

UNICEF
TECHNICAL
NOTE

Effective regulatory approaches to protect, support and promote better diets and create healthy food environments for children



NUTRITION GUIDANCE SERIES

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Technical Note on
Effective Regulatory Approaches
to Protect, Support and Promote
Better Diets and Create Healthy Food
Environments for Children

About this document

This Technical Note has been prepared to help UNICEF staff advocate for policies to protect, promote and support healthy diets for children as recommended by the UNICEF Nutrition Strategy 2020–2030 and UNICEF’s Guidance on the Prevention of Overweight and Obesity in Children and Adolescents (UNICEF Guidance).^{1,2} This document provides a high-level summary of the global mandates for action, identifies priority regulatory actions, describes international evidence and experience and lists detailed resources that are available for further reading.

Throughout this Technical Note, the importance of evidence in guiding policy design, development and

implementation is stressed. Interventions should specify clear, measurable and achievable objectives. This Technical Note focuses on regulatory actions because government-led mandatory measures with effective compliance mechanisms are shown to be more effective than voluntary actions such as industry self-regulation.

A greater understanding of the evidence, common challenges and effective rebuttals will help ensure that UNICEF teams can support governments develop a robust and comprehensive regulatory response to overweight and obesity in children and adolescents.

Global mandates on healthy diets and overweight and obesity prevention

The prevalence of overweight among all children and adolescents, from infancy to the age of 19, is on the increase almost everywhere. To address the changing face of malnutrition and the increasing ‘triple burden’ of malnutrition, the prevention of overweight in children and adolescents is now solidly integrated as a priority in the UNICEF Nutrition Strategy 2020–2030.² Recognizing the need to scale up work at the country level, UNICEF published its first Programme Guidance for overweight prevention in 2019, which outlined the policy actions and interventions required to create an enabling environment.

The need for action to promote healthy diets and prevent childhood overweight and obesity is more widely supported by global mandates including the Sustainable Development Goals,³ the Rome Declaration on Nutrition,⁴ the United Nations Decade of Action on Nutrition 2016–2025,⁵ United Nations General Assembly and World Health Assembly (WHA) declarations and outcome documents on the Prevention and Control of Non-Communicable Diseases.⁶ More specifically, the establishment and subsequent recommendations of the Commission on Ending Childhood Obesity (ECHO) elevated childhood overweight and obesity prevention as an urgent priority.⁷ These global mandates all call for effective regulatory approaches to address the obesogenic environment that is recognized as a primary driver of the problem.⁸

There is also growing consensus that overweight, obesity and obesogenic environments are not only a public health concern but also threaten children’s rights.

As the WHO Commission on Ending Childhood Obesity underlined in its final report:

Government and society have a moral responsibility to act on behalf of the child to reduce the risk of obesity. Tackling childhood obesity resonates with the universal acceptance of the rights of the child to a healthy life as well as the obligations assumed by State Parties to the Convention of the Rights of the Child. This new perspective offers some potential to increase the pressure on States to effectively address the various harms associated with the marketing of unhealthy, ultra-processed food to children.⁹

The effective implementation of regulatory actions that protect, promote and support healthy diets and contribute to the prevention of childhood overweight and obesity is therefore critical to respect, protect and fulfil the rights of the child.

The United Nations Convention on the Rights of the Child¹⁰ provides the foundations of a child rights-based approach, together with three instruments: the Universal Declaration of Human Rights,¹¹ the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹² and the International Covenant on Civil and Political Rights (ICCPR)¹³ – which are collectively referred to as the International Bill of Human Rights. Rights that are particularly relevant to protecting, promoting and supporting healthy diets and preventing overweight and obesity include a child’s inherent right to life,¹⁴ right to health,¹⁵ right to adequate food,¹⁶ right to education,¹⁷ right to access information aimed at the promotion of well-being and health¹⁸ and right to privacy.¹⁹

Figure 1. CRC articles on rights related to healthy food environments for children



Priority regulatory actions

The *UNICEF Guidance on the Prevention of Overweight and Obesity in Childhood and Adolescence* promotes a step-by-step approach to country-level work, beginning with a situation analysis of overweight in children of all age groups. Thereafter, UNICEF offices are encouraged to scale up country-level support, together with governments and counterparts, to improve the enabling environment. This includes the development and implementation of regulatory actions as well as monitoring and enforcement measures.

The UNICEF Guidance recommends the following **FIVE** mutually supportive regulatory actions:

1. Marketing practices: Comprehensive regulations to protect children from the harmful impact of food marketing practices, including the implementation of the *International Code of Marketing of Breast-milk Substitutes*, the *WHO Guidance on Ending the Inappropriate Promotion of Foods for Infants and Young Children* and the *WHO Set of Recommendations on the Marketing of Food and Non-Alcoholic Beverages to Children*.

2. Food labelling: Adoption of interpretative front-of-pack nutrition labelling (FOPNL) requirements that identify unhealthy foods and beverages with excess saturated fat, trans fats, free sugars and/or salt.

3. Food reformulation: Mandatory reformulation of processed foods to, for instance, reduce the use of added free sugars and added salt, and/or reduce portion sizes.

4. Fiscal measures: Use of fiscal measures, such as subsidies or tax exemptions on nutritious foods and taxes on sugar-sweetened beverages (SSBs), to encourage the consumption of healthy foods and diets and discourage the consumption of unhealthy foods and products.

5. Food in schools: Mandatory policies and standards around food and beverages provided or available in around daycare centres, preschools and schools.

A regulatory framework resulting from the comprehensive adoption of each of these actions will help promote healthy diets and practices in children and contribute to the prevention of overweight and obesity from birth. It may also help reduce the displacement of nutritious foods from children's diets, effectively addressing malnutrition in all its forms. As such, the goal should be to implement the full package of regulatory actions for a comprehensive response.

The next section of the report provides a set of guiding principles that can be used to inform work across any of the regulatory actions recommended for the prevention of overweight and obesity. However, recognizing that policymakers and UNICEF staff may have specific questions regarding the substantive content and implementation of each individual regulatory action, the report also examines each one in-depth and provides advice on how to ensure an effective regulation, including responses to common industry-led arguments against them. Resources to support the development and implementation of each element are also provided.



GUIDING PRINCIPLES

The following guiding principles underpin UNICEF’s approach to each of the recommended regulatory actions set out in this report; they should be considered in accordance with the relevant national context. These principles are relevant to both the substantive content of the regulation and the processes by which regulatory measures are developed and implemented by government counterparts.

1. Use a child rights-based approach

Under the Convention on the Rights of the Child, a child means every human being below the age of 18 years. A child’s rights-based approach clearly holds governments accountable for respecting, protecting and fulfilling children’s rights. It also includes obligations to refrain from interfering in the enjoyment of children’s rights and to protect these rights from violation by third parties.

Governments have an imperative to adopt a child rights-based approach to protect children from the harmful impact of obesogenic environments because:

- Children are right holders: these entitlements give rise to legal obligations on the part of governments – as duty-bearers – to respect, protect and fulfil children’s rights.
- The best interests of the child shall be a primary consideration in all decisions concerning them, including how harmful practices are regulated.
- The competing rights and interests invoked by business actors must be assessed in light of the best interests of the child principle.
- A child rights-based approach can galvanize broader societal support for regulations and policies and encourage the involvement of child rights support groups and other civil society organizations operating beyond the food and health sectors. A child rights-based approach can also help promote good governance, clear roles and responsibilities and accountability, while empowering children as individuals and their parents and other caregivers.

