PUBLIC HEALTH DECISION-MAKING IN CARICOM:
Strengthening the Front-of-Package Nutrition Labelling Standardisation Programme
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<td>NSB</td>
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<td>PAHO</td>
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<td>Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy</td>
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<td>6PPP</td>
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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.

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.1 The Caribbean, recording over 70% of deaths linked to NCDs, has the highest NCD mortality rate in the region of the Americas.2 Modifiable risk factors, such as tobacco use, harmful alcohol consumption, unhealthy diet, physical inactivity, along with air pollution, contribute to increased NCD prevalence.3 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.4

Unhealthy diets significantly drive the Caribbean’s NCD epidemic.5 Since the 1990s, trade agreements have facilitated an influx of unhealthy food and beverages in the Caribbean Community (CARICOM or ‘the Community’),6 which have contributed to a major nutritional transition.7 Today, CARICOM countries import over $5 billion USD worth of food.8 Imports account for 60%-80% of food consumed in some CARICOM nations,9 and one-third of imported food are energy-dense and high in fat, sugar, and sodium.10 These products are generally more affordable than healthy food options, easier to transport and less perishable.11 It is, therefore, unsurprising that childhood obesity, a metabolic risk factor for NCDs,12 more than doubled in Caribbean countries between 2006 and 2016,13 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.14 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.15

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10 Ibid 11.
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.\(^\text{16}\) 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\(^\text{17}\) and the Caribbean Public Health Agency (CARPHA) also recommends mandatory nutrition labelling of food in its Six Point Policy Package (6 PPP).\(^\text{18}\)

Several FOPNL schemes exist;\(^\text{19}\) 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.\(^\text{20}\) 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.\(^\text{21}\)

The efficacy of the warning label scheme is supported by local evidence from recent studies in Jamaica\(^\text{22}\) and Barbados.\(^\text{23}\) The study in Jamaica, conducted by PAHO, the Jamaican Ministry of Health and Wellness, and the University of Technology, Jamaica,\(^\text{24}\) 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...
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) 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, 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. While the food and beverage industry has supported FOPNL broadly, it has challenged the adoption of the octagonal ‘high-in’ warning labels and has mobilised in opposition to the regional standard, wielding significant influence at the regional and national levels. 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.

25 PAHO/WHO, FOPWL in Barbados Study (n 23).
27 PAHO (n 16).
28 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.
32 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].
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.

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<th>Relevant Institutions of the Community</th>
<th>Relevant Associate Institutions of the Community</th>
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<td>CARICOM Regional Organisation for Standards and Quality</td>
<td>The University of the West Indies</td>
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<tr>
<td>Council for Human and Social Development</td>
<td>Caribbean Public Health Agency</td>
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<td>Caribbean Agricultural Health and Food Safety Agency</td>
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1. CARICOM

CARICOM was established in 1973 upon the signing of the Treaty of Chaguaramas. 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.

CARICOM comprises twenty nations – fifteen Member States and five Associate Member States – that have committed to regional integration based upon the four main pillars of economic integration, foreign policy coordination, human and social development and security. 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.

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. 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”. 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 – and also urged the provision of additional resources for both the national and regional level governance structures.
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. Article 23 of the RTC designates the Secretariat as the Community’s principal administrative organ. 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.

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. 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. 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. 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). COTED is required to develop this programme in collaboration with competent agencies, such as CROSQ which develops and harmonises regional standards. CROSQ’s Council of executive heads of national standards bodies from the CARICOM Member States, for instance, reports annually to COTED on the organisation’s activities.

44 RTC (n 39), Articles 10(2), 18, 19 and 23.
46 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.”).
48 RTC (n 39), Articles 10 (2) and 15 (1).
49 RTC (n 39), Article 15.
50 RTC (n 39) Article 67.
to COTED, which in turn, determines CROSQ’s policy. Further, COTED makes the final decision about which standard to adopt, primarily with regard to its trade and economic responsibilities.

B. Council for Human and Social Development

The Council for Human and Social Development (COHSOD) is a designated CARICOM Organ. 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.

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.

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. 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. These Institutions are juridical persons that exist as separate legal entities with their own governance arrangements, which are usually endorsed in the form of an agreement signed by Member States or a Memorandum of Understanding (MOU).

