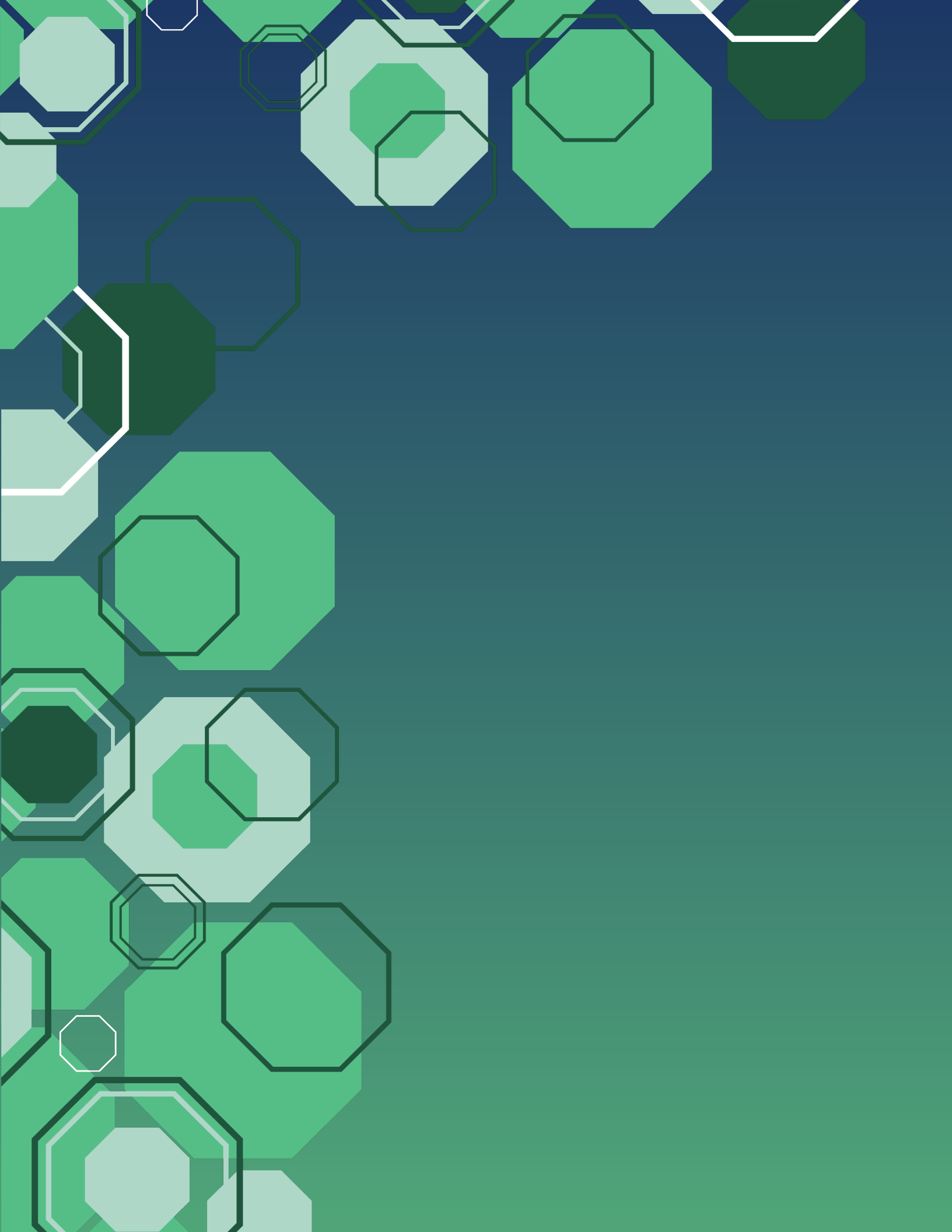


# PUBLIC HEALTH DECISION- MAKING IN CARICOM:

Strengthening the Front-of-  
Package Nutrition Labelling  
Standardisation Programme





PUBLIC HEALTH DECISION-MAKING IN CARICOM: Strengthening the Front-of-Package Nutrition Labelling Standardisation Programme

© 2024 by Global Center for Legal Innovation on Food Environments, Healthy Caribbean Coalition & Law and Health Research Unit, University of the West Indies, Cave Hill.

ISBN: 978-976-8323-19-4

eISBN: 978-976-8323-18-7

Some rights reserved. This work is available under the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0). To view a copy of this license, visit: <http://creativecommons.org/licenses/by-nc-sa/4.0/>

Under the terms of this license, this work may be copied, redistributed, and adapted for non-commercial purposes, provided the new work is issued using the same or equivalent Creative Commons license and it is appropriately cited, as indicated below. In any use of this work, there should be no suggestion that the Global Center for Legal Innovation on Food Environments, Healthy Caribbean Coalition or the Law and Health Research Unit, University of the West Indies endorse any specific organisation, product, or service. Use of the logos of the Global Center for Legal Innovation on Food Environments, Healthy Caribbean Coalition and the Law and Health Research Unit, University of the West Indies is not permitted.

Adaptations: If this work is adapted, the following disclaimer should be added along with the suggested citation: "This is an adaptation of an original work by the Global Center for Legal Innovation on Food Environments, Healthy Caribbean Coalition and the Law and Health Research Unit, University of the West Indies. Views and opinions expressed in the adaptation are the sole responsibility of the author(s) of the adaptation and are not endorsed by the Global Center for Legal Innovation on Food Environments, Healthy Caribbean Coalition or the Law and Health Research Unit, University of the West Indies."

Translation: If this work is translated, the following disclaimer should be added along with the suggested citation: "This translation was not created by the Global Center for Legal Innovation on Food Environments, Healthy Caribbean Coalition or the Law and Health Research Unit, University of the West Indies. The Global Center for Legal Innovation on Food Environments, Healthy Caribbean Coalition and the Law and Health Research Unit, University of the West Indies are not responsible for the content or accuracy of this translation."

Suggested citation: Lake, S., Barbosa, I., Benjamin, K., Constantin, A., Hutton, M., and Foster, N. Public Health Decision-Making in CARICOM: Strengthening the Front-of-Package Nutrition Labelling Standardisation Programme (March 2024). Report of the Global Center for Legal Innovation on Food Environments, the Healthy Caribbean Coalition and the Law and Health Research Unit of the Faculty of Law, University of the West Indies, Cave Hill.

License: CC BY-NC-SA 4.0 IGO

Third-party materials: If material that is attributed to a third party, such as tables, figures, or images, is reused from this work, it is the user's responsibility to determine whether permission is needed for that reuse and to obtain permission from the copyright holder. The risk of claims resulting from infringement of any third-party-owned material or component from this work rests solely with the user.

General disclaimers: The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Global Center for Legal Innovation on Food Environments, Healthy Caribbean Coalition or the Law and Health Research Unit, University of the West Indies concerning the legal status of any country, territory, city, or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. Dotted and dashed lines on maps represent approximate border lines for which there may not yet be full agreement.

The mention of specific companies or of certain manufacturers' products does not imply that they are endorsed or recommended by the Global Center for Legal Innovation on Food Environments, Healthy Caribbean Coalition or the Law and Health Research Unit, University of the West Indies in preference to others of a similar nature that are not mentioned. Errors and omissions excepted, the names of proprietary products are distinguished by initial capital letters.

All reasonable precautions have been taken by the Global Center for Legal Innovation on Food Environments, Healthy Caribbean Coalition and the Law and Health Research Unit, University of the West Indies to verify the information contained in this publication. However, the published material is being distributed without warranty of any kind, either expressed or implied. The responsibility for the interpretation and use of the material lies with the reader. In no event shall the Global Center for Legal Innovation on Food Environments, Healthy Caribbean Coalition or the Law and Health Research Unit, University of the West Indies be liable for damages arising from its use.

Printed in Barbados.

# Acknowledgements

This report significantly benefitted from the research of two former students of Georgetown University Law Center – **Shajoe Lake** and **Ezra Tanen** – who were, at the time, enrolled in the O’Neill Institute’s Practicum: Regulating Alcohol, Tobacco and Food in International and Comparative Law, and therefore were afforded the opportunity to work with an external civil society partner, namely the Healthy Caribbean Coalition, to commence this line of work.

This report was subsequently developed and written by:

**Shajoe Lake**, former Fellow, Health and Human Rights Initiative, O’Neill Institute for National and Global Health Law;  
**Isabel Barbosa**, Associate Director, Health and Human Rights Initiative, O’Neill Institute for National and Global Health Law;  
**Kimberley Benjamin**, Consultant, Health and Human Rights Initiative, O’Neill Institute for National and Global Health Law;  
**Andrés Constantin**, Assistant Director, Health Law Programs, O’Neill Institute for National and Global Health Law;  
**Maisha Hutton**, Executive Director, Healthy Caribbean Coalition; and  
**Nicole Foster**, Law Lecturer & Head, Law & Health Research Unit, University of the West Indies, Cave Hill.

These authors wish to thank the following persons for their useful comments and advice on various drafts of the report (in alphabetical order by last name):

**Beverley Barnett**, Public Health Advisor, Healthy Caribbean Coalition;  
**Francine Charles**, Programme Manager, Heart and Stroke Foundation of Barbados;  
**Deborah Chen**, Executive Director, The Heart Foundation of Jamaica;  
**Kerine Dobson**, Attorney-at-law with expertise in Caribbean Integration Law;  
**Sir Trevor Hassell**, President, Healthy Caribbean Coalition;  
**Barbara McGaw**, Project Manager, The Global Health Advocacy Project, The Heart Foundation of Jamaica;  
**Margherita Melillo**, Associate, Health and Human Rights Initiative, O’Neill Institute for National and Global Health Law; and  
**Danielle Walwyn**, Advocacy Officer, Healthy Caribbean Coalition.

Editorial coordination: Isabel Barbosa, Maisha Hutton and Kimberley Benjamin

Design: Decilion

© 2024 Global Center for Legal Innovation on Food Environments, Healthy Caribbean Coalition & Law and Health Research Unit, University of the West Indies, Cave Hill

# Table of Contents

<b>List of Acronyms &amp; Abbreviations</b>	<b>7</b>
<b>Executive Summary</b>	<b>8</b>
<b>Introduction</b>	<b>12</b>
<b>Part I: Identifying the relevant players</b>	<b>17</b>
1. CARICOM	18
2. Organs of the Community	19
A. Council for Trade and Economic Development	19
B. Council for Human and Social Development	20
3. Institutions of the Community	20
C. Community Institutions	20
D. Associate Institutions	24
<b>Part II: Assessing the Standards Development Programme</b>	<b>25</b>
1. CROSQ Process for Developing Standards	26
A. Preliminary stage (Stage 00)	26
B. Proposal stage (Stage 10)	27
C. Preparatory stage (Stage 20)	27
D. Committee Stage (Stage 30)	27
E. Enquiry Stage (Stage 40)	28
F. Approval Stage (Stage 50)	29
G. Publication Stage (Stage 60)	31
H. Review Stage (Stage 90)	31
I. Implementation in Member States	31
2. Potentially Inordinate Industry Involvement	32
<b>Part III: Brief normative considerations</b>	<b>35</b>
1. Consumer Protection Objective	36
2. Member States' International Obligations under Articles 2.1, 2.2, and 4 of the WTO's TBT Agreement	37
A. The Prohibition Against Barriers to Trade	37
3. The Code of Good Practice for the Preparation, Adoption and Application of Standards	38
<b>Part IV: Conclusion and recommendations</b>	<b>39</b>



# List of Acronyms & Abbreviations

<b>CAHFSA</b>	Caribbean Agricultural Health and Food Safety Agency
<b>CAIHR</b>	Caribbean Institute for Health Research
<b>CARICOM</b>	Caribbean Community
<b>CARPHA</b>	Caribbean Public Health Agency
<b>CCH</b>	Caribbean Cooperation in Health
<b>CCJ</b>	Caribbean Court of Justice
<b>COHSOD</b>	Council for Human and Social Development
<b>COTED</b>	Council for Trade and Economic Development
<b>CROSQ</b>	CARICOM Regional Organisation for Standards and Quality
<b>CRS 5:2010</b>	CARICOM Regional Standard Specification for the labelling of pre-packaged foods
<b>CSME</b>	CARICOM Single Market and Economy
<b>CSO</b>	Civil Society Organisation
<b>FOPNL</b>	Front-of-package nutrition labels
<b>MOU</b>	Memorandum of Understanding
<b>NCD</b>	Noncommunicable disease
<b>NSB</b>	National Standards Body
<b>PAHO</b>	Pan American Health Organization
<b>RTC</b>	Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy
<b>SPS</b>	Sanitary and phytosanitary
<b>UNHLM3</b>	United Nations Third High-Level Meeting
<b>USD</b>	United States dollars
<b>WHO</b>	World Health Organization
<b>6PPP</b>	Six Point Policy Package

# Executive Summary





Noncommunicable diseases (NCDs) are the leading cause of death in the Americas, with the Caribbean recording over 70% of deaths linked to NCDs - the highest NCD mortality rate in the region. Unhealthy diets, one of the modifiable risk factors alongside tobacco use, harmful alcohol consumption, physical inactivity and air pollution, significantly drive the Caribbean's NCD epidemic. Since the 1990s, trade agreements have facilitated an influx of unhealthy food and beverages in the Caribbean Community (CARICOM), contributing to a major nutritional transition.

Regulating nutrition labelling of food and beverages is an essential part of a suite of public health interventions to address unhealthy diets and therefore prevent NCDs. Mandatory front-of-package nutrition labels (FOPNL) have been endorsed internationally and regionally including by CARICOM Heads of Government, and are considered to be an enabling policy, to support other public health interventions such as marketing restrictions. Studies conducted in Barbados and Jamaica by the Pan American Health Organization (PAHO) and partners highlight the efficacy of front-of-package warning labels.

Considering the urgent need to address the NCD epidemic, the CARICOM Regional Organisation for Standards and Quality (CROSQ) has been revising the CARICOM Regional Standard Specification for the labelling of pre-packaged foods (CRS 5:2010) since 2018 to include octagonal 'high-in' warning labels. The fifteen CARICOM Member States failed to reach the 75% threshold needed to adopt the regional standard containing the octagonal 'high-in' warning labels in 2021. The CROSQ process recently involved Member States voting again on the Final Draft CARICOM Regional Standard Specification for the Labelling of Pre-Packaged Foods in October 2023. The results of the 2023 vote were shared with the National Standards Bodies in the first week of March 2024. Overall, CARICOM Member States voted against the Standard, with seven countries opposing, five countries supporting and three countries abstaining. While the food and beverage industry has supported front-of-package nutrition labelling broadly, it has challenged the adoption of the octagonal 'high-in' warning labels and has mobilised in opposition to the regional standard.

In this context, it is crucial to strengthen the CROSQ standardisation programme to privilege decision-making that is free from conflicts of interest (including the science that underpins policymaking). Good governance mechanisms can increase transparency, foster accountability and ultimately safeguard policymaking from vested interests. This report seeks to inform the strengthening of public health decision-making in CARICOM by analysing the front-of-package nutrition labelling standardisation programme. First, it identifies the CARICOM Organs, Institutions, Agencies, and Committees involved in the standardisation programme, outlines how standards are developed and adopted, and assesses entry points for inordinate industry involvement. It then discusses some normative considerations about the standardisation programme contained in the Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy (RTC). Finally, it issues the following recommendations to strengthen public health decision-making in CARICOM, including within the standardisation programme:

## 1. THE COMMUNITY (through the CARICOM Secretariat)

The Community, through the CARICOM Secretariat its principal administrative organ, should:

- a. Develop protocols and guidelines on how to organise, manage and oversee official, transparent consultation processes. These should include measures that enable the CARICOM Secretariat to adequately identify, prevent, and manage conflicts of interest involving CARICOM Organs, Institutions and Associate Institutions, as well as to ensure access to information, including the timely publication of decisions.
- b. Facilitate the streamlining of the region's 'health in all policies approach' to ensure policy coherence.
- c. Explore measures that allow for meaningful engagement, notably by civil society organisations, in regional decision-making fora and processes in fulfilment of the objectives outlined in Article 6 of the RTC.
- d. Request an advisory opinion from the Caribbean Court of Justice (CCJ) that, for example, clarifies the meaning of the objectives of the Community, in light of the health situation and the commitments

expressed by CARICOM Member States, such as the Declaration of Port-of-Spain ‘Uniting to Stop the Epidemic of Chronic Non-Communicable Diseases’.

## **2. Council for Trade and Economic Development (and where applicable, the Council for Human and Social Development)**

The Council for Trade and Economic Development (COTED) and the Council for Human and Social Development (COHSOD), as designated CARICOM Organs with responsibility for trade and industry and health and human development, respectively, should:

- a. Establish ongoing collaboration between COTED and COHSOD, as well as agencies with public health expertise, such as the Caribbean Public Health Agency (CARPHA), during the development and harmonisation of standards and technical regulations with relevance to public health. For instance, COTED and COHSOD have held joint meetings to discuss trade-related NCD policies in the past. However, this type of meeting should not be a one-off occurrence but be the accepted best practice.
- b. Further, when developing and harmonising all standards and technical regulations with relevance to public health, consideration should be given to adopting joint COTED-COHSOD decisions that could benefit such processes. For example, in the past, COTED and COHSOD have adopted joint policy decisions, such as the joint policy decision to recognise trans fats as harmful to health and to support the elimination of industrially produced trans fatty acids from CARICOM’s food supply.
- c. Consult COHSOD and CARPHA during the development of standards and technical regulations with relevance to public health which will be voted upon at the national level. Article 20 of the RTC states that “where a Community Organ... develop[s] a proposal which is likely to impact importantly on activities within the sphere of competence of another Community Organ, the first-mentioned Community Organ shall transmit such proposal to other interested Community Organs for their consideration and reaction before reaching a final decision on the proposal.”
- d. Encourage the submission of and/or submit requests for the development of new standards or technical regulations with relevance to public health.

