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# TRANSITIONING TO “SOMETIMES FOODS”: CHILE’S NEW STOP-LIGHT FOOD LABELING LAWS

Tony Godfrey\*

*Who care if me eat carrot or collard greens? Me also like broccoli and lettuce and lima beans. Me still Cookie Monster. That not a sham.*

—Cookie Monster<sup>1</sup>

SINCE first airing in 1969, *Sesame Street* has now been shown in over 120 countries; well-known and beloved by children all over the world.<sup>2</sup> One of the show’s more perennial and popular characters is made up of a blue furry blur, high-googly eyes, and an insatiable appetite for chocolate chip cookies: Cookie Monster.<sup>3</sup> But, in 2005 the team behind *Sesame Street* made a decision to focus on healthier habits and teach Cookie Monster moderation.<sup>4</sup> The blue, furry monster’s most popular song, “C is for Cookie,” gave way to “A Cookie is a Sometimes Food,” and he now eats plenty of fruits and vegetables along with his sometimes-cookies.<sup>5</sup>

On July 6, 2012, the Chilean Senate enacted the first of what would become a set of new laws regulating the labeling and marketing of certain foods inside Chile.<sup>6</sup> This law, titled On the Nutrient Composition of Food and Its Advertising, set out to “[improve] point of food purchase consumer information by incorporating easy-to-understand front-of-

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1. *10 Cookie Monster Quotes We Can Totally Get Behind*, KITCHEN DAILY (May 14, 2014), <http://www.kitchendaily.com/read/best-cookie-monster-quotes-sesame-street>.
2. Michael Jay Friedman, *Sesame Street Educates and Entertains Internationally*, IIP DIGITAL, (Apr. 8, 2006), <http://iipdigital.usembassy.gov/st/english/article/2006/04/20060405165756jmnamdeirf0.4207117.html#axzz2gmvoKT7B>.
3. See *Sesame Street, C is for Cookie*, YOUTUBE (Feb. 6, 2009), <http://www.youtube.com/watch?v=Ye8mB6VsUHW> (a wonderful example of the blue, furry monster).
4. Chelsea J Carter, *Cookie Monster: ‘Me eat less cookies,’* USA TODAY (Apr. 7, 2005, 4:15 PM), [http://usatoday30.usatoday.com/life/television/news/2005-04-07-cookie-monster\\_x.htm](http://usatoday30.usatoday.com/life/television/news/2005-04-07-cookie-monster_x.htm).
5. See MarshalGrover, *A Cookie is a Sometime Food*, YOUTUBE (Mar. 6, 2010), <http://www.youtube.com/watch?v=iH9IO6iMO78>.
6. See Law No. 20606, Julio 6, 2012, DIARIO OFICIAL [D.O.] (Chile), available at [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/d-cl/dv/ley\\_20606\\_comp\\_alim/\\_ley\\_20606\\_comp\\_alim\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-cl/dv/ley_20606_comp_alim/_ley_20606_comp_alim_en.pdf).

packages labeling and specific messages addressing critical nutrients, and (ii) [decrease] children's exposure to unhealthy foods by restricting marketing, advertising and sales."<sup>7</sup>

## I. THE NEW FOOD LABELING LAWS

### A. THE HEALTH SITUATION

Chile is a vibrant developing country whose demographics and health situation has changed drastically over the past decades. From 1960-2000 malnutrition in children less than six years of age decreased from 37% to just 2.9%, but obesity in children just four years old is now at 20%.<sup>8</sup> The adult population is not immune to obesity either, with an overall obesity rate of 25.1%.<sup>9</sup> There are likely many factors contributing to this increase in obesity, but the country's sedentary lifestyle, with 89.4% of Chileans qualifying as extremely sedentary, is likely not helpful.<sup>10</sup> Additionally, Chileans spend an average of 63% of their income on packaged foods, such as potato chips and sodas.<sup>11</sup> Current rates of obesity in Chile put it behind only three other countries: New Zealand (26.5%); Mexico (30.0%); and the United States (33.8%).<sup>12</sup>