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. It was established in 2002 by the signing of an Intergovernmental Agreement...
between CARICOM Member States in compliance with Article 67 of the RTC.\textsuperscript{63} 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.\textsuperscript{64}

CROSQ consists of a Council, Special Committees and a Secretariat (Figure 1).\textsuperscript{65} 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.\textsuperscript{66} 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.\textsuperscript{67} 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”.\textsuperscript{68} 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,\textsuperscript{69} whilst the Barbados National Standards Institute is “a joint venture between the Government of Barbados and the private sector.”\textsuperscript{70} 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.

\textbf{Figure 1. Actors in the CROSQ Standards development and harmonisation process}

\begin{figure}[h]
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\includegraphics[width=\textwidth]{crosq_actors.png}
\caption{Actors in the CROSQ Standards development and harmonisation process}
\end{figure}


\textsuperscript{65} Agreement Establishing CROSQ (n 52) Article 5.

\textsuperscript{66} Agreement Establishing CROSQ (n 52) Article 5.

\textsuperscript{67} Agreement Establishing CROSQ (n 52) Article 5.

\textsuperscript{68} CROSQ Directive 1 (n 64) p. 3.


CROSQ leads standards development as a cooperative effort with the NSBs, which represent their home nations and aim to reach consensus on their proposals.\(^{71}\) While CROSQ standards are voluntary,\(^{72}\) NSBs have the statutory authority to create legally binding standards in their home countries, pending approval from their respective portfolio ministers.\(^{73}\) 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.\(^{74}\)

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.\(^{75}\) 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.\(^{76}\) These committees are supervised by the Technical Management Committee.\(^{77}\)

CROSQ history with food labelling

CROSQ developed the first CARICOM Regional Standards on pre-packaged food labelling in 2010,\(^{78}\) 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).\(^{79}\) 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.\(^{80}\) 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.\(^{81}\) 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)
Initiative, monitors and evaluates Member States’ progress with its objectives.ii

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.iii 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,”iv 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.”vvi Importantly, CARPHA is also responsible for conducting “relevant research on public-health priorities in the Caribbean”vii and for providing evidence for decisions relating to public health.viii With regards to addressing unhealthy diets in the Caribbean, CARPHA’s 6 PPP includes mandatory nutrition labelling of food, among other related policies.viii

CARPHA may also collaborate with other community institutions on matters relevant to public health. For example, in 2022, CARPHA and CROSQ 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.viii

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.vi

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

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84 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).
86 Agreement Establishing CARPHA (n 83) Article 5(n).
87 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.”).
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. 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.”

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. 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. UWI aims to “advance education and create knowledge through excellence in teaching, research, innovation, public service intellectual leadership and outreach”. With regards to research, the UWI, in collaboration with PAHO, has played a pivotal role in a study pertaining to FOPNL in Barbados.

ii. CARICOM Private Sector Organisation

The CARICOM Private Sector Organisation (CPSO) is an Associate Institution of the Community. In December 2020, the Conference signed a MOU with it, creating a legal framework for collaboration between the private sector and the Community. The overarching objective of this institution is to assist Member States with the full implementation of the CARICOM Single Market and Economy. 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. To date, however, there is no corresponding regional civil society associate institution with an equivalent position at the regional policymaking table.
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). Section 2 identifies and discusses the entry points within the programme and the broader RTC framework for potentially inordinate industry involvement.

Stages in the Development & Approval of a CARICOM Regional Standard

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Implementation in Member States
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. 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. Importantly, the new work item proposal should include a justification as well as the identification of the proposed benefits.

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101 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.

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

103 CROSQ Directive 1 (n 64) Sections 3.1.2 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.104

**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.105 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.106

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.107 Any National Standards Bodies' representative from a CARICOM Member State may participate in the Regional Technical Committee or Subcommittee,108 but this work is often delegated to members of other organisations.109

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

**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.112 Further, the Regional Technical Committee or the appropriate Working Group, creates a programme of work and target dates for the completion of the project.113

**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.114 The committee draft is submitted to the CROSQ Secretariat.

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104 CROSQ Directive 1 (n 64) Section 4.1.
105 CROSQ Directive 1 (n 64) Section 4.1.
106 Ibid. Sections 5.7 and 5.9.
107 CROSQ Directive 1 (n 64) Section 4.1.
108 Ibid. 5.3.1.
109 CROSQ Directive 1 (n 64) Section 4.1.
110 Ibid. 5.3.1.
111 Ibid. Sections 5.7 and 5.9.
112 CROSQ Directive 1 (n 64) Section 4.1.
113 Ibid. Sections 6.1.4, 6.1.5.
114 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 5:2002 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,\(^{115}\) 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.\(^{116}\)

National Mirror Committees are intended to include a range of relevant stakeholders which facilitate open, transparent and equitable feedback on standards.\(^{117}\) 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).\(^{118}\) 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 these 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”\(^{119}\) 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”.\(^{120}\) 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.