## **3. CARICOM Regional Organisation for Standards and Quality**

The CARICOM Regional Organisation for Standards and Quality (CROSQ), a CARICOM Institution with responsibility for developing and harmonising CARICOM Regional Standards, should:

- a. Facilitate a special process for dealing with public health standards. CROSQ Directive 1 allows the agency to expand the directive to address a specific operational issue. One such issue is the mandatory requirement for the chairperson of the Regional Technical Committee to be from the private sector. This requirement, even if not having an actual impact on the committee’s decisions, provides an apparent perception of and potential for conflicts of interest, which is inconsistent with international best practices.
- b. Develop (if not existing) or add to (if existing) a Memorandum of Understanding (MOU) that facilitates collaboration with CARPHA on any standardisation programme with relevance to public health, such as FOPNL. As evidenced by the Letter of Agreement between CROSQ and CARPHA for partnership on the development and implementation of regional health, safety and environmental sanitation operational standards for the tourism industry, it is possible for these CARICOM institutions to collaborate on standardisation programmes with relevance to public health.
- c. Mandate that the Regional Technical Committee be chaired by a CARPHA representative when the organisation is developing a standard with relevance to public health.
- d. Mandate the inclusion of a representative of a public health regional civil society organisation (with a background in health promotion/protection) on the Regional Technical Committee when developing standards with relevance to public health.
- e. Continue to provide technical resources to National Standards Bodies prior to the circulation of a final draft standard. This assistance may be in the form of hosting meetings with National

Standard Bodies to discuss the nature and rationale of standards, supporting evidence free from conflicts of interest, and other information to assist Member States with arriving at a position.

- f. In consultation with National Standard Bodies, develop and publish detailed guidance on committee representation, as well as commenting and voting processes at the national level, which should be applicable to all Member States. The guidance should:
  - i. Outline how representation should be constituted on National Mirror Committees, ensuring substantial balance in representation across stakeholder groups (e.g., industry and civil society). In instances where no domestic civil society organisation exists in a Member State, provide for the appointment of a regional civil society organisation with established expertise in the subject matter. When dealing with public health standards, ensure membership includes a representative from the local Ministry of Health, and reputable academic institutions with research focused on health.
  - ii. Outline a standard and transparent voting process, including conflict of interest requirements, for the determination of Member States' national positions on regional standards, including steps such as publishing the National Mirror Committees composition, meeting minutes, and decisions on public channels. This is important in the Caribbean, considering industry's involvement in the standards development and harmonisation process which currently extends to voting.
  - iii. The consultative process should be open, transparent, and supported by formal guidelines, allowing for all stakeholders to view, participate and monitor it.
- g. Facilitate deeper cooperation with PAHO, the University of the West Indies and other reputable academic institutions with research focused on health, to identify and develop scientific studies free from conflicts of interest to provide technical support to CROSQ in matters with relevance to public health.

#### 4. Caribbean Public Health Agency

CARPHA, as the Caribbean public health agency with central oversight of the region, should:

- a. Offer guidance to CROSQ on how to define 'standards with relevance to public health' as well as offer general guidance pertinent to standards with relevance to public health to relevant CARICOM Organs, such as COHSOD and COTED.
- b. Submit requests for the development of new standards or technical regulations with relevance to public health.
- c. Chair the relevant Regional Technical Committee and actively participate in all CARICOM level meetings related to standards and technical regulations with relevance to public health.
- d. Mobilise national Ministry of Health representatives and other public health stakeholders to actively participate in National Mirror Committees.
- e. Develop mechanisms that enable it to support national consultations through the provision of technical assistance, including the generation of conflict free evidence.
- f. Advocate for joint COTED-COHSOD meetings and decisions on standards with relevance to public health.

#### 5. University of the West Indies

The University of the West Indies (UWI), an Associate Institution of CARICOM which advances education and the creation of knowledge in the region, should:

- a. Leverage research capabilities, such as through the Public Health research programmes, the Law Faculties, the Law and Health Research Unit, the Caribbean Institute for Health Research (CAIHR) and other reputable research institutions in the region, especially regarding legal and policy research to strengthen policymaking processes in the region, including about access to information and preventing and managing conflicts of interest.
- b. Submit requests for the development of new standards or technical regulations with relevance to public health based on conflict-free research.
- c. Coordinate for adequate representation of academia in National Mirror Committees.

# Introduction



Noncommunicable diseases (NCDs) – cardiovascular diseases, cancers, chronic respiratory illnesses, diabetes and mental health conditions – are the leading cause of death in the region of the Americas, killing more than 5.5 million people annually.<sup>1</sup> The Caribbean, recording over 70% of deaths linked to NCDs, has the highest NCD mortality rate in the region of the Americas.<sup>2</sup> Modifiable risk factors, such as tobacco use, harmful alcohol consumption, unhealthy diet, physical inactivity, along with air pollution, contribute to increased NCD prevalence.<sup>3</sup> To address NCDs and their risk factors, the World Health Organization (WHO) recommends a comprehensive approach that involves a suite of policies including fiscal measures such as taxes and subsidies, marketing restrictions, labelling policies such as front-of-package labelling, and school nutrition policies, among others.<sup>4</sup>

Unhealthy diets significantly drive the Caribbean's NCD epidemic.<sup>5</sup> Since the 1990s, trade agreements have facilitated an influx of unhealthy food and beverages in the Caribbean Community (CARICOM or 'the Community'),<sup>6</sup> which have contributed to a major nutritional transition.<sup>7</sup> Today, CARICOM countries import over \$5 billion USD worth of food.<sup>8</sup> Imports account for 60%–80% of food consumed in some CARICOM nations,<sup>9</sup> and one-third of imported food are energy-dense and high in fat, sugar, and sodium.<sup>10</sup> These products are generally more affordable than healthy food options, easier to transport and less perishable.<sup>11</sup> It is, therefore, unsurprising that childhood obesity, a metabolic risk factor for NCDs,<sup>12</sup> more than doubled in Caribbean countries between 2006 and 2016,<sup>13</sup> and by 2030, the prevalence of child obesity is estimated to reach 22% in Barbados, Jamaica, St. Kitts and Nevis, 23% in Dominica and up to 24% in Bermuda.<sup>14</sup> The Pan American Health Organization (PAHO) recommends changing diets to reduce the intake of excessive amounts of "critical nutrients" such as sugars, total fats, saturated fats, and sodium.<sup>15</sup>

<sup>1</sup> Pan American Health Organization [PAHO], 'Noncommunicable Diseases' <<https://www.paho.org/en/topics/noncommunicable-diseases>> accessed 14 November 2023.

<sup>2</sup> PAHO, 'Non-communicable diseases in the Region of the Americas: facts and figures'. Washington, D.C.: PAHO; 2019. <<https://iris.paho.org/handle/10665.2/51483>> accessed 14 November 2023; Razzaghi H, Martin DN, Quesnel-Crooks S, Hong Y, Gregg E, Andall-Brereton G, et al. 10-year trends in noncommunicable disease mortality in the Caribbean region. *Rev Panam Salud Publica*. 2019;43:e37. <https://doi.org/10.26633/RPSP.2019.37>.

<sup>3</sup> World Health Organisation [WHO], 'Noncommunicable Diseases' <<https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases>> accessed 14 November 2023.

<sup>4</sup> See e.g., WHO, "Best buys" and other recommended interventions for the prevention and control of noncommunicable diseases' <<https://iris.who.int/bitstream/handle/10665/259232/WHO-NMH-NVI-17.9-eng.pdf?ua=1>> accessed 14 November 2023; WHO, 'More ways to save more lives, for less money: World Health Assembly adopts more Best Buys to tackle noncommunicable diseases' <https://www.who.int/news/item/26-05-2023-more-ways-to-save-more-lives-for-less-money---world-health-assembly-adopts-more-best-buys-to-tackle-noncommunicable-diseases> 14 November 2023.

<sup>5</sup> Pan American Health Organization, 'Noncommunicable Diseases' <<https://www.paho.org/en/topics/noncommunicable-diseases>> accessed 14 November 2023.

<sup>6</sup> Charlotte Hsu 'After Trade Deal, Unhealthy Foods Flowed into Central America, Dominican Republic, Study Finds' (University of Buffalo, 13 November 2019) <<http://www.buffalo.edu/ubnow/stories/2019/11/werner-trade-diet.html>> accessed 14 November 2023.

<sup>7</sup> Caribbean Commission on Health and Development, 'Report of the Caribbean Commission on Health and Development' (2005) <<https://iris.paho.org/handle/10665.2/9995>> accessed 14 November 2023.

<sup>8</sup> David O. Yason, 'Balancing water scarcity, food production, and trade imperatives in the Caribbean: Could virtual water analysis help?' (2022) *Journal of Cleaner Production* 376, 134285 <<https://www.sciencedirect.com/science/article/abs/pii/S0959652622038574>> accessed 14 November 2023.

<sup>9</sup> Food and Agriculture Organization of the United Nations [FAO], 'State of Food Insecurity in the CARICOM Caribbean - Meeting the 2015 hunger targets: Taking stock of uneven progress' (2015). <<https://reliefweb.int/sites/reliefweb.int/files/resources/a-i5131e.pdf>> accessed 14 November 2023.

<sup>10</sup> *Ibid* 11.

<sup>11</sup> Derek Headey and Harold Alderman, 'Why Living in a Poor Country Means You Have Bad Food Choices' (The Conversation, 29 August 2019) <<https://theconversation.com/why-living-in-a-poor-country-means-you-have-bad-food-choices-121993>> accessed 14 November 2023.

<sup>12</sup> Pan American Health Organization, 'Noncommunicable Diseases' <<https://www.paho.org/en/topics/noncommunicable-diseases>> accessed 14 November 2023.

<sup>13</sup> Fitzroy J. Henry, 'Globalization Challenges to Family Nutrition in the Caribbean: The Way Forward' (2016) 2 *Journal of Family Medicine and Disease Prevention* 2, 1-2 <<https://clinmedjournals.org/articles/jfmdp/journal-of-family-medicine-and-disease-prevention-jfmdp-2-036.pdf>>.

<sup>14</sup> World Obesity Federation. *World Obesity Atlas 2022*. (4 March 2022) <<https://www.worldobesity.org/resources/resource-library/world-obesity-atlas-2022>> accessed 14 November 2023.

<sup>15</sup> Pan American Health Organization, 'Front-of-Package Labeling as a Policy Tool for the Prevention of Noncommunicable Diseases in the Americas' (2020) PAHO/NMH/RF/20-0033 <[https://iris.paho.org/bitstream/handle/10665.2/52740/PAHONMHRF200033\\_eng.pdf?sequence=6&isAllowed=y](https://iris.paho.org/bitstream/handle/10665.2/52740/PAHONMHRF200033_eng.pdf?sequence=6&isAllowed=y)> accessed 14 November 2023.

Regulating nutrition labelling of food and beverages is an essential part of any plan to address unhealthy diets and therefore prevent NCDs. PAHO also recommends mandatory, prominent, front-of-package nutrition labels (FOPNL) as part of a suite of public health interventions and as an enabling policy to support other public health interventions such as marketing restrictions.<sup>16</sup> Importantly, Caribbean Heads of Government endorsed front-of-package labelling as one of the region's six priorities in the lead up to the United Nations Third High-Level Meeting (UNHLM3) on NCDs<sup>17</sup> and the Caribbean Public Health Agency (CARPHA) also recommends mandatory nutrition labelling of food in its Six Point Policy Package (6 PPP).<sup>18</sup>

Several FOPNL schemes exist;<sup>19</sup> however, PAHO recommends mandatory front-of-package warning labels, such as black and white octagonal signs placed conspicuously on packages to alert consumers to products containing excess critical nutrients.<sup>20</sup> The monochrome contrasts best with colourful packaging and warning signs are easily interpreted by consumers to avoid or limit purchases of unhealthy food and beverages.<sup>21</sup>

The efficacy of the warning label scheme is supported by local evidence from recent studies in Jamaica<sup>22</sup> and Barbados.<sup>23</sup> The study in Jamaica, conducted by PAHO, the Jamaican Ministry of Health and Wellness, and the University of Technology, Jamaica,<sup>24</sup> compared the warning label scheme to the magnifying glass and traffic-light labelling schemes, placing consumers from varying social and economic backgrounds in groups (based on the schemes and one group for control) to assess their (a) ability to correctly identify the least harmful option among a group of foods, (b) intention to buy the least harmful products more often, and (c) understanding of nutrient content. Conclusively, the study found that consumers assigned to the warning labels group had (a) 108% (2.1 times) higher chance of correctly identifying the least harmful food options, (b) 91% (1.9 times) higher chance of deciding more often to purchase the least harmful food options or none of the options, and (c) 9 times higher chance of correctly identifying when products contain excessive amounts of critical nutrients. The study in Barbados, conducted by PAHO and the University of the West Indies (UWI), compared the octagonal 'high in' warning labels included in the proposal by the CARICOM Regional Organisation for Standards and Quality (CROSQ) for adoption by CARICOM to the current scenario of no warning labels. The results of the study indicate that warning labels have the potential to avert or delay approximately 16% of the deaths caused by NCDs, namely 57% from cardiovascular diseases, 29% from diabetes, 7% from kidney diseases, 2% from liver diseases, and 5% from cancers, as well as save the Barbados economy

<sup>16</sup> Ibid 22; WHO, 'Guiding Principles and Framework Manual for Front-of-Pack Labelling for Promoting Healthy Diets' (2019) <[https://cdn.who.int/media/docs/default-source/healthy-diet/guidingprinciples-labelling-promoting-healthydiet.pdf?sfvrsn=65e3a8c1\\_7&download=true](https://cdn.who.int/media/docs/default-source/healthy-diet/guidingprinciples-labelling-promoting-healthydiet.pdf?sfvrsn=65e3a8c1_7&download=true)>.

<sup>17</sup> CARICOM, Thirty-Ninth Regular Meeting of the Conference of Heads of Government of the Caribbean Community. Decisions. July 2018. <<https://caricom.org/wp-content/uploads/39-HGC-JUL-2018.pdf>> accessed 14 November 2023.

<sup>18</sup> Caribbean Public Health Agency [CARPHA], 'Promoting Healthy Diets, Food Security, and Sustainable Development in the Caribbean through Joint Policy Action': CARICOM Technical Brief <[https://carpha.org/Portals/0/Documents/CARPHA\\_6\\_Point\\_Policy\\_for\\_Healthier\\_Food\\_Environments.pdf](https://carpha.org/Portals/0/Documents/CARPHA_6_Point_Policy_for_Healthier_Food_Environments.pdf)> accessed 14 November 2023.

<sup>19</sup> Rebecca Kanter, et al., 'Front-of-Package Nutrition Labelling Policy: Global Progress and Future Directions' (2018) 21 Public Health Nutrition, 21(8), 1399-1408.

<sup>20</sup> PAHO (n 15).

<sup>21</sup> Ibid.

<sup>22</sup> PAHO/WHO, 'Superior Efficacy of Front-of-Package Warning Labels in Jamaica' (March 2021) <[https://iris.paho.org/bitstream/handle/10665.2/53328/PAHONMHRF210002\\_eng.pdf?sequence=1&isAllowed=y](https://iris.paho.org/bitstream/handle/10665.2/53328/PAHONMHRF210002_eng.pdf?sequence=1&isAllowed=y)> accessed 14 November 2023 [PAHO/WHO, FOPWL in Jamaica Study]; White-Barrow V, Gomes FS, Eyre S, et al, 'Effects of front-of-package nutrition labelling systems on understanding and purchase intention in Jamaica: results from a multiarm randomised controlled trial' (2023) BMJ Open 13:e065620 <doi: 10.1136/bmjopen-2022-065620.> accessed 14 November 2023 [White-Barrow, Gomes, Eyre et al, 2023].

<sup>23</sup> PAHO/WHO, 'Front-of-package warning labels save lives and resources: results from a modelling study in Barbados (September 2023)' <<https://www.paho.org/en/documents/front-package-warning-labels-save-lives-and-resources-results-modeling-study-barbados>> accessed 14 November 2023 [PAHO/WHO, FOPWL in Barbados Study].

<sup>24</sup> PAHO/WHO, FOPWL in Jamaica Study (n 22).



approximately 732.8 million USD in mortality costs.<sup>25</sup> Hence, the warning label scheme aligns with CARICOM's public policy objective of curbing the NCD epidemic,<sup>26</sup> and has been endorsed by both PAHO<sup>27</sup> and CARPHA.<sup>28</sup>

Considering the urgent need to address the NCD epidemic, CROSQ has been revising the CARICOM Regional Standard Specification for the labelling of pre-packaged foods (CRS 5:2010)<sup>29</sup> since 2018 to include octagonal 'high-in' warning labels.<sup>30</sup> The fifteen CARICOM Member States failed to reach the 75% threshold needed to adopt the regional standard containing the octagonal 'high-in' warning labels in 2021, when only six of nine countries voted in favour of the standard (six abstentions were not counted). The CROSQ process recently involved Member States voting again on the Final Draft CARICOM Regional Standard Specification for the Labelling of Pre-Packaged Foods in October 2023. The results of the 2023 vote were shared with the National Standards Bodies in the first week of March 2024. Overall, CARICOM Member States voted against the Standard, with seven countries opposing, five countries supporting and three countries abstaining.<sup>31</sup> While the food and beverage industry has supported FOPNL broadly, it has challenged the adoption of the octagonal 'high-in' warning labels<sup>32</sup> and has mobilised in opposition to the regional standard, wielding significant influence at the regional and national levels.<sup>33</sup> This approach mirrors industry interference in FOPNL policymaking processes across the Americas, where the industry opposed and attempted to weaken warning label systems where adopted.<sup>34</sup>

<sup>25</sup> PAHO/WHO, FOPWL in Barbados Study (n 23).