### B. THE CHILDREN IN 2012

Law 20606 is broadly sweeping in its protection of children from certain food marketing, protecting children due to their "natural credulity."<sup>13</sup> The law focuses on any foods that are high in "calories, fats, sugars, salt, or other ingredients" detrimental to the health of the population, as determined by the Ministry of Health.<sup>14</sup>

In regulating these foods, the Senate banned their sale or marketing in any nursery, elementary, or secondary school.<sup>15</sup> No matter the location, none of these foods as determined by the Ministry of Health may be mar-

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7. C. Corvalán et al., *Structural responses to the obesity and non-communicable diseases epidemic: the Chilean Law of Food Labeling and Advertising*, 14 (Suppl. 2) *OBESITY REVIEWS* 79 (2013), available at <http://www.foodpolitics.com/wp-content/uploads/Corvalan-Chile-Bellagio-Ob-Reviews-2013.pdf>.
  8. Claudia Bambs et al., *Morbid obesity in a developing country: the Chilean experience*, 86 *BULL. OF THE WORLD HEALTH ORG.(WHO)* 737, 813 (2008), available at <http://www.who.int/bulletin/volumes/86/10/07-048785/en/>.
  9. Chile, *Better Life Index*, OECD, <http://www.oecdbetterlifeindex.org/countries/chile/> (last visited Feb. 9, 2015).
  10. Bambs, *supra* note 8, at 813.
  11. Amy Guthrie, *Junk Food Feels the Heat in Latin America*, *WALL ST. J.* (Dec. 27, 2013), <http://online.wsj.com/news/articles/SB10001424052702304773104579270523572200790>.
  12. *ECONOMIST INTELLIGENCE UNIT, NUTRITION IN CHILE: GLOBAL CHALLENGES, LOCAL SOLUTIONS*, 4 (2013) available at [http://foodsecurityindex.eiu.com/Home/DownloadResource?fileName=EIU\\_GFSI%202013\\_Nutrition%20in%20Chile%20report.pdf](http://foodsecurityindex.eiu.com/Home/DownloadResource?fileName=EIU_GFSI%202013_Nutrition%20in%20Chile%20report.pdf).
  13. Law No. 20606, Julio 6, 2012, D.O. art. 6 (Chile), available at [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/d-cl/dv/ley\\_20606\\_comp\\_alim\\_ley\\_20606\\_comp\\_alim\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-cl/dv/ley_20606_comp_alim_ley_20606_comp_alim_en.pdf).
  14. *Id.* at art. 5.
  15. *Id.* at art. 6.

keted to a person under the age of fourteen, and to avoid even accidentally marketing to children, there may be no marketing that includes “gifts, contests, games, or other items that attract children.”<sup>16</sup> In case there was any question, the law reiterates that “under no circumstances must advertising hooks such as toys, accessories, stickers, or similar be used as incentives.”<sup>17</sup> The McDonald’s Happy Meal is on the out in Chile.

Reading the law, one gets the impression that the Chilean Government is serious about preventing the marketing of unhealthy foods to children. But, what are those unhealthy foods?

### C. THE MINISTRY OF HEALTH’S RULES

The initial law of 2012 was relatively short, and left much of its classification of unhealthy foods to the Ministry of Health.<sup>18</sup> The development of the rules necessary to enforce the law were slow to come, but on December 17, 2013, former-President Piñera formally announced that the Ministry of Health would soon be releasing the draft rules, to take effect six months later.<sup>19</sup>

As part of the mandate, the Ministry of Health was required to define “unhealthy” for purposes of regulation.<sup>20</sup> This was no small feat, and the Ministry of Health leaned heavily on researchers at the University of Chile to review the research on nutrients and their composition in various foods.<sup>21</sup> Despite this research, defining guidelines and limits for “unhealthy” foods is naturally arbitrary, and the Ministry of Health made some concessions in evaluating “unhealthy.”<sup>22</sup> For instance, Chilean dietary serving size guidelines differ for children and for adults.<sup>23</sup> But, even though Law 20606 is oriented at children, the rules proposed by the Ministry of Health calculate nutrient content limits based upon average adult recommended servings.<sup>24</sup> This is but one example of many decisions necessary to be made when implementing a law directed at “unhealthy” foods.

