



Front-of-Package Labeling Preparing for International Trade Legal Arguments

Last updated: June 2024

Front-of-package labeling (FOPL) policies are public health interventions aimed at preventing diet-related non-communicable diseases (NCDs) by providing consumers with simple and understandable information about the excess of nutrients of concern — such as sugars, fats and sodium — in packaged foods and non-alcoholic beverages, facilitating healthier purchasing decisions. Food and beverage products are one of the main categories of goods internationally traded among jurisdictions, making FOPL a topic of discussion in trade fora — such as the Committee on Technical Barriers to Trade (TBT) from the World Trade Organization (WTO) — as differing labeling requirements between countries could create “obstacles” for the free trade of these goods. The food and beverage industry — either directly or through governments — regularly uses trade threats to oppose or delay country efforts to introduce FOPL measures (please see the Global Health Advocacy Incubator (GHAII)’s [Behind the Labels report](#)). To date, many arguments against FOPL have been tied to obligations contained in international trade agreements. This document seeks to outline the most common arguments and suggested best responses with supporting evidence.



The WTO has developed a TBT Agreement to ensure the legitimate objectives of technical regulations (such as the protection of public health) do not create unnecessary obstacles to trade. The TBT Agreement acknowledges that states have the right and duty to regulate, which may lead to different regulatory requirements among countries. In order to be considered a technical regulation, the said norm must comply with three requirements: (1) it must apply to an identifiable product or group of products; (2) it must set requirements about the characteristics of those products; and (3) it must be legally binding. FOPL regulations meet the TBT's requirements for a technical regulation and can be assessed in accordance with the proportionality test set by international trade law. Therefore, FOPL regulations withstand international trade challenges, as they comply with the following trade law requirements:

1

Have a legitimate public health objective: The policy goal should be clearly defined, tailored to circumstances and evidence-based. The protection of public health is recognized as a legitimate objective in the TBT Agreement. Each state has sovereign authority to determine its own risk tolerance in setting health objectives, and this authority is used to assess whether the measure is necessary to accomplish the established objectives. For concrete examples on public health objectives, please see established policy goals for approved FOPL policies on page 3 of [GHAI's Comparative Table of FOPL Regulations Around the Globe](#).

2

Be justified to achieve the public health objective: The policy must be reasonably necessary to achieve the public health objective, considering the risks of not having it. It is important to demonstrate with evidence how FOPL contributes to accomplishing public health goals, including how less-trade-restrictive alternatives are not suitable and why they do not meet the objective as effectively as FOPL. For example, as documented in [GHAI's Behind the Labels report](#), corporate actors usually position alternative policy “solutions” to replace FOPL — such as education or awareness-raising measures, voluntary agreements or self-regulatory schemes — none of which have shown effectiveness in reducing diet-related NCDs.



3

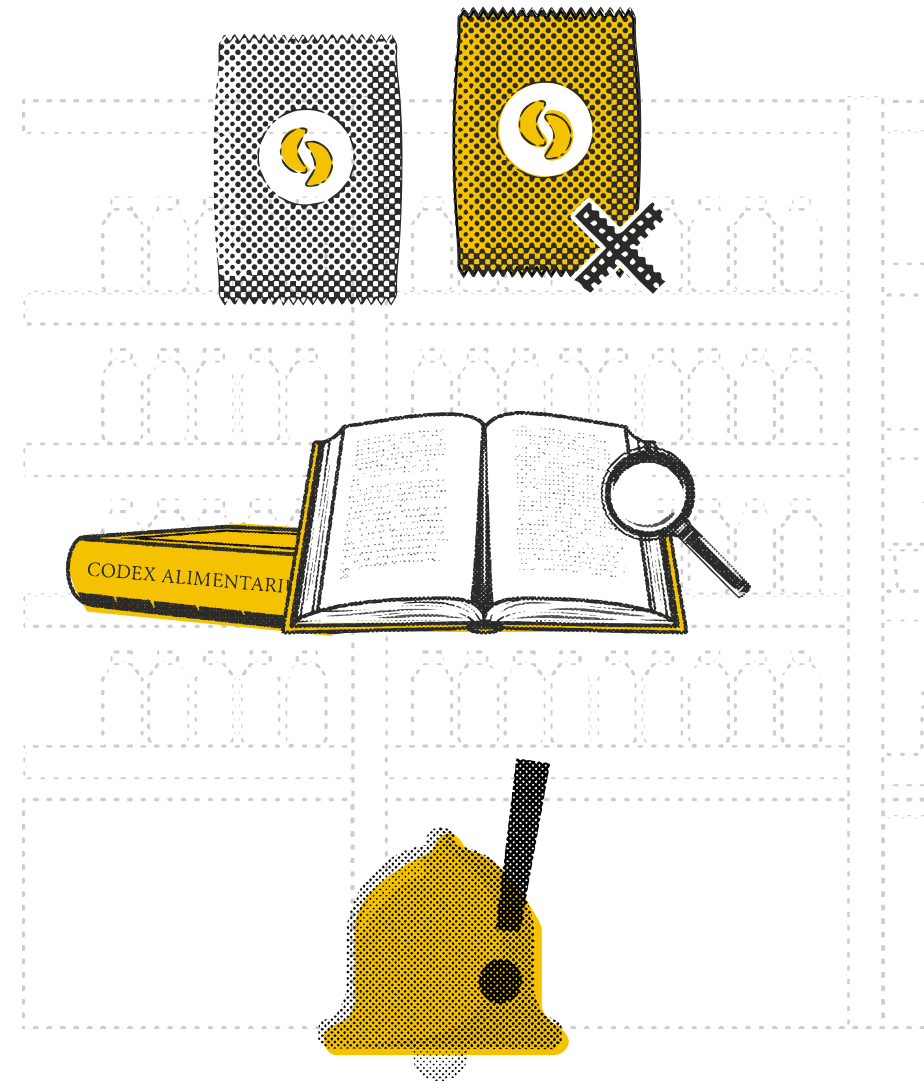
Not be discriminatory: The technical regulations must avoid discriminating among products in purpose and in effect, directly and indirectly, and all product distinctions must be justified for public health reasons and supported by proper scientific evidence. FOPL measures should regulate both foreign and national products equally.

4

Comply with international standards: The TBT encourages WTO members to use international standards as a basis for their technical regulations unless such standards represent an ineffective or inappropriate means for achieving a specific policy objective. For instance, the Codex Alimentarius is used as a reference on this point. However, Codex is a set of international food standards and guidelines of voluntary compliance that serves as a basis for domestic regulations. The Codex Commission has a double mandate to protect public health and ensure fair international trade practices; many governments were using Codex to block FOPL advances in trade fora, even though it did not include concrete FOPL guidelines until 2021.

5

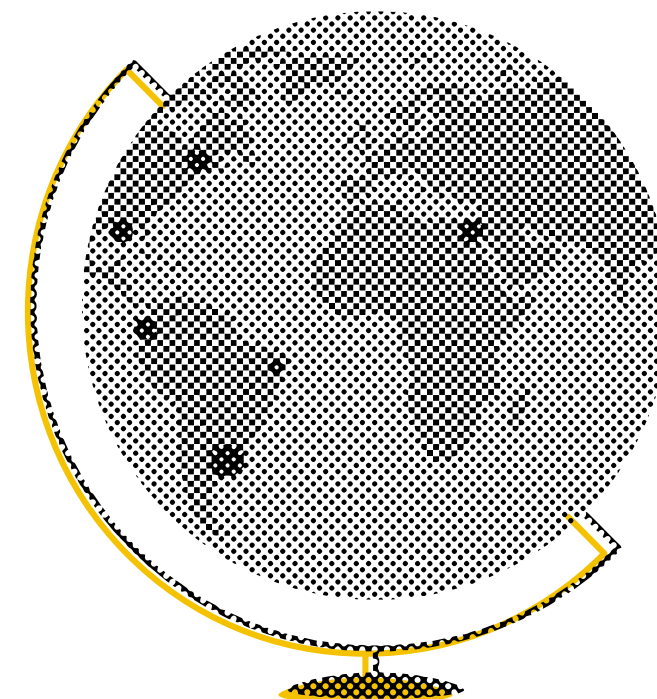
Comply with due process and notification requirements before the TBT Committee: In order to fulfill transparency requirements, the WTO advises governments to announce new laws or regulations with a potential impact on trade in advance, so that other member states can raise concerns before the policy is enacted. Under the TBT Agreement, 60 days is recommended.