Specific references will be included for each of the regulatory actions set out in this report to highlight:

- Relevant rights
- Relevant General Comments of the United Nations Committees, including the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Discrimination Against Women, which are the

bodies responsible for interpretation of the respective treaties

- Relevant reports of Special Rapporteurs who are independent experts appointed by the United Nations Human Rights Council to monitor and report on human rights in specific countries or on particular themes

2. Regulatory actions should be evidence-based

It is important that countries seeking to introduce legal protections for children ensure that there is a clear rationale and evidence underpinning the proposed measures. Context-specific information on children’s health and nutrition situation, and how it differs from recommendations, provides one of the most important rationales for action and can be a highly compelling argument for policy leaders. For example, evidence showing that children are consuming sugar far excess of recommended levels can help spur government to act, for example by introducing a tax on SSBs. However, it is also important to generate supporting evidence regarding the environmental factors driving the situation (e.g., what factors are contributing to the obesogenic environment in the country), as this can strengthen the case for action as well as provide the rationale behind the regulatory action. Here, UNICEF’s knowledge generation role can be important – for example, in generating evidence on the extent and nature of marketing of food to children in a country and leveraging it as justification for introducing restrictions.

In order to build the case for evidence-based regulatory actions, countries will also need to collate and summarize existing national, regional and global evidence to support the regulatory action, taking into consideration global recommendations and guidelines (e.g., WHO guidelines and recommendations, Codex Alimentarius Guidelines), systematic reviews and grey literature. The evidence required will vary depending on the regulatory action under discussion, and this will be examined in subsequent sections. Ideally, measures should be based on nationally derived evidence, though there is international precedence for resource-constrained countries to base regulatory measures on internationally recognized best practice.²⁰

Finally, it is critical that the differential application of interventions to specifically defined food and beverages be based on bona fide, evidenced-based public health reasoning. Where this is not the case and policies are not consistently applied, policies may be challenged for being discriminatory – such as where there is an attempt to favour a domestic food or beverage over an imported

one. Nutrient profiling is a way of translating evidence-based dietary recommendations (such as food-based dietary guidelines) into policy tools that will be relevant across a range of regulatory actions. Nutrient profiling is the science of classifying food or ranking foods according to their nutritional composition for reasons related to the prevention of disease and promotion of health.²¹ Nutrient profiling may be used, for example, to: determine the classification of foods that will be the subject of marketing restrictions to reduce the harmful impact on children; develop fiscal policies such as taxes or subsidies; establish criteria for products that can be sold and promoted in educational institutions; and/or to underpin the application of FOPNL. For example, Mexico's recent FOPNL reforms used the Pan American Health Organization nutrient profile model to determine which products should carry a black octagonal warning label.²² Each of the World Health Organization (WHO) regions have developed guidance on nutrient profile models.²³

3. Clearly defined regulatory objectives

It is important that interventions specify clear, measurable objectives. The objectives of regulation provide the basis by which policy 'success' will be assessed both politically and legally and objectives should reflect measurable pathways of effect, that can be evidenced by evaluation.²⁴

Examples of specific regulatory objectives

- Decreasing the availability, desirability and consumption of products high in saturated fats, trans fats, free sugars and/or salt;
- Increasing the consumption of nutritious foods such as fruits, vegetables, nuts, whole grains and legumes;
- Raising revenue for public health;
- Improving consumer literacy in relation to healthy and unhealthy food products; and
- Encouraging reformulation and healthier food production.

Objectives may vary according to country context and should be informed by existing evidence wherever possible (see above). While broad objectives in regulatory tools, such as 'the promotion of public health' may be an overarching goal of one or more measures, it should not be cited as the sole objective as it will be difficult for countries to show that they have achieved objectives if they are framed in an overly broad manner. This has implications for determining whether the intervention has achieved its objective, which may, in turn, have political and legal implications if the measure is challenged. Examples will be included throughout the paper of effective framing of objectives.

Examples of specific regulatory objectives

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Increasing the consumption of nutritious foods such as fruits, vegetables, nuts, whole grains and legumes;

Raising revenue for public health;

Improving consumer literacy in relation to healthy and unhealthy food products; and

Encouraging reformulation and healthier food production.

4. Comprehensive and consistent approach

No single measure is a 'silver bullet' for promoting healthy diets and the prevention of overweight and obesity in children. The most effective regulatory response is a comprehensive one, implementing a range of complementary and coordinated regulatory actions that operate coherently and synergistically to contribute towards the broader policy goal.

Alignment between measures is desirable to increase public health impact. For example, if a food is deemed to be subject to marketing restrictions due to its unhealthy nutritional content, it should also be subject to restrictions on sale and promotion in school settings. Similarly, foods required to carry front-of-pack warning labels that signify them as unhealthy (e.g., warning labels), should not be permitted for marketing to children. As an example, Chile introduced regulations (which entered into force in entering on 27 June 2016) requiring products that exceed specified limits of saturated fats, added sugars, sodium and energy to use one or more 'black stop sign' labels stating that the products were "high in" salt, sugar, energy or saturated fat according to its nutritional composition. Products bearing these labels cannot have cartoon characters on the packaging; are prohibited from being sold, marketed, promoted or advertised within preschool, primary school or high school institutions; cannot be advertised on media or other means of communication directed to children under 14 or where the audience is greater than 20 per cent children under 14; and cannot be given freely to children or advertised in conjunction with items that appeal to children such as toys.²⁵

5. Government-led, mandatory measures accompanied by monitoring and enforcement measures are preferable to voluntary, self-regulated measures

While Governments may face pressure from industry to implement voluntary actions such as industry-led self-regulatory codes, or co-regulatory public-private partnerships, there is little evidence that these 'softer' approaches are effective in promoting healthier diets. For example, in Australia, a review of two voluntary pledges developed by the Australian food industry to regulate marketing to children identified loopholes in the substantive content of the measures, a lack of meaningful sanctions for non-compliance and the absence of regular and systematic monitoring by an independent third party to ensure adherence to the voluntary pledges.²⁶ Similarly, evidence shows that voluntary FOPNL does not experience sufficient

uptake and that food companies 'game' the system and preferentially use the labels on healthier products, without using them on less healthy products. These tactics mislead consumers and undermine the objective of the system.²⁷ Weak voluntary codes of conduct and poor industry adherence in the area of marketing of breastmilk substitutes have resulted in calls for stronger regulatory action worldwide.²⁸

A significant limitation of many voluntary actions is the absence of adequate independent and published monitoring and evaluation, and limited basis for corrective action or enforcement. For example, a recent independent evaluation of the International Food and Beverage Alliance's voluntary pledge to reduce unhealthy marketing to children indicated that in 10 years since that commitment was made, there had been little progress in developing any mechanism for monitoring and holding participating companies to account.²⁹

Real world uptake of mandatory measures is gathering momentum, including taxes on SSBs, mandatory warning-style FOPNLs, mandatory salt limits in foods, and legislation to prohibit the use of industrially-produced trans-fats.³⁰ Evidence continues to emerge that these measures are having the intended impact.^{31,32} While there are examples of weak or poorly enforced regulations, mandatory approaches clearly have the greatest potential to protect children; they offer opportunities for strong government leadership and meaningful sanctions for industry non-compliance to drive effective implementation. Ongoing monitoring and evaluation of recently implemented mandatory measures will be critical to continue to build the evidence-base for effective action.

