminently readable, and will be of interest to all those concerned with trade policy and the trading system, as well as being valuable for upper division undergraduate seminars. The particulars of the political arguments for and against SH, the quotes of opinions of policy makers, and the marshalling of evidence regarding policy choices and attempts at international cooperation make the period come alive and simultaneously enable a balanced assessment regarding the role of trade policy and its determinants. The two books will almost certainly alter the views of those who attribute the Great Depression largely to trade policy and Smoot–Hawley.

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Trade and Public Health: *The WTO, Tobacco, Alcohol and Diet*

by Benn McGrady

Cambridge, UK: Cambridge University Press, 2011

The emerging tensions between the norms—legal and otherwise—of free trade and public health protection related to tobacco, alcohol, and food have been receiving increasing scholarly attention, but, until now, there has not been a relatively comprehensive discussion of the principal issues framing these tensions. Writing chiefly from a legal perspective, and focusing purposefully on the World Trade Organization’s (WTO) relationships with these three major public health areas, McGrady’s *Trade and Public Health: The WTO, Tobacco, Alcohol and Diet* addresses many facets of the key issues. The book is dense with discussion about both the fundamentals and the vagaries of trade policy as countries’ efforts to regulate public

health run into tension with it. Though not a legal scholar, I will endeavor from a political economy perspective to comment on the book's treatment of several substantive and timely issues at the nexus of trade and health.

The book will be valuable to a range of potential readers, including trade law practitioners encountering public health issues for the first time; public health practitioners who are attempting to understand trade law, its practice, and its implications; and international law and/or trade scholars who are seeking to resolve some of the complexities of these tensions. Much of the book is technical in nature and those with previous knowledge of key trade concepts – such as national treatment, most-favored nation, and non-discrimination – will have a much easier time making sense of what are often complex legal issues. What is particularly compelling about this book is that McGrady is evenhanded and systematic. On practically every issue, he presents a balanced interpretation of the tensions that would serve public health goals while preserving the basic norm of open trade. It is also reasonable to suggest that he is a problem-solver because he often offers well-reasoned ways in which to resolve the existing tensions. Both ardent public health and open trade proponents will likely find the discussion sometimes frustrating, which is a good indication that he has struck a fine balance.

Many readers will be interested in how conflicting international agreements can be successfully reconciled, and in Chapter 2 the author examines how to reach this goal through judicial interpretation, a process called 'normative integration'. The author focuses particularly on restrictive, divergent, and broad interpretations of the Vienna Convention on the Law of Treaties, Article 31(3)(c) because the treaty in theory should offer utility for identifying how such agreements can be reconciled. To date, the WTO adjudicatory process has mostly taken a narrow view of the article, but the chapter's greatest strength from a public health perspective is the author's case for the application of the broad or divergent approaches, which would permit greater WTO consideration of other international rules. The minor weakness of the chapter is that the non-legal reader will not follow the discussion easily – even a few concrete examples as the reader encounters in subsequent chapters (especially Chapter 4) would have served to add a greater sense of application. Fortunately, particularly in Chapter 6, the author refers back to the discussion, which should help clarify its content better.

Chapter 3 is a lengthy discussion of the fundamentals of WTO-related rules regarding taxes, subsidies, and restrictions on marketing. It covers a wide range of issues, though one theme pervades much of the chapter: 'the way in which a measure affects the conditions for competition between domestic and foreign goods' (p. 128). The complexities of the cases are not always obvious either, even to a relatively well-informed observer. The author offers the example of a Canadian ban on tobacco flavoring. While the ostensible public health justification – protecting underage consumers – appears solid, there is also a reasonable argument that the measure is discriminatory because domestically produced tobacco products are manufactured using a varietal that does not typically require flavoring. The author examines in detail how such a measure could be challenged, but also how a country honestly seeking effective health regulation might reasonably defend it.

The chapter examines a number of themes, but particularly illuminates the complexities of national treatment and to some extent market access issues in the

General Agreement on Tariffs and Trade (GATT), the Subsidies and Countervailing Measures agreement, the Agreement on Agriculture, and the General Agreement on Trade in Services (GATS). With the national treatment focus, GATT Article III naturally receives much of the attention. Public health proponents will likely be frustrated by the article's narrow focus on the effects on competition, but this actually helps to explain why GATT XX(b) – the health exception – becomes central to protecting countries' rights to regulate public health. The section on GATS is particularly timely because of the agreement's lower – but perhaps growing – level of institutionalization, and notes that scheduled commitments will have a large impact. The author makes the pragmatic suggestion that countries that have not yet made specific commitments should proactively seek to qualify their future commitments permitting themselves more regulatory autonomy; and countries that have already committed to the agreement might be better off seeking a health exception under the agreement's Article XIV(b).

As the logical extension of Chapter 3, the next chapter focuses on the potential health exceptions afforded by both GATT XX(b) and GATS XIV(b). In particular, the author highlights the tremendous legal uncertainty that surrounds any invocation of these health exceptions. But through very effective use of relevant cases – particularly *Brazil–Retreaded Tyres*¹ – the author seeks to clarify the issues that are better settled and to elucidate the context of the issues that remain poorly resolved. Logically, much of the focus is on the necessity test – whether a health exception is necessary and the party can demonstrate a compelling state interest. Necessity also suggests that the same goal could not be achieved by a less trade restrictive or discriminatory measure. Many non-legal readers will be frustrated to learn that there is no universal definition for necessity; though on account of the vast complexity of many cases, it should be clear why this ambiguity often exists for good reason. The author argues that there has been a developing weighing and balancing approach of necessity's crucial factors, including the importance of a measure's goal, its actual contribution to alleviating the specific issue, its trade-restrictive nature, and the complex distinctions between alternative and complementary measures. Furthermore, how a country formally characterizes the objectives of the measure likely contributes to a favorable interpretation by WTO panels and the Appellate Body.