<sup>26</sup> CARICOM. Declaration of Port-of-Spain: Uniting to stop the epidemic of chronic NCDs (15 September 2007) <<https://caricom.org/declaration-of-port-of-spain-uniting-to-stop-the-epidemic-of-chronic-ncds/>> accessed 14 November 2023 [Port-of-Spain Declaration].

<sup>27</sup> PAHO (n 16).

<sup>28</sup> CARPHA, 'Caribbean people have a right to know what is in their food' (4 October 2021) <<https://cayman.loopnews.com/content/carpha-caribbean-people-have-right-know-what-their-food>> accessed 14 November 2023.

<sup>29</sup> CARICOM Regional Organisation for Standards and Quality [CROSQ], 'CARICOM Regional Standard Specification for labelling of pre-packaged foods - CRS 5:2010' <<https://law.resource.org/pub/crs/ibr/cc.crs.5.2010.pdf>> accessed 14 November 2023 [CROSQ Specification for labelling of pre-packaged foods].

<sup>30</sup> CARICOM Regional Organisation for Standards and Quality, 'CARICOM Regional Standard Labelling of Foods – Pre-Packaged Foods – Specification (Revision) - DCRS 5:202X (CROSQ 2020)' <<https://www.healthycaribbean.org/wp-content/uploads/2021/03/FDCRS-5-Labelling-of-foods-revision-v-16-2-2021.pdf>> accessed 14 November 2023 [CARICOM Regional Standard Labelling of Pre-Packaged Foods]; Pan American Health Organization, 'PAHO Urges Support for CARICOM Front-of-Pack Warnings Against Unhealthy Food' (PAHO, 17 December 2020) <<https://www.paho.org/en/news/17-12-2020-paho-urges-support-caricom-front-pack-warnings-against-unhealthy-food>> accessed 14 November 2023. Note that CROSQ is also including the following revisions made to the Codex: (1) the General Standard for the Labelling of Pre-packaged Foods CX1 – 1985 Revised in 2018; and (2) the General Standard for the Labelling of and Claims for Pre-packaged Foods for Special Dietary Uses CODEX STAN 146-1985).

<sup>31</sup> CARICOM Regional Organisation for Standards and Quality, 'Notice - Update on Draft Regional Standard for Labelling of Pre-packaged Foods Development' (2 February, 2024) <<https://website.crosg.org/update-on-draft-regional-standard-for-labelling-of-pre-packaged-foods/>> accessed February 25, 2024.

<sup>32</sup> For example, Richard Pandohie, 'Front-of-package labelling – the JMEA perspective' *The Gleaner* (Kingston 27 June 2021); 'JMEA concerned about implementation of front of package labelling' *Jamaica Observer* (Kingston, 1 March 2021) [Pandohie].

<sup>33</sup> For example, Andrene Chung, 'Front-of-packaging labelling – Jamaica consumers trumped by vested interests' *The Gleaner* (Jamaica, 15 August 2021); Emmanuel Joseph, 'Private Sector Body Opposes Warning Label' *Barbados Today* (Barbados, 10 October 2023); Sheria Brathwaite, 'Importer warns of higher food prices from stop-sign food labels' *Barbados Today* (Barbados, 26 October 2023); Daphne Ewing-Chow, 'Raging Non-Communicable Diseases In The Caribbean Have Sparked A War Between The Food Industry And Public Health' *Forbes* (30 January, 2022); Daphne Ewing-Chow, 'Food Labels As A Business Opportunity In The Caribbean: Thinking Outside The Package' *Forbes* (8 March 2022); Richard Pandohie, 'Front-of-package labelling – the JMEA perspective' (27 January 2021); Deborah Chen, 'Is evidence being ignored in front-of-package labelling' *The Gleaner* (Jamaica, 15 June 2021); Sir Trevor Hassell, 'Jamaica cannot continue to ignore front-of-package labelling' *The Gleaner* (<https://jamaica-gleaner.com/article/commentary/20210622/sir-trevor-hassell-jamaica-cannot-continue-ignore-front-package>). See also, PAHO, CARPHA, Organisation of Eastern Caribbean States, Healthy Caribbean Coalition, Caribbean Institute for Health Research and UWI Cave Hill Law and Health Research Unit, 'Statement to the Sixth Ministerial Meeting of COTED/COHSOD on the Determination of Regional Standard for Specification for Labelling of Pre-Packaged Foods to Incorporate Front-Of-Package Labelling Specifications' (29 April, 2023) [Unpublished statement]; Joint Letter from Representatives of PAHO, CARPHA, Organisation of Eastern Caribbean States, Healthy Caribbean Coalition, Caribbean Institute for Health Research and UWI Cave Hill Law and Health Research Unit to all National Standards Bodies and National Mirror Committees in the Caribbean regarding CARICOM Private Sector Organization commissioned research on FOPNL (26 April, 2022) [Unpublished letter].

<sup>34</sup> For a discussion on industry challenges against warning labels in Latin America, see Yessika Hoyos Morales, Sergio Carvajal Gallego and Alejandro Mantilla Quijano, 'La interferencia de la industria es nociva para la salud. Colectivo de Abogados José Alvear Restrepo and El Poder Consumidor (2020)' <[https://colectivodeabogados.org/interferenciaetiquetado/imagenes/Interferencia\\_industria\\_etiquetado\\_latam\\_25sept.pdf](https://colectivodeabogados.org/interferenciaetiquetado/imagenes/Interferencia_industria_etiquetado_latam_25sept.pdf)> accessed 14 November 2023; Melissa Mialon and others, 'I had Never Seen so Many Lobbyists': Food Industry Political Practices During the Development of a New Nutrition Front-of-Pack Labelling System in Colombia' (2021) *Public Health Nutrition* 24(9), 2737-2745.

In this context, it is crucial to strengthen the CROSQ standardisation programme to privilege decision-making that is free from conflicts of interest (including the science that underpins policymaking). Good governance mechanisms can increase transparency, foster accountability and ultimately safeguard policymaking from vested interests. This report seeks to inform the strengthening of public health decision-making in CARICOM by analysing the FOPNL standardisation programme. The report is therefore expected to serve as a useful tool for CARICOM stakeholders, namely decision-makers at the regional and national levels, involved in the standardisation programme. First, it identifies the CARICOM Organs, Institutions, Agencies, and Committees involved in the standardisation programme, outlines how standards are developed and adopted, and assesses entry points for inordinate industry involvement. For instance, it challenges the mandate for the chair or convenor of the CROSQ technical committee to be industry-related, as well as the need for persons with industry ties to form the board of the National Standards Bodies.

As references (despite the nuances in approaches), this report primarily considers the activities of two National Standards Bodies in particular, the Bureau of Standards Jamaica and the Barbados National Standards Institution, given the more readily available information for these countries. It then discusses some normative considerations about the standardisation programme contained in the Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy (RTC), which directs CROSQ to pursue a consumer protection objective, as well as act in a manner consistent with international obligations, while developing regional standards. Finally, it issues recommendations to strengthen public health decision-making in CARICOM, including within the standardisation programme. Recommendations are addressed to specific CARICOM stakeholders involved in the standardisation programme, whose respective institutional mandates suggest potential for involvement in strengthening the existing standardisation programme.



# Part I: Identifying the relevant players

Part I identifies the CARICOM Organs, Institutions, Agencies, and Committees involved in the CROSQ standardisation programme and discusses their relevance to food labelling and public health.

	Relevant Organs of the Community	Relevant Institutions of the Community	Relevant Associate Institutions of the Community
CARICOM		CARICOM Regional Organisation for Standards and Quality	
	Council for Trade and Economic Development	Caribbean Public Health Agency	The University of the West Indies
		Caribbean Agricultural Health and Food Safety Agency	
	Council for Human and Social Development	Caribbean Court of Justice	CARICOM Private Sector Organisation

## 1. CARICOM

CARICOM was established in 1973 upon the signing of the Treaty of Chaguaramas.<sup>35</sup> In 2001, this agreement was revised to establish a Caribbean Community (CARICOM) and CARICOM Single Market and Economy (CSME). This new regime is governed by the Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CSME (RTC), which came into effect in 2006.<sup>36</sup>

CARICOM comprises twenty nations – fifteen Member States and five Associate Member States<sup>37</sup> – that have committed to regional integration based upon the four main pillars of economic integration, foreign policy coordination, human and social development and security.<sup>38</sup> Heads of Government for each of the fifteen nations with full membership status constitute the Conference of the Heads of Government of CARICOM (the Conference), which is one of the principal Organs of the Community and sets the policy direction of the Community.<sup>39</sup>

The Conference has issued various decisions evidencing its endorsement of public health measures, including front-of-package labelling as well as its support for stronger governance mechanisms in relation to public health.<sup>40</sup> For example, in 2018, ahead of the UNHLM3 on NCDs, the Conference endorsed six priorities for the Caribbean including “implementing policies geared to preventing childhood obesity, including for ‘health-promoting schools’ and Front-of-Package labelling” and also “strengthening accountability, in particular through national coordinating mechanisms”.<sup>41</sup> Earlier, in 2017, the Conference also supported the need for enhanced governance of the Caribbean Cooperation in Health (CCH) IV Strategy – the fourth iteration of the region’s efforts to advance an RTC objective of functional cooperation to address common health and development challenges<sup>42</sup> - and also urged the provision of additional resources for both the national and regional level governance structures.<sup>43</sup>

<sup>35</sup> Caribbean Community and Common Market [CARICOM], ‘History of the Caribbean Community’ <<https://caricom.org/history-of-the-caribbean-community/>> accessed 14 November 2023.

<sup>36</sup> Ibid; CARICOM, Revised Treaty of Chaguaramas Establishing the Caribbean Community, Including the CARICOM Single Market and Economy (5 July 2001) <<https://caricom.org/treaties/revised-treaty-of-chaguaramas-establishing-the-caricom-including-csme/>> accessed 14 November 2023.

<sup>37</sup> Caribbean Community Secretariat, ‘Member States and Associate Members’ <<https://caricom.org/member-states-and-associate-members/>> accessed 16 May 2023.

<sup>38</sup> CARICOM Community Secretariat, ‘Who We Are’ <<https://caricom.org/our-community/who-we-are/>> accessed 14 November 2023.

<sup>39</sup> CARICOM, Revised Treaty of Chaguaramas Establishing the Caribbean Community, Including the CARICOM Single Market and Economy (5 July 2001) <<https://caricom.org/treaties/revised-treaty-of-chaguaramas-establishing-the-caricom-including-csme/>> accessed 14 November 2023, Articles 10(1), 11(1) and 12 (RTC); Brynmor T.I. Pollard, ‘The Caribbean Community (CARICOM) - Its Structure and Functions’ (1999), 147 <[http://www.oas.org/es/sla/ddi/docs/publicaciones\\_digital\\_XXVI\\_curso\\_derecho\\_internacional\\_1999\\_Brynmor\\_T\\_I\\_Pollard.pdf](http://www.oas.org/es/sla/ddi/docs/publicaciones_digital_XXVI_curso_derecho_internacional_1999_Brynmor_T_I_Pollard.pdf)> accessed 14 November 2023.

<sup>40</sup> See e.g., CARICOM. Thirty-Eighth Regular Meeting of the Conference of Heads of Government of the Caribbean Community, St. George’s, Grenada. 4-6 July, 2017, <<https://caricom.org/wp-content/uploads/38-HGC-JUL-2017.pdf>> (“THE CONFERENCE: ...Also supported the strengthening of the domestic food production along with the promotion and consumption of fresh indigenous foods where appropriate; Urged that the implementation of health taxes be strongly considered where they were not yet in place”, among others); CARICOM. Thirty-Seventh Regular Meeting of the Conference of Heads of Government of the Caribbean Community, Georgetown, Guyana. 4-6 July, 2016, <<https://caricom.org/wp-content/uploads/Decisions-37HGC-July-2016.pdf>> (THE CONFERENCE: With regard to NCDs, ...Also Urged Member States to implement a regulatory regime for the compulsory food labelling of all commercially manufactured foods...; Requested Member States to consider and implement regimes to curb the advertising of harmful foods and beverages especially to children...; Also requested all Member States to support policies which promote harm reduction such as taxation of tobacco, alcohol, salty and sugary foods and trans-fat containing food as a fiscal measure to support the health and other social sectors;...”).

<sup>41</sup> CARICOM, Thirty-Ninth Regular Meeting of the Conference of Heads of Government of the Caribbean Community. Decisions. July 2018. <<https://caricom.org/wp-content/uploads/39-HGC-JUL-2018.pdf>> accessed 14 November 2023.

<sup>42</sup> RTC (n 39), Article 6 (Objectives of the Community) (“The Community shall have the following objectives: ... (i) enhanced functional co-operation, including - (i) more efficient operation of common services and activities for the benefit of its peoples; (ii) accelerated promotion of greater understanding among its peoples and the advancement of their social, cultural and technological development; (iii) intensified activities in areas such as health, education, transportation, telecommunications.”).

<sup>43</sup> CARICOM. Thirty-Eighth Regular Meeting of the Conference of Heads of Government of the Caribbean Community, St. George’s, Grenada. 4-6 July, 2017, <<https://caricom.org/wp-content/uploads/38-HGC-JUL-2017.pdf>> accessed 14 November 2023.

## 2. Organs of the Community

The Conference and Community Council of Ministers (the Council) serve as principal Organs within the Community. Assisting them are five other Organs, two of which are mentioned below due to their relevance to this report. Additionally, three Bodies and the CARICOM Secretariat contribute to the functioning of the Community.<sup>44</sup> Article 23 of the RTC designates the Secretariat as the Community's principal administrative organ.<sup>45</sup> The Secretariat has several functions, including to “service meetings of the Organs and Bodies of the Community and take appropriate follow up action on determinations issuing from such meetings” and “initiate, organise and conduct studies on issues for the achievement of the objectives of the Community”, among other functions listed in Article 25 of the RTC and otherwise assigned to it by Organs of the Community.<sup>46</sup>

Relatedly, the Secretariat's programmatic activities are managed through four technical directorates, namely the Economic Integration, Innovation, and Development Directorate; CARICOM Single Market and External Trade Directorate; Foreign and Community Relations Directorate; and the Human and Social Development Directorate.<sup>47</sup> For example, the Human and Social Development Directorate within the CARICOM Secretariat plays a pivotal role in setting the agenda and servicing meetings pertinent to public health. This includes sessions involving Chief Medical Officers, as well as Organs like the Council for Human and Social Development (COHSOD) and its collaborative sessions with other Organs such as the Council for Trade and Economic Development (COTED).

### A. Council for Trade and Economic Development

The Council for Trade and Economic Development (COTED) is a designated CARICOM Organ.<sup>48</sup> It typically consists of government ministers in charge of trade, commerce or industry, and is responsible for “the promotion of trade and economic development” in CARICOM.<sup>49</sup> Article 67 of the RTC mandates COTED to develop a standardisation programme that facilitates trade and improves the quality of goods and services traded in CARICOM, among other objectives (albeit none that explicitly reference health).<sup>50</sup> COTED is required to develop this programme in collaboration with competent agencies,<sup>51</sup> such as CROSQ which develops and harmonises regional standards.<sup>52</sup> CROSQ's Council of executive heads of national standards bodies from the CARICOM Member States, for instance, reports annually

<sup>44</sup> RTC (n 39), Articles 10(2), 18, 19 and 23.

<sup>45</sup> RTC (n 39), Article 23, Caribbean Community Secretariat, 'The Organs and Bodies of the Community' <<https://caricom.org/the-organs-and-bodies-of-the-community/>> accessed 14 November 2023.

<sup>46</sup> RTC (n 39), Article 25 (“In addition to any functions which may be assigned to it by Organs of the Community, the Secretariat shall: (a) service meetings of the Organs and Bodies of the Community and take appropriate follow up action on determinations issuing from such meetings; (b) initiate, organise and conduct studies on issues for the achievement of the objectives of the Community; (c) provide, on request, services to the Member States of the Community on matters relating to the achievement of its objectives; (d) collect, store and disseminate to the Member States of the Community information relevant for the achievement of its objectives; (e) assist Community Organs in the development and implementation of proposals and programmes for the achievement of objectives of the Community; (f) co-ordinate in relation to the Community the activities of donor agencies, international, regional and national institutions for the achievement of objectives of the Community; (g) prepare the draft budget of the Community for examination by the Budget Committee; (h) provide, on request, technical assistance to national authorities to facilitate implementation of Community decisions; (i) conduct, as mandated, fact-finding assignments in the Member States, and (j) initiate or develop proposals for consideration and decision by competent Organs in order to achieve Community objectives.”).

<sup>47</sup> CARICOM Secretariat. Strategic Plan 2022-2030. (March 2023). <[https://issuu.com/caricomorg/docs/caricom\\_secretariat\\_strategic\\_plan\\_2022-2030](https://issuu.com/caricomorg/docs/caricom_secretariat_strategic_plan_2022-2030)> accessed 14 November 2023.

<sup>48</sup> RTC (n 39), Articles 10 (2) and 15 (1).

<sup>49</sup> RTC (n 39), Article 15.

<sup>50</sup> RTC (n 39) Article 67.

<sup>51</sup> RTC (n 39) Article 67(1).