Examples of compliance monitoring and enforcement measures for regulatory actions to improve children's diets and food environments include:

- In Taiwan Province of China, advertisers face a penalty of between NT\$40,000 (US\$1,189) and NT\$4 million (US\$118,917) if they violate the 2016 restrictions on food marketing to children. Advertisers can be asked to correct the content of the advertisement if it is deemed a serious violation and can be fined up to NT\$600,000 (US\$ 19,104) if they refuse to stop airing them.³³
- In Chile, the Ministry of Health coordinates the implementation of the country's warning labels and marketing regulations, including compliance and enforcement, which are implemented in all regions by the regional health authorities. Compliance monitoring

consists of inspections to assess warning labels, marketing restrictions, and/or sales, depending on the institution visited. If violations are found, the inspection report must detail the noncompliance issue and require an investigation.³⁴ Depending on the investigation findings, the resolution will vary from a reprimand to a fine or prohibition from selling a given product. The reprimand consists of warning the company and demanding that it comply with the regulation within 30 to 60 days and verify compliance with a new inspection.³⁵ A re-offence may be sanctioned with double the original fine. Additionally, and depending on the risk for the population's health, the sanction could require the company to suspend distribution or destroy the product.³⁶

6. Coherence with domestic and international trade and investment law

It is critical that interventions be developed in coherence with domestic and international trade and investment law. In the context of international trade and investment law, governments have generally been afforded the regulatory space to develop and implement evidence-based, bona fide measures to protect public health. However, new measures should be strategically designed to ensure they remain compliant with these agreements. Similarly, special protections for children and public health are common under domestic law, and sometimes, national constitutions safeguard the rights of consumer. However, domestic law obligations can vary between countries due to different constitutional protections. Specific challenges raised by industry against the different regulatory measures recommended in this guidance will be explored further. Required regulatory due process should be followed and clear expectations should be established confirming that harmful industry practices – such as those that promote unhealthy foods and contribute to obesogenic environments – will be subject to ongoing regulation. It is imperative for governments to engage attorney generals, as well as departments of justice, foreign affairs and trade, prior to developing measures and in the policy design, implementation and enforcement process to ensure compliance with relevant domestic, international trade and investment law.

7. Avoidance of conflict of interest

Conflict of interest has been defined by WHO as arising in circumstances where there is the potential for undue influence over the independence, objectivity, professional judgement or actions of a government's work in public health. Conflict of interest does not

necessarily mean that improper action has occurred, but rather that there is a risk of it occurring.³⁷ Conflicts of interest may occur in instances when a food and beverage manufacturer – whose core business contributes to the promotion and consumption of unhealthy diets – plays a role in determining how their business practices are to be regulated.³⁸ In the development of regulations to promote healthy diets and prevent overweight and obesity in children, it is important that the public health goal of interventions be emphasized and that conflict of interest be identified, managed and mitigated. While due care should be taken by governments to ensure all stakeholders are afforded due process and consulted, it is governments that have the mandate to protect and promote public health, and governments who retain ultimate responsibility for initiating, developing and evaluating public health policies. In Canada, a government-wide commitment to regulatory transparency means that Health Canada publishes a table of all correspondence with stakeholders in which views, opinions and information are relayed with intent to inform the development of policies, guidance or regulations related to healthy eating.³⁹ This table includes the date, subject and purpose of all meetings, and the title of any document provided, which is available upon request. Formal online public consultations are open to all stakeholders, with reports summarized and made publicly available. Public Health England has also recently taken steps to improve the transparency of government interactions with the food and other industries.⁴⁰

8. Multisector engagement

Developing and implementing regulatory frameworks related to food and nutrition often requires the engagement of a broad range of government departments and agencies - including those representing health, business and commerce, trade and investment, food and agriculture, sport, culture, media and communications, consumer affairs, child education, and relevant enforcement agencies. Clear and transparent processes should be established to ensure the effective engagement of all relevant departments and agencies, with a clear and leading role for public health.

**FURTHER DETAIL ON
EACH RECOMMENDED
REGULATORY MEASURE**



Restrictions to protect children from the harmful impact of marketing



Action area 1: Protecting children from marketing of unhealthy foods

Evidence is unequivocal that the marketing of products high in saturated fat, trans fats, free sugars and/or salt affects a child's food and drink intake, preferences, food purchase requests, and nutritional knowledge.⁴¹ In light of this, a regulatory framework to promote healthy diets and address overweight and obesity prevention in children should include restrictions to reduce the power and exposure of harmful marketing to children.

a. Global mandates

In 2010, during the sixty-third WHA, WHO Member States unanimously endorsed a set of recommendations on the marketing of foods and non-alcoholic beverages to children urging governments to adopt restrictions at the national level and address cross-national marketing.⁴² The need for countries to implement this set of recommendations has been reiterated in WHO's 'Best Buys',⁴³ the Report of the Commission on Ending Childhood Obesity⁴⁴ and the Rome Declaration on Nutrition from the Second International Conference on Nutrition.⁴⁵

Harmful marketing infringes on the rights of the child enshrined in the Convention on the Rights of the Child and other legally binding human rights instruments. Four human rights that are indisputably impacted by food marketing include the right to health, the right to adequate food, the right to privacy and the right to be free from exploitation. Other rights may also be impacted, including the right to education, the right to access to appropriate information, the right to leisure, culture and play, the right to non-discrimination, and the right to survival, life and development. Recognizing the long-term health impacts of marketing foods and drinks high in saturated fat, trans fat, free sugars and/or salt to children, the United Nations Committee on the Rights of the Child has stated that countries should ensure that marketing does not have adverse impacts by "adopting appropriate regulation".⁴⁶ For further information on the intersection between human rights and marketing restrictions, please refer to the UNICEF publication *A child rights-based approach to food marketing: a guide for policy makers*.⁴⁷

b. Key elements

To ensure that marketing restrictions are effective, all forms of harmful food and beverage marketing to which children are exposed should be regulated. Restrictions should:

- Cover marketing of food and beverages defined as high in saturated fats, trans fats, salt, and/or free sugars, ideally by using a validated nutrient profiling model. Without explicitly defined nutrition criteria or thresholds, implementing food marketing restrictions becomes practicably impossible; this has been one of the biggest obstacles to policy development. When defining the food to be restricted from marketing, governments can adapt the WHO Regional Nutrient Profile Models. Some countries may develop and validate their own models. This can be a lengthy process and for many low-resource countries, it is often better to use or adapt an existing model, such as those developed by WHO. Typically, restrictions only apply to marketing that explicitly features foods and beverages defined as high in saturated fats, trans fats, salt, and/or free sugars. However, experience shows that this can lead to a proliferation in marketing for brands that do not feature foods or beverages high in saturated fats, trans fats, salt, and/or free sugars (e.g., the promotion of zero calorie soft drinks). Evidence suggests that, in instances where a brand is typically associated with less healthy food, exposure to brand advertising or advertisements for healthy food products/meal bundles does not promote healthier choices in children, but rather, a liking for unhealthy food. As such, governments should be encouraged to consider restrictions on brand marketing when the brand is associated with unhealthy items (i.e., a significant proportion of their sales are for foods or beverages high in saturated fats, trans fats, salt, and/or free sugars).
- Extend to all forms of marketing, which encompasses “any form of commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal and/or consumption of particular products and services.”⁴⁸ Restrictions on marketing should not be limited to advertising, but rather include branding, packaging, promotion, product placement, sponsorship and digital means of marketing, and “all types of initiatives for promoting sale”.⁴⁹
- Extend to all forms of media, including broadcast, non-broadcast, online platforms and social media, and in all settings where children gather (e.g., schools, leisure centres, sports venues). Regulations should not be limited to certain forms of media, such as broadcast media, only. In Portugal, advertising of foods and beverages high in saturated fat, trans fat, free sugars and salt is prohibited across television, radio, cinema, publications and the Internet “within 30 minutes before and after children’s programmes and television programmes, audiovisual media services on-demand and on the radio where at least 25 per cent of the audience is younger than 16 years; in films with an age rating of less than 16 years, screened in cinemas; in publications intended for children under 16 years of age; on the Internet, through websites, pages or social networks, as well as in mobile apps destined for devices that use the Internet, when their contents are intended for those under 16 years of age.”⁵⁰ The law would have been stronger if it had covered children up to the age of 18 years of age (see below).
- Cover children up to the age of 18, consistent with the definition of a child within the Convention on the Rights of the Child.⁵¹ Prohibitions on advertising in the Republic of Korea and Ireland cover children under 18 years of age.^{52,53}
- Not be limited to marketing ‘directed to’ or ‘targeted to children’ but rather extend to marketing ‘to which children are exposed’ as well as marketing that is ‘likely to appeal to children’. This should be determined using evidence of viewing audience, the content of the marketing communication and persuasive appeals used, timing, product type, and location. In Chile, regulations cover broadcasting (e.g. TV shows) directed at children and where more than 20 per cent of the audience is children, or in commercial breaks before, during or after these shows. Norms also regulate the design of advertisements, including the use of symbols, characters and presentations aimed at children under 14 years of age.⁵⁴ The law would have been stronger if it defined children as under 18 years of age, rather than 14 years of age. In the United Kingdom, the government is considering a ban on all online advertising for foods high in saturated fats, trans fats, free sugars and/or salt – anywhere, at any time – because they feel this is the best way to protect children from exposure to harmful marketing.⁵⁵
- Be implemented through mandatory, government-led measures,⁵⁶ with enforcement and sanctions for breach administered by a government body, and review mechanisms in place to ensure the effectiveness of the law. In Portugal, there is a provision requiring the impact of the marketing restrictions law to be evaluated every 5 years based on indicators including the consumption of food by children under 16 and their general health. Relevant

information is provided by the Ministries of Health, Education, Consumer Protection and Food and relevant agrifood and economic sectors and changes are made to improve the law as required. The Minister for Economy is responsible for monitoring and enforcing the law.⁵⁷

