

## **Comments on Health Canada’s Regulations Amending Certain Regulations Made Under the Food and Drugs Act (Nutrition Symbols, Other Labelling Provisions, Partially Hydrogenated Oils and Vitamin D)**

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### **About World Cancer Research Fund International**

World Cancer Research Fund International leads and unifies a network of cancer prevention charities with a global reach. We are the world’s leading authority on cancer prevention research related to diet, weight and physical activity. We work collaboratively with organisations around the world to encourage governments to implement policies to prevent cancer and other non-communicable diseases (NCDs).

We advocate for the wider implementation of more effective policies that create environments that are conducive for people and communities to follow our Cancer Prevention Recommendations<sup>1</sup>. Our NOURISHING policy framework brings together ten policy areas where governments need to take action to promote healthy diets and reduce overweight, obesity and diet-related NCDs. The framework is accompanied by an extensive, regularly updated database of implemented government policy actions from around the world. “Nutrition label standards and regulations on the use of claims and implied claims on food” is one of the ten policy areas outlined in the NOURISHING framework.

More information on World Cancer Research Fund International can be found at <http://www.wcrf.org/> and <http://www.wcrf.org/NOURISHING>.

### **Contact**

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### **Summary**

World Cancer Research Fund International advocates for governments to take a comprehensive policy approach to promoting healthy diets and reducing overweight, obesity and diet-related NCDs. Interpretive front-of-pack nutrition labelling is one important part of a wider package of policies needed to address diet-related NCDs.

We agree with Health Canada’s mandatory approach to the regulation of front-of-pack nutrition labelling (FOPL) as specified in Canada Gazette Part I: Vol. 152, No. 6 – February 10, 2018. Implementing a mandatory FOPL will help provide consumers with consistent, quick and easy-to-use information on foods high in sodium, sugars, and/or saturated fat across pre-packaged products.

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<sup>1</sup> <http://www.wcrf.org/int/research-we-fund/our-cancer-prevention-recommendations>

In this response, our comments are focused solely on Health Canada’s proposed front-of-pack nutrition label (the nutrition symbol), and not other proposed amendments to the Food and Drug Regulations (FDR) (nutrient content claims and other nutrition-related statements, vitamin D fortification, FDR amendments related to the prohibition of PHOs or labelling of foods containing certain high-intensity sweeteners).

#### Technical considerations

##### **Size, format and location of “high in” symbol**

We agree with the formatting requirements for the nutrition symbol as they will create consistency of location across products which will help facilitate consumers’ ability to quickly and easily notice the nutrition symbol. These include the size of the symbol being proportional to the size of the principal display surface of the package; a minimum buffer zone; and the placement of the symbol being on the upper right-most 25% of the principal display panel.

##### **Nutrient thresholds for sodium, sugar and saturated fat**

The proposed thresholds in the regulation are based on 15% of the Daily Value (DV), which reinforce and align with existing Canadian food and nutrition policies, including Canada’s Food Guide and the footnote on Nutrition Facts Tables “5% or less is a little, 15% or more is a lot”.

We are concerned with the proposed sugars threshold of 30% DV for prepackaged meals and main dishes. This threshold is too high and we recommend it be lower than 30%. Analysis should be conducted to determine a more appropriate threshold for sugar in prepackaged meals and main dishes. Allowing a 30% DV for all packaged meals/main dishes will not help to limit the addition of sugars during reformulation (e.g. more sugar could be added when sodium or saturated fat is reduced).

##### **Timeline for implementation**

We recommend that the target date for industry compliance remain 14 December 2021, which is the end date of the original transition period for the 2016 nutrition labelling regulations.

Calls for delaying implementation is a well-known strategy of opponents to food regulation for healthier diets. Claims are commonly made about the difficulties of compliance on such “short” time frames in the context of global supply chains and production networks. However, Chile’s recent experience implementing a front of pack warning label demonstrates that industry is able to adapt swiftly to new regulatory requirements.

