

Working Paper No. 04/2017 | March 2017

# Recent changes in food labelling regulations in Latin America: the cases of Chile and Peru

Sofía Boza<sup>1</sup>, Mónica Guerrero<sup>2</sup>, Rocío Barreda<sup>2</sup> and Macarena Espinoza<sup>3</sup>

1. Department of Agricultural Economics, Faculty of Agricultural Sciences and Institute of International Studies. Universidad de Chile. Email: [sofiaboza@u.uchile.cl](mailto:sofiaboza@u.uchile.cl).
2. Researchers, MSc. in International Economic Law. Pontificia Universidad Católica del Perú. Emails: [mguerreroa@mef.gob.pe](mailto:mguerreroa@mef.gob.pe)/[rbarreda@mincetur.gob.pe](mailto:rbarreda@mincetur.gob.pe)
3. Department of Agricultural Economics, Faculty of Agricultural Sciences. Universidad de Chile. Email: [macaer@ug.uchile.cl](mailto:macaer@ug.uchile.cl).

## ABSTRACT

In Latin American countries, economic growth has been reflected in a generalized change of eating patterns, transforming in a few decades from high rates of under-nutrition to frequent obesity problems in the population. This overweight crisis raises the propensity of suffering important health issues. Changes in food labelling regulations, with the aim of giving the consumer more information, have been part of the proposed strategy to fight against this overweight problem in some Latin American countries. The objective of this paper is to present Chilean and Peruvian food labeling regulations, as well as the review of the evolution hitherto of their discussion within national industry and especially multilateral trade forums.

Research for this paper was funded by the Swiss State Secretariat for Economic Affairs under the SECO/WTI Academic Cooperation Project, based at the World Trade Institute of the University of Bern, Switzerland.

SECO working papers are preliminary documents posted on the WTI website ([www.wti.org](http://www.wti.org)) and widely circulated to stimulate discussion and critical comment. These papers have not been formally edited. Citations should refer to a “SECO/WTI Academic Cooperation Project” paper with appropriate reference made to the authors.

The authors would like to express their gratitude to Pierre Sauvé and Rodrigo Polanco (WTI), Professors Dorotea López and Felipe Muñoz from the Institute of International Studies (Universidad de Chile) and Professors Manuel Montegudo and Victor Saco (Pontificia Universidad Católica del Perú) for all their efforts and support.

## 1. Introduction

According to figures available in 2010 and published by the World Health Organization (WHO), 2.8 million people die annually from problems associated with being overweight or obese. There is also an increased suffering of diseases such as heart disease, strokes and associated diabetes.

Zárate et al. (2009) indicates that obesity is recognized as a major public health problem in the world, as the increase in its prevalence has reached epidemic proportions for the vast majority of industrialized and developing countries. Specifically, as stated by Barrera et al. (2013) obesity is a systemic, chronic and multicausal disease, not exclusive to economically developed countries, involving all age groups, ethnic groups and all social classes. In its origin, genetic, environmental, metabolic and endocrinological factors are involved. However, only 2 to 3% of the obese would have some endocrinological pathology as cause among which the most important are hypothyroidism, Cushing's syndrome, hypogonadism and hypothalamic lesions associated with hyperphagia (Moreno, 2012).

In addition, according to figures reported by the WHO, in 2010 it was estimated that 42 million children were overweight in the world. The problem is that an obese or overweight child tends to remain as such in adulthood. Therefore, the child is more likely to suffer in the future from early non-communicable diseases (NCDs). In fact, it is estimated that approximately 40% of children and 70% of obese adolescents will become obese adults; thus, creating a negative impact on health and burden of disease. In addition, there is a greater risk that overweight and obese children and adolescents contract chronic diseases in adulthood, in addition to high mortality rates due to the suffering of some of these health problems (Liria, 2012).

