



Interference, Capture, and Delay: Common Industry Practices

Front-of-Pack Warning Labeling in Colombia

**Colectivo de Abogadas y Abogados
José Alvear Restrepo - Cajar**



Cajar

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Expressions of Gratitude

This research and systematization of the path taken to achieve the issuance of Law 2120 of 2021, “by which measures are adopted to promote healthy food environments and prevent non-communicable diseases...” and Resolution 2492 of 2022 issued by the Ministry of Health, which we present to you today, is both an expression of gratitude and a tribute to all those individuals from civil society organizations who, decisively and without yielding to adversity and the power of the large industry of sugary beverages and ultra-processed foods, contributed their efforts so that today, front-of-pack warning labeling is a reality that will protect the rights of children, adolescents, and the entire Colombian population.

It is not an exaggeration to say that, after seven years of continuous struggle, there were moments when it may have seemed more sensible to give up than to continue; the Red PaPaz can attest to this, tirelessly expressing concern for the health of Colombian children to every stakeholder in the law known as the Junk Food Law. Also, FIAN Colombia, an organization working for the guarantee of the human right to adequate food and nutrition, grounding its struggle in food sovereignty. Or the researchers from Dejusticia or Educar Consumidores who, with commitment, contributed research, knowledge, and legal management

to fuel the debate, drive the law, and help curb the overconfidence of the industry and the actors either co-opted, interfered with, or genuinely convinced of defending private economic rights over the common good.

Expressing gratitude and paying tribute to many committed academics and researchers who have dedicated their knowledge to the defense of the right to health, especially for the most vulnerable populations; to pediatric doctors who, despite the strong industry pressure, managed to provide valuable arguments that fueled the discussion and contributed to the final wording of the Law. Acknowledging, thanking, and celebrating the role of civil society that, aware of the importance of confronting interference, revealing industry malpractices, and defending democracy, once again fought to demand their rights and thereby strengthen the democratic state where human rights prevail over economic interests.

For Cajar, this research demonstrates that even though it may be challenging, it is possible, and with the strength of organized civil society, paraphrasing the graffiti from the May 1968 events in Paris, we can be realistic and demand the impossible. If civil society understands the importance of this struggle, organizes itself, challenges the legislators, reminds them that their duty is to legislate for the entire society and not just for

a few, then together, we can take solid steps towards fully guaranteeing human rights.

Finally, it is crucial to note that without the ongoing support of the Global Health Advocacy Incubator and Bloomberg

Philanthropies, the production of these materials would be very difficult, and monitoring the compliance with the law, which is yet to be implemented, would be even more challenging.

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Abbreviations and acronyms

ANDI	Asociación Nacional de Empresarios de Colombia
ANTV	Autoridad Nacional de Televisión
Asograsas	Asociación Colombiana de la Industria de Aceites y Grasas Comestibles
Cajar	Colectivo de Abogadas y Abogados José Alvear Restrepo
NcDs	Non-Communicable Diseases
FAO	Food and Agriculture Organization of the United Nations
FIAN	Food First Information and Action Network
FBDGs	Food-Based Dietary Guidelines
ICBF	Instituto Colombiano de Bienestar Familiar
Invima	Instituto Nacional de Vigilancia de Medicamentos y Alimentos
NNA	Niñas, Niños y Adolescentes
WHO	World Health Organization
NGO	Non-Governmental Organization
PAHO	Pan American Health Organization
CSOs	Civil Society Organizations
UPFD	Ultra-Processed Food and Drink
PL	Bill
SIC	Superintendencia de Industria y Comercio
Unicef	United Nations Children’s Fund
UN	United Nation

Introduction

It is urgent to adopt a preventive and rights-based approach to combat the pandemic of death and inequality that are Non-Communicable Diseases (NCDs)..

Soledad García Muñoz - Special Rapporteur

The implications of Non-Communicable Diseases (NCDs), especially cardiovascular deficiencies, overweight, and obesity in Colombia (as well as in Latin America, the Caribbean, and worldwide), cannot be reduced to the dispassionate analysis of figures and percentages, unstoppable increases, and apparent helplessness at various decision-making levels to address the public health realities that concern all citizens. The matter is more complex; the implications of NCDs directly affect people's lives, deepen inequalities, and increasingly erode access to and enjoyment of their rights.

Between the public interest and the private interests of the ultra-processed food and sugary beverage industry are the people: children, adolescents, youth, older adults, and society as a whole, with their right to access healthy food environments, real nutrition, better health, good nutrition, and information, among others.

Placing people's lives amid these interests makes it possible for the figures to take on the meaning they seek to convey. For example, statistics may prompt decision-makers to seek ways to prevent millions of people from suffering chronic illnesses or thousands of them

from dying each year. It is crucial to understand the impact of the obstruction of public health measures by the industry, such as front-of-package warning labeling, taxes on sugary beverages, regulation of advertising targeting children, and the issuance of norms guaranteeing healthy school environments. Additionally, it is essential to grasp, analyze, and understand the various tactics of corporate interference, their modes of operation, the levels of influence, the involvement of sectors and actors, and the repertoire of fallacies grounded in the development of national economies, job creation, and their contribution to national accounts.

Having said that, the problem of Non-Communicable Diseases (NCDs), specifically cardiovascular diseases, obesity, and overweight in Colombia and the world, is becoming increasingly alarming. According to the World Health Organization (WHO), in the Americas, eight out of ten people die from an NCD, and at least 35 % of these are premature deaths occurring in individuals under 70 years old (Pan American Health Organization - PAHO, n.d.). In Colombia, currently, 56.4 % of the adult population is overweight, while

between 2010 and 2015, the overweight rate in children and adolescents increased from 18.8 % to 24.4 % (Ministerio de Salud y Protección Social, 2020). Although the causes explaining this issue are multiple, scientific studies free from conflicts of interest have shown that one of the most relevant factors is the increased consumption of ultra-processed food and drink products (WHO, PAHO, 2015). In fact, there is an extensive body of literature associating the expansion of these products with the emergence of NCDs (Gómez, 2019).

When many of these ultra-processed food products become part of the daily lives of children and adolescents, the situation becomes urgent. This is particularly concerning because it ceases to be a problem involving the average consumer and extends its impact to a population classified as being of special protection. In this regard, there is growing concern from Civil Society Organizations (CSOs) and international organizations such as the World Health Organization (WHO), the Pan American Health Organization (PAHO), the Food and Agriculture Organization of the United Nations (FAO), and the United Nations Children's Fund (Unicef). Consequently, a package of public policy measures has been promoted, including the adoption of front-of-pack warning labeling, where explicitly and in a clear, truthful, readable, and understandable manner, it indicates when a product exceeds certain critical nutrients, such as sugar, saturated fats, or sodium (FAO, 2019, pp. 76-82). The path has not been easy, but it has provided a series of lessons learned that we will share in this document.

Now, in addition to highlighting these issues related to public health, this research is based on the need to continue the task of

documenting and uncovering the various industry interference practices, especially when the defense of human rights and democracy is at stake from the most comprehensive perspectives. Trying to prevent the approval of measures that could ultimately save lives, obstructing legislative processes, delaying administrative decisions, or hindering public decision-making is, ultimately, a demonstration of the power of the industry and its asymmetry against society. All in favor of corporate private interests and against public health, human rights, and the common good.

Thus, this research on front-of-package warning labeling in Colombia and the systematization of the process aims to provide elements that allow a better understanding of the scope of common interference practices, their complicated consequences on the legislative and executive branches, their ability to prevent, undermine, and postpone decisions that safeguard general interests. It places private and particular interests of the industry above the common good with the sole objective of increasing or maintaining profits.

Therefore, the following pages are intended for readers, experts, academics, researchers, members of civil society organizations, citizens, decision-makers, and society in general from all countries in the region and the world that are on the path of legislating in this matter. The history in Colombia and in the countries of the region that have progressed in related public policies, front-of-pack warning labeling, or sugary beverage taxes suggests that the industry producing sweetened and ultra-processed foods has a catalog of actions, a repertoire that repeats, deepens, renews, perfects, and expands as required, regardless of the

country and depending on how strengthened civil society organizations, states, and their institutions are to interfere, block, or delay the implementation of public policies aimed at protecting the rights to health, nutrition, and information.

In this regard, for the Colectivo de Abogadas y Abogados José Alvear Restrepo (Cajar), it is crucial to organize the experience lived in Colombia and provide elements that allow identifying these corporate actions to evaluate them, understand them, systematize them, and generate academic and empirical knowledge that serves as a reference for all countries in the region. It contributes to the comprehensive defense of human rights, public interest, and the deepening of our democracies. This perspective has nothing to do with being against the industry of ultra-processed food products or sugary beverages. It is merely a stance consistent with the institutional mission of Cajar to ensure that corporations act with transparency, do not interfere with legislation or the application of rules that guarantee the rights of individuals, especially the most vulnerable, do not engage in practices of corporate co-optation of the State, and contribute from their corporate activities to the creation of healthy environments for society as a whole.

Despite the evident need to adopt these measures for their social benefit, the industry has deployed various strategies to oppose their regulation and implementation. According to Dainius Puras, United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2014-2020), the industry's pressures are known tactics as corporate interference:

(...) undue influence on government decision-making that must be addressed by states to ensure that regulations preventing harm to the population (...) are guided by human rights and scientific evidence free from conflicts of interest. (United Nation - UN, 2020)

From Cajar, a non-governmental organization defending human rights that has been operating in Colombia for over 45 years, we have been monitoring corporate interference practices because they undoubtedly impact human rights and democracy. To advance in citizen education processes and to understand in a practical way how these practices materialized during the formulation and implementation of public policies, in this case, front-of-pack warning labeling, this document consists of four sections, in addition to this introduction. In the first section, we will explain interference from a legislative perspective in the process of creating the front-of-pack warning labeling law. The second section will address corporate power extended to the administrative realm, its actions, scope, and impact on the executive branch. The third part will delve into investigating and reflecting on the road ahead, challenges, communications, education, and propose some conclusions from what has been learned.

Finally, it is worth reiterating here that Cajar is not against the industry of ultra-processed food and beverages, nor is it against any industry. However, it will not back down or spare efforts when fulfilling its mission to defend and advocate for human rights and the expansion of democracy, especially the rights of the most vulnerable or at-risk individuals and communities. The risks of not doing so are discussed by Dr. Mora Plazas in Box 1.

Box 1**Human Nutrition and Public Health**

It is imperative to begin by recalling that to become Homo Sapiens Sapiens, humanity underwent an interaction between the environment and genetics that took a very significant amount of time from the early stages of evolution.

Throughout this process, all nutrition was based on what nature produced and perhaps some other ingredients now known as culinary ingredients. These are derived from foods that, with basic processing, help enhance the taste and appearance of the food. Since foods are produced by nature, they contain what is known as the food matrix. The food matrix is the inherent structure of the food, also derived from evolution, and this food matrix implies that foods contain fiber, vitamins, minerals, and other nutrients. For example, milk contains vitamin D and calcium, and vitamin D is essential for the absorption of calcium. All food is formed as a result of evolution, as the best selection, and this is what humanity has consumed throughout history through evolution. The consumption of this type of food is associated with long-term healthy living. There is enough evidence to support this claim. An example is the dietary guidelines of different countries, which, to become official documents as recommendations to the population for better consumption and nutrition, are based on the consumption of foods and not edible products. Colombia's guidelines are called Food-Based Dietary Guidelines (FBDGs), and similar guidelines exist in Brazil, Uruguay, the Dominican Republic, among others. In all countries, the diet is based on the consumption of natural foods, as it has been demonstrated that these are not related to long-term diseases.

At this moment, we are witnessing an “invasion” of certain edible products that cannot be called foods because they contain very little natural food in their composition, and most have lost their food matrix and are being produced artificially. These products are characterized by high sodium, added sugar, and added fat content, and a high caloric contribution but with very little fiber, protein, vitamins, and minerals.

Pan American Health Organization has proposed a classification for all those foods and edibles that are being highly consumed. This classification is called Nova, originated in Brazil, and was later adopted by the Pan American Health Organization. In this classification, there are four groups to define what we call foods and edibles.

- ☼ The first group is essentially what we know as unprocessed or minimally processed foods. These foods have been the foundation of humanity's diet for many years.*
- ☼ The second group consists of culinary ingredients derived from foods, with minimal processing, which help enhance the appearance of foods during cooking and preparation*
- ☼ The third group includes processed foods; these are foods that undergo processes such as fermentation, cooking, or smoking to extend their shelf life or enhance their flavor. However, these procedures are simple and have been traditionally used. Some processed foods may have an excessive addition of salt or sugar and should be consumed in moderation.*

- ☼ The last group of edible products, which we refer to as ultraprocessed, includes those that do not preserve the food matrix (the fiber or nutrients of a food). Instead, they are manufactured with different chemical formulas to give the product a more appealing taste, vibrant colors, and these chemicals are not naturally present in foods. In other words, these products no longer retain much of the natural food.*

In Colombia, it was approved that these products carry a front warning label, which is a nutritional labeling system that helps us differentiate between foods and edible products. Thus, foods derived from nature, unprocessed or minimally processed foods, culinary ingredients, and typical preparations like bandeja paisa or bocadillo would not carry a label because, when consumed in moderation and within a healthy eating pattern, they do not increase the risk of long-term health effects.

The rapid changes we experience in the increased consumption of ultraprocessed products, combined with a sedentary lifestyle, increase the risk of developing non-communicable chronic diseases. There is evidence demonstrating that increased consumption of ultraprocessed products contributes to rising obesity rates. The consumption of ultraprocessed products is associated with diets high in sugars, fats, and cosmetic additives. Cosmetic additives are those that enhance the product's taste, color, and appeal for consumption, especially for children, adolescents, and the entire population, but they are generally low in fiber and micronutrients.

Various studies point to the relationship between the consumption of ultraprocessed products and cardio-metabolic diseases. For example, excessive consumption of added sugars leads to an increase in LDL (low-density lipoprotein) cholesterol, which is significantly associated with the rise of cardio-metabolic diseases. Similarly, the consumption of fructose, another sugar that can be added to many products, especially those marketed for diabetics, is linked to the onset or increased prevalence of fatty liver disease, which is also related to cardio-metabolic diseases.

It is important to emphasize that many studies show that saturated fats present in natural foods, such as the saturated fats in eggs, milk, various types of meat, fish, poultry, and even some red meats, have not been found to have a clear relationship with cardio-metabolic diseases. On the contrary, some may have a protective effect against these diseases.

In a study conducted with the University of North Carolina and Javeriana University, it was found that approximately 80 % of the products sold in supermarkets in Colombia, according to the parameters of the Pan American Health Organization, would have an excess of some critical nutrients that, when consumed excessively over a long period, are related to an increased risk of non-communicable chronic diseases. In 2020, data from this year were analyzed compared to 2018, and a change in beverages was observed. The use of sweeteners increased from 33 % to 64 %, and the amount of sugar was reduced by approximately 4 grams. Otherwise, all solid products had more or less the same percentage. In a specific study on cereals, it was found that 97 % of breakfast cereals, including some granolas, are high in sugars. This not only happens in Colombia but worldwide, which is why nutritional labels are being implemented globally. There

are different types of nutritional labels, but we can group them into three categories: informative, interpretative, and warning labels.

Warning labels simply convey a message to alert the consumer: this product contains an excess of a nutrient that, when consumed regularly, can be harmful to health. As informed, you can freely make a healthy decision.

Mercedes Mora Plazas¹

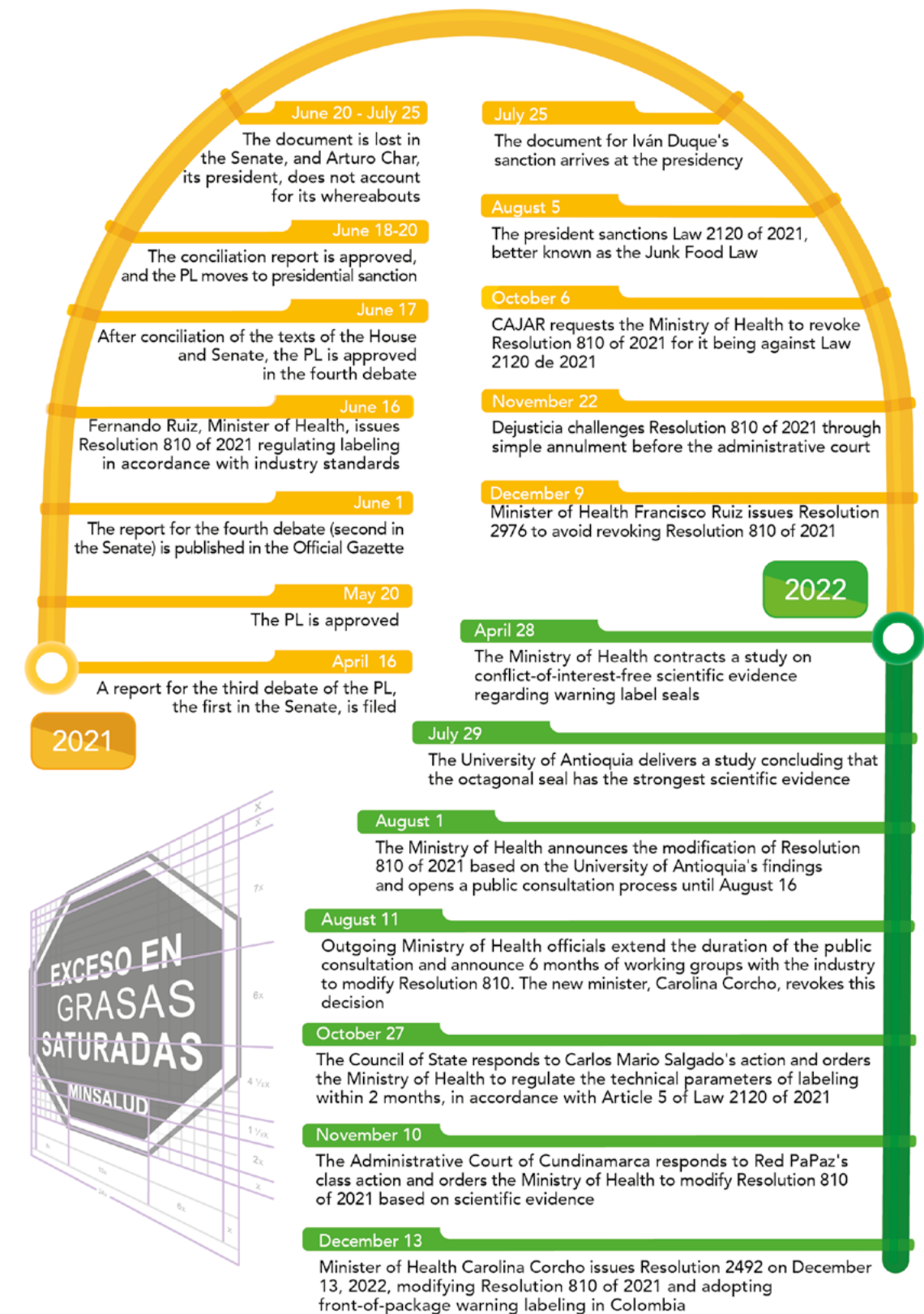
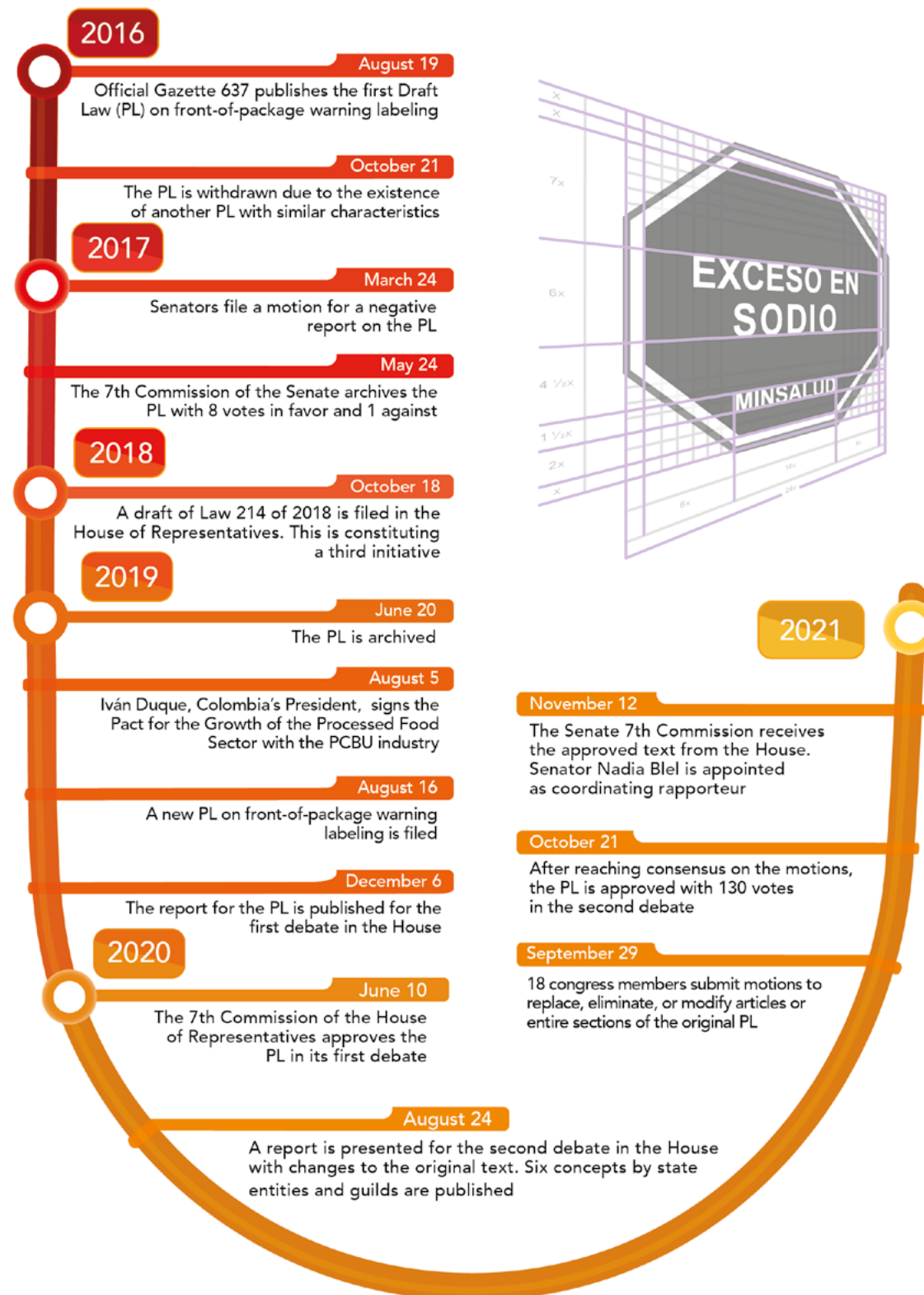
Professor at Javeriana University