The rules against unhealthy foods had three basic requirements. First, that all packaged foods with high contents of sugars, fat, and salt would carry a message on their packaging to the effect of “Eating Healthy and

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16. *Id.*

17. *Id.* at art. 8.

18. *Id.* at art. 5.

19. UPI Chile, *Presidente Piñera Presenta Nuevo Reglamento de Etiquetado de Alimentos*, EL MOSTRADOR (Dec. 17, 2013), <http://www.elmostrador.cl/ahora/2013/12/17/presidente-pinera-presenta-nuevo-reglamento-de-etiquetado-de-alimentos/>.

20. Law No. 20606, Julio 6, 2012, D.O. art. 5 (Chile), available at [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/d-cl/dv/ley\\_20606\\_comp\\_alim\\_/ley\\_20606\\_comp\\_alim\\_en.pdf.cl/dv/ley\\_20606\\_comp\\_alim\\_/ley\\_20606\\_comp\\_alim\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-cl/dv/ley_20606_comp_alim_/ley_20606_comp_alim_en.pdf.cl/dv/ley_20606_comp_alim_/ley_20606_comp_alim_en.pdf).

21. Corvalán et al., *supra* note 7, at 81.

22. *Id.* at 81–82.

23. *Id.* at 82.

24. *Id.*

Exercising are Good for Health.”<sup>25</sup> Second, that in addition to the positive statement reinforcing the need for healthy eating and exercise, a warning label must also be present on the packaging.<sup>26</sup> Finally, any advertising directed at children will be banned.<sup>27</sup>

Under the rules proposed, these warning labels would be within a large green, blue, or red hexagon indicating the unhealthy content.<sup>28</sup> The Ministry of Health derived a table for a number of different food products and incorporated this table into its rules.<sup>29</sup> Various foods explicitly regulated include mayonnaises, ketchups, ice creams, fruit juices, and sodas—to name but a few.<sup>30</sup> The proposed rules take their purpose very seriously—the limits imposed are far lower than traditional contents. For instance, the rules require the hexagonal warning for sodas in excess of fifteen grams of sugar per serving, with a serving set at 240 milliliters.<sup>31</sup> But, a traditional Coca-Cola, as an example, contains thirty-nine grams of sugar per twelve fluid ounce serving.<sup>32</sup> Converted, this becomes about twenty-six grams of sugar per 240 milliliters—massive 73% above the limit set by the Ministry of Health.<sup>33</sup>

## II. THE INEVITABLE COMPROMISE

Absent until now has been any discussion of Law 20.606’s Article 11. While the law left its rules and enforcement to the implementation of the Ministry of Health, it did mandate that rules be determined and enacted within a year of the law’s passage.<sup>34</sup> This timeline would have implemented enforceable rules by July 2013, but it was not until December 2013 that draft rules were announced.<sup>35</sup>

As with any attempt at regulation in a country, there are a number of international treaties and agreements that must also be taken in to account.<sup>36</sup> The business sector alone has a highly vested interest in laws like 20606: In 2013, Chile’s packaged food sales reached \$12.3 billion, a 23.9% increase from 2008.<sup>37</sup> The competing interests of international

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25. UPI Chile, *supra* note 19.

26. *Id.*

27. *Id.*

28. *Id.*; Modifica Decreto No. 977, Diciembre 17, 2013, D.O. (Chile), available at <http://www.diariooficial.interior.gob.cl/media/2013/12/17/do-20131217.pdf>.

29. Modifica Decreto No. 977, Diciembre 17, 2013, D.O. at art. 1 (Chile).

30. *Id.*

31. *Id.*

32. *Product Nutrition, COCA-COLA*, <http://productnutrition.thecoca-colacompany.com> (last visited Feb. 9, 2015).

