



## The Andean Community validates the front-of-package warning labeling policy in Colombia

### *Summary of the General Secretariat of the Andean Community's Technical Decision No. 010-02023 - GASESOSAS COLOMBIANAS S.A.S., GASEOSAS LUX S.A.S. and NUTIMENTI DE COLOMBIA S.A.S. vs. the Government of Colombia*

- ▶ The Andean Community of Nations (CAN) is an international organization that aims to promote economic and commercial growth through the integration of its member states (Bolivia, Colombia, Ecuador and Peru). The ultra-processed product industry used a dispute settlement mechanism through CAN to challenge the front-of-package warning labelling (FOPWL) regulations in Colombia. It argued that this regulation blocked food trade due to its excessive and disproportionate requirements.
- ▶ On April 14, 2023, three soda companies filed a complaint against Colombia before the General Secretariat of the Andean Community (SGCAN) due to an alleged violation to the regional Decision No. 827 due to the approval of a FOPWL by the Ministry of Health's Resolution No. 2492/2022. The supposedly breached rules were the principle of transparency and no discrimination within the Member States (article 5), the principle that states that regulations and procedures implemented should not restrict trade more than necessary to achieve a legitimate goal (article 5), and the requirement that establishes that Member States shall use international law to elaborate and approve regulations and procedures (article 8). Decision No. 827 of the Andean Community contains the "*Guidelines for development, implementation and enforcement of technical decisions and procedures to evaluate both the internal adequation of Andean Community Member States and the Communitarian regulation*".
- ▶ The main legal grounds of the companies' claims were the following:
  - Resolution 2492/2022 modified the Resolution 810/2021 prohibiting the use of health claims on ultra-processed products with one or more labels.
  - The plaintiffs claimed Colombia did not comply with the art. 5 of the Andean Community resolution that establishes the principle of transparency, which mandates parties to communicate normative modifications that may affect third parties and consumers in a reasonable and sufficient manner, prior to the approval of a new resolution or law.



- Companies also argued that Colombia was violating the Codex guidelines through Resolution 2492. The alleged violation relies on the fact that the nutrient profile model (NPM) set in the Colombian regulation does not comply with Codex or other international standards. Moreover, companies argued that Codex mandates to provide consumers with quantitative, clear and unambiguous information regarding sweeteners, while the regulation is now providing qualitative warnings regarding their presence in UPP.

▶ Colombia's response:

- The Technical Resolution from the Health Ministry complies with the CAN principle of transparency due to the fact that the Colombian regulation was published and duly notified third parties, general citizens and other country about the regulation, which provided them the opportunity to make observations about the measure through proper channels.

- The FOPWL does not restrict trade more than is needed in order to protect a legitimate objective such as the right to health, life, and the proper functioning of the health system. Moreover, the FOPWL is an indispensable, proportionate and appropriate measure to fight against diet-related non-communicable diseases (NCDs) and to properly inform and help the population to make responsible and informed choices.

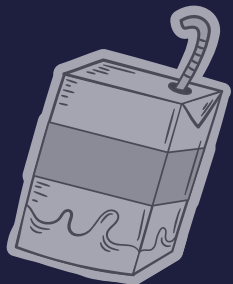
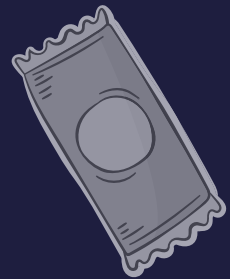
- The NPM used to establish the Colombian regulation comes from an international standard, in accordance with art. 8 of Resolution 827, which is the PAHO NPM. Codex Alimentarius does not have effective tools or guidance to prevent NCDs.

▶ Considering both parties' responses, the SGCAN's findings were the following:

- On the alleged violation of the transparency principle, the SGCAN concluded Colombia complied with it by communicating and publicizing modifications or new technical resolutions. Colombia did it using the Notification Information System and Technical Regulation of the Andean Community (SIRT), within the 60-day period to do so, prior to its approval.

- Regarding the discrepancies between Codex regulations and the PAHO NPM adopted by Colombia, the SGCAN stated that although the latter is not an international standard, the new Colombian regulation complies with article 8 of Decision 827 due to the lack of Codex standards on FOPWL. Therefore, using the NPM from PAHO as a reference was reasonable to inform the population and prevent them from being misled by food marketing.

- About food additives, the SGCAN found that the criteria used by the Colombian authorities to modify Resolution 810/2021 are a legitimate way to comply with their obligations regarding the state's health policy. Codex standards only establish the maximum allowed doses according to the



food product/additive, without setting any precise amount to be considered for warning labels.

■ As final considerations -not challenged by the industry-, the SGCAN recommends that Colombia consider how new regulations may impact interested parties, regarding their schedules to implement those. Lastly, SGCAN recommends that Colombia publicize the Resolution 2492/2022 through SIRT, reviewing arts. 14 and 3 of decisions 827 and 615, respectively.

## Considerations

In recent years, significant progress has been made in the area of FOPWL policies in Latin America and around the world. Based on evidence and recommendations from international organizations such as the Pan American Health Organization (PAHO), FOPWL represents a key public health policy to prevent and address NCDs related to inadequate dietary patterns. However, these policy advances and regulatory processes have faced many obstacles. Numerous strategies by the unhealthy food and beverage industry have been documented to avoid the approval by proposing ineffective alternative solutions, to weaken their design or to delay the implementation of these measures.

In this context, the "[Behind the Labels](#)" report documented hundreds of direct and indirect corporate behaviors with the potential to undermine FOPWL advancements worldwide. The report identified five main industry strategies, including the use of legal and trade-related arguments to delay or hinder policy progress. Specifically, these industry arguments related to international trade fall into two main categories:

1. Arguing that states cannot move forward with the adoption of FOPWL systems because it constitutes a technical barrier to trade, impeding the flow of international trade in the region and globally.
2. Within regional economic or integration forums such as the CAN, the Southern Common Market (MERCOSUR), and the Central American Integration System (SICA), it is argued that Member States cannot unilaterally advance with the adoption of FOPWL systems but must wait for regional progress to harmonize regulatory standards.

Developing responses to these arguments in each specific case has been critical to advance numerous FOPWL policies in Latin America and globally. In this [GHA resource](#), there is a collection of arguments to prepare and respond to trade arguments.



In Colombia, in particular, the state managed to pass a FOPWL policy in line with best practices despite significant corporate pressures, as shown in [GHAI's FOPWL comparative table](#). The authorities in Colombia successfully progressed to protect human rights to health and adequate food & nutrition through the "Junk Food Law" ([Law No. 2120/2021](#)) and the subsequent [resolution No. 2192/2022](#) from the Ministry of Health and Social Protection, that amended [resolution No. 810/2021](#).

These resolutions faced regional claims from the ultra-processed food industry under the CAN's dispute resolution framework. For the first time, a trade organization issued a decision related to FOPWL, in this case dismissing the industry's arguments.

In particular, the SGCAN's decision supports public health efforts and demonstrates Colombia's compliance with transparency and evidence-based standards, making FOPWL a proportionate measure in achieving its legitimate goals. This is essential for Colombia and other countries in the region that have been struggling to counter industry strategies against FOPWL using trade related arguments.

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