

# **Is the Timing Right for an International Code of Marketing of Food and Non-Alcoholic Beverages to Children?**

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*This article addresses recent calls for the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF) to develop a 'Code of Practice on the Marketing of Unhealthy Food and Beverages to Children.' The article argues that such suggestions ignore the development of WHO's Set of Recommendations on the Marketing of Food and Non-Alcoholic Beverages to Children and misrepresent its scope. The recommendations, adopted by the World Health Assembly in 2010, aims 'to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.' In light of the current WHO reform process and financial constraints, the fact that WHO member states explicitly chose to develop a 'Set of Recommendations' instead of a 'Code,' and the similarities between a code and recommendations, this article questions the feasibility and added value of re-opening the issue. Instead it recommends that the Secretariat be supported in their mandate to provide assistance to member states in implementing the existing WHO Set of Recommendations.*

## **INTRODUCTION**

Over the past two decades, the prevalence of childhood obesity has continued to rise, with current rates topping 35 percent in the US<sup>i</sup> and 30% in England<sup>ii</sup>. Studies have revealed that obese children are increasingly developing type II diabetes, and are more likely to become obese adults, leading to the same disease risk factors facing obese and overweight adults.<sup>iii</sup>

Obesity and overweight is multifactorial, with a number of causes and suggested reasons for its increase. This includes levels of physical activity, parental eating habits, breastfeeding and early child nutrition. The role of marketing food and non-alcoholic beverages to children is implicated as contributing factor to the rise in childhood obesity. Partly as a result of these concerns, at the 60<sup>th</sup> World Health Assembly (WHA) in 2007, member states requested the Director-General to:

Promote initiatives aimed at implementing the global strategy [for the prevention and control of noncommunicable diseases] with the purpose of increasing availability of healthy food and promoting healthy diets and healthy eating habits and to promote responsible marketing including the development of a set of recommendations

on the marketing of foods and non-alcoholic beverages to children, in order to reduce the impact of foods high in saturated fats, trans-fatty acids, free sugars, or salt, in dialogue with all relevant stakeholders, including private sector parties, while ensuring avoidance of potential conflict of interest.<sup>4</sup>

This mandate started a three-year process<sup>5</sup> to develop the Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children<sup>6</sup>, which was adopted by the 63<sup>rd</sup> World Health Assembly in 2010. As a follow-up, the WHO produced *A Framework for Implementing the Set of Recommendations on the Marketing of Foods and Nonalcoholic Beverages to Children*<sup>7</sup> which is intended “to assist member states in implementing the recommendations by providing guidance in the areas of policy development, policy implementation, and monitoring, evaluation and research.”

In the Spring 2012 issue of *Global Health Governance*, Allyn Taylor, Ibadat Dhillon and Lenias Hwenda proposed that WHO and UNICEF draft *A WHO/UNICEF Global Code of Practice on the Marketing of Unhealthy Food and Beverages to Children*.<sup>8</sup> I agree with their overall sentiments that the current Set of Recommendations does not go far enough in addressing the issue. However, I would like to argue that the article ignores the development of the current Set of Recommendations and misrepresents its scope. I pose that re-opening the issue in this way currently would be financially and diplomatically unfeasible, particularly in the context of the current WHO reform process. However, this does not discount the possibility of interim measures, such as increased monitoring of the private sector or member state implementation of the Set of Recommendations, which could eventually lead to a stronger tool. Moreover, if all member states were to implement the Set of Recommendations it would have the same outcome as the code that Taylor et al. suggest.

## **BACKGROUND**

This article comes out of a wider study in which I examine processes of global health diplomacy at the WHO from an anthropological perspective. As part of this, in 2010-2011, I conducted interviews with 20 individuals involved in the development of the Set of Recommendations, including member state delegates, individuals at the WHO headquarters and representatives of the private sector and civil society. As I discuss below, in the drafting process, WHO convened an ad hoc expert group and two sets of stakeholder consultations with the private sector and civil society. I interviewed 3 of the 8 members of the ad hoc expert

group, representatives from 7 of the 12 private sector actors and 5 of the 10 NGOs that took part in the consultations. I included questions about how they would change the recommendations, their opinions about taking a recommendations route instead of a code, and what worked well and what could have been improved about the overall process. For comparison I also analysed the development of the WHO/UNICEF International Code of Marketing of Breastmilk Substitutes, adopted in 1981.

