

Against warning labels on junk food in Mexico

How Switzerland danced to the Nestlé tune

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Mexico has implemented black STOP-style signs on unhealthy foods to combat the country's rampant obesity trend. However, the project was met with fierce resistance from multinational companies and their host states. At the forefront: Nestlé and Switzerland. Documents and e-mail exchanges show how willingly the Swiss State Secretariat for Economic Affairs jumped in to defend the food giant's commercial interests against Mexico's health policy. According to exclusive market data obtained by Public Eye, the business at stake for Nestlé was worth more than one billion Swiss francs. The research also shows that Switzerland's intervention in Mexico is far from being an isolated case.

As soon as the weekend is over, the stress begins again. On the morning of Monday 25 November 2019, a person employed in Mexico by the Swiss Department of Foreign Affairs (FDFA) – evidently exasperated wrote an e-mail to an official at the State Secretariat for Economic Affairs (SECO). In Cc: were seven other employees from both departments. The writer stated that “a little over fifteen days ago”, she (or he – we don't know because the name was anonymized in the e-mail) had been made aware of “this issue with food labelling”. It had been agreed that the Vevey-based company would contact SwissCham Mexico, the Swiss-Mexican Chamber of Commerce, and ask “for the support of Switzerland and the Chamber”. After all, Nestlé was not the only company that would be affected by this regulation, but also, for example, Lindt, Ricola and Emmi. However, the person states, Nestlé obviously preferred “to turn directly to SECO, and only on its own account”. And then, in bold type:

“Therefore, in my opinion, an official intervention would have to take place on behalf of all the Swiss companies concerned and in close cooperation with SwissCham, of which they are members – and not just Nestlé.”

Clearly, the corporation is defending its interests, but “Nestlé has privileged access to the authorities” and the corporation “did not consider it appropriate to share its insider knowledge (...). I am not even sure that the other Swiss companies concerned have any idea of the problems that they'll be facing due to these new warning labels.”

Five hours later: a second e-mail from the same person to the same recipient list. In the meantime, she or he had been in touch with an executive at Nestlé who had confirmed “the seriousness of the issue and the urgent need for intervention, reason why Nestlé had decided to turn directly to SECO, asking for official support from the Swiss authorities”. Nestlé was now requested to contact SwissCham and ask them to convene an “urgent meeting” in which the company should share its “inside information”, so that a “joint strategy towards the Mexican authorities” could be developed – “to the benefit of all Swiss companies”.

A national emergency

So what was this all about? A “national epidemiological emergency”. This is what the Mexican government declared in November 2016, due to “the extent and number of cases of excess weight and obesity”. The most recent figures, gathered for the 2020 national health study, are alarming: 38 percent of children aged between five and eleven are overweight or obese. Among Mexicans aged 20 and over, 74 percent are overweight, while over a third of adults are obese. After the US, Mexico has become the second-worst country for weight-related problems within the Organisation for Economic Cooperation and Development (OECD).

According to the “Alliance for Healthy Nutrition”, formed by Mexican academics and activists, the main cause of the obesity epidemic is the “accelerated decline in the dietary habits of the population”, characterized, on the one hand, by a reduction in the consumption of fruit, vegetables, cereals and legumes and, on the other hand, by an “exponential increase” in the consumption of refined flour, soft drinks and “highly processed foods and drinks in general”. Ultra-processed foods, as they are usually called, are industrial products that often contain little or no whole foods: rather, they are mostly made from substances extracted from foods, such as fats, oils, starches, and sugars, often mixed with artificial colourings and flavours or stabilisers. There is strong evidence of a link between the consumption of these products and obesity, high blood pressure, diabetes, cardiovascular disease and cancer. In 2013, in Mexico, 214 kilograms of these foods were sold per capita. Worldwide, only the US, Canada and Germany were ahead of Mexico. Dr. Hugo López-Gatell, an epidemiologist responsible for disease prevention and public health at the Mexican Ministry of Health, stated, at a press conference two years ago, that in 2018 half of all deaths in Mexico were due to diseases associated with poor diet. Interviewed by Public Eye, he confirmed: “The main cause of this obesity epidemic in Mexico is the oversupply of ultra-processed products. They represent the largest share of the Mexican diet nowadays.”