<sup>52</sup> Agreement Establishing the CARICOM Regional Organisation for Standards and Quality, (4 February 2002) <https://caricom.org/wp-content/uploads/Agreement-Establishing-The-CARICOM-Regional-Organisation-for-Standards-and-Quality-CROSQ-incl-Montserrat-and-Haiti.pdf> accessed 14 November 2023 [Agreement Establishing CROSQ].

to COTED, which in turn, determines CROSQ's policy.<sup>53</sup> Further, COTED makes the final decision about which standard to adopt, primarily with regard to its trade and economic responsibilities.<sup>54</sup>

## B. Council for Human and Social Development

The Council for Human and Social Development (COHSOD) is a designated CARICOM Organ.<sup>55</sup> It typically consists of government ministers responsible for health and human development. One of its core mandates is the promotion and improvement of health in CARICOM.<sup>56</sup>

Importantly, COHSOD and COTED, despite their respective institutional mandates, have held joint meetings and also adopted joint decisions relevant to health, such as the joint policy decision recognising trans fats as harmful to health and supporting the elimination of industrially produced trans fatty acids from CARICOM's food supply emanating from the Sixth Joint Meeting of COTED and COHSOD in 2022.<sup>57</sup>

## 3. Institutions of the Community

The RTC provides for two types of CARICOM institutions: Community Institutions, of which there are currently 19 and Associate Institutions, currently 6 in total.<sup>58</sup> Community Institutions are established under the auspices of the RTC, usually by an intergovernmental agreement signed by Member States, while Associate Institutions are entities that enjoy important functional relationships with CARICOM and assist in fulfilling its objectives.<sup>59</sup> These Institutions are juridical persons that exist as separate legal entities with their own governance arrangements,<sup>60</sup> which are usually endorsed in the form of an agreement signed by Member States or a Memorandum of Understanding (MOU).<sup>61</sup>

## C. Community Institutions

### i. CARICOM Regional Organisation for Standards and Quality

The CARICOM Regional Organisation for Standards and Quality (CROSQ) is the Community Institution responsible for developing and harmonising CARICOM Regional Standards to facilitate trade, enhance efficiency in the production and delivery of goods and services, improve the quality of local goods and promote consumer and environmental protection – institutional objectives which do not explicitly reference health.<sup>62</sup> It was established in 2002 by the signing of an Intergovernmental Agreement

<sup>53</sup> Ibid Article 7 ("The Council shall report annually to COTED which shall determine the policy of CROSQ, particularly the establishment or adoption of regional standards and technical regulations").

<sup>54</sup> Ibid.

<sup>55</sup> Ibid Article 10.

<sup>56</sup> Ibid Article 17.

<sup>57</sup> Note: A copy of the actual decision emanating from the Sixth Joint Meeting of COTED and COHSOD in 2022 was not publicly available at the time of writing this report. See, CARICOM. 'Chief Medical Officers in CARICOM receive updates on regional health coordination' 15 July 2022 <<https://caricom.org/chief-medical-officers-in-caricom-receive-updates-on-regional-health-coordination/>> accessed 14 November 2023.

<sup>58</sup> Caribbean Community Secretariat, 'Institutions' <[https://caricom.org/institutions/?tx\\_institution\\_type=community-institutions](https://caricom.org/institutions/?tx_institution_type=community-institutions)> accessed 14 November 2023.

<sup>59</sup> RTC (n 39) Article 22.

<sup>60</sup> Caribbean Community Secretariat, 'Institutions' <[https://caricom.org/institutions/?tx\\_institution\\_type=community-institutions](https://caricom.org/institutions/?tx_institution_type=community-institutions)> accessed 14 November 2023.

<sup>61</sup> See e.g., Agreement Establishing CROSQ (n 52) Article 4.1; Memorandum of Understanding between the Caribbean Community and the CARICOM Private Sector Organization Inc. Concerning Cooperation towards the Full Implementation of the CARICOM Single Market and Economy <<https://caricom.org/the-caricom-private-sector-organization-and-the-caribbean-community-sign-mou-3rd-december-2020-cpsa/>> accessed 14 November 2023.

<sup>62</sup> Agreement Establishing CROSQ (n52); Anneke Jessen, 'CARICOM Report Number 2: Subregional Integration Report Series' (2005) 56-57 <[https://books.google.com/books?id=tWrH2Lq1QFYC&dq=crosq+and+tobacco&lr=&source=gbs\\_navlinks\\_s](https://books.google.com/books?id=tWrH2Lq1QFYC&dq=crosq+and+tobacco&lr=&source=gbs_navlinks_s)>.

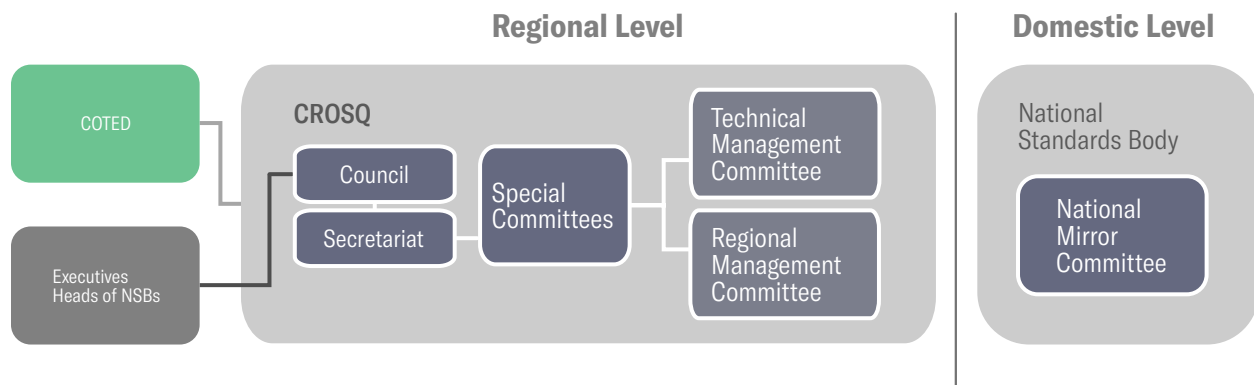
between CARICOM Member States in compliance with Article 67 of the RTC.<sup>63</sup> CROSQ Directive 1 – Development/Harmonisation of Regional Standards (CROSQ Directive 1) is the main constituent document for the institution. It outlines the formative and substantive framework governing the standardisation programme.<sup>64</sup>

CROSQ consists of a Council, Special Committees and a Secretariat (Figure 1).<sup>65</sup> The CROSQ Council, in turn, consists of the executive heads of the National Standards Bodies of CARICOM Member States, and reports annually to COTED, including making recommendations on standards COTED should adopt.<sup>66</sup> Considering COTED’s mandate to develop a standardisation programme, and the objective of CROSQ to operate as the regional standards body, there is a nexus created between CROSQ and COTED. For instance, CROSQ reports to COTED, which is in turn responsible for approving standards, as well as CROSQ’s programme of work and budget.<sup>67</sup> However, both entities retain the separateness of their juridical personality.

### National Standards Bodies

National Standards Bodies (NSBs) are “bod[ies] within a Member State that ha[ve] been given, by government, the responsibility of standardisation in that Member State”.<sup>68</sup> NSBs in the Caribbean tend to have trade and industry origins. For instance, the Bureau of Standards of Jamaica is an agency of the Ministry of Industry, Investment and Commerce,<sup>69</sup> whilst the Barbados National Standards Institute is “a joint venture between the Government of Barbados and the private sector.”<sup>70</sup> Arguably then, NSBs, by their very nature, have an institutionalised bias which favours industry in standards development and harmonisation processes, which would not always align with health.

Figure 1. Actors in the CROSQ Standards development and harmonisation process



Source: Adapted from diagram at CARICOM Regional Organisation for Standards and Quality, Organisation <<https://website.crosq.org/organisation/>> accessed 14 November 2023.

<sup>63</sup> CARICOM Regional Organisation for Standards and Quality, Presentation at ASTM CARICOM Roadshow 6, [https://www.astm.org/GLOBAL/images/8\\_CROSQ\\_Presentation.pdf](https://www.astm.org/GLOBAL/images/8_CROSQ_Presentation.pdf) accessed 14 November 2023 [CROSQ Presentation at ASTM].

<sup>64</sup> CARICOM Regional Organisation for Standards and Quality, CROSQ Directive 1 – Development/Harmonisation of Regional Standards. <[https://dhrs.crosq.org/story\\_content/external\\_files/CROSQ%20Directive%201\\_online.doc](https://dhrs.crosq.org/story_content/external_files/CROSQ%20Directive%201_online.doc)> accessed 14 November 2023 [CROSQ Directive 1].

<sup>65</sup> Agreement Establishing CROSQ (n 52) Article 5.

<sup>66</sup> Agreement Establishing CROSQ (n 52) Article 5.

<sup>67</sup> Agreement Establishing CROSQ (n 52) Article 5.

<sup>68</sup> CROSQ Directive 1 (n 64) p. 3.

<sup>69</sup> Jamaica Bureau of Standards. 'About BSJ' (2023) <<https://www.bsj.org.jm/about/about-bsj>> accessed 14 November 2023.

<sup>70</sup> Barbados National Standards Institute. 'History' (2023) <<https://bnsibarbados.org/about-us/>> accessed 14 November 2023.

CROSQ leads standards development as a cooperative effort with the NSBs, which represent their home nations and aim to reach consensus on their proposals.<sup>71</sup> While CROSQ standards are voluntary,<sup>72</sup> NSBs have the statutory authority to create legally binding standards in their home countries, pending approval from their respective portfolio ministers.<sup>73</sup> Despite the nuances in approaches across and within countries, this report will reference the activities of two National Standards Bodies in particular, the Bureau of Standards Jamaica and the Barbados National Standards Institution, given the more readily available information for these countries.

## Technical Management Committee

The Technical Management Committee is one of CROSQ's Special Committees. Appointed in 2005, it comprises technical experts from the NSBs, who meet 3 to 4 times a year to manage CROSQ's administrative work.<sup>74</sup>

## Regional Technical Committees

While the National Standards Bodies' directors comprise the CROSQ Council, stakeholders from the private and public sectors support the organisation's work.<sup>75</sup> Specifically, the CROSQ Council delegates the development of standards to Regional Technical Committees (or in some instances Regional Technical Sub-Committees) whose membership may be drawn from regulated industries.<sup>76</sup> These committees are supervised by the Technical Management Committee.<sup>77</sup>

## CROSQ history with food labelling

CROSQ developed the first CARICOM Regional Standards on pre-packaged food labelling in 2010,<sup>78</sup> three years after the Conference jointly announced the 2007 Declaration of Port-of-Spain 'Uniting to Stop the Epidemic of Chronic Non-Communicable Diseases' (The Declaration).<sup>79</sup> The Declaration, which called for a 'whole of society' approach to tackling NCDs, addressed both NCD prevention and control and consisted of 15 actionable mandates and 27 commitments.<sup>80</sup> These mandates included calls from the Conference for the promotion of programmes for healthy school meals and healthy eating in education sectors, mandatory labelling of foods, pursuit of trade policies allowing for greater use of indigenous agricultural products and foods and elimination of trans-fats from diets of Caribbean citizens.<sup>81</sup> Although the Declaration is non-binding, the CARICOM Secretariat and the Office of Caribbean Program Coordination (PAHO/WHO), which is the joint Secretariat for the Caribbean Cooperation in Health (CCH)

<sup>71</sup> CROSQ Directive 1 (n 64); CROSQ Presentation at ASTM (n 63).

<sup>72</sup> See CARICOM Regional Organisation for Standards and Quality, 'COTED Approves Two New Standards for the Region' (14 November 2014) <<https://website.croseq.org/coted-approves-two-new-standards-for-the-region>> accessed 14 November 2023.

<sup>73</sup> See United States of America Department of Commerce International Trade Administration, 'Jamaica- Country Commercial Guide' (21 October 2020) <<https://www.trade.gov/country-commercial-guides/jamaica-standards-trade>> accessed 14 November 2023; Standards Act 2006 (Act No. 2006-5) c. 326A, Section 6(1) (Barbados) <<http://104.238.85.55/en/ShowPdf/326A.pdf>>, The Standards Act 2012 (L.N. 220/2013), Section 7 (Jamaica) <<https://moj.gov.jm/sites/default/files/laws/The%20Standards%20Act.pdf>>.

<sup>74</sup> CROSQ, 'Organisation' <<https://website.croseq.org/organisation/>> accessed 14 November 2023.

<sup>75</sup> Ibid.

<sup>76</sup> CROSQ Directive 1 (n 64) Section 3.1.16. See also, CARICOM Regional Standard Labelling of Pre-Packaged Foods (n 30).

<sup>77</sup> Ibid.

<sup>78</sup> CARICOM Regional Organisation for Standards and Quality, 'Price List for CROSQ Standards (10 October 2017) <<https://website.croseq.org/standards-catalogue/>> accessed 14 November 2023.

<sup>79</sup> Port-of-Spain Declaration (n 26).

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.



Initiative, monitors and evaluates Member States' progress with its objectives.<sup>82</sup>

## ii. Caribbean Public Health Agency

The Caribbean Public Health Agency (CARPHA) addresses regional public health matters. The Institution was established in July 2011 by an intergovernmental agreement between CARICOM Member States and began operation in January 2013.<sup>83</sup> While its main objective is to “rationalise public health arrangements in the Region by combining the functions of five Caribbean Regional Health Institutes (RHIs) into a single agency,”<sup>84</sup> CARPHA is also responsible for the surveillance and management of NCDs. Moreover, the Institution is responsible for addressing CARICOM’s “contribution to global health agreements and compliance with international health regulations.”<sup>85</sup> Importantly, CARPHA is also responsible for conducting “relevant research on public-health priorities in the Caribbean”<sup>86</sup> and for providing evidence for decisions relating to public health.<sup>87</sup> With regards to addressing unhealthy diets in the Caribbean, CARPHA’s 6 PPP includes mandatory nutrition labelling of food, among other related policies.<sup>88</sup>

CARPHA may also collaborate with other community institutions on matters relevant to public health. For example, in 2022, CARPHA and CROSOQ signed a letter of agreement for the joint development and implementation of regional health, safety and environmental sanitation operational standards for use in the tourism sector.<sup>89</sup>

## iii. Caribbean Agricultural Health and Food Safety Agency

The Caribbean Agricultural Health and Food Safety Agency (CAHFSA), established by an intergovernmental agreement in 2010, the precursor to the Revised CAHFSA agreement that now governs the institution, is responsible for coordinating and organising the establishment of an effective and efficient regional sanitary and phytosanitary (SPS) regime on behalf of Member States through regional mechanisms, including the development and use of regional and international standards, measurement, and guidelines.<sup>90</sup>

## iv. Caribbean Court of Justice

Inaugurated in Port of Spain, Trinidad and Tobago, on April 16, 2005, the Caribbean Court of Justice (CCJ) has a bench of seven judges that is presided over by a President. The Court is a hybrid court that operates in two jurisdictions; an original jurisdiction in which it has compulsory and exclusive authority

<sup>82</sup> T. Alafia Samuels and Nigel Unwin, ‘The 2007 Caribbean Community Port-of-Spain Declaration on Noncommunicable Diseases: An Overview of a Multidisciplinary Evaluation’ (2017) 42 Rev PANAM Salud Publica e193 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6385896/>>.

<sup>83</sup> Agreement Establishing the Caribbean Public Health Agency (2011) <[https://carpha.org/Portals/0/Documents/CARPHA\\_IGA.pdf](https://carpha.org/Portals/0/Documents/CARPHA_IGA.pdf)> [Agreement Establishing CARPHA]; CARPHA, ‘About the Caribbean Public Health Agency (CARPHA)’ <<https://carpha.org/Who-We-Are/About>> accessed 14 November 2023.

<sup>84</sup> Ibid. (The five RHIs are: the Caribbean Environmental Health Institute (CEHI), the Caribbean Epidemiology Centre (CAREC), the Caribbean Food and Nutrition Institute (CFNI), the Caribbean Health Research Council (CHRC) and the Caribbean Regional Drug Testing Laboratory (CRDTL).

<sup>85</sup> CARPHA, ‘About the Caribbean Public Health Agency (CARPHA)’ <<https://carpha.org/Who-We-Are/About>> accessed 14 November 2023.

<sup>86</sup> Agreement Establishing CARPHA (n 83) Article 5(n).

<sup>87</sup> Ibid Article 5(a) and (b) (“In order to achieve its objectives set out in Article 4, CARPHA shall perform the following functions: (a) provision of an evidence base for public health decision-making and policy in the Caribbean, including the definition, collection, maintenance and analysis of minimum data sets, health situation analysis, critical analysis of the impact of social and other determinants of health and response to public health interventions; (b) conduct of relevant research on public-health priorities in the Caribbean”).

<sup>88</sup> CARPHA, ‘Promoting Healthy Diets, Food Security, and Sustainable Development in the Caribbean through Joint Policy Action’: CARICOM Technical Brief <[https://carpha.org/Portals/0/Documents/CARPHA\\_6\\_Point\\_Policy\\_for\\_Healthier\\_Food\\_Environments.pdf](https://carpha.org/Portals/0/Documents/CARPHA_6_Point_Policy_for_Healthier_Food_Environments.pdf)> accessed 14 November 2023.

<sup>89</sup> Latoya Burnham, ‘CROSOQ & CARPHA Join Forces on Health, Safety, Environmental Tourism Standards’ 17 March 2022. <<https://website.crosoq.org/crosoq-carpha-join-forces-on-standards/>> accessed 14 November 2023.

<sup>90</sup> Revised Agreement Establishing the Caribbean Agricultural Health and Food Safety Agency (CAHFSA) <<https://caricom.org/wp-content/uploads/Revised-Agreement-Establishing-the-Caribbean-Agricultural-Health-and-Food-Safety-Agency-CAHFSA.pdf>>, Article 3; Caribbean Agricultural Health and Food Safety Agency (CAHFSA), ‘Organization’ <<https://www.cahfisa.org/about-us/organization>> accessed 14 November 2023. See also RTC (n 39) Articles 57(1) (k) and 56.

to interpret and apply the rules set out in the RTC to decide disputes arising under it, and an appellate jurisdiction in which it operates as the final appellate court for some Member States, interpreting and applying their domestic law.<sup>91</sup> In its original jurisdiction, there is no room for a dissenting opinion. Part 3.4 (4) of the original jurisdiction rules states that “the conclusions reached by the majority of the Judges after final deliberation shall be the decision or advisory opinion of the Court, as the case may be, and shall be published in a single judgment, order or advisory opinion of the Court. There shall be no other judgment or opinion.”<sup>92</sup>

## D. Associate Institutions

### i. The University of the West Indies (UWI)

The University of the West Indies (UWI) is recognised as an Associate Institution of the Community.<sup>93</sup> Established in 1962, UWI now consists of three main campuses in Jamaica, Trinidad and Tobago and Barbados, as well as other centres and schools of continuing studies in other countries across the region.<sup>94</sup> UWI aims to “advance education and create knowledge through excellence in teaching, research, innovation, public service intellectual leadership and outreach”.<sup>95</sup> With regards to research, the UWI, in collaboration with PAHO, has played a pivotal role in a study pertaining to FOPNL in Barbados.<sup>96</sup>

### ii. CARICOM Private Sector Organisation

The CARICOM Private Sector Organisation (CPSO) is an Associate Institution of the Community.<sup>97</sup> In December 2020, the Conference signed a MOU with it, creating a legal framework for collaboration between the private sector and the Community.<sup>98</sup> The overarching objective of this institution is to assist Member States with the full implementation of the CARICOM Single Market and Economy.<sup>99</sup> As such, CPSO is afforded Observer status to participate in meetings of CARICOM Organs or may be invited to participate in various Committees, Working Groups and Technical Teams established by CARICOM Organs.<sup>100</sup> To date, however, there is no corresponding regional civil society associate institution with an equivalent position at the regional policymaking table.