August 9, 2021

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The winding path of front labeling in Colombia



Interference and Capture: Common Practices in the UPFD Industry²

Many of the risk factors for non-communicable diseases are exacerbated by products and practices wielded by immensely powerful economic forces. The influence of the market readily transforms into political power, creating a dynamic where economic interests can significantly impact policy decisions and public health outcomes.

Margaret Chan Fung Fu-chun³

Chronic non-communicable diseases have a tremendous impact on health-care systems in terms of costs, but more significantly in terms of chronic conditions, disabilities, and premature deaths. Ultimately, lives are lost. The unregulated consumption of ultra-processed food and beverages is alarming. Historically in Colombia, progress in enacting legislative measures capable of influencing consumption behavior and fostering healthy food environments, including taxes and warning labels, has faced numerous obstacles, interferences, and mechanisms of capture and co-optation by the industry.

Perhaps, 2021 and 2022 mark a milestone in the country. After eight years and more than six bills presented during that period, the passage of Law 2120 on July 30, 2021, also known as the Junk Food Law, is noteworthy. Additionally, within the framework of the current administration’s tax reform, Law 2277 of December 13, 2022, introduced a tax on sugary ultra-processed beverages and some

ultra-processed products.

The journey has not been easy, and the process is not over. To delve into the purpose of this document, it is worth asking: What can explain these kinds of obstacles? It is clear that it is not the arguments, as scientific evidence without conflict of interest demonstrates, among other things: i) the urgent need to regulate this industry, ii) the necessity of promoting public health policies that ensure the construction of healthy food environments, iii) the urgency of establishing a more appropriate balance of power among different actors such as industry, civil society organizations, academy, the State, political parties, institutions, and associations, among others, iv) the inescapable need to strengthen access to economic, political, and social rights for communities capable of advocating for their health decisions, and v) the imperative of preventing the manipulation of dominant narratives about corporate determinants of health.

² UPFD: Ultra-processed Food and Beverage Products.

³ Director-General of the World Health Organization from 2007 to 2017. Speech by Dr. Margaret Chan, Director-General, at the 66th World Health Assembly (May 20, 2013). <https://www.who.int/es/director-general/speeches/detail/who-director-general-addresses-the-sixty-sixth-world-health-assembly>

It seems that the key is to understand how the correlation of interests prevents us from advancing towards regulation less manipulated by the industry and with more impact on society, despite knowing the benefits of such norms on consumption in the short, medium, and long term, both in terms of healthcare system costs and lives saved. Efforts made by NGOs, academy, and some lawmakers committed to the common good are also acknowledged.

Understanding the correlation of forces is also about unequivocally recognizing the enormous power of the industry to avoid regulation and thereby revealing and illustrating its repertoires and strategies. This power is exercised through many mechanisms, including noteworthy ones and some that are less mentioned, such as the use of the media, proximity to regulatory bodies, the alleged control, commodification, and influence over research agendas, financing, or discrediting research that goes against their interests, exploiting global financial crises to their advantage, and constructing narratives about social assistance as a waste of public spending, to the detriment of the most vulnerable population in our society (McKee, Staackler, 2018).

Understanding the objectives, scope, and corporate influence, as well as exposing the mechanisms to prevent regulation, is an important step where NGOs, academy, and society at large converge. It facilitates the construction of more transparent public policies and guidelines on conflicts of interest in all areas of influence and at every level. At this point, it is worth acknowledging that the approval of Law 2120 of 2021 is also due to Colombia having an organized, persistent,

and committed civil society advocating for the right to health and adequate nutrition.

Logbook of the Industry's Role in Congress

This section will detail the three experiences that took place in the Congress of the Republic during the processing of Law 2120 of 2021, which regulates front-of-package warning labeling. From Cajar, it is expected that readers of this document can identify industry actions, legislative responses, and executive actions. It should be noted that interference practices by the industry, which resists regulation and prioritizes its economic interests over the rights of citizens, have been common in each process.

One of the industry's methods to interfere with the creation of public policies aimed at regulating its activities and protecting fundamental rights of individuals has been lobbying. Lobbying is understood as a set of actions or initiatives by private actors to influence the formulation of public policy, with the aim of interfering, preventing, or distorting policies that seek to regulate their activities (Cajar, 2020). In the legislative space of the Congress of the Republic, lobbying occurs mainly at two moments. A publicly visible moment where individuals associated with the industry enter the debate space to talk to congress members with the goal of promoting their position, opposing public measures, or changing votes. And a private moment where direct approaches are made, encouraging congress members to take a position in favor of big industry interests. While this practice per se is not illegal in the country (although it is not regulated despite several

attempts), like any interference-related practice, it creates situations of disadvantage for citizens. The representatives of these industries seek to

influence legislation in favor of their economic interests, leading to an abuse of power that weakens democracy.





Box 2

The path to the octagonal warning label

The labels have varying levels of complexity; however, warning labels should be the least complex. In some countries in the region, progress has already been made in the implementation of warning labels, including Peru, Uruguay, Mexico, Chile, Argentina, and recently, Colombia.

In 2020, Universidad Javeriana, in collaboration with the University of North Carolina, conducted an online study with the aim of identifying which warning label Colombians understood best. The options included an octagon, a triangle, and a circle (the circular one was one of the labels proposed at the time by the Ministry of Health in conjunction with the ultra-processed food industry). The result indicated that the octagon is the type of label best understood by Colombians, as it is culturally recognized as a warning symbol. Its use would enable consumers to be informed about the excess of critical nutrients through clear, visible, legible, and easily identifiable information. It is intended that consumers understand directly and simply that the product is not healthy, and ultimately, the effect of the label would lead to a decrease in the intention to purchase.

Although it is clear that octagonal warning labels are crucial and suitable for use in Colombia, it is also worth noting that labeling alone is not sufficient to prevent non-communicable chronic diseases. To implement policies for the prevention of such diet-related diseases, other tools are required. However, labeling is a cross-cutting element that intersects with all these tools. For instance, progress is needed in areas such as:

-  *Restricting the marketing of unhealthy food products, meaning that products carrying the warning label cannot be promoted.*
-  *Regulating food environments in schools and other public institutions based on the premise that products bearing the warning label are clearly identified as unhealthy.*
-  *Imposing taxes on products such as sugary beverages.*
-  *Promoting drinking water nationwide, as well as ensuring access to whole, real foods.*

As of July 30, 2021, Colombia has the Labeling Law, better known as the Junk Food Law. One of its primary objectives, though not the sole one, is to promote measures for creating healthy food environments. One of its significant measures is to compel the industry and manufacturers to place a warning label on packaging when their products exceed recommended levels of sugars, saturated fats, sodium, or sweeteners. This enables consumers to distinguish between natural foods and ultra-processed edible products.

It is noteworthy, and far from being anecdotal, that the label promoted through Resolution 810 of June 16, 2021, by the Ministry of Health is circular (note that it was published just days before the entry into force of Law 2120 on July 30, 2021, seemingly to prevent the enactment of said law). This is remarkable because there is evidence suggesting that a circular shape is not suitable for Colombia. One reason is that the circular shape in the country is associated with high quality. Additionally, since 2011, the Ministry of Health itself has advocated for the use of “high in” inside a circle as a positive element. When a product contains beneficial nutrients such as iron or calcium, the Ministry allows manufacturers to use a label indicating that the product is high in these nutrients

The paradox, and not entirely clear to academy and civil society actors, is that the Ministry itself allowed the use of “high in” in a circular label when the intention was to warn about an ultra-processed edible product with one or more nutrients detrimental to health, such as excess sugars, sodium, or saturated fats.

It was only on December 16, 2022, with the change of government, that the octagonal labeling was regulated. The then Minister of Health, Dr. Carolina Corcho, announced that through Resolution 2492 of December 2022, the Ministry initiated the process of regulating Law 2120 of 2021, while also addressing a ruling from the Council of State. Thus, the current national government determined the use of an octagonal label with a black background and clear, truthful, and simple information, allowing consumers to access the right to information. The country aims to achieve a positive impact on the citizens’ nutrition because nutritional labels, specifically warning labels, contribute to the consolidation of healthy eating

The journey is not yet complete, but with Law 2120, the regulation enacted by the current national government, the industry’s deadline, and the commitment of civil society, academy, and the general public, more Colombians will undoubtedly be able to differentiate between natural foods and ultra-processed edible products. In this scenario, it is foreseeable that consumers will increasingly seek foods with fewer labels, and producers will strive to create more foods with fewer labels, establishing a mutually beneficial relationship.

Yessika Hoyos Morales
Lawyer at Cajar
August, 2023

Bill 019 of 2017: First Attempt

The journey toward the creation of the law regulating front-of-package warning labeling in Colombia began in 2017 with Bill 019 presented in the House of Representatives of the National Congress. This bill, divided into six chapters, aimed not only to regulate front-of-package warning labeling but also to oversee public actions in favor of healthy lifestyle habits and establish a system of sanctions under the Instituto Nacional de Vigilancia de Medicamentos y Alimentos (Invima) and the Superintendencia de Industria y Comercio (SIC) (Imprenta Nacional de Colombia, 2017).

The bill contained in its Article 1 several key definitions highlighting distinctions between unprocessed and minimally processed foods, processed and ultra-processed products, and high-calorie and/or low-nutritional-value edible or drinkable products, various types of sugars, sweeteners, distinctions between culinary and general ingredients, among others. In Articles 3 and 4, it established obligations for the Ministry of Technology and Communication, Ministry of Education, Ministry of Health and the now-defunct Autoridad Nacional de Televisión (ANTV) to develop educational tools, interference-free campaigns promoting healthy lifestyle habits, and actions to prevent NCDs. Additionally, there were provisions for the development of content for television promotion, especially during children’s programming and prime time. These points were also subject to extensive debates.⁴

However, the focal point of almost the entire debate revolved around the regulation of labeling present in the third chapter. Additionally, various prohibitions and obligations for the industry in terms of advertising

and marketing of ultra-processed products were established. Article 6 mandated the obligation to declare on labeling the quantity of sugar, free sugars, and other sweeteners, sodium, total fats, saturated or trans fats per serving. It also required a list of ingredients with all additives and a description, in case the product contained genetically modified organisms.

Article 7 established a front-of-package warning label that would be highly impactful, clear, visible, legible, easily identifiable, and understandable for consumers, with unequivocal messages about the actual contents of the products. The goal was to prevent their excessive consumption and promote their correct use. In this initial bill, the intention was to use the words “EXCESS OF,” differentiating between sodium, sugars, free sugars, total fats, saturated fats, trans fats, and sweeteners. Simultaneously, this article aimed for the symbol to be an octagonal label with a black background and a white border covering 50% of the product label. Another additional measure was the inclusion of the phrase “Frequent consumption is harmful to health.” The regulation of this was left to the Ministry of Health within a one-year timeframe.

Article 8 mandated an obligation for the industry to reduce the content of critical nutrients in their products within a one-year timeframe. Meanwhile, Article 9 outlined specific obligations to regulate the advertising of edible and drinkable products. Its paragraphs stipulated the mandatory consideration of studies and recommendations from Unicef, PAHO, and WHO for public policies on NCDs. It also emphasized the protection of

⁴ One of the positive aspects of this initial approach was that promotional spaces were also provided to Non-Governmental Organizations (NGOs)

children and adolescents under the purview of the Ministry of Health and the Instituto Colombiano de Bienestar familiar (ICBF) in industry advertising. Additionally, it prohibited conflicts of interest when making decisions related to advertising and advocated for the use of regulatory frameworks in collaboration with civil society to promote social marketing encouraging healthy eating. The remaining sections of the law included affirmative actions to improve healthy lifestyle habits, such as the establishment of drinking water fountains.

Furthermore, it established the Nova System, which categorizes foods based on their nature, purpose, and degree of processing (Imprenta Nacional de Colombia, 2017), according to the following groups:

- 1. Unprocessed or minimally processed foods
- 2. Processed culinary ingredients
- 3. Processed foods
- 4. Ultra-processed products

The reason for categorizing foods in this way is associated with the growing recognition that natural or minimally processed foods should be preferred over ultra-processed products. Therefore, the explanatory statement of the bill indicated that the Pan American Health Organization (PAHO) proposed that states regulate processed and ultra-processed products meeting certain criteria. This included promoting measures such as front-of-package warning labeling:

Sodium Greater than or equal to: 1 mg of sodium per calorie in the product	Free sugars Greater than or equal to : 10% of the total energy in the product, derived from free sugars	Other sweeteners Any amount of sweeteners other than sugars
Total fat Greater than or equal to: 30% of the total energy in the product from total fats	Saturated fats Greater than or equal to: 1 % of the total energy in the product from saturated fats	Trans fats Greater than or equal to: 1 % of the total energy in the product from trans fats

Table 1: Author's compilation, Cajar 2023.

However, these conclusions began to be debated by the industry, led by the Asociación Nacional de Empresarios de Colombia (ANDI). ANDI is a non-profit association whose aim is to promote the political, economic, and social principles of a healthy free enterprise system. Their arguments for the debate were mainly three:

- ❶ The best way to prevent overweight, obesity, and malnutrition is associated with consumption habits, so legislative efforts, combined with the efforts of the industry, academy, the medical community, and consumers themselves, should focus on this aspect.
- ❷ The proposals on labeling and advertising in the bill were deemed unnecessary because the current legal framework already encompassed them.
- ❸ As a consequence of the above, the authorities have the provisions and legal powers to constantly monitor the health of Colombians, making new regulations unnecessary (Imprenta Nacional de Colombia, 2017, p. 21).

Note that these initial arguments presented by ANDI reaffirm their strategies. Firstly, they place the burden of transforming consumption habits on citizens, ignoring that altering behaviors requires changing environments. It is undeniable that the social, physical, and cultural context hinders such change. Secondly, they argue that the proposed regulation is redundant, as there are already related norms in place, rendering it unnecessary. All these arguments run counter to health rights, or at best, fail to protect them.

In its second and third stances, ANDI added the following arguments to its rationale:

- ❶ One must follow the Codex Alimentarius recommended by the WHO and the FAO, and in this regard, ANDI does not believe that foods should be categorized based on nutritional profiles.
- ❷ The Nova system has not been recognized by the *Codex* due to technical issues, which are not specified in the statement (Congreso de la República, 2018).
- ❸ The proposed labeling model may confuse consumers, as the health warning could be construed as a recommendation not to consume the products, which is restrictive and contradicts scientific arguments (which are also not specified).
- ❹ There is a negative approach towards industrialized foods and beverages, without acknowledging that some foods naturally contain higher levels of critical nutrients than those added.
- ❺ Excessive regulation of the sector can have a negative impact on the development and expansion of the industry and, consequently, may constitute an unjustified restriction on international trade (Congreso de la República, 2018, pp. 16-19).

Based on these additional statements from the association representing Colombian entrepreneurs, one can observe how the industry's agenda is systematic and increasingly sophisticated in preventing the approval of any type of regulation in their sector. This occurs even if the arguments used are not accurate and run counter to scientific evidence and the imperative to move towards healthy food environments.

The Asociación Colombiana de la Industria de Aceites y Grasas Comestibles (Asograsas) chose to criticize the bill for its alleged

lack of scientific rigor, particularly questioning the use of the Nova food classification system (Imprenta Nacional de Colombia, 2017). Asograsas urged the industry to directly intervene, considering it an authorized entity, even more so than Non-Governmental Organizations (NGOs) and Civil Society Organizations (CSOs). In their argumentation, they attempted to portray how, given their representation, civil society evidently stood to benefit economically from the bill. Through these and other maneuvers, Asograsas began to solidify the idea that “processed and ultra-processed products were being demonized,” a notion that some congress members would later defend without any substantiation (Imprenta Nacional de Colombia, 2017). It is important to note that later, on July 21, 2018, President-elect Iván Duque appointed Angela María Orozco, the president of Asograsas, as the Minister of Transport.

