



Trade challenges to nutrition labelling policies at the WTO: issues, actors, and prospects

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Overview



WTO rules: Technical Barriers to Trade (TBT) Agreement

Members shall ensure that regulations are not prepared, adopted or applied with the effect of **creating unnecessary obstacles to international trade.**



No country should be prevented from taking measures necessary to ensure the **protection of human health...** subject that they are in accordance with this agreement.

How these rules can be used to shape policy



“Technical Barriers to Trade (TBT) committee meetings have effectively facilitated the resolution of – or diffused at an early stage – issues arising between members”

WTO, 2015

Nutrition labelling policies have regularly been challenged at the TBT Committee

Country & policy	Year(s) challenged
Thailand - Labelling Requirement for Snack Foods	2007 - 2008
Chile - Proposed amendment to the Food Health Regulations	2013 - 2016
Indonesia - Ministry of Health Regulation on the inclusion of sugar, salt and fat content information, as well as health messages on the label of processed foods	2013 - 2016
Peru - Act to Promote Healthy Eating Among Children and Adolescents	2013 - 2018
Ecuador - Resolution on the labelling of processed and packaged food products; Ministry of Public Health Executive Decree amending the Sanitary Regulations for the Labelling of Processed Foods for Human Consumption	2014 - 2018
Bolivia - Food Labelling and Advertising Law	2016
Uruguay - Labelling of Packaged Food	2019

Actors

- Many challenges raised by high-income members where large multi-national food corporations are registered.
- E.g. US, EU, Switzerland, Canada are forceful opponents.
- Claims originating from industry submissions?
- In 2013, a US representative commented on Peru's proposals by stating that :

“The US pre-packaged food industry has expressed concern over the economic impact of the inclusion of warning statements on a mandatory basis”



Examples of principal issues & arguments

‘Unnecessary trade costs’

- 2013 Peru’s legislation: US argued that the legislation creates unnecessary trade costs as the measures are ineffective – and more effective ‘daily meal guides’ should be used instead.
- i.e. unnecessary as an alternative that is equally effective could be introduced.
- Other challenges focus on specifics of design e.g. size, colour.

International standards

- 2014 Ecuador’s legislation: included “high in” warnings.
- Scientific evidence suggests these interpretative guides are important for making such measures effective.
- EU: such warnings are not “foreseen by the applicable Codex guidelines on nutrition labelling.”

Empty threats?

- Some claims may seem persuasive **but have questionable basis in WTO rules or scientific evidence.**
- E.g. the claim that daily meal guides are effective in reducing obesity is **not supported by scientific evidence.**
- CODEX guidelines: “existing nutrition labelling guidelines at Codex do not explicitly provide guidance on interpretive labelling” (Thow et al. 2019).
- i.e. standards applicable specifically to interpretative FOP labelling measures do not yet exist.
- Tom Heilandt, CODEX Secretary : “the absence of Codex guidance on a topic does **not** automatically mean that a measure is not in line with Codex”.
- In any case, the TBT Agreement recognises that in certain cases not all international standards are appropriate – members may deviate.

To what end? Chile's experience

- Chilean 'STOP' sign legislation faced fierce opposition at WTO.
- US, Australia, Switzerland, Canada, Argentina, and the EU, among others, objected to the measure on 8 occasions between 2013 and 2016.
- Strong political will seems to have enabled Chile to withstand WTO pressure.
- Chile's measure went ahead despite significant opposition (incl. arguments citing CODEX).
- Despite TBT committee pressure, there has not been a WTO dispute.



Indonesia, 2013

- In 2013 Indonesia proposed legislation for health warnings on processed food packages, to be implemented from April 2016 onwards.
- The warnings would describe the product's salt, sugar, and fat content.
- Canada, Australia, and the EU challenged the measure at the WTO TBT Committee. They questioned scientific basis for introducing the labels and asked for Indonesia to consider alternative measures.
- Indonesia subsequently announced it had delayed planned implementation by 4 years to 2019.
- Indonesia said that it would reevaluate the regulation and consider alternative approaches to NCD prevention during an extended transition period.
- This included considering a public education campaign instead of imposing mandatory labels – precisely what a representative of the EU had suggested at an earlier WTO meeting.
- **Shows that WTO pressure can yield influence. However, the Chilean example illustrates that it is not necessary to concede to WTO members' demands, and that political will seems to play a key role.**

Prospects for Mexico

- In short, some claims raised against Mexican measure may seem persuasive **but have questionable basis in WTO rules & scientific evidence** (e.g. CODEX, scientific efficacy of alternatives).
- WTO has also upheld right of members to legislate in other areas, e.g. tobacco.
- At WTO, tobacco labelling policies were regularly supported by WHO. WHO attended to comment on scientific evidence and support proposed measures.
 - WHO has recommended FOP labelling as a strategy to address diet-related non-communicable diseases.
 - Opportunity to as WHO step up in this case too and lend support.