<sup>91</sup> See: Agreement Establishing the Caribbean Court of Justice, <[https://ccj.org/wp-content/uploads/2021/02/ccj\\_agreement.pdf](https://ccj.org/wp-content/uploads/2021/02/ccj_agreement.pdf)> Article III (Establishment and Seat of the Caribbean Court of Justice); RTC (n 39), Article 211, accessed 14 November 2023.

<sup>92</sup> Caribbean Court of Justice, Original Jurisdiction Rules 2021, (Caribbean Court of Justice, 11 October 2021) <<https://ccj.org/wp-content/uploads/2021/10/Caribbean-Court-of-Justice-Original-Jurisdiction-Rules-2021.pdf>>, Rule 3.4(4).

<sup>93</sup> RTC (n 39), Article 22.

<sup>94</sup> CARICOM, ‘University of the West Indies’ <<https://caricom.org/institutions/university-of-the-west-indies-uwi/>> accessed 14 November 2023.

<sup>95</sup> Ibid.

<sup>96</sup> PAHO/WHO FOPWL in Jamaica Study (n 22); PAHO/WHO FOPWL in Barbados Study (n 23).

<sup>97</sup> Caribbean Community, ‘CARICOM Private Sector Organization’ <<https://caricom.org/institutions/caricom-private-sector-organization-cps/>> accessed 14 November 2023.

<sup>98</sup> CARICOM Private Sector Organization, ‘Overview’ <<http://thecpso.org/overview-style-2/>> accessed 14 November 2023.

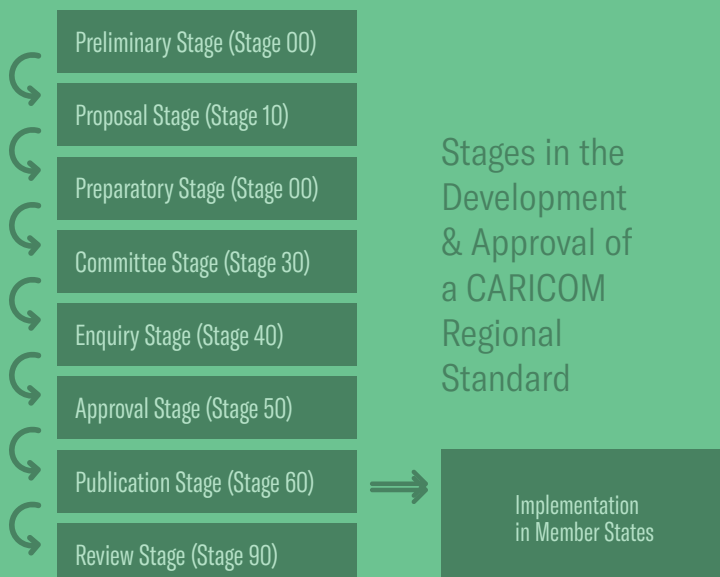
<sup>99</sup> Ibid.

<sup>100</sup> Memorandum of Understanding between the Caribbean Community and the CARICOM Private Sector Organization Inc. Concerning Cooperation towards the Full Implementation of the CARICOM Single Market and Economy <<https://caricom.org/the-caricom-private-sector-organization-and-the-caribbean-community-sign-mou-3rd-december-2020-cps/>> accessed 14 November 2023 (“Towards the achievement of the objective of this Memorandum of Understanding, the Parties agree that the CPSO will have the opportunity to participate in meetings of the Organs of the Community as an Observer.”) [CARICOM and CPSO MOU].



# Part II: Assessing the Standards Development Programme

Part II explains the standardisation programme, outlining how regional standards are developed and implemented. It also explores and identifies entry points for potentially inordinate industry involvement in the process. Section 1 follows the development of a standard from a proposal to a Final Draft CARICOM Regional Standard (FDCRS), including the process for COTED approval and Member State implementation (See Table 1).<sup>101</sup> Section 2 identifies and discusses the entry points within the programme and the broader RTC framework for potentially inordinate industry involvement.



**Table 1. Stages in the Development & Approval of a CARICOM Regional Standard**

Development stage	Acronym	Description	Maximum time limit
Stage 00 Preliminary stage	New Work Item Proposal (NWIP)	A request for the development of a new standard is received by the CROSQ Secretariat on the prescribed form from a National Standards Body (NSB).	–
Stage 10 Proposal stage	–	The NWIP is then evaluated by the NSBs and once there is consensus, the standards development project is submitted for CROSQ Council's approval. A Regional Technical Committee of subject area experts as nominated by Member States through their NSBs is then formed if one does not exist.	1.5 months
Stage 20 Preparatory stage	Working Draft (WD)	The Regional Technical Committee or Working Group (WG) thereof then develops a WD of the proposed Standard and a Project Schedule established.	7 months A 75% positive vote is necessary for approval of CD
Stage 30 Committee stage	Committee Draft (CD)	The Regional Technical Committee discusses the WD and reaches consensus on a CD.	
Stage 40 Enquiry stage	Draft CARICOM Regional Standard (DCRS)	The CD is then registered by the CROSQ Secretariat as a DCRS. The DCRS is circulated to the Member State for review and comment. The Regional Technical Committee disposes of comments and reaches consensus on the technical contents of a revised Draft. The CROSQ Secretariat conducts a process and editorial review of this revised Draft.	9 months with a circulation of 3 months initially
Stage 50 Approval stage	Final Draft CARICOM Regional Standard (FDCRS)	This revised Draft is then registered by the CROSQ Secretariat as a FDCRS. Member States vote on FDCRS. The CROSQ regional Technical Management Committee (TMC) with the assistance of the CROSQ Secretariat tallies the votes and conducts a second level review to verify that all procedures were followed. Once the requisite number of positive votes is attained, the TMC recommends the FDCRS to the CROSQ Council for approval and onward transmission to COTED for approval as a CARICOM Regional Standard (CRS). If not, the TMC returns the FDCRS to the Regional Technical Committee for further technical review and decision making on the way forward by due process.	5 months - includes editing A 75% positive rate is required for submission for approval
Stage 60 Publication stage	CARICOM Regional Standard (CRS)	Final editing and publishing by the CROSQ Secretariat and disseminated to the NSBs.	3 months
Stage 90 Review stage		The standard is reviewed for technical and market relevance.	5 years

Source: CARICOM Regional Organisation for Standards and Quality, 'Standards Development Work Programme' <<https://website.crosq.org/regional-standards-work-programme/>> accessed 14 November 2023.

## 1. CROSQ Process for Developing Standards

The CROSQ standardisation programme is designed to efficiently produce standards and achieve consensus among CARICOM Member States and Institutions.<sup>102</sup> This section describes the process for developing a CARICOM Regional Standard (Table 1).

### A. Preliminary stage (Stage 00)

The process begins when a National Standards Body or other interested party submits a new work item proposal, that is, “a proposal for a new standard, a new part of an existing standard or a Technical Specification or a Publicly Available Specification” to the CROSQ Secretariat.<sup>103</sup> Importantly, the new work item proposal should include a justification as well as the identification of the proposed benefits

<sup>101</sup> Of note, the CROSQ standardisation programme is designed to achieve consensus from regulators and regulated industries before issuing final, regional standards. See CROSQ Directive 1 (n 64) Section 3.1.8; Knight W.A. and Hippolyte D., 'Keeping NCDs as a Political Priority in the Caribbean: A Political Economy Analysis of Non-Communicable Diseases Policy-making'. (2018), 28-29 [Knight and Hippolyte], CROSQ Specification for labelling of pre-packaged foods (n 30) iv.

<sup>102</sup> CROSQ Directive 1 (n 64) 6. See also Knight and Hippolyte (n 101) 28-29.

<sup>103</sup> CROSQ Directive 1 (n 64) Sections 3.1.12 and 4.1. Of note, CROSQ's website refers to this initial action as a proposal, however, Directive 1 refers to it as a request as displayed in the table above. See CROSQ Directive 1 (n 64) Section E.3.2.1.

to be derived from the proposed standard, among other requirements set out in the CROSQ Directive.<sup>104</sup>

## **B. Proposal stage (Stage 10)**

The CROSQ Secretariat circulates the new work item proposal to National Standard Bodies, which then evaluate it and submit their evaluations back to the CROSQ Secretariat.<sup>105</sup> The CROSQ Secretariat then prepares a summary report which includes a recommendation of one of the following: (a) approval of the proposal (if at least four Member States will actively participate in the committee and at least 75% of the total votes received are positive); (b) a new Regional Technical Committee; (c) using an existing Technical Committee or (d) suspension of the proposal. If consensus is achieved, then the recommendation is submitted to the CROSQ Council for approval.<sup>106</sup>

Importantly, in responding to a new work item proposal, the Technical Management Committee may establish a Regional Technical Committee, if none already exists (and also a Regional Technical Subcommittee, if required) which deals with the particular subject matter of the proposal.<sup>107</sup> Any National Standards Bodies' representative from a CARICOM Member State may participate in the Regional Technical Committee or Subcommittee,<sup>108</sup> but this work is often delegated to members of other organisations.<sup>109</sup>

Regional Technical Committee members appoint a chairperson,<sup>110</sup> and may create working groups and advisory groups to accomplish specific tasks.<sup>111</sup>

## **C. Preparatory stage (Stage 20)**

The Regional Technical Committee or the appropriate Working Group, if one was created to deal with the standard in question, prepares a working draft.<sup>112</sup> Further, the Regional Technical Committee or the appropriate Working Group, creates a programme of work and target dates for the completion of the project.<sup>113</sup>

## **D. Committee Stage (Stage 30)**

Once the Regional Technical Committee reaches consensus on the working draft, it creates a committee draft, which should include regulatory objective(s) at the outset.<sup>114</sup> The committee draft is submitted to the CROSQ Secretariat.

<sup>104</sup> CROSQ Directive 1 (n 64) Section 4.1.

<sup>105</sup> CROSQ Directive 1 (n 64) Section 4.1.

<sup>106</sup> CROSQ Directive 1 (n 64) Section 4.1.

<sup>107</sup> CROSQ Directive 1 (n 64) Section 4.1.

<sup>108</sup> Ibid. 5.3.1.

<sup>109</sup> CARICOM Regional Standard: Labelling of Pre-Packaged Foods (n 30) iv.

<sup>110</sup> CROSQ Directive 1 (n 64) Section 5.4.

<sup>111</sup> Ibid. Sections 5.7 and 5.9.

<sup>112</sup> CROSQ Directive 1 (n 64) Section 4.1.

<sup>113</sup> Ibid. Sections 6.1.4, 6.1.5.

<sup>114</sup> Of note, some previous standards prepared through the CROSQ standardisation programme also explicitly stated objectives. See e.g., CARICOM Regional Standard for Tobacco Products – Advertising, Promotion, Sale and Sponsorship Specification (DCRS 60) which includes a statement in its Foreword that “This standard is intended to prohibit tobacco products from being advertised, promoted, sold and sponsored to the general public.” The Foreword of the Final Draft CARICOM Regional Standard 5:202x Labelling of Foods – Pre-Packaged Foods – Specification (Revision) states that the standard is intended to “- assist the purchaser or consumer towards an understanding of the nature, quality or use of the foods so that he may judge whether it is adequate for his needs and whether it is of acceptable quality or usefulness; - enable the manufacturer or retailer to carry out his obligation to describe the foods at the point of sale in a truthful, informative and non-deceptive manner so that no cause for complaint may be found that the foods were wrongly described.”

## E. Enquiry Stage (Stage 40)

The CROSQ Secretariat then registers the committee draft as a Draft CARICOM Regional Standard and circulates it to all National Standards Bodies,<sup>115</sup> which are to review and provide comments. In doing so, National Standards Bodies may convene National Mirror Committees to solicit comments on the Draft CARICOM Regional Standard from various stakeholders.<sup>116</sup>

National Mirror Committees are intended to include a range of relevant stakeholders which facilitate open, transparent and equitable feedback on standards.<sup>117</sup> However, it is important to note that the composition, operations and functions of National Mirror Committees, including decision-making processes, are not standardised or documented across and within CARICOM Member States. As such, there is variation in the National Mirror Committees in terms of membership, the process for submission of comments (i.e., how to deal with repeated comments, evidence or justification for comments, platforms for comments and transparency of comments submitted), voting protocols (i.e., whether in stakeholder groups or as individuals, via consensus or majority vote and other voting requirements).

In terms of composition, for instance, Jamaica's National Mirror Committee is made up of five categories of stakeholders: (1) Government (Ministry of Health and Wellness, the Scientific Research Council, the National Compliance and Regulatory Authority); (2) Non-governmental organisations (The Heart Foundation of Jamaica and Diabetes Association of Jamaica); (3) Academia (The University of the West Indies and the University of Technology, Jamaica); (4) Consumer representative groups (Consumer Affairs Commission and the National Consumers League of Jamaica) and (5) Industry or the private sector (Jamaica Manufacturers and Exporters Association).<sup>118</sup> In Barbados, the National Mirror Committee is made up of seven stakeholder groups, namely (1) Government and regulators; (2) Non-governmental organisations; (3) Academia and research bodies; (4) Consumers and consumer representative organisations; (5) Regulators or conformity assessment providers; (6) Labour and Trade Unions; and (7) Industry or the private sector.

Relatedly, despite those different categories, multiple stakeholders across each may predominantly report to a particular ministry, such as the Ministry with responsibility for industry and trade, and therefore possess a bias that favours industry. In Jamaica, for example, the private sector, despite having its own stakeholder category in the National Mirror Committee, also has its interests represented in at least two additional stakeholder categories – in the “Government” stakeholder group through the National Compliance and Regulatory Authority, which describes itself as “a statutory body which falls under the Ministry of Industry, Investment and Commerce”<sup>119</sup> and among the “Consumer representative groups” through the Consumer Affairs Commission, which states that it is “a government agency under the Ministry of Industry, Investment and Commerce”.<sup>120</sup> Consequently, there is a need for balanced representation that considers not only the appropriate mix of stakeholder categories but also the reporting pathway of each committee member.

Regarding the operation and functions of these National Mirror Committees, there are also significant variations, such as whether one vote is permitted per person, or by stakeholder category only, among other operational nuances.

<sup>115</sup> CROSQ Directive 1 (n 64) Section E.3.1.2.

<sup>116</sup> CROSQ Directive 1 (n 64) Section 5.3.3; Knight and Hippolyte (n 101) 29.

<sup>117</sup> See e.g., International Standards Organization. ‘Guidance for ISO national standards bodies – Engaging stakeholders and building consensus’ <<https://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100269.pdf>> accessed 14 November 2023.

<sup>118</sup> Nicole Foster, Constantin A. and Lake S., CARICOM's efforts to tackle unhealthy diets: a cautionary tale for Latin America. (2022) 8 Journal of International Studies <doi: 10.21783/rei.v8i2.663> accessed 14 November 2023.

<sup>119</sup> National Compliance & Regulatory Authority. ‘About Us’ <<http://www.ncra.org.jm/about-us>> accessed 14 November 2023.

<sup>120</sup> Consumer Affairs Commission, ‘About Us’ <<https://www.cac.gov.jm/portal/index.php/new-services>> accessed 14 November 2023.

Commenting, however, is not limited to the National Mirror Committees. The National Standard Bodies are required to provide “ample opportunity for participation” from the public.<sup>121</sup> Various methods like workshops, town hall meetings and consultations may be used to solicit comments,<sup>122</sup> but national legislation buttresses stakeholders’ participation. Jamaica’s legislation, for instance, prohibits standards from taking effect unless and until the portfolio minister is “satisfied that any persons who may [be] affected,” had the opportunity to “consider it and make representations” to the Bureau of Standards Jamaica,<sup>123</sup> while, in Barbados, the Barbados National Standards Institution must “give due consideration to the representations” of the public.<sup>124</sup>

A technical officer then summarises the National Mirror Committees’ comments and transmits them to the Regional Technical Committee.<sup>125</sup> The committee must ensure that all comments are “compiled and handled appropriately,”<sup>126</sup> review each comment, and decide which to accept or reject. This decision must be based on sound and well-established scientific knowledge, referencing documents or studies.<sup>127</sup> However, it is unclear from the current process for handling comments how irregularities arising during the consultative process are to be addressed, such as unbalanced consultative processes where certain stakeholders are not informed or only informed very late of consultations and therefore not properly represented in the comments being submitted.

The Regional Technical Committee may amend the Draft CARICOM Regional Standard to include accepted comments, or clarify an existing requirement. Where amendments are made, the draft must be revised and circulated to the committee for consensus. If the committee reaches consensus on any revisions, it will resubmit the revised draft to the National Standard Bodies for another round of public review.<sup>128</sup>

## F. Approval Stage (Stage 50)

When revisions are complete, the Regional Technical Committee’s proposal becomes a Final Draft CARICOM Regional Standard. CROSQ Secretariat circulates this Final Draft CARICOM Regional Standard to the National Standard Bodies, which provide their final votes and comments. In order to be submitted to the CROSQ Council for approval, 75% positive votes are required.<sup>129</sup> However, voting procedures and requirements are not currently standardised and therefore also vary across CARICOM Member States.

