



# CHILDHOOD OBESITY PREVENTION WEBINAR SERIES

2019-2020



## 2. PUSHING AND PULLING: THE CARIBBEAN EXPERIENCE MOVING TOWARDS FRONT-OF-PACKAGE NUTRITION LABELS



# Implementing Front-of-Package Warning Labels in CARICOM: Trade and other Practical Considerations

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# FOPL IS A TRADE POLICY ISSUE

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- FOPL is a trade issue because it has market access implications.
- World Trade Organization has rules that govern how Members should implement non-tariff measures such as FOPL schemes.
- Principal agreement that addresses FOPL schemes is the WTO Agreement on Technical Barriers to Trade (TBT Agreement).

# KEY TBT REQUIREMENTS re FOPL

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- Preamble recognises Members' right to implement measures to protect health at the level they consider appropriate provided:
  - they are not applied in a manner that amounts to arbitrary or unjustifiable discrimination or a disguised restriction on international trade.
- Article 2.2: technical regulations not to be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create.
- Legitimate objectives specifically mentioned include “protection of human health or safety” .
- *Australia — Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* (useful guidance re interpretation of these provisions.)



# PROPOSED REGIONAL STANDARD: SOME TRADE CONCERNS

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- Discriminatory?
  - In principle the proposed standard would apply to ALL pre-packaged products, domestic or imported → not discriminatory.
  - Any exceptions/exclusions should have a rational connection to the public health objective informing the standard (thereby avoiding charges of being discriminatory / a disguised restriction on international trade).

# PROPOSED REGIONAL STANDARD: SOME TRADE CONCERNS

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- Negatively affect intra-regional trade?
  - Once the scheme is implemented across the region (which is the ultimate goal) then there should not be any trade disruptions vis-à-vis intra-regional trade.
- Distort trade away from our current trading partners?
  - Stickers can be used to affix on imported goods before they are available on shelves for consumers to purchase (which would allow importers to continue to source these goods from their traditional suppliers.)
  - Canada, one of our trading partners, will be implementing a FOPL warning label scheme in the near future.
  - In any event, there is no one harmonised labelling system among our trading partners..

# PROPOSED REGIONAL STANDARD: SOME TRADE CONCERNS

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- If domestic industry unwilling to utilise stickers / exporter not willing to change their packaging (due to the small size of our markets), potential opportunity for domestic substitution/introduction of new local products? Potential single market opportunities?



# PROPOSED REGIONAL STANDARD: SOME TRADE CONCERNS

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- CODEX Alimentarius discussions on FOPL
  - While the TBT Agreement allows for a presumption of consistency where a technical regulation is based on an international standard (such as those from CODEX), this does not mean that states can only act when an international standard exists.
  - Moreover, even if an international standard exists, Member States are not precluded from going above this standard (their action being supported by evidence).
  - Discussions within CODEX are in their infancy and will take several years to produce an outcome (if at all). In fact, the experiences and evidence gathered from FOPL schemes such as the proposed regional standard could make a useful contribution to the CODEX discussions.



# PROPOSED REGIONAL STANDARD: SOME PRACTICAL CONCERNS

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- Implementation costs
  - industry (compliance) = increased cost of products???
  - government (enforcement and monitoring)

# CONCLUDING THOUGHTS

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- The more pertinent question that has to be answered is not whether trade will be impacted, as there are always costs associated with the introduction of new regulation, but rather, **what priority/value do Caribbean people place on the health objective the standard seeks to secure and what trade offs are we willing to accept in order to secure that objective?**
- Ultimately the determination of where to strike the balance as between the competing trade (industry) and health interests can only be made by governments.

## HOWEVER

- Governments' determination has to be a *balanced* and *informed* one that takes account of the scale and long-term economic impact of the region's NCD epidemic and also minimizes any potential conflicts vis-à-vis existing international trade obligations (e.g re non-discrimination principle).



# THANK YOU !!!



**THE END**