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115 CROSQ Directive 1 (n 64) Section E.3.1.2.
116 CROSQ Directive 1 (n 64) Section 5.3.3; Knight and Hippolyte (n 101) 29.
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. Various methods like workshops, town hall meetings and consultations may be used to solicit comments, 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, while, in Barbados, the Barbados National Standards Institution must “give due consideration to the representations” of the public.

A technical officer then summarises the National Mirror Committees’ comments and transmits them to the Regional Technical Committee. The committee must ensure that all comments are “compiled and handled appropriately,” 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. 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.

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. 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.

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

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121 CROSQ Directive 1 (n 64) Section 5.3.3.
122 Ibid. Section E.3.6.1.
125 CROSQ Directive 1 (n 64) Section E.3.6.2.
126 Ibid. Section 5.7.12.
128 Ibid. Section 5.7.12.
129 Ibid. Section E.3.6.7.
130 CROSQ Directive 1 (n 64) Section E.3.6.2.
131 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. If a simple majority of the CROSQ Council votes for the Final Draft CARICOM Regional Standard, a Member State or the Conference may place the Final Draft CARICOM Regional Standard on the COTED meeting agenda. 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. 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.” 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. While COTED emphasises a consensus-based approach, it mainly consults the private sector when determining the impact of a Final Draft CARICOM Regional Standard. In April 2015, COTED agreed that the formation of a Caribbean Business Council would constitute the main avenue for public-private stakeholder interaction. 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. COTED has, however, expressed interest in deepening engagement with the health sector and civil society, and this has been evidenced, for example, through the joint COTED-COHSOD meetings and decisions.

If the standard secures a three-quarters majority vote from COTED, it will be approved and converted to a CARICOM Regional Standard. 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. 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. Member States that are
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.\textsuperscript{146} 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.\textsuperscript{147}

\textbf{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.\textsuperscript{148}

\textbf{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.\textsuperscript{149} 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.\textsuperscript{150} 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.\textsuperscript{151} If at least one member identifies a significant error, the standard may be revised, again following a 75% vote.\textsuperscript{152} 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.\textsuperscript{153} 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.\textsuperscript{154}

\textbf{I. Implementation in Member States}\textsuperscript{155}

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,\textsuperscript{156} and this requirement is buttressed by

\textsuperscript{146} RTC (n 39) Article 27.
\textsuperscript{147} Ibid. Section E.3.7.6
\textsuperscript{148} Ibid. Section E.3.7.6
\textsuperscript{149} RTC (n 39) Article 27.
\textsuperscript{150} Ibid. Section E.3.7.6
\textsuperscript{151} Ibid. Section E.3.7.6
\textsuperscript{152} Ibid. Section E.3.7.6
\textsuperscript{153} Ibid. Section E.3.7.6
\textsuperscript{154} Ibid. Section E.3.7.6
\textsuperscript{155} 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.
\textsuperscript{156} Agreement Establishing CROSQ (n 52) Article 11.
the good faith obligation in the RTC,^157 not all Member States have enacted legislation that automatically incorporates CROSQ standards into domestic law.^158

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^159 which may also direct the Bureau of Standards Jamaica to revoke a standard.^160 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.^161

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.”^162 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”^163 or “prevent fraud or deception arising from misleading advertising or labelling,”^164 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”.^165 While CROSQ Directive 1 also states that the World Trade Organization’s (WTO) Technical Barriers to Trade Agreement (TBT Agreement),^166 including the Code of Good Practice for the Preparation, Adoption and Application of Standards (the Code of Good Practice),^167 are indispensable to its application,^168 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.^169

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

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^159 Standards Act (Jamaica) (n 124) Section 7(6).

^160 Ibid Section 7(6).

^161 Standards Act (Barbados) (n 125) Section 5(1)(a).


^163 Standards Act Barbados (n 117) Section 8(1)(a).

^164 Ibid Section 8(1)(a).

^165 Ibid Annex C.


^168 CROSQ Directive 1 (n 64) Section 2, Normative References.