These industry positions were also supported by the Ministry of Commerce, Industry, and Tourism and the SIC. On the other hand, the Ministry of Health took a critical stance on the bill, not to facilitate its shelving but to complement and enrich it.

Despite the intention to archive the bill, it continued its process in the Commission and later moved to the plenary of the House of Representatives. Its delay was evident, and its discussion only took place between May and June 2018.

Among others, representatives such as María Fernanda Cabal, Oscar Darío Pérez, Samuel Hoyos, and Margarita Restrepo from the Centro Democrático Party, and Eduardo Díazgranados from the Partido de la U Party, expressed opposition to the bill. (Imprenta Nacional de Colombia, 2017, pp. 13-14). It

is noteworthy that their arguments centered around the demonization of the industry, consumer freedom, and the potential harm to small retailers (Imprenta Nacional de Colombia, 2017, pp. 13-14). These arguments are directly related to those presented by the then-presidential candidate Iván Duque in his defense of not taxing sweetened beverages, as well as those of ANDI and Asograsas in this project. This chorus would later be joined by the then-president of Fenalco, Guillermo Botero Nieto, who subsequently became the defense minister in the Duque administration.

The debate took a turn that led to its unfeasibility. The discussion shifted away from public health arguments, and fallacious arguments about issues not regulated by the bill were introduced. The dynamics then revolved around the lobbying efforts of various industry representatives. This situation became much more evident on June 6, 2018, the date it was discussed in the plenary of the House of Representatives:

According to numerous sources consulted and the public testimonies of the congress members themselves, the lobbying activity around this project was unusually intense during the debates. This became much more evident on June 6. Due to that lobbying, on that day, as titled by *El Espectador*, they “stripped the soul” from the initiative. (Imprenta Nacional de Colombia 2017, p. 13)

On June 6, 2018, the debate had a particularity: representatives from civil society and the industry were allowed to participate in the discussion. Additionally, dozens of lobbyists joined, moving from one side to another, seeking legislators with the aim of altering the course of the project.

The other representatives from civil society watched the debate from the gallery. In contrast, in addition to the visible faces of the industry, there were dozens of lobbyists in the plenary. Their task was straightforward: to alter the course of the project. “We saw 66 lobbyists,” said Representative Ospina. Many of them “were the same ones I had already debated with in the context of Bill 022,” said Correa.

(...) They can come directly from production guilds or lobbying agencies. Some have been identified by the media, for example, Valure, led by former Representative Nicolás Uribe, and Axis. (Imprenta Nacional de Colombia 2017, p. 13)

In the process of debating the bill for its review, an ad hoc commission was approved, including, among others, Samuel Hoyos from the Centro Democrático Party, Didier Burgos from the Partido de la U Party and Carlos Guevara from Partido Mira Party. While the intervention of these congress members led to changes in the articles related to school stores and the advertising of ultra-processed products, the use of the Nova system and the octagonal front-of-package warning label was maintained. Later, the position of the three parliamentarians changed diametrically. Firstly, they advocated for the implementation of the Guideline Daily Amounts (GDA) system, setting aside the Nova System and, consequently, changing the front-of-package warning label. Secondly, they modified the provision of the label size so that, instead of being 50 % as the project had foreseen until then, it was reduced to 20 % of the

front face of the packaging. There are indications that it was the lobbyists who presented the proposed changes to the congress members (Imprenta Nacional de Colombia 2017, p. 13), and although it is difficult to prove, the reality is that the approved bill favored the interests of the ultra-processed products and sweetened beverages industry, passed by the plenary of the House of Representatives on June 12, 2018.

Paradoxically, it fell to civil society organizations to request the archival of the approved project since, in conclusion, the original purpose of the project was undermined. The front-of-package warning label was removed, along with definitions related to ultra-processed foods or products, edible or drinkable products with high caloric content and/or low nutritional value, types of sugars, among others. Additionally, it excluded limitations on advertising.

The contradiction to the general interest and the protection of the health of Colombian citizens was evident. The industry demonstrated its interference power, and the asymmetry of industry dominance over the general interest came to light. Once again, the industry implemented and refined its catalog of practices to interfere and prevent regulation.

Indeed, powerful interests prevailed, and, once again, questions arise about the limits that separate legal and legitimate mechanisms of persuasion from illegal and illegitimate ones concerning the general, social, and collective good. (Salcedo-Albarracín, Garay-Salamanca, en Cajar, 2021, p. 36).

Law Project LP 214 of 2018: Second Attempt

The lessons learned from the undeniable successes of the industry have been persistence and a keen awareness not to be surprised by its reach. Thus, this new bill presented in the House of Representatives reiterated the need to promote healthy eating habits and included front-of-package warning labels. Essentially, for civil society organizations (CSOs), it was about keeping the issue on the public agenda, as it was foreseeable that the discussion times in the House and Senate would not be enough for the bill to be approved in the corresponding legislative period. Moreover, considering that the industry would employ all available tactics to prevent its progress.

However, while the PL 019 bill of 2017 continued its process in the Senate, the arrival of the Iván Duque government implied, according to denunciations by the Liga Contra el Silencio, that at least eleven high-ranking officials, including the Ministry of Health, the Ministry of Education, and the Ministry of Defense, were in one way or another connected to the processed and ultra-processed food and sugary beverage industry:

Eleven high-ranking officials in the government of Iván Duque come from organizations or companies that have some connection to the sugary beverage and highly processed food industry. This situation raises concerns about public health policies and state regulation that the current government may implement in this area. (Liga Contra el Silencio, 2019, 26 de September)

Furthermore, it was foreseeable that industry interference practices would operate

differently considering the structuring of the new proposal with six chapters, as follows: (i) general provisions, including an article on the scope of application, (ii) communication obligations for the prevention of NCDs by certain national entities, (iii) regulation of processed and ultra-processed food and beverage products on key issues such as labeling and front-of-package warning labeling, (iv) obligations and prohibitions in advertising directed at children and adolescents and their sanctioning regime, (v) public actions in favor of healthy food environments, and (vi) rules on sanctions (Imprenta Nacional de Colombia, 2018, pp. 20-44).

It is important to highlight that in this project, Article 5 established the obligation for the now-extinct ANTV to provide spaces for NGOs and public entities to broadcast messages promoting healthy lifestyles during children's programming and prime time, without channel and radio station restrictions. Meanwhile, Article 6 established the obligation to declare the amount of sugar, free sugars, and other sweeteners, sodium, total fats, saturated or trans fats per serving of the product, as well as the list of ingredients with their additives and ingredients with genetically modified organisms (Imprenta Nacional de Colombia, 2018, p. 42). And Article 7 incorporated the definition of front-of-package warning labeling, but while it continued to maintain the octagonal model and the 50% of the product label, only sodium, sugars, and saturated fats were included as critical nutrients. On the other hand, the use of the words "Excess of" was replaced with "High in". Finally, the warning message was changed to: "Avoid products with a warning, prefer natural foods" (Imprenta Nacional de Colombia, 2018, p. 43).

In the face of failure, education

Given the limited time for the processing of this bill, a significant portion of civil society efforts focused on advancing campaigns urging Congress to expedite the debates so that its processing could take place in the plenary of the House of Representatives.

Based on the lessons learned, civil society organizations foresaw that the industry's intervention would be felt in novel ways. This time, they stigmatized the democratic participation of citizens in the discussion, going so far as to label their interventions as "improper interference" in the legislative process. As expected, lobbying was also crucial in ensuring the bill's failure.

On June 12, 2019, the penultimate session of the legislature, the session of the Seventh Committee of the House of Representatives was suspended for reasons unrelated to the agenda items. Specifically, this was due to the arrival of Jesús Santrich for his first official day of work as a congressman (La Patria, 2019, 12 de junio). Thus, PL 214 could not be debated due to a lack of quorum. Two congressmen and several organizations told the Liga Contra el Silencio that the early closure of the session was a tactic to sink the project. This was not unusual, especially considering that at the time of filing the project, a year earlier, there were already signs of interference related to the assignment of rapporteurs who modified the original text of the bill (Liga Contra el Silencio, 2019, 11 de julio).

The bill proposed by the rapporteurs suggested that the labeling be developed by a government commission that included representatives from both the industry and civil society, said Díaz. According to the repre-

sentative, this made the outcome unpredictable. "When the same project already defined the type of labeling, the form of labeling, an award-winning labeling," he said. The United Nations Food and Agriculture Organization (FAO) and the InterAmerican Heart Foundation have awarded the proponents of the labeling law in Chile. (Liga Contra el Silencio, 2019, 11 de julio)

And this time, the ANDI, Fenalco, and AXIS were also present and operating, serving as lobbying offices.

In all debates, they are present. In the Commission, they take out the representatives, more or less tell them what to do, approach the advisors, and say, 'End this session now,' said a representative of civil society who asked not to be identified. We saw that in the session when Santrich arrived; a person from Axis told the assistant to a member of the board, 'That's enough, end this session.' That was the order. (...)

Another member of civil society described the industry's lobby on the committee in this way: I don't have evidence of any illegal incentive or inappropriate incentive. I can't say that. But I can say that they used all their strength to try to build conviction among the members of the Commission. (Liga Contra el Silencio, 2019, 11 de julio)

The arguments used by the industry are repeated over and over, and in this case, they were related to i) the inconvenience of this type of regulation, ii) doubt about scientific evidence without conflicts of interest that are contrary to their objectives, iii) the economic risk to the country's development model, iv) the potential loss of jobs, and v) the closure of neighborhood stores if the industry is regu-

lated. However, in no case were these claims proven, and no concern was expressed for public health issues (Liga Contra el Silencio, 2019, 11 de julio).

And it remains regrettable how these conflict-of-interest theses were and are repeated by some congressmen. In the specific case of PL 214 of 2018, the industry's positions notably coincided with those of the former senator and then-president Iván Duque, who was the candidate who received the most donations from this industry during his campaign. This eventually explains why the Ministry of Health lost interest in PL 019 and the proposal for tax reform that included a tax on sugary drinks.

In fact, the Ministry of Health and Invima opposed several aspects of the bill. For the purposes of this document, it is worth highlighting their opposition to the regulation of labeling contained in Article 6, arguing that nutritional labeling should adhere to Resolution 333 of 2011. Additionally, they explicitly mentioned that other types of labeling should go through joint working groups with the industry, associations, and academy, excluding recommendations from NGOs, leaders in advocating for the implementation of public policies recommended by international organizations that safeguard, among other things, the right to health (Imprenta Nacional de Colombia, 2018, pp. 10-11).

Box 3

Warning labels on junk food would be effective in Colombia

A study found that they help consumers identify which foods are less healthy.

With front warning labels on junk food and sugary drinks packaging, Colombians can easily perceive which of these products are the least healthys.

This was demonstrated by a virtual study titled 'Evaluation of the Effectiveness of Different Front-of-Pack Warning Labels for Food and Beverages with High Sugar, Sodium, and/or Saturated Fat Content in Colombia,' conducted by the University of North Carolina, the Universidad Nacional de Colombia, Universidad Javeriana, and Vital Strategies. This study was recently published in the 'Nutrients' journal.

Specifically, 1.997 adults were randomly assigned to view simulated market products with three types of labels: octagon, circle, triangle, and the barcode (the latter being the control). Afterward, they answered some questions.

49 percent stated that octagonal front warning labels discouraged them from consuming ultraprocessed products with excessive harmful nutrients compared to 27 percent who chose triangular labels and 21 percent who opted for circular labels.

The study also revealed that when choosing between two fruit drinks, 84 percent of the parti-

*cipants believed that the drink with an octagonal warning label **had the highest sugar content, compared to 32 percent exposed to products with barcodes.***

Furthermore, warning labels performed similarly among participants with low (secondary basic or lower) and high (university level or higher) education levels, "demonstrating that they could have a positive and equitable impact on purchasing decisions, regardless of educational level," according to the study.

*Another significant finding is that the presence of warning labels on the front of the packaging discourages Colombians more from buying these products. **Approximately 22 percent of participants would buy the less healthy products with a warning label,** en compared to 54 percent who reported buying them when they saw the barcode (control).*

According to the researchers, "policymakers should consider the octagon warning as part of a front-of-package labeling policy to help consumers identify and reduce the consumption of foods with high levels of concerning nutrients."

Luis Fernando Gómez, a professor at Universidad Javeriana and one of the authors, states that the results align with those of other studies in Latin America that demonstrate the effectiveness of these warning labels. "For this intervention to have a greater impact, it must be linked to other actions such as advertising restrictions and promotion of ultraprocessed foods, regulation of food environments, and a tax on sugary beverages," he asserts.

*Mercedes Mora, also a co-author and professor at the Universidad Nacional de Colombia and Universidad Javeriana, believes that this study demonstrates **that octagonal warning labels on the front of packaging are clear and understandable for the Colombian population. They would help promote healthier eating, encouraging the consumption of natural foods that are healthy** and would never carry a warning label.*

It is worth noting that front-of-package warning labeling is endorsed by the World Health Organization (WHO) for addressing the growing problem of obesity. In Colombia, legislative efforts to promote it have been unsuccessful, and at the beginning of the year, the Ministry of Health announced a labeling project that features its own version of circular seals, which is making progress. (...)

El Tiempo⁵

Health Unit

October 18, 2020

5 Available at: [Estudio sobre etiquetado en Colombia respalda sellos frontales de advertencia - Salud - EL-TIEMPO.COM](https://www.eltiempo.com/salud/estudio-sobre-etiquetado-en-colombia-respalda-sellos-frontales-de-advertencia-salud-EL-TIEMPO.COM)

As expressed by Representative Mauricio Toro to the Liga Contra el Silencio, at least two officials from the Ministry of Commerce explained to the members of the Seventh Commission the reasons that justified the alleged inconvenience of the PL. This position is consistent with the document of comments on PL 214 of 2018 presented by that ministerial portfolio, summarized in the following arguments: i) the issue under consideration was already being discussed through PL 256 of 2018 Senate that contained observations from the Ministry of Commerce and the guilds. They referred to the failed project corresponding to PL 019 in the Chamber, modified based on the interests of the industry, ii) the regulatory framework on the matter should be established by the executive in accordance with the international commitments signed and within the framework of a regulatory procedure to obtain the necessary inputs, and iii) the guidelines of the Codex Alimentarius should be followed (National Printing Office of Colombia, 2018). The position of the Ministry of Commerce, so close to that of the industry, although questioning the article as a whole, could have influenced the delay and subsequent filing of the PL. Faced with evidence that the PL would not be debated in the legislature, 22 civil society organizations took actions to draw attention to the commission in charge to expedite the debate with the aim that the bill could continue its path to the plenary.

The apathy of some congressmen to debate the PL was so evident that Cajar filed a disciplinary complaint against Representatives Jairo Humberto Cristo Correa, Henry Correal Herrera, and Faber Alberto Castillo for failing to meet the deadlines for processing the PL.

It was inconceivable that by May 27, 2019, the report for the first debate had not been filed when the project had been submitted the previous year ([Dulce Veneno, 2019, 19 de agosto](#)).

And it is worth reiterating that it has been the NGOs that have taken systematic actions to draw the attention of the elected congress members towards advancing the creation of laws that favor the rights of all individuals, prioritizing vulnerable populations over the economic interests of certain sectors. In other words, adhering to the democratic principle established in our constitution. On June 5, 2019, a large banner was hung on the facade of the National Congress, urging congress members to debate and approve the PL. This action was accompanied by a social media campaign. The reaction of some congress members was not delayed, and there was pressure to remove the banner, especially from senators of the Centro Democrático Party, Cambio Radical Party, and the Partido de la U Party, parties traditionally financed by the industry, according to the Liga Contra el Silencio ([Dulce Veneno, 2019, 09, 2](#)).

On June 18, 2019, ANDI issued a statement defending the specific interests of its members, stating:

However, as an association and as entrepreneurs convinced that dialogue and consensus in the country are important, always aiming to achieve the common good and benefit society, we reject the acts of intimidation and harassment that other stakeholders in Bill 214 exert on the Representatives in the Chamber. (ANDI, 2019, 06, 18)

Note how, on the one hand, civil society

urged the National Congress to adopt regulations based on the recommendations of the WHO and PAHO to protect the population, especially children, from the uncontrolled expansion of NCDs caused to a large extent by the consumption of ultra-processed food and beverages. On the other hand, the ANDI rejected this broad civil society, labeling their actions as “intimidation and harassment” and demanding equality in the debate. This ignores or disregards the asymmetry between the values each side defends. While the industry defends economic interests of associations, civil society represents the defense of rights, especially those being denied to the most vulnerable populations. Therefore, for an association like ANDI to label these citizen actions “as acts of harassment and intimidation” has very serious implications, among other things, because it jeopardizes the integrity of individuals representing the legitimate and democratic interests of the populations.

Another issue that comes to light in ANDI’s statement is that it perceives itself as a democratic actor, acting from its power of persuasion and argumentation to ensure that legislative proposals align with business perspectives. It lacks any form of self-criticism and disregards, hides, or ignores its interference practices to tailor legislative projects to its interests, have them shelved when they are not, or minimize their effects when their practices fail. As an example, Bill 214 of 2018 was shelved at the end of the 2019 legislative session, as it suited and expected by the industry. And yes, it must be acknowledged, once again, in the second attempt to advance legislation related to junk food, the industry succeeded in shelving Bill 214 of 2018.

PL 167 of 2019 House - PL 347 of 2020 Senate: A Step Forward

Despite two setbacks, NGOs and health-committed legislators once again presented the bill aimed at creating front-of-package warning labels. Even though the industry employed documented interference strategies throughout the process, the provisions regarding labeling survived with significant modifications both in the House of Representatives and the Senate.

The third consecutive attempt culminated in Law 2120 of 2021 “by means of which measures are adopted to promote healthy food environments and prevent non-communicable diseases (...)” (Función Pública, 2021). A challenging journey, a satisfactory outcome, and yet another demonstration of the persistence of NGOs, academy, research centers, networks, parents concerned about their children’s health, and some legislators committed to public health and the common good. A display of persistence within an undeniable power asymmetry between the industry and the rest of society.

So, when what seems most relevant in this process is the constancy, perseverance, and tenacity of NGOs with the support of certain and few legislators, it is worth asking as a country and as a society, first, how to explain that a public health policy aimed at preventing non-communicable diseases, which is significant in terms of costs for the healthcare system and in terms of lives saved, had to go through a process of more than six years to become a reality. Second, how to explain – as a country and society – that it had to be done despite the opposition of the industry, its lobbyists, and their interference, capture, and delay strategies, along with

those legislators sympathetic to industry interests, and some officials from the national government who openly and until the last moment provided their services to prevent the law from being passed. Faced with the impossibility of achieving this, they hastened institutional processes to enact Resolution 810 of 2021 as a last-ditch mechanism for delaying the implementation of the law; a novel strategy, hitherto unknown.

It seems then that persistence goes from being a commendation to civil society to becoming an interrogation, among others, of decision-makers, those responsible for the public health system, the executive, and the legislative branches, who should clearly have led this regulation. After all, it is reasonable to think that the balance of power between them and the industry could be less skewed.