## **DRAFTING THE SET OF RECOMMENDATIONS**

Taylor et al. note that the idea of a Code precedes the Set of Recommendations. In 2006, the WHO convened a forum and technical meeting in Norway, which reviewed the current evidence on the effects of marketing on children, global and national regulatory frameworks and action by the private sector.<sup>9</sup> The final recommendation of the technical meeting was for WHO to consider developing an international code. Also, in response to WHA60.23, the International Study of Obesity/International Obesity Task Force (IOTF) and Consumers International published 'Recommendations for an International Code on Marketing of Foods and Non-Alcoholic Beverages to Children which proposed a Code approach<sup>10</sup>. These were based upon IOTF's *Sydney Principals* "for achieving a substantial level of protection for children against the commercial promotion of foods and beverages."<sup>11</sup>

This idea of a code was also debated amongst member states. At the 60<sup>th</sup> WHA in 2007, delegates discussed Agenda Item 12.8: Prevention and control of noncommunicable diseases: implementation of the global strategy. Guiding this discussion was resolution EB120.R17<sup>12</sup>, and a draft resolution<sup>13</sup> which included a paragraph requesting the Director-General to:

Promote responsible marketing in order to reduce the impact of foods high in saturated fats, trans-fatty acids, free sugars, or salt, in dialogue with all relevant stakeholders, including private-sector parties, while ensuring avoidance of potential conflict of interest...

The first intervention of the meeting was from Dr. Larsen of Norway who suggested that the words "including developing an international code on marketing of foods and non-alcoholic beverages to children" be inserted in paragraph 2(6) of the draft resolution contained in resolution EB120.R17, between the words "responsible marketing" and "in order to reduce."

Several countries, including Brazil, New Zealand, Poland, South Africa and the United Kingdom supported Dr. Larsen's amendment, as

did civil society groups Consumers International, International Lactation Consultant Association, International Association for the Study of Obesity and Corporate Accountability International. The US and Switzerland objected.

According to Dr. Kessler of Switzerland, "drafting an international code would take a disproportionate amount of the Secretariat's time as against the results it would achieve." Mr. Hohman of the US:

Expressed his surprise that the delegation of Norway had proposed such a radical amendment to a resolution already approved by the Executive Board; the proposed international code of marketing would apply to thousands of products, and the work involved in developing and monitoring such a code would have enormous resource implications for WHO. Moreover, the amendment had been submitted with little prior consultation. He had no instructions from his Government on the matter, so could not support the proposed amendment.

The US objection was not unexpected.<sup>14</sup> At the 120th Executive Board meeting the previous January, the US delegate had proposed striking the text: "reducing marketing and promotion of unhealthy products" from the original draft resolution and instead had suggested text "to improve marketing, including voluntary changes in promotional practices."

At the end of the WHA discussions, Norway revised their previous amendment to the draft resolution by substituting the words "a set of recommendations" for "an international code" and the resolution passed. Regarding the code, Taylor et al. argues that "this neglected idea deserves renewed attention, re-conceptualization, and legal refinement." I disagree with this statement. The idea of a code has not been neglected; it was discussed and member states chose to take the route of developing recommendations.

Certainly, the issue of marketing food to children is a dynamic case study and the global situation has changed in the five years since the 60<sup>th</sup> WHA. For instance, non-communicable disease is a higher political priority, raised in fora such as the 2011 High-level Meeting of the United Nations General Assembly on the Prevention and Control of Non-Communicable Diseases.<sup>15</sup> The right to healthy food for children has also been raised within the UN Human Rights Council.<sup>16</sup> There is also mounting evidence that relying solely on self-regulatory action by the food industry is inadequate.<sup>17</sup> However, any move to re-open the issue at the WHO must take into account this history.