#### Countering opposition to FOPLs

In countries around the world, proposed FOPLs have been met with significant opposition and interference from stakeholders whose interests conflict with the introduction of a FOPL. Robust policy design, including a strong evidence base, is therefore essential to ensure the FOPL can withstand this opposition.

Health Canada uses evidence to support the proposed nutrition symbol, including:

- Canadians' consumption of the key nutrients of concern (sodium, sugars, saturated fat), which is above recommended limits
- Limited health literacy of Canadians which presents difficulties in understanding and using the current Nutrition Facts table
- Prevalence rates of NCDs in Canada
- Dietary risks are the number one risk factor for the disease burden in Canada
- Economic burden of NCDs in Canada
- Cost-benefit analyses of nutrition symbol
- Costs of implementing the proposed nutrition symbol
- Scientific basis for nutrient thresholds of the proposed nutrition symbol
- Consumer testing on type, format and location of the proposed nutrition symbol

### Trade and legal issues

It is essential that Health Canada carefully reviews its international legal obligations to ensure the proposed regulations setting out the nutrition symbol can withstand potential opposition.

The World Trade Organization (WTO) Agreement on Technical Barriers to Trade (the 'TBT Agreement')<sup>1</sup> has several key commitments that are relevant to interpretive front of pack nutrition labelling:

Preamble: no country should be prevented from taking measures necessary for the protection of human health

Article 2.1: Technical regulations shall treat 'like products' the same, both imported and domestically produced

Article 2.2: Technical regulations should not create unnecessary obstacles to trade (not be more trade restrictive than necessary to fulfil a legitimate objective), taking account of the risks non-fulfilment would create

Article 2.4: Members should use relevant international standards as the basis for technical regulations

Article 2.5: If a measure may have a significant effect on trade, members shall explain the justification for the measure at the request of another member.

However, if a measure is designed to achieve a legitimate objective and is based on international standards, it shall be rebuttably presumed not to create an unnecessary barrier to trade.

Article 2.9: If a measure is not in accordance with international standards (or no relevant standard exists), members shall notify other members, provide information and allow time for comment

Article 2.12: Members shall allow a reasonable time between publication and entry into force of the measure, to allow for implementation

*As summarised by Thow AM et al. 2017*

Overall, these legal obligations will be relatively straightforward to comply with, as long as a set of issues outlined below are carefully considered. Opponents to FOPLs sometimes argue that the regulations do not meet international legal obligations. This technique is often designed to create uncertainty about the proposed regulatory measure, despite it being possible to design FOPLs that meet international obligations.

Below, we cover four main areas that require consideration to help Health Canada's nutrition symbol withstand opposition: policy objectives, discrimination, trade restrictiveness and international standards and guidelines.

### *Policy objectives*

Setting clear policy objectives is critically important in order to defend FOPLs against trade issues and legal arguments. It is necessary to frame the objectives in a way that explains how the measure (FOPL) will address the specific problem. Health Canada's amendments to the FDR do this in the objective relevant to the nutrition symbol: "Help reduce risks to health by providing consumers with quick and easy-to-use information on foods high in sodium, sugars and/or saturated fat to help reduce consumption of these nutrients."

In addition, the fact that Health Canada has framed the nutrition symbol as part of a comprehensive suite of complementary policies – Canada's Healthy Eating Strategy – which aims to help reduce the incidence of NCDs and burden of these diseases on Canada's health care system, and help improve the health and well-being of Canadians, strengthens the measure from a trade and legal perspective. The nutrition symbol is thus framed as a necessary part of this suite of policies.

Lastly, the nutrition symbol has been designed to build on existing nutrition labelling tools in Canada and address their limitations.

### *Discrimination*

Health Canada has appeared to have considered its international legal obligations under the GATT (General Agreement on Tariffs and Trade) and the WTO TBT Agreement to ensure it does not discriminate in its technical regulations between products from Canada and those from other countries (Article 2.1 TBT). Health Canada's proposed regulations specify that all products, domestic and imported will be subject to the regulations.

### *Trade restrictiveness*

To further withstand opposition, Health Canada must regulate in a manner that is "not more trade restrictive than necessary to achieve a legitimate government objective" (Article 2.2 TBT).