Fattening Deregulation

The signing of the North American Free Trade Agreement (NAFTA) between Mexico, the US and Canada in 1994 is often considered as the starting point for the disastrous developments that led to an increasingly unhealthy diet for the Mexican population. However, according to López-Gatell, a “transformation towards neoliberalism, deregulation, and thus also a weakening of health protection” had already taken place in Mexico in the 1980s. Under the premise of “development, prosperity and growth”, this “deliberate deregulation” was resolutely pursued until a few years ago.

The country’s first attempts to counter this threat to public health dates back to 2014, when Mexico introduced a sugar tax on soft drinks as well as a mandatory labelling system for convenience foods. The amounts of sugar, salt, calories and saturated fats had to be listed on the front of the pack, combined with an indication of the proportion of the recommended daily intake covered. Nevertheless, the consumer goods industry association ConMexico, in which Nestlé is actively involved, made sure that the reference values were determined in a highly industry-friendly manner. Moreover, in a study published in 2016 the national health institute (the INSP) came to the conclusion that only one-fifth of the population actually paid attention to the labelling. As a result, the institute recommended to consider alternative labels that could be “understood and used by a wide range of people”.

Chile: a role model

A role model was to be found some 6000 kilometres south-east of Mexico. In the summer of 2012, Chile had adopted legislation based on three pillars. Firstly, the introduction of black warning labels in the form of a STOP sign bearing the message “Alto en...”: high content in sugar, salt, saturated fats or calories. Secondly, a ban on the sale of any product bearing warning labels in primary schools. Thirdly, rules were put in place to prevent the advertising of these products to minors. In reference to a popular chocolate bar from Nestlé, the law was known as the “Ley del Súper Ocho”. According to Nestlé, three of these “Super 8” bars are consumed every second in Chile. Now, not only all these bars, but a large selection of Nestlé’s overall product range, were to be provided with black warning labels. Apparently feeling threatened, the corporation based in Vevey seems to have sought official support from the Swiss authorities: more specifically, from SECO, whose tasks include representing the “interests of Switzerland as a business location abroad”.

On 22 March 2013, the SECO sent a letter to the Chilean authorities from Bern. The letter – as well as the e-mails mentioned above – is part of a set of documents which “Temps Présent”, a show broadcast on the French-speaking Swiss TV RTS, has obtained based on the law enshrining the principle of freedom of information in public administration (Öffentlichkeitsgesetz) and employed to shed light on Nestlé’s lobbying of the Swiss authorities.

The trouble with Codex

The letter was addressed to the “TBT Enquiry Point of Chile”. (TBT stands for Technical Barriers to Trade.) The TBT Agreement, which came into force in 1995 with the establishment of the World Trade Organisation (WTO), provides a framework to ensure that “technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade”. Switzerland was thus asking the Chilean authorities to show how they came to the conclusion that “the proposed amendment is necessary to protect human health”. Furthermore, Switzerland wanted to know whether Chile had “considered less trade-restrictive measures”.

Secondly, Switzerland invoked the principle that existing international standards should be used when developing new regulations. In this case, the standards being the Codex Alimentarius: a collection of standards for food safety and quality, published by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). The Codex “does not set upper thresholds” for specific nutrients, Switzerland claimed, and asked “to receive the information motivating Chile to choose a label with a negative message – that is, ‘High in...’” and in what way the envisaged provisions were compatible with Codex guidelines.

In fact, the question raised by Switzerland – whether Codex actually prevents countries from developing their own warning systems – has since been discussed on an international level. In a report published in 2020, the Pan American Health Organization (PAHO), the regional office of the WHO for the Americas, drew the conclusion that the Codex did not in any way prevent countries from implementing their own labelling schemes. “Discussions and development of any Codex texts are based on and informed by the experiences of countries and regions”, states the report. “This means that Codex expects member states to take action.” Countries “have a right to take

necessary and non-discriminatory actions to protect public health and guarantee their populations' food and nutrition security (...) This includes going beyond Codex guidance”.

