

Discriminatory taxation of food and beverages is ineffective and distorts competition

INFORMATION PAPER

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Introduction

The American Chamber of Commerce to the European Union (AmCham EU) supports policies aimed at improving the health and lifestyle of Europeans and we are keen to work with the institutions to find solutions to the problem of increasing obesity rates. However, we feel that attempts by a number of Member States to introduce special taxes on certain food and beverage products are not an effective approach to tackling complex dietary and lifestyle-related issues related to obesity. Furthermore, they may even harm the competitiveness of the EU and national budgets.

AmCham EU is concerned about discriminatory taxes applied to the food sector for the following reasons:

- Food and beverage taxes generate competitive disadvantages;
- Food taxes are regressive in nature and hit lower socio-economic groups hardest;
- There is no evidence demonstrating a positive impact of food taxes on the 'healthiness' of people's diets;
- Punishing specific food products alone would not automatically lead to the elimination of bad diets and lifestyles; and
- Food taxes hit companies that produce locally and could discourage investment in Europe by both European and non-European companies.

Given the discriminatory nature of taxes on specific food products, AmCham EU believes that they must prove necessary, effective and proportional. As none of the taxes introduced so far have fulfilled these conditions, we would welcome their re-evaluation.

Food taxes: the revival of an out-dated fiscal measure?

The concept of taxing individual foodstuffs categories – in addition to VAT – is not new. In some European countries, special excise taxes were imposed for many decades, mainly with a view on 'luxury' food products. Historically, these taxed mainly covered salt and sugar, while in the 20th century, focus turned to alcoholic beverages, confectionary and soft drinks.

Due to the IMF's general rule limiting excise duties to alcoholic beverages, tobacco, automobiles, automobile spare parts and petroleum¹, the trend in fiscal policies over the 1990s was to expel other excise taxes 'to the realm of curiosities'², resulting in a decline of excise duties between 1995 and 2008/2009 in the EU³. However, Europe's debt crisis has caused this trend to be broken as national governments, desperately seeking additional income for their austerity

¹ McCarten, William J. & Stotsky, Janet, 1995. 'Excise Taxes', in Shome, Parthasarathi (ed.), Tax Policy Handbook, International Monetary Fund, Washington 1995, p. 102.

² Terra, Ben J.M., 1996. 'Excises', in Thuronyi, Victor (ed.), Tax Law Design and Drafting, International Monetary Fund, Washington 1996, p. 263.

³ Taxation trends in the European Union. Data for the EU Member States and Norway, 2010 & 211 editions. Eurostat Statistical Books, 2010/2011.

budgets, started introducing new excise taxes on a number of foodstuffs categories as part of efforts to increase revenue.

Furthermore, increasing obesity rates has added the new element of taxes being used as instruments to influence dietary habits and to reduce the consumption of allegedly unhealthy products.

No clear trends, no clear objectives

Since 2011, two EU Member States have imposed new excise taxes on certain foodstuffs categories as explicit instruments for public health policies.

Hungary introduced a health-related excise tax on a number of allegedly unhealthy foodstuffs categories, including sugar-sweetened beverages, jams, salty snacks and seasonings. Fixed tax rates are applicable once products pass certain sugar and salt content thresholds.

Denmark introduced a health-related excise tax on saturated fat, with a relative rate per kilogram of fat in the finished product, covering all fat-containing foodstuffs except milk (e.g. meat, butter, oil, dairy products other than milk). Denmark has also split its long-existing technical excise tax on soft drinks into two different rates, with a higher rate for sugar-containing beverages (increased in 2012) and a lower rate for sugar-free beverages. Furthermore, the Danish government is also considering a tax on sugar-containing foodstuffs.

A number of Member States including Italy, France, Romania and Slovakia, have considered but finally abandoned the idea of health taxes and/or went for other indirect tax models, such as VAT increases or purely technical excise duties on selected foodstuffs categories. Recent developments indicate that Denmark is also considering abandoning its excise taxes.