So begins the story of Law 2120 of 2021, which, by the way, does not regulate front-of-package warning labeling. There was a challenging journey filled with obstacles, interferences, capture, delays, bad practices, and

common practices by the ultraprocessed food and beverage industry. Unfortunately, the history of Law 2120 of 2021 shows, with few exceptions, how the industry has no interest in contributing to the prevention of non-communicable diseases, obesity, or overweight, among others. Unregulated consumption of these products significantly increases the risk.

This part of the story is relevant because, having culminated in the promulgation of the law, NGOs, academy, research centers and networks, medical associations, parents, representatives of organizations, legislators who defended the common good and represented the issue in the legislative body, some media outlets, and the general public obtained important lessons. They identified dishonorable mechanisms of the industry and, at the same time, learned to develop actions to defend the common good and say “enough” to collusion with an industry that is unable to be self-critical and pivot towards a win-win relationship that guarantees its economic interests without going against the health of the citizens.

Box 4

What changed in civil society to achieve the approval of Law 2120 of 2021?

It's not about a specific action; it was the result of a long process. For several years, civil society organizations (CSOs) mobilized consistently and persistently through communication and political advocacy actions in Congress, legal avenues, such as a popular action, meaning all the pressure from civil society that made Colombia talk about labeling and care about labeling. Front-of-package warning labeling ceased to be a discussion only among Congress, ANDI, Fenalco, and the industry, opening doors to CSOs, the people, and civil society that were taking ownership of these discussions. Additionally, interest from the media about what was happening was awakened.

The truly impactful achievement was mobilizing civil society around labeling. This is why the last bill was the result of an engaged civil society and the support of some legislators committed

to public health.

The landscape changed in 2016; although there were legislators supporting the project at that time, the number of allies in Congress increased for various reasons. Some were convinced of the convenience of the bill; others were interested in leading an important issue in the public agenda and public opinion. Some others took into account that the labeling issue had a significant presence in the media. Regardless of the reason, it is true that in the last stage when Law 2120 of 2021 took shape, there was majority support.

Looking back, it is undeniable that the most relevant aspect throughout these years was to position the issue in public opinion and mobilize citizens around labeling. The pressure exerted by citizens on their Congress, the mobilization, the letters sent to legislators from various regions of the country when they archived PL 214, the fact that people knew what was happening in Congress and mobilized in favor of front-of-package warning labeling, changed the course of this story.

CSOs, in a coordinated and joint effort, made people feel that the issue concerns the entire citizenry, and that was very important because the industry did not have it as easy. Nowadays, it is evident that the media talks about ultraprocessed food and beverages; there is appropriation of the concept of ultraprocessed food and beverages, which is already part of concepts developed in laws such as the 2022 Tax Reform and the Junk Food Law.

Although the media were never allies for obvious reasons, it is noticeable that now they speak more freely and knowledgeably about ultraprocessed foods, now they are interested in the labeling law, now they want to know more about how lobbying and industry practices develop. There is now a greater concern and a higher commitment to understand the issue and provide better information, and this is the result of the hard and unwavering work of CSOs over several years.

The industry has probably changed its strategies, but it is clear that it will hardly change its goal of productivity at all costs. Perhaps there have only been changes in its way of acting to achieve its objectives, its strategies, its actions; however, the asymmetry of power is and will eventually remain a constant in the relationships between citizens and the industry, and institutionalism.

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August, 2023*

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Initial wording

The initial wording of both bills (House and Senate) did not differ much from the wording of Bill 214 of 2018, except for the following conceptual clarifications:

- 🌿 In Article 2, in the definition of ultraprocessed food or drink products, critical nutrients now include trans fats and other sweeteners in addition to the existing ones: sodium, free sugars, and saturated fats, with specified thresholds indicating their exceedance.
- 🌿 In the regulations regarding the communication of prevention of NCDs outlined in Article 4, it is explicitly stated that educational tools must highlight the risks associated with consuming ultraprocessed food products.
- 🌿 In Article 7, which regulates front-of-pack warning labeling, the octagonal symbol remains unchanged. However, when the product contains sweeteners other than the sugars indicated within the octagonal symbol, the warning reads “contains sweeteners,” eliminating the phrase “excess of.”
- 🌿 In the same Article 7, the proportion of the warning label is changed to 20% of the product’s label. Paragraph 1 of Article 7 revises the additional phrase to “avoid frequent consumption.”
- 🌿 Regarding public actions in favor of healthy environments in public and private institutions for preschool, primary, and secondary education, which were in Article 11, new restrictions are added to limit the advertising of products with warning labels and/or non-caloric sweeteners. It establishes the implementation of these measures within six months.

🌿 Paragraph 2 of Article 11 adds the possibility of an administrative sanctioning procedure in accordance with Article 168 of Law 115 of 1994 in case of non-compliance with the provision contained therein.

🌿 The provision on conflicts of interest remains unchanged (Imprenta Nacional de Colombia, 2019, pp. 20-24).

In the Seventh Commission of the House, the rapporteurs were Representative Mauricio Toro from the Partido Verde, who was already committed to the project, and Representative Carlos Eduardo Acosta from the Partido Colombia Justa y Libre, an opponent of the regulation. Faced with the difficulty of reaching an agreement between the two rapporteurs, two reports were presented. On June 10, 2019, the bill was debated with substantial modifications to its wording, and eventually, a consensus was reached on the text that emerged from the Seventh Commission of the House to be presented to the plenary. The same congressmen were designated as rapporteurs. The bill was announced in September, but it only appeared on the agenda in October 2020.

At this point, nothing had changed regarding the industry; systematic delay strategies were repeated, steps were taken to prevent the bill from being debated, including holding hearings, not including the bill on the agenda, changing the order of the bill on the agenda, and the constant presence of lobbyists and industry representatives (such as ANDI and Fenalco) in plenary and committee discussions. It is reasonable to deduce that some congressmen have an agenda with or from the industry, perhaps being there because

the industry placed them, and consequently, they work with its agenda. The various forms the industry uses to reach legislators are notable. Their presence during the discussion of bills in the House and Senate was constant, and it is public knowledge that they were the authors of several proposals submitted to congressmen for respective filing. Even in the House of Representatives plenary, Representative Inti Asprilla requested the removal of ANDI from the bill discussion sessions, among other reasons, because their interference was undeniable.

In the plenary session of the House, the bill lost many of the civil society’s bets on key elements related to labeling, regulation, and advertising. The same logic as the first 2017 project was being repeated, but this time there seemed to be a chance to improve the outcome in the Seventh Commission of the Senate, where Senator Nadia Blel of the Conservative Party was designated as the rapporteur. Senator Blel showed a willingness to listen to organizations, legislate in favor of society at large, and finally, in the Seventh Commission of the Senate, a report was filed that incorporated elements that had been lost in the House of Representatives plenary.

Both ANDI and Fenalco, as well as civil society organizations (OSCs), issued technical opinions on the project. The industry provided several opinions against the bill, conveyed through senators aligned with their interests, such as Gabriel Jaime Velasco Ocampo of the Partido Centro Democrático Party. Despite being prohibited by Law 5 from reading corporate interventions, he had no qualms about reading verbatim an ANDI opinion as his own, without declaring his conflicts of interest, as he had recently been

the director of ANDI in Valle del Cauca, and part of his funding came from the sugar industry. Similarly, Congressman Carlos Motoa of the Partido Cambio Radical Party defended industry interests over public health interests. In this instance, they led proposals to sink or archive the project, but they did not succeed. Indeed, important recommendations from civil society were embraced in the report presented by Senator Nadia Blel, who also included suggestions from Representative Mauricio Toro, who continued to lead the project that was ultimately approved in the Seventh Commission of the Senate.

It was a victory for civil society, which, this time, had the support of representatives and senators who contributed their efforts to ensure that i) the project was discussed within the prescribed time frames set by the regulations, ii) they managed to reconcile positions so that over 40 congress members could participate in the bill (Vorágine, 2020, 12, 1), driving its progress through both the committees and the plenary sessions of the Chamber and the Senate, iii) the achievements were maintained during the discussions, and iv) a reconciliation commission was established to merge the two texts during the reconciliation process.

At this point, the complexity lay in the fact that of the seven individuals forming the commission, three were inclined to advance the front-of-package warning label law, while four leaned toward industry arguments. Moreover, the Ministry of Health and Ministry of Commerce played a controversial role, providing recommendations to the Commission on the final text, not necessarily in line with the recommendations of the WHO and PAHO. Once again, the weight of the power asymmetry within the commis-

sion came to the forefront. Additionally, the Ministry of Health was advancing Resolution 810, which it had been preparing for two years as part of the regulatory impact analysis. The intention was to issue the resolution prior to the approval of the law and thus claim that the law was unnecessary.

The final text was reconciled with the minimum conditions necessary for a labeling based on the most available scientific evidence free from conflicts of interest. A law was achieved that represented a further step in the process initiated in 2016. Although elements such as advertising measures and restrictions on UPBF in marketing and school environments were lost, a scientific standard for front-of-package warning labeling was established, and some definitions were incorporated. In other words, the approved law, while not ideal, did advance public health objectives aimed at preventing NCDs.

Its discussion was also influenced by the timing, for two reasons: first, due to the effects of the pandemic, as public health measures gained interest in the population. Second, because, also due to the pandemic, virtual sessions in Congress changed the industry’s lobbying methods (Duque, T., and Chavarriaga, S., 2021, Junio 27). It cannot be concluded that industry interference ended, but it is known to have transformed and strengthened in some aspects that did not depend on direct lobbying actions on-site. As mentioned earlier, a common form of interference was the inclusion of propositions representing the industry’s perspective, managed by some industry-aligned congress members, even with texts identical to concepts already presented by the industry, especially by ANDI.

It is also crucial to note that, alongside this legislative process, progress was being made in the regulation of front-of-package warning labeling by the government, academy, and NGOs, with active industry participation and prominence. This was on the verge of undermining the legislative process, seeking its archive once again. By this time, Congress had already resumed in-person sessions, so industry lobbying had intensified. Nevertheless, the labeling regulations approved in the law are stricter than those in Resolution 810.





















Proceedings in the House of Representatives

The PL was ambitious in many of its contents, including regulations for the industry and provisions for certain state entities. In the House of Representatives, opposition to the project came from representatives of the Partido Centro Democrático Party, such as Christian Garcés, Gabriel Vallejo, and Jairo Cristancho. The problematic points were related to definitions, the conflict of interest of officials responsible for regulation, restrictions on advertising for certain UPBFs, and front-of-package warning labeling. All these points were going to undergo transformations in the final draft, and the positions that would be expanded in the plenary session were laid out during the first debate in the Seventh Commission.

The coordinating rapporteurs of the PL (Mauricio Toro and Carlos Eduardo Acosta) had different approaches to the project. While Mauricio Toro defended the text in its entirety as presented, only recommen-

ding some additional definitions,⁷ Carlos Eduardo Acosta proposed a profound change to the project’s text. An atypical situation, demonstrating the level of influence of the UPBF sector in the PL, occurred in

the formal opinions requested by one of the rapporteurs from entities that included companies and industry associations, as seen in the following list. (Imprenta Nacional de Colombia, 2019, p. 15):

 Asociación Colombiana de Ingenieros de Alimentos	 Colegio Colombiano de Nutricionistas Dietistas
 Ministerio de Salud y Protección Social	 Sociedad Colombiana de Pediatría
 Ministerio de Comercio, Industria y Turismo	 Instituto Colombiano de Bienestar Familiar
 Asociación Colombiana de Ciencia y Tecnología de Alimentos	 Ministerio de Hacienda y Crédito Público
 Federación Colombiana de Consumidores	 Asociación Nacional de Empresarios de Colombia
 Team Food	 Alquería
 Alpina	 Grupo Nutresa
 PepsiCo	 Nestlé
 Postobón	 Femsa
 Colanta	 ONAC

As can be seen, Representative Acosta consulted 13 companies or organizations closely tied to the UPBF industry, four state entities including three ministries, two organizations closely related to academy, and only one organization close to civil society. Deliberately, expert organizations such as the PAHO and pioneering civil society organizations were ignored, and the participation of companies was privileged.

The result was predictable: ANDI, ACTA,

ONAC, and Team Food provided negative opinions. Their arguments questioned: i) not following the recommendations of the Codex Alimentarius, ii) the NOVA food classification system lacking scientific basis, iii) the intake of ultraprocessed products being potentially nutritious and not influencing the presence of NCDs, and iv) NCDs being generated due to lack of education and nutritional ignorance among individuals (Imprenta Nacional de Colombia, 2019, pp. 15-17).

7 Specifically, incorporating a definition of intrinsic sugars, distinguishing them from free sugars.

Based on these opinions and meetings with other types of ‘experts,’ Representative Acosta proposed a profound modification of the articles, which included:

- 🗳️ Some definitions without technical concepts about the level of food processing, critical nutrients, and obesogenic environments.
- 🗳️ It created a National Intersectoral Council for the Prevention and Control of NCDs and assigned it various functions related to this purpose.
- 🗳️ It left under the responsibility of the national government the development of a technical regulation on definitions and front-of-pack labeling, and imposed a food safety obligation.
- 🗳️ It changed the obligation to create spaces for the transmission of messages promoting healthy lifestyle habits to simply “promoting” them, although it encouraged that the information be truthful and impartial.
- 🗳️ It removed restrictions on advertising targeting minors.

The rest of the articles were modified to a lesser extent, except that this proposition eliminated Article 13, which addressed the issue of conflicts of interest, and excluded any mention of the topic in the rest of the articles (Imprenta Nacional de Colombia, 2019, pp. 32-47). Indeed, without much discussion, prematurely and with strong support, the issue of conflicts of interest was completely eliminated in the second debate. Undoubtedly, a triumph for the industry, which safeguarded the revolving door practice and protected the possibility of individuals close to the industry participating as officials in its regulation.

Thus, the text approved in the first de-

bate incorporated the perspectives of both speakers. Some definitions were modified, and the responsibility for regulating the technical aspects of labeling was assigned to the Ministry of Health. The obligation for the government to ensure the safety of food products was included, and restrictions on advertising were removed—although they were later reintroduced.

Against all odds and despite the arduous efforts of both the industry and certain congress members and government officials, the proposed law (PL) continued its process. Prior to the second debate, the positions of congress members Vallejo, Garcés, Motoa, and Cristancho against the PL deepened. The involvement of civil society, the industry, and the government expanded, as did the concepts and comments on the project from, among others, the Asociación Nacional de Anunciantes, the Corporación Colombia Joven, the Red Académica de Nutrición, the Food First Information and Action Network- FIAN Colombia, the Ministry of Finance, ANDI, Red Académica en Colombia Libre de Conflictos de Interés, Red PaPaz, Dejusticia, and the Colectivo de Abogadas y Abogados José Alvear Restrepo. During the progress of this debate, positions centered around two key aspects: i) restrictions on advertising (which were revived thanks to Representative Toro), and ii) the acceptance of the scientific foundations of the Nova system for food classification, influencing both labeling and definitions. In this context, interventions by Civil Society Organizations (CSOs) were crucial in refuting the industry’s stance on the alleged lack of scientific basis for the Nova System.

The stance of FIAN was one of the most

articulate:

While some sectors have attempted to dispute the degree of food processing as a valid criterion for contributing to preventive health measures, to the extent that recently the Ministry of Agriculture of Brazil spoke out against the country’s dietary guidelines, the truth is that technical bodies of the United Nations such as the FAO, WHO, and Unicef consider the Brazilian Guide an example to follow. Additionally, the Ministries of Health in Canada, France, Uruguay, Peru, and Ecuador have their dietary guidelines and nutrition policies inspired by the Brazilian model.

Furthermore, in 2016, the FAO praised the Brazilian Guide and classified it as one of the four most comprehensive in the world, considering both health and environmental aspects, comparing it with documents from Sweden, Germany, and Qatar. In addition, a letter sent by 33 renowned academics from universities such as Harvard, Johns Hopkins, Yale, and Cambridge seeks to defend the dietary guidelines and states that the technical note from the Ministry of Agriculture of Brazil lacks a valid foundation. The academics express that the text “clearly written without knowledge of scientific research on this topic, raises several unjustified criticisms of the Brazilian dietary guidelines published by the Ministry of Health.” (FIAN Colombia, 2020, p. 7)

In turn, the Academic Network for the Human Right to Adequate Food and Nutrition criticized the industry’s position for disregarding both the Nova System and its responsibility in the proliferation of Non-Communicable Diseases:

This attack has been supported by industry sectors in Brazil that see the Nova System as an obstacle to their primary goal, which is to encourage the profitable consumption of Ultra-Processed Food Products (PCU, in Spanish). In our country, some industry sectors have also joined these positions, lacking scientific validity, and demand the removal of any reference to PCUs and the use of the NOVA system and the nutrient profile of the Pan American Health Organization (PAHO) as a scientific basis from some legislative initiatives in Congress. These initiatives aim to advance regulations that warn about the risks of PCU consumption, advertising targeting children and adolescents, and marketing in educational institutions.

(...)

Just as legislative initiatives are advancing in the country supported by civil society to adopt strategies for promoting healthy food environments in Colombia, the National Business Association of Colombia (ANDI) makes statements to the presidency of the House of Representatives and its members. Without significant scientific basis, ANDI labels the designation of ultra-processed food products as a “technical error” and attributes the responsibility for adopting healthy eating patterns and lifestyle habits mainly to individual responsibility, nutritional education, and the promotion of physical activity.

(...)

These practices of Corporate Political Activity by the industry, which interfere with the implementation of favorable public food policies for the population, using discursive strategies that shift responsibility from the

industry and its unhealthy products to the systematic violation of the Right to Adequate Food and Nutrition and the right to health, placing the entire weight of responsibility on the individual, have been recognized in recent studies in the Latin American region and our country. These studies suggest that they need to be identified, evaluated, and regulated by government entities. (Red Académica por el Derecho Humano a la Alimentación y Nutrición Adecuadas, 2020, pp. 4-6)

The industry’s position remained unchanged; on one hand, it attacked the scientific foundation of the Nova system, and on the other hand, it argued that advertising restrictions were excessive. The industry even claimed that children aged eight and older should have the critical ability to analyze advertising and decide for themselves. (Asociación Nacional de Anunciantes, 2020). After the second debate and enduring all possible delaying strategies, in which, furthermore, the national government at the time participated through officials from the Ministry of Health and Commerce, the bill that passed this test in October 2020 was sent to the Seventh Commission of the Senate in November of the same year.

Senate Proceedings

Once in the Senate, it took two months for the secretariat to assign a rapporteur for the bill. The Senate attributed the delay to the House, while the House claimed that the bill was already in the Senate. Although it may seem incredible, everything indicates that the whereabouts of Bill 347 of 2020

(Senate) were not known. After this delay, Senator Nadia Blé from the Conservative Party was appointed as the rapporteur coordinator. According to information confirmed by Representative Mauricio Toro in an interview with Cajar, the interference extended to Senator Blé. Initially, there were requests for her to decline the coordination, and later, representatives from the Ministry of Health, Ministry of Commerce, and ANDI extended closed-door invitations. The purpose of these meetings was to persuade the rapporteur about the need for the bill, arguing that the Ministry of Health was already regulating the issue. Senator Blé accepted these meetings under the condition that Representative Toro and his team would also attend (Cajar, 2020, interview with Mauricio Toro).