In the Codex Committee on Food Labelling meeting in Autumn 2021, even Switzerland, which is represented by the Federal Food Safety and Veterinary Office (FSVO), took the stand that “based on their national context and evidence of what works best with consumers, countries should remain free to recommend (...) systems that may either consider both the nutrients/ingredients to avoid and those to favour, or only the nutrients/ingredients the consumption of which is discouraged”.

Fruitless Interventions

In the Summer of 2013, three months after the letter was sent, Switzerland also intervened for the first time in a meeting of the TBT Committee. Meetings take place three times a year in Geneva to discuss “specific trade concerns”. The Swiss delegation stated that they had “some concerns with the draft measure” and invited Chile “to consider Switzerland's voluntary approach regarding the referencing of nutrition thresholds on products”. In the same session, Switzerland raised its concerns about another draft law: the “Law on Healthy Nutrition” in Peru, which, like its Chilean counterpart, provided for the use of black warning labels. At the TBT committee meeting in June 2014, Switzerland intervened against another labelling attempt: Ecuador’s approach to use colours to indicate whether a packaged food product has a high, medium or low content of a certain ingredient. The system foreseen would “unfairly discriminate against certain products without conveying sound information to consumers”, Switzerland claimed, and reiterated that “no nutrient threshold was established under the relevant Codex standard”.

But this did not yield the expected results. In 2014, PAHO Member States unanimously put forward a five-year plan aimed at preventing obesity in children and teenagers. Among the established goals: “To develop and implement norms for front-of-package labelling that promote healthy choices by allowing for quick and easy identification of energy-dense, nutrient-poor products”. At the end of 2014, Ecuador put its labelling system into effect. In Chile, after the re-election of Michelle Bachelet, the newly formed socialist government was preparing to launch robust legislation – against massive resistance from the industry and, in particular, from the lobby group AB Chile, founded by Nestlé and five other companies. But despite repeated interventions by Switzerland, the EU, the US and other countries at WTO level, and despite all the efforts on the part of the industry to obstruct the legislation, the “Ley del Súper Ocho” came into force in Chile in June 2016.

In an interview in April 2017, Pablo Devoto, CEO of Nestlé Chile, complained that the warning labels did not educate the consumers, but just frightened them. “As a country,” he then said, as if he were the Chilean president, “we must move from alarming to informing.” At Nestlé, people didn’t think that the regulation had changed consumption habits “in a definitive and final manner”. However, some scientific studies have since come to different conclusions. A monitoring program performed by three universities in June 2019 showed that the sales of products bearing warning labels fell significantly: by 25 percent for sugar-sweetened beverages, and by 36 percent for breakfast cereals.

In Peru, similarly, the lobbying efforts led by the Sociedad Nacional de Industrias, of which Nestlé is a member, proved unfruitful. In the summer of 2019, Peru also implemented its “Law for

Healthy Nutrition”, including mandatory, octagonal warning symbols based on the Chilean model. And at around the same time, the Health Committee of the Chamber of Deputies (lower house of Congress) in Mexico advocated “easily understandable”, “truthful” and “visible” warning labels on packaged foods. The “Norma Oficial Mexicana 051”, or NOM-051, was subsequently established. It provided for five black “STOP” signs bearing the writing “Exceso” – that is: “Excess” – for saturated fats, calories, salt, trans fats, and sugar. In addition, following the example of Chile, products bearing warning labels could no longer be advertised using cartoon characters, toys or celebrities. For Nestlé, it was now “crunch time”: while the group generates around half a billion Swiss francs in sales per year in Chile and Peru, it made almost three billion Swiss francs in Mexico in 2019.

[Picture not visible] "We have the right to know what we consume": Campaign for the intended warning labels in Mexico.

What was at stake?

To get an idea of what was at stake for Nestlé, we obtained market data from the renowned market-research institute Euromonitor. They show the retail sales of specific Nestlé brands and products in 2019 in Mexico. We do not know the exact level of profit made by the retailers. However, the figures at least allow us to estimate the size of Nestlé’s business with respect to products that were at risk, at the time, of ending up with one or several warning labels – and ultimately actually did. Because spoiler alert! – NOM-051 actually came into force in October 2020.