A technical officer summarises these comments and votes, noting all negative votes. This information is used to prepare a voting summary report that is submitted to the chairperson of the Regional Technical Committee, as well as the Technical Management Committee, for informational purposes. Comments are not considered but are logged for future revision of the standard.<sup>130</sup>

The Technical Management Committee conducts a second level review, ensuring that the appropriate procedure was followed in the standard development process. If satisfied, the Technical Management

<sup>121</sup> CROSQ Directive 1 (n 64) Section 5.3.3.

<sup>122</sup> Ibid. Section E.3.6.1.

<sup>123</sup> The Standards Act 2012 (L.N. 220/2013), Section 7(5) (Jamaica) <<https://moj.gov.jm/sites/default/files/laws/The%20Standards%20Act.pdf>.<https://moj.gov.jm/sites/default/files/laws/The%20Standards%20Act.pdf>> [Standards Act (Jamaica)].

<sup>124</sup> Standards Act 2006 (Act No. 2006-5) c. 326A, Section 6(3) (Barbados) <<http://104.238.85.55/en/ShowPdf/326A.pdf>> [Standards Act (Barbados)].

<sup>125</sup> CROSQ Directive 1 (n 64) Section E.3.6.2.

<sup>126</sup> Ibid. Section 5.7.12.

<sup>127</sup> Ibid. Annex E 3.6.3., E.3.6.4.

<sup>128</sup> Ibid. Section E.3.6.7.

<sup>129</sup> CROSQ Directive 1 (n 64) Section E.3.6.2.

<sup>130</sup> Ibid. Section E.7.1b.

Committee submits the Final Draft CARICOM Regional Standard to the editorial committee chair for editing. A technical officer and the Regional Technical Committee chair review the technical content of the Final Draft CARICOM Regional Standard to ensure that it has not been altered. The Technical Management Committee chair then makes a recommendation to the CROSQ Council for adoption of the standard.<sup>131</sup> If a simple majority of the CROSQ Council votes for the Final Draft CARICOM Regional Standard,<sup>132</sup> a Member State or the Conference may place the Final Draft CARICOM Regional Standard on the COTED meeting agenda.<sup>133</sup> If the level of requisite votes is not achieved, the Technical Management Committee must return the Final Draft CARICOM Regional Standard to the Regional Technical Committee for review and a decision on next steps.<sup>134</sup> CROSQ Directive 1 provides that “in all votes throughout the various stages of development of a deliverable, abstentions are excluded when the votes are counted.”<sup>135</sup> Therefore, an abstention is not considered to be a vote cast.

After CROSQ Council approval, a technical officer must present the Final Draft CARICOM Regional Standard to COTED at its next meeting.<sup>136</sup> While COTED emphasises a consensus-based approach, it mainly consults the private sector when determining the impact of a Final Draft CARICOM Regional Standard.<sup>137</sup> In April 2015, COTED agreed that the formation of a Caribbean Business Council would constitute the main avenue for public-private stakeholder interaction.<sup>138</sup> It is uncertain if this entity has been established or if the idea was morphed into creating the CARICOM Private Sector Organisation, considering the similarity between the mandates of both entities.<sup>139</sup> COTED has, however, expressed interest in deepening engagement with the health sector and civil society,<sup>140</sup> and this has been evidenced, for example, through the joint COTED-COHSOD meetings and decisions.<sup>141</sup>

If the standard secures a three-quarters majority vote from COTED,<sup>142</sup> it will be approved and converted to a CARICOM Regional Standard.<sup>143</sup> However, if COTED decides by a two-thirds majority that a Final Draft CARICOM Regional Standard is an issue of critical importance to the national well-being of a Member State, an affirmative vote is needed by all Member States to approve it.<sup>144</sup> Abstentions will not be construed as impairing the validity of any decision required to be reached by unanimity, provided that at least three-quarters of Member States vote in favour of the decision.<sup>145</sup> Member States that are

<sup>131</sup> Knight & Hippolyte (n 101).

<sup>132</sup> RTC (n 39) Article 27; Agreement Establishing CROSQ (n 51) Article 6.3. Note that the decision to recommend the standard for adoption is a procedural one and thus requires a simple majority. If it were a substantive issue, it would need a two-thirds majority to be approved for recommendation to the COTED.

<sup>133</sup> Knight & Hippolyte (n 101) 28.

<sup>134</sup> CARICOM Regional Organisation for Standards and Quality, ‘Standards Development Work Programme’ <<https://website.crosq.org/regional-standards-work-programme/>> accessed 14 November 2023.

<sup>135</sup> CROSQ Directive 1 (n 64) Foreword G.

<sup>136</sup> CROSQ, ‘COTED Approves Two New Standards for the Region’ (14 November 2014) <<https://website.crosq.org/coted-approves-two-new-standards-for-the-region/>> accessed 14 November 2023.

<sup>137</sup> Knight & Hippolyte (n 101) 28.

<sup>138</sup> Ibid; Michelle Nurse, ‘COTED to engage private sector on more continuous basis’ (CARICOM Today, 11 November 2014) <<https://today.caricom.org/2014/11/08/coted-to-engage-private-sector-on-more-continuous-basis/>> accessed 14 November 2023.

<sup>139</sup> Kendol Morgan, ‘The CARICOM Private Sector Organization and the Caribbean Community Sign MOU 3rd December 2020 – CPSO’ (11 January 2021) <<https://today.caricom.org/2020/12/04/the-caricom-private-sector-organization-and-the-caribbean-community-sign-mou-3rd-december-2020-cpso/>> accessed 14 November 2023.

<sup>140</sup> Knight & Hippolyte (n 101) 29.

<sup>141</sup> Note: A copy of the actual decision emanating from the Sixth Joint Meeting of COTED and COHSOD in 2022 was not publicly available at the time of writing this report. See, CARICOM, ‘Chief Medical Officers in CARICOM receive updates on regional health coordination’ 15 July 2022 <<https://caricom.org/chief-medical-officers-in-caricom-receive-updates-on-regional-health-coordination/>> accessed 14 November 2023.

<sup>142</sup> RTC (n 39) Article 29.

<sup>143</sup> CROSQ Directive 1 (n 64) Section E.3.7.

<sup>144</sup> RTC (n 39) Article 29.

<sup>145</sup> Ibid.



in arrears for more than two years cannot vote on a Final Draft CARICOM Regional Standard, but the Conference can permit delinquent Member States to vote if it is satisfied that the failure to contribute is due to conditions beyond its control.<sup>146</sup> If a Final Draft CARICOM Regional Standard is approved as a CARICOM Regional Standard, a technical officer must inform the chair of the relevant Regional Technical Committee, the proposer Member State(s) and other interested parties of COTED's decision.<sup>147</sup>

### **G. Publication Stage (Stage 60)**

A technical information systems officer engages in an editorial review of the approved standards and once satisfied, publishes it and notifies the National Standards Bodies and the rest of the public about the standard.<sup>148</sup>

### **H. Review Stage (Stage 90)**

Five years after a CARICOM Regional Standard is approved, it is subjected to systematic review. As part of the systematic review, the Regional Technical Committee has five months wherein members can decide to confirm, amend, revise, or withdraw a standard.<sup>149</sup> Committee members make this decision following an evaluation of whether CARICOM Member States have adopted the standard, whether any have changed the standard, or recommended minor or significant changes.

If at least five Member States adopt a CARICOM Regional Standard as a national standard (voluntary or compulsory) and leave it unchanged, the standard may be confirmed upon a 75%-positive vote.<sup>150</sup> If at least five Member States adopt the standard, whether changed or unchanged, and at least one Member State identifies a necessary, minor technical change, the standard may be amended upon a 75%-positive vote.<sup>151</sup> If at least one member identifies a significant error, the standard may be revised, again following a 75% vote.<sup>152</sup> CROSQ does not define which errors are considered "significant" and which are considered "minor." Alternatively, 75% of the Regional Technical Committee members may vote to withdraw the standard and CROSQ members have three months to object to that decision.<sup>153</sup> If no 75% vote is reached on any action, then the Regional Technical Committee should convene a discussion and reach consensus on how to proceed.<sup>154</sup>

### **I. Implementation in Member States<sup>155</sup>**

CROSQ's consensus-based approach implies that standards will be adopted and implemented by Member States. However, while Member States are required to adopt appropriate legal and administrative arrangements to give effect to COTED decisions,<sup>156</sup> and this requirement is buttressed by

<sup>146</sup> RTC (n 39) Article 27.

<sup>147</sup> CROSQ Directive 1 (n 64) Section E.3.7.6

<sup>148</sup> CROSQ Directive 1 (n 64) Section E.3.7.

<sup>149</sup> CROSQ Directive 1 (n 64) Section 6.2.2.2.

<sup>150</sup> Ibid. Section 6.2.3.2.

<sup>151</sup> Ibid. Section 6.2.3.2.

<sup>152</sup> Ibid. Section 6.2.3.2.

<sup>153</sup> Ibid. Section 6.2.3.2.

<sup>154</sup> Ibid. Section G.3.2.3.

<sup>155</sup> Note: Implementation of the CARICOM Regional Standard within Member States is not recognised as part of the typical regional standards development process but has been included here for completeness given the report's reference to some domestic level implications for the regional standards process.

<sup>156</sup> Agreement Establishing CROSQ (n 52) Article 11.

the good faith obligation in the RTC,<sup>157</sup> not all Member States have enacted legislation that automatically incorporates CROSQ standards into domestic law.<sup>158</sup>

Moreover, notwithstanding the automatic or non-automatic incorporation of CROSQ standards, some Member States can revoke or amend a CARICOM Regional Standard after it is incorporated. The Jamaica Standards Act empowers the Bureau of Standards Jamaica to “revoke or amend a standard” with the consent of the Minister of Industry, Investment and Commerce<sup>159</sup> which may also direct the Bureau of Standards Jamaica to revoke a standard.<sup>160</sup> Similarly, the Barbados Standards Act provides that a “standard may, with the approval of the Minister [Energy and Business Development], be amended or revoked” by the Barbados National Standards Institution.<sup>161</sup>

Furthermore, the definition of whether a CARICOM Regional Standard is voluntary or compulsory resides within Member States’ purview. In Jamaica, the Minister of Industry, Investment and Commerce has discretion to declare a standard compulsory whenever “necessary or desirable in the public interest.”<sup>162</sup> Similarly, Barbados’ Minister of Energy and Business Development may declare a standard compulsory if it is intended to primarily “protect the consumer against danger to health or safety”<sup>163</sup> or “prevent fraud or deception arising from misleading advertising or labelling,”<sup>164</sup> among other objectives.

## 2. Potentially Inordinate Industry Involvement

First, CROSQ Directive 1 mandates that the chairperson or convenor of a CROSQ technical committee, including working groups, must have “an existing role and good reputation in the industry”.<sup>165</sup> While CROSQ Directive 1 also states that the World Trade Organization’s (WTO) Technical Barriers to Trade Agreement (TBT Agreement),<sup>166</sup> including the Code of Good Practice for the Preparation, Adoption and Application of Standards (the Code of Good Practice),<sup>167</sup> are indispensable to its application,<sup>168</sup> it is worth noting that neither instrument includes said mandate. The only relevant requirement is that interested parties affected by a standard be granted the opportunity to comment on draft standards.<sup>169</sup>

Second, at the national level, standards legislation can lead to National Standard Bodies’ directors having close ties to regulated industries. For instance, the Jamaican Standards Act mandates that the

<sup>157</sup> RTC (n 39) Article 9; See also, United Nations, Vienna Convention on the Law of Treaties, (United Nations Treaty Series, 23 May 1969) Vol. 1155, p. 331; *Trinidad Cement Limited, TCL Guyana Incorporated v The Co-Operative Republic of Guyana* [2009] CCJ 1 (OJ) [10].

<sup>158</sup> Note that several CARICOM countries have adopted legislation to give effect to the obligations arising from the Agreement Establishing CROSQ: Antigua and Barbuda, Caribbean Community (CARICOM) Regional Organisation for Standards and Quality (CROSQ) Act No. 12 of 2012; Belize, Caribbean Community (CARICOM) Regional Organisation for Standards and Quality (CROSQ) Act 36 of 2005; Barbados Standards Act 2006; Guyana, Caribbean Community (CARICOM) Regional Organisation for Standards and Quality (CROSQ) Act No. 13 of 2005; Jamaica, Caribbean Community (CARICOM) Regional Organisation for Standards and Quality (CROSQ) Act 2005; Trinidad, Caribbean Community (CARICOM) Regional Organisation for Standards and Quality (CROSQ) Act 10 of 2005.

<sup>159</sup> Standards Act (Jamaica) (n 124) Section 7(6).

<sup>160</sup> *Ibid* Section 7(6).

<sup>161</sup> Standards Act (Barbados) (n 125) Section 5(1)(a).

<sup>162</sup> *Ibid* Section 7(7). Note that in Jamaica, the National Compliance and Regulatory Authority (NCRA) publishes a list of standards occasionally, stating which standards are compulsory. See NCRA, ‘List of Jamaican Standards Specifications (Compulsory)’, Food Regulations and Trade Orders 1 (2018) <<http://www.ncra.org.jm/sites/default/files/Jamaican%20Standards%20Specifications%20%28Compulsory%29%2C%20Food%20Regulations%20and%20Trade%20Orders.pdf>>.

<sup>163</sup> Standards Act Barbados (n 117) Section 8(1)(a).

<sup>164</sup> *Ibid* Section 8(1)(e).

<sup>165</sup> *Ibid*. Annex C.

<sup>166</sup> World Trade Organization (WTO) Technical Barriers to Trade Agreement (TBT Agreement) 1868 U.N.T.S. 120 < [https://www.wto.org/english/docs\\_e/legal\\_e/17-tbt\\_e.htm](https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm) > [TBT Agreement].

<sup>167</sup> *Ibid*. Annex 3: The Code of Good Practice for the Preparation, Adoption and Application of Standards [The Code of Good Practice].

<sup>168</sup> CROSQ Directive 1 (n 64) Section 2, Normative References.

<sup>169</sup> TBT Agreement (n 167) The Code of Good Practice, Annex 3. Article L.



Bureau of Standards Jamaica's board must include representatives of manufacturers, wholesalers, retailers and agriculturalists in addition to representatives of government and consumer interests.<sup>170</sup> In Barbados, the Barbados National Standards Institution's board consists of representatives from Barbados Light & Power, Barbados Investment and Development Corporation, and Barbados Manufacturers Association, in addition to other industry and government agents.<sup>171</sup> These board members hire the National Standard Bodies' directors<sup>172</sup> who participate in discussions taking place at the regional level; they sit on the CROSQ Council and have final say over CROSQ decisions.<sup>173</sup>

Third, as previously mentioned, the National Mirror Committees convened by the National Standard Bodies invite comments on proposed CROSQ standards from the private sector. For instance, the Barbados National Standards Institution solicits comments from seven stakeholder groupings,<sup>174</sup> including 'Industry and commerce (the manufacturers, business, and trade associations, service industries, retailers, insurers, financial institutions, banks, designers, producers etc.)', while the Bureau of Standards Jamaica solicits comments from five stakeholder groups,<sup>175</sup> including representatives from the manufacturing sector. By contrast, civil society and public health advocates – albeit participants of consultation processes – have faced difficulties registering their comments with the National Mirror Committees.<sup>176</sup> It is important to note that this lack of standardisation with regards to the composition of the voting groups and also the voting process represents an avenue for inordinate industry involvement. There is therefore a need for balance in the representation of civil society organisations (CSOs) and their meaningful participation in such policy processes.

Lastly, COTED itself is prone to alignment with industry interests due to its nature and composition. COTED is comprised of CARICOM government ministers and delegates who primarily represent Member States' trade and economic interests,<sup>177</sup> and who are primarily concerned with promoting trade within the CARICOM Single Market and Economy.<sup>178</sup> This shared interest with the industry creates a potential entry point for the industry to influence the standardisation programme, such as by framing public health measures primarily as trade issues.<sup>179</sup>

<sup>170</sup> The Standards Act (Jamaica) (n 116) Section 1(a)(iii).

<sup>171</sup> Bajan Reporter, 'New Board of Directors for B.N.S.I.' (4 February 2020) <<https://www.bajanreporter.com/2020/02/new-board-of-directors-for-b-n-s-i/>> accessed 14 November 2023.

<sup>172</sup> Jamaica Observer, 'BSJ Begins Search for New Executive Director' (2 February 2021) <[https://www.jamaicaobserver.com/news/bsj-begins-search-for-new-executive-director\\_213725?profile=1373](https://www.jamaicaobserver.com/news/bsj-begins-search-for-new-executive-director_213725?profile=1373)> accessed 14 November 2023.

<sup>173</sup> CROSQ Directive 1 (n 64) Section 3.1.8. For example, while the Regional Technical Committee responsible for developing the CRS for FOPNL includes representatives from the Antigua and Barbuda Ministry of Health and Environment, Bahamas Agricultural Health and Food Safety Authority, it also includes representatives from VSH Foods, Baron Foods, and the Jamaica Manufacturers and Exporters Association. See CARICOM Regional Standard: Labelling of Pre-Packaged Foods (n 30) iv.

<sup>174</sup> Export.gov, 'Barbados Country Commercial Guide – Barbados Trade Standards' <<https://www.export.gov/apex/article?id=Barbados-Trade-Standards>> accessed 4 May 2021. The seven stakeholder categories in Barbados are: (1) Government and regulators; (2) non-governmental organisations; (3) Academia and research bodies; (4) Consumers and consumer representative organisations; (5) Regulators or conformity assessment providers; (6) Labour and Trade Unions; and (7) Industry or the private sector.