It is worth reiterating that the strongest opposition to the bill came from the Centro Democrático Party and Cambio Radical Party, parties, under the guidance of Senators Gabriel Velasco, Milla Romero, and Carlos Mota. Their positions were in line with those advocated by the industry in various scenarios and in the concepts presented. To the extent that, in one of the debates, Senator Gabriel Velasco read a portion of the concept presented by ANDI as if it were his own (Vorágine, 2021, 17 de septiembre). On the other hand, when comparing the propositions of Senator Milla Romero from the Centro Democrático Party with the texts of the concepts from ANDI, a striking similarity is found. Just as an example:

Senator Milla Romero's Proposal	Opinion of ANDI
Amend Article 5, which shall read as follows: Article 5. Front-of-package warning labeling. All edible products or beverages classified as ultra-processed according to the level of processing with an excessive amount of critical nutrients. For all packaged foods that exceed the warning thresholds established by the Ministry of Health and Social Protection, they must implement front-of-package labeling incorporating a warning seal. This seal must be of high preventive impact, clear, visible, legible, easily identifiable, and understandable for consumers, with unequivocal messages warning consumers of excessive contents of critical nutrients.	Article 5. Front-of-package warning labeling. All edible products or beverages classified as ultra-processed according to the level of processing with an excessive amount of critical nutrients, packaged foods with an excessive amount of critical nutrients that exceed the warning thresholds established by the Ministry of Health and Social Protection, must implement front-of-package labeling incorporating a warning seal. This seal must be of high preventive impact, clear, visible, legible, easily identifiable, and understandable for consumers, with unequivocal messages warning consumers of excessive contents of critical nutrients.

Source: CAJAR, own elaboration based on information from the Colombian National Printing Office 2023

Undoubtedly, the industry also had senators who served as vehicles for their interference and, openly, replicated their interests in propositions to the bill. This situation was denounced by Cajar, as a brief analysis of electoral campaigns revealed that they had received funding from companies related to the PCBU industry or the sugar industry; a situation that clearly presented a conflict of interest.⁸

In the third debate, the bill did not undergo significant modifications concerning front-of-package warning labeling. However, in the fourth and final debate, there were delays because the President of the Senate, Arturo Char, ensured that the bill occupied the last positions on the agenda for discussion. Three days before the end of the legislative session, with Senator Blé on maternity leave, Senator Char took advantage of a regulatory gap to propose filing the report the next bu-

siness day with a new rapporteur. However, Senator José Ritter López from the Partido de la U Party proposed himself as the rapporteur, preventing the bill from being archived and paving the way for the next debate on June 17, 2021.

One day before the debate on June 16, 2021, the Ministry of Health led by Fernando Ruiz issued Resolution 810 of 2021, establishing circular seals with more industry-friendly cut-off points. This move aimed to convey to Congress the narrative that a law was not necessary since regulations could be established through resolutions.

As pointed out by Representative Mauricio Toro and Senator Angélica Lozano during the final debate, officials from the Ministry of Commerce, the Ministry of Health, and the Ministry of the Interior, in clear competition with industry lobbyists, were making a titanic effort to convince senators to chan-

8 Particular attention was drawn to Senators Milla Romero, Gabriel Velasco, Carlos Fernando Mota, and José Ritter López, specifically regarding their funding. This is not to overlook the crucial role played by Senator López in the approval of the law.

ge their votes or disrupt the quorum to sink the bill. They sought to introduce a block of propositions that modified it according to the industry's convenience. The intervention of officials from these departments even occurred at the moment of the vote.⁹ Fortunately, despite the industry's strenuous efforts and some officials of the national government, the law would only need the reconciliation process between the bills from the House and the Senate, which was also expected to be challenging.

In addition to appointing ten reconcilers—normally, two are appointed, unless there are external pressures—of which seven were against the bill, there was another delay, this time led by the secretary in notifying the senators. To further complicate the situation, the congress members in the reconciliation process requested the involvement of ANDI, Ministry of Commerce, and Ministry of Health.

In the end, entry was allowed for the ministries, and significant modifications were made regarding the complete removal of advertising restrictions and definitions to avoid association with ultra-processed products. However, it was possible to include in the article on front-of-package warning labeling the introduction of the phrase “greater scientific evidence free from conflicts of interest.” In this way, a front-of-package warning label in line with the original objectives of the bill was safeguarded.

Despite everything, the Junk Food Law became a reality on June 20, 2021. However, its processing still faced obstacles, as it took President Iván Duque one month and ten

days to sanction it; he only did so on July 30, 2021. What should have been an automatic process turned into an additional delaying tactic.

Front-of-package warning labeling

The originally proposed front-of-package warning labeling underwent modifications; however, it represents a significant step in regulation, primarily because it achieved:

- 🌱 All edible and drinkable products must have it, categorized based on the level of processing with an excessive amount of established critical nutrients, and according to the limits set by the Ministry of Health.
- 🌱 It must be of high preventive impact, clear, visible, legible, easily identifiable, and understandable for consumers, with unequivocal messages warning them of excessive contents of critical nutrients.
- 🌱 The National Government and the Ministry of Health are given the authority to regulate the maximum parameters (form, content, design, proportion, symbols, texts, maximum values, colors, size, and location). However, in issuing these regulations, they must be based on the highest available scientific evidence free from conflicts of interest, although they retain the authority to use that provided by the World Health Organization.

- 🌱 The regulation of applicable criteria for nutritional or health claims is also left to the discretion of the Government and the Ministry of Health.
- 🌱 Artisanal and minimally processed edible and drinkable products are exempt from front-of-package labeling.
- 🌱 One year is given to regulate the aforementioned measures.

Box 5

Warning labels are an urgent necessity

Front-of-package warning labeling is a measure that the World Health Organization presents as cost-effective for creating healthy food environments, an absolute necessity for the country.

It is crucial to understand that this epidemic of obesity and overweight, along with hypertension and diabetes, caused 44% of all deaths in the Americas region in 2017.

I want to address a topic that is of special importance to Red PaPaz: the proportion of girls and boys with overweight between 5 and 19 years old has been increasing dramatically. Let's also remember that obesity not only harms the health of girls and boys, but it limits their educational achievements, reduces productivity at work by increasing absenteeism and presenteeism, and diminishes real employment opportunities, among other consequences.

According to a study conducted by Red PaPaz in 2020, 81 % of people agree that lawmakers should legislate to prevent non-communicable diseases associated with malnutrition. Additionally, 85 % of people believe that the government should prioritize the right to health over the interests of junk food industries.

Why do we need front-of-package warning labeling? Because nearly 70 % of Colombians believe that current labels are difficult to understand or do not provide useful information; because labeling protects the right to healthy eating, the right to access information, and the right to decide freely; it safeguards the fundamental rights of girls, boys, and adolescents as outlined in our national constitution.

What advantages does front-of-package warning labeling offer then?

- 🌱 *It clearly communicates when a product has an excess of critical ingredients such as sugars, saturated fats, sodium, and sweeteners.*
- 🌱 *It provides quick and easily understandable visual cues that enable consumers to identify these unhealthy products.*
- 🌱 *It allows consumers to make an informed decision.*
- 🌱 *It enables the industry to innovate, reducing the quantity of critical ingredients that also serve no nutritional purpose.*

⁹ On the day the bill was approved in the Senate, Senator Angélica Lozano warned about lobbying on the social network Facebook, through this link: <https://www.facebook.com/angelicalozanocorrea/videos/204980088162420/>

This is the proposal for front-of-package warning labeling: excess sugars, excess sodium, excess saturated fats, or a warning when the product contains sweeteners.

What does this include? Labeling junk food, the packages of these processed products. To do this, it is necessary to use octagonal warning labels that already show the evidence, studies not only international but also conducted for Colombia.

Warning labels with the term “excess of” eliminating the use of positive labels because part of the very serious confusion with labeling today is the amount of information that ultimately leads to consumer confusion. Additionally, no health claims should be allowed on products that have warning labels. This becomes a contradiction because if they have warning labels, they shouldn’t have these declarations that make products appear healthy.

Furthermore, implementation needs to occur as soon as possible because it is scientifically proven that warning labels are an urgent necessity.

*Carolina Piñeros Ospina¹⁰
Executive Director of Red PaPaz*

Both front-of-package warning labeling and other measures contained in Law 2120 of 2021 are a significant achievement. This success is attributed to various stakeholders, including NGOs, academy, research centers, medical associations, parent networks, Colombian society as a whole, and those

legislators who supported the process in any of the three attempts or throughout the more than six years of persistence until its approval and presidential sanction. These are victories for Colombian society, as they reinforce the protection of the rights to health, nutrition, and information.

¹⁰ Intervention given at the forum cited by the Seventh Committee of the Senate on bills related to nutrition (2021, 22 de abril). https://www.youtube.com/watch?v=MqY6xZTu9F0&ab_channel=RedPaPaz



A captured government, an erratic State

Resolution 810 of 2021: Confuse and You Shall Reign

*Resolution 810 was issued before the law...
one week or fifteen days, but it was before the law.*

Fernando Ruiz¹¹
Former Minister of Health

The process of regulating front-of-package warning labeling in Colombia was captured by the industry, resulting in the issuance of Resolution 810 on June 16, 2021. This administrative act was issued within the framework of regulatory impact analysis, on the same day the bill was being voted on in the Senate to regulate front-of-package warning labeling. While it may seem coincidental, it goes far beyond being a mere chance occurrence. Thus, the triumph of Colombian society in pushing forward the Junk Food Law contrasted with the triumph of the industry in obtaining the issuance of this resolution. Since their usual practices were not enough to stop the appro-

val of the law, the industry opted for a strategy to delay its implementation as much as possible, a strategy called Resolution 810 of 2021. The industry's message to Colombian society was clear: even if you win, you don't really win.

Thus, under a supposedly democratic and technical appearance, participation in the formulation of Resolution 810 was opened to the industry, civil society, and academy so that they could make their observations based on conflict-free scientific evidence. However, the recommendations of NGOs and academy were systematically ignored in drafting the resolution, unlike the proposals made by the industry.

¹¹ Intervention by the then Minister of Health in the political oversight debate called by Representative Mauricio Toro regarding the issuance of Resolution 810 of 2021, on June 3, 2022. https://www.youtube.com/watch?v=bNld0w-JOd0&ab_channel=MinSaludCol

A policy friendly to the industry

President of Colombia (2018-2022) Iván Duque Márquez was the presidential candidate who received the most funding from the UPFD industry. When he served as a senator (2014-2018) representing the Centro Democrático Party, he opposed the inclusion of a tax on sweetened beverages. During his presidency, at least eleven individuals associated with the UPFD industry in some way were appointed to high positions in the government. It was foreseeable that any government initiative related to this industry would seek minimal impact.

Front-of-package warning labeling would indeed be a relevant issue, as the public debate had been on the country's agenda since 2016, fueled by the advocacy of a civil society increasingly sensitive to the issue and advocating for its regulation. In that sense, all actors—civil society, the national government, and the industry—would face challenging situations based on their own interests. The democratic logic dictates that the interests of society and the national government should eventually coincide. However, the paradox was that the real alliance and communion of interests occurred between the industry and the national government. For example, on August 5, 2019, at the Teatro Colón in Bogotá, the “Pact for the growth of the processed food sector” took place between the Government and the UPFD industry, with the goal of boosting the growth of this sector of the economy.

Within this framework, it was identified that one of the bottlenecks for industry growth was the pressure to regulate front-of-

package warning labeling through bills, which, according to the industry, lacked technical foundation. The proposed solution was a technical working group between the industry and the Government to review labeling regulations and harmonize them with the needs in external markets of interest, with a notable absence of a human rights approach and without the intervention of civil society.

Inconsistencies of a Captured Ministry

The Ministry of Health's position on front-of-package warning labeling focused on the need to update Resolution 333 of 2011, which was considered obsolete at the time. The ministry argued that it did not adequately protect the rights to information and health of the population, especially children and adolescents. Therefore, in the first semester of 2019, an analysis of normative impact was conducted. Due to the ministry's erratic decisions, existing mistrust, and evidence that decisions regarding front-of-package warning labeling were not based on the best available scientific evidence without conflicts of interest, Red PaPaz filed a popular action against the Ministry of Health and other entities on December 6, 2019. The main goal was to achieve front-of-package warning labeling based on the best scientific evidence free from conflicts of interest. This popular action was supported by NGOs such as Cajar, Dejusticia, FIAN Colombia, and Educar Consumidores. Similarly, Senator Juan Luis Castro and the Attorney General's Delegation for the Defense of the Rights of Children, Adolescents, Families, and Women joined as

co-plaintiffs.

On February 26, 2020, the Ministry of Health presented a ten-point plan to the public to advance the regulation of food labeling and improve the nutritional information of products. This proposal implemented the Israeli labeling, which is globally recognized for its lack of scientific studies and effectiveness. Moreover, the countries of the Pacific Alliance—Chile, Mexico, and Peru—had already implemented the octagonal label recommended by PAHO and WHO. Finally, it caused reluctance because the circular label with the phrase “HIGH IN” is associated with positive situations, creating confusion for consumers. The proposal was enthusiastically received by the industry as it was the result of their collaborative work with the Ministry of Health. Thus, on July 27, 2020, the draft resolution adopting the circular model was published, which was problematic because it did not include a warning to moderate consumption, maintained the phrase “HIGH IN,” included a positive circular label, and did not define the differences between artisanal and minimally processed, processed, and ultra-processed foods and beverages.

In the context of the ongoing popular action, the presiding judge called for a conciliation hearing with the parties. As there was no consensus, it was declared a failure. However, on November 25, 2020, the Ministry of Health published another draft resolution that included the phrase “Moderate your consumption” and reduced the implementation of labeling to six months and the rest of the provisions to twelve months. This draft resolution was published

for less than 24 hours; any reference was then removed, and the opportunity to submit comments was denied. Due to this, Dejusticia and FIAN Colombia submitted a request asking the Ministry of Health for an explanation. The Ministry responded as follows:

Given that the mandatory thirty-day public consultation had already concluded, the entity deemed it appropriate to initiate a new public consultation on some adjustments to the project, including the phrase and duration. However, as of today, within the framework of the international public consultation, the initial conditions of the project regarding these two points remain unchanged. (Ministerio de Salud, s.f.)¹²

This irregular behavior of the Ministry of Health, coupled with the fact that the resolution project sent for international consultation within the framework of the World Trade Organization in February 2021 was similar to the ones presented on July 27, 2020, and November 25, raised concerns. The change in the shape of the front warning label reverted to being circular, the phrase “Moderate your consumption” was eliminated, and the regulation's implementation was extended to 18 months. The Ministry did not justify these changes, displaying an undeniable appearance of bad faith towards Colombian society.

A brief analysis of this resolution proposal leads to the conclusion that, in seven critical points for the protection of human rights already enshrined in law, the Ministry of Health chose to issue a resolution that aligned with industry requests, without ex-

12 Ministry of Health. ‘Response to Right of Petition from FIAN and Dejusticia.’ Unpublished Document. 8.

plaining why comments from international organizations, civil society, and academy were not accepted.

Resolution 810 of 2021 lowered the standard of protection for rights already established in law and ignored available scientific evidence that specifically suggests establishing an octagonal front warning label system.

The Ministry of Health acceded to other industry demands, such as modifying the cutoff points to comply only with 807 % of the declared nutrient content and exceeding the declared critical ingredient quantities by 207 %. These concessions reduced the effectiveness of Resolution 810, as the industry could present products with excess critical ingredients as healthy. The resolution also allowed the inclusion of health and nutritional property statements on products with negative warning labels, contrary to scientific evidence, causing immense consumer confusion. Additionally, Resolution 810 removed all references to sweeteners, as requested by the industry in their comments. This is significant because scientific evidence has shown that some sweeteners can be harmful to health, so consumers have the right to know if products contain these substances to make informed consumption decisions (Hall, K. D., Ayuketah, A., Brychta, R., Cai, H., Cassimatis, T., Chen, K. Y., Zhou, M, 2019).

Despite these issues, the Ministry of Health issued Resolution 810 on June 16, 2021, while the PL was being voted on in its final debate in the Senate. In fact, the news of its issuance reached lawmakers voting on the set of propositions through Ministry of Health officials, aiming to influence their

negative decision regarding the approval of Law 2120 of 2021, known as the Junk Food Law. This is further evidence of how:

(...) the exacerbated economic and political power of legal corporations has permeated the institutional architecture of Colombia over the last decade, in regulatory domains ranging from mining exploitation to the consumption of ultra-processed foods associated with the incidence of non-communicable diseases. (Salcedo-Albarracín, E. y Garay-Salamanca, L. J., 2021, p. 36)

When analyzing industry interference in administrative institutional processes, it becomes evident that, in the regulatory process, interference does not operate directly as is customary in the legislative process. However, it is indisputable that other types of interference and corporate capture of the state also operate. Indeed, it is undeniable that there was a differentiated treatment by the Ministry of Health in favor of the industry and to the detriment of civil society and its organizations in institutional discussions on the matter.

Although supposedly Resolution 810 arose from a procedure based on the expertise of the health ministry—conceived to technically and scientifically regulate matters within its purview—what was observed in the process was a politicized and ideologized Ministry of Health closer to the interests of the industry and defending ideological content that can and should be put forward in legislative debates, rather than a health department making decisions on a crucial issue for public health, access to human rights, and the strengthening of democracy and institutional integrity.

The regulation at the service of the industry: Resolution 810

We are the first country in Latin America where the industry takes the lead. It says to the Government: come and let's work with icons, with shapes, with limits that serve Colombians

Camilo Montes

Director of the Chamber of Food - ANDI¹³

The director of the Food Chamber of ANDI, Camilo Montes, uttered the words in the epigraph on June 25, 2021, in an interview with Noticias Caracol, nine days after the final debate and approval of Law 2120 of 2021 in the Congress of the Republic, and the providential – for the industry – issuance of Resolution 810 of 2021 by the Ministry of Health.

While Law 2120 required defining the type of label based on the best scientific evidence free from conflicts of interest, Resolution 810 opted for the circular label favoring the interests of the industry and going against the evidence, recommendations from conflict-free academics, international organizations, and the public health of Colombian society.

Indeed, the national government's regulation through the process of formulation and issuance of Resolution 810 of 2021 by the Ministry of Health served the companies and associations related to UPBF. It was a strategy to obstruct, delay, and complicate the implementation of Law 2120 of 2021, ignoring the evidence, requests, recommendations, and years of work by NGOs, the academic community, representatives, and congress

members who supported legislative processes and ultimately approved the Junk Food Law. It even disregarded recommendations from the international community guiding public health matters, such as the PAHO and WHO, among others.

Among the most significant flaws of Resolution 810, which on paper aimed to update the regulations established in Resolution 333 of 2011 regarding such a crucial public health issue as the consumption of ultraprocessed food and beverages, it is striking that, in alignment with the private interests of companies in the sector, the Ministry of Health:

- ✿ It omitted definitions regarding sweeteners, caffeine, and foods based on the level of processing.
- ✿ It excluded sports hydrating or energy drinks from front-of-package warning labeling.
- ✿ It proposed that, as a rule, even products with warning labels could make nutritional property claims, with only a few exceptions.
- ✿ It allowed products with one or more front-of-package warning labels to make health property claims only where the nutritional information table is presented.
- ✿ It adopted the circular shape and the phrase “high in” as the front-of-package warning label, despite evidence of its inequity, lack of effectiveness, and potential for confusion among consumers.