France is a noteworthy example. In 2011, the French government proposed a health-related excise tax on sugar-containing beverages, which was then changed by the Parliament into a general excise on all non-alcoholic beverages except waters. In the adoption of the tax, the health aspect, which was the justification for its introduction, was abandoned and even rejected by the Constitutional Council.

No justification for discrimination

Food taxes on selected products are discriminatory by default. In that sense, they must prove necessary, effective and proportional. However, none of these conditions have been fulfilled, neither from economic, socio-economic nor public health perspectives.

Easy tax income vs. sustainable growth

From an economic point of view, taxes on profitable food sectors or product categories might be attractive in the short term. But from a mid- to long-term perspective, they would have a negative impact on a country's economy as they generate competitive disadvantages and discourage investment. These measures

are complex and expensive to manage, with diverging tax regimes resulting in further fragmentation of the Single Market and damaging the competitiveness of the European food supply chain, the EU's biggest industry in terms of employment and added value.

Other potentially distortive impacts include trade conflicts, distortions around cross-border shopping, regulatory arbitrage and unfair competition between food categories based on subjective criteria.

Highest impact on low-income consumers

From a socio-economic perspective, the regressive nature of food taxes is totally disproportionate, as they hit low-income populations hardest. Lower socio-economic groups typically spend a larger share of their income on food than higher income categories. While this is already true in general, consumers in countries with high household expenditure on food would be hit particularly hard (e.g. in Romania, where food counts for 40% of household expenditure compared to the EU average of 16%).

Public health as excuse for bad fiscal policies?

In light of increasing obesity rates and desperate attempts to find simple and quick solutions for this worrying trend, it seems tempting to use financial incentives or disincentives to influence consumer behaviour. However, there is hardly any evidence that food taxes would have any impact on the 'healthiness' of people's diets⁴.

Arguably, there is no such thing as a 'healthy' or an 'unhealthy' food product. On the contrary, any food product that is approved to be placed onto the market can be part of a perfectly healthy diet, as long as it is consumed in variation and moderation. This is true for any product that contains perceived 'high' levels of sugar, fat or salt.

Specific products should not be seen as 'unhealthy' but rather the specific diet that consists of too little variation and contains too much sugar, fat or salt. When this is taken into account, it is obvious that 'punishing' specific food products alone would not automatically lead to the elimination of bad dietary habits and unhealthy lifestyles.

Scapegoat measures for protectionism?

The most prominent sector in ongoing debates about 'health taxes' and 'unhealthy foodstuffs' are soft drinks. There's not a single case where soft drinks are not mentioned when policy makers consider combining fiscal measures and health policies. At the same time, soft drinks are the best example

⁴ According to the OECD, those taxes could even be counterproductive given the unforeseeable substitution effects: 'It is difficult to predict how consumers will react to price changes caused by taxation. Some may respond by reducing their consumption of healthy goods in order to pay for the more expensive unhealthy goods, thus defeating the purpose of the tax. Others may seek substitutes for the taxed products, which might be as unhealthy as those originally consumed'; Obesity Update 2012, OECD Policy Brief, Paris 2012, p. 4;
www.oecd.org/dataoecd/1/61/49716427.pdf.

of the contradictory character of respective taxes, as they actually contribute only 2.5% of the calorie intake of the average European consumer's diet.

While it is difficult to explain why regressive fiscal measures should be used to reduce such small percentages of energy intakes, another trigger comes to light: tax debates very often make a distinction between 'unhealthy', allegedly non-European 'junk food' versus 'traditional/local' and therefore allegedly 'healthy' foodstuffs from Europe. With the exception of Denmark, which has taken a rather neutral, nutritional approach with its fat tax, every single country that has implemented new food taxes have proposed special rules exempting 'local' products.