33. Modifica Decreto No. 977, Diciembre 17, 2013, D.O. (Chile).

34. Law No. 20.606, Julio 6, 2012, D.O. art. 11 (Chile), available at [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/d-cl/dv/ley\\_20606\\_comp\\_alim\\_/ley\\_20606\\_comp\\_alim\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-cl/dv/ley_20606_comp_alim_/ley_20606_comp_alim_en.pdf).

35. UPI Chile, *supra* note 19.

36. One might refer to this as “globalization.”

37. *Chile Country Profile, FOOD EXPORT*, <https://www.foodexport.org/Resources/CountryProfileDetail.cfm?ItemNumber=1024> (last updated Oct. 2014).

trade agreements, international business, and domestic regulation have given rise to a significant delay in the implementation of the laws.

Chile’s attempt at domestic regulation came into conflict with its obligations under the Chile-EU Association Agreement.<sup>38</sup> Article 18 of the agreement expressly calls for Chile and the EU to cooperate on “standards, technical regulations, and conformity assessment” necessary for free trade.<sup>39</sup> This article specifically requires “regulatory cooperation” and standardizing conformity assessment between Chile and the EU.<sup>40</sup> It is not a stretch to see that a unilateral regulatory change of the scale contemplated by Chile’s Ministry of Health in implementing Law 20.606 may cause friction between the many groups affected. In fact, an internal communication between members of the FoodDrinkEurope industry lobbyist organization shows just that.<sup>41</sup>

The internal correspondence between FoodDrinkEurope in January 2013 informs its members of the proposed changes, and encourages them to submit their own comments to the Chilean Ministry of Health in opposition to the proposed rules.<sup>42</sup> The industry group also calls on its members to put pressure on the relevant European Commissions to investigate the regulatory change, and makes reference to the US-based Grocery Manufacturers’ Association (GMA) industry group’s opposition to the regulatory changes in Chile.<sup>43</sup> A draft statement included in the correspondence outlines FoodDrinkEurope’s position—namely, that Chile’s proposed regulations are not in keeping with its bilateral agreements to the detriment of the European food and drink industries.<sup>44</sup> The industry group, and likely others such as the GMA, are concerned that “if the draft rules on labeling are adopted, the purchase of many traditional European products, including products bearing protected Geographical Indications, will be effectively discouraged by the warning and their marketing will be restricted.”<sup>45</sup> Because Law 20606 expressly seeks to limit the marketing and sale of packaged foods to children and the Chilean population generally, the concerns of these industry groups are likely

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38. See generally Agreement Establishing an Association Between the European Community and its Member States, of the One Part, and the Republic of Chile, of the Other Part, Chile-EU, Feb. 1, 2003, 2002 O.J. (L 352) 1, 8, available at [http://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175eaf0.0004.02/DOC\\_2&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175eaf0.0004.02/DOC_2&format=PDF).

39. *Id.* at art. 18.

40. *Id.*

41. See *For Feedback/Action*, FOODDRINKEUROPE (Sept. 20, 2014 8:00 PM), <http://izbamleka.pl/wp-content/uploads/2013/01/FDE-Chilijska-Regulacja-Sanitarna-dotycząca-Zywności.pdf>. (Letter from Kinga Malinowska to members).

42. *Id.*

43. *Id.*

44. *The Food and Drink Industries of the European Union Call for Food Labelling Legislation in Chile That is Respectful of the Country’s International Commitments—DRAFT*, FOODDRINKEUROPE (Sept. 20, 2014 8:05 PM), <http://izbamleka.pl/wp-content/uploads/2013/01/Stanowisko-FDE-dot.-nowych-zasad-znakowania.pdf>.