13 Noticias Caracol. “Ley de comida chatarra: ¿empresas hicieron lobby para que no se aprobara?” Noticias Caracol, 25 de junio de 2021, acceso el 7 de julio de 2021, <https://noticias.caracoltv.com/salud/ley-de-comida-chatarra-empresas-hicieron-lobby-para-que-no-se-aprobara>

- ❁ It excluded the successful octagonal label applied in Chile, Peru, Uruguay, Mexico, and Argentina, countries with similar cultural and commercial characteristics to Colombia.
- ❁ It ignored that the octagon symbolizes a “stop” or “alert” signal and its success lies in culturally perceiving it as a danger sign.
- ❁ It favored the use of a circular label when, in Colombia, this label is predominantly used as a quality seal, doing so with the industry’s approval and ignoring recommendations from public health regulatory institutions like the PAHO and the compared experience of countries with economic, cultural, and social characteristics similar to those of Colombia.
- ❁ It deliberately ignored the confusion it would cause due to its contradiction with the approved Law 2120 of 2021 at the same time.
- ❁ It set aside the ample available conflict-free scientific evidence but also claimed the need to commission a study on the subject, which predictably resulted in the same recommendations made for years by both PAHO and WHO and civil society organizations.
- ❁ It granted concessions to the industry that reduced the effectiveness of Resolution 810, allowing products with excess critical ingredients to be passed off as healthy.

It is clear, then, that the formulation of Resolution 810 did not consult or ignored the available conflict-free scientific evidence. It is evident that this decision favored the industry

and aimed to protect its economic interests over the health and clear information of the Colombian population. It is crucial to emphasize that the issuance of Resolution 810 in 2021 has led to the chaos that consumers must still endure today.

Even with the issuance of Government Resolutions 2492 of 2022 and 254 of 2023, which modify Resolution 810 of 2021 under President Petro’s administration, consumers face a confusing and tangled scenario without a clear pedagogical strategy. When making daily consumption decisions, citizens encounter: i) products that should be labeled but lack seals, ii) identical products with two different types of seals, iii) products that should not be labeled but have either circular or octagonal seals, and iv) products with one or more warning labels along with health or nutritional property claims.

The level of confusion generated by the issuance of Resolution 810 in 2021, its socialization, misuse, contradictions, lack of clarity, untimely issuance, and neglect of the rights and health of the population leave little room to think otherwise than that this regulation served the industry.

As an example of the repeated mistakes of the Ministry of Health, according to its response to a right of petition filed by Cajar, between July 15 and September 22, 2021, the Ministry of Health held meetings to socialize the content of Resolution 810 with Grupo Éxito, Asograsas, Induarroz, Colombia Productiva, Logyca, Cisan, Invima, ILSI-Acodin, and SENA.¹² Three talks took place before the issuance of Law 2120, despite it being publicly known since June 20, 2021, that the law had passed its conciliation process. Six talks oc-

14 Ministry of Health. Response to the Right of Petition from the Colectivo de Abogadas y Abogadas José Alvear Restrepo. Bogotá D.C. 2021.

curred after the issuance of Law 2120 of 2021, disregarding abruptly that the new law undermined the basis of Resolution 810.

Moreover, it is known that the Ministry of Health met with ANDI and ProColombia on September 30, 2021, to analyze how to coordinate Law 2120 of 2021 with Resolution 810, caring little about the fact that such a resolution contradicted Law 2120, which holds higher legal status.

Neglect, carelessness, traps, and arrogance were exhibited by the Ministry of Health,

under the leadership of then-Minister Fernando Ruiz, in a strategy that turned its back on prevention and the guarantee of fundamental rights, such as the right to health for Colombian society. Instead, it played into the interests of the industry. For this reason, then-Minister Fernando Ruiz was summoned by Representative Mauricio Toro for a political control debate. Representative Toro’s arguments can be seen in the following excerpt, which contains the most relevant parts of his intervention.

Box 6

It is that you do not govern for the ANDI, you govern for the citizens (...)

We have called for this political control debate due to all the difficulties that the front-of-package labeling law for ultra-processed food, better known as the Junk Food Law, has faced. Not only during its passage through Congress due to the opposition from the Ministry of Commerce and Health, but also regarding the tortuous path of regulation. I have to tell the minister that it has been my greatest technical disillusionment in these four years of work (...).

[In] the regulation of the Junk Food Law (...), I am talking about some traps that the Ministry of Health, led by you, Minister, has been setting for the regulation and the law, and that’s why I’m going to do an analysis (...).

Here, the interests of the industry are not the primary concern. The supreme good of the health of Colombians, the supreme good is the economy of Colombians; this should be the supreme good. But here, the good of the industry, which, as demonstrated, could change its formulas to better feed people, as they have already done in other countries where labeling has been implemented, was privileged (...).

The first topic I want to address is the excess of traps by the Ministry of Health and the national government, Minister (...).

Opposing the approval of the Junk Food Law makes no sense. How is it possible that the national government and the Ministry of Health, which is precisely responsible for protecting the health of Colombians, children, adolescents, have opposed the approval of the Junk Food Law hand in hand with the Ministry of Commerce and hand in hand with ANDI?

Ten years of struggle, seven bills, three in these last four years, which fell due to the lack of support

from the Ministry of Health, which was also the great absentee in this debate (...). Because it handed over to the Ministry of Commerce, I don't know if by order of the president, the leadership of what the discussion of the Junk Food Law entailed. And Ministry of Commerce was the main actor in this government regarding the approval of junk food, of course, defending the interests of the industry that does not want labeling because they don't want to tell Colombians the truth about what they are eating.

(...) People are deceived into buying their products, thinking that it is good for their families, for their children, for themselves when what is behind it is an excess of sugar, fats, and sodium (...) the economic interests of the industry are prioritized over the health interests of Colombians (...).

Trap number 1

- ✿ Opposing the approval of a law that is fair for Colombians (...). In dictatorships, information is hidden; in dictatorships, citizens are lied to. In a democracy, the truth is told so that people are informed and know what they are eating (...). The ANDI says, and so does the minister and the deputy minister of health, 'Oh, people get used to labels, so it loses its effectiveness.' That is not a decision that you should make to avoid labeling (...).

Trap number 2

- ✿ (...) impose an inefficient labeling by inference from Resolution 810, which was drafted by the industry (...). (...) a copy-paste of what the industry sent to the national government. They just signed it and changed a few accents. It became the most inefficient labeling, the only one that has not worked anywhere in the world, which is Israel's, confusing, tangled, full of colors, little characters with word changes to say: 'Industry, look, we labeled it, here's what you want, even if nobody understands it, because the more inefficient, the better.'

(...)

When they saw that the bill was advancing in the Congress of the Republic, despite the lies of the industry, (...) the Ministry of Health and the Ministry of Commerce received the photocopy of what the industry wanted from ANDI, they signed it, and they delivered it, five days before the last debate in the Congress of the Republic, on this bill, telling the congressmen: 'Don't approve the Junk Food Law anymore...

(...) They mix a hodgepodge of necessary things and throw in the labeling that the industry wanted, which ANDI handed to me, saying they wanted it to be approved because it is inefficient and useless. And they tell the senators: 'Don't approve the law.' (...) It was the last day of sessions, and they tell the president of the Congress to move on with other projects.

That is a trap; that is disloyalty to the citizens. But what they did not tell the congressmen is that it was Resolution 810 that the industry wanted. A resolution that talks about a confusing labeling so that children and adolescents cannot understand it, because we are talking about an octagonal, monochromatic labeling that talks about excess and does not bring little drawings or colors. This

is so that a child who is just learning to read can recognize it, so that a person who does not have much education, as may happen here, can understand it as easily as someone who does. But what does the resolution say... a labeling of circles, with yellow, red, green colors, which does not talk about excess, but about being high. It brings a little drawing of a salt shaker, of butter, to make it look nice and to confuse people and make them think that it is good and not bad. That's what you put in 810, Minister. You should be ashamed of this. The industry wanted that. Where has that labeling worked? Nowhere in the world, nowhere. Israel adopted it because of industry influence, and the WHO and PAHO are clear that it has been the biggest failure of a global labeling (...).

(...) Fortunately, the Congress of the Republic managed to understand the trap you wanted to set, and I managed to stop it. I had to go in the midst of the pandemic when there was semi-presence, to speak and grab the congressmen to tell them: 'They are deceiving you. What the Minister of Health and the Minister of Commerce are doing is deceiving us.' And I start calling one by one, and look how I confronted you, Minister: in the plenary session of the Senate of the Republic, I was sitting with the few who were present, calling my colleagues because on the other side were the Ministry of Health and the Ministry of Commerce with an Excel sheet. A photo that Senator Angélica Lozano would upload to social media, where they were calling you, telling the senators: 'Do not vote, vote against it, we already got the resolution we sent you, do not vote, sink the project, vote against it (...).' One hundred thousand people, Minister, one hundred thousand people per year are getting sick from non-communicable diseases derived from poor nutrition. And you allied with the industry for that to happen (...). A serious trick and trap (...).

So they tell me that it turns out that Resolution 810 talks about so many things within that labeling, and that is why they cannot repeal it. Sorry: of course, they can partially repeal it if they wanted to, if they felt like it, but no. So, what I still cannot understand today, deceiving senators, manipulating public opinion, Minister, saying that civil organizations, academy had participated in the agreement of this resolution.


(...) How can you then say that civil organizations participated in the agreement and construction of that when they did not? The literal A of the answer to question 11 of the questionnaire, and I want to read question 11 so that you can see it, what I still cannot figure out, Minister, says: in multiple interviews, it has been stated that Resolution 810 was built together with public entities and guilds, what was the participation of guilds and companies in the construction of Resolution 810, what is the impact of guilds and companies that speak about regulation? (...) Here, it was the industry that spoke. Eight against three. Here, the ANDI for food spoke, here, the ANDI for beverages spoke, Asoleche, Incontex, Sinipalma, Asocaña, and on behalf of civil society, academy, Educar Consumidores, and the Universidad Javeriana...

In the first paragraph that is the answer to question number 12, and I read it to you, Minister, the spokesmen for the ultraprocessed food and sugary drinks industry have pointed out that

Resolution 810 is an initiative of the industry and not the Ministry. Who had the initiative to establish Israel’s circular labeling, the Ministry, or the industry? In the first paragraph of question number 12, it is stated that from civil society, there was no objection to the form of labeling, nor was there a verbal suggestion to include it in the seal. In other words, it is also a lie. They are telling lies here.

In the socialization that the Ministry carried out on the resolution project on April 15, 2021, it is evident that there were at least eight comments from civil society, from academy, specifically recommending not to use a circular seal and to replace it with the hexagonal one. In other words, the ministry did not take those comments into account. The ministry considers those from the industry, but it does not consider those from academy and civil society, because it claims they did not express an opinion (...) This resolution was undoubtedly concerted with ANDI, which was what it wanted from the beginning when we heard about it: to be circular, confusing, tangled, something that nobody understands ...


Trap number 3

 *Maintaining Resolution 810, which goes against the law. (...) The law demands that the labeling model be based on greater technical and scientific evidence, not whatever ANDI felt like. You don’t govern for ANDI; you govern for the citizens (...).*

(...) So, the Ministry of Health must repeal the resolution because it contradicts the law, but the Ministry of Health argues that it does not repeal it because the resolution covers more than just labeling, an argument that is false because it can be partially repealed.

(...) The decision to adopt the circular symbol for the labeling in 810 was made based on only three scientific studies that do not compare different labeling models but only analyze the circular one adopted by Israel (...) without shame, straightforwardly, fearlessly, they chose the circular one, found three studies that somewhat talk about the circular seal and said that’s the one to adopt because that’s what the industry sent.

Trap number 4


 *[To] delay the regulation of the law. The law was issued in the midst of the pandemic, a year and a half after the declaration of the health emergency, and thus the ministry (...) attributes the delay in the regulation of the law to the health emergency. (...) We were there with Cajar in February, minister, submitting signatures. We’ve been asking you to do it for months. Signatures were submitted to you, Cajar organized a protest and a citizen signing event asking you, and still, you didn’t want to, you knew you had to do it, but you didn’t care.*

(...)

Why didn’t you advance the procedures, minister, six months later? The Congress gave you the order, gave you the order to regulate within 12 months, not to start 12 months after approval. The

law grants the ministry one year to regulate, one year to initiate regulation, and you still insist that you are advancing studies. By August 1st, the regulation must be defined, and the serious issue is that you have not made progress on that.

Trap number 5

 *[To] deceive companies and make them assume duplicated costs. (...) [T]he Ministry of Health and INVIMA have promoted the adoption of Resolution 810 (...). They held a workshop to teach entrepreneurs how to label with the circular labeling that has not yet been defined if it should be circular or not. You know the irresponsibility and the size of the irresponsibility; your deputy minister came out on W Radio during Holy Week telling the industry to adopt the circular labeling of 810, inferior to the law and contrary to the law. And when asked, minister, to the deputy minister, if that means that after the study is done, the form of labeling changes, it can affect the industry, the deputy minister says: yes, they should start adopting the circular one, but if perhaps the regulation of the law says it has to be different, well, the industry should change it... as if that were taking three pesos out of their pocket...*

Today you are affecting micro, small, and medium-sized enterprises.

(...)

Look at the great confusion of what you are doing; entrepreneurs are assuming the costs of adopting the round labeling that surely will not be the one approved by the resolution. That is a risk for the industry.

(...)

This costs money to the industry, not only money, the health of Colombians for not having the right information but now it will also cost entrepreneurs.

Mauricio Toro¹⁵
Member of the House of Representatives
June 2, 2022

Minister Ruiz’s response speaks for itself; regulation of public health policies. In Box 7, in a sort of acknowledgment, he revealed some excerpts from his intervention. that indeed, the industry intervened in the

15 Political oversight debate with the Minister of Health: Why has there been a delay in the implementation of the #JunkFoodLaw, and how much longer must we wait for it to be enforced? https://www.youtube.com/watch?v=bj-JOSNumZH4&ab_channel=MauricioToroO

Box 7

(...) We also have to talk and work with the industry...

1. What has been happening in the process? Obviously, since 2019, we started a discussion with civil society that has presented us with some demands, some absolutely respectable requests regarding junk food. The ministry has been collecting them since 2019, but obviously, we also have to talk and work with the industry **because this is not a unilateral issue, and no policy is entirely unilateral.**

As you yourself, representative [addressing Representative Toro], pointed out, there are effects in the industry, and these effects also occur in small and large companies. Therefore, it is necessary to conduct this review together.

2. The meetings that must necessarily take place, the open working groups, for which there are minutes and attendance lists, in which the issues have been discussed with the industry, civil society, and all those concerned. (...)

3. What are the stages undergone for the issuance of Resolution 810? There has been an assertion that I think is important to correct. It has been presented and attempted to be portrayed in the media as if Resolution 810 was a resolution that the Ministry of Health worked on with the industry and then imposed it. The reality really doesn't support that in any way. We started in 2019 with a proposal that emerged from different actors. There was a pending popular action that has not yet been ruled on. A series of feedback meetings were held, obviously with civil society and the industry. A nutritional labeling decalogue was presented in February 2020. A regulatory impact analysis was conducted in March 2020, and a resolution project was developed. A national public consultation was conducted, a ministerial request was made, along with other agencies for simultaneous procedures, and an international public consultation was carried out that determined the scope of Resolution 810.

When it is claimed that Resolution 810 is competing, as has also been suggested in the media, with the law, I want to remind you that Resolution 810 was issued before the law. A week or 15 days before, but it was before the law. Therefore, the law defines terms under which Resolution 810 continues to function until it is supplanted or replaced by a resolution that, through regulatory means, addresses or raises issues defined in the respective law.

The central argument made by the plaintiff, and I believe it is the central argument here, that all of this was cooked up with the industry and that the industry sat down with the Ministry of Health, and somewhere in private rooms, they sat down, and the president of ANDI, with whom I have very rarely actually met to discuss other issues, and never about this one, handed us a resolution project, and we adopted it. This overlooks the fact that this resolution was discussed and talked about with the industry. I have here something that I am going to allow myself to read, which reached the acting minister at the time before issuance and at the time it was put up for consultation, and a decalogue of what Resolution 810 should be was proposed.

These individuals approved points 2 to 8, it is in writing, a letter was filed with the Ministry of Health of Colombia. That is the decalogue. Points 2 to 8 are written, I won't go into each one, but you look at the different points, they appear as presented by the Ministry of Health, including the circular labeling, high in added sugars, high in sodium, high in saturated fats. Accepted by these important representatives of civil society who today, I understand, are part of those complaining and have raised this campaign over the past few months. (...)

4. And what does this article say? I am going to read the important part so that the entire Colombian public takes it into consideration. «The national government, led by the Ministry of Health and Social Protection, will regulate the technical parameters of this labeling, defining the form, content, figure, proportion, symbols, texts, maximum values, colors, size, and location of the packaging that will contain them, based on the best available scientific evidence and free from conflicts of interest.

And there are two important topics here because the media have also called me to ask: why haven't you already adopted hexagonal labeling? Well, ladies and gentlemen, if the law had told me: adopt hexagonal labeling now, I would issue a resolution and say, in accordance with the law... an article on hexagonal labeling. It doesn't tell me that; it tells the ministry: based on the best available scientific evidence and free from conflicts of interest. This means, in technical terms, that we have to search, **given that the ministry had already taken a position in favor of the circular form of labeling, it clearly requires a study or analysis by a qualified entity to tell us which labeling form we should adopt.** And that has been absolutely clear and transparent in the way the ministry has been handling the issue. What this analysis tells us is what we must clearly accept and adopt. It's not what the health minister says, it's not what a professor at the National University or the Javeriana University says; it's what a specific technical study, free from conflicts of interest, executed and reviewed by a qualified entity, specifies based on the evidence, as is done in all regulatory analyses, and based on that, it outlines what should be the respective adoption or what is recommended to adopt front labeling.

What has been the regulatory process? The law was enacted on July 30. The Ministry of Health has had to face at least four or five absolutely important effects: the pandemic effect, clearly. Throughout last year, many research centers in the country were closed, with no contracting capacity, and obviously, we had to face the fact that there was no availability of anyone who could conduct the studies. Taking that into account, unfortunately, the process of future appropriations was not accepted. To address the issue, since September, two months after issuance, a direct contract was sought with the Institute of Health Technology Assessment, which is an entity attached to the Ministry of Health but is a mixed-nature entity that conducts all evaluations in the country. We only started, dear representatives, in September, and there is evidence of that, that we requested the study, worked with them, and said let's do the study through them for the labeling. It turns out that in January, when the issue was brought up, in

December, sorry, when the issue was brought up, the Ministry's Contracting Committee did not approve the contract with the IETS, considering that there were several centers with greater capacity that could conduct this analysis, and we could not make a direct contract. (...)

5. Since September of last year, a campaign has been launched through various media channels, exerting pressure and employing a strategy of legal conflict against the Ministry of Health, along with public exposure through campaigns and prime time advertisements across different media outlets. Our estimations indicate that at least 1.4 billion pesos have been invested in these advertisements. 1.4 billion pesos, concerning an issue where a simple dialogue between civil society or interested parties with the Ministry of Health could have provided the clarity we have today. I wonder, what sense does it make to spend billions of pesos in campaigns pointing fingers at the Ministry of Health, targeting the health minister, clearly attempting to generate distrust and lack of credibility in an institution like the Ministry of Health, to achieve effects that are not fully understood.

