

Meeting Report

EXPERTS CONSULTATION ON THE BACKGROUND DOCUMENT ON PROTECTING CHILDREN FROM THE HARMFUL IMPACT OF FOOD MARKETING



9–10 May 2017
Manila, Philippines

WORLD HEALTH ORGANIZATION
REGIONAL OFFICE FOR THE WESTERN PACIFIC

RS/2017/GE/34(PHL)

English only

MEETING REPORT

EXPERTS CONSULTATION ON THE BACKGROUND DOCUMENT ON PROTECTING
CHILDREN FROM THE HARMFUL IMPACT OF FOOD MARKETING

Convened by:

WORLD HEALTH ORGANIZATION
REGIONAL OFFICE FOR THE WESTERN PACIFIC

Manila, Philippines
9–10 May 2017

Not for sale

Printed and distributed by:

World Health Organization
Regional Office for the Western Pacific
Manila, Philippines

July 2017

NOTE

The views expressed in this report are those of the participants of the Experts Consultation on the Background Document on Protecting Children from the Harmful Impact of Food Marketing and do not necessarily reflect the policies of the conveners.

This report has been prepared by the World Health Organization Regional Office for the Western Pacific for Member States in the Region and for those who participated in the Experts Consultation on the Background Document on Protecting Children from the Harmful Impact of Food Marketing in Manila, Philippines from 9 to 10 May 2017.

Contents

SUMMARY	1
1. INTRODUCTION	3
1.1 Meeting organization.....	3
1.2 Meeting objectives.....	3
2. PROCEEDINGS	3
2.1 Opening session.....	3
2.2 Session on country presentations.....	4
2.2.1 Chile: Law on food labelling and advertisement	4
2.2.2 Republic of Korea: Special Act on the Safety Management of Children’s Dietary Life	5
2.2.3 China: Advertisement Law.....	6
2.2.4 Hong Kong SAR (China): Voluntary code	6
2.2.5 New Zealand: Food marketing	7
2.2.6 Australia: Voluntary pledge of the food industry.....	8
2.2.7 Plenary discussion	9
2.3 Session on introduction to the background document on protecting children from the harmful impact of food marketing.....	9
2.3.1 Summary of inputs to the overall structure, content and framing of the document...9	
2.4 Session on food marketing	10
2.4.1 Presentation on the power of marketing.....	11
2.4.2 Presentation on measuring marketing exposure (FNAB)	11
2.4.3 Plenary discussion	12
2.5 Session on the role of government in protecting children from the harmful impact of food marketing	12
2.5.1 Address to the participants	12
2.5.2 Presentation on experience with enforcement mechanisms on the International Code of Marketing of Breast-milk Substitutes	13
2.5.3 Presentation on trade and health: implications for marketing restrictions.....	14
2.5.4 Summary of inputs to the role of governments in protecting children from the harmful impact of marketing.....	14

2.6 Session on inputs to a possible draft resolution.....	15
2.6.1 Summary of inputs to a possible draft resolution.....	15
2.7 Closing session	16
3. CONCLUSIONS AND RECOMMENDATIONS	16
3.1 Conclusions	16
3.2 Recommendations for WHO	16
ANNEXES	18
Annex 1. List of temporary advisers and secretariat	18
Annex 2. Meeting programme.....	20

Key words

Child nutrition / Food / Marketing – standards / Strategic planning

SUMMARY

The nutrition landscape has undergone dramatic changes in the past decades, spurred by rapid economic and income growth, urbanization and globalization. Food systems have been transformed by many factors, including the liberalization of international food trade. The modern communication environment is enabling marketing to children through diverse channels with increasingly smarter tactics, including advertising through social media and advergames, promotion via the provision of free samples, celebrity endorsement, tie-ins or loyalty programmes, and sponsorship. At no time in history have children been more exposed to potential harm arising from the marketing of food and non-alcoholic beverages (FNABs) and breast-milk substitutes (BMS). There is abundant evidence showing that marketing influences consumer choice and increasing evidence on the impact of marketing on health.

Restricting marketing of FNABs and BMS is part of a comprehensive package to reduce malnutrition in all its forms, a Sustainable Development Goal indicator. Global and regional action plans have called upon Member States to restrict marketing of FNABs and BMS, through implementation of the *International Code of Marketing of Breast-milk Substitutes* and subsequent relevant World Health Assembly resolutions and the WHO *Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children*. The Western Pacific Region has been slow to adopt these mandates, in part due to limited practical guidance for Member States. Recognizing the importance of protecting children from potentially harmful marketing and the need to scale up action, Member States confirmed the agenda item of the sixty-eighth session of the WHO Regional Committee for the Western Pacific on restrictions on marketing FNABs including BMS for and to children. To support the upcoming Regional Committee resolution, a background paper on protecting children from the harmful impact of food marketing is being prepared, and this consultation was held to solicit experts' views and inputs on the document.

This report summarizes the outcomes of a two-day experts consultation held in Manila, Philippines from 9 to 10 May 2017.

Conclusions

- 1) The background document was welcomed and its overall structure and focus supported.
- 2) In view of increasing evidence on the harmful impact of food marketing on children, and realizing that virtually all food marketing in the Region is for unhealthy foods, accelerating and/or initiating action to restrict food marketing was agreed as an essential intervention to reduce malnutrition in all its forms.
- 3) Experts affirmed the value of discussing all foods that children may consume (including BMS and FNABs), recognizing the commonalities in marketing techniques, channels and their impact on health.

- 4) The rights-based framing to protect children from the harmful impact of food marketing strongly supports regulatory action to restrict marketing through the Convention on the Rights of the Child, ratified by all countries in the Region.

Recommendations for the WHO Secretariat

- 1) Revise the background document “Protecting Children from the Harmful Impact of Food Marketing” with the following recommended changes:
 - a) Strengthen the rights-based framing by highlighting how protecting children from food marketing is protecting the health of the next generation and thus securing the future of Member States.
 - b) Emphasize how restricting food marketing is an indispensable component of a comprehensive package to reduce malnutrition in all its forms (Sustainable Development Goal target 2.2).
 - c) Further explore the economic costs of unhealthy diets, including the economic burden of not breastfeeding, and the increasing economic burden of noncommunicable diseases.
 - d) Place stronger emphasis on regulatory action in light of growing evidence that voluntary pledges are ineffective.
 - e) Share examples from other countries that have taken regulatory action towards successfully restricting food marketing and highlight key attributes of the process.
- 2) Conduct virtual consultations with Member States to obtain their input to the background document (between 29 May and 22 June 2017).
- 3) Finalize the background document (end of June 2017).