The importance of quantifying obesity figures is that in most of the developed world, three out of four deaths are due to cardiovascular disease, cancer, accidents and other chronic diseases, such as diabetes, hypertension, chronic respiratory disease, and osteoporosis (Pizarro et al, 2004). Evidence of some cases in Mexico state that overweight and obesity are the main risk factors for a greater burden of NCDs, accounting for 75% of total deaths and 68% of disabilities in that country (Rtveladze et al. Al, 2012). In this instance, overweight and obesity are the fifth leading cause of death in the world (JUNAEB, 2014). They reduce the life expectancy of a person between 6 and 20 years old (Moyer, 2012). Further studies indicate that for every 33 pounds of extra weight, the probability of death would increase by 30% (OECD, cited by Rtveladze et al, 2012). In addition, estimates conclude that by the year 2020 NCDs will not only be the leading cause of disability worldwide, but will also become the costliest problems faced by health care systems. This poses a threat to all countries from a health and economic point of view (Miso et al, 2007). Other estimates report that the cost of obesity and its comorbidities reaches a percentage that varies between 2% and 9.4% of total health expenditure in countries with available information; along with the costs associated related to work incapacities and lower productivity (Vázquez and López, 2002).

Due to the above; obesity has become one of the main concerns for many countries, since it not only carries a great amount of costs, but also associates to a series of diseases equally important for public health. According to Oliva et al (2008), obesity has an impact at the individual, family and social level. People suffering from some degree of obesity not only have a shorter life

expectancy, but also have a greater need of health resources and a significantly lower quality of life compared to a non-obese person.

In this context, several international organizations have openly expressed their concern about this growing epidemic and have generated a series of recommendations and/or suggestions for its prevention. These suggestions have been collected by various countries of the world to combat the high rates of obesity and the condition of NCDs. Among the most recent cases that can be highlighted are those in Chile and Peru. In recent years, they have worked on the establishment of public policies to address the issues raised. In Chile, one of the main measures has been the entry into force of Law No. 20606 on Food Labelling and Advertisement, as well as the updates and modifications to the sanitary regulation of foods through the publication of Decree No. 13. A similar example in Peru is the publication of Law No. 30021 on the Promotion of Healthy Food for Children and Adolescents and its Regulation. They aim to establish a regulatory framework for advertising, the promotion of healthier living habits, the modification of the school environment and the establishment of front labeling to inform the consumer about the risks of food consumption that exceed critical nutrients levels.

Given that the regulations of both countries have aspects that are related to food quality and is applicable both to domestic and imported products, it falls within the scope of the Agreement on Technical Barriers to Trade (TBT Agreement) of the World Trade Organization (WTO). In this sense, an intense debate has taken place on the implementation and future of the measures mentioned, as various WTO members have argued that they should not be dealing with what they deem as harmful international trade policies.

## **2. History of Law No. 20.606 in Chile**

### **a. First Constitutional Process in the Senate Chamber**

#### **a.1. Initial Draft Law**

As in the rest of the world, in Chile, the levels of overweight and obesity have increased, together with an increase in the suffering of chronic noncommunicable diseases caused by these nutritional conditions, the prevention of which is mostly linked to nutrition and eating habits. Because of this, some Senators presented the 2007 the document "Unhealthy Food Regulation Draft Law" with the aim to propose solutions.

In the parliamentary motion presented, it is indicated that in Chile, obesity is the most prevalent chronic disease in all groups of population, affecting 8% of children under six years of age, 17% of first year students of primary education, 33% of pregnant women, 28% of adult women and 23% of adult men. The prevalence of obesity-related NCDs indicates that hypercholesterolemia affects 35% of adults, hypertension in 33.7% of adults and type 2 diabetes mellitus has a prevalence in adults which varies between 4% and 12%. The prevalence of these diseases is also specified in the obese children population, mentioning studies which reveal that 30% present dyslipidemias, 50% hyperinsulinemia, 10% hypertension and between 1 and 2% contracting type 2 diabetes mellitus.