Whether and then how the SPS and TBT agreements are relevant to major public health issues receive treatment in Chapter 5. One of the key discussions in this chapter is the role of international standards in determining the legitimacy of regulations. Similar to nearly every related issue in this book, there is significant complexity in terms of standards – e.g. some are more clear than others and some have greater legitimacy – so determining the role of standards in the process is not straightforward.

Departing from the more legally focused approach, Chapter 6 seeks to put some of these tensions into a more political framework. This task is an enormous one, but the author recognizes the challenge and wisely limits the discussion to delegation, legalization, and harmonization. After several very legal-technical chapters, this

¹ Appellate Body Report, *Brazil–Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R, 3 December 2007.

discussion will be a welcome change for readers more interested in the abstract discussion of how to reconcile tensions. The delegation section contemplates which entity or entities should be charged with reconciling these tensions (e.g. the WTO, the Framework Convention on Tobacco Control (FCTC), etc.). While acknowledging the need for some coherence in rulemaking so those making new regulations know the parameters (better), the author argues that we cannot reasonably theorize these issues away and that there is no clear path to delegation. The sheer complexity and particularly the relative trade-offs both for health and trade naturally make this process difficult – there is no universal set of truths on which to rely. It is frustrating, but the system's *de facto* current case-by-case approach, based on a wide variety of goals and interpretations of how to achieve them, and often necessarily involving multiple adjudicatory bodies, may be the best option.

Among other topics, the legalization section provides an excellent discussion of the relative merits (and costs) of binding versus non-binding international agreements. Many readers will assume that binding agreements give some added legitimacy, but, as Chapter 2 illustrates in detail, there is no simple way to resolve conflicts between treaties, even within existing legal frameworks, including the Vienna Convention. On the other hand, non-binding instruments such as some FCTC guidelines appear to offer demonstrable utility, including recognition by WTO panels, perhaps precisely because of lower levels of pressure than from a potentially conflicting binding agreement (such as the FCTC itself). Thus, *caveat emptor* to proponents of binding agreements on alcohol or food: there is no obvious choice.

Perhaps surprisingly in light of the chapter's earlier discussions, the section on harmonization is blunt in calling for a clearer and higher status for the FCTC in the WTO (p. 272). Rarely does the author make such an explicit plea, but, in this case, he illustrates how preposterous it is that other non-binding standards and guidelines appear to have greater status than the actual treaty. The plea is reasonable, but one has to wonder if the current ambiguity is not only the status quo, but also a slightly bizarre way of maintaining both greater rule (trade) and regulatory (health) flexibility.

This is a very useful and important book because it discusses in considerable depth the complexities of the major issues that frame many of the legal tensions between international trade agreements and national and international public health agreements and policies. As the author notes more than once, the proximity of specific measures to actual public health issues does vary. Thus, the scope for tobacco control provisions within particular trade agreements's public health exceptions seems to be increasingly acceptable to more actors because the links between tobacco use and health are arguably more direct (and because there is no safe level of tobacco use). It will be interesting to observe the possibly differing nature of the tensions between trade agreements and efforts to regulate alcohol and diet.

Hopefully, the book will give serious pause to the different actors involved in these processes. For proponents of open trade, this book should not only raise awareness of why public health policies can provide societal benefits, but also how they can be broadly consistent with economic openness. For public health advocates, they should understand better why some policies look like (and in some circumstances are) thinly veiled protectionism (e.g. banning all flavorings but menthol), and will consequently

seek to craft public health-enhancing policies that are consistent with central principles of openness such as most-favoured-nation and national treatment.

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The Prospects of International Trade Regulation: From Fragmentation to Coherence

edited by Thomas Cottier and Panagiotis Delimatsis
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This volume is the result of the first stage of a National Centre for Competence in Research (NCCR) project, 'Trade Regulation – International Trade: From Fragmentation to Coherence', operating at the University of Bern's World Trade Institute (WTI). One of the book's editors, Thomas Cottier, is the Managing Director of the WTI and the Director of the NCCR – Trade Regulation project. The NCCR – Trade Regulation is a project of grand scale: the Swiss National Science Foundation (SNF) provided an initial four-year phase of funding of 10,400,000 CHF, as well as 9,400,000 CHF for a second four-year phase, which is ongoing and will conclude in 2013. The funding is being used to support research across 12 individual projects (IPs), with experienced and more junior researchers contributing to each project, and input from political scientists as well as lawyers. This edited collection aims to synthesize the results of the initial phase of research. The IPs address trade regulation across a wide range of subject matters and perspectives, but share the common goal of exploring themes of fragmentation and coherence in their various international trade contexts. In particular, the book strives to identify the regulatory debates that lie ahead and to make policy recommendations in light of those dilemmas.¹ A chapter is devoted to each project, with several project participants co-authoring each contribution. With 48 different contributing authors and over 450 pages of text devoted to summarizing four years of effort spent engaging in 12 separate projects, it is an understatement to describe this book as a highly ambitious undertaking. Perhaps inevitably, some aspects of the volume are more successful than others.

The editors have utilized two useful techniques that add significant value to the individual contributions and to the volume as a whole. First, every chapter begins with a box of bullet-point 'Key Messages'. Given that each project is attempting to summarize several years' worth of work in a condensed space, these summary items are a particularly helpful method of highlighting the authors' key takeaway messages. Second, the editors (together with colleagues Katja Gehne and Tetyana Payosova), have written an extensive and very useful Introduction. With many if not most edited collections, it is possible to begin and end one's perusal by reading only the specific chapters of interest. While introductory chapters generally signal unifying elements of collections in greater or lesser detail, they are not always essential reading in and of

¹ Preface at xviii.