1. INTRODUCTION

1.1 Meeting organization

On 9–10 May 2017, the WHO Regional Office for the Western Pacific convened the Experts Consultation on the Background Document on Protecting Children from the Harmful Impact of Food Marketing.

1.2 Meeting objectives

The objective of the consultation was to provide technical inputs to the working background document “Protecting Children from the Harmful Impact of Food Marketing”.

2. PROCEEDINGS

2.1 Opening session

The consultation was opened by Dr Susan Mercado, Director, Division of Noncommunicable Diseases (NCD) and Health through the Life-Course, WHO Regional Office for the Western Pacific on behalf of Dr Shin Young-soo, WHO Regional Director for the Western Pacific.

Dr Mercado welcomed participants to Manila and highlighted the importance of doing more to address the harmful impact of marketing of food to children and of breast-milk substitutes to caregivers. She highlighted the politically sensitive nature of the subject and the potential need for a variegated approach, from voluntary pledges to regulation. Dr Mercado added that, as one of six agenda items at the upcoming session of the WHO Regional Committee for the Western Pacific, the document would need to attract the Regional Committee’s attention to the issue of food marketing to and for children.

Dr Katrin Engelhardt, Technical Lead, Nutrition, WHO Regional Office for the Western Pacific, presented an overview of the experts consultation. The objective of the two-day meeting was to obtain technical inputs on the background document on protecting children from the harmful impact of food marketing, including on the framing of the document, the inclusion of food products, evidence on the harmful impact of food marketing, roles of the government and promising actions.

Only four countries in the Region are fully implementing the *International Code of Marketing of Breast-milk Substitutes*, and only one country has taken regulatory action to restrict food marketing to children. Food marketing remains a challenging area for countries in the Region and for WHO.

2.2 Session on country presentations

The objective of this session was to learn from country action to regulate food marketing to and for children. Experiences from Chile, the Republic of Korea, China, Hong Kong SAR (China), New Zealand and Australia were shared.

2.2.1 Chile: Law on food labelling and advertisement

Dr Lorena Rodriguez, Chief, Department of Nutrition and Food, Ministry of Health, Chile

Obesity rates in Chile are among the highest in the world, and studies show that 1 in every 11 deaths in Chile is attributable to overweight and obesity. In 2011, 27.1% of girls and 28.6% of boys aged 5–17 years were obese, and more than 50% of the population is overweight. Chile is the largest consumer of sugar-sweetened beverages globally, and few people have a diet in line with national dietary guidelines.

In collaboration with researchers, the food environment was assessed to identify areas where policies could have a positive impact. Realizing the importance of so-called structural strategies and changes to the food environment to enable healthy decisions, the Government proposed several actions to tackle obesity, including regulatory measures to protect breastfeeding (implementation of the *International Code of Marketing of Breast-milk Substitutes*), regulating marketing of foods and non-alcoholic beverages to children (building on the *WHO Set of Recommendations on the Marketing of Food and Non-alcoholic Beverages to Children*), implementing warning labels on the front of pre-packaged foods, and restricting the sale and marketing of unhealthy foods in schools. A food classification system was developed to determine which foods are “unhealthy” and for which marketing should be banned by establishing thresholds for calories, saturated fats, sugar and salt. Challenges arose when defining the thresholds. Chilean academics proposed that natural foods should provide the baseline values, which was met with opposition from the private sector. As a compromise, it was decided not to use the phrase “processed foods” but rather “added ingredients” to foods.

Chile’s law on nutritional composition of food and food advertising (Law 20.606), also known as Super 8 Law, was passed in June 2015 and entered into force in June 2016. The definition of advertising in the Chilean law is comprehensive and includes “all forms of promotion, communication, recommendation, propaganda, information or action aimed to promote the consumption of a certain product” (Art. 106, 34). Chile’s law reduces the exposure and power of food marketing: exposure by banning marketing in schools, cinemas, on road signs, during events, on television (including cable TV), radio, newspapers, magazines, road signs, and through websites and social media (including Facebook and YouTube); and power of food marketing by banning all marketing directed at children under 14 years that uses children’s characters, figures, music, voices, and expressions, cartoons, toys, animals or persons attractive to children, fanciful arguments and other elements of children’s everyday life. The law also bans the use of contests, memberships, gifts, reward systems, events and games to market food. However, the ban only covers marketing of products directly to children, such as meal sets with toys. Industry can market their brand or other kinds of food not specifically aimed at children as long as the levels of sugar, salt, fats and calories are below the established thresholds.

Regarding school food marketing, the law bans all forms of marketing of foods that fall over the set nutrient thresholds within nurseries, primary and secondary schools. Recognizing that food labelling is used as a form of food marketing, the law also includes warning labels on the front of packages.

Monitoring and enforcement of the law are carried out by both regional and national public health authorities. Inspections are conducted on-site and online, with much focus on supermarkets and food kiosks. After more than 2000 inspections, compliance with the law is improving, rising from under 40% to over 60%. Penalties depend on the number and gravity of violations.

Evaluation of the law is currently ongoing, showing initial wide recognition and support by the population.

2.2.2 Republic of Korea: Special Act on the Safety Management of Children's Dietary Life

Dr Cho-il Kim, Director General, Korea Health Industry Development Institute, Republic of Korea

The Special Act on the Safety Management of Children's Dietary Life was developed in response to an increase in child obesity due to overnutrition and lack of physical activity, and as a measure to ensure food and nutrition safety for children. The grounding activity for the Special Act was initiated in 2006 with a government task force including industry and academia, and the Act came into effect in 2009. The Special Act was the first to deal with children's food environment, and the first to deal with overnutrition – undernutrition has traditionally been the focus of nutrition interventions in the Republic of Korea.