Bureau of Standards Jamaica’s board must include representatives of manufacturers, wholesalers, retailers and agriculturalists in addition to representatives of government and consumer interests. 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. These board members hire the National Standard Bodies’ directors who participate in discussions taking place at the regional level; they sit on the CROSQ Council and have final say over CROSQ decisions.

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, 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, 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. 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, and who are primarily concerned with promoting trade within the CARICOM Single Market and Economy. 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.

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170 The Standards Act (Jamaica) (n 116) Section 1(a)(iii).
173 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.
174 Export.gov, ‘Barbados Country Commercial Guide – Barbados Trade Standards’ <https://www.export.gov/apex/article2?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.
175 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.
176 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.
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.\(^\text{180}\)

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.

\(^{180}\) 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.181

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.
1. Consumer Protection Objective

Article 67 of the RTC requires COTED to collaborate with competent agencies to develop a standardisation programme, in a manner that furthers its stated objectives, among which is consumer protection. 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, also aiming at some stated objectives, among which are promoting consumer welfare and safety. 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.” 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.” 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.” 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, CARPHA is responsible for providing “an evidence base” for decisions relating to public health and for conducting “relevant research on public-health priorities in the Caribbean.” 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”, 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
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. 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. 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, 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. This means that FOPNL standards should not afford local products more favoured treatment than like foreign products. The Final Draft CARICOM Regional Standard applies equally to local and foreign products, and therefore is likely to comply with Article 2.1.

In turn, Article 2.2 of the TBT Agreement prohibits Member States from adopting standards that unnecessarily restrict trade, clarifying that technical regulations shall not be more trade restrictive than necessary to fulfil a legitimate objective, such as the protection of human health. As discussed above, FOPNL helps consumers identify products with excess critical nutrients, discouraging consumption as a means of preventing diet-related NCDs. Specifically, considering this particular objective and the local context, scientific evidence free from conflicts of interest supports warning labels’ superior efficacy. 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.

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195 RTC (n 39) Article 67.1.

196 TBT Agreement (n 167) Article 2.2.


198 TBT Agreement (n 167) Article 2.1.

199 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).


201 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 multifair randomised controlled trial, (2023) BMJ Open 13:e065620. doi: 10.1136/bmjopen-2022-065620 [Vanessa White-Barrow and others (2023)].

202 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).

203 Vanessa White-Barrow and others (2023) (n 202).
While similar trade arguments have been used in relation to FOPNL development in Chile,204 Peru,205 and Indonesia206 in 2013, Ecuador207 in 2014, and Uruguay in 2019,208 and most recently, Argentina in 2023,209 these countries have moved forward with FOPNL.210 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.”211

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,212 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).213 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.214

CROSQ Directive 1 provides that National Standards Bodies should hold consultations with various stakeholders at the national level.215 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.216 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.

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204 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.
206 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.
209 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.
212 WTO, ‘Members and Observers’ <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).
213 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.”
214 CROSQ Directive 1 (n 64) Section E.3.6.1.
215 See e.g., Standards Act (Jamaica) (n 124) Section 7(5); Standards Act (Barbados) (n 125) Section 6(3).
Part IV:
Conclusion and recommendations

As currently designed, CROSQ’s standardisation programme is vulnerable to inordinate private sector influence. However, there are opportunities for strengthening public health decision-making to safeguard the standards process from conflicts of interest and being unduly influenced by vested interests, outlined in the following recommendations. They identify measures that various CARICOM Organs, Institutions, and other agencies should implement to promote and ensure transparency and to diminish the limitations of the standardisation programme in order to improve its ability to effectively promote health. While most of the recommendations are specific to the standardisation programme, a few of the recommendations have wider applicability to health-related deliberations and governance within the Community.
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, to 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 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. 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.

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

218 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/EB142_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.”).


220 See RTC (n 39) Article 6 which speaks to the objectives of the Community.


223 See 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.225 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.226

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.227 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.228

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.229

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.230

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.231

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.232 The guidance should:

i. Outline how representation should be constituted on National Mirror Committees,233 ensuring substantial balance in representation across stakeholder groups (e.g., industry and civil society).234 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

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225 CROSQ Directive 1 (n 64) Foreword, paragraph F.
229 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.
230 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.
231 CROSQ Directive 1 (n 64) Section E.3.6.2.
232 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.3.8. Note that Directive 1 provides basic recommendations on how NSBs should arrive at their national positions.
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.235

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,236 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.


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