## SCOPE OF THE RECOMMENDATIONS

Taylor et al. clearly describe issues around childhood marketing and explain why the current Set of Recommendations are insufficient in addressing them. Specifically:

The Set of Recommendations provides important guidance but does not effectively address the extent or underlying nature of the global challenge. It envisions national action and fails to articulate global standards, engage industry in the development and compliance of relevant standards, or fully engage the WHO in the monitoring of potentially abusive marketing practices.

Food and beverage marketing to children is now a globalized phenomenon that cannot be addressed by unilateral national action alone

A WHO/UNICEF Code could provide low- and middle-income countries with much-needed leverage to resist industry pressure to withdraw national legislation aimed at protecting their populations during bilateral negotiations with wealthy nations and agreements with the food and beverage industries.<sup>18</sup>

My interpretation is that the authors take issue with the Set of Recommendations because (1) it is targeted at the national level (not international), (2) fails to engage the private sector and (3) fails to set up a monitoring function for the WHO. I take these in turn. I also refer to *A Framework for Implementing the Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children* in addressing these concerns, which was published at about the same time as the original article went to press. This supporting document was written in response to the mandate from Resolution WHA63.14 to “provide technical support, on request, in implementing the set of recommendations”<sup>19</sup> and addresses some of the authors’ wider concerns over the scope of the Set of Recommendations.

One issue is over the global nature of the Set of Recommendations. Some informants from both civil society and the private sector felt there was not sufficient involvement of low and middle-income countries in the development of the Set of Recommendations, or more broadly, in the issue of marketing food to children. However, all member states had the opportunity to discuss the set of resolutions during regional consultations, at the WHA and at the Executive Board so there was ample opportunity for them to contribute. Additionally, based on interviews, I argue that the current Set of Recommendations and Implementation Framework, can serve to raise the issue more widely

and in turn engage more low and middle-income countries in future pursuits. In fact, according to the WHO, many of these countries are already starting to implement aspects of the Set of Recommendations.

Taylor et al. also rightfully point out that the Set of Recommendations proposes national-level legislation and does offer solutions on a global level. This is intentional and has to do with the mandate given by member states. However, member states were fully aware of the global nature of the problem, particularly the issue of cross-border marketing (when advertising intended for one market is disseminated in another market) which is explicitly addressed in the Set of Recommendations. Finally, although the idea of setting minimum international standards would be very useful, it is also a difficult task that must take into account both global and national trade and communication laws governing marketing. Additionally, it must address the difficulty in creating global definitions of concepts such as unhealthy foods and the age of a child. The International Association for the Study of Obesity's StanMark Project<sup>20</sup> attempted to do this but ultimately was only able to describe the wide range of ways in which the marketing of tobacco, alcohol and food are addressed globally. In another example, the International Food and Beverage Alliance (IFBA), comprised of 10 multinational food and non-alcoholic beverage companies,<sup>21</sup> has set minimum international standards for their members<sup>22</sup>. Specifically, IFBA members commit either to:

1. only advertise certain products that meet specific nutrition criteria based on accepted scientific evidence and/or applicable national and international dietary guidelines to children under 12 years; or
2. Not to advertise their products at all to children under the age of 12 years.

Within this, 'children' are defined as those under 12 years of age and advertising to children under 12 "means advertising in child-directed media where 35 percent or more of the audience is under 12 years of age." According to IFBA though, "since food company portfolios vary widely, each company determines its own nutritional criteria and makes these public." Beyond this, individual companies can set their own additional guidelines. These standards have been criticized at weak; yet I would challenge 194 member states to agree on more stringent definitions.

Taylor et al.'s comments about the private sector and civil society are also puzzling. On one hand they are concerned about the ability of low and middle-income countries to resist industry pressure, a

sentiment also expressed by informants in my research. At the same time, they are concerned over the lack of industry engagement in policy development. They spell out the merits of a code versus treaty approach, but do not quite explain how this differs from the Set of Recommendations. Specifically, in contrast to a treaty, they write that:

Another key advantage of a code is that it can incorporate all relevant actors in the negotiation and implementation process and can speak directly to industry and civil society.