- Extend to cross-border marketing, subject to relevant applicable laws (see common challenges below).
- Require that private Internet platforms remove digital marketing of unhealthy foods accessible to children if deemed to be non-compliant with regulation.⁵⁸ In addition to the child's right to health, adequate nutrition and the best interests of the child, this requirement can be based on the grounds of rights to freedom of expression and thought⁵⁹ and access to media from a diversity of services.⁶⁰

c. Response to common challenges

- Countries seeking to introduce measures may face calls for the definition of 'child' to be unduly limited. Countries have introduced measures to protect children up to the age of 18 years of age, such as the Republic of Korea⁶¹ and Ireland⁶², which is consistent with the definition of child under the Convention of the Child and the recommendations from the WHO Commission on Ending Childhood Obesity. There is evidence that, despite food industry claims to the contrary, older children are also vulnerable to the persuasive influences of harmful marketing.⁶³
- Countries seeking to implement marketing restrictions may encounter claims that restrictions on intellectual property, such as trademarked characters featured on packaging (e.g., 'Tony the Tiger'), breach laws relating to freedom of commercial expression; are unnecessarily trade restrictive; and violate intellectual property rights under domestic, regional and international trade and investment law. However, these laws do not confer absolute rights on companies and generally provide space for national regulations that are bona fide, evidence-based and in the interests of public health. Chile has successfully introduced a requirement for the removal of trademarked characters on food packaging when the product is carrying a warning label. This is part of Chile's food labelling and marketing restrictions that prohibit the use of techniques and incentives that could attract the attention of children, such as cartoons and animations on unhealthy foods.⁶⁴ Nonetheless, legal advice should be sought from relevant legal, attorney generals, foreign affairs and

trade departments prior to the implementation of such restrictions.

- To counter claims that the measures will not address overweight and obesity, it is important that specific objectives for the measure be introduced (e.g., to reduce children's exposure to marketing of foods high in saturated fats, trans fats, free sugars and/or salt) and that such measures be developed as part of a suite of measures.
- To effectively address cross-border marketing, governments should engage in advocacy to introduce coordinated, cross-border regulation at a supra-national level.

d. Resources

- WHO, **Set of Recommendations on the marketing of food and non-alcoholic beverages to children**
- UNICEF, **A child rights-based approach to food marketing: a guide for policy makers**
- UNICEF, **Children and Digital Marketing: Rights, risks and responsibilities. Discussion Paper.**
- WHO/UNICEF Toolkit on food marketing to children (forthcoming, available upon request).

Action area 2: Implementation of the International Code of Marketing of Breast-milk Substitutes and subsequent relevant resolutions of the World Health Assembly

In addition to reducing the risk of infant mortality and morbidity, breastfeeding can reduce the risk of overweight and obesity in children.⁶⁵ However globally only 42 per cent of infants under six months of age are exclusively breastfed¹ and the global market for breastmilk substitutes (BMS) is estimated to be worth approximately \$70 billion⁶⁶ with the aggressive and inappropriate promotion of BMS imposing a major barrier to breastfeeding.⁶⁷ Therefore, regulatory measures are required to prevent the inappropriate marketing of BMS.

a. Global mandates

In 1981, the International Code of Marketing of Breast-milk Substitutes (the Code) was adopted by the WHA to protect families from the industry's aggressive marketing tactics. The Code seeks to prohibit all advertising and other forms of promotion of BMS, bottles, and teats, either through health care systems or to the broader public. Since its adoption, the Code has been regularly

updated by subsequent WHA resolutions,⁶⁸ which have addressed new scientific evidence on breastfeeding and the BMS industry's new products and promotional tactics. However, implementation of the Code has not been uniform. Although 136 (70 per cent) of 194 WHO Member States had enacted legal measures with provisions to implement the Code as of April 2020, only 25 of these countries had measures substantially aligned with the Code; a further 42 had measures which were moderately aligned; 69 had only included some provisions, while 58 WHO Member States had no legal measures at all. Effective monitoring and enforcement mechanisms remain a challenge in many countries.⁶⁹

The Framework for Action from the Second International Conference for Nutrition (ICN2) recommends the adoption and implementation of the Code and relevant WHA resolutions.⁷⁰ Promotion and support of exclusive breastfeeding for the first 6 months of life has been included as a recommended intervention under WHO's 'Best Buys'.⁷¹ Recommendation 4.1 of the ECHO Commission's report is to enforce regulatory measures such as the Code including subsequent relevant WHA resolutions.⁷²

Article 24(e) of the Convention of the Rights of the Child states that all segments of society, in particular parents and children, should be informed, have access to education and be supported in ... "the advantages of breastfeeding".⁷³ The Committee on the Rights of the Child stated that countries are "required to introduce into domestic law, implement and enforce [...] the International Code on Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions", and that "private companies should [...] comply with the International Code of Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions."⁷⁴ The Committee on the Elimination of All forms of Discrimination Against Women stated that countries should ensure "effective regulation of marketing of breast-milk substitutes and implementation and monitoring of the International Code of Marketing of Breast-milk Substitutes."⁷⁵ Technical guidance from the Office of the United Nations High Commissioner for Human Rights states that countries must "regulate private actors over which they exercise control, such as [...] producers and marketers of breast-milk substitutes," which calls for the implementation and monitoring of the Code.⁷⁶

b. Key elements⁷⁷

- The promotion of all BMS should be prohibited, including all milk products in either liquid or powdered form, that are specifically marketed for feeding infants and young children up to the age of 36 months (including follow-up formula and growing-up milks). The prohibition should also apply to feeding bottles and teats.⁷⁸ The Code and relevant resolutions are regarded as a minimum standard. Language around this is included in the model law (see 'Key resources', below). However, some countries have chosen to go further, with the rationale to protect the best interests of the child. In Fiji, for example, the definition of products covered includes (a) infant formula; (b) follow-up formula; (c) any other food marketed or otherwise represented as suitable for feeding children up to the age of 5 years; (d) any appliance that replaces breastfeeding, including but not limited to a feeding bottle, cup with spout or pacifier; and (e) other food or appliances declared to be a "designated product" for the purposes of the regulation.
- The legislation should state that prohibited promotional practices include but are not limited to "(a) advertising; (b) sales devices such as special displays, discount coupons, premiums, rebates, special sales, loss-leaders, tie-in sales, prizes or gifts; (c) provision of one or more samples of a designated product to any person; and (d) donation or distribution of information or education material referring to infant or young child feeding or performance of educational functions related to infant or young child feeding."⁷⁹
- Common types of Code violations include conventional forms of advertising through a variety of media, and more recently through social media and digital marketing, to promote BMS, bottles, and teats to the general public and promotion through health care systems; free samples to mothers; using sales inducements such as special offers or price reductions; publicizing health or nutrition claims on labels or other BMS materials; idealizing BMS products in text or images; providing free supplies of BMS, bottles, or teats to health facilities; and sponsoring the education and meetings of health workers. It is thus important that measures cover all forms of promotion.⁸⁰
- The legislation or regulations should allocate responsibility for independent monitoring, and sanctions in the event of non-compliance. Article 11 of the Code requires companies to comply with the Code at all levels, and therefore to establish their own Code compliance procedures. The overall duty to monitor Code compliance, however, lies with governments,

who should establish independent monitoring mechanisms that are free from commercial influence and conflicts of interest. The WHO/UNICEF **NetCode toolkit** provides necessary guidance and protocols for both periodic and ongoing monitoring and assessment.