There might be two reasons for this. Firstly, foods like soft drinks, hamburgers and potato chips are much easier to define and target than most other of the hundreds of different food categories from the extremely diverse European food production landscape. Secondly, these food categories are usually identified with 'non-European', multinational corporations, and in the debates about a fair balancing of fiscal measures, it seems much easier to target and 'punish' non-European multinationals than 'local' economic sectors.

In this perceived targeting of foreign multinationals, what is overlooked is that almost all multinational food producers – including many AmCham EU members – are producing locally and contribute just as much to European economies as their indigenous competitors.

Working together for sustainable solutions

In times of low economic growth and budgetary crises, AmCham EU members continue to provide considerable added value to Europe's GDP and to invest further in Europe, providing jobs and growth opportunities.

AmCham EU members are committed to contributing to solutions to the global issue of increasing obesity rates. However, in debates about obesity, solutions should take into account the complexity and multi-factorial nature of obesity, they must be based on sound scientific evidence⁵, follow multi-stakeholder approaches such as the EU Platform for Action on Physical Activity, Diet and Health, and disregard allegedly easy but clearly ineffective quick-fixes like discriminatory food taxes.

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate U.S. investment in Europe totaled \$2.2 trillion in 2010 and directly supports more than 4.2 million jobs in Europe.

⁵ There is no clear evidence or consensus in the academic world about the effectiveness of food taxes as health measures that would lead to healthier dietary consumption patterns. On the contrary, the results of a large number of scientific studies shows that taxes can and should not be used to promote healthy diets (see annex).

Further reading

Supporting the competitiveness of the European food and drink industry.
FoodDrinkEurope Competitiveness Report 2011;
http://www.fooddrink europe.eu/uploads/press-releases_documents/FoodDrinkEurope_Competitiveness_Report_2011.pdf

Annex – Selected quotes from scientific literature on food taxes

The academic community is increasingly looking into taxation as an instrument to change dietary consumption patterns. Although some academics support tax-based approaches, a large number of scientific studies express serious doubts about the effectiveness and appropriateness of taxes on foodstuffs (see list below with selected quotes).

So far – as confirmed by two recent scientific reviews of existing literature¹ – there is no consensus amongst scientists about the use of fiscal measures to promote healthy diets, and in the absence of scientific evidence policy-makers should refrain from proposing such measures.

Alemanno, Alberto & Carreño, Ignacio, 2011. ‘Fat taxes in the EU between fiscal austerity and the fight against obesity’, *European Journal of Risk Regulation* 4, 2011

- ‘One question is whether these product-specific taxes are really addressing the obesity problem by penalising certain ‘unhealthy’ products or if they are just new instruments to generate fiscal revenues (or maybe, even, to protect certain domestic constituencies), in particular in view of the public deficit problems that many EU Member States are currently facing in the context of the economic crisis.’
- ‘[...] it is not clear whether the imposition of such taxes reduces obesity or whether governments would get better results from education campaigns, for instance’
- ‘[...] there is no consensus in the scientific community on which foods to target. Therefore, before committing to the introduction of a fat tax, policy-makers need to consider their objective, the effect of the tax in combination with other measures, and the impact on businesses.’
- ‘In view of the discrimination among specific food categories, the hope is that, in Europe, the adage that ‘there are no bad foods, only bad diets’ will not become ‘there are no bad health policies, only bad trade-related measures’.’

http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1945804_code553230.pdf?abstractid=1945804&mirid=3

Allais, Olivier & Bertail, P. & Nichele, Veronique, 2008. ‘The Effects of a ‘Fat Tax’ on the Nutrient Intake of French Households’, *European Association of Agricultural Economists, 2008 International Congress Ghent*, 2008

¹ Hughes 2012 and Etilé 2012; see the respective entries below.