Mexican retail sales of Nestlé products in the categories “chocolate and confectionery” (about 270 million Swiss francs), ice-cream (about 150 million) and “powdered beverages” (about 140 million), amounted to over half a billion Swiss francs in 2019. Each individual product in these categories was to receive at least one warning label. There were also several dairy-produce brands of which all products were to receive warning labels: in 2019, sales of these brands amounted to approximately another 270 million Swiss francs. And finally, one must also consider the products from brands such as Nescafé, Maggi or the Cereal range that were to receive one or several labels. According to our calculations, another 340 million Swiss francs can be accounted for by these brands’ sales. In total, the retail sales value of Nestlé products that were “threatened” with one or more warning labels amounted to over one billion Swiss francs in Mexico in 2019. Nestlé, when confronted with these figures, stated: “Less than 30 percent of the products we sell in Mexico are marked with warning labels. We continue to focus on expanding our range of tasty and healthy products.”

The Swiss intervention

So that’s what it was all about when, on 15 November 2019, a Nestlé employee wrote an e-mail to a person at SECO. “It was a great pleasure to see you again here in Vevey last week”, the text said. “As discussed, I am attaching hereto a summary and key messages of the two pressing issues we are dealing with in Mexico”. The first problem: bans on disposable plastic bags and bottles, which Nestlé ultimately resisted in vain. The second problem, of course: NOM-051. “We would appreciate your help and recommendations on our advocacy efforts,” the mail continued.

SECO seemed to take the matter seriously. It took just seventeen minutes for the reply e-mail to arrive on the Nestlé server. The SECO employee wrote: “Thank you very much for this. We will

look into it and consider intervening next week.” And then: “May I ask you to whom the considered intervention has to be addressed in Mexico, since you followed these developments more closely than we did?” Before intervening, they were to contact Nestlé again “reflecting what [we] will say and to whom in Mexico”.

“Unnecessary fears”

Now let’s take a look at the content of the memorandum that Nestlé sent to SECO: “The proposal is much more restrictive than the Chilean front-of-pack model, as it combines the warning octagons with stricter Nutrient Profile”, the company writes. In addition, the proposal “considers greater restrictions on advertising and on the sale of products when they are labelled”. Nestlé supported labelling systems aimed at “helping consumers to make informed food purchases and healthier eating choices”. However, the Mexican standard “will not comply with such purposes”.

Apart from the “too radical and restrictive” nutrient profile used to determine the threshold values, warning labels such as those provided by Mexico should in principle be “avoided”, as they are “not currently provided for in the guidelines of the Codex Alimentarius on nutrition labelling”, the Memo states. They are also “incompatible with international standards as they are susceptible of creating unnecessary fear in consumers, as it clearly indicates to consumers that the food in question should be avoided”. In addition, Nestlé claims that the “broad restrictions on promotion and advertising”, that forbid products bearing warning labels being promoted with cartoon characters or toys, is contrary to Mexican and international intellectual property law.

In the days before the e-mail was sent from Vevey to the SECO, Nestlé also went on the offensive in Mexico. On 5 November, the corporation submitted its statement on the regulation in which it predicted that the intended warning labels would “not have the intended impact”. The population would “continue to consume unhealthy products, even though they are aware of their effects on health. According to them, the real problem is “not the information that the consumer receives about the products”, but “the consumers themselves, who are not sufficiently educated”. That is why instead of warning labels, information campaigns were needed, so the company claimed. A week later, Nestlé approached their suppliers with a letter that “El Poder del Consumidor”, a Mexican consumer organisation, later published.

The suppliers were asked to express their “concern” to the Mexican authorities about the draft, which stated that certain finished products are “classified as harmful to health, with the aim of dissuading Mexicans from consuming them”. The suppliers’ intervention was “indispensable” in preventing jobs from being destroyed “at a time when national economic prospects are challenging”. When asked about this by Public Eye, Alejandro Calvillo, Director of El Poder del Consumidor, described this invitation to suppliers as “an attempt to slow down the development of the standard”. Nestlé, he said, was among the companies that had opposed the new standard most vehemently.