c. Common challenges

- Implementation of the Code may be met by challenges under domestic and international trade and investment law, such as claims that the measures discriminate against foreign goods or investors; are too trade restrictive; infringe intellectual property laws; are inconsistent with international standards, including Codex Alimentarius; and have not been designed in accordance with necessary requirements of due process.
- To counter such criticisms, it is important that the objectives of BMS regulation be specific and clearly defined. The classification of products that are subject to marketing restrictions should be evidence-based, the regulations should not be more trade restrictive than necessary to achieve their objectives, and the regulations should not discriminate, for example, by treating imported products less favourably than domestic products. Due process should be followed in the development and implementation of the measures.
- Although most countries worldwide (136, about 70 per cent) have implemented the Code through some form of legislation, some of which are more stringent than the Code itself, there has never been a formal legal dispute concerning domestic implementation of the Code under an international trade agreement.⁸¹
- Monitoring and enforcement remain a challenge in many countries. An independent and sustainable system should be designed as national regulations are being drafted, drawing on the NetCode toolkit for guidance.
- Legal measures to implement the Code should be part of a comprehensive suite of measures to address overweight and obesity. It is important that legal advice be sought by relevant departments such as the Attorney-General, however it should be noted that governments generally have regulatory space to enact measures to protect bona fide, evidence-based public health measures under national and international law.

d. Key resources

- **International Code of Marketing of Breast-milk Substitutes and subsequent relevant resolutions of the World Health Assembly**
- **Marketing of breastmilk substitutes: National implementation of the international code, status report 2020**
- **WHO policy brief on international trade agreements and implementation of the International Code of Marketing of Breast-milk Substitutes**
- **WHO FAQs on the International Code**
- **Model Law (Annex 4 in this document)**
- **NetCode toolkit**

Action area 3: Implementation of the Guidance on Ending the Inappropriate Promotion of Foods for Infants and Young Children

The WHA has adopted a number of subsequent resolutions since 1981 containing language that has expanded or clarified the provisions of the Code. However, WHA Resolution 69.9 of 2016 does not contain the actual operative language to be followed; rather it makes reference to an entire new set of recommendations contained in the WHO Guidance on Ending the Inappropriate Promotion of Foods for Infants and Young Children. It is thus important that policymakers be aware of and understand the provisions in the Guidance, in addition to the provisions of the Code, noting that the measures required to regulate the inappropriate promotion of foods for children from 6 to 36 months of age can be incorporated into Code regulations, as shown in the Model Law.

a. Global mandates

WHA Resolution 69.9 of May 2016 and the associated WHO Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children are the key instruments regulating the inappropriate promotion of foods for infants and young children. The sixty-ninth WHA welcomed the guidance and WHA69.9 urged Member States, manufacturers and distributors, health care professionals and the media to implement the recommendations contained in the Guidance.

b. Key elements

- The term “foods” covers both foods (including complementary foods) and beverages (including fruit juices and SBBs) and applies to all commercially produced foods that are marketed as being suitable for infants and young children from the age of 6 months to 36 months. The guidance is not applicable to vitamin and mineral food supplements and home fortification products such as micronutrient powders and small-quantity lipid-based nutrient supplements.
- Foods for infants and young children that do not function as BMS may be promoted only if they meet all the relevant national, regional and global standards and are in line with national dietary guidelines. Nutrient profile models for commercially produced complementary foods should be developed and utilized to guide decisions on which foods are inappropriate for promotion. The WHO Regional Office for Europe has developed a nutrient profile model that can be used or adapted for this purpose.⁶²
- The guidance applies to promotional activities by governments, non-governmental organizations and corporations.
- Messages, such as those in advertisements and on product labels, used to promote foods for infants and young children should support optimal feeding; inappropriate messages should therefore not be included. This means:
 - › Messages must include a clear and easily understood statement on the importance of continued breastfeeding until 2 years of age or beyond and the importance of not introducing complementary feeding before 6 months of age
 - › No images or text that suggests use for infants under the age of 6 months
 - › No image or text likely to undermine or discourage breastfeeding, that makes a comparison to breastmilk, or that suggests that the product is nearly equivalent or superior to breastmilk
 - › No promotion of bottle feeding
 - › No endorsement by a professional or other body, unless this has been specifically approved by relevant national, regional or international regulatory authorities
 - › No cross-promotion to promote breastmilk substitutes indirectly via the promotion of foods for infants and young children
- Companies that market foods for infants and young children should not create conflicts of interest in health facilities or throughout health systems. This means:
 - › No free products, samples or reduced-price foods to

families through health workers or health facilities, except: as supplies distributed through officially sanctioned health programmes (products distributed should not display company brands)

- › No donation of equipment or services to health facilities
 - › No gifts or incentives to health care staff
 - › No hosting of events, contests or campaigns in health facilities
 - › No gifts or coupons to parents, caregivers and families
 - › No education to parents and other caregivers on infant and young child feeding in health facilities
 - › No provision of information for health workers other than that which is scientific and factual
 - › No sponsorship of meetings of health professionals and scientific meetings
- Government-led regulatory measures should be invoked, ensuring a system for monitoring the implementation of the guidance and sanctions in the event of non-compliance. Countries such as Bangladesh and Brazil already prohibit pictures of young babies on labels of complementary foods, while Cambodia, the Philippines and Viet Nam require information about the proper introduction of complementary foods to be included in all educational and informational materials dealing with infant and young child feeding. Other countries, such as Bangladesh, Botswana and India, prohibit advertising and other forms of commercial promotion for complementary foods for infants and young children up to the age of 5 years, 3 years and 2 years respectively. UNICEF and the International Baby Food Action Network have updated the ‘model law’ to provide a concrete and practical example of what appropriate legislation should look like⁶³ In order to incorporate all provisions of the Code and the WHO Guidance.

c. Common challenges

- Implementation of the Guidance may be met with challenges under domestic and international trade and investment law, such as claims that the measures are discriminatory against imported goods or investors, too trade restrictive, infringe intellectual property laws, are not made in accordance with international standards including Codex Alimentarius and have not been designed in accordance with necessary due process.
- Product delineation for the purposes of regulation should be based on evidence, such as nutrient profile models; and imported goods and investors

are not treated less favourably than comparable locally made products. Measures should be part of a comprehensive suite of measures to address overweight and obesity to optimize impact on public health. It is important that legal advice be sought by relevant departments such as the Attorney-General, however it should be noted that governments generally have regulatory space to enact measures to protect bona fide, evidence-based public health measures under national and international law.

d. Key resources

- **Guidance on ending the inappropriate promotion of foods for infants and young children:** WHA A69/7 Add.1.
- **UNICEF Nutrition Guidance: Implementing WHA Resolution 69.9 (2016) and WHO Guidance on ending in appropriate promotion of foods for infants and young children.**
- **WHO Guidance on ending inappropriate promotion of foods for infants and young children: Implementation Manual.**
- **Model Law (Annex 4 in document)**



Use of fiscal measures to encourage healthy diets and discourage consumption of unhealthy products