Firstly, who finances these billions? It is financed by parents who pay, we contribute to certain entities. If that's the case, is it money well spent? If so, shouldn't it be invested in campaigns for children to have better access to food, and once labeling is implemented, to educate people on how to read and understand it? Sometimes, as experts, we forget that people need to be taught how to read a label. Or in other areas that are much more relevant, some of the other strategies to address the issue of obesity. What are the motivations behind this? Motivations to undermine the credibility of the regulatory body of the Ministry of Health. The Ministry of Health is a technical entity. (...)

We are not a health authority beholden to anyone, to any interest. Hopefully, because the latest advertising suggests that this government was not capable, let's see if the next candidates will, indeed, regulate junk food. The question is: are the intentions behind this to politicize the actions of the Ministry of Health? If that is the goal, we are in serious trouble. And if those financing this are international organizations, because I have no idea who funds this, those organizations need to be told that they are very mistaken. This is not South Sudan; this is Colombia, a rule-of-law state with regulations, which may be lengthy and delayed, yes, but in the end, there is respect for institutionalism and the population. And that is what the Ministry of Health represents.

Fernando Ruiz¹⁶
Exministro de salud
2 de junio de 2022

Both in the textbox and in the recording of Minister Ruiz's intervention in the political control debate, explicit acknowledgment from the Ministry of Health regarding the non-compliance with Law 2120 of 2021 is evident. There is also a refusal to accept scientifically sound evidence free from conflicts of interest in the decision to use the circular label. The recognition that the ministry was on the verge of proceeding with a direct contract with an institution lacking the capacity to perform the required analysis is acknowledged. Lastly, there is an expression of uncontrolled anger and frustration towards NGOs and civil society in general for fulfilling their role and defending the rights of Colombian citizens.

With this backdrop, the government of President Iván Duque Márquez concluded a period characterized by constant industry interference, the implementation of delaying strategies requiring the approval of various actors, the consistent and shameless disregard for the best available scientific evidence free from conflicts of interest, executive participation in defense of private interests at the expense of the right to access information, health, and proper nutrition for Colombian citizens.

On August 7, 2022, the government of President Gustavo Petro was inaugurated,

adopting a progressive stance. Progressive governments in the region have consistently moved towards front-of-package warning labeling with an octagonal seal, as depicted in the following graph. Undoubtedly, it is a significant factor that in progressive governments, legislation and regulation on sensitive issues with numerous conflicts of interest, such as those related to the UPFD industry, tend to advance.

In countries like Brazil and Colombia, during ultra-conservative governments, a warning labeling system was preferred that satisfied industry interests. In Colombia, with the advent of a progressive government, Resolution 810 was modified to adopt a front-of-package warning labeling based on the best available scientific evidence free from conflicts of interest.

It is essential to conclude this section by reiterating that, indeed, the economic and political power of corporations has managed to undermine the institutional structure. Consequently, the role of civil society is becoming increasingly relevant and necessary. Civil society will be the sole guarantor that regulations of laws, norms, or policies are never again at the service of private interests, as was the case with the specific regulation that benefited the UPFD industry.

¹⁶ Political oversight debate on Resolution 810 of 2021, June 3, 2022, https://www.youtube.com/watch?v=bNild0w-JOd0&ab_channel=MinSaludCol

Latin America and Front-of-Pack Warning Labeling Regulation



Resolution 810 shows no mercy
The judiciary has ruled
on the class action lawsuit

As part of the Class Action filed by civil society organizations, on November 22, 2022, the First Section, subsection A of the Administrative Court of Cundinamarca issued a favorable judgment in support of collective rights and interests related to public health, consumers, and users. The court decided:

1.1 ORDER the Ministry of Health and Social Protection to, as soon as possible and in accordance with established procedures, conclude the process aimed at issuing the administrative act that will modify Resolution No. 810 of 2021, issued by said entity, in accordance with the provisions of Article 5 of Law 2120 of 2021. The Ministry of Health and Social Protection must consider, for this purpose, the best available scientific evidence free from conflicts of interest, as contained in the study conducted by the University of Antioquia on front-of-package labeling for certain foods. Once notified of this ruling, the Ministry of Health and Social Protection must provide monthly reports on the compliance with the order given in this ruling, indicating precise details of progress and outcomes.

1.2 ORDER the formation of a Compliance Verification Committee, led by the Adjudicating Magistrate of this ruling and composed, in addition, by the Minister of Health and Social Protection, the Public Prosecutor, and the legal representatives of the Colombian Corporation of Parents and Mothers (Corporación Colombiana de Padres y Madres), Red PaPaz, and the Colombian

Consumer Education Association, Educar Consumidores, as well as Fian Colombia.

This ruling sets in motion the process of modifying Resolution 810 of 2021 in its critical aspects: i) front-of-package warning labeling, ii) the scope, definitions, general requirements, authorization parameters for depleting existing labels, the use of stickers and supplementary labels, and iii) the transition period for implementing the technical labeling requirements. Its effective date was determined to be June 14, 2023.

Nullification Action – Dejusticia:
The Industry Defending
Circular Labeling

On November 22, 2021, the NGO Center for the Study of Law, Justice, and Society (Dejusticia) filed a lawsuit before the Administrative Jurisdiction alleging nullity against Resolution 810 of 2021 through a simple nullity control, contending that this administrative act suffered from false motivation, abuse of power, and infringement of the national and international norms and standards on which it should be based (Dejusticia, 2021, 17 of November).

In this lawsuit, Dejusticia pointed out, among other things, that, along with various civil society organizations, it had argued that the seal established in Resolution 810 of 2021 did not align with the best available scientific evidence free from conflicts of interest, “(...) as it has only been implemented in one country (Israel) and recently, so there is no solid evidence confirming its impact” (Dejusticia, 2022, 5 of July).

Likewise, it stated in the nullity lawsuit that “(...) the Ministry favored circular labeling due to pressure from the ultra-processed food industry, which interfered both in the approval process of the Law and in the construction of the Resolution with the Government”.

In order to support this argument, Cajar filed a supporting document in this nullification process. In it, it was reaffirmed that Resolution 810 of 2021 was issued with an abuse of power, as it favored the proposals made by the ultra-processed products and sweetened beverages industry, ignoring the comments and proposals made by academy and civil society organizations, as well as conflict-of-interest-free scientific evidence.

Within the framework of this process, ANDI also submitted a supporting document defending the circular labeling model adopted by the Ministry of Health. In its document, this trade association representing the interests of the industrial sector of ultra-processed products and sweetened beverages, classified the accumulation of scientific evidence presented by the plaintiff organization as mere perception surveys (as did the Ministry of Health in response to civil society’s complaints). In this sense, they argued that we were not facing any scientific evidence, and therefore, the Ministry of Health could “(...) without the need for any explanation (...)” choose the circle as the geometric shape for the front-of-package nutritional labeling”.

On the other hand, ANDI acknowledged, in the face of the abuse of power charge, that this trade association, as such, had “(...) every right to represent the legitimate interests of its members before various authorities,” and that for this purpose, “(...) engages in lobbying activities before the Congress of the Republic (...)”.

Furthermore, regarding the pact for the growth and job creation in the processed food sector concluded between the national government and various trade associations, it recalled that the proposed solution in it is to “Form a technical committee to review labeling regulations and also to harmonize these regulations with the needs in external markets of interest (including front-of-package labeling).” In other words, this pact never aimed to align front-of-package warning labeling with the general interest but rather with the specific interest of the PCBU industry.

In that context, the interference of the ultra-processed products and sweetened beverages industry in support of circular labeling extended from the design of front-of-package labeling in the Ministry of Health’s internal administrative procedure to the nullification process initiated by the human rights advocacy organization, Dejusticia. This was done with the aim of defending the specific interests of this sector against the demands to adopt front-of-package warning labeling advocated by civil society organizations dedicated to the promotion of human rights.

Revocation Action – Cajar

Parallel to the annulment action, Cajar submitted a request for the Ministry of Health to undertake a direct revocation of Resolution 810 of 2021 due to: i) being contrary to Law 2120 of 2021, and ii) running counter to the social and economic order of the country by positioning, promoting, and socializing a labeling model to the public and the business sector that should imperatively change upon the implementation of Law 2120 of 2021.

tific evidence rather than the interests of the industry.

Regarding the disparity between the law and Resolution 810, the Ministry maintained that:

☛ In this scenario, this Ministry is currently reviewing, both technically and legally, the provisions of Article 5 of Law 2120 of 2021 concerning Resolution 810 of 2021. Based on the results of this analysis, the need for a study that provides the most available evidence on front-of-package warning labeling and all parameters described in the Law will be assessed. If this study indicates a need for a modification to the regulations, this Ministry will take the necessary steps within the legal timeframe provided for this purpose.

☛ Upon comparing Resolution 810 of 2021 with the Law 2120 of the same year, no blatant disparity is evident between the two. Statements such as the possible confusion of the labels are subjective assessments and can be verified by reviewing pages 43 to 47 of the aforementioned Resolution. The fact that the option considered the best by the petitioner was not embraced is not, in itself, a charge that allows the dismissal of the work carried out, labeling it as biased or endorsed by the industry. (Ministerio de Salud, 2022)

At this point, it is noteworthy that, on the one hand, the ministry asserts that it was rigorous in adhering to international principles regarding the best scientific evidence. However, it simultaneously mentions that there is consideration for the need to undertake a study that provides the most available scientific evidence. This implies an implicit acknowledgment that the ministry may not currently possess the most robust scientific evidence and may not be able to gather it.

As expressed in the corresponding text, the prevalence of the general interest is a fundamental principle upon which the Colombian social rule of law is founded. This principle guides its essential purposes and the exercise of public functions. Consequently, administrative functions in Colombia must serve general interests and be carried out in accordance with the principles of due process, equality, good faith, participation, responsibility, transparency, morality, efficiency, economy, speed, impartiality, and publicity.

In response, the Ministry of Health issued Resolution 2076 on December 9, 2021, resolving the request for a direct revocation against Resolution 810 of 2021. The decision was made not to revoke Resolution 810, citing the following arguments, among others:

☛ Resolution 810 of 2021 does not violate Law 2120 because it was issued earlier. Since it was issued before, it cannot be claimed that the legal obligations outlined in the law extend to the text of the Resolution. This is because, at the time of its issuance, the sanction of the law was a mere expectation.

☛ Due to the “rigorous” process involved in the construction of Resolution 810, adhering to international principles regarding the best scientific evidence and aiming to address an issue for the benefit of the Colombian population, it cannot be claimed that it undermines the social and economic order of the country. It is worth noting in this argumentation that the complaint raised in the request was left unanswered.

☛ It was argued that there was no conflict of interest, and any decision made in the construction of the resolution was based on scien-

Furthermore, it is important to note that the ministry’s argumentation concerning the point about the violation of the country’s social and economic order does not address the organization’s requirements questioning the economic and social impact that the implementation of labeling without the strongest scientific evidence could have.

On the contrary, the ministry focused on promoting, as a counterargument, that a possible confusion of the labels is a subjective assessment—as also asserted by ANDI in the annulment action process—when they had already publicly acknowledged that circular labels are associated with quality in the country. Due to the requirements of Article 5 of Law 2120 of 2021, it was necessary to reconsider this measure under conflict-of-interest-free scientific evidence.

Therefore, there is an acknowledgment that, indeed, Law 2120 of 2021 is binding, and its entry into force rendered Resolution 810 of 2021 void; especially considering that this article was known to the Ministry of Health, as it actively participated in the legislative debates of House Bill No. 167 and Senate Bill No. 347 of 2020. In fact, this prior knowledge, along with the urgency that characterized the process of publishing Resolution 810 of 2021, highlights that the administration preempted Law 2120 of 2021 deliberately and with the intention of opposing the demands of civil society. These demands were aimed at ensuring that the administration’s actions regarding front-of-package warning labeling were in line with conflict-of-interest-free scientific evidence.

Process of Amendment to Resolution 810 of 2021

After the lengthy process of revealing that Resolution 810 of 2021 did not meet the scientific standards required by Law 2120 of 2021, on February 9, 2022, the Deputy Minister of Health announced that they were initiating a competitive process to make modifications to the labeling in accordance with the strongest scientific evidence.

In this context, on April 28, 2022, the Ministry of Health opened the contracting process MSPS-SMC-005-2022, with the objective of “evaluating the strongest available evidence to establish forms, colors, sizes, captions, and location of front-of-package warning labeling for processed products in Colombia”.

At the request of civil society organizations, it was established as a criterion in this contracting process that the technical team to be hired should not have a conflict of interest. Additionally, the technical evaluation of conflict of interest in the studies to be analyzed was requested as a technical exclusion criterion.

Following the aforementioned, the University of Antioquia was ultimately selected, and on July 29, it delivered a study titled “Technical Document of the Results of the Systematic Review of Conflict-of-Interest-Free Literature on the Shape, Content, Figure, Proportion, Symbols, Texts, Colors, Size, Location on Product Packaging, among others, for Front-of-Package Labeling.” In this study, it concluded that the features that front-of-package warning labeling in Colombia should have, following the strongest available evidence without conflict of interest, are:

- Shape: Octagonal
 - Color: Black, white border
 - Location: In the upper third of the main display panel
 - Warning Text: “EXCESS IN” critical nutrients related to the EC recommended by PAHO/WHO (i.e., sodium, free sugars, total fats, saturated fats, and trans fats), with the caption: “Contains sweeteners, not recommended for children”.
 - Regulatory Entity Text: “Ministry of Health” (...).
- They represented this as follows:



Graphic created by the University of Antioquia

As a result of this conclusion, on August 1, 2022, Health Minister Francisco Ruiz announced that it was “(...) necessary to modify Resolution 810 of 2021 regarding front-of-package warning labeling (...)” In this regard, he published a draft resolution on the website to amend Articles 2, 3, 16,

25, 32, and 37 of Resolution 810 of 2021, incorporating all the recommendations made by the University of Antioquia. He also opened a public consultation period for comments and observations until Tuesday, August 16, 2022.

Box 8

Public Consultation on Front-of-Package Warning Labeling Resolution

After the evaluation of the scientific evidence conducted by the Universidad de Antioquia, adjustments to the shape and figure, as well as other modifications, are being introduced.

Press Release No. 412 of 2022

Bogotá, August 1, 2022 – With the aim of complying with Article 5 of Law 2120 of 2021 regarding front-of-package warning labeling, the Ministry of Health identified the need to conduct a study analyzing the strongest available scientific evidence free of conflicts of interest in this regard.

In this regard, administrative processes were carried out for the structuring of the preliminary study to request contracting; publication of the call for proposals and the final evaluation of the process to award the contract (which can be reviewed on the SECOP II website, with reference number MSPS-SMC-005-2022); as well as Contract 113 of 2022 with the Universidad de Antioquia, with the following contractual objective: To conduct an evaluation of the strongest available evidence to establish forms, colors, sizes, captions, and the location of front-of-package warning labeling for processed products in Colombia.

The following conclusions were obtained from the mentioned study:

Shape and Figure: The octagon has the most available evidence in randomized experimental studies, being included as an intervention variable in 88.9% of the studies. The only randomized experimental study that compared shapes and figures of front-of-package warning labels found that the octagonal shape is the most suitable for capturing attention and has the greatest potential to maximize the perception of unhealthiness (Cabrera et al., 2017).

Color: The only randomized experimental study that compared shapes and figures of front-of-package warning labels found that black is the most suitable color for capturing attention and has the greatest potential to maximize the perception of unhealthiness (Cabrera, 2017).

Content and Text: The only randomized experimental study that compared front-of-package warning label characteristics found that the text «EXCESS IN» is the most suitable for capturing attention and has the greatest potential to maximize the perception of unhealthiness (Cabrera et al., 2017).

Additionally, when observing the information present in the images of the labels from the eight studies showing favorable effects of the octagonal shape, it is interpreted: 50 % (4 studies) used the warning text “HIGH IN,” and 37.50 % (3 studies) used “EXCESS IN.” However, it is important to note that, although the warning text “HIGH IN” was used in four of these, the “EXCESS IN” text was used by the study with the strongest evidence and in studies conducted in Colombia. It also aligns with the term “excessive amount” used in the description of Article 5 of Law 2120.

Maximum Values

Regarding this parameter, the Ministry of Health and Social Protection conducted the corresponding literature review. At this point, it was concluded that the nutrient profile model of the Pan American Health Organization is mentioned by the strongest evidence found as the best-performing model, and it is selected for use in Colombia based on the following:

- It shows greater validity in identifying foods containing excessive critical nutrients
- It is the most rigorous or demanding in terms of the percentage of regulated products, allowing consumers to more accurately identify foods with excessive levels of critical nutrients
- It is based on scientific evidence, including WHO guidelines on nutrients of public health interest
- It is a tool for regulating advertising, front-of-package labeling, and fiscal policies for high-energy and low-nutritional value foods and beverages
- The inclusion criteria for critical nutrients (free sugars, sodium, saturated fats, total fats, and trans fatty acids) were based on population nutrient intake goals established by the WHO to prevent obesity and NCDs.
- The model includes “other sweeteners,” excluding fruit juices, honey, or other food ingredients that can be used as sweeteners.
- The model includes parameters that define the level of food processing, complying with Article 5 of Law 2120 of 2021: “All edible or drinkable products classified according to the level of processing with an excessive amount of critical nutrients established by the Ministry of Health must implement front-of-package labeling with a warning seal”

In line with this, it becomes necessary to modify Resolution 810 of 2021 regarding front-of-package warning labeling. It is important to note that requirements unrelated to front-of-package warning labeling, such as the nutritional table, continue to follow the provisions established in Resolution 810.

Moreover, for those products already on the market or already equipped with the circular seal and its provisions (values, declarations), they may use up their existing labels, for which they will have six months from the publication of the modification in the Official Gazette. If, after this time, they still have labels with the initial provisions, they may request authorization for depletion from Invima.

In other words, there should not be any associated extra costs related to the destruction of printed material (due to label depletion). Neither should there be additional expenses for conducting laboratory tests (in fact, Resolution 810 allows for the estimation of nutrient content based on the information from the food composition table).

Ministry of Health¹⁷
Press Release
August 1, 2022

17 Available at: [A consulta pública resolución para etiquetado frontal de advertencia \(minsalud.gov.co\)](https://www.minsalud.gov.co/consultas/consultas-publicas/resolucion-para-etiquetado-frontal-de-advertencia)

Ministry of Health doesn't give up: last attempt to delay

Despite the fixed deadline for the public consultation on the modification of Resolution 810 of 2021, on August 11, 2022 – four days after the inauguration of President Gustavo Petro – the Ministry of Health and Social Protection released a press release titled “Information for Stakeholders,” announcing an extension in the time frame for the public consultation on the modification project. It also announced the establishment of working groups for up to six (6) months, with the participation of the national government – Ministry of Health, Ministry of Commerce, Industry and Tourism, National Planning Department, Invima, a delegate from the Presidency of the Republic, and industry representatives.

Anticipating the delay strategy promoted by outgoing Ministry of Health officials, Cajar sent a petition to the ministry expressing concern about this new attempt to delay and requesting the exclusion of the industry from these working groups. The ministry responded that:

[it was] decided to extend the national public consultation period for the modification project of Resolution 810 of 2021 to ensure broader participation from the general public, considering the potential impact of the proposed changes in the form, wording, and proportion of the warning seals. It was considered important for the general community to have more time for analysis and submission of comments. (Ministerio de Salud, 2022, 10, 10)

Moreover, they indicated that “[t]he scope of these technical working groups was designed to listen to civil society (including the food industry) about their experiences with some products that have already implemented the labeling outlined in Resolution 810 of 2021 (...)”. It was also mentioned that this decision was made “by officials belonging to the senior management who, at the time of the publication, were part of the office of the former Minister of Health and Social Protection (...)” (Ministerio de Salud, 2022, 10, 10).