There are five main parts of the Special Act: management of children's favourite foods; nutrition labelling in restaurants; designation and management of children's food safety and protection zones (green food zones); children's food service management support centres; and restrictions on advertising. The Special Act imposes a partial restriction on or prohibition of advertising of energy-dense, nutrient-poor foods and foods high in caffeine. There was objection to the restriction of advertising within Government, with the argument that it would hurt the national economy. As a result, the Ministry of Health and Welfare and Korea Food and Drug Administration (now Ministry of Food and Drug Safety) then settled for a partial limit on advertising, prohibiting advertisements of energy-dense, nutrient-poor foods on television between 17:00 and 19:00 for three years (referred to as the Sunset Rule). Food advertisements on radio, television and the Internet offering free toys are also restricted.

The Special Act is monitored and enforced by the Ministry of Food and Drug Safety and local/regional governments. Penalties for violations include fines and imprisonment up to three years. Monitoring and enforcement are time and labour consuming, and it remains difficult to obtain support from other ministries. The Ministry of Food and Drug Safety is planning to extend the Sunset Rule until January 2021.

With regard to marketing of foods for infants and young children, the little-known Livestock Products Sanitary Control Act of 1992 restricts marketing of breast-milk substitutes for

infants 0–12 months. The Food Sanitation Act does not restrict marketing of baby foods for infants and young children up to 36 months, but specifically prohibits the use of cross-promotion between breast-milk substitutes and baby foods.

2.2.3 China: Advertisement Law

Dr Jixiang Ma, Deputy Director, National Centre for Chronic and Communicable Disease Control and Prevention (China CDC), China

Only 18.9% of infants in China are exclusively breastfed the first six months of life. Studies from China have revealed that five factors are positively linked to breastfeeding rates: low income level, low maternal education level, advanced maternal age, if the infant is born into a multi-child family and rural location.

China's law on maternal and child health, promulgated in 1994 and implemented in 1995, was the country's first law to protect the health of women and children. The Law stipulates compulsory maternal and child health care, provision of breastfeeding guidance by health-care institutions, labelling on breast-milk substitutes about the superiority of breastfeeding, and restriction of marketing of breast-milk substitutes. China also has other policies dealing with breastfeeding, namely the Food and Nutrition Development Outline for China (2014–2020), which seeks to advocate breastfeeding, bring attention to complementary feeding and nutritional supplements, and strengthen the quality of breast-milk substitutes and infant food, as well as the Children Development Outline in China (2011–2020). The Advertisement Law of the People's Republic of China prohibits advertisements of infant dairy products in mass media or in public places which claim to substitute for breast-milk fully or partially (Article 20). The Chinese advertising review agency may issue fines and revoke business licenses if the law is violated.

Another challenge also in China is the increasing consumption of sugar-sweetened beverages.

2.2.4 Hong Kong SAR (China): Voluntary code

Dr Ka Wai Rita Ho, Principal Medical and Health Officer (Family Health Service), Department of Health, Hong Kong SAR (China)

The development of the voluntary code on marketing of breast-milk substitutes in Hong Kong SAR (China) began in 2010 when a task force was set up. In late 2012 to early 2013, a four-month public consultation was conducted, and the findings were reported to the Legislative Council. In late 2015, requirements on nutritional composition and nutrition labelling of infant formula came into operation, followed by requirements on nutrient labelling of follow-up formula and pre-packaged foods for infants and young children in 2016. The new requirements are amendments to the Food and Drugs (Composition and Labelling) (No. 2) Regulation 2014. The Government is deliberating the way forward for nutrition and health claims for breast-milk substitutes and foods for infants and young children under 36 months of age.

There were several challenges to the development of the voluntary code, including lack of support from local stakeholders, lack of consensus on covered age and definition of breast-milk substitutes, lack of common international practice on restrictions of food marketing

among countries with a social/economic status similar to Hong Kong SAR (China), lack of comprehensive strategies in promoting and protecting breastfeeding, and having to comply with local legislative frameworks such as the Competition Ordinance.

A facilitating factor in the development process was the formation of a Committee on Promotion of Breastfeeding in April 2014. It was set up under the Food and Health Bureau, is chaired by the Under Secretary for Food and Health, and aims to provide advice on strategies and action plans to further protect, promote and support breastfeeding and to oversee their effective implementation. The Committee is comprised of representatives of health-care professionals, academia, breastfeeding advocates, nongovernmental organizations (NGOs) and the relevant government department. The voluntary code is an integral part of a comprehensive strategy to protect, promote and support breastfeeding. In addition to the national code, a series of multifaceted measures have been implemented in phases: to strengthen professional support for breastfeeding in health-care facilities; to strengthen the public's acceptance and support of breastfeeding; to support working mothers to sustain breastfeeding by encouraging the community to adopt breastfeeding-friendly workplace policies; to promote and support breastfeeding in public places through promotion of breastfeeding-friendly premises and provision of infant care facilities; and to strengthen the surveillance on local breastfeeding rates.

Hong Kong SAR (China) is currently finalizing its voluntary code and plans to launch it in mid-2017 under the title Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants and Young Children. The Government plans to collaborate with relevant NGOs and academia to conduct surveys to evaluate the code's overall effectiveness, which will be reported to the Committee on Promotion of Breastfeeding.

2.2.5 New Zealand: Food marketing

Dr Louise Signal, Associate Professor, Department of Public Health, University of Otago, New Zealand

New Zealand has a voluntary code (self-regulation) on marketing of breast-milk substitutes for infants up until 6 months of age. Marketing of follow-on milk products is allowed because they are not defined as breast-milk substitutes. The process for making complaints is difficult to understand and there are only 10–12 complaints per year. New Zealand is a large exporter of breast-milk substitutes, especially to China, making the formula industry a significant contributor to the national economy. There are currently no plans to make any changes to the voluntary code.

Marketing of food and beverages to children has a voluntary industry self-regulatory code that was recently reviewed. The code covers children up to 14 years of age with a special duty of care up to 18 years of age, and is monitored by the New Zealand Advertising Standards Authority. A major weakness is that the code does not include marketing on product packaging and sponsorship, which are major methods of food marketing in New Zealand. Seventy-four public health and nutrition academics recently evaluated the changes and concluded that the proposed code largely represents little change, and cannot be expected to provide substantial protection for children and young people from the marketing of

unhealthy foods. They concluded that government regulations will be needed to achieve this. This conclusion is borne out by recent research on the exposure to food marketing from the children's perspective in a study entitled Kids'Cam. This innovative real-time study found that children were exposed to food marketing on multiple occasions per day including in public places and school. The marketing was primarily of energy-dense nutrient-poor foods and drinks.