Fiscal measures can be effectively used to decrease consumption of unhealthy products and increase consumption of healthy products. Regulatory options include implementing taxes on foods and beverages high in saturated fat, trans fat, free sugar and/or salt to increase their price at point of purchase; and subsidizing or *removing* taxes on nutritious foods such as fruits and vegetables, wholegrains, nuts and legumes to decrease their price. The evidence is strongest and most consistent for the effectiveness of taxes on SSBs that increase the price by 20–50%. Evidence also shows that overall diet quality improves when fruits and vegetables are subsidized, thus leading to improvements in health outcomes. There is growing evidence for the likely effectiveness of combinations of taxes and subsidies, particularly as a mechanism to reduce potential substitution with unhealthy foods.^{84,85} Taxing foods and beverages high in saturated fat, trans fat, free sugar and/or salt can also be an effective way to raise revenue, and it is possible (and popular with the public) to advocate for the revenue to be ring-fenced for health, education or early child development.

a. Global mandate

WHO's 'Best Buys' and other recommended interventions for the prevention and control of noncommunicable diseases (NCDs)' highlights taxation on SSBs as an 'effective intervention' and classifies the implementation of subsidies to increase the intake of fruits and vegetables as 'recommended' interventions.⁸⁶ Implementation of an effective tax on SSBs is recommended in the Report of the Commission on Ending Childhood Obesity.⁸⁷ Effective taxation is also an element of rights compliance. The Special Rapporteur on the Right to Food indicated that States should "impose taxes on soft drinks (sodas), and on HFSS foods, in order to subsidize access to fruits and vegetables and educational campaigns on healthy diets."⁸⁸

b. Key elements

To ensure that tax and fiscal policies are effective, the following features should be included in regulatory measures:

- Clear delineation of products that will be covered by the tax and/or subsidy, informed by evidence-based

standards. It is important that governments use evidence and standard criteria (e.g., free or total sugar, salt, saturated fat or energy content/a nutrient profile model) to determine what foods or beverages are subject to fiscal policies, as this will help justify the measure. Some examples of existing criteria follow:

- › In Malaysia, the tax on beverages is based on customs tariff codes, and covers carbonated drinks containing free (added) sugar or flavoured and other sweetening matter which contain sugars exceeding 5g per 100ml, as well as fruit juices and vegetable juices that contain more than 12g sugar per 100ml.⁸⁹
- › The United Kingdom Soft Drinks Levy constitutes £0.24 per litre of drink if it contains 8g of sugar per 100ml and £0.18 per litre of drink if it contains between 5–8 g of sugar per 100ml.⁹⁰
- › In Mexico, an 8 per cent tax applies to nonessential foods with energy density ≥ 275 kcal/100g and a peso-per-litre tax on SSBs.⁹¹
- Care must be taken to ensure comprehensive coverage of the tax (i.e., that it applies to all SSBs), otherwise consumers may switch to other, more affordable, unhealthy substitutes. For example, a World Bank study of the use of taxation to address NCDs in Tonga revealed that although unhealthy food products that were subject to the excise tax had become more expensive, there were still unhealthy substitute products available that were not subject to the tax. After the introduction of a tax on mutton flaps (discarded fatty cuts of meat, imported from New Zealand), 40 per cent of mutton flap consumers reported shifting to salted beef, tinned fish and corned beef, which were not subject to the tax but contained similarly high and unhealthy levels of salt and saturated fat.⁹²
- Any exclusion of products from the coverage of the fiscal policies should be based on bona fide, public health reasons. For example, exclusions of products such as milk products with added sugars from the scope of a SSB tax is not advised unless there are evidence-based, public health rationale for the exclusion. For example, the sugar levy in the United Kingdom has been criticized for exempting sweet and flavoured milks.⁹³ In Tonga, while there was an excise tax on imported ice cream and instant noodles, locally manufactured ice cream and instant noodles were not subject to the excise tax, making them cheaper, unhealthy substitutes to their imported counterparts. This distinction should thus be avoided for both legal and public health reasons.⁹⁴
- The tax rate should be at a level that will lead to a decrease in the consumption of the targeted product, with WHO recommending a tax of 20 per cent or more. Industry pressure in Chile resulted in the introduction of a lower rate of taxation on SSBs, impacting the effectiveness of the intervention.⁹⁵
- As with all the interventions in this framework, it is important that taxes and subsidies be introduced with monitoring and evaluation mechanisms in place to ensure the effectiveness of the tax. In Mexico, an evaluation of the “peso-per-litre” tax found a 7.6 per cent reduction in the purchase of taxed sugary drinks during 2014 and 2015; the tax also raised over US\$2.6 billion in revenue, some of which was invested in the creation of water fountains in schools.⁹⁶
- There are limited examples of the implementation of population-wide food subsidies with the express objective of lowering the price of healthy foods and increasing their consumption, but there are some examples of targeted subsidies on fruit and vegetables for specific population groups (e.g., free school fruit; vouchers for low-income families). For example, the inclusion of healthier products in nutrition assistance programmes (that is, the schemes for the most deprived or food stamps programmes) successfully encouraged consumer shifts. The greatest shifts have been found to be towards healthier substitutes within the same product category (for example, from 2 per cent fat to non-fat milk and from white to wholegrain bread) but increases in fruit and vegetable consumption have also been observed.⁹⁷ An increasing number of countries are also looking to exempt nutritious foods from tax, with the aim of ensuring access to basic foodstuffs for vulnerable populations. For example, Botswana and South Africa both have zero ratings or tax exemptions for fresh fruits and vegetables, among other food categories.

c. Response to common challenges

- Conflict of interest and intense industry lobbying can undermine efforts to establish a tax and can impact its effectiveness. In Fiji, a domestic excise tax on SSBs was reduced in the budget, largely due to lobbying by the domestic soft drink industry, which argued that the tax was excessively eroding the profitability of their operations and that it was irregularly enforced (the excise tax was administered using self-regulation).⁹⁸ In Chile, proposals for an SSB tax were met with criticism from the industry, which argued that freedom of choice of consumers would be impacted and that the tax would have

a detrimental impact on the economy, trade and jobs. This resulted in the introduction of a lower tax threshold, well below the WHO recommended level of 20 per cent, severely undermining the effectiveness of the tax. However, despite industry arguments, evidence consistently points to no negative impact from taxes on the economy or jobs. In Mexico, despite facing claims that the introduction of an SSB and non-essential energy-dense food tax in 2014 would cause job losses in Mexico, studies indicated that there was no decrease in employment associated with the taxes in the manufacturing sector. Further, employment in commercial stores selling food and beverages did not change after the two taxes, and national unemployment rates did not increase after the taxes were implemented.⁹⁹ Findings from the United States (where state level taxes apply) and the United Kingdom are the same.^{100,101}

- Public health taxes have been labelled by industry as unconstitutional and in violation of national laws including the rights of commercial enterprise and the rights of autonomy of consumers and/or claimed to be ‘ultra-vires’ (meaning beyond the government’s authority). Claims have also been made that these taxes and subsidies infringe regional and international trade and investment agreements by jeopardizing the free movement of goods, discriminating against imported goods in favour of domestic products and significantly reducing returns on investment. However, national, regional and international laws recognize the sovereign right of states to regulate in the interests of public health. To counter these industry arguments:
 - › Taxes and subsidies should be based on nutritional composition with the relevant thresholds determined by evidence-based standards.
 - › Regulatory distinctions in the application of tax and subsidies coverage should be based on bona fide evidence-based public health reasoning. Distinctions should not discriminate against or between imported products or investors; if they do, the distinctions should be due to bona fide, evidence-based public health reasons.
 - › Measures should be positioned as part of a comprehensive suite of measures, including other regulatory actions described in this report.
 - › Relevant legal measures relating to due process of law-making should be observed.

d. Resources available

- WHO, Fiscal policies for diet and the prevention of noncommunicable diseases
- UNICEF, UNICEF Implementing taxes on SSBs



Adoption of front-of-pack nutrition labelling requirements that identify unhealthy foods and beverages



Governments can require simple, graphical FOPNL to provide at-a-glance information on the nutritional quality of food. They should appear on the primary display panel of foods to supplement nutrient declarations on the back of pack. FOPNL can help consumers make informed and healthier food choices, for example by helping them identify foods that are high in saturated fat, trans fat, free sugars and/or salt. An additional objective of FOPNL can be to stimulate manufacturers to reformulate and produce healthier foods.