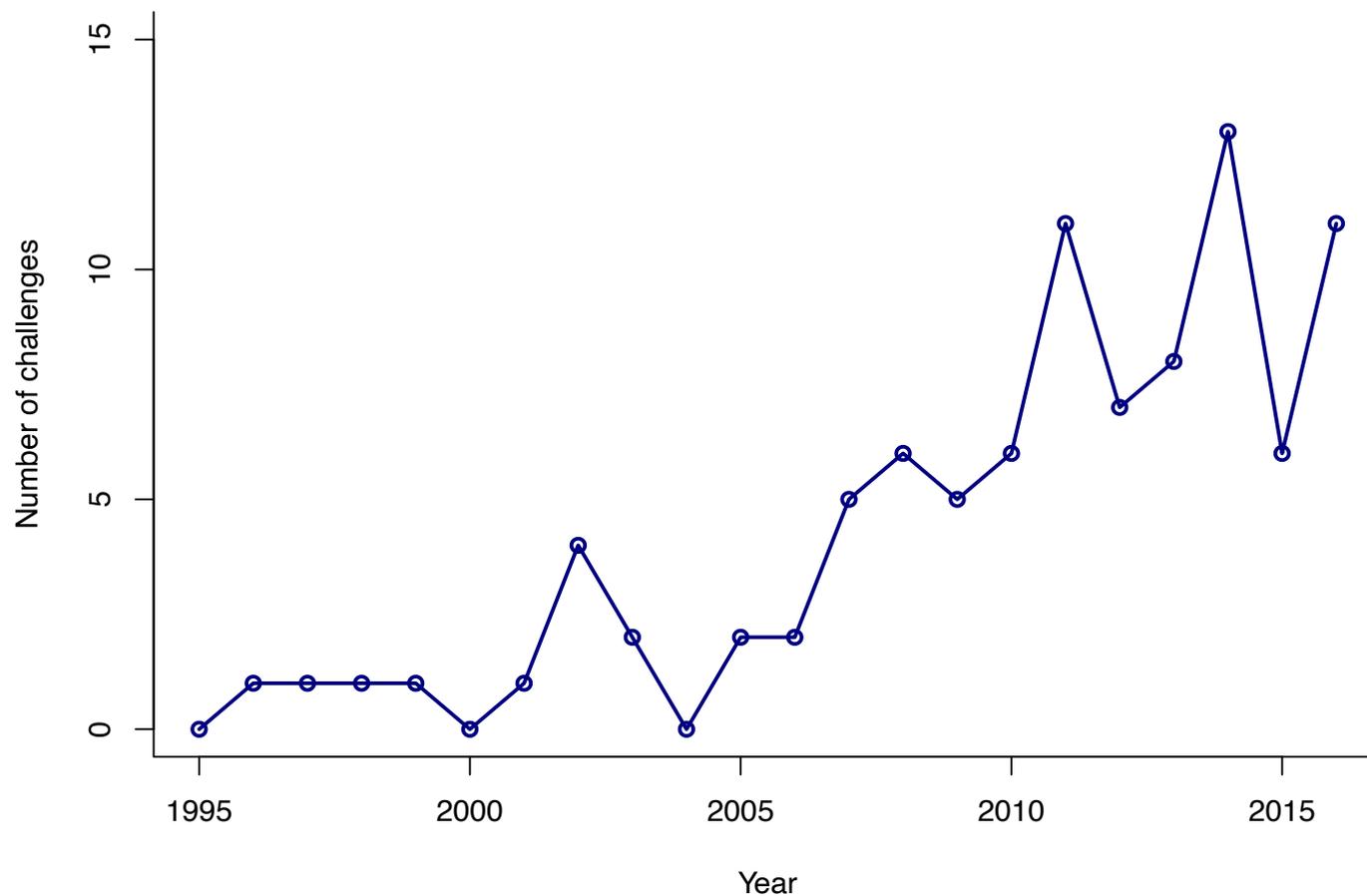
Additional references

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A growing number of food/ soft-drink, alcohol, and tobacco regulations were challenged at the WTO on the basis of their purported violations of trade rules, 1995-2016