2.2.6 Australia: Voluntary pledge of the food industry

Dr Rebecca Freeman, Senior Lecturer/NHMRC Early Career Research Fellow, University of Sydney, Australia

Australia has two voluntary codes on food marketing: Responsible Children's Marketing Initiative (RCMI) and Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (QSRI). Both have been developed by the Australian Food and Grocery Council. The codes aim to reduce marketing to children for food and drinks that are not healthier choices, to use marketing to children to promote healthy eating and lifestyles, and to provide parents with a means to raise concerns about marketing to children.

However, the voluntary codes have several limitations both with regard to their scope and implementation. The codes only cover advertising and programmes aimed directly at children for which the definition is very narrow. The Advertising Standards Bureau (ASB) defines "aimed directly at children" only as programmes for which the audience is more than 50% children or which are clearly directed in the first instance to children. As a result, television programmes watched by the highest number of children (which are shown in evening viewing periods), and advertisements featuring children and child-based activities are not covered by the voluntary codes. Another limitation is that the voluntary codes do not cover all forms of marketing (e.g. marketing on digital media, point-of-sale promotion, brand advertising and promotions on product packaging) and do not apply to children older than 11 (RCMI) and 13 (QSRI) years of age. Therefore, teenagers, who are the biggest consumers of sugar-sweetened beverages and fast foods, are not covered by these voluntary codes – at a time where teenage obesity rates are rising significantly. The voluntary codes also do not apply to all food marketers – only those who have voluntarily signed up to the initiatives.

The voluntary codes allow for companies to use their own nutrient profile models to determine which of their products may be marketed to children. The nutrition criteria are generally complex, confusing, weak and with high thresholds for sugar, salt, fat and energy content. This allows for marketing of most food products to children regardless of health profile. In addition, companies' own restriction based on nutrient content only applies to children's meals.

With regard to monitoring and enforcement of the codes, the system relies entirely on complaints from the public to identify breaches. ASB has no power to impose sanctions on marketers violating the voluntary codes and can only request marketers to modify or withdraw advertisements. This means there are no effective deterrents against breaching the voluntary codes.

There is no evidence of a significant reduction in the level of children's exposure to food advertising on free-to-air television since the codes were introduced. In summary, Australia's self-regulatory system governing food and beverage marketing to children is not consistent with the WHO *Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children*. Self-regulation is currently incapable of sufficiently protecting children because marketers lack incentive to develop, comply with or enforce restrictions.

2.2.7 Plenary discussion

The experts were encouraged by the Chilean experience and its success with adopting statutory food marketing regulations. The need for a solid evidence base and consultation with relevant stakeholders was emphasized as vital for the development and effectiveness of any measure to restrict or regulate food marketing to children.

Another focus of the discussion was the need to acknowledge how it might take several years for countries to draft and adopt any voluntary or statutory measures to restrict food marketing. For example, initiatives to restrict food marketing could in some areas learn from or be compared with the process of developing the Framework Convention on Tobacco Control (FCTC) in 2005. Even with a solid evidence base and increased allocated financial and human resources, it has taken years for countries to integrate the FCTC into national legislation. Also, there is one very important distinction to be made if or when comparing regulation of food marketing to tobacco control: food is a basic human need and tobacco is not.

2.3 Session on introduction to the background document on protecting children from the harmful impact of food marketing

Dr Katrin Engelhardt, Technical Lead, Nutrition, Division of NCD and Health through the Life-Course, WHO Regional Office for the Western Pacific

The purpose of the background document is to create awareness and highlight the growing evidence of the harmful impact of food marketing; call for food marketing restrictions to and for children aged 0–18 years; increase recognition that regulatory actions are needed (rather than voluntary, industry-led pledges); highlight the role of government including the current status of policy implementation and promising actions; and propose next steps to develop a regional action plan. The primary audience of the background documents is the delegates to the session of the WHO Regional Committee for the Western Pacific in October 2017.

The document at the time of the experts consultation is composed of six chapters: (1) Children's rights matter, (2) Nutrition situation in the Region, (3) A closer look at food marketing, (4) The role of government in protecting children, (5) Policy implementation and promising action, and (6) Preparing for a regional action plan to protect children. The document combines a right-based approach with a risk-based approach.

2.3.1 Summary of inputs to the overall structure, content and framing of the document

The objective of this session was to obtain inputs to the approach of combining marketing of breast-milk substitutes and food and non-alcoholic beverages into one document, as well as

inputs on the framing of the document. Experts divided into two groups and reported back in plenary.

Participants called for caution if or when combining breast-milk substitutes and food and non-alcoholic beverages as the policy response differs between these two areas. Overall, the approach was supported. It was suggested to start with a joint narrative but to separate when necessary (i.e. when discussing the scope of policies or evidence on the impact of marketing). The reason for this novel approach in addressing all food marketing to and for children under the same heading should be made clearer through a stronger narrative and figure/text revisions. It was recommended to strengthen the rights-based framing by highlighting how protecting children from food marketing is protecting the health of the next generation and thus securing the future of Member States.

It was agreed that the background document should take a realistic outlook, showing promising starts in some countries but also addressing the challenges. At the same time, however, it was strongly recommended that the background document should not present voluntary action to restrict food marketing as an option equal to that of regulatory action, based on the lack of evidence that voluntary measures are effective in decreasing the power, exposure and subsequent impact of food marketing.

It was suggested to make reference to the Health in All Policies (HiAP) approach. It was further recommended that the Sustainable Development Goals (SDGs) be referenced and/or used as a cross-cutting theme of the background document, arguing that unregulated food marketing is a barrier to achieving the SDGs by 2030, more specifically SDG2 to end all forms of malnutrition.

The need for careful consideration of language was highlighted, specifically to avoid using language adding informative value to marketing. It was suggested to distinguish between the terms *deceptive*, *misleading* and *persuasive* marketing. A definition of commercial determinants, further discussions of the role of commercial determinants and the importance of complementary foods were requested in Chapter 1.

2.4 Session on food marketing

Dr Katrin Engelhardt, Technical Lead, Nutrition, Division of NCD and Health through the Life-Course, WHO Regional Office for the Western Pacific

The purpose of chapter 3 is to create awareness about the harmful impact of food marketing, highlighting the growing evidence on breast-milk substitutes, complementary foods (that are not considered breast-milk substitutes), and food and non-alcoholic beverages. The chapter also discusses the similarities and differences in marketing of these foods. It comprises definitions of food marketing, and the three most common forms of marketing: advertisements, promotions and sponsorships. The definitions are based on Article 13 in the WHO FCTC.