A variety of FOPNL regulations are now being used by governments worldwide.¹⁰² For FOPNL to promote healthier diets, governments must select a label format that consumers can understand and use. A significant body of public health evidence is now reflected in WHO guidance, which suggest that formats with interpretive elements (e.g., use of colours, symbols and/or words) that show judgment or recommendation are most useful.¹⁰³ These include nutrient-specific interpretive labels such as warnings for excess salt, free sugar and saturated fat or energy content, and multiple types of summary indicators including the Nutri-Score system which rates foods on a spectrum from A-E based overall

nutritional quality. While evidence continues to build for which label formats works best in different contexts, there is now a significant body of evidence that indicates that these interpretative labels perform better when compared to non-interpretive labels such as the industry-preferred Guideline Daily Amount system still used in countries including the United States and Thailand.¹⁰⁴

There is also evidence that FOPNL that provides information about product *un*healthfulness is more effective in supporting consumers to choose nutritionally favourable products.¹⁰⁵ FOPNL in this category includes nutrient-specific warning labels and summary indicator labels, provided these summary indicators are not used selectively by companies to only show favourable ratings, such as healthier choice logos and heart ticks, but also appear on less healthy products to indicate product unhealthfulness. For this reason, FOPNL should be mandatory.

FOPNL should not replace 'nutrient declarations' or quantitative ingredient declarations, which provide quantitative information, usually in small print size, on the back of package in accordance with Codex

Alimentarius,¹⁰⁶ a collection of internationally adopted food standards, guidelines and related texts established to protect the health of the consumers and to ensure fair practices in the food trade.¹⁰⁷

a. Global mandates

- WHO has produced guiding principles and a framework manual for FOPNL for promoting healthy diets.¹⁰⁸ Recommendation 1.7 of the Report of the Commission on Ending Childhood Obesity calls for the implementation of interpretive FOPNL supported by public education of both adults and children for nutrition literacy.¹⁰⁹ WHO also includes the reduction of salt intake through the implementation of FOPNL as a 'Best Buy' while other recommended measures include the replacement of trans-fats and saturated fats with unsaturated fats through labelling and implementation of nutrition labelling to reduce total energy intake (kcal), sugars, sodium and fats.¹¹⁰ The Codex Alimentarius Committee on Food Labelling is in the process of developing guidelines on FOPNL measures;¹¹¹ however, these are not yet in place. In terms of child's rights-based arguments, clear and informative FOPNL not only protects the right to health but the right to education¹¹² and the right to access information aimed at the promotion of well-being and health.¹¹³

b. Key elements

Effective FOPNL measures should contain the following elements:

- A label format that consumers can understand and use. International research and locally generated findings can support countries to select the format that best achieves government objectives within the national context.
- Clear and measurable objectives and sufficient monitoring and evaluation mechanisms to ensure the success of these objectives can be demonstrated. Most current regulations worldwide contain a measurable consumer-focused objective (e.g., the aim is to inform and/or help consumers make healthier choices). Uruguay's 2018 regulations are even more strategic, with the objective to allow consumers to "identify foods with excessive amounts of specific nutrients", a threshold which is likely to be easier for government to demonstrate in the short-term with subsequent research.¹¹⁴ Brazil's objectives for FOPNL, currently under development, are to facilitate decision-making by Brazilian consumers, with specific objectives including: (a) to improve the visibility

and readability of nutritional information; (b) reduce situations that can mislead consumers regarding nutritional composition; (c) facilitate nutritional comparison; (d) improve the accuracy of declared nutritional values; and (e) broaden the scope of nutritional information.¹¹⁵

- Regulations (i.e., mandatory implementation) with enforcement mechanisms and sanctions for non-compliance are preferable to voluntary FOPNL schemes.¹¹⁶ In Australia, the Health Star Rating System is a voluntary system that designates the healthiness of a product by assigning a rating from half a star to five stars. However, an evaluation in 2018 indicated that 70 per cent of eligible products did not display the rating, and less healthy products were less likely to display the rating, thereby undermining the objective.¹¹⁷
- Government-led FOPNL development is perceived as more credible by consumers.¹¹⁸ While government-led engagement with stakeholders via public consultation is recommended by WHO on some aspects relating to the implementation of the FOPNL (e.g., practical requirements around label design and positioning on package), there are also areas where WHO specifically recommends that industry engagement be avoided, particularly in development of nutrient profiling criteria given the conflicts of interest in this area.¹¹⁹ Legal affairs departments should be engaged to ensure that a mandatory system will not be contrary to domestic constitutional law and international law agreements.
- Display specifications that promote visibility and salience on pack (e.g., size, colour, placement specifications); a justified scope for which products are included and excluded in the system; and a valid nutrient profile model that uses nutrients and food components that are justified by available health evidence must be defined. For example, Chile requires products that exceed specified limits of saturated fats, sugars, sodium and energy to use one or more black octagonal shaped labels stating the products are "high in" salt, sugar, energy or saturated fat according to its nutritional composition, while France uses a nutrient profile model to determine which products score A - E.
- Alignment with the operation of other national public health and nutrition policies. For example, as noted previously, FOPNL in Chile is linked to marketing restrictions and availability of foods in school canteens. These linkages have potential to increase public health impact.
- Structured, regular monitoring of FOPNL to evaluate whether the labelling system is meeting

its objectives. Robust monitoring and evaluation can be supported by baseline and follow-up data on the labelling and nutritional composition of the food supply, annual sales of nutritionally delimited food categories, periodic detailed consumption surveys, and changes in the prices and advertising spending on nutritionally delimited food categories. Governments should also consider a range of enforcement options to encourage compliance with FOPNL regulation and penalize non-compliance.

c. Responses to common challenges

- A number of proposals for mandatory FOPNL have been the subject of discussions in committees of the World Trade Organization. Arguments raised include that the measures are not based on scientific evidence, are more trade restrictive than necessary to achieve a public health objective, and are not based on international standards, particularly Codex Alimentarius Guidelines. Countries have been able to counter these arguments on public health grounds, including Chile, which reiterated that measures were crucial to protect children as one out of three children under the age of 6 in the country was overweight.¹²⁰ It is important to note that none of the discussions has escalated to a formal legal challenge. If a complaint were to be brought under international trade and investment law, the unsuccessful challenges against Australia's tobacco plain packaging laws under domestic, international trade and investment law would provide support to countries to adopt legitimate measures to protect public health. To minimize the risk of possible legal challenge it is important to ensure that attorney-general, foreign affairs and trade and investment law departments are engaged prior to the development of FOPNL schemes. It is also important to ensure measures are evidence-based and part of a suite of comprehensive measures to address overweight and obesity.

d. Resources available

- WHO Guiding principles and framework manual for front-of-pack labelling for promoting healthy diets
- WHO EURO Health Evidence Network Report 'What is the evidence on the policy specifications, development processes and effectiveness of existing front-of-pack food labelling policies in the WHO European Region?'