In this context, it is useful to note that groups opposing FOPLs for healthier diets often claim that Art. 2.2 TBT requires the regulating WTO member (e.g. Canada) to affirmatively establish that its chosen regulatory path is the least trade restrictive. This is not the case. The initial burden of proof, to establish this claim in a formal dispute settlement proceeding, would be on the WTO member alleging the violation.

What Article 2.2 TBT requires from Canada is that the regulatory course it chooses with the FOPL does not affect the free flow of goods more than it must to meet its objective to provide consumers with quick and easy-to-use information. It does not require Canada to justify why the proposed nutrition symbol is more suited than other measures, for example, taxes or advertising restrictions. Article 2.2 TBT retains a state's free choice over the regulatory instrument it uses.

Health Canada's proposed regulations include special considerations around issues of small package size to facilitate implementation, including small options of the symbol for small packages (size of the symbol to be proportional to the size of the principal display surface) and full exemptions for products with an available display surface of less than 15 cm<sup>2</sup>, individual portions of food that are solely intended to be served by a restaurant or other commercial enterprise with meals or snacks.

Aside from a one-time compliance cost to industry, implementation of the nutrition symbol will not restrict trade as food labels on prepackaged products in Canada will always differ from those used in the US (and other countries) due to Canada's bilingual labelling requirements and use of the metric (not imperial) units of measurements.

Lastly, Health Canada could consider using stickers, similar to Chile, to simplify implementation of the nutrition symbol.

#### *International standards and guidelines*

Health Canada has also appeared to have considered its requirement to regulate in line with relevant international standards (Article 2.4 TBT). International and regional entities have recommended the use of nutrition labelling to promote healthy eating (see Box 1).

Currently, there is no international standard directly relevant to *interpretive* FOPL, because the Codex Alimentarius Commission has only recently (May 2016) started its process regarding front of pack nutrition labelling. The resulting standards, if framed as a baseline, would be able to serve as a reference point for national action but should not prevent innovation in developing and implementing interpretive FOPLs in the meantime.<sup>2</sup>

**Box 1:** Existing international and regional entities that recommend the use of nutrition labelling to promote healthy eating:

- World Health Organization Global Action Plan for the Prevention and Control of NCDs 2013-2020<sup>3</sup> includes "Promote nutrition labelling, according to but not limited to, international standards, in particular the Codex Alimentarius, for all pre-packaged foods including those for which nutrition or health claims are made."
- The updated (2017) Appendix 3 of the WHO Global Action Plan on NCDs<sup>4</sup> recommends:
  - Reduce salt intake through the implementation of front-of-pack labelling (noting that regulatory capacity along with multisectoral action is needed)
  - Implement nutrition labelling to reduce total energy intake (kcal), sugars, sodium and fats

- The Pan American Health Organization (PAHO) Plan of Action for the Prevention of Obesity in Children<sup>5</sup> has as Strategic Line of Action 3: Fiscal policies and regulation of food marketing and labelling.
  - Objective 3.3: To develop and implement norms for front-of-package labeling that promote healthy choices by allowing for quick and easy identification of energy-dense nutrient-poor products.
  - Indicator: 3.3.1: Number of countries that have norms in place for front-of-package labeling that allow for quick and easy identification of energy-dense nutrient-poor products and sugar sweetened beverages, which take into consideration Codex norms.
- Report of WHO Commission on Ending Childhood Obesity<sup>6</sup> recommends to implement interpretive front-of-pack labelling, supported by public education of both adults and children for nutrition literacy with the following rationale:
  - Healthy eating habits can be nurtured from infancy and have both biological and behavioural dimensions. This requires caregiver understanding of the relationship between diet and health, and behaviours to encourage and support the development of such healthy habits. Simple, easy to understand food labelling systems can support nutrition education and help caregivers and children to make healthier choices.

### **Equity**

The design of a FOPL must consider its potential impact across different populations (e.g. different levels of socio-economic status and varying levels of literacy and numeracy skills).