Trade Arguments Raised Against FOPL Policies, Potential Responses and Available Research

The [table below \(Table A\)](#) summarizes common arguments used by the food and beverage industry to oppose or delay FOPL measures and provides the best suggested responses, along with existing research or evidence to support each response. For specific information on resource publications and how to use this information, please contact GHAI at fpp@advocacyincubator.org. Following the table, the appendices provides examples of how such arguments have been raised in relation to the recent FOPL measures in Mexico ([Appendix I](#)) and Argentina ([Appendix II](#)). For more information, please see [GHAI's Comparative Table of FOPL Policies Around the World](#) or consult our book [Law, Trade, and Nutritional Labeling](#).

Please note the list of arguments included in the table below is not exhaustive; most of them are related to the level of necessity or justification of FOPL to improve health outcomes (trade law requirement #2). There have been almost no concerns related to the objective of FOPL themselves. Rather, objections have focused on whether FOPL is necessary to achieve better public health outcomes by providing consumers with information on the excess of critical nutrients in an effort to guide healthier purchasing decisions, consequently decreasing the consumption of unhealthy foods and beverages and, therefore, diet-related NCDs.



It is relevant to clarify that trade concerns around technical standards within the TBT Committee do not entail a dispute settlement mechanism case. There have been no disputes around FOPL policies within the WTO, but trade concerns have been raised within the TBT fora. Trade concerns represent only issues or matters that member states raise in TBT conversations when they believe certain regulations either might impact trade or do not comply with trade requirements. These conversations are open discussions in which states raise concerns that can be responded to by the country representative receiving them, as is highlighted in the appendices for Argentina and Mexico. Furthermore, as FOPL discussions evolve globally, more background evidence emerges supporting FOPL and other healthy food policies by organizations such as the World Health Organization (WHO) and its regional divisions¹ and human rights bodies such as the Interamerican Commission on Human Rights² and the Special Rapporteur on the Right to Health^{3,4}, enhancing global consensus about the positive public health and nutrition impact of FOPL measures.

TABLE A: Common Industry Arguments and Counter Arguments

Arguments	<ul style="list-style-type: none">• The objective of the measure does not align with the public health goal; or• There is no/insufficient scientific evidence for effectiveness of FOPL to achieve the objective; or• What is the rationale behind the nutrient profile model/thresholds chosen?
What does it mean?	<p>These arguments question the link between FOPL and the public health goal it aims to address. For example, if the public health problem is described as high rates of obesity and NCDs, then industry might argue there is no evidence showing that FOPL helps reduce obesity and NCDs.</p> <p>The policy objective is important, as it informs the evidence required to establish key principles, such as “necessity,” as part of a proportionality test. When countries consider FOPL schemes to provide information to consumers on products with excessive levels of sugar, sodium and fat that could be harmful to health in order to decrease their consumption, international and local — if available — evidence backing up the policy standards should be collected and documented in support of the chosen measure. Each country has sovereign authority to determine its own risk tolerance in its health goals, and this is used to determine whether the measure is <i>necessary</i> to achieve the established goal or objective. Note that these arguments are often very detailed and question the scientific evidence related to how the particular thresholds are chosen, the shape of the warning label, the types of consumer behavior studies that have been conducted or the impact of the measure on the overall diet of the population and on individual dietary patterns.</p>
How to respond to it?	<p>It is important to ensure that clear, measurable objectives are set and defined in relation to how the measure will impact the specific health problem, as well as backed by scientific evidence. For example, the objective may be to provide easy-to-understand information to help consumers make healthier food choices. Then evidence could be cited that shows how FOPL helps consumers make healthier food and beverage choices, which contributes to lower sugar/salt/fat intake — with high intake of these elements being one cause of obesity and chronic disease.</p> <p>There should be evidence to support each part of the measure, including evidence of health harms, the particular nutrient profile model used and why certain cutoffs or thresholds were chosen. Data from Chile and other countries shows FOPL policies and warnings are linked to decreased purchasing intent of unhealthy products, such as “junk food” and ultra-processed products, which in turn leads to reduced risk of developing NCDs.</p> <p>Other data shows nutrient profile models, such as the Pan American Health Organization (PAHO) model and the Chilean FOPL models, that provide negative evaluation of products are an effective way to support consumers in making healthier choices by decreasing consumption of ultra-processed products.</p> <p>However, it is important for each government to document the reasons behind the choice of a particular FOPL model, as well as evidence that the measure’s details (such as the thresholds, nutrient profile model, label design and wording) are appropriate for the country context.</p> <p>For more information on the latest evidence supporting FOPL, please see GHA’s FOPL evidence sheet.</p>

TABLE A: Common Industry Arguments and Counter Arguments

Arguments	FOPL is more trade-restrictive than necessary or too burdensome.
What does it mean?	<p>This argument comes from a key concept in many trade agreements which requires governments not to introduce policies that might “make it more difficult for products to be traded freely across borders.” It is also related to trade law requirement #2 — the measure must be necessary to achieve the public health objective.</p> <p>This argument may be two-fold: (a) less trade-restrictive alternatives were not adequately considered; and/or (b) FOPL is too burdensome overall.</p> <p>Argument (a) requires governments to consider a variety of measures or policy options that might meet the objective, and to choose the one with the least potential impact on trade. Relevant to FOPL, opponents commonly argue that other measures — such as those related to public education or awareness campaigns about healthy food, physical activity efforts or voluntary labeling systems — could be used.</p> <p>They might also argue that alternative FOPL systems — normally those not based on warning labels, such as Guideline Daily Amounts (GDAs) — are less trade-restrictive and might also accomplish the desired objective. They might also mention systems such as NutriScore, which consider positive and negative nutrients, better summarize nutritional information and do not demonize certain products, making them less trade-restrictive than warning-based systems.</p> <p>This last point is also related to argument (b), as many times opponents to FOPL models focused solely on the negative characteristics of products (such as warnings) highlight that these demonize certain foods and beverages without providing information to consumers on healthier alternatives. They also focus on the economic costs and general burden of printing new labels for all products, and/or the process of having to verify all products in accordance with the new criteria.</p>
How to respond to it?	<p>For argument (a), the trade-restrictiveness argument, it is important the government considers and documents all alternatives considered, as well as why they were declined. This must cover both alternative policy options and alternative FOPL systems.</p> <p>There is a growing body of evidence to show that many other measures do not effectively address the problem, or at least not by themselves. Moreover, voluntary measures have proven unimpactful in terms of public health. It is also important to note that some other measures (such as education campaigns) are also being used as <i>complementary</i>, not alternative measures.</p> <p>Demonstrating how FOPL is not a standalone policy, but part of a comprehensive strategy to address diet-related NCDs, could also be helpful. The decision to choose a particular FOPL system must be aligned with the measure’s public health objective.</p> <p>Evidence shows that FOPL systems reduce consumer intention to purchase unhealthy products and are simpler and easier to understand than industry-endorsed Traffic Light Labels (TLLs) and GDAs. Research shows GDAs do not reduce consumption of unhealthy products, and actually confuse consumers. Research shows warning labels are more effective at influencing consumer perceptions than TLL, since a product can have multiple colors, which might confuse consumers. NutriScore, another FOPL scheme, poses the risk of positioning ultra-processed products to be seen as healthy alternatives (for instance, a product can possess fiber and vitamins, but also be high in sugar and fat).</p>

TABLE A: Common Industry Arguments and Counter Arguments

How to respond to it?	<p>Voluntary labeling systems can lead to multiple types of logos and labels, which increase consumer confusion and decrease the usefulness of the logo. Voluntary labels are also often used in combination with other claims on food packaging, such as nutrient or health claims, further confusing consumers.</p> <p>Evidence shows that FOPL implementation is the most effective measure in influencing purchasing intention. Other measures, such as education campaigns, may be <i>complementary</i>, but not an actual alternative.</p> <p>Regarding argument (b), that the chosen FOPL is generally burdensome, this is a discourse usually leveraged by industry. It assumes that printing different labels creates an undue burden, or that FOPL might have a negative impact on employment levels, but there is typically no evidence supporting such statements. This can be countered by:</p> <ul style="list-style-type: none">• demonstrating there are many other requirements that force companies to reprint labels for different markets (e.g., regulations on gluten-free products);• showing the costs of printing new labels are generally low and not overly burdensome (e.g., companies change labels for Christmas and other occasions);• allowing the use of stickers for imported products (thus lowering the potential costs for reprinting labels) temporarily; or• leveraging evidence from Chile which showed no impact on employment levels related to FOPL implementation. <p>It is helpful to have evidence to show why the proposed measure will not be burdensome for trade, such as existing country-specific requirements for labels. It may also be helpful to show how verifying or assessing foods according to the new requirements is not overly burdensome, or how the government can help make the process as efficient as possible through implementation guidelines.</p>
Arguments	<ul style="list-style-type: none">• A particular FOPL scheme does not align with Codex; or• Codex does not allow the use of mandatory FOPL; or• FOPL is inconsistent with existing Codex instruments.
What does it mean?	<p>This argument is related to trade law requirement #4, compliance with international standards.</p> <p>For example, industry — and industry-aligned governments — has argued there are trade issues when countries pursue strong FOPL. Various trade agreements reference Codex instruments, and industry uses these to make threats about breaches of international trade law.</p>
How to respond to it?	<p>Following years of work, in November 2021, Codex adopted FOPL guidelines as an annex to the existing Guidelines on Food Labeling (CAC/GL-1985). The FOPL guidelines provide very overarching principles to guide countries in developing FOPL. They do not prescribe the use of any particular FOPL style; rather, they let countries pursue evidence-based FOPL measures. The guidelines explicitly state FOPL can be mandatory. They also explain FOPL development should be government-led with consultation from other sectors.</p> <p>To avoid this type of argument to influence the process, it is important to show how a FOPL measure is evidence-based and that government is leading its development with consult from other sectors. It can also be helpful to demonstrate the extent to which the country is already complying with existing Codex instruments, such as standards on nutrition labeling (such as with back-of-pack labels), guidelines on health claims, food supplements, infant formula, etc. Codex standards represent a floor — not a ceiling — of what states can do to protect public health.</p>