After this response, and surprisingly, on October 27, 2022, the Fifth Section of the Council of State, in response to an action promoted by citizen Carlos Mario Salgado Morales, ordered the Ministry of Health, in compliance with the mandate contained in the second paragraph of Article 5 of Law 2120 of 2021 and within a period of two months, regulate the technical parameters of front-of-package labeling as required by Law 2120 of 2021.

Despite announcing the establishment of these working groups, as well as the intention to postpone the modification of Resolution 810 of 2021 for another six (6) months, under the mandate of Dr. Carolina Corcho as the incoming health minister in President Gustavo Petro Urrego's government, no instructions were given for the development of these working groups. In other words, it was decided not to establish these working groups and to continue with the process of modifying the administrative act, complying not only with the satisfaction of the general interest but also with the ruling issued by the Tribunal of Cundinamarca and the Council of State.

Comments on the public consultation regarding the modification of Resolution 810

During the open national consultation to modify Resolution 810 of 2021, according to the Ministry of Health, “a total of 1,573 comments were received in the national consultation, 830 from individuals and 71 from legal entities (...)” (Ministerio de Salud, 2022, 11, 17).

According to the Ministry of Health, the comments were analyzed using the following methodology:

(...) Reading and review of the comment, Analysis of the comment in relation to the regulatory proposal, Analysis of the evidence supporting the comment, Decision on the status (accepted or not accepted) by the technical team, Preparation of the entity's considerations regarding each comment. (Ministerio de Salud, 2022, 11, 17)

Additionally, the Ministry of Health reported that, according to this methodology, each comment was analyzed with scientific evidence support, accepting only those that met these criteria:

- (i) Were consistent with the regulatory purpose. (ii) Aimed to defend public health and improve the information provided in the front-of-pack warning labeling. (iii) Complied with the mandates established in Article 5 of Law 2120 of 2021. (iv) Were supported by scientific evidence free of conflicts of interest. (v) The received comments were related to the articles under national consultation. (vi) Improved the wording, understanding, and form of the regulatory project. (vii) Improved the

implementation or form of inspection, surveillance, and control of the regulatory project. (Ministerio de Salud, 2022, 11, 17)

In response to the petition submitted by Cajar, the Ministry of Health stated that out of the 759 comments received during the public consultation process, 129 comments were accepted. (Ministerio de Salud, 2022, 11, 17).

During this public consultation, the industry participated and, in their comments, opposed the modification of Resolution 810 of 2021, particularly regarding the characteristics of labeling, the nutrient profile, and limits based on the PAHO model, the inclusion of definitions such as processed and ultra-processed food, among other points (Ministry of Health, 11, 17, 2022). They opposed the introduction of the label warning about the content of sweeteners,¹⁸ the prohibition on other labels or nutritional declarations on products with warning labels,¹⁹ and the deadlines established for implementing the octagonal label and exhausting the circular one.

Among these interventions, the multinational company Kellogg defended the circular labeling model, stating that:

(...) it would be advisable to wait for its implementation to review possible improvements or adjustments that may be required, thus avoiding the need for modification without measuring the results of its implementation. This approach prevents additional damages and costs to producers and marketers (...). (Ministerio de Salud, 2022, 11,17)

In response to similar comments, the Ministry of Health was clear in indicating that:

(...) the normative project aims to improve health, which is a right of individuals, through clear, truthful information that allows them to make healthy decisions in their diet and was the result of a search for scientific evidence free of conflicts of interest (...). (Ministerio de Salud, 2022, 11,17)

Under this argument, the Ministry of Health defended the modification of the resolution against industry comments. However, the request to extend the validity of the modification of Resolution 810 of 2021 and to extend the term for depleting circular labels was accepted.

Although Cajar requested not to extend the implementation terms in its intervention, the health department stated that it was necessary “(...) to avoid incurring additional expenses in changing the seals to the octagonal ones established in the normative project (...)”, as well as “that the manufacturer can make a single change of packaging.” Therefore, it extended the validity of Resolution 810 of 2021 for an additional six (6) months and twelve (12) months for label depletion without Invima authorization.

Finally, the issuance of Resolution 2492 of 2022

On December 13, 2022, Resolution 2492 of

2022 was issued, modifying articles 2, 3, 16, 25, 32, 37, and 40 of Resolution 810 of 2021, which establishes the technical regulations on nutritional and front labeling requirements for packaged foods for human consumption, implementing the octagonal warning labeling in accordance with the study conducted by the Universidad de Antioquia.

However, as mentioned, in the modification, the Ministry of Health established a transition period for the depletion of circular labels at the request of the industry. Thus, it allowed manufacturers to maintain circular seals under two circumstances: i) requesting Invima authorization to deplete products with these seals until the date determined by this authority, upon manufacturers’ request before February 28, 2023; and ii) overlaying adhesives with the octagonal seal without Invima authorization until December 15, 2023.

Taking advantage of this opportunity provided by the health ministry, the ultra-processed food and sugary beverage industry submitted over 5,200 label depletion requests to Invima, whereas according to this authority, “normally an average of 300 requests are received annually.” (Invima, 2023, 7 of July). The Invima considered that it would not be able to resolve all the requests before the entry into force of the resolution, that is, before June 14, 2023.

In these circumstances, on June 2, 2023, Invima published a press release titled

“Invima provides reassurance to the food industry regarding the label exhaustion process.” It announced that regarding the unresolved/pending requests, “(...) products could remain on the market while a substantive response is provided by the Institute through the respective administrative act (Invima, 2023, 2 de junio). This decision was made despite the fact that, according to Invima, as of July 2023, 3,785 procedures had been processed, of which 2,536 had resolutions (Invima, 2023, July 7), and they estimated that the remaining ones would be processed in August 2023.

According to Invima

(...) the exhaustion of label inventory, use of adhesives or complementary labels may be granted only once until June 14, 2024. Therefore, starting from June 15, 2024, packaged foods that do not comply with the established nutritional and front warning labeling regulations must be removed from the market by the producer or marketer, regardless of the food’s manufacturing, marketing, or packaging date.

Thus, the transition period allowed by the Ministry of Health effectively meant the continued presence of circular front warning labels in the market for an additional year, until June 14, 2024.

This situation has serious implications, as it extends for another year a labeling that, firstly, is illegal, as circular labels lack the greatest scientific evidence free of conflicts of interest required by Article 5 of Law 2120 of 2021; and, secondly, was designed and promoted to satisfy the interests of the ultra-processed products and sweetened beverages

industry.

It is crucial to note that the fact that the octagonal label has greater scientific evidence free of conflicts of interest is of particular importance. Therefore, as an organization that has supported the demand for this important measure, the persistence of the circular label implies that Colombians are not being properly informed about the excess ingredients that pose significant risks due to their consumption.

Furthermore, the authorization from the national government to allow the circulation of circular labels implies a one-year delay in evaluating the effectiveness of the octagonal warning label as a best practice promoted by the WHO and the PAHO in the fight against NCDs. Therefore, the national government once again prioritized the interests of the industry over the rights of Colombians to access information about the risks that may arise from the consumption of these products.

In summary, the regulation of the octagonal warning label in Colombia with greater scientific evidence free of conflicts of interest has been characterized by the decision of the Legislature and the Executive to satisfy the particular interests of the ultra-processed products and sweetened beverages industry over the general interest pursued by this measure, namely, guaranteeing our rights to health and adequate nutrition. This is not without cost, as documented, this industrial sector adopted various strategies to interfere with legislative debates that sought to introduce the front-of-package warning label through law and captured officials from the Ministry of Health of Iván Duque’s government who actively promoted the circular label.

18 In this regard, refer to the comments from the companies *Coussins, Griffith Foods*, Biodistribuciones Terra, Super Alimentos, IPF, Quala, Pricesmart, Skinny Investments, ANDI bebidas, ANDI alimentos, JGB, Kellogg, FEDE-PANELA, Boydorr, Carnes del Sebastián, Wellness, Snacks Good Bite, BEAL, IPF, Level 5 Nutrition, OLAB, FENALCO, ASOLECHE, COLANTA, Grupo DIANA y Wake Up. Information available at this link: <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/Forms/DispForm.aspx?ID=26261>

19 In this regard, refer to the comments from the companies *Griffith Foods*, Super Alimentos, Dolarcity, Quala, Congrupo, Aruna, Skinny Investments, ANDA, ANDI Alimentos, ASECEC, JGB, Kellog, Carnes del Sebastián, ALSA, Wellness y ASOLECHE. Information available at this link: <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/Forms/DispForm.aspx?ID=26261>

Faced with the abrupt changes in information and regulation of labeling adopted by Resolution 810 of 2021, as stipulated in Resolution 2492 of 2022, and the provisions of Article 5 of Law 2120 of 2021, the prevailing chaos surrounding the regulation of front-of-package warning labels prompted numerous petitions to Invima seeking clari-

fication on the labeling situation. In this context, Article 5 of Law 2120, as illustrated in the box 9, becomes both an opportunity and a risk. The outcome will depend on whether its implementation and interpretation prioritize the rights of Colombian society or the economic interests of the ultra-processed food and beverage industry.

Box 9

Article 5: The Path of Regulation in Service of Society

Article 5: Frontal Warning Labeling. *All edible or drinkable products classified according to the level of processing with an excessive amount of critical nutrients established by the Ministry of Health and Social Protection must implement frontal labeling incorporating a warning seal. This seal should be of high preventive impact, clear, visible, legible, easily identifiable, and comprehensible for consumers, with unequivocal messages warning consumers of excessive contents of critical nutrients.*

The National Government, under the Ministry of Health and Social Protection, will regulate the technical parameters of this labeling, defining the form, content, figure, proportion, symbols, texts, maximum values, colors, size, and location on the packaging of products that should contain it. This regulation will be based on the greatest available scientific evidence, free from conflicts of interest. For this purpose, it may take into account the scientific evidence provided by the World Health Organization (WHO).

The warning seal should be placed on the front of the product when critical nutrients exceed the maximum values established by the Ministry of Health and Social Protection, in accordance with the greatest available scientific evidence free from conflicts of interest. To achieve this, scientific evidence provided by the World Health Organization (WHO) may be considered.

Paragraph 1. *The National Institute of Surveillance of Medicines and Food - Invima, or the entity performing its functions at the national level, shall carry out the Inspection, Surveillance, and Control actions as stipulated in this law and the corresponding regulation to be issued by the Ministry of Health and Social Protection. In case of non-compliance, if proven, it shall proceed to impose the sanctions referred to in Article 577 of Law 9 of 1979.*

Paragraph 2. *The National Government, under the leadership of the Ministry of Health and Social Protection, will regulate the criteria applicable to nutritional or health claims on the labels of products that must adopt the warning seals referred to in this article. This regulation should include specific criteria for packaging of food products sold in individual servings.*

Paragraph 3. *Typical and/or artisanal food and minimally processed beverages, as classified based on the level of processing, will be exempt from the application of front-of-package warning labeling, taking into account the regulations issued by the Ministry of Health and Social Protection.*

Paragraph 4. *The Ministry of Health and Social Protection, within a maximum period of one year from the promulgation of this law, will regulate the provisions of this article.*

Law 2120 of 2021
Article 5°

However, despite the magnitude of the challenge facing Colombian society and the transition from an ultra-conservative to a progressive government, the Invima's statement on June 2, 2023, stands out as a reassurance to the processed food and sweetened beverages industry regarding the depletion of label stock. In contrast to the legal maxim stating that no one can benefit from their own neglect, it can be anticipated that the industry will once again secure an extension of deadlines to adopt the octagonal warning labeling.

The industry seems unwilling to change its customary practices of interference and co-optation in the legislative and executive processes, as well as in the regulation and implementation of laws governing the matter. At the same time, civil society, academy, NGOs, associations of doctors and pediatricians, research networks, think tanks, mothers and fathers, and an increasingly significant number of legislators also seem unwilling to let the economic interests of a few powerful entities continue to weaken democracy and cut off access to the rights of the population.

The struggle will never be easy, but

systematizing experiences paints the overall picture and alerts society and its organizations to the repertoire of actions the industry takes when defending its economic interests. It also illustrates the growing capacity of an organized, persistent civil society attuned to the defense of its rights. Over the course of these six years, these civil society organizations have qualified their ability to understand the forms, repertoires, and levels of interference and co-optation by the industry. Considering that these corporate practices are implemented both in the formulation and implementation processes.

In this case study, it became evident that when they fail to halt the approval process of laws in Congress, the industry's mechanics involve delaying the application as a repeated repertoire. This tactic limits the scope of achieved objectives, creates confusion among consumers, demoralizes involved stakeholders, weakens democracy, and reinforces the evidence of existing power asymmetry between civil society and the current government, and between civil society and companies associated with the processed and sweetened beverage industry.



Even though we won, we didn't really win

The road ahead

Parts of the road are still to be constructed so that, indeed, Colombia finally has consistent regulation and a unique and clear model for front-of-package warning labeling.

The excesses caused by the issuance of Resolution 810; the detrimental role of the Ministries of Health, Industry, and Commerce in the process; the industry's usual malpractices; the lack of commitment from some legislators to the health of the Colombian population and the common good; the stigmatization against NGOs by some interested actors, including the national government; the nearly impossible role of the media, which, on the one hand, is owned by the owners of the UPFD industry companies and, on the other hand, has the constitutional and democratic obligation to inform society about matters of public interest; and finally, the demonstrated and evident power asymmetry among actors, are the ingredients of a recipe whose result is that, despite having Law 2120 of 2021 and being under the administration of the first progressive government in the country's republican history, the challenges for Colombia to comprehensively implement a front-of-package warning labeling model are still numerous.

Few legislations have faced as much resistance as those related to healthy food environments and front-of-package warning labeling. These

strategies of delay, capture, and interference by the industry test the democratic character of Colombian institutions. Despite this panorama, there is also good news for the country, among other things:

- Civil society has organized itself so that its voice can be heard. Currently, there is a social learning process that has allowed an expansion of the repertoire of action, also from civil society.
- In the regulatory sphere, the combination of legal, communication, and mobilization tools succeeded in compelling the government to pay attention to the demands of society.
- As long as the objectives are clear in defense of the common good, an effective communication strategy has proven to be crucial in counteracting the interference and corporate capture practices of the industry.
- It has become essential to build democratic safeguards to protect public health agendas through advancements in evidence-based policies, transparency, and without conflicts of interest.
- There is a better-informed public opinion, society, and citizenry more interested and committed to issues related to public health in general, particularly topics like healthy food environments and front-of-package warning labels, among others.

While the challenges persist, it is important to acknowledge that the perseverance and tenacity of the involved NGOs throughout these years have been of vital significance in preparing the ground for discussions on public policies in the country. This has resulted in a scenario with new stakeholders showing interest. Actors who were accustomed to making decisions behind closed doors, disregarding the general interest and rights, must now take into account a society that demands explanations and participation. The society is better equipped to defend its rights to information, health, and adequate nutrition.

Furthermore, it is expected that the industry, in processes like the one systematized in this research document, will find an opportunity to analyze, evaluate, and examine how practices such as capture, interference, or delay hinder the right to health and information for citizens. These practices cloud public discourse, lead to greater social imbalances, constrain organizations and civil society, affect access to human rights for vulnerable populations, and undermine democracy.

It is necessary to note that there is a significant challenge for the institutional framework in terms of what is stated in Article 9 of the law related to the promotion of healthy environments in public and private educational spaces. This involves the development and coordination of pedagogical actions aimed at the school community regarding balanced and healthy nutrition, as well as the design and implementation of informative, pedagogical, and educational campaigns on nutritional label reading.

Another challenge is legally defending the octagonal warning label against the le-

gal actions that the industry is likely to initiate to halt its implementation. For instance, in Mexico, as of April 2022, more than 162 lawsuits against the Official Mexican Standard NOM-051-SCFI/SSA1-2010 had been documented, including 135 injunctions and 27 annulment suits (Reporte Índigo, April 25, 2022).

Regarding the Colombian frontal warning labeling, on April 14, 2023, lawyers representing Gaseosas Colombia S.A.S., Gaseosas Lux S.A.S., and Nutimenti de Colombia S.A.S. filed a non-compliance action with the General Secretariat of the Andean Community against the Colombian state, particularly against the Ministry of Health, alleging a breach of Andean Community Decision 827 by adopting the octagonal frontal warning label based on the conflict-free scientific evidence from the PAHO and the study conducted by the Universidad de Antioquia.

The General Secretariat of the Andean Community, in Opinion No. 010-2023 dated July 25, 2023, considered in this scenario that Colombia has not breached Decision 827 and reiterated that the octagonal warning label:

It is based on scientific evidence, pursues a legitimate objective, and is suitable and necessary to safeguard public health and the lives of Colombians. The measure contributes to the reduction of communicable diseases and, consequently, decreases the mortality rate. It also supports the proper functioning of the healthcare system, enabling the fulfillment of the legitimate objectives pursued by Resolutions 810 and 2492. Therefore, it does not constitute a violation of Article 6 of Decision 827)

In this context, Colombian civil society

must remain vigilant about the legal actions initiated by the industry and intervene to safeguard the frontal warning labeling as a necessary measure to contribute to ensuring the health and nutrition of the Colombian population.

Finally, another significant challenge is re-

lated to promoting active participation from families, society, and citizens to ensure the respect and guarantee of the right to health for children and adolescents, as well as access to information, communication, and public documentation required for social control and citizen oversight.

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La edición
e impresión de
Interferencia, captura y dilación:
habituales prácticas de la industria
Etiquetado frontal de advertencia en Colombia
se realizaron en la ciudad de
Bogotá en el mes
de
octubre de dos mil veintitrés.
Utilizamos tipografía de la familia
ITC New Baskerville Std



Interference, Capture, and Delay: Common Industry Practices

When ultra-processed food products become a part of the daily lives of girls, boys, and adolescents, it ceases to be a problem solely involving the average consumer and extends its impact to a population classified as having special protection. In this regard, there is a growing concern among Civil Society Organizations and international bodies such as the WHO, PAHO, FAO, and Unicef. Consequently, a package of public policy measures has been advocated, including the adoption of a front-of-pack warning labeling. This labeling explicitly and clearly indicates when a product exceeds certain critical nutrients, such as sugar, saturated fats, or sodium, in a manner that is truthful, readable, and comprehensible. The journey in Colombia has not been easy but has provided a series of lessons learned, which are encapsulated in this research.

In addition to highlighting these issues related to public health, the document at your disposal uncovers various industry interference practices. These include attempts to hinder the approval of measures that could ultimately save lives, obstruct legislative processes, delay administrative decisions, or hinder public decision-making. Ultimately, this demonstrates the industry's display of power and its asymmetry compared to society—all in favor of private corporate interests and contrary to public health, human rights, and the common good.

This research provides insights to better understand the scope of common interference practices, their intricate consequences on legislative and executive powers, their ability to prevent, undermine, and postpone decisions safeguarding general interests, and how they prioritize private and industry-specific interests over the common good