Within the arguments put forward, it is mentioned that the growth and expansion of "fast food" has contributed to the increase of overweight and obesity of the population. Therefore; they supply the public with food containing high energy density, high fat content, saturated fats and trans fatty acids, associated with high palatability, along with enormous amounts of salt and sugars, with a high glycemic index and low fiber content. In addition, they indicate that these fast food restaurants marketing strategies target, in particular, at the child population. In addition, the Senators present the measures proposed by the WHO to the Governments to prevent overweight and obesity, sustained in two important points related to the information of key nutritional aspects and the advertisement. On the first point, it is indicated that consumers have the right to receive standardized and understandable information on food. This will allow them to opt for healthier decisions. The Governments can regulate the provisions for the delivery of this information, ensuring that it is truthful. At the same time, they suggest preventing advertising aimed at children, as the companies exploit their lack of knowledge and experience.

The proposed Law establishes the rules applicable to the production, distribution, marketing and consumption of food. Its scope extends to all those who sell or market food, making them responsible for ensuring their quality and safety, for providing truthful information about their composition and for responding to any harm they may cause to consumers (article 1). The Law uses the concept of "nutrients indicators of diet quality". This will correspond to all those whose excessive or deficient content in foods can constitute a risk factor for human health, including long term effects (article 2). The project obligates manufacturers, distributors and importers of foods to declare and label the content of these nutrients (total fats, saturated fats, trans fats, sugar, sodium, fiber and calcium) (article 3). The additives that create an erroneous impression about the nature, composition or quality of the food are prohibited (article 4). In addition, the promotion of healthy eating habits and the warning about the excessive consumption of critical nutrients in educational establishments are included (article 5). In this sense, it is forbidden that foods with excess of critical nutrients be marketed in institutions of primary and secondary education, considering a perimeter of 100 meters away from them. In addition, it is prohibited to deliver without charge to minors under 18 years of age and to sell, distribute and sell to children under 14 years of age (article 6). In article 7 are presented the provisions regarding nutrients whose excess or deficit generate problems for human health, including the maximum and minimum levels allowed, and indicative labels (Tables 1 and 2). On foods that exceed the limits established in article 7, it is prohibited to advertise to minors along with the use of commercial hooks or any means that take advantage of their credulity (article 8). Penalties for non-compliance with the provisions of the draft law are defined. The fine for production, sale or marketing of foods whose content exceeds what is established, but which are presented or marketed indicating otherwise, will be between 50 to 1000 UTM<sup>1</sup> (article 9). It will be sanctioned with a fine that can vary between 50 and 5000 UTM to those who produce sell or commercialize foods that only by consuming them produce immediate problems in health and also to those who produce sell or commercialize foods with toxic or polluting elements (art. 10 and 11). Regarding this last point, the minimum prison sentence in its minimum degree is included if the toxic element causes health risk or damage (article 11). In addition, article 12 specifies that non-compliance with any of the provisions contained in the Draft Law shall be governed by what is established in the Sanitary Code, specifically as provided in Book X.

---

<sup>1</sup> 1 UTM = 71.09 USD (March 2017).

Finally, it is indicated that a specific regulation that develops the matters referred to in the draft law would be issued within the 6 months after its publication (article 13).

Nutrients	Low Content 	Medium Content 	High Content 
Fats	$\leq 3$ g/100 g or $\leq 1,5$ g/100 ml	$>3$ g/100 g and $<20$ g/100 g or $>1,5$ and $<10$ g/100 ml	$\geq 20$ g or $\geq 10$ g/100 ml
Saturated Fats	$\leq 1,5$ g/100 g or $\leq 0,75$ g/100 ml	$>1,5$ and $<5$ g/100 g or $>0,75$ and $<2,5$ g/100 ml	$\geq 5$ g/100 g or $\geq 2,5$ g/100 ml
Added Sugars (includes monosaccharides and disaccharides)	$\leq 5$ g/100 g or $\leq 2,5$ g/100 ml	$>5$ and $<15$ g/100 g or $>2,5$ and $<7,5$ g/100 ml	$\geq 10$ g/100 g or $\geq 7,5$ g/100 ml
Salt	$\leq 0,3$ g/100 g or $\leq 0,3$ g/100 ml	$>0,3$ and $<1,5$ g/100 g or $>0,3$ and $<1,5$ g/100 ml	$\geq 0,5$ g/100 g or $\geq 1,5$ g/100 ml

Table 1. Level of fats, saturated fats, added sugars and recommended salt. Source: Draft Law on Regulation of Unhealthy Foods, 2007.