TABLE A: Common Industry Arguments and Counter Arguments

Arguments	Front-of-pack warning labels arouse fear in the consumer, which is prohibited by Codex.
What does it mean?	<p>This argument is also related to trade law requirement #4, and comes from the Codex <i>General Guidelines on Claims</i>, which prohibits “claims which could give rise to doubt about the safety of similar food, or which could arouse or exploit fear in the consumer.”</p> <p>Various countries and industry have argued that front-of-pack warning labels (unlike other types of FOPL systems) arouse fear in the consumer.</p>
How to respond to it?	FOPLs provide evidence-based information that enables the consumer to make a healthier choice. There is no basis for the belief that accurate information about the healthfulness of a product improperly engenders fear about food safety, as opposed to the health impacts of regular consumption. Evidence shows the majority of consumers who reviewed various front-of-pack warning labels found them to be “about right” or “not harsh enough.”
Arguments	The effect of a FOPL scheme is discriminatory or protectionist (i.e., the policy will have a stronger impact on foreign companies/products).
What does it mean?	<p>This argument is related to trade law requirement #3 on non-discrimination and claims FOPL affects foreign and domestic products differently.</p> <p>For instance, a measure that aims to target all sugary drinks but excludes juices may be challenged if most juices are locally made, while most sodas are foreign-owned/imported. In that case, even though both juices and sodas contain high levels of sugar and might have similar health impacts, the effect of the measure would fall mainly on imported goods. The argument has also been made when most of the affected products/producers are foreign, and industry would have to adjust their production and labeling practices to comply.</p>
How to respond to it?	<p>Even though it is important to avoid direct and indirect discrimination of products under the scope of the FOPL measure, the strongest evidence is the scientific basis behind the thresholds chosen to determine which products are subject to it. If there is a strong public health basis for this, then even if the effect is stronger for foreign products, it can be justified. For example, natural juices sold by small vendors or without packaging could be excluded for enforcement reasons.</p> <p>To date, there have been no mandatory FOPL measures that distinguish between foreign and national products. But it is crucial to document and articulate any distinctions drawn between different products, product sources or production methods — for instance, explaining why specific products are targeted by the measure, but similar ones are not, and the public health rationale for each decision.</p> <p>When the measure covers many more foreign-owned products than domestic ones, a strong public health case can be made that the foreign products are key contributors to diet-related chronic disease (where such evidence exists).</p> <p>FOPL measures tend to apply similarly to foreign and domestic products, and flexibility mechanisms — such as allowing stickers so as not to impose a burden on foreign products — may be used.</p>

TABLE A: Common Industry Arguments and Counter Arguments

Arguments	Breach of trademarks due to the removal of graphics or logos on packaging.
What does it mean?	<p>As FOPL measures sometimes include restrictions on packages with labels to enhance the policy impact, the breach of trademarks argument has arisen before in the regulatory restriction of use of cartoon characters, logos or other forms of advertising on packaging, such as the cases of Argentina, Chile and Mexico. Since these elements are almost always trademarked, the argument alleges that not allowing their use interferes with the trademark rights held by the companies and protected by international trade agreements.</p> <p>Even though some of these concerns have emerged within the TBT Committee, there is a specific agreement within the WTO (the Trade-Related Aspects of Intellectual Property Rights, or TRIPs) which sets standards of protection for intellectual property, including trademarks.</p>
How to respond to it?	<p>Similar arguments were made related to tobacco packaging, and courts have consistently ruled against this argument; trademark law protects the owner from infringement (others using their trademark) but does not give them a right to use the trademark in all contexts. Especially where there is a health justification, it is appropriate to limit the use of trademarks.</p> <p>Research from Chile shows policies restricting the use of child-directed marketing — such as the use of children’s characters — on packages of products that are “high in,” has resulted in a reduced prevalence of unhealthy products targeting children. However, restrictions applicable only to marketing directed at children might not fully protect them from being exposed to unhealthy products marketing.</p>

Appendices - Trade Concerns Raised Against the FOPL Policies in Mexico and Argentina

In order to reinforce the table above, this document will now explore sample concerns raised from states in the TBT Committee to the notification of the FOPL technical standards in Argentina and Mexico — two FOPL policies with the highest public health standards worldwide. The responses from Mexico ([Table B](#)) and Argentina ([Table C](#)) to particular points are included, and connected to further potential responses which may be added to complement those already included in [Table A](#).

Among concerns raised about the FOPL regulations in Argentina and Mexico, concerns about Mexico’s rules attacked the essence of the measure and requesting less trade-restrictive alternatives, while concerns raised about Argentina — the latest regulation — dove deeper into the details of the FOPL, such as timeline, small-product labels, etc. This distinction is important because Mexico’s regulation was approved before Argentina’s, so once that policy was implemented, it opened the way for Argentina to elevate its FOPL policy design based on best public health practices. It also highlights the fact that even in a trade-oriented space such as the TBT, states are no longer questioning the objective nor the necessity of FOPL, but rather are discussing particular details of the measure.

The tables below are organized in four columns, left to right: (1) trade law requirement or broader topic area; (2) sub-theme or specific concern area of the argument; (3) text of the concern(s); and (4) responses provided by Mexico, along with other potential supporting information that complements what was included in [Table A](#).

Appendix I: Comments in Response to Mexico’s FOPL Measure and Mexico’s Responses

In October 2019, Mexico [notified](#) its proposed FOPL measure in accordance with the WTO TBT Agreement. This allows other countries to consider how this policy might impact trade and to raise any concerns in the TBT Committee, to resolve any potential issues that could rise to the level of a dispute.

As of November 3, 2023, **Canada, Colombia, Costa Rica, El Salvador, the European Union, Guatemala, Paraguay, Switzerland and the United States** have made comments in the TBT Committee responding to the notification. The table below provides examples of some of the arguments made, as well as responses from the government of Mexico made within the TBT discussions. Please contact GHAI at fpp@advocacyincubator.org for more information about further potential responses and available research.

TABLE B: Comments in Response to Mexico’s FOPL Measure and Mexico’s Responses	
Trade law requirement or broader topic area	#2 - Be justified and necessary to achieve the public health objective
Sub-theme or specific concern area of the argument	Evidence backing up the measure to achieve the policy objective – choice of the label shape and “Excess” wording
Text of the concern	<p>Did Mexico study the effectiveness of an octagon as opposed to circular or rectangular shapes? Were any other labeling schemes considered? Further, has Mexico studied the effectiveness of using more neutral messaging to inform consumers of nutritional content of packaged foods, or whether symbols may be interpreted by consumers as an instruction not to consume particular products or entire groups of products?” (USA)</p> <p>“Switzerland would also be interested in better understanding the motivation behind choosing a label with negative warning such as “exceso en.” By using such a warning, consumers may come to believe that these foods should be avoided altogether, while they can be part of a balanced diet.” (Switzerland)</p> <p>“Furthermore, industry has estimated that the proposed front-of-package labeling scheme would affect over 80 percent of food products on store shelves in Mexico bearing one or more stop sign warning labels. Can Mexico please explain how the new labeling scheme will effectively address consumer diet patterns if the majority of products have warning labels? Can Mexico speak to any consumer behavior studies that were conducted prior to the development of this proposal? Are consumers reading the text on the warning label closely or do they base purchasing decisions on the total number of warning labels?” (USA)</p> <p>“The EU considers that individual warnings such as ‘Excess calories,’ ‘Excess sugars,’ ‘Excess saturated fats,’ ‘Excess trans fats’ and ‘Excess sodium’ do not the objective of front-of-pack nutrition labeling as described in Section 5 of the Codex Guidelines on Nutrition Labeling, i.e. ‘to increase the consumer’s</p>