<sup>175</sup> Export.gov, 'Jamaica Country Commercial Guide' <<https://legacy.export.gov/article?id=Jamaica-Standards-for-Trade>> accessed 14 November 2023. The five stakeholder categories in Jamaica are: (1) Government; (2) non-governmental organisations; (3) Academia; (4) Consumer representative groups and (5) Industry or the private sector.

<sup>176</sup> For example, many groups whose work focus on NCDs do not have the financial resources or are not given the space to comment on trade or other issues that are deemed to be beyond their organisational scope. See Knight & Hippolyte (n 101) 36.

<sup>177</sup> RTC (n 39) Articles 10 (2) and 15 (1); Grenada Ministry of Trade, Industry, Co-Operatives and CARICOM Affairs, 'The Council for Trade and Economic Development' <<https://gov.gd/moti/council-trade-and-economic-development-coted>> accessed 14 November 2023; CARICOM Today, 'CARICOM Endorses Made in Caribbean Initiative' (8 December 2020) <<https://today.caricom.org/2020/12/02/coted-endorses-made-in-caricom-initiative/>> accessed 14 November 2023; CARICOM, 'The Council for Trade and Economic Development,' <[https://caricom.org/organs\\_and\\_bodies/the-council-for-trade-and-economic-development-coted/#:-:text=The%20Council%20for%20Trade%20and%20Economic%20Development%20\(COTED\)%20promotes%20trade,the%20Single%20Market%20and%20Economy](https://caricom.org/organs_and_bodies/the-council-for-trade-and-economic-development-coted/#:-:text=The%20Council%20for%20Trade%20and%20Economic%20Development%20(COTED)%20promotes%20trade,the%20Single%20Market%20and%20Economy)> accessed 14 November 2023.

<sup>178</sup> RTC (n 39) Articles 10 (2) and 15 (1).

<sup>179</sup> Pandohie (n 32).

An overarching entry point for potentially inordinate industry involvement is through any gaps in the governance of such a multistakeholder standards development and harmonisation process, including the general absence of publicly available, written rules of engagement, at both the regional and domestic levels. For instance, rules regarding the inclusion or exclusion of evidence at the various stages of the regional standards development process, notably from actors with vested interests that are contrary to the objectives of the standard, are absent.<sup>180</sup>

In the context of development of standardisation programmes, the aforementioned instances allow for inordinate industry involvement leading to possible tensions between public health and commercial objectives. Hence, it is necessary to purposefully rebalance the scales in order to strengthen public health decision-making in CARICOM, as explored in the conclusions and recommendations.

---

<sup>180</sup> See e.g., PAHO, CARPHA, Organisation of Eastern Caribbean States, Healthy Caribbean Coalition, Caribbean Institute for Health Research and UWI Cave Hill Law and Health Research Unit, 'Statement to the Sixth Ministerial Meeting of COTED/COHSOD on the Determination of Regional Standard for Specification for Labelling of Pre-Packaged Foods to Incorporate Front-Of-Package Labelling Specifications' (29 April, 2023) [Unpublished statement]; Joint Letter from Representatives of PAHO, CARPHA, Organisation of Eastern Caribbean States, Healthy Caribbean Coalition, Caribbean Institute for Health Research and UWI Cave Hill Law and Health Research Unit to all National Standards Bodies and National Mirror Committees in the Caribbean regarding CARICOM Private Sector Organization commissioned research on FOPNL (26 April, 2022) [Unpublished letter].

# Part III: Brief normative considerations

Part III considers whether CROSQ's standardisation programme complies with the normative requirements prescribed by the Revised Treaty of Chaguaramas (RTC).

Section 1 discusses how the RTC prescribes a consumer protection objective, among other objectives, for the development of the standardisation programme.<sup>181</sup>

Section 2 analyses the development of the standardisation programme in relation to Member States' international obligations, specifically the WTO's Technical Barriers to Trade (TBT) Agreement's prohibition against adopting standards that are barriers to trade and its Code of Good Practice.

## International

World Trade  
Organization

Technical Barriers to  
Trade Agreement &  
Code of Good Practice

## Regional

CARICOM

Revised Treaty  
of Chaguaramas

## 1. Consumer Protection Objective <sup>181</sup>

Article 67 of the RTC requires COTED to collaborate with competent agencies to develop a standardisation programme,<sup>182</sup> in a manner that furthers its stated objectives, among which is consumer protection.<sup>183</sup> In compliance with Article 67 of the RTC, CARICOM Member States executed an Intergovernmental Agreement which created CROSQ to develop and harmonise CARICOM Regional Standards,<sup>184</sup> also aiming at some stated objectives, among which are promoting consumer welfare and safety.<sup>185</sup> However, it is important to note that despite the consumer protection objective, health still does not feature in any meaningful way in the regional standardisation process, arguably due to its absence from any of the objectives of the standards programme.

However, when it comes to FOPNL standards, consumer protection is indissociable from public health objectives, considering that FOPNL aims at “allowing consumers to correctly, quickly, and easily identify products that contain excessive amount of sugars, fats, and sodium... protect[ing] them from the top risk factors for mortality, i.e. high blood sugar levels, and overweight/obesity, which are harming their health.”<sup>186</sup> Relatedly, the Final Draft CARICOM Regional Standard Specification for the Labelling of Pre-Packaged Foods is intended to “assist the purchaser or consumer towards an understanding of the nature, quality or use of the foods so that he may judge whether it is adequate for his needs and whether it is of acceptable quality or usefulness”, among other objectives, and acknowledges that “[f]ront-of-package nutritional warning labels interpret nutritional information, add ease and speed to information access and improve the consumer’s ability to make a critical and better-informed decision.”<sup>187</sup> In this sense, CROSQ should collaborate with CARPHA to develop such standards with relevance to public health, given that one of CARPHA’s objectives is precisely “to promote and develop measures for the prevention of disease in the Caribbean.”<sup>188</sup> In addition to being “responsible for the surveillance and management of NCDs that have reached epidemic proportions, such as obesity, cancer, heart disease and diabetes,”<sup>189</sup> CARPHA is responsible for providing “an evidence base”<sup>190</sup> for decisions relating to public health and for conducting “relevant research on public-health priorities in the Caribbean.”<sup>191</sup> Considering the link between FOPNL standards’ objective and NCD prevention, and the requirement for CROSQ decisions to be based on “sound and well-established scientific knowledge,”<sup>192</sup> CARPHA’s research and guidance should be central to the development of FOPNL standards.

CROSQ’s standardisation programme likely fulfils its mandate to collaborate with CARICOM Organs and Institutions responsible for consumer protection in the development of its FOPNL standards. CARPHA has been involved in the current CROSQ-led process through its agency-level consultation on

<sup>181</sup> RTC (n 39) Article 67.3(d).

<sup>182</sup> RTC (n 39) Article 67.

<sup>183</sup> Ibid. Article 67.3.

<sup>184</sup> CROSQ Presentation at ASTM (n 63).

<sup>185</sup> Agreement Establishing CROSQ (n 52); Anneke Jessen, ‘CARICOM Report Number 2: Subregional Integration Report Series’ (2005) 56-57 <[https://books.google.com/books?id=tWrH2LqIFYC&dq=crosq+and+tobacco&lr=&source=gbs\\_navlinks\\_s](https://books.google.com/books?id=tWrH2LqIFYC&dq=crosq+and+tobacco&lr=&source=gbs_navlinks_s)>.

<sup>186</sup> PAHO, ‘Front-of-Package Labeling as a Policy Tool for the Prevention of Noncommunicable Diseases in the Americas’ (2020) PAHO/NMH/RF/20-0033, 10 <[https://iris.paho.org/bitstream/handle/10665.2/52740/PAHONMHRF200033\\_eng.pdf?sequence=6&isAllowed=y](https://iris.paho.org/bitstream/handle/10665.2/52740/PAHONMHRF200033_eng.pdf?sequence=6&isAllowed=y)> accessed 14 November 2023.

<sup>187</sup> CROSQ. Final Draft CARICOM Regional Standard 5:202x Labelling of Foods – Pre-Packaged Foods – Specification (Revision) (This Standard also states that it is intended to “enable the manufacturer or retailer to carry out his obligation to describe the foods at the point of sale in a truthful, informative and non-deceptive manner so that no cause for complaint may be found that the foods were wrongly described.”).

<sup>188</sup> Agreement Establishing CARPHA (n 83), Article 4.

<sup>189</sup> CARPHA, ‘About the Caribbean Public Health Agency’ <<https://carpha.org/Who-We-Are/About>> accessed 14 November 2023.

<sup>190</sup> Agreement Establishing CARPHA (n 83) Article 5(a).

<sup>191</sup> Ibid. Article 5(n).

<sup>192</sup> CROSQ Directive 1 (n 64) Section E.3.6.3.

matters pertaining to FOPNL as well as its chairmanship of the Six Point Policy Package (6 PPP) Inter-Agency Technical Committee, in which CROSQ participates.<sup>193</sup> According to a CARPHA report, CROSQ's revision of the current FOPNL standards is being done as part of a PAHO facilitated project between Chile and CARICOM under the Caribbean Cooperation for Health (CCH) Initiative framework.<sup>194</sup> Nonetheless, there is room for improvement in said collaboration, as explored in the conclusions and recommendations.

## 2. Member States' International Obligations under Articles 2.1, 2.2, and 4 of the WTO's TBT Agreement

Article 67 of the RTC requires the development of a standard to be consistent with Member States' international obligations,<sup>195</sup> among which those contained in Articles 2.1, 2.2, and 4 of the WTO's TBT Agreement.

### A. The Prohibition Against Barriers to Trade

Article 2.1 of the TBT Agreement prohibits Member States from adopting technical standards that are discriminatory against products originating in foreign countries.<sup>196</sup> This means that FOPNL standards should not afford local products more favoured treatment than like foreign products.<sup>197</sup> The Final Draft CARICOM Regional Standard applies equally to local and foreign products, and therefore is likely to comply with Article 2.1.<sup>198</sup>

In turn, Article 2.2 of the TBT Agreement prohibits Member States from adopting standards that unnecessarily restrict trade,<sup>199</sup> clarifying that technical regulations shall not be more trade restrictive than necessary to fulfil a legitimate objective, such as the protection of human health.<sup>200</sup> As discussed above, FOPNL helps consumers identify products with excess critical nutrients, discouraging consumption as a means of preventing diet-related NCDs.<sup>201</sup> Specifically, considering this particular objective and the local context, scientific evidence free from conflicts of interest supports warning labels' superior efficacy.<sup>202</sup> Hence, FOPNL, as included in the Final Draft CARICOM Regional Standard, arguably only restricts trade insofar as necessary, given the lack of less trade-restrictive alternatives with equal efficacy.<sup>203</sup>

<sup>193</sup> CARPHA, 'Articles' (1 June 2023). <[https://www.carpha.org/More/Media/Articles/ArticleID/740/CARPHA-Plans-Activities-for-Caribbean-Nutrition-Day-and-Caribbean-Nutrition-Awareness-Month#:~:text=The%206%2DPPP%20includes%20policy,\(6\)%20Food%20Chain%20Incentives.](https://www.carpha.org/More/Media/Articles/ArticleID/740/CARPHA-Plans-Activities-for-Caribbean-Nutrition-Day-and-Caribbean-Nutrition-Awareness-Month#:~:text=The%206%2DPPP%20includes%20policy,(6)%20Food%20Chain%20Incentives.)> accessed 14 November 2023.

<sup>194</sup> CARICOM Secretariat, CARPHA and PAHO, Caribbean Cooperation in Health-IV Report 2020 Regional Public Goods in Focus (2020) <[https://www.carpha.org/Portals/0/Publications/CCH-IV-Regional-Public-Good-Report\\_final.pdf](https://www.carpha.org/Portals/0/Publications/CCH-IV-Regional-Public-Good-Report_final.pdf)>.

<sup>195</sup> RTC (n 39) Article 67.1.

<sup>196</sup> TBT Agreement (n 167) Article 2.1.

<sup>197</sup> See e.g., Australia — Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging [Tobacco Plain Packaging Case], WT/DS467/23 [2018].

<sup>198</sup> CROSQ (2010) (n 19).

<sup>199</sup> TBT Agreement (n 167) Article 2.2. For the purposes of this report, the RTC prohibition against barriers to trade and Article 2.2 of the TBT Agreement will be treated as one and the same. Tobacco Plain Packaging Case, (n 185).

<sup>200</sup> TBT Agreement (n 167) Article 2.2. For the purposes of this report, the RTC prohibition against barriers to trade and Article 2.2 of the TBT Agreement will be treated as one and the same. Tobacco Plain Packaging Case (n 185).

<sup>201</sup> CROSQ Specification for labelling of pre-packaged foods (n 30); Vanessa White-Barrow and others, Effects of front-of-package nutrition labelling systems on understanding and purchase intention in Jamaica: results from a multiarm randomised controlled trial, (2023) *BMJ Open* 13:e065620. doi: 10.1136/bmjopen-2022-065620 [Vanessa White-Barrow and others (2023)].

<sup>202</sup> CARICOM Regional Standard Labelling of Pre-Packaged Foods (n 30); Vanessa White-Barrow and others (2023) (n 202); PAHO/WHO FOPWL in Jamaica Study (n 22); PAHO/WHO FOPWL in Barbados Study (n 23).

<sup>203</sup> Vanessa White-Barrow and others (2023) (n 202).

While similar trade arguments have been used in relation to FOPNL development in Chile,<sup>204</sup> Peru,<sup>205</sup> and Indonesia<sup>206</sup> in 2013, Ecuador<sup>207</sup> in 2014, and Uruguay in 2019,<sup>208</sup> and most recently, Argentina in 2023,<sup>209</sup> these countries have moved forward with FOPNL.<sup>210</sup> Countries have successfully contended before the WTO TBT committee that FOPNL helps to provide “consumers with sufficient information about the food which they consume and reduc[e] non-communicable diseases,” “provide consumers with information so as to make appropriate dietary choices and reduce the risk of diet-related NCDs; and empower consumers to make an informed choice in order to foster effective competition and consumer welfare.”<sup>211</sup>

### 3. The Code of Good Practice for the Preparation, Adoption and Application of Standards

All CARICOM Member States, with the exception of one, are also WTO Member States,<sup>212</sup> and therefore bound by Article 4 of the TBT Agreement, which provides that they must ensure regional standardising bodies adopt and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards (Code of Good Practice).<sup>213</sup> As noted above, the Code of Good Practice requires that interested parties affected by a standard be granted the opportunity to comment on draft standards.<sup>214</sup>

CROSQ Directive 1 provides that National Standards Bodies should hold consultations with various stakeholders at the national level.<sup>215</sup> Likewise, Standards Acts within some CARICOM Member States also explicitly require that persons who may be affected by the standard should be afforded the opportunity to make representations.<sup>216</sup> While these provisions do not state which stakeholders should be consulted, the practice is for industry representatives to comment on a Draft CARICOM Regional Standard as part of National Mirror Committees, which are created and administered by NSBs, as discussed above. However, in line with the Code of Good Practice, comments must be solicited from all interested parties. Consequently, there is a need for adequate notification of the commenting period as well as compliance with the length of time for the commenting period as set out in the Code of Good Practice, in order to ensure better balance in the representation across stakeholder groups and meaningful participation.

<sup>204</sup> WTO, ‘Committee on Technical Barriers to Trade– Minutes of the meeting of 18 June 2014–Note by the Secretariat (G/TBT/M/63)’ (2014a) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBT/M63.pdf&Open=True>> accessed 14 November 2023.

<sup>205</sup> WTO, ‘Committee on Technical Barriers to Trade– Minutes of the meeting of 18-19 March 2015–Note by the Secretariat (G/TBT/M/65)’ (2015) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBT/M65.pdf&Open=True>> accessed 14 November 2023.

<sup>206</sup> WTO, ‘Committee on Technical Barriers to Trade– Minutes of the meeting of 17, 19 and 20 June 2013–Note by the Secretariat (G/TBT/M/60)’ (2013) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBT/M60.pdf&Open=True>> accessed 14 November 2023; WTO, ‘Committee on Technical Barriers to Trade– Minutes of the meeting of 18-19 March 2015–Note by the Secretariat (G/TBT/M/65)’ (2015) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBT/M65.pdf&Open=True>> accessed 14 November 2023.

<sup>207</sup> WTO, ‘Committee on Technical Barriers to Trade– Minutes of the meeting of 19–20 March 2014–Note by the Secretariat (G/TBT/M/62)’ (2014b) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBT/M62.pdf&Open=True>> accessed 14 November 2023.

<sup>208</sup> Thow, Jones, Hawkes and others, ‘Nutrition labelling is a trade policy issue: lessons from an analysis of specific trade concerns at the World Trade Organization’ (2018) *Health Promotion International* <10.1093/heapro/daw109> accessed 14 November 2023; Eric Crosbie, Angela Carriedo and Laura Schmidt, [Crosbie and others (2022)] ‘Hollow Threats: Transnational Food and Beverage Companies’ Use of International Agreements to Fight Front-of-Pack Nutrition Labeling in Mexico and Beyond’ (2022) *International Journal of Health Policy Management* <10.34172/IJHPM.2020.146> accessed 14 November 2023.

<sup>209</sup> WTO, ‘Committee on Technical Barriers to Trade - Argentina - Decree Implementing Law No. 27.642 on the Promotion of Healthy Eating (ID 772). (November 2023) <<https://tradeconcerns.wto.org/en/stcs/details?imsId=772&domainId=TBT>> accessed 14 November 2023.

<sup>210</sup> Eric Crosbie, Angela Carriedo and Laura Schmidt, [Crosbie and others (2022)] ‘Hollow Threats: Transnational Food and Beverage Companies’ Use of International Agreements to Fight Front-of-Pack Nutrition Labeling in Mexico and Beyond’ (2022) *International Journal of Health Policy Management* <10.34172/IJHPM.2020.146> accessed 14 November 2023.