45. *Id.*

well-founded, whether or not it is in the interest of the health of the country.<sup>46</sup>

### III. HOPEFULLY A SOMETIME RULE

#### A. FINAL PROGRESS

There has already been significant delay in enforcing Law 20606 well beyond its mandate of July 2013. Since the passage of the law, Chile has welcomed a new President into office, but no new rules have been implemented. Not only have the necessary rules not been implemented, but in April 2014, those rules proposed in January 2013 were scrapped.<sup>47</sup> This is not entirely a loss to advocates for health and new food labeling laws in Chile, as Senator Girardi, who worked to pass Law 20606, has said recently that the proposed rules were “regulations made for business . . . [they] were for industrialized food only, leaving out prepared foods and fast foods, which is an aberration.”<sup>48</sup>

Chile’s newest President, Michelle Bachelet, has begun her second term, first serving as President of Chile from 2006 to 2010.<sup>49</sup> Her experience in the position likely gives her an advantage in all upcoming negotiations, but her personal experience as a pediatrician and human rights activist before serving as President are likely also good indicators of how she will handle food labeling and dietary health in Chile.<sup>50</sup> Even more telling, however, is that it is President Bachelet’s own appointed Minister of Health that has chosen to scrap the prior rules and start over because, as written, they were “pretty wimpy,” and new proposed rules will likely contain stricter color labels and even lower levels of allowed sodium, fat, and sugar.<sup>51</sup>

#### B. THE FUTURE OF SOMETIMES-FOODS

Lack of motivation by industry groups, the difficulties of bilateral agreements, and other factors may have caused delays in implementing Chile’s ground-breaking Law 20606 so far, but it is likely only a matter of

46. See generally Law No. 20606, Julio 6, 2012, D.O. (Chile), available at [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/d-cl/dv/ley\\_20606\\_comp\\_alim\\_ley\\_20606\\_comp\\_alim\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-cl/dv/ley_20606_comp_alim_ley_20606_comp_alim_en.pdf). Art. 4 Sec. 4 warns about the “harmful effects of diets rich in fat, saturated fat, sugars, and other nutrients that in determined quantities and volumes can pose a health risk.” *Id.* at art. 4, sec. 4.

47. *Gobierno deroga Reglamento de la Ley de Etiquetado de Alimentos: Según Ministra, “es poco claro y dificulta fiscalización”* [Government repeals Regulations of Food Labeling Law: As minister, is unclear and difficult to control,] FOODWATCHER (Apr. 21, 2014), <http://www.foodwatcher.cl/2014/04/gobierno-deroga-reglamento-de-la-ley-de-etiquetado-de-alimentos-segun-ministra-es-poco-claro-y-dificulta-fiscalizacion/> [hereinafter FOODWATCHER].

48. *Id.*

49. Lally Weymouth, *An Interview With Michelle Bachelet, Chile’s Incoming President*, WASH. POST (March 7, 2014), [http://www.washingtonpost.com/opinions/an-interview-with-michelle-bachelet-chiles-incoming-president/2014/03/07/f1a285ee-a544-11e3-a5fa-55f0c77bf39c\\_story.html](http://www.washingtonpost.com/opinions/an-interview-with-michelle-bachelet-chiles-incoming-president/2014/03/07/f1a285ee-a544-11e3-a5fa-55f0c77bf39c_story.html).

50. See *id.*

51. FOODWATCHER, *supra* note 46.

time before it is implemented in full. Its momentum appears unabated, and other countries are following Chile's example.<sup>52</sup> Ecuador implemented its own traffic-light food labeling requirements for high levels of sugar, fat, and sodium; Peru, Uruguay, and Costa Rica have banned packaged foods in their schools; and Mexico has increased taxes on similarly packaged foods.<sup>53</sup>

It appears that Chile will ultimately win its fight for stricter food-labeling laws. C may be for cookie, but Chile will make sure that Cookie Monster sticks to his new regimen of moderation and sometimes foods.

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52. Tom Gara, *After Bloomberg, Latin America Steps Up War on Junk Food*, WALL ST. J. (Dec. 27, 2013), <http://blogs.wsj.com/corporate-intelligence/2013/12/27/latin-america-steps-up-where-bloomberg-failed/>.

53. *Id.*