Nutrients	Low Content 	Medium Content 	High Content 
Fiber	$\leq 0,5$ g/100 g or $\leq 0,1$ g/100 ml	$>0,5$ and $<3$ g/100 g or $>0,1$ and $<1,5$ g/100 ml	$\geq 3$ g/100 g or $\geq 1,5$ g/100 ml
Calcium	$\leq 0,1$ g/100 g or $\leq 0,01$ g/100 ml	$>0,1$ and $<0,1$ g/100 g or $>0,01$ and $<0,1$ g/100 ml	$\geq 1,0$ and $\leq 1,5$ g/100 g or $\geq 0,1$ and $\leq 0,15$ g/100 ml

Table 2. Recommended fiber and calcium levels. Source: Draft Law on Regulation of Unhealthy Foods, 2007.

## **a.2. Discussion of the Draft Law**

On January 8, 2008, the First Report of the Health Commission was published based on the discussion of various issues associated with the Draft Law. In that debate, the need to reduce the overweight and obesity levels of the population due to the series of negative implications associated with the condition was supported. However, the discussion focused on the strategy of prevention and control, based on the promotion of healthy eating and physical activity. It is emphasized how difficult it is to combat these problems, since their causes are part of the environment of the people, which complicates the modification of their habits.

On the other hand, the document indicates the actions that the Ministry of Health had taken up to that moment. It highlights several programs whose main purpose is to educate about healthy eating. It mentions the "Healthy Schools" program aimed at the schools to follow a healthy diet guide. Integral strategies oriented to impact in the life cycle with guidelines on the evaluation, diagnosis and intervention in obesity; including the creation of the Global Strategy for Obesity in Chile (EGO by its acronym in Spanish), which targets to school, community, family and business. The document also mentions the creation of alliances with the food industry, which resulted in voluntary commitments to reduce contents of some components whose excess may be harmful, such as the reduction of trans fats in margarine.

The State's role to generate adequate legislation in the control of obesity that includes clear labeling, regulation of advertising and marketing, especially to children under 12, is emphasized. As a consequence, the idea of legislating was approved.

Subsequently, several discussions were held where it is assumed the importance of defining a clear and effective action to combat the problems of excess weight of the country, but it is questioned whether the Law proposed will actually affect obesity rates. In this context, reference is made to the "traffic light" labeling, arguing that an individual could consume only foods labeled with the "green light" and similarly, suffer from some degree of excess weight. They also mentioned the income restraints of Chilean population, because this determines the diet to be consumed. For this reason, it is indicated that the proposed labeling would not have greater impact, so, they argue, it would be convenient to evaluate the possibility of implementing sales bans on foods that exceed the limits of some critical components such as trans fats. The idea is to establish a limit of nutrients that does not generate damage to the population in commercialized foods.

With regard to advertising and marketing, it is mentioned that the self-regulation adopted and agreed to by the food industry has not worked. Children would be the most persuadable and lucrative sector. It also indicates that there is a social phenomenon, where both parents are working and therefore are absent thus making it much easier for the advertising organizations to take advantage in promoting their products to the children. Therefore, advertising directed to younger generations must be regulated.

Finally, the decision was taken to hold a new debate with the Health Commission to prepare a new first report, since the antecedents presented were considered insufficient.

In the following discussions, the responsibility of the State in the levels of childhood obesity was debated, since there is a relationship between the level of income and obesity. The lowest income groups are those with the highest rate of obesity and in addition, are the ones that have a greater use of the food provided by the National Board of School Aid and Scholarships (JUNAEB by its acronym in Spanish) through the Program of School Feeding (PAE by its acronym in Spanish). The two modalities of PAE were exposed by speakers: one that provides 700 calories, equivalent to less than 35% of what is required by children in primary education, while the other contributes between 42% and 43% of the caloric requirements of the students of secondary education. Those percentages would indicate that even if with this model there are problems of obesity, then the situation is associated to other factors. On the other hand, another situation is exposed as a contrast, with regards to the children who access the PAE, the most vulnerable are less obese than the non-vulnerable, being the first students of priority for the program. There were even figures indicating that public establishments have a lower level of obesity than semi-public ones, with the former receiving the highest allocation of food rations.