TABLE B: Comments in Response to Mexico’s FOPL Measure and Mexico’s Responses

Text of the concern	<p>understanding of the nutritional value of their food and to assist in interpreting the nutrient declaration.’ Indeed, such individual warnings do not allow the consumer to understand the complete nutritional status of the food product, but only to draw the consumer’s attention to (a) single nutrient(s) in high quantity.” (European Union)</p> <p>“The proposed regulation requires a front-of-pack octagonal, “stop sign” warning on package processed foods in “excess of” nutrient thresholds for saturated fat, trans fat, sodium, sugar, and calories. It is our understanding that a wide variety of foods, including many yogurts, cereals, and canned beans, will be required to have this warning label. Has Mexico considered whether the stop sign warning symbols may cause consumers to avoid foods containing important nutrients and that can be part of a balanced diet?” (USA)</p> <p>“Industry has informed us that Mexico’s sugar threshold is so low that it would trigger stop sign shaped labels on certain lower-calorie beverages, where a blend of sugar and low- and/or no calorie sweeteners are used to give consumers more options with fewer calories. For example, a reduced-sugar fruit drink beverage that contains low- and/or no-calorie sweeteners would be required to bear two or more FOP stop-sign shaped labels – even though it has fewer calories and sugar than other products which may be exempted from such stop signs.” (USA)</p>
Responses provided by Mexico and other back-up information	<p>Responses by Mexico:</p> <p>“At present, labels attached to pre-packaged food and non-alcoholic beverages marketed in Mexico must adhere to the Guideline Daily Amounts-based front-of-pack labeling system. This labeling system has not had the desired impact in terms of the Mexican population’s understanding of information concerning critical nutrient content. The amendments to NOM-051 therefore seek to ensure the fulfilment of legitimate public health objectives and to prevent consumers from being misled. Details of the technical and scientific evidence that underpins NOM-051 can be found in Chapter 11 of the Standard (Bibliography), which lists the 157 bibliographical references used for the final version of this technical regulation.”</p> <p><i>(The hyperlink was added and was not part of the official response.)</i></p>
Trade law requirement or broader topic area	<p>#2 - Be justified and necessary to achieve the public health objective</p>
Sub-theme or specific concern area of the argument	<p><i>Evidence backing up the measure to achieve the policy objective — rationale behind the risk assessment and choice of thresholds used</i></p>

TABLE B: Comments in Response to Mexico’s FOPL Measure and Mexico’s Responses

<p>Text of the concern</p>	<p>“Recalling Article 2.2 of the TBT Agreement, which states that ‘technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create,’ Switzerland asks the Mexican authorities to provide the risk assessment that led to the proposed amendments to Norma Oficial Mexicana NOM-051-SCFI/SSA1-2010. Information on the scientific evidence used to perform the before mentioned risk assessment is also welcomed. Furthermore, we are particularly interested in understanding the rationale behind setting the thresholds in table 6 of draft amendment, including the scientific and technical evidence, and how they contribute to achieving the legitimate objective pursued by the measure.” (Switzerland)</p> <p>“Among our many concerns for this measure, we would like to highlight some of them today. We continue to be concerned that Mexico has chosen more stringent nutrient thresholds than the thresholds set by other countries. For example, the proposed threshold for sodium is lower than the thresholds set by Uruguay and Chile. Mexico has derived its thresholds from the World Health Organization’s Population Nutrient Intake Goals to Prevent Obesity and Related Non-Communicable Diseases. The WHO goals relate to an individual’s total diet. When applied to individual foods the threshold may be more conservative than necessary.” (USA)</p> <p>“The limits set for nutrients on labels reflect the thresholds established by the WHO on the basis of the global daily diet of an individual, a parameter that was transferred proportionally to the specific product, when it is not a parameter established within the Codex Alimentarius framework.” (Guatemala)</p> <p>“With regard to the content of the measure, and bearing in mind that the classification parameters according to which a product is considered to contain excessive calories, sugar, saturated fats, trans fats or sodium are not Codex-based, we reiterate the request made to the Mexican delegation at this Committee’s previous meeting, to indicate the scientific basis or international reference standard used to define the key parameters for Mexico’s classification and to provide relevant justification for the use of the front-of-pack warning sign as supplementary nutrition information.” (Costa Rica)</p> <p>“In view of the above, we consider it important that such measures use as a benchmark the standards issued by the Codex Alimentarius to ensure that they are based on scientific and technical evidence, or on other technical or scientific evidence, as the nutrient profiles proposed in the measure are being called into question due to their lack of technical rigor. This is because the measure means applying the recommendations made by experts on the total diet to particular foods, ignoring the fact that many factors contribute to overweight and obesity, with bad eating habits and a sedentary lifestyle, total food intake or the quantity and frequency of its consumption being relevant factors. Therefore, when addressing such problems, account should be taken of the intrinsic levels that some foods contain and which are not the result of an industrial process.” (Colombia)</p>
<p>Responses provided by Mexico and other back-up information</p>	<p>Responses by Mexico:</p> <p>“In view of the fact that there is currently no international standard on nutritional profiles and consumption limits for a healthy diet, the nutritional profile set out in the amendment to NOM-051 is based on technical and scientific elements compiled by the Pan American Health Organization, and deemed appropriate for contributing to the strategy to address the public health challenges currently faced by the Mexican population and for informing consumers about excess critical nutrients commonly linked to excess weight gain and obesity.”</p>

TABLE B: Comments in Response to Mexico’s FOPL Measure and Mexico’s Responses	
Trade law requirement or broader topic area	<p>#2 - Be justified and necessary to achieve the public health objective</p> <p>#4 - Comply with international standards</p>
Sub-theme or specific concern area of the argument	<p><i>a. Evidence backing up the measure to achieve the policy objective — considering the inclusion of caffeine or sugar substitutes</i></p> <p><i>b. Use of Codex guidelines</i></p>
Text of the concern	<p>“Regarding the consumption by children of products containing added caffeine or sugar substitutes, Costa Rica requests the delegation of Mexico to refer to the international reference standard used, or the risk analysis, which establishes the risk posed to children by the consumption of products containing these ingredients.” (Costa Rica)</p> <p>“We are concerned that the stop sign shape of the label for sweeteners could convey a warning to consumers for additives that have been approved for use by Mexico. We would like to note that this proposed warning label for sweeteners in the form of a stop sign is unique in the world. Can Mexico provide more details about the objective and the scientific basis for the requirement for front of package labels stating that products “CONTAINS SWEETENERS, AVOID CONSUMPTION BY CHILDREN”? Is the concern that sweeteners are unsafe for consumption by children or is the concern that these substances will lead to later consumption of sweet foods? Can Mexico provide more information about any consumer research it conducted regarding the proposed warning label for sweeteners? Has Mexico considered whether this label may discourage the reformulation of products to lower their sugar content? Companies are increasingly reformulating sweet products to replace sugar with sweeteners to offer less calorically dense products, while still maintaining product palatability. Using these guidelines, a product reformulated in this way may be required to carry more warning labels than a high sugar original product, potentially discouraging consumption of lower calorie products.” (USA)</p> <p>“The EU observes that the Codex Alimentarius General Standard for Food Additives (CODEX STAN 192-1995) does not allow the use of sweeteners in food targeted at infants and young children (i.e., up to three years of age). However, sweeteners are permitted in many other food categories that are consumed, inter alia, by children older than three years. To the understanding of the EU, the use of sweeteners is technologically justified to replace sugars for the production of energy-reduced food, non-cariogenic food or food with no added sugars, or if the use of sweeteners permits an increase in the shelf-life of the food, or in food intended for particular nutritional uses. Those considerations are applicable in general and do not exclude children (above three years of age).” (European Union)</p>
Responses provided by Mexico and other back-up information	<p>Responses by Mexico:</p> <p>“The inclusion of warnings concerning the use of sweeteners and caffeine is considered necessary given that the products covered by NOM-051 may be consumed by vulnerable population groups, such as children. In the specific case of sweeteners, their inclusion was based on the technical and scientific evidence included in Chapter 11 (Bibliography), which ranks Mexico as one of the countries with the highest rates of excess weight gain and obesity in children in the world. Furthermore, it should be made clear that in the specific case of warnings concerning sweeteners, they are included not for toxicological purposes, but simply for informative reasons. Regarding caffeine, the technical and scientific information included in Chapter 11 (Bibliography) of the final version of the amendment to NOM-051 bases the inclusion of this additive on the effects that it can have on children.”</p>