- *'[...] a 'fat tax' would have ambiguous and extremely small effects [...]'*
- *'[...] a fat tax policy is unsuitable for substantially affecting the nutrient intake of French households.'*
- *'[...] food policymakers need to keep in mind that a fat tax policy may have perverse effects by exacerbating nutritional disparities among consumers'.*

<http://www.inra.fr/internet/Departements/ESR/publications/iss/pdf/iss10-03.pdf>

Amarasinghe, Anura & D'Souza, Gerard, 2010. *Obesity Prevention: A Review of the Interactions and Interventions, and some Policy Implications*, West Virginia University, Regional Research Institute, Research Paper 2010-2, 2010

- *'Since fat taxes are regressive, tax incidence would be felt hardest by low income families.'; '[...] justification for a discriminatory excise tax on soft drinks is weak.'*

<http://www.rri.wvu.edu/pdffiles/wp2010-2.pdf>

Bahl, Roy, 1998. *Why Levy Discriminatory Excises on Soft Drinks?*, International Studies Program, School of Policy Studies, Georgia State University, Working Paper 98.3, 1998

- *'[...] the economic case for taxing soft drinks is weak. [...] A middle or higher income country that resorts to a tax list of discriminatory excises on consumption of specified products is taking a step back in the development of their fiscal system and is postponing a more proper reform that would be in the better interest of the country'*
- *'The case for a discriminatory tax on soft drinks is very weak. At best the discriminatory taxation of soft drinks is part of a 'stopgap' program, usually designed to solve a short-term revenue problem'*

<http://aysps.gsu.edu/isp/files/ispwp9803.pdf>

Barclay, Alan W. & Brand-Miller, Jennie, 2011. *'The Australian Paradox: A Substantial Decline in Sugars Intake over the Same Timeframe that Overweight and Obesity Have Increased'*, *Nutrients* 3, 2011

- *'Our findings do not support the widely held belief that reducing the consumption of refined sugars, and increasing the availability and preference for low-joule beverages, will help to reverse societal trends in obesity'*
- *'The findings challenge the implicit assumption that taxes and other measures to reduce intake of soft drinks will be an effective strategy in global efforts to reduce obesity'*

<http://www.mdpi.com/2072-6643/3/4/491/pdf>

Craven, Barrie & Marlow, Michael L. & Shiers, Alden, 2012. *'Fat Taxes and Other Interventions Won't Cure Obesity'*, *Economic Affairs* 32.2, 2012

- *'[...] The rise in obesity prevalence and the associated increase in obesity related health costs increase incentives for private industry to find ways to reduce obesity prevalence. Private industry has, indeed, responded to the obesity challenge by providing a variety of means to*

reduce weight and increase physical fitness. The response of private enterprise to the obesity epidemic is more likely to move economies to increased welfare outcomes than is government intervention’.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2080359

Crowle, Jacqueline & Turner, Erin, 2010. *Childhood Obesity: An Economic Perspective*, Australian Government, Productivity Commission Working Paper, Melbourne 2010

- *‘Bans or taxes on particular energy-dense nutrient-poor foods, for example, face design difficulties, affect all consumers regardless of their weight status, and in the case of taxes, can have perverse budgetary and health effects particularly for the neediest groups.’*
- *‘The considerable uncertainty about the causes of obesity suggests that hard interventions, such as taxes or subsidies on specific goods and services, would be difficult to justify. Further, the practical challenges of designing taxes on specific goods and services limit the likelihood of them being effective in addressing obesity (and may lead to perverse outcomes).’*

http://www.pc.gov.au/_data/assets/pdf_file/0015/103308/childhood-obesity.pdf

Etilé, Fabrice, 2012. ‘La taxation nutritionnelle comme outil de santé publique : justifications et effets attendus’ (with English summary ‘Nutritional taxes as a policy instrument for public health: Rationales and expected impact’), *Cahiers de nutrition et de diététique* 47.1, 2012

- *‘[...] consumers are able to substitute between many food products, and producers are free to change the price and the quality of the supply; Hence, any taxation scheme may be defeated by market reactions. The behavioral and health impact of a nutritional tax should thus be low, at least at conventional levels of taxation (between 5 and 20%). [...]’*