2.4.1 Presentation on the power of marketing

Dr Lesley King (remote connection), Executive Officer & Adjunct Associate Professor, Prevention Research Collaboration, Sydney School of Public Health, University of Sydney, Australia

Marketing is designed to increase the recognition, appeal and consumption of particular products and services by exposing target groups repeatedly, reaching large proportions of the population or target group, and using persuasive messages. Persuasive techniques include emotional appeals, food product appeals, visual elements and audio elements. Children lack the developmental capacity to identify the advertisers' persuasive content. Even when they understand intent to sell, they may not realize intent to persuade.

Studies give insights into the frequent use of a wide range of marketing techniques designed to appeal to children, in advertising on television, on outdoor posters and through sports sponsorship, for example. A number of these studies have been conducted in Asia and the Pacific, including Australia, Indonesia, Malaysia, Mongolia, the Republic of Korea and Singapore. Addressing this wide range of techniques is complex, and many regulatory initiatives and policy guidelines tend to have simple content specifications, focusing on common techniques such as the use of promotional characters and premium offers. For example, the Quebec Consumer Protection Act (section 248 and 249) takes a more comprehensive approach, by regulating the marketing to children under 13 years on the basis of advertising content (e.g. if the message of an advertisement is designed to attract the attention of children).

2.4.2 Presentation on measuring marketing exposure (FNAB)

Dr Bridget Kelly (remote connection), Senior Lecturer in Public Health, Module Lead, Food Promotion (INFORMAS), University of Wollongong, Australia

Monitoring data is important to identify the extent of children's exposure to food promotions and the need for policy interventions, to inform policy specifications, and to evaluate the impact of any policy intervention. Monitoring activities should focus on aspects of marketing that guide policy development. For example, INFORMAS (International Network for Food and Obesity/NCD Research, Monitoring and Action Support) is a global network of public interest organizations and researchers that aims to monitor, benchmark and support public and private sector actions to create healthy food environments and reduce obesity and NCDs.

As a special case, monitoring food marketing on new media poses several difficulties, including the multitude of social media platforms and the continuous evolvement of new trends and the difficulty for research and policy to keep up. There are four different approaches for monitoring social media marketing: systematic assessment, partial assessment, indicative assessment and case study reports. Monitoring is essential for increasing the accountability of industry for responsible marketing and of governments for protecting children from its harmful effects.

2.4.3 Plenary discussion

The experts were supportive of the definition of marketing used in the background document, as well as the definitions of advertisement, promotion and sponsorship. It was suggested to include more evidence on both the power and exposure of marketing of breast-milk substitutes and food and non-alcoholic beverages to children - additional studies and articles were referenced in the discussion.

With regard to discussing the target group of food marketing, it was recommended to use a more inclusive definition and broaden the current definition from ‘caregivers (of infants and young children) and children’, to for example teachers and community leaders, or anyone who may have an influence on what children consume.

The plenary discussion also focused on the importance of measuring the power and exposure of marketing, as the impact of marketing is more difficult to measure. Short term impacts that are indeed measurable are food preference, choice and consumption patterns. These can be used as in turn proxies for obesity, NCDs and premature mortality. Acknowledging that these long-term impacts are more difficult to measure, it should be made clear that there is a chain of causality regarding the harmful impact of food marketing.

2.5 Session on the role of government in protecting children from the harmful impact of food marketing

The purpose of chapter 4 is to describe the role of the government, including the ministry of health, taking a leadership role, defining the regulatory approach and the content of the regulation, and facilitating monitoring and enforcement of the marketing regulation put in place. Other key actions to consider are the collaboration within government (including at the subnational level) and collaboration outside government (which would require mechanisms to safeguard against industry interference and conflicts of interests).

The purpose of chapter 5 is to highlight promising action taken by WHO Member States, both within the Western Pacific Region and at the global level. Country examples included were from Chile and the Republic of Korea.

2.5.1 Address to the participants

Dr Shin Young-soo, WHO Regional Director for the Western Pacific

Recent visits to Member States in the Region have set off concern over the rise in obesity and NCDs at a time when several countries are still fighting undernutrition. Foods high in salt, sugar and fat are heavily marketed to children. Marketing to and for children is especially problematic because children may not have the cognitive ability to understand its persuasive intent. Progress on implementing the *International Code of Marketing of Breast-milk Substitutes* adopted in 1981 and the *WHO Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children*, endorsed by the World Health Assembly in 2010, has been slow, and food marketing remains a challenging area. WHO is grateful to the experts for their valuable inputs to the draft background document, which may be an

important first step to strengthen measures to protect children from the harmful impact of food marketing, and to tackle the double burden of malnutrition in the Region.

2.5.2 Presentation on experience with enforcement mechanisms on the International Code of Marketing of Breast-milk Substitutes

Mr David Clark, Legal Adviser, United Nations Children's Fund

A woman should be able to make an informed choice about infant feeding, which means that society has an obligation to protect pregnant and lactating mothers from any influences that could disrupt breastfeeding. A total of 135 countries have adopted some legal measure on the Code, but most need to be further strengthened. Also, increased attention should be given to the areas of monitoring and enforcement of the Code which are currently very weak. Challenges to Code implementation, monitoring and enforcement include lack of political will, absence of coordination among stakeholders, continued interference from manufacturers and distributors of breast-milk substitutes in government efforts to initiate or strengthen Code monitoring and enforcement, lack of sufficient data and expertise on Code-related matters, and limited national and international human and financial resources.

Trade is an important issue when discussing restrictions or regulations of food marketing. For example, a recent National Trade Estimate Report by the Office of the United States Trade Representative has identified actions taken by Hong Kong SAR (China), Malaysia and Thailand to restrict marketing of breast-milk substitutes as significant trade barriers. The report also points to Chile and Peru for new policies to reduce childhood obesity by restricting marketing of foods high in sugar, salt and fat. However, in all trade regimes, there should be space for public interest laws to meet legitimate health objectives when they are founded on internationally adopted standards and recommendations such as the Code and subsequent relevant World Health Assembly resolutions. UNICEF has compiled a list of 42 countries with Code legislation, all of whom are members of the World Trade Organization (WTO) and thus signatories to the Technical Barriers to Trade (TBT), Sanitary and Phytosanitary (SPS) and Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreements. None of the 42 countries has been challenged on the basis of creating barriers to trade.