TABLE B: Comments in Response to Mexico's FOPL Measure and Mexico's Responses	
Trade law requirement or broader topic area	#2 - Be justified and necessary to achieve the public health objective
Sub-theme or specific concern area of the argument	<i>Trade-restrictiveness of the measure</i> — challenging the mandatory nature of the measure, or focusing on individual responsibility and checking if less trade-restrictive measures have been considered
Text of the concern	<p>"Switzerland shares Mexico's view on the relationship between diet and health. The Swiss Food Safety and Veterinary Office (FSVO) issues recommendations on daily nutrient in-take and sets nutrient thresholds for different food categories, but on a voluntary basis only. Major food producers and importers have agreed to introduce the label "NutriScore" on packaged food on a purely voluntary basis in order to provide better and more targeted information to consumers. Switzerland would kindly ask Mexico if less trade-restrictive alternative measures have been taken into account, contributing to the relevant legitimate objectives." (Switzerland)</p> <p>"Given that restaurant/street foods and home-cooked foods can also be significant sources of calories, added sugar, fat, and sodium, can Mexico provide more information about the consumer education and other programs it has in place or has under consideration to encourage healthier dietary choices?" (USA)</p> <p>"We therefore would like to reiterate our call to consider a voluntary approach that would bring on board the food and beverage industry. In the case of Switzerland this has proven to be a workable approach that has yielded positive outcomes." (Switzerland)</p> <p>"...the EU has taken a different approach to empower consumers to make informed choices when adopting Regulation (EU) No 1169/2011 on the provision of food information to consumers, which came fully into application at the end of 2016. This Regulation imposes an obligation to provide nutrition information. However, its placing on the front-of-pack is not prescribed. In order not to confuse consumers, Regulation (EU) No 1169/2011 clarifies which particulars of the nutrition declaration may be repeated on the front-of-pack (on a voluntary basis), either the energy value alone or the energy value together with the amounts of fat, saturates, sugars and the sodium content expressed as salt." (European Union)</p> <p>"...there is, to date, and in El Salvador's view, no technical and scientific proof of a direct link between the establishment of a warning label and a reduction in, or the control of, this disease. It is therefore questionable whether these measures would achieve any legitimate health-related objective. In addition to this, there are other factors, such as sedentariness, which play a more prominent role in obesity. The warning label is not a comprehensive solution to the problem and would have serious implications for trade." (El Salvador)</p>

TABLE B: Comments in Response to Mexico's FOPL Measure and Mexico's Responses	
Text of the concern	<p>"El Salvador considers that the use of front-of-pack labeling will not necessarily help consumers to make good choices regarding what they consume. On the contrary, such choices are linked, in many cases, to consumers' socio-economic standing and level of education. We therefore reiterate that warning labels lack a sound scientific basis for meeting the legitimate objective pursued, and diverge from applicable international standards in this area, in particular the Codex Alimentarius." (El Salvador)</p>
Responses provided by Mexico and other back-up information	<p>Responses by Mexico:</p> <p>"The amendments to NOM-051 seek to provide Mexican consumers with clear, truthful and accurate information on critical nutrient content and commercial information via the labeling of pre-packaged food and non-alcoholic beverages, with a view to helping them make better informed decisions. The amendments to NOM-051, which are based on the Regulatory Impact Analysis presented before the National Commission on Regulatory Improvement, constitute one of the most important elements of the comprehensive strategy developed by the Government of Mexico to address health problems related to non-communicable diseases such as obesity and excess weight gain."</p>
Trade law requirement or broader topic area	<p>#2 - Be justified and necessary to achieve the public health objective</p>
Sub-theme or specific concern area of the argument	<p><i>Trade-restrictiveness of the measure</i> — burden of introducing new labels and checking for less trade-restrictive measures</p>
Text of the concern	<p>"The conformity assessment requirements in Chapter 9 of the regulation appear to make the currently voluntary label approval a mandatory process, thereby requiring conformity assessment of all products with Mexican regulations and standards. The United States is concerned with the potential negative economic impact associated with such requirements becoming mandatory, such as ensuring the volume of labels required to be assessed by verification bodies are processed without delay, in addition to the costs associated with label changes and the assessment process. Can Mexico please confirm whether mandatory label approval and conformity assessment of all products subject to the regulation is intended in the revisions to this regulation? If so, what legitimate objective is being met by introducing such a burdensome process and has Mexico considered other, less restrictive methods for determining the compliance and accurate labeling of products?" (USA)</p> <p>"For small economies like ours, new regulations containing labeling requirements generate concern because they create a lack of harmonization among such provisions worldwide, making it difficult for small- and medium-sized producers to gain access to the international market because of different labeling requirements and restrictions. We request Mexico to cancel the discontinuation of the use of adhesive labels, as this measure is more trade-restrictive than necessary." (Guatemala)</p> <p>"Costa Rica believes that the measure adopted by Mexico could generate inconsistencies with TBT Agreement obligations, in particular those established</p>

TABLE B: Comments in Response to Mexico's FOPL Measure and Mexico's Responses

Text of the concern	<p>in Articles 2.2 and 2.4. It is Costa Rica's view that as things currently stand worldwide in light of the COVID-19 pandemic, the implementation of certain sanitary and phytosanitary measures that create additional restrictions or burdens, without prejudice to the power that Members have to adopt them if considered necessary, constitutes a challenge that hampers global economic recovery efforts, especially in developing countries that are reliant on international trade, such as Costa Rica." (Costa Rica)</p> <p>"The design of the nutrient profiles of the Mexican regulation discourages the reformulation of products because, as they are based on a percentage in relation to their total energy content, there will always be the requirement to include warning labels, despite industry innovation efforts." (Colombia)</p>
Responses provided by Mexico and other back-up information	<p>Responses by Mexico:</p> <p>"The amendments to NOM-051 seek to provide Mexican consumers with clear, truthful and accurate information on critical nutrient content and commercial information via the labeling of pre-packaged food and non-alcoholic beverages, with a view to helping them make better informed decisions. The amendments to NOM-051, which are based on the Regulatory Impact Analysis presented before the National Commission on Regulatory Improvement, constitute one of the most important elements of the comprehensive strategy developed by the Government of Mexico to address health problems related to non-communicable diseases such as obesity and excess weight gain."</p>
Trade law requirement or broader topic area	#2 - Be justified and necessary to achieve the public health objective
Sub-theme or specific concern area of the argument	<i>Trade-restrictiveness of the measure</i> — implementation timeline and use of stickers
Text of the concern	<p>Transition period</p> <p>"The draft amendment does not specify a transition period between adoption and application of the new technical regulation. Producers and businesses in and outside of Mexico will require sufficient time to adapt their internal processes to the new regulation. Switzerland therefore calls on Mexico to engage with relevant stakeholders and provide a sufficiently long transition period in line with Article 2 (12) of the TBT Agreement." (Switzerland)</p> <p>"The United States requests Mexico to allow a two-year minimum implementation period to ensure a smooth transition. While the WTO TBT Committee Decisions and Recommendations set a minimum six-month implementation timeline, we recognize that this regulation is complex and far reaching so a lengthier timeline would better allow companies to comply." (USA)</p> <p>"We are very concerned that phase one of implementation for these requirements is currently scheduled to begin on 1 October 2020, approximately six months after the final regulation was published. We request that Mexico allow for a transition period of at least two years prior to initiating phase one</p>