<http://www.sciencedirect.com/science/article/pii/S0007996011001982>

Fletcher, Jason M. & Frisvold, David E. & Tefft, Nathan, 2010. ‘The effects of soft drink taxes on child and adolescent consumption and weight outcomes’, *Journal of Public Economics* 94, 2010

- *‘[...] soft drink taxes do not appear to have countered the rise in obesity prevalence because any reduction in soft drink consumption has been offset by the consumption of other calories. Cast in this light, the revenue generation and health benefits of soft drink taxes appear to be weaker than expected.’*

<http://medicine.yale.edu/labs/fletcher/soda.pdf>

Gelbach, Jonah B. & Klick, Jonathan & Stratmann, Thomas, 2007. *Cheap Donuts and Expensive Broccoli: The Effect of Relative Prices on Obesity*, Social Science Research Network, Working Paper Series, 2007

- *‘[...] the sensitivity of individuals to changes in relative food prices may not be sufficient to make fat taxes, within plausible ranges, a viable tool to lower obesity’.*

<http://tigger.uic.edu/~nba/donuts.pdf>

Hawkes, Corinna, 2012. 'Food taxes: what type of evidence is available to inform policy development?', *Nutrition Bulletin* 37, 2012

- 'What does this leave us with for evidence for policy? Well, it tells us that we do not really know how a population would respond to a tax on foods.'

<http://onlinelibrary.wiley.com/doi/10.1111/j.1467-3010.2011.01949.x/pdf>

Hespel, Véronique & Berthod-Wurmser, Marianne, 2008. *Rapport sur la pertinence et la faisabilité d'une taxation nutritionnelle* (Report on the pertinence and feasibility of a nutritional tax), République Française, Inspection générale des Finances, Inspection générale des Affaires sociales, Paris 2008

- 'The establishment of a tax for exclusively nutritional purposes would face a number of difficulties: Very heavy administrative costs for companies and authorities, as well as legal, technical, economic and social obstacles, especially in terms of justification. The mission repels this option and rather recommends to go back to available fiscal measures' (translation from the French).

http://www.igf.finances.gouv.fr/gcp/webdav/site/igfinternet/shared/Nos_Rapports/documents/2008/Taxe_nutritionnelle.pdf

Lacaniño, Ryan D. & Cash, Sean B. & Adamowicz, Wiktor L., 2011. 'Heterogeneous Consumer Responses to Snack Food Taxes and Warning Labels', *Journal of Consumer Affairs* 45.1, 2011

- 'The low own-price elasticities found here provide support to the existing literature that suggests that a tax on less healthy food products would not be an effective way to decrease consumption of these products'.

<http://onlinelibrary.wiley.com/doi/10.1111/j.1745-6606.2010.01194.x/pdf>

Mattes, R.D. & Shikany, J.M & Kaiser, K.A. & Allison, D.B., 2011. 'Nutritively sweetened beverage consumption and body weight: a systematic review and meta-analysis of randomized experiments', *Obesity Reviews* 12.5, 2011

- 'The current evidence does not demonstrate conclusively that NSB consumption has uniquely contributed to obesity or that reducing NSB consumption will reduce BMI levels in general'.

http://www.coca-cola.com.sg/media/pdf/research-paper_obesity.pdf

OECD, 2010. *Healthy Choices*, OECD Health Ministerial Meeting, Paris, 7-8 October 2010, Session 2, Paris 2010

- '[...] fiscal measures aimed specifically to change behavior are complex to design and enforce; their impact may be unpredictable as the price elasticity of demand varies across individuals and population groups; they can bear more heavily on low-income groups than on those with higher incomes, and substitution effects are not always obvious'.