Recommendations for actions to strengthen formal Code monitoring and enforcement mechanisms include incorporating funding for monitoring bodies and their activities into relevant national budgeting processes, to avoid dependence on external funding and ensure sustainability, and to increase capacity for monitoring at subnational levels. The establishment of a sustainable monitoring mechanism requires finding answers to the following questions: who monitors, with what authority, with what resources, to whom violations should be reported, who adjudicates, what sanctions are available, and what guidance is needed. Furthermore, parliamentarians must be sensitized to the importance of Code monitoring and enforcement, and to their specific roles and responsibilities, including legislating for the Code, budgetary review, approval and oversight, and political advocacy with constituents. It is further recommended to strengthen partnerships to provide technical

and legal assistance to countries, and to strengthen collaboration among UN agencies, civil society organizations and other relevant partners, while avoiding conflicts of interest.

2.5.3 Presentation on trade and health: implications for marketing restrictions

Ms Anna Garsia, Consultant, Prevention of Noncommunicable Diseases Department, WHO headquarters

There have been widespread restrictions on all three types of tobacco marketing (advertising, promotion and sponsorship) in accordance with Article 13 of the WHO FCTC and the relevant implementation guidelines adopted by the Conference of the Parties to the Convention. International trade agreements have generally not been used to challenge most tobacco marketing restrictions, except for packaging requirements. Two cases involving challenges to packaging requirements were Uruguay's single presentation requirement for tobacco brands (which allows only one variant per brand family to be offered for sale) and Australia's tobacco plain packaging legislation.

Existing trade and investment obligations – that is, WTO law and International Investment Agreements (IIAs) – may be relevant to the process of developing and implementing food marketing restrictions or regulations. For example, mandatory packaging and labelling requirements on tobacco food, beverages or breast-milk substitutes are often technical regulations that fall under the TBT Agreement. Among other things, the TBT Agreement prohibits discrimination against imported products as compared to like domestic products (Article 2.1) and also prohibits technical regulations that are more trade restrictive than necessary to achieve a legitimate objective (Article 2.2). Thus, a country's obligations under the TBT Agreement are important to take into account, including from the outset of the policy process when framing the objectives of any policy to restrict or regulate food marketing to children. A number of measures that might constitute so-called marketing restrictions have been the subject of discussion at the TBT Committee. However, there has not yet been a dispute initiated in relation to these policies.

It may be useful to learn from the experience of litigation over tobacco packaging and labelling measures. The tobacco industry has strongly opposed packaging and labelling measures, often on the basis of the impact these measures have on their intellectual property rights. The measures have been challenged in many domestic jurisdictions and have been the subject of disputes under WTO agreements and IIAs (more specifically bilateral investment treaties). The tobacco industry has also asserted that the measures are in violation of trade and investment agreements in opposing measures in private lobbying and during public consultations.

2.5.4 Summary of inputs to the role of governments in protecting children from the harmful impact of marketing

Overall, it was suggested to combine Chapters 4 and 5 and to add specific guidelines or advice that governments could follow on how to implement marketing regulations and/or be more specific on actions that need to be taken – both within and outside of government. This could take the form of a road map that is linked to real examples from countries or based on a

case study. Issues that could be highlighted in the road map include knowing/understanding the legislative base, mapping relevant stakeholders (e.g. parliamentarians, packing and design experts, and health professionals), knowing/understanding trade agreements, having national dietary guidelines and/or a food classification system in place, building an evidence base, and being aware of conflicts of interest and industry interference in policy development and implementation. Another recommendation was to focus on a few detailed examples of promising experiences rather than including numerous examples. In particular, Chile was highlighted as a potential case study.

There was broad consensus on deleting a table in Chapter 4 highlighting strengths and weaknesses between different regulatory approaches, namely laws and regulations, co-regulatory schemes, self-regulatory schemes, and voluntary actions. The background document should be unambiguous in its message about how legally enforceable measures are the only approach that works to regulate marketing. It should at the same time avoid presenting voluntary regulation as an option for countries. It was suggested to have clear guidelines for engagement with the private sector to avoid conflicts of interest and be prepared for possible interference in the policy-making process. Governments are increasingly requesting clear guidance on engagement with non-state actors, specifically also with the private sector, as for the WHO FCTC. Furthermore, it was suggested to emphasize that public health objectives may be used to override trade concerns and intellectual property law – an argument that Chile used to pass its regulation on food marketing to children. In addition to guidelines on avoiding conflicts of interest and industry interference, it is possible that countries request legal capacity from WHO on this matter.

2.6 Session on inputs to a possible draft resolution

A draft resolution may be proposed to support the background document on protecting children from the harmful impact of food marketing.

2.6.1 Summary of inputs to a possible draft resolution

Moderator: Dr Ki-Hyun Hahm, Technical Officer, Health Law and Ethics, Division of Health Systems, WHO Regional Office for the Western Pacific

The experts recommended that the preambulatory clauses of a possible draft resolution include a number of World Health Assembly resolutions on marketing breast-milk substitutes, promotion of foods for infants and young children, and marketing of food and non-alcoholic beverages to children, as well as several global strategies and declarations to tackle the double burden of malnutrition. A possible draft resolution might apply the same children's rights approach as the background document, and likewise highlight the growing evidence of the harmful impact of food marketing to and for children. It was further suggested to place more emphasis on the health risks of the current situation – that is, not restricting food marketing to and for children. The experts recommended referring to economic costs for the long-term harmful impact of food marketing, including cost to households, cost to health systems to treat malnutrition, and cost for society of disability and premature mortality. With regard to acknowledging the importance in a possible draft resolution of engaging with all

relevant stakeholders, it was suggested to borrow language from Article 5.3 in the WHO FCTC to avoid industry interference and conflicts of interest.

Actions points proposed for Member States could be to accelerate action on protecting children from the harmful impact of marketing through enforceable legal frameworks, while taking into account existing legislation and policies, as well global mandates for children's nutrition and international obligations on children's rights.