TABLE B: Comments in Response to Mexico's FOPL Measure and Mexico's Responses

<p>Text of the concern</p>	<p>of implementation. We request that Mexico allow for a transition period of at least two years prior to initiating phase one of implementation. We emphasize the need for an extended transition period in light of the COVID-19 global pandemic, which has placed significant pressure on the food and beverage industry to maintain supply of safe and affordable food and manage complex global supply chains. More flexibility in food production and labeling is needed at this time rather than diverting critical resources to comply with labeling rules aimed at longer term public health goals.” (USA)</p> <p>Stickers “The EU appreciates that stickers can be used for compliance with the labeling obligations, however this is only temporary (until 31 March 2020). We would like to invite Mexico to provide for a permanent possibility to use adhesive labels to comply with all the relevant obligations on food labeling.” (European Union)</p>
<p>Responses provided by Mexico and other back-up information</p>	<p>Responses by Mexico: Transition period “Transitional articles provide for a phased entry into force of NOM-051. Phase 1 relating to the front-of-pack labeling system (stamps and warnings) will enter into force on 1 October 2020, more than six months after the publication of the measure in the Mexican Official Journal (DOF). From 1 October 2020 to 31 March 2021, the requirements of the front-of-pack labeling system may be met by using stickers or any other form of adhesive label that can be attached to the existing product label. The use of adhesive labels is a temporary measure to facilitate transition to the requirements of the newly amended NOM-051. However, by 1 April 2021, labeling must comply with all the established requirements. This means that the parties concerned have more than a year from when the final version of NOM-051 was published in the DOF, to fully comply with all of its provisions.”</p> <p>“The Government of Mexico granted a period from 1 April to 31 May 2021 for the marketing of products without penalty if they only complied with the new front-of-pack labeling system on their labels, and not with other commercial and health information that came into force on 1 April 2021. This was so as to recognize the need for stock turnover of products that were already at the final point of sale to the consumer before 1 April 2021. The delegation of Mexico reiterates its willingness to clarify any doubts that the Members of this Committee may have on the implementation of this Technical Regulation. Such concerns may be sent in writing via the WTO contact point.”</p> <p>Stickers “In short, from 1 April 2021, all products (domestic and imported) that are marketed to the end consumer in the United Mexican States should meet all the requirements provided for in NOM-051. In the case of importers, they will be able to use adhesive materials to cover the label of origin to comply with all provisions of the applicable technical regulations.”</p>
<p>Trade law requirement or broader topic area</p>	<p>#3 - Not be discriminatory</p>

TABLE B: Comments in Response to Mexico's FOPL Measure and Mexico's Responses	
Sub-theme or specific concern area of the argument	<i>Discrimination on foreign products</i>
Text of the concern	"While it is the EU's understanding that the proposed measure would apply without difference to domestic and foreign producers, the impact will be particularly strong for foreign operators, which would have to adjust their production and labeling practices to comply with the draft resolution." (European Union)
Responses provided by Mexico and other back-up information	GHAI comment: Foreign operators already comply with different labeling requirements that vary from market to market, and evidence shows companies are able to quickly shift packaging and labeling in their products (e.g., Christmas packaging).
Trade law requirement or broader topic area	#4 - Comply with international standards
Sub-theme or specific concern area of the argument	<i>Use of Codex guidelines</i>
Text of the concern	<p>"Referring to Article 2.4 of the TBT Agreement, we note the statement in CAC/GL 2-1985 CODEX Guidelines on Nutrition Labeling whereby the information contained in the nutrient declaration 'Should not lead consumers to believe that there is exact quantitative knowledge of what individual should eat in order to maintain health, but rather to convey an understanding of the quantity of nutrients contained in the product.' Furthermore, the CAC/GL 2-1985 CODEX Guidelines on Nutrition Labeling do not foresee the use of warning labels. Consequently, the Codex Alimentarius does not set thresholds for nutrients that are subject to the notified draft." (Switzerland)</p> <p>"Standards and guidelines of the Codex Alimentarius Commission are frequently cited in the WTO TBT Committee as international standards that meet the WTO TBT Committee as international standards that meet the WTO TBT Committee Decision on International Standards, found in G/TBT/1/Rev. 14. We note that Article 2.4 of the WTO TBT Agreement requires Members to use international standards as the basis for their regulations except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued. Codex is currently developing guidance on FOPNL, but can Mexico clarify how the following Codex Standards were considered in the development of these requirements:</p>

TABLE B: Comments in Response to Mexico’s FOPL Measure and Mexico’s Responses

Text of the concern	<ul style="list-style-type: none">• Codex Guidelines on Nutrition Labeling (CAC/GL-1985)• Codex General Guidelines on Claims (CAC/GL 1979)• Codex Standard for Vitamin and Mineral Food Supplements (CAC/GL 55-2005)• Codex Standard for Follow-up Formula (CODEX STAN 156-1987)• Codex Guidelines on Formulated Complementary Foods for Older Infants and Young Children (CODEX CAC/GL 8-1991)• Formula Foods for Use in Very Low Energy Diets for Weight Reduction (CODEX STAN 203-1995).” (USA) <p>“Paragraph 8.2.1 of Codex Standard CXS 1-1985: General Standard for the Labeling of Prepackaged Foods, states that ‘If the language on the original label is not acceptable, to the consumer for whom it is intended, a supplementary label containing the mandatory information in the required language may be used instead of relabeling’, while paragraph 8.2.2 states that ‘In the case of either relabeling or a supplementary label the mandatory information provided shall [...] fully and accurately reflect that in the original label.’ With the provision established in the current Standard, Mexico is departing from the international reference standard and establishing an unnecessary obstacle to international trade. In this regard, at the national level, Mexican food products sent to the Guatemalan market are able to comply with the labeling requirements established by Central American regulations through the use of supplementary adhesive labels, instead of being required to have permanent labels affixed in the country of origin exclusively for the Guatemalan market. This measure facilitates trade and is proportionate to the level of protection sought, and we therefore request reciprocal treatment.” (Guatemala)</p> <p>“Costa Rica would like to take this opportunity to emphasize the importance of harmonizing food labeling schemes, in particular front-of-pack nutrition labeling, on the basis of Codex regulations (Guidelines on Nutrition Labeling CXG-2-1985, Annex 2, adopted in 2021). In this regard, we encourage the use of the recently approved Codex guidance on the subject as a reference to ensure that regulations are consistent with the international consensus and do not establish unnecessary restrictions on trade.” (Costa Rica)</p> <p>“To date, the Codex Alimentarius has not determined percentages of sodium, fat or sugar content, above which consumers must be warned through labels with stop signs or black stamps which are designed to discourage people from consuming the product. This lack of harmonization and scientific evidence has resulted in the proliferation of various front-of-pack food labeling schemes, with different content-percentage thresholds at which a warning is required, all of which increases the costs associated with international trade in food, makes businesses less competitive and ultimately introduces unnecessary obstacles to trade.” (Costa Rica)</p> <p>“In this regard, our industry has expressed concern about the implementation of the measure adopted by Mexico, not least given that this technical regulation may be more trade-restrictive than necessary to fulfil public health objectives, as it does not appear to be based on relevant international standards or sound scientific evidence, running contrary to Article 2.4 of the Agreement on Technical Barriers to Trade TBT/WTO (“TBT Agreement”), which provides that: ‘Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations.’ However, this measure stigmatizes foods developed by the industry based on non-technical classifications and criteria, because they refer to systems that are not clear or precise, causing confusion among consumers.” (Colombia)</p>
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TABLE B: Comments in Response to Mexico’s FOPL Measure and Mexico’s Responses

Responses provided by Mexico and other back-up information	<p>“Given that no existing international standard covers the aspects that the amendments to NOM-051 seek to address, the Government of Mexico has devised and adopted the measures that it considers appropriate for ensuring the fulfilment of its legitimate objectives in light of current public health challenges. On the basis of the above, Chapter 10 of the amended version of NOM-051 (Concordance with international standards) states that the Standard is not equivalent to the Codex Alimentarius standards cited therein.”</p> <p>“The delegation of Mexico is participating actively in the front-of-pack labeling standard-setting work through the Codex Alimentarius. However, the lack of an international standard on the subject at this time does not prevent a Member from issuing Technical Regulations on front-of-pack labeling on pre-packed foods and non-alcoholic beverages in order to protect its legitimate public interest objectives. We would also clarify that the technical and scientific evidence supporting the amendment to Mexican Official Standard NOM-051-SCFI/SSA1-2010 is available in the bibliography chapter for consultation by any interested party.”</p> <p>“As has been previously mentioned by Mexico, we are aware that international schemes for the labeling of foods now exist under Annex 2 to the Codex Alimentarius Guidelines on Nutrition Labeling (CXG-2-1985), adopted in 2021. However, at the time NOM-051 was being prepared, there were no international reference standards that could be used as a basis for establishing front-of-pack labeling for pre-packaged food and non-alcoholic beverages. The adoption, modification and/or annulment of technical regulations in Mexico are governed by the standardization process, timeframes and stages established under the Law on Quality Infrastructure, as well as under the General Law on Regulatory Improvement, which includes a regulatory impact analysis applicable to Mexican Official Standards. The Government of Mexico reiterates its responsibility to comply with the international commitments set out in the Agreement on Technical Barriers to Trade and those relative to the free trade agreements to which Mexico is party, as well as to constantly harmonize technical regulations with international parameters, recognizing the legitimate objective of public policy to safeguard the population’s health generally.”</p>
Trade law requirement or broader topic area	Breach of trademarks
Sub-theme or specific concern area of the argument	Marketing restrictions tied to FOPLs infringe trademark rights
Text of the concern	<p>“Removal of graphics and advertising on packaging Section 4.1.5 requires that labels of prepackaged food and non-alcoholic beverages that include a stop sign shaped label or ‘stamp’ should not include characters, drawings, celebrities, gifts, offers, toys or contests, price or content related offers, visual-spatial games or social networks ads that promote their consumption. Trademarks play an important role in commerce by allowing companies to distinguish their products in the market and preventing consumer confusion. Can Mexico please identify the consumer research or other behavioral change studies that are the basis for these requirements? How will Mexico account for trademarked characters when implementing these requirements?” (USA)</p> <p>“The restriction on the use of children’s characters limits the use and enjoyment of an intellectual or industrial property right (e.g., mark, caricature, cartoon) and not only inhibits the intellectual development of creators, but also prevents any contribution to ensuring distinctive elements between products for consumers, as provided for in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).” (Guatemala)</p>