<sup>211</sup> Crosbie and others (2002) (n 208).

<sup>212</sup> WTO, ‘Members and Observers’ <[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm#membermap](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm#membermap)> accessed 14 November 2023 (Note: The Bahamas is the only CARICOM Member State that is currently not also a WTO Member State. The Bahamas has started the WTO membership accession process).

<sup>213</sup> TBT Agreement (n 167) Article 4.

<sup>214</sup> TBT Agreement (n 167) Annex 3: The Code of Good Practice, Article L (“Before adopting a standard, the standardizing body shall allow a period of at least 60 days for the submission of comments on the draft standard by interested parties within the territory of a Member of the WTO. This period may, however, be shortened in cases where urgent problems of safety, health or environment arise or threaten to arise...”).

<sup>215</sup> CROSQ Directive 1 (n 64) Section E.3.6.1.

<sup>216</sup> See e.g., Standards Act (Jamaica) (n 124) Section 7(5); Standards Act (Barbados) (n 125) Section 6(3).





## 1. THE COMMUNITY (through the CARICOM SECRETARIAT)

The Community, through the CARICOM Secretariat its principal administrative organ, should:

- a. Develop protocols and guidelines on how to organise, manage and oversee official, transparent consultation processes.<sup>217</sup> These should include measures that enable the CARICOM Secretariat to adequately identify, prevent, and manage conflicts of interest<sup>218</sup> involving CARICOM Organs, Institutions and Associate Institutions, as well as to ensure access to information, including the timely publication of decisions.<sup>219</sup>
- b. Facilitate the streamlining of the region's 'health in all policies approach' to ensure policy coherence.<sup>220</sup>
- c. Explore measures that allow for meaningful engagement, notably by civil society organisations, to regional decision-making fora and processes in fulfilment of the objectives outlined in Article 6 of the RTC.<sup>221</sup>
- d. Request an advisory opinion from the Caribbean Court of Justice that, for example, clarifies the meaning of the objectives of the Community, in light of the health situation and the commitments expressed by CARICOM Member States, such as the Port-of-Spain Declaration '*Uniting to Stop the Epidemic of Chronic Non-Communicable Diseases*'.

## 2. COTED (and where applicable, COHSOD)

COTED and COHSOD, as designated CARICOM Organs with responsibility for trade and industry and health and human development, respectively, should:

- a. Establish ongoing collaboration between COTED and COHSOD, as well as agencies with public health expertise, such as CARPHA, during the development and harmonisation of standards and technical regulations with relevance to public health. For instance, COTED and COHSOD have held joint meetings to discuss trade-related NCD policies in the past.<sup>222</sup> However, this type of meeting should not be a one-off occurrence but be the accepted best practice.
- b. Further, when developing and harmonising all standards and technical regulations with relevance to public health, consideration should be given to adopting joint COTED-COHSOD decisions that could benefit such processes. For example, in the past, COTED and COHSOD have adopted joint policy decisions, such as the joint policy decision to recognise trans fats as harmful to health and to support the elimination of industrially produced trans fatty acids from CARICOM's food supply.<sup>223</sup>
- c. Consult COHSOD and CARPHA during the development of standards and technical regulations with relevance to public health which will be voted upon at the national level. Article 20 of the RTC states that "where a Community Organ... develop[s] a proposal which is likely to impact importantly on activities within the sphere of competence of another Community Organ, the first-mentioned Community Organ shall transmit such proposal to other interested Community Organs for their consideration and reaction before reaching a final decision on the proposal."<sup>224</sup>
- d. Encourage the submission of and/or submit requests for the development of new standards or technical regulations with relevance to public health.

<sup>217</sup> See RTC (n 39) Article 67 (4) which speaks to transparency in the program specifically.

<sup>218</sup> See e.g., World Health Organization, 'Safeguarding against possible conflicts of interest in nutrition programmes' WHO Director General Report 4 December 2017 (WHO, EB142/23) <[https://apps.who.int/iris/bitstream/handle/10665/274165/B142\\_23-en.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/274165/B142_23-en.pdf?sequence=1&isAllowed=y)> (which states that "a conflict of interest arises in circumstances where there is potential for a secondary interest to unduly influence, or where it may be reasonably perceived to unduly influence, either the independence or objectivity of professional judgment or actions regarding a primary interest.").

<sup>219</sup> See e.g., Organisation for Economic Co-operation and Development, Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service (2022) OECD/LEGAL/0316 <<https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>>.

<sup>220</sup> CARICOM and CARPHA, 'Caribbean Cooperation in Health Phase IV (CCH IV) Summary of the Regional Health Framework 2016-2025' <[https://caricom.org/documents/16429-cch-iv-publication\\_rev-7\\_health\\_sector\\_development.pdf](https://caricom.org/documents/16429-cch-iv-publication_rev-7_health_sector_development.pdf)>.

<sup>221</sup> See RTC (n 39) Article 6 which speaks to the objectives of the Community.

<sup>222</sup> Michelle Nurse, 'COTED, COHSOD Focus on Reducing NCDs' (CARICOM Today, 31 October 2019) <<https://today.caricom.org/2019/10/30/coted-cohsod-focus-on-reducing-ncds/>> accessed 14 November 2023.

<sup>223</sup> CARICOM, 'Chief Medical Officers in CARICOM receive updates on regional health coordination' 15 July 2022 <<https://caricom.org/chief-medical-officers-in-caricom-receive-updates-on-regional-health-coordination/>> accessed 14 November 2023. Note: A copy of the actual decision emanating from the Sixth Joint Meeting of COTED and COHSOD in 2022 was not publicly available at the time of writing this report.

<sup>224</sup> RTC (n 39) Article 20.



### 3. CROSQ

CROSQ, a CARICOM Institution with responsibility for developing and harmonising CARICOM Regional Standards, should:

- a. Facilitate a special process for dealing with public health standards. CROSQ Directive 1 allows the agency to expand the directive to address a specific operational issue.<sup>225</sup> One such issue is the mandatory requirement for the chairperson of the Regional Technical Committee to be from the private sector. This requirement, even if not having an actual impact on the committee's decisions, provides an apparent perception of and potential for conflicts of interest, which is inconsistent with international best practices.<sup>226</sup>
- b. Develop (if not existing) or add to (if existing) a Memorandum of Understanding (MOU) that facilitates collaboration with CARPHA on any standardisation programme with relevance to public health, such as FOPNL.<sup>227</sup> As evidenced by the Letter of Agreement between CROSQ and CARPHA for partnership on the development and implementation of regional health, safety and environmental sanitation operational standards for the tourism industry, it is possible for these CARICOM Institutions to collaborate on standardisation programmes with relevance to public health.<sup>228</sup>
- c. Mandate that the Regional Technical Committee be chaired by a CARPHA representative when the organisation is developing a standard with relevance to public health.<sup>229</sup>
- d. Mandate the inclusion of a representative of a public health regional civil society organisation (with a background in health promotion/protection) on the Regional Technical Committee when developing standards with relevance to public health.<sup>230</sup>
- e. Continue to provide technical resources to National Standards Bodies prior to the circulation of a final draft standard. This assistance may be in the form of hosting meetings with National Standard Bodies to discuss the nature and rationale of standards, supporting evidence free from conflicts of interest, and other information to assist Member States with arriving at a position.<sup>231</sup>
- f. In consultation with National Standard Bodies, develop and publish detailed guidance on committee representation, as well as commenting and voting processes at the national level, which should be applicable to all Member States.<sup>232</sup> The guidance should:
  - i. Outline how representation should be constituted on National Mirror Committees,<sup>233</sup> ensuring substantial balance in representation across stakeholder groups (e.g., industry and civil society).<sup>234</sup> In instances where no domestic civil society organisation exists in a Member State, provide for the appointment of a regional civil society organisation with established expertise in the subject matter. When dealing with public health standards, ensure membership includes a representative from the

<sup>225</sup> CROSQ Directive 1 (n 64) Foreword, paragraph F.

<sup>226</sup> OECD, 'Managing Conflict of Interest in the Public Sector – A Toolkit' <<https://www.oecd.org/gov/ethics/49107986.pdf>>. See also, Organisation for Economic Co-operation and Development, Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service (2022) OECD/LEGAL/0316 <<https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>>.

<sup>227</sup> Caribbean Public Health Agency, 'Promoting Healthy Diets, Food Security, and Sustainable Development in the Caribbean Through Joint Policy Action' CARICOM Technical Brief (9-10 February 2017) <[https://carpha.org/Portals/0/Documents/CARPHA\\_6\\_Point\\_Policy\\_for\\_Healthier\\_Food\\_Environments.pdf](https://carpha.org/Portals/0/Documents/CARPHA_6_Point_Policy_for_Healthier_Food_Environments.pdf)>.

<sup>228</sup> Latoya Burnham, 'CROSQ & CARPHA Join Forces on Health, Safety, Environmental Tourism Standards' 17 March 2022. <<https://website.crosq.org/crosq-carpha-join-forces-on-standards/>> accessed 14 November 2023.

<sup>229</sup> See Agreement Establishing CARPHA (n 81) Article 4; CARPHA, 'About the Caribbean Public Health Agency (CARPHA)' <<https://carpha.org/Who-We-Are/About>> accessed 14 November 2023; CROSQ Directive 1 (n 65) Foreword, paragraph F.

<sup>230</sup> See Agreement Establishing CARPHA (n 83) Article 4; CARPHA, 'About the Caribbean Public Health Agency (CARPHA)' <<https://carpha.org/Who-We-Are/About>> accessed 14 November 2023; CROSQ Directive 1 (n 64) Foreword, paragraph F.

<sup>231</sup> CROSQ Directive 1 (n 64) Section E.3.6.2.

<sup>232</sup> RTC (n 39) Article 27. Note that the RTC gives organs broad powers to establish their internal voting procedures. See also CROSQ Directive 1 (n 64) Section E.3.6. Note that Directive 1 provides basic recommendations on how NSBs should arrive at their national positions.

<sup>233</sup> CROSQ Directive 1 (n 64) Section E.3.6. See also International Standards Organization, 'Guidance for ISO national standards bodies – Engaging stakeholders and building consensus' <<https://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100269.pdf>>.

<sup>234</sup> Ibid. See also International Standards Organization, 'Guidance for ISO national standards bodies – Engaging stakeholders and building consensus' <<https://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100269.pdf>>.

- local Ministry of Health, and reputable academic institutions with research focused on health.
- ii. Outline a standard and transparent voting process, including conflict of interest requirements, for the determination of Member States' national positions on regional standards, including steps such as publishing the National Mirror Committees composition, meeting minutes, and decisions on public channels. This is important in the Caribbean, considering industry's involvement in the standards development and harmonisation process which currently extends to voting.
  - iii. The consultative process should be open, transparent, and supported by formal guidelines, allowing for all stakeholders to view, participate and monitor it.<sup>235</sup>
- g. Facilitate deeper cooperation with PAHO, the University of the West Indies and other reputable academic institutions with research focused on health, to identify and develop scientific studies free from conflicts of interest to provide technical support to CROSQ in matters with relevance to public health.

#### 4. CARPHA

CARPHA, as the Caribbean public health agency with central oversight of the region,<sup>236</sup> should:

- a. Offer guidance to CROSQ on how to define 'standards with relevance to public health' as well as offer general guidance pertinent to standards with relevance to public health to relevant CARICOM Organs, such as COHSOD and COTED.
- b. Submit requests for the development of new standards or technical regulations with relevance to public health.
- c. Chair the relevant Regional Technical Committee and actively participate in all CARICOM level meetings related to standards and technical regulations with relevance to public health.
- d. Mobilise national Ministry of Health representatives and other public health stakeholders to actively participate in National Mirror Committees.
- e. Develop mechanisms that enable it to support national consultations through the provision of technical assistance, including the generation of conflict-free evidence.
- f. Advocate for joint COTED-COHSOD meetings and decisions on standards with relevance to public health.

#### 5. University of the West Indies

UWI, an Associate Institution of CARICOM which advances education and the creation of knowledge in the region, should:

- a. Leverage research capabilities, such as through the Public Health research programmes, the Law Faculties, the Law and Health Research Unit, CAIHR and other reputable research institutions in the region, especially regarding legal and policy research to strengthen policymaking processes in the region, including about access to information and preventing and managing conflicts of interest.
- b. Submit requests for the development of new standards or technical regulations with relevance to public health based on conflict-free research.
- c. Coordinate for adequate representation of academia in National Mirror Committees.

<sup>235</sup> For example, the Canadian FOPL process provides online access to the submissions and deliberations, including depositing of comments. See Government of Canada, 'Transparency of stakeholder communications for healthy eating initiatives' <https://www.canada.ca/en/services/health/campaigns/vision-healthy-canada/healthy-eating/transparency-stakeholder-communications-healthy-eating-initiatives.html> accessed 30 March 2022. See also Government of Canada, 'Toward Front-of-Package Nutrition Labels for Canadians' < <https://www.canada.ca/en/health-canada/programs/front-of-package-nutrition-labelling/consultation-document.html> > accessed 30 March 2022.

<sup>236</sup> Agreement Establishing CARPHA (n 83) Article 4. See also CARPHA, 'About the Caribbean Public Health Agency (CARPHA)' <<https://carpha.org/Who-We-Are/About>> accessed 14 November 2023.

## ABOUT THE INSTITUTIONS INVOLVED IN THIS REPORT



### [Global Center for Legal Innovation on Food Environments](#)

The Global Center for Legal Innovation on Food Environments Center, housed at the O'Neill Institute for National and Global Health Law at Georgetown University in Washington D.C., serves as a transnational venue for the study, research, training, education and publication on aspects of healthy food.



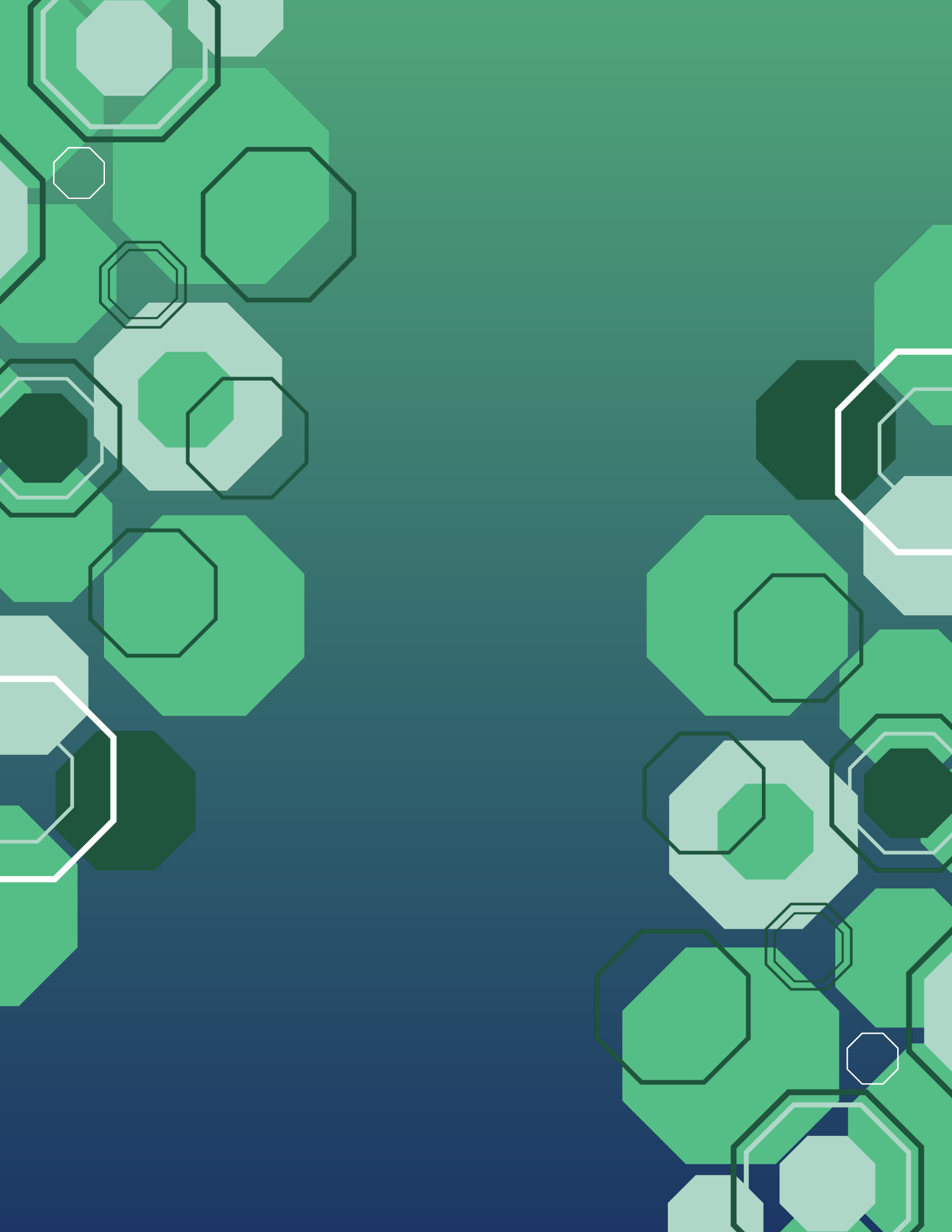
### [Healthy Caribbean Coalition](#)

The Healthy Caribbean Coalition, a registered not-for-profit organisation based in Barbados, is an alliance of regional civil society organisations established to address noncommunicable diseases and their associated risk factors and conditions in the Caribbean.



### [Law and Health Research Unit, Law Faculty, University of the West Indies, Cave Hill](#)

The Law and Health Research Unit, situated within the Faculty of Law at the University of the West Indies Cave Hill campus, engages in academic scholarship pertinent to the areas of law and health.





# **PUBLIC HEALTH DECISION-MAKING IN CARICOM:**

Strengthening the Front-of-Package Nutrition  
Labelling Standardisation Programme