2.7 Closing session

Dr Katrin Engelhardt closed the experts consultation on behalf of WHO. She thanked WHO headquarters for their presence and support as well as all experts for their active participation and contributions. WHO will revise the background document based on inputs from the experts and continue to work with Member States to strengthen measures to regulate food marketing to and for children.

3. CONCLUSIONS AND RECOMMENDATIONS

3.1 Conclusions

- 1) The background document was welcomed and its overall structure and focus supported.
- 2) In view of increasing evidence on the harmful impact of food marketing on children, and realizing that virtually all food marketing in the Region is for unhealthy foods, accelerating and/or initiating action to restrict food marketing was agreed as an essential intervention to reduce malnutrition in all its forms.
- 3) Experts affirmed the value of discussing all foods that children may consume (including breast-milk substitutes and foods and non-alcoholic beverages), recognizing the commonalities in marketing techniques, channels and their impact on health.
- 4) The rights-based framing to protect children from the harmful impact of food marketing strongly supports regulatory action to restrict marketing through the Convention on the Rights of the Child, ratified by all countries in the Region.

3.2 Recommendations for WHO

The experts consultation recommended WHO to do the following:

- 1) Revise the background document "Protecting Children from the Harmful Impact of Food Marketing" with the following changes:
 - a. Strengthen the rights-based framing by highlighting how protecting children from food marketing is protecting the health of the next generation and thus securing the future of Member States.

- b. Emphasize how restricting food marketing is an indispensable component of a comprehensive package to reduce malnutrition in all its forms (Sustainable Development Goal target 2.2).
 - c. Further explore the economic costs of unhealthy diets, including the economic burden of not breastfeeding, and the increasing economic burden of NCDs.
 - d. Place stronger emphasis on regulatory action in light of growing evidence that voluntary pledges are ineffective.
 - e. Share examples from other countries that have taken regulatory action towards successfully restricting food marketing and highlight key attributes of the process.
- 2) Conduct virtual consultations with Member States to obtain their input to the background document (between 29 May and 22 June 2017).
 - 3) Finalize the background document (end of June 2017).

ANNEX 1. LIST OF TEMPORARY ADVISERS AND SECRETARIAT**1. PARTICIPANTS**

Mr David Clark, Legal Adviser, United Nations Children's Fund, UNICEF House, 3 United Nations Plaza, New York, New York 10017, United States of America, Tel. No.: 1212-326-7000, E-mail: dclark@unicef.org.

Dr Rebecca Freeman, Senior Lecturer/NHMRC Early Career Research Fellow, The University of Sydney, Level 6, CPC 2006, Sydney, Australia, Tel. No.: 614-2468-4548, E-mail: becky.freeman@sydney.edu.au.

Ms Anita George, Senior Legal Policy Advisor, Cancer Council Victoria, 615 St Kilda Road, Melbourne Vic 3004, Australia, Tel. No.: 9514-6338, E-mail: anita.george@cancervic.org.au.

Dr Ka Wai Rita Ho, Principal Medical and Health Officer (Family Health Service), Department of Health, 21/F Wu Chung House, 213 Queen's Road, Hong Kong, Hong Kong, Tel. No.: 852-3796-0888, E-mail: rita_ho@dh.gov.hk.

Dr Bridget Kelly (via Skype), Senior Lecturer in Public Health, Module Lead, Food Promotion (INFORMAS), University of Wollongong, Northfields Ave, Wollongong NSW 2522, Australia, Tel. No.: 612-4221-3893, E-mail: bkelly@uow.edu.au.

Dr Cho-il Kim, Invited Research Fellow, Korea Health Industry Development Institute, 187 Osongsaengmyeong-2-ro, Osong-eup, Cheongju, Chungbuk 28159, Republic of Korea, Tel. No.: 8243-713-8611, Fax No.: 8243-713-8907, E-mail: kimci@khidi.or.kr.

Dr Lesley King (via Skype), Executive Officer & Adjunct Associate Professor, Prevention Research Collaboration (PRC), Sydney School of Public Health, The University of Sydney, Level 6, The Hub, D17, Charles Perkins Centre, The University of Sydney, New South Wales 2006, Australia, Tel. No.: 61-418-648-629, E-mail: lesley.king@sydney.edu.au.

Dr Jixiang Ma, Deputy Director, National Center for Chronic and Communicable Disease Control and Prevention (China CDC), No. 27 Nanwei Road, Xicheng District, Beijing, China, Tel. No.: 8610-6313-1779, Fax No.: 8610-6304-2350, E-mail: majix@163.com.

Mr Roger Mathisen, Program Director, Alive & Thrive Southeast Asia, FHI 360, Ly Thuong Kiet, Hanoi, Viet Nam, Tel. No.: 8416-5409-8380, E-mail: rmathisen@fhi360.org.

Dr Lorena Cecilia Rodriguez Osiac, Head, Nutrition and Food Department, Ministry of Health, Mac Iver 54A, Comuna, Santiago, Chile, Tel. No.: 562-2574-0474, E-mail: lorena.rodriquez@minsal.cl.

Dr Louise Signal, Associate Professor, Department of Public Health, University of Otago, 23A Mein Street, Newton 6242, New Zealand, Tel. No.: 64-385-5541 ext 6477, E-mail: louise.signal@otago.ac.nz.

2. SECRETARIAT

Dr Susan Mercado, Director, Division of NCD and Health through the Life-course, WHO Regional Office for the Western Pacific, 1000 Manila, Philippines, Tel. No.: 632-528-9852, Fax No.: 632-521-1036, E-mail: mercados@who.int.

Dr Katrin Engelhardt (Responsible Officer), Technical Lead, Nutrition, Division of NCD and Health through the Life-course, WHO Regional Office for the Western Pacific, 1000 Manila, Philippines, Tel. No.: 632-528-9093, Fax No.: 632-521-1036, E-mail: engelhardtk@who.int.

Dr Howard Sobel, Coordinator, Reproductive, Maternal, Newborn, Child and Adolescent Health, Division of NCD and Health through the Life-course, WHO Regional Office for the Western Pacific, 1000 Manila, Philippines, Tel. No.: 632-528-9868, Fax No.: 632-521-1036, E-mail: sobelh@who.int.