TABLE B: Comments in Response to Mexico’s FOPL Measure and Mexico’s Responses	
Responses provided by Mexico and other back-up information	<p>GHAI comment:</p> <p>The Mexican government did not provide an official response to this argument within the TBT Committee, but the modification of the technical standard includes evidence of the harmful damage done to children by unhealthy food and beverages advertising. Moreover, plenty of evidence exists to support this policy intervention: https://etiquetadosclaros.org/publicidad-y-personajes/</p>

Appendix II: Comments in Response to Argentina’s FOPL Measure and Argentina’s Responses

In April 2022, Argentina [notified](#) its proposed FOPL measure in accordance with the WTO TBT Agreement. This allows other countries to consider how this policy may impact trade, and to raise any concerns in the TBT committee, to resolve any potential issues that could rise to the level of a dispute.

As of November 3, 2023, and according to the documents publicly available online on the WTO website, **Costa Rica, Guatemala and the United States** have raised trade concerns in response to the notification. The table below provides examples of some of the arguments made, including responses by the government of Argentina made in the context of the TBT discussions. Please contact GHAI at fpp@advocacyincubator.org for more information about potential responses and available research.

TABLE C: Comments in Response to Argentina’s FOPL Measure and Argentina’s Responses	
Trade law requirement or broader topic area	#2 - Be justified and necessary to achieve the public health objective
Sub-theme or specific concern area of the argument	<i>Evidence backing up the measure to achieve the policy objective</i> — rationale behind the risk assessment and choice of nutritional thresholds used
Text of the concern	“Has Argentina considered that the Pan-American Health Organization’s Nutrient Profile was based on the World Health Organization’s nutrient intake goals intended for total diets, rather than profiles more appropriate for individual foods making up total dietary patterns?” (USA)

TABLE C: Comments in Response to Argentina’s FOPL Measure and Argentina’s Responses

Responses provided by Argentina and other back-up information	<p>Responses by Argentina:</p> <p>“With respect to the Nutrients Profile, we must first point out that the nutrient profiling system (NPS) of the Pan American Health Organization (PAHO) is based on the World Health Organization (WHO) nutrient intake goals for the nutrients assessed. The Food Guidelines for the Argentine Population (GAPA) are based on the same international recommendations which state that the nutrient profile models need to complement and support food-based dietary guidelines in the region in which they are applied. Therefore, the Argentine Ministry of Health carried out a study which evaluated the degree of concordance between eight NPSs used under different regulations (PAHO/WHO, Uruguay, Chile, Peru, Ecuador, Bolivia, the United Kingdom and the NPS proposed by the Food Industry Coordination Committee (COPAL)) with the national recommendations made in the GAPA. The PAHO NPS had the highest overall degree of concordance (almost 80%) in the complete concordance evaluation and, when carrying out an overall evaluation of each NPS, the PAHO model performed the best, corresponding to the national scientific evidence available to date. This suggests that this nutrient profile is the best option for assessing the food sold in our country. Moreover, Law No. 27.642, which is the product of a wide-ranging legislative discussion, with the participation of all sectors involved, clearly states that the Nutrient Profile Model of the Pan American Health Organization shall be used, without any possibility of changing this.”</p> <p>“It follows that Argentina considers that this nutrient profile is the best option for assessing the food marketed in our country. It is important to mention that in recent years ultra- processed products and an increase in malnutrition rates, especially through excess, in all social groups. The excess consumption of critical nutrients regulated by labeling is associated with increased cardiovascular and cerebrovascular diseases, obesity, diabetes, cancer and hypertension, among others, which are the cause of most deaths in Argentina each year. At the same time, excessive consumption of these nutrients is associated with the consumption of ultra-processed and processed products containing excessive amounts of such nutrients as set out in the PAHO/WHO Nutrient Profile Model. Studies carried out in 10 countries, including Argentina, also concluded that the consumption of products containing excess critical nutrients according to the PAHO/WHO definition (which has been adopted by the Law and its regulations in Argentina) is associated with significant non-compliance with WHO recommendations on the intake of these nutrients.”</p>
Trade law requirement or broader topic area	#2 - Be justified and necessary to achieve the public health objective
Sub-theme or specific concern area of the argument	Evidence backing up the measure to achieve the policy objective — label sizes and different package sizes
Text of the concern	“What flexibilities will Argentina provide for label placement to accommodate different sized packaging? The labels may account for a disproportionate surface area on the packaging of smaller, individually packaged items.” (USA)

TABLE C: Comments in Response to Argentina’s FOPL Measure and Argentina’s Responses

<p>Responses provided by Argentina and other back-up information</p>	<p>Responses by Argentina:</p> <p>“With respect to placing labels on packages of different sizes, the size of the label is defined by law: Article 5 states that ‘the size of each label shall never be less than five percent (5%) of the surface area of the front of the package’, with ‘the front of the package’ meaning the part of the label featuring the sales description and the brand or logo, if any, most prominently. Therefore, Appendix II to implementing Decree No. 151/2022 established more than 15 size ratio categories, in order to ensure that small packages comply with the 5% legal requirement. The regulations provide that micro-labels, which cover 15% of the surface area of the front of the packages, can only be affixed to packages with a surface area of less than 10 cm². For product packages with a front surface area between 10 cm² and 20 cm², it was deemed that each warning label should cover 5% of the surface area. For packages with a surface area greater than 20 cm² and for products that have more than one label, the implementation handbook proposes an adjustment whereby the “surface area available for labels” is calculated, which is set at 65% of the surface area of the front of the package. Packages bearing a single label, irrespective of their size, must use the label sizes set out in Tables 1 and 2 of the implementing Decree. Moreover, when the surface area of the front of the package is greater than 300 cm², the only size of octagonal warning label to be used is 3.9 cm x 3.9 cm, while for rectangular warning labels it is 6.4 cm x 1.6 cm.”</p> <p>“It was decided to apply the correction factor of 0.65 to products with a front of package surface area greater than 20 cm², but not to products where it is between 10 cm² and 20 cm², because applying this factor would result in a front-of-pack surface area of less than 10 cm² for this size category. This could contravene Article 5 of the Law, which clearly states that “should the surface area of the front of the package be less than or equal to 10 centimeters squared and should it bear more than one label, the enforcement authority shall determine the suitable position of the labels.”</p>
<p>Trade law requirement or broader topic area</p>	<p>#2 - Be justified and necessary to achieve the public health objective</p>
<p>Sub-theme or specific concern area of the argument</p>	<p><i>Trade-restrictiveness of the measure</i> — implementation timeline and use of stickers</p>
<p>Text of the concern</p>	<p>“We note that other countries have permitted stickering of labels to provide greater flexibility. Will Argentina consider temporary stickering as an option for compliance during the implementation period?” (USA)</p> <p>“We understand companies were expected to comply with the new law by September 2022, just six months after publication of the final law. Can Argentina confirm whether the law is being fully implemented at this time? The United States is concerned about the short implementation period of this measure. We understand that Argentina is considering extensions to the implementation period in specific cases. We request that Argentina consider a 24-month implementation period for stage one, until March 2024, to allow sufficient time for industry to effectively comply. Other countries in the region have adopted a 24-month period when implementing similar labeling policies.” (USA)</p>

TABLE C: Comments in Response to Argentina’s FOPL Measure and Argentina’s Responses