<http://www.oecd.org/dataoecd/14/13/46098333.pdf>

OECD, 2010. Sassi, Franco. *Obesity and the Economics of Prevention. Fit not Fat*, OECD Publications, Paris 2010

- *'The impact of the tax on government and supplier (e.g. food manufacturer) revenues will depend on the elasticity of consumers' demand for the taxed product'.*
- *'Taxes on lifestyle commodities, or sin taxes, tend to be controversial. Critics perceive them as undue interference with individual choice. Governments levying such taxes are sometimes seen as 'profiting' from unhealthy behaviours'.*
- *'In addition, taxes on consumption are typically regressive, unless consumption is concentrated among the wealthiest, which is certainly not the case for most potentially unhealthy lifestyle commodities, as the consumption of these tends to be concentrated among the less well off. Therefore, tax payments will weigh more heavily on the incomes of the most disadvantaged'.*
- *'In addition to distributional effects, imposing taxes on certain forms of consumption may also generate costs, mainly in relation to enforcement. When prices in a market are kept artificially high by taxation, phenomena like parallel trade and smuggling will flourish, which governments must then regulate or repress'.*

http://www.oecd.org/document/31/0,3746,en_21571361_44701414_45999775_1_1_1_1,00.html

OECD, 2012. *Obesity Update 2012, OECD Policy Brief*, Paris 2010

- *'It is difficult to predict how consumers will react to price changes caused by taxation. Some may respond by reducing their consumption of healthy goods in order to pay for the more expensive unhealthy goods, thus defeating the purpose of the tax. Others may seek substitutes for the taxed products, which might be as unhealthy as those originally consumed'.*

www.oecd.org/dataoecd/1/61/49716427.pdf

Suggs, L. Suzanne & McIntyre, Chris, 2011. 'European Union public opinion on policy measures to address childhood overweight and obesity', *Journal of Public Health Policy* 32, 2011

- *'Our results suggest strong consistency among EU countries in support for two policies: providing information to parents and more physical activity in schools. For improving children's diets, our data show widespread support for providing parents with information, education programs in schools, and restrictions on advertising. For reducing childhood obesity, more physical activity in schools received the most support followed by education and advertising restrictions. There was very little support for imposing taxes on unhealthy food'.*
- *In the survey, tax increases were overwhelmingly rejected, receiving only 2.8 per cent support. Sixteen countries had 2 per cent or less support for this measure.*

<http://www.palgrave-journals.com/jphp/journal/v32/n1/full/jphp201044a.html>

Valente, Hugo et al., 2010. ‘Sugar-sweetened beverage intake and overweight in children from a Mediterranean country’, *Public Health Nutrition* 14.1, 2010

- ‘We did not find any association between overweight and SSB consumption in any consumption group [...]’
- ‘The intake of SSB was not associated with increased risk of overweight [...]’.

http://journals.cambridge.org/abstract_S1368980010002533

Wansink, Brian et al., 2012. ‘From Coke to Coors: A Field Study of a Sugar-Sweetened Beverage Tax and its Unintended Consequences’, *Social Science Research Network online publication*, July 2012

- ‘Could taxes on soft drinks reduce obesity? To examine this, a six-month field experiment was conducted in a small American city where half of the households faced a 10% tax and half did not. The 10% tax resulted in a short-term (1-month) decrease in soft drink purchases, but there was no decrease in purchases over a 3-month or 6-month period. Moreover, in beer-purchasing households, this tax led to increased purchases of beer’.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2079840

Waterlander, W.E.; Steenhuis, I.H.; de Boer, M.R.; Schuit, A.J.; Seidell, J.C., 2012. ‘Introducing taxes, subsidies or both: The effects of various food pricing strategies in a web-based supermarket randomized trial’, *Preventive Medicine* 54.5, 2012

- ‘Price decreases are effective in stimulating healthy food purchases, but the proportion of healthy foods remains unaffected. Price increases up to 25% on healthier products do not significantly affect food purchases. Future studies are important to validate these results in real supermarkets and across different countries’.

<http://www.sciencedirect.com/science/article/pii/S0091743512000527>