Reformulation of processed foods including portion sizes



The aim of reformulation of processed foods, including reducing portion sizes, is to reduce the amount of saturated fat, trans fats, free sugars and salt/sodium in processed food products with a view to prevent excessive dietary intake and improve the nutrient content of foods and the quality of the food supply.¹²¹ Over the last several decades, portion sizes have increased in many settings and evidence suggests that the availability of larger portions is associated with an increase in total caloric intake, which could lead to weight gain.¹²² WHO states that food product reformulation and portion size control are essential elements to providing a healthier food supply and preventing and controlling NCDs.¹²³ Nevertheless, an increasing number of countries consider that policies targeting reformulation have important limitations. They point to limited progress from voluntary agreements (which industry tends to favour, as a way to make limited improvements while claiming they are contributing to the solution) and to the growing body of evidence suggesting that the level of food processing, rather than nutrient content alone, also has harmful health effects.¹²⁴ As a result, many countries – notably in Latin America – are prioritizing other regulations and policies instead, such as FOPNL or taxes, in order to

discourage the consumption of unhealthy foods (or ultra-processed foods) and encourage consumption of minimally processed whole foods.¹²⁵

a. Global mandates

WHO's 'Best Buys' includes the reduction of salt intake through the reformulation of food products to contain less salt and the setting of target levels for the amount of salt in foods and meals.¹²⁶ Limiting portion and package size to reduce energy intake and the risk of overweight/obesity, and replacing trans-fats and saturated fats with unsaturated fats through reformulation, have been classified as other recommended interventions.¹²⁷ One of the nine voluntary global targets for NCDs by 2025 is a 30 per cent relative reduction in mean population intake of salt/sodium.¹²⁸

b. Key elements

- Mandatory regulation of the nutritional composition of processed foods with clear policy objectives, evidence-based targets and government oversight and control is preferable to voluntary self-regulation by industry, given widely documented industry inaction

and under-performance in voluntary agreements.¹²⁹ For example, in 2013, Argentina adopted Law 26.905,¹³⁰ introducing mandatory maximum levels of sodium in meat products, breads, soups, seasoning mixes and tinned food to promote the reduction of the consumption of sodium in the population. The mandatory scheme is accompanied by sanctions, fines of up to 1 million pesos (~US\$12,000), and risks of business closure for infringement. In a survey of almost 4,000 products, more than 90 per cent of the products included in the national sodium reduction law were found to be compliant.¹³¹ Similarly, in 2013, South Africa introduced regulations that impose maximum salt levels for 13 food categories, including bread, breakfast cereals and porridges, butter and fat spreads, processed meat, savoury snacks, and potato crisps. A survey of 11,000 products in the run-up to the mandatory implementation date of the legislation found that 67 per cent of products were compliant.¹³² In contrast, in 2016, the Government of the United Kingdom challenged the food and hospitality industry to reduce sugar by 20 per cent in foods that contribute most to children's sugar consumption, as part of voluntary, industry-led efforts to tackle obesity. After three years of implementation, average overall sugar reduction across all food categories was at only per cent.¹³³

- Food reformulation, even when mandatory, is insufficient on its own to create healthy diets and needs to be accompanied by other regulatory measures described in this guidance note, as well as actions to improve the affordability and accessibility of healthy foods, particularly fruit, vegetables and other fresh products.

c. Responses to common challenges

- Mandatory product reformulation and portion size measures may be challenged on the grounds that: they were not devised in accordance with sufficient consultation (due process); the authority enacting the measure was acting ultra vires (exceeded their authority); the coverage of some products by regulation to the exclusion of others is discriminatory; the measures limit consumer freedom of choice; or the measures do not achieve their objectives. As an example, in 2012, the New York City Board of Health passed a regulation that prohibited the sale of SSBs above 16 ounces (470ml) in food service establishments. The law was challenged by industry, stating that the Board of Health had exceeded its authority in enacting the measure. The industry challenge was successful, and the measure was struck

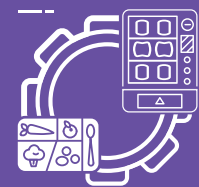
down. However, it has been reported that while the Board of Health had exceeded its authority, New York City Council or New York State legislature could still enact a serving size restriction.¹³⁴

d. Resources

- WHO Best Buys
- The SHAKE technical package for salt reduction
- Accelerating salt reduction in Europe: a country support package to reduce population salt intake in the WHO European Region
- WHO REPLACE Trans-fat free by 2023



Policies and standards on food, nutrition in preschools, primary and secondary schools and for the sale of foods and beverages in and around schools



The school environment has the capacity to influence healthy eating habits and physical activity levels of children around the world. Policies and standards on food, nutrition in preschools, primary and secondary schools, including on the sponsorship and branding of schools and sporting events by the food and beverage industry and the sale of foods and beverages in schools should be introduced that enable the promotion of healthy diets and limit the promotion and availability of products high in salt, sugar and fats.

a. Global mandates

The Commission on Ending Childhood Obesity Recommendation 1.8 states that settings such as schools, child-care settings, children's sports facilities and events should create healthy food environments while Recommendation 5.1 and 5.2 highlight the need to establish standards for meals provided in schools, or foods and beverages sold in schools, that meet healthy nutrition guidelines and eliminate the provision or sale of unhealthy foods, such as SSBs and energy-dense, nutrient-poor foods, in the school environment.¹³⁵

From a child's rights perspective, General Comment 15 on the right of the child to the enjoyment of the highest attainable standard of health (Article 24) states that children's exposure to foods that are high in saturated fats, trans fats, free sugar and/or salt should be limited and their availability in schools controlled.¹³⁶

b. Key elements

Standards for determining the foods and beverages that can be distributed, sold or promoted in child-care settings, schools, sports facilities and events should:

- Be based on evidence, such as a nutrient profile model or government-endorsed food-based dietary guidelines. For example, as previously detailed, Chile's law on food labelling and advertising not only requires front-of-package warning labels and restrictions on marketing to children of all foods and beverages containing added sugars, sodium or saturated fat that exceeds set nutrient or calorie thresholds, but also bans the sale, promotion of these products within preschool, primary and secondary education establishments, including through sponsorship of

the institution itself, or sporting events, scholarship, learning resources etc.¹³⁷

- Apply to all foods and beverages sold or available on the school premises and extend to ‘tuck shops’ or vending machines on relevant premises. For example, in Slovenia, vending machines are banned from school premises.¹³⁸
- Include settings in the immediate vicinity of schools and childcare settings, such as mobile vendors. The Republic of Korea has established ‘green food zones’, banning junk foods and soda within 200 metres of selected schools.¹³⁹
- Be introduced through mandatory, government-led regulations provided these are designed and developed in accordance with national and international laws. Monitoring and enforcement are critical elements that are often neglected.
- Be supplemented by fruit and vegetable initiatives in schools. For example, the European Union (EU) School Fruit, Vegetables and Milk Scheme (Regulation EU No 2016/791), funded through the EU’s common agricultural policy, supports the distribution of fruit, vegetables and milk and milk products to schools across the EU as part of a wider programme of education about European agriculture and the benefits of healthy eating.¹⁴⁰
- Engage a broad level of stakeholders, including ministries of health, education, planning, finance, commerce and trade and attorneys general departments, and relevant civil society organizations noting the need to adhere to conflict of interest principles.

c. Responses to common challenges

- Governments facing industry complaints against school policies and standards to promote healthy diets should be advised that there is generally regulatory space within national and international law for the implementation of regulatory measures to protect public health. For example, the Ministries of Health and Education in Costa Rica introduced restrictions on the sale and distribution of foods and beverages that exceeded limits of saturated fat, sodium and free sugars. The regulation was unsuccessfully challenged in 2012 by the Costa Rican Food Industry Association, which claimed the measure was restrictive of freedom of commerce and trade. The measure was upheld as it was found to be a bona fide measure to protect public health and address the high rates of childhood overweight and obesity in Costa Rica. The Court found

that freedom of trade was secondary to the protection of public health.¹⁴¹ Nonetheless, legal advice should be sought by legal and attorneys general departments prior to the development of such measures and the measure should be part of a comprehensive suite of measures to address overweight and obesity.

- Governments should ensure that their school food policies are informed by food-based dietary guidelines, a nutrient profile model and/or other evidence-based nutrient intake recommendations and use these to determine any classification of restricted or non-restricted foods. This will help counter attempts by industry to find methods to classify unhealthy foods as healthy foods. For example, as a result of intense industry lobbying, the United States Congress effectively blocked United States Department of Agriculture rules that would have made it more difficult for pizza containing tomato paste to be counted as a vegetable.¹⁴²
- It is imperative that governments ensure that fair and equitable processes are in place for the procurement of healthy foods in school settings via contract agreements and that legal advice is obtained prior to any proposed changes to existing procurement contracts.

d. Resources

- **Global Strategy on Diet, Physical Activity and Health**
- **ECHO report**

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