On 25 November 2019, the contact person at SECO forwarded the Memorandum “that Nestlé (...) transmitted to us” to nine colleagues along with a request for a “first assessment”. On the same day, the above-mentioned e-mail exchange with the FDFA department in Mexico took place. FDFA apparently had not been involved up to then, and was irritated by Nestlé’s solitary initiative, but at SECO, they were unimpressed.

On November 25: SECO internal request for a "first assessment on the memorandum".

On November 26 comes the assessment: "In fact, scientific justification is lacking" for the limits established by the new Mexican labeling system.

The following day, the person responsible shared her conclusion internally: as a matter of fact, "a scientific justification" was missing for the threshold values set by Mexico. "This point should be included", the person recommended. Moreover, Switzerland could refer to the Codex standard, "similarly to the intervention in the TBT in connection with Chile", the analysis reads. Furthermore, Switzerland could refer to its "own experience" of introducing a label "on a voluntary basis and with the involvement of the relevant stakeholders".

A U-turn at the traffic lights

This last point was reiterated the next day. One individual wrote: "For the further processing of this request, it is important to remember that major food manufacturers and importers, including Nestlé (Switzerland), have announced the introduction of the simplified nutrition labelling system 'Nutri-Score' in Switzerland". This approach differed from the Mexican one, particularly in that "this is a voluntary measure".

In fact, Nestlé had stated in June 2019 that it supported Nutri-Score as "the preferred nutrition labelling system for food and beverages in continental Europe." This reflected "our commitment to good nutrition and informed food choices", the company claimed. It was a U-turn: for years, Nestlé had tried – at times in conjunction with other companies to prevent, water down and delay the food "traffic light" system. So what prompted the corporation, whose management in 2021 admitted internally that more than sixty percent of its products were unhealthy, to promote a traffic-light system? French nutritionist Mélissa Mialon notes: "The introduction of warning labels in Latin America is probably one of the main reasons for Nestlé's shift with respect to Nutri-Score." To state the obvious: compared to black warning labels, the traffic light has clear advantages for Nestlé: first of all, a colourful scale looks significantly more decorative than a black "STOP" sign. More importantly, while the system used in Mexico or Chile "denounces" an excess of a certain substance, Nutri-Score allows the possibility to compensate for negative nutritional properties with positive ones. This means that while according to the "Latin American" system a manufacturer has to reduce the sugar, salt or fat content to avoid a black "STOP" sign on the packaging, Nutri-Score can be pushed up by adding positively rated nutrients such as fibre or protein. Let's illustrate this with one of the most famous Nestlé products: Nesquik.

At the end of 2020 PAHO, to whom we refer above, compared the black warning labels with five other labelling systems, including "summary systems" such as the Nutri-Score. They came to the following, unequivocal conclusion: "Stark front-of-package warnings against foods excessive in fats, sugars, and sodium are the best way to help people avoid the unhealthiest purchases. Merging or adding information about positive nutrients or attributes", as in the case of Nutri-Score, "would divert its purpose, dilute the effect, and increase consumer confusion".

In the letter that SECO finally sent to the Mexican authorities on 9 December 2019, the SECO nevertheless recalls that in Switzerland, "major food producers and importers" have agreed to introduce NutriScore "on a purely voluntary basis". Switzerland would "kindly ask Mexico if less trade-restrictive alternative measures have been taken into account." For the rest, the letter

essentially repeats the points made by Nestlé in the memorandum: Switzerland is “particularly interested” in understanding the rationale behind the thresholds set for the warning labels. And they would like to know why Mexico wants to introduce negative warning labels, even though they are not provided for in the Codex and consumers “may come to believe that these foods should be avoided altogether, while they can be part of a balanced diet”.

Mexico Resists

At the beginning of 2020, Switzerland, together with the EU, the US and other countries, submitted a “Specific Trade Concern” regarding the legislation envisaged by Mexico to the TBT Committee. In February 2020, a SECO employee intervened at the TBT meeting alongside the EU and the US, repeating the concerns expressed in the e-mail. For a brief moment, it looked as if the joint resistance against the Mexican plan was actually going to be successful: due to a complaint from an industrial association, a Mexican court suspended the application of the new standard at the end of February. However, only a few days later, the decision was once again overturned by the higher authority. “Unfortunately, the news we have is that the NOM could be published by the end of March/beginning of April, with no big changes from the draft we saw”, wrote the Nestlé staffer to SECO on 12 March, after once again kindly thanking them for their “valuable help in this important matter.”