Other relevant point in the discussion was the partial prolongation of postnatal break, since if breastfeeding reaches close to one year or more, obesity in children is lower and even non-existent. In Chile, an accelerated decrease in the prevalence of breastfeeding during the second trimester of life was detected in 2005 in the group with maternal work outside the home. It also discussed the need to ban the sale of sugar added drinks in schools, promoting the consumption of water and diet drinks. In addition, emphasis was placed on the regulation of food advertising to children under 12 years. Together, it was proposed to promote physical activity in the population, facilitating the use of the bicycle, by building and enabling cycle paths with safe and adequate parking. Also discussed was the feasibility of implementing tax regulations to the consumption of foods with high calorie content, as well as promoting the consumption of healthy foods in replacement through economic incentives.

In the same discussion, the National Association of Advertisers of Chile (ANDA by its acronym in Spanish) recognizes the problems derived from overweight and obesity, but indicates that some points of the Draft Law would not contribute to its solution and in addition, are counterposed with constitutional guarantees, since it limits freedom of expression. In this sense, they believe that prohibiting or limiting the publicity of a good, service or institution, whose existence and disposition to the public are lawful, constitutes an obstacle in the free development of the country's activities. If they are harmful and against human health, they should simply be prohibited. However; their communication cannot be restricted if they have not been declared outside the commercial activity. Likewise, the National Association of Refreshing Drinks (ANBER by its acronym in Spanish), indicate that the Draft Law seeks to address a multiclausal problem, associated with genetic factors, sedentarily and inadequate diet, so that the most appropriate solution would be education. About the proposed labeling, they ensure that is difficult to apply and may lead to stigmatizing certain foods and causing confusion among consumers.

In the ensuing discussion, the concern is expressed about the articles of the project that refer to the advertising, labeling and nutritional composition of foods. Concerns continued to be raised about the "traffic light system", as in it would categorize food as good or bad, leading to erroneous decisions by the consumer, thus suggesting that there are other ways of labeling that

could be more effective, efficient or neutral with respect to the information provided. However, the Senators emphasize that the State must adopt strict measures since neither the market nor the actors of the industry can by themselves, take care of the public good that constitutes the health of the consumers. Finally, the Senators decided to approve the project, proposing modifications to the original one, which were explained in a bulletin and subsequently discussed in the Second Report of the Health Commission.

### **a.3. Amendments to the Draft Initial Law**

Regarding the Draft Law quite significant changes were made, which were collected and approved by the Senate on March 17, 2009. Despite this, part of the main structure is conserved. Changes include attribution to the Ministry of Health through the Food Sanitary Regulation, by regulation of the level of additives (article 4); as well as the responsibility to established aspects associated with labeling, ensuring that the information contained is visible and easily understood by the consumer (article 5). In addition, articles referring to provisions related to educational establishments include the incorporation of at least 3 blocks of physical education per week (article. 4). It should be mentioned that the ban on the use of commercial hooks for minors is maintained, but on the offer or free delivery of foods with a nutritional component that exceeds the established limits was limited only to 14 years. In addition, it was included the prohibition of advertising foods substitutes for breast milk along with a provision that requires the Ministries of Health and Education to implement a system of nutritional monitoring in students of pre-school, primary and secondary education, by specialists which measure their body mass index (BMI) and guide them on the follow-up of healthy lifestyles (article 6).

Among the most outstanding changes, there is one related to labeling, since the "traffic light" was rejected and a sign with the legend "high in" is proposed. The limits of critical nutrients would be defined in the specific regulation. Additionally, an article is included that grants the Sanitary Authority the power to corroborate with their own analysis the information indicated in the label (article 5). Finally, articles specifying penalties are eliminated, since the modifications include that non-compliance with the provisions of the Draft Law will be defined in the Food Sanitary Regulation (article 7).