Civil society participation in negotiation and implementation of the code could empower citizens to seek greater accountability from industry and governments, and potentially discourage coercion by wealthy nations and powerful corporate interests.

There are two responses to their concerns. Firstly, using the example of the WHO/UNICEF Code on the Marketing of Breastmilk Substitutes, parts of the Code apply to companies directly, regardless of action taken by member states<sup>23</sup>. However, in practice, this has been contested by infant milk and food manufactures for decades.<sup>24</sup> This does not mean that companies should not be reminded of their commitments under such a code, but that using such a code is not a ‘magic bullet’ for dealing with the private sector. Secondly, regarding the negotiation process, the private sector was involved in the consultations for the Set of Recommendations and representatives from the Coca-Cola Company, Covington & Burling LLP, Corporativo Bimbo, General Mills, Inc., Kellogg Company, Kraft Foods, McDonald's Corporation, Mars, Incorporated, Nestlé S.A, PepsiCo, Inc, Unilever NV, and the World Federation of Advertisers attended.<sup>25</sup>

Similarly, civil society representatives from Consumers International, Corporate Accountability International, the International Association for the Study of Obesity/International Obesity Task Force, International Association of Consumer Food Organizations, International Baby-Food Action Network, International Pediatric Association, International Union Against Cancer, International Union of Nutritional Sciences, World Federation of Public Health Associations and World Heart Federation also attended a set of consultations. Finally, Tim Lobstein, from the International Association for the Study of Obesity, was an author of the Implementation Framework. Concerns over conflicts of interest and the involvement of the private sector were addressed in both the Set of Recommendations and Implementation Framework:

Recommendation 4: Governments should set clear definitions for the key components of the policy.

Recommendation 6: Governments should be the key stakeholders in the development of policy and provide leadership, through a multistakeholder platform, for implementation, monitoring and evaluation. In setting the national policy framework, governments may choose to allocate defined roles to other stakeholders, while protecting the public interest and avoiding conflict of interest.<sup>26</sup>

This recognizes that the private sector has a role to play and must be consulted, but that ultimately governments are to develop public health policy – not the private sector. However, governments may choose to call upon the private sector in aspects of policy implementation.

Finally, I question Taylor et al.'s suggestion that a code could contain stronger provisions for the WHO's role in monitoring. Broadly, the Constitution of the WHO is lacking in guidance on the relationship with the private sector.<sup>27</sup> Articles 62 and 63 state:

Each member shall report annually on the action taken with respect to recommendations made to it by the Organization and with respect to conventions, agreements and regulations.

Each member shall communicate promptly to the Organization, important laws, regulations, official reports and statistics pertaining to health which have been published in the State concerned.

Based on the experiences of the Breastmilk Code or the text of Article 9 of the WHO Global Code of Practice on the International Recruitment of Health Personnel the broad mandate for the Secretariat in monitoring a Code would most likely be to support member states in monitoring and sharing information<sup>2829</sup>. This would require supporting efforts by existing regional networks and international organizations, and cooperating with the private sector and civil society where appropriate. This would include reporting to the WHA on the implementation of the Code (based on reports submitted by member states); but would not explicitly give it the mandate to monitor national-level industry action. I fail to see how these code monitoring activities would differ significantly from those laid out in the operative paragraphs of Resolution WHA63.14 which adopted the Set of Recommendations. This resolution requests the Director-General to provide technical support to member states in implementing the Set of Recommendations, to support existing regional networks, to facilitate the existence of new ones, to cooperate with civil society, the public and private sectors to strengthen international cooperation and to report on the implementation to the WHA.<sup>30</sup>