Health Canada's existing Nutrition Facts table can be complex and difficult to understand and use, especially for those who struggle with literacy and numeracy issues. The stated objective for the implementation of the proposed nutrition symbol is to provide consumers with quick and easy-to-use information. Health Canada has concluded based on research that all members of Canadian society have an equal opportunity to benefit from the proposed nutrition symbol. Research is needed post-implementation to confirm that the simplicity of the interpretive nutrition symbol is understood and used across different populations to ensure that all Canadians benefit. Rigorous post-implementation evaluation is an important part of sound regulatory policy and can carry important lessons for further changes, as well as for other countries thinking about similar regulations.

### **Public education campaign**

A well-designed public education campaign is essential to accompany the implementation of the nutrition symbol in order to educate the public and increase understanding and its use. We are therefore encouraged that Health Canada is planning an education campaign to accompany, but in no way replace, the implementation of the nutrition symbol. It is particularly important that education campaigns reach people with low health and numeracy literacy.

### Stakeholder engagement

Health Canada has undertaken an extensive public consultative process. There was a pre-consultation on the proposed FOPL consisting of online consumer and technical surveys accompanied by a consultation document, followed by a number of engagement activities including consultations with academic experts and key health and industry stakeholders to provide further information on the FOPL proposal and a one-day meeting with stakeholders and experts to discuss FOPL evidence and options for the nutrition symbol design.

It is vital that governments put in place governance mechanisms to prevent and manage potential conflicts of interest in the design and implementation of public policy. We are pleased with Health Canada's new approach regarding transparency of stakeholder communications for healthy eating initiatives, announced by the Minister of Health in October 2016. Following this announcement, all meetings and correspondence with the intent of informing policy development are published online, including the name of the organization and topics and purpose of discussion.

### Monitoring and evaluation

In general, very few mandatory interpretive FOPLs have been implemented globally (Chile, Ecuador, Mexico). And Chile is the only country in the world who has implemented a mandatory warning label similar to Health Canada's proposed nutrition symbol.

Once implemented, the nutrition symbol could have unintended positive, negative or neutral impacts. Performance measurement and evaluation of Health Canada's implemented nutrition symbol will be instrumental to understanding whether the symbol is meeting the policy's objectives. Results from monitoring and evaluating the symbol will be beneficial to Health Canada to ensure the symbol is providing consumers with quick and easy-to-use information and will also benefit other countries around the world seeking to implement similar front of pack nutrition labelling.

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<sup>1</sup> WTO. (1994) *Agreement on Technical Barriers to Trade*. World Trade Organization, Geneva.

<sup>2</sup> Thow AM, Jones A, Hawkes C, Ali I, and Labonté R. (2017). Nutrition labelling is a trade policy issue: lessons from an analysis of specific trade concerns at the World Trade Organization. Health Promotion International; doi.org/10.1093/heapro/daw109.

<sup>3</sup> [http://apps.who.int/iris/bitstream/handle/10665/94384/9789241506236\\_eng.pdf;jsessionid=6ADF9812B13EF1D801F81202F0CC13AB?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/94384/9789241506236_eng.pdf;jsessionid=6ADF9812B13EF1D801F81202F0CC13AB?sequence=1)

<sup>4</sup> [http://www.who.int/ncds/management/WHO\\_Appendix\\_BestBuys.pdf](http://www.who.int/ncds/management/WHO_Appendix_BestBuys.pdf)

<sup>5</sup> [http://www.paho.org/hq/index.php?option=com\\_content&view=article&id=11373%3Aplan-of-action-prevention-obesity-children-adolescents&catid=8358%3Aobesity&Itemid=4256&lang=en](http://www.paho.org/hq/index.php?option=com_content&view=article&id=11373%3Aplan-of-action-prevention-obesity-children-adolescents&catid=8358%3Aobesity&Itemid=4256&lang=en)

<sup>6</sup> [http://apps.who.int/iris/bitstream/handle/10665/204176/9789241510066\\_eng.pdf?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/204176/9789241510066_eng.pdf?sequence=1)