Even though the draft was modified, a great debate on the new Draft Law is seen in the next discussions, as some Senators consider it insufficient for the prevention of overweight and obesity. In contrast, an important number of Senators considered that it is necessary to set requirements on labeling so that in this way, consumers are not misled and there is transparency about what they consume. On the other hand, it was pointed out that not all establishments have the adequate infrastructure to implement such requirements in the Draft Law. For instance, this would imply that it may be necessary to provide certain resources for the implementation of more physical education blocks in school curriculum. In addition, it should be considered that schoolchildren belonging to the Metropolitan Region have a reduced number of hours of physical activity resulting from the suspension of them based upon pollution levels.

Despite all the above-mentioned observations, the Draft Law is approved and with that it can pass to the second constitutional procedure in the Chamber of Deputies.

## **b. Second Constitutional Process in the Chamber of Deputies**

Following the approval of the Draft Law in the Senate Chamber, a brief discussion was given, which was reflected again in the First Report of the Health Commission, on January 2010. The background was sent to the Chamber of Deputies which decides to approve the idea of legislating, since, in general, they agree with the objectives of the project and its dispositions. Nevertheless, the Deputies made some indications, as to why the project had to be evaluated by the Commission of Health with the idea in mind to make a decision on the indications proposed. Thus, on August 31, 2010, the second report of the Health Commission was presented, highlighting the importance of the legal initiative presented, since for the first time it is seeking to generate objective action and coincides with the recommendations given by the WHO for the control and prevention of obesity. However, the Commission expressed some concern about certain points of the Draft Law; for instance, regarding the obligation to provide four hours of physical education a week. They indicated that there is a constitutional provision that governs the freedom of education in public and private institutions, for which with the exception of mathematics and language subjects, plans and programs are fixed by them. Also, it was stated that a greater number of compulsory hours of physical education will not necessarily translate into more exercise in schools. On the other hand, concerns were raised regarding the supervision of the sale of food products within the schools, as there are not enough human resources to do so. Additionally, on advertising, the Health Commission stated the importance of regulating it because school-age children consume a lot of television. It has been verified that 75% of the child population owns a television in their bedroom and 70% of advertising for children corresponds to highly caloric food. In this regard, studies were mentioned where it is shown that the children consider more attractive and tasty foods that have a connection with a known or admired animated character. The Commission also provided some background information such as the WHO indicates that advertising protection for minors should be up to 18 years and not up to 12 as proposed by the Draft Law.

Some members of the Health Commission, representing the food industry, expressed their concern about advertising restrictions since the Draft Law does not recognize the responsible self-regulation that exists and is governed by a specific code (Council on Self-Regulation and Advertising Ethics, CONAR). In addition, although they raise that they are not unaware that strict regulations should be generated, they indicated that the advertising ban would undermine economic and expression freedom and sports activities at the national and school level. The Draft Law prevents financing and sponsorship of entertainment activities, such as championships, and culture. Likewise, they stated that the prohibition and limitation in advertising would not necessarily impact obesity levels. They showed studies in which it is observed that in mature markets, where the number of advertisements have been reduced or parked directed at children, there has not been a reduction in the levels of obesity, so that prohibitions and restrictions are not only disproportionate, but also ineffective as they would not imply compliance with the objectives of the policy.

The report shows a notable concern on the part of the food industry since, they said, they have been working on the promotion of education (physical and alimentary), through the information

to the consumer using Guideline Daily Amounts (GDA)<sup>2</sup>, which has been adopted by a large number of countries (Figure 1). This was born in Chile as an initiative from the food industry as a sign of willingness to contribute to the reduction of obesity; which has been included on more than two thousand food products. In addition, the report added that the industry agreed with the Ministry of Health for a reduction of sodium and the elimination of up to 2% of trans fats. Specifically, on the labeling, they indicated that the semaphore proposed in the first version of the Project leads to errors, since the red color is not a good indication of alert and would not fulfill the role of information. Therefore, they propose to work with the labeling system in the GDA, because studies have corroborated that it is understandable by the population and allows consumers to make simple comparisons between the foods they intend to buy. In addition, they raised concerns about the content of the project that provides absolute regulatory authority to the Ministry of Health for compliance with the provisions of the Law, because the existence of multi-sector and multidisciplinary technical instances would not be known.