Dr Ki-Hyun Hahm, Technical Officer, Health Law and Ethics, Division of Health Systems, WHO Regional Office for the Western Pacific, 1000 Manila, Philippines, Tel. No.: 632-528-9826, Fax No.: 632-521-1036, E-mail: hahmk@who.int.

Mr Peter Souza Hoejskov, Technical Officer, Food Safety, Division of Health Security and Emergencies, WHO Regional Office for the Western Pacific, 1000 Manila, Philippines, Tel. No.: 632-528-9914, Fax No.: 632-521-1036, E-mail: hoejskovp@who.int.

Dr James Salisi, Consultant, Nutrition, Division of NCD and Health through the Life-course, WHO Regional Office for the Western Pacific, 1000 Manila, Philippines, Tel. No.: 632-528-9095, Fax No.: 632-521-1036, E-mail: salisij@who.int.

Ms Dorit Erichsen, Consultant, Nutrition, Division of NCD and Health through the Life-course, WHO Regional Office for the Western Pacific, 1000 Manila, Philippines, Tel. No.: 632-528-9867, Fax No.: 632-521-1036, E-mail: erichsend@who.int.

Dr Temo Waqanivalu, Programme Officer, Surveillance and Population-based Prevention, Department for Prevention of Noncommunicable Diseases, World Health Organization, Avenue Appia 20, CH-1211 Geneva 27, Switzerland, Tel. No.: 41-22-791-2617, E-mail: waqanivalut@who.int.

Ms Anna Frances Garsia, Consultant, Prevention of Noncommunicable Diseases, Department of Noncommunicable Diseases and Mental Health, World Health Organization, Avenue Appia 20, CH-1211 Geneva 27, Switzerland, Tel. No.: 4122-791-3474, E-mail: garsiaa@who.int.

ANNEX 2. MEETING PROGRAMME

DAY 1 - Tuesday, 9 May 2017

09:00–10:00 **Opening ceremony**

Welcome remarks

Dr Susan Mercado, Director, Division of Noncommunicable Diseases and Health through the Life-course, on behalf of Dr Shin Young-soo, Regional Director for the Western Pacific

Introduction by the participants

Background and objectives of the meeting

Dr Katrin Engelhardt, Technical Lead, Nutrition, Division of Noncommunicable Diseases and Health through the Life-course, WHO Regional Office for the Western Pacific

10:00–10:30 **Mobility break (group photo)**

10:30–12:30 **Country presentations**

Moderator: Dr Susan Mercado, Director, Division of Noncommunicable Diseases and Health through the Life-course, WHO Regional Office for the Western Pacific

Law on Food Labelling and Advertisement

Dr Lorena Rodriguez, Chief, Department of Nutrition and Food, Ministry of Health, Chile

Special Act on the Safety Management of Children's Dietary Life

Dr Cho-il Kim, Director General, Korea Health Industry Development Institute, Republic of Korea

Advertising Law

Dr Jixiang Ma, Deputy Director, National Centre for Chronic and Communicable Disease Control and Prevention (China CDC), China

Voluntary Hong Kong Code

Dr Ka Wai Rita Ho, Principal Medical and Health Officer (Family Health Service), Department of Health, Hong Kong

Voluntary pledge of the food industry – New Zealand

Dr Louise Signal, Associate Professor, Department of Public Health, University of Otago, New Zealand

Voluntary pledge of the food industry – Australia

Dr Rebecca Freeman, Senior Lecturer/NHMRC Early Career Research Fellow, University of Sydney, Australia

Plenary discussion

- 12:30–13:30 **Lunch Break**
Al Fresco dining area, Cafeteria, Regional Office for the Western Pacific
- 13:30–15:00 **Introduction to the background document “Protecting Children from the harmful impact of food marketing”**
Overview of the background paper
Dr Katrin Engelhardt, Technical Lead, Nutrition, Division of Noncommunicable Diseases and Health through the Life-course, WHO Regional Office for the Western Pacific

Group work: Inputs to the framing of the document

Plenary discussion
- 15:00–15:30 **Mobility break**
- 15:30–17:00 **Food marketing**
Overview of Chapter 3 of the background document
Dr Katrin Engelhardt, Technical Lead, Nutrition, Division of Noncommunicable Diseases and Health through the Life-course, WHO Regional Office for the Western Pacific

Power of marketing
Dr Lesley King (remote connection), Executive Officer & Adjunct Associate Professor, Prevention Research Collaboration, Sydney School of Public Health, The University of Sydney, Australia

Measuring marketing exposure (food and non-alcoholic beverages)
Dr Bridget Kelly (remote connection), Senior Lecturer in Public Health, Module Lead, Food Promotion (INFORMAS), University of Wollongong, Australia

Plenary discussion
- 17:00–18:30 **Welcome reception**
Al fresco dining area, Cafeteria, Regional Office for the Western Pacific

DAY 2 - Wednesday, 10 May 2017

8:30–10:30 The role of government in protecting children from the harmful impact of food marketing

Address

Dr Shin Young-soo, WHO Regional Director for the Western Pacific

Overview of Chapters 4 and 5 of the background document

Dr Katrin Engelhardt, Technical Lead, Nutrition, Division of Noncommunicable Diseases and Health through the Life-course, WHO Regional Office for the Western Pacific

Experience with enforcement mechanisms on the Code

Mr David Clark, Legal Adviser, United Nations Children's Fund

Trade and health: implications for marketing restrictions

Dr Anna Garsia, Consultant, Prevention of Noncommunicable Diseases, Department of Noncommunicable Diseases and Mental Health, WHO headquarters

Plenary discussion

10:30–10:50 Mobility break

10:50–12:00 Group work: The role of government in protecting children from the harmful impact of food marketing

12:00–13:30 Lunch break (Brown Bag Session)

Multi-Function Room, 5th Floor, Regional Office for the Western Pacific

The harmful impact of food marketing

Dr Rebecca Freeman, Senior Lecturer/NHMRC Early Career Research Fellow, University of Sydney, Australia

Country action to protect children

Dr Lorena Rodriguez Osiac, Chief, Department of Nutrition and Food, Ministry of Health, Chile

13:30–15:00 Inputs to a possible draft resolution

Dr Ki-Hyun Hahm, Technical Officer, Health Law and Ethics, Division of Health Systems, WHO Regional Office for the Western Pacific

Plenary discussion

15:00–15:30 Mobility break

15:30–17:00 Closing remarks

www.wpro.who.int