On 27 March, NOM-051 was published in the Mexican Official Journal without any changes. On 3 April, SECO contacted Nestlé again. It had heard from its US sources that “according to their industry, the coming into force of the requirements would have to be postponed due to COVID-19 and the current high demand for food. Does Nestlé share this assessment/concern?”. Apparently, they did. At the TBT meeting in May, Switzerland called on the Mexican authorities “with some urgency” to delay the entry into force of the amendment “to a later date”. The US and the EU were more concrete: they called for a two-year postponement.

But, as you already know: NOM-051 came into force on 1 October 2020.

PAHO describes the standard as “the most advanced and comprehensive regulation worldwide”. Switzerland intervened once more, at the next TBT meeting at the end of October, once again encouraging Mexico “to review the amendment in order to ensure an adequate supply of food and beverages to the Mexican market in particular during the COVID-19 pandemic”. But it was too late. It appears that food companies quickly started adapting the recipes of their product as a result of the new legislation. And seemingly the Mexican authorities wanted to prove that they were serious about implementing the new standard: in April, they seized more than ten-thousand products from eighty brands that were not correctly labelled, including two types of Nestlé cereals.

The reactions

Nestlé did not answer the specific questions from Public Eye (for example regarding their “cooperation” with SECO, the development of sales since the introduction of the warning labels, or their U-turn towards Nutri-Score) but provided a summary statement. According to Christoph Meier, Global Head of Corporate Media Relations, Nestlé is “committed to supporting people in achieving a balanced diet.” However, they believe that the “specific form of labelling with warning labels”, as implemented by Chile and Mexico, “does not help to choose healthier options in a

particular product category”. Whereas evaluations in Europe have shown that Nutri-Score “helps consumers to make well-informed nutrition choices”. However, they stated that: “We maintain a transparent and constructive exchange with authorities and stakeholders and, of course, strictly comply with the labelling regulations in both countries.”

The State Secretariat for Economic Affairs has provided us with a relatively detailed answer, although remaining conspicuously vague on certain aspects. When asked whether the interventions in Mexico and Chile took place at the request of Nestlé, the State Secretariat wrote that “usually”, they were alerted to WTO notifications from other WTO members by “interested stakeholders and economic operators.” These concerns are then reviewed, and only in the case of “reasonable doubt and questions a written comment or intervention in the TBT Committee is envisaged, together with the other WTO members”. But is it common for SECO to seek advice from private companies to whom an intervention should be appropriately addressed? “Switzerland has adequate representation abroad capable of maintaining bilateral relations and of getting in touch with representatives of our partner countries.” Was SECO’s intervention in Mexico coordinated with the EDA and/or the FSVO? “In the WTO TBT Committee, the position of Switzerland is represented, in coordination as necessary, with the relevant offices”, writes the SECO. The various federal agencies “work closely together and coordinate their efforts”. Finally, according to SECO, there is “no contradiction” between Switzerland’s position in the framework of the Codex (according to which, countries should be free to choose their labelling system) and Switzerland's position in the WTO TBT Committee.

Definitely to be continued

In 2021, Uruguay also implemented a law involving warning labels. Brazil and Colombia have adopted similar laws, and Canada’s Ministry of Health is proposing the same. Most recently, in March 2022, the “Law for the Promotion of a Healthy Diet” was published in Argentina, pushing for black, octagonal warning labels.

Meanwhile, in Switzerland, the outgoing State Secretary Marie Gabrielle Ineichen-Fleisch, at a panel discussion in May, stated quite frankly: “Over my last eleven years as Director at SECO, one of the main tasks has been fighting against further regulation.” Dr. Hugo López Gatell, the expert from the Mexican Ministry of Health, said in response:

“Our government has decided to separate political power from economic power. If countries like Switzerland intend to defend the interests of their companies, they should do so within the framework of their national laws or within international bodies. But we will never allow another country or a foreign company to dictate our health policy.”

Focus on Global Justice

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