## **CURRENT FEASIBILITY OF A CODE**

When the Recommendations were discussed at the WHO's 126<sup>th</sup> Executive Board meeting in January 2010 and adopted in May 2010 by the 63<sup>rd</sup> WHA, there were concerns by the NGO community and some member states, namely Chile and the UK, that it was not strong enough in terms of giving ultimate authority to governments (rather than the private sector) in addressing marketing.<sup>31</sup> The consensus amongst the civil society actors I interviewed over the course of my research was that the Set of Recommendations do not go far enough and were watered down; however all acknowledged that it was the best possible outcome. However, a code would have been a stronger document only in popular perception. In practice, recommendations and a code often have the same outcomes and informants were cognizant of this; furthermore, in legal terms, a 'code' is actually a type of 'recommendation'<sup>32</sup> and both fall under Article 23 of the WHO Constitution, which states: "The Health Assembly shall have the authority to make recommendations to members with respect to any matter within the competence of the Organization."<sup>33</sup> In light of these limitations, there was broad support for the recommendations, described positively by informants as "a springboard for action," something that "raises the profile of the issue," and "something to hang your hat on."

The recommendations were chosen instead of a code, in part, because of the Swiss and US objections to the amendment by Norway. Another reason was the available evidence on the effects of marketing of food to children. The WHO commissioned and drew upon two systematic reviews, along with other research on the global regulatory environment.<sup>34</sup> However, the evidence base at the time did not exist to fully rule-out self-regulation; nor was there enough evidence for more concrete policy recommendations. This is not to say that all public health policies should be solely evidence-based; there is certainly a case for applying the precautionary principle and making evidence-informed policies. However, there needs to be stronger evidence to support re-opening this issue. Arguably there is now enough evidence to contest self-regulatory approaches as not comprehensive enough.<sup>35</sup> More is needed though on the impact of marketing restrictions. A final point is that the Secretariat would need a fresh mandate to re-open the issue and in light of reforms and the extensive agenda that WHO has following the UN High Level Meeting, it does not seem to be the best use of resources, both human and financial.

## CONCLUSIONS

I agree with Taylor et al. that more action is needed on globally addressing the issue of marketing pressure on children. However, if most member states adopted the current Set of Recommendations in a comprehensive manner then this goal would be achieved. While much has changed in the past five years since the WHO received its mandate to develop a Set of Recommendations, it is reasonable to speculate that this current policy will need strengthening in the near future. However, any work on strengthening should be mindful of the background and context of the Set of Recommendations and must take into account the effort put into them by the Secretariat, along with a number of supportive member states, including Norway.

Re-opening the issue would require a new mandate and evidence that the Set of Recommendations and the Implementation Framework have failed to make any change. It would also require WHO to commission a new systematic review on the state of the evidence on marketing food to children, as well as on the impact of policies aimed at curbing marketing pressure. A related research gap is that, with some notable exceptions<sup>36</sup>, there is lack of evidence in low and middle-income countries on the scope of and effects of marketing – addressing. However, by mandate the WHO is not a research organisation and addressing this gap falls on the research community, not the WHO.

Rather than calling for a Code, I suggest that more support be given to the Secretariat to be able to provide the required assistance to member states in the implementation of the Set of Recommendations. I also call upon member states, civil society actors and academic researchers to continue to produce quality evidence and to systematically scrutinize the actions of the food industry in the same way that the International Baby Food Action Network scrutinizes that of the infant milk and food industry.

In light of WHO reform, the Organization needs inspiration, innovation and new ideas – but, for better or worse, it also needs for these ideas to be feasible within a relatively structured system. There is the adage that if one wants to reform the WHO, one should start with reforming the member states. That is, before suggesting that a new code is needed, we should how many member states have the resources to pass the necessary regulations to implement the existing Set of Recommendations, monitor and enforce them?

## **DECLARATION**

*The research on which this article is based was approved by the Ethics Committee of the London School of Hygiene and Tropical Medicine. The author is a contributing author to A Framework for Implementing the Set of Recommendations on the Marketing of Foods and Nonalcoholic Beverages to Children. However all views expressed by her are hers alone and do not reflect the views of the WHO.*

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<sup>4</sup> Sixtieth World Health Assembly, Resolution WHA60.23. "Prevention and control of noncommunicable diseases: implementation of the global strategy." (2007). Available online: [http://apps.who.int/gb/ebwha/pdf\\_files/WHASSA\\_WHA60-Rec1/E/reso-60-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHASSA_WHA60-Rec1/E/reso-60-en.pdf). Date accessed: 3 October 2007.

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