Responses provided by Argentina and other back-up information	<p>Responses by Argentina:</p> <p>“With respect to the United States’ concern about the time frames for implementing the measure, Law No. 27.642 has a number of implementation phases both for the nutrient profile system, and for large corporations and SMEs (which have different deadlines). In addition, the Law also included an option to request a single six-month extension for the first implementation phase. Deadlines for large corporations: 20 July 2022: deadline for requesting extensions; 20 August 2022: deadline for implementing the first phase/start of the second phase; 16 February 2023: end of the approved extension period for the first phase; 20 May 2023: deadline for implementing the second phase; and 20 May 2024: deadline for approved special cases involving returnable containers. Deadlines for SMEs: Tier one micro-, small and medium-sized companies under Law No. 25.300 (MSMES), as well as cooperatives operating in the popular economy and suppliers of products in the family farming sector, as defined in Article 5 of Law No. 27.118. 20 January 2023: deadline for requesting extensions; 20 February 2023: deadline for implementing the first phase/start of the second phase; 19 August 2023: end of the approved extension period for the first phase; 20 May 2023: deadline for implementing the second phase; and 20 May 2024: deadline for approved special cases involving returnable containers.”</p> <p>“Therefore, it is expected that, by November 2023 (two years after the Chamber of Deputies approved the Law), all products covered by the regulations and produced from that date will have to comply with front-of-pack labeling requirements, irrespective of the production capacity of the company producing them. With respect to placing adhesive labels on packages to provide greater flexibility, national legislation (the Argentine Food Code) provides that, in the case of imported products, self-adhesive labels may be added to adapt the labeling to the regulations in force in the country. In the case of returnable containers with lithographed and/or painted labels, it shall be permitted to add the corresponding warning signs or messages in the form of firmly affixed, heat-seal or heat-shrink labels. This will only be permitted for up to 30 months after the Law enters into force, meaning that, from 20 May 2024, the front-of-pack nutritional labeling must be lithographed and/or painted onto all returnable containers.”</p>
Trade law requirement or broader topic area	#4 - Compliance with international standards
Sub-theme or specific concern area of the argument	<i>Codex standards</i> — harmonization to avoid technical barriers to trade
Text of the concern	<p>“Costa Rica once again emphasizes the importance of harmonizing food labeling schemes on the basis provided by international reference organizations, such as the Codex Alimentarius and its existing regulations such as the Guidelines on Nutrition Labeling CXG 2-1985, Annex 2, adopted in 2021. The lack of harmonization of food labeling regulations leads to the proliferation of schemes with different content percentages for requiring a warning, resulting in unnecessary barriers to trade. To date, the Codex Alimentarius has not defined percentages of sugar, fat or other content above which consumers must be warned through labels labels with stop signs or black stamps intended to discourage consumption of the product. Costa Rica undertakes to maintain an open dialogue between both countries’ delegations to the WTO, with the aim of exchanging communications and information relating to the new Argentine regulation.” (Costa Rica)</p>

TABLE C: Comments in Response to Argentina’s FOPL Measure and Argentina’s Responses

Responses provided by Argentina and other back-up information	<p>Responses by Argentina:</p> <p>“We appreciate Costa Rica’s interest in Law No. 27.642 on the promotion of healthy eating. In Argentina, the enactment of Law No. 27.642 was the result of a lengthy democratic process, with extensive discussion in both houses of the National Congress, where industry, academia and civil society had the opportunity to present their positions. In the framework of the committee discussions, where a great deal of relevant scientific evidence was circulated, parliamentary decisions were taken. Similarly, during the drafting process for the Regulatory Decree, different sectors were involved and had the opportunity to make suggestions. This Law, which was the product of a comprehensive legislative discussion, with the participation of all sectors involved, clearly states that the Pan American Health Organization (PAHO) Nutrient Profile Model should be used.”</p> <p>“We would first like to point out that Law No. 27.642 on the Promotion of Healthy Eating Eating is designed to ensure the population’s right to health and adequate food through the promotion of healthy eating, by providing simple and comprehensible nutritional information for packaged foods and non-alcoholic beverages. This will promote confident and active decision-making and warn consumers about high levels of sugars, sodium, saturated fats, total fats and calories, using clear, appropriate and accurate information that protects consumer rights, which is the key focus of the law. Under no circumstances can Law No. 27.462 be considered a barrier to trade, as it merely seeks to give people simple and easily understandable nutritional information about the products covered by the Law.”</p> <p>“(…) the Agreement on Technical Barriers to Trade recognizes that countries may put in place measures designed to protect public health. This is recognized in the preamble to and in Article 2.2 of the Agreement. (…) Parliamentary decisions were made during the discussions in the committees, in which a huge amount of relevant scientific evidence was disseminated. Similarly, various sectors were involved in the process of drawing up the implementing Decree. These sectors were given the opportunity to submit proposals and suggestions, which were included to the extent permitted by law.”</p> <p>“To conclude, we would like to reiterate that preventing malnutrition includes, among other measures, providing warnings about high levels of critical nutrients, such as sugars, sodium, saturated fats, total fats and calories, in packaged foods and non-alcoholic beverages, using clear, appropriate and accurate information that protects consumer rights, which is the key focus of Law No. 27.642 on the Promotion of Healthy Eating.”</p>
Trade law requirement or broader topic area	#5 - Compliance with due process and notification requirements
Sub-theme or specific concern area of the argument	Notification requirements
Text of the concern	“The United States supports Argentina’s public health objectives of reducing diet-related non-communicable diseases. Argentina published its final Front-of-Pack Nutrition Labeling Law, entitled Decree implementing Law No. 27.642, on 23 March 2022, and notified the measure to the WTO nine days

TABLE C: Comments in Response to Argentina’s FOPL Measure and Argentina’s Responses	
Text of the concern	<p>later, on 1 April 2022. The United States reiterates the importance of notifying measures to the TBT Committee with at least a 60-day comment period so that interested parties have an opportunity to submit written comments, discuss these comments upon request, and have comments considered by Argentina before finalizing measures. We understand companies were expected to comply with the new law by September 2022, just six months after publication of the final law.” (USA)</p>
Responses provided by Argentina and other back-up information	<p>Responses by Argentina: “With respect to the United States’ concern about the time frames for implementing the measure, Law No. 27.642 has a number of implementation phases both for the nutrient profile system, and for large corporations and SMEs (which have different deadlines). In addition, the Law also included an option to request a single six-month extension for the first implementation phase. Deadlines for large corporations: 20 July 2022: deadline for requesting extensions; 20 August 2022: deadline for implementing the first phase/start of the second phase; 16 February 2023: end of the approved extension period for the first phase; 20 May 2023: deadline for implementing the second phase; and 20 May 2024: deadline for approved special cases involving returnable containers. Deadlines for SMEs: Tier one micro-, small and medium-sized companies under Law No. 25.300 (MSMES), as well as cooperatives operating in the popular economy and suppliers of products in the family farming sector, as defined in Article 5 of Law No. 27.118. 20 January 2023: deadline for requesting extensions; 20 February 2023: deadline for implementing the first phase/start of the second phase; 19 August 2023: end of the approved extension period for the first phase; 20 May 2023: deadline for implementing the second phase; and 20 May 2024: deadline for approved special cases involving returnable containers.”</p> <p>“Therefore, it is expected that, by November 2023 (two years after the Chamber of Deputies approved the Law), all products covered by the regulations and produced from that date will have to comply with front-of-pack labeling requirements, irrespective of the production capacity of the company producing them. With respect to placing adhesive labels on packages to provide greater flexibility, national legislation (the Argentine Food Code) provides that, in the case of imported products, self-adhesive labels may be added to adapt the labeling to the regulations in force in the country. In the case of returnable containers with lithographed and/or painted labels, it shall be permitted to add the corresponding warning signs or messages in the form of firmly affixed, heat-seal or heat-shrink labels. This will only be permitted for up to 30 months after the Law enters into force, meaning that, from 20 May 2024, the front-of-pack nutritional labeling must be lithographed and/or painted onto all returnable containers.”</p> <p>GHAI comment: Even though Argentina did not strictly comply with the 60-day comment period mandated by the TBT Agreement, this was raised as a concern and the government responded with a focus on the extended implementation schedule, without further formal consequences. However, it is strongly recommended for states to comply with this notification requirement adequately before WTO spaces.</p>

Recommended citation: Global Health Advocacy Incubator (GHAI) - Campaign for Tobacco-Free Kids (CTFK). Front-of-Package Labeling – Preparing for International Trade Legal Arguments. June 2024. Available at: <https://advocacyincubator.org>.

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References

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- ² Interamerican Commission on Human Rights. REDESCA de la CIDH publica informe temático "Las Enfermedades No Transmisibles y los Derechos Humanos en las Américas" (REDESCA of the IACHR publishes thematic report "Noncommunicable Diseases and Human Rights in the Americas"). <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2023/205.asp>
- ³ Office of the United Nations High Commissioner for Human Rights. Statement by the UN Special Rapporteur on the right to health on the adoption of front-of-package warning labelling to tackle NCDs. <https://www.ohchr.org/en/statements/2020/07/statement-un-special-rapporteur-right-health-adoption-front-package-warning#:~:text=Front%2Dof%2Dpackage%20warning%20labeling%20allows%20consumers%20to%20identify%20more,high%20content%20of%20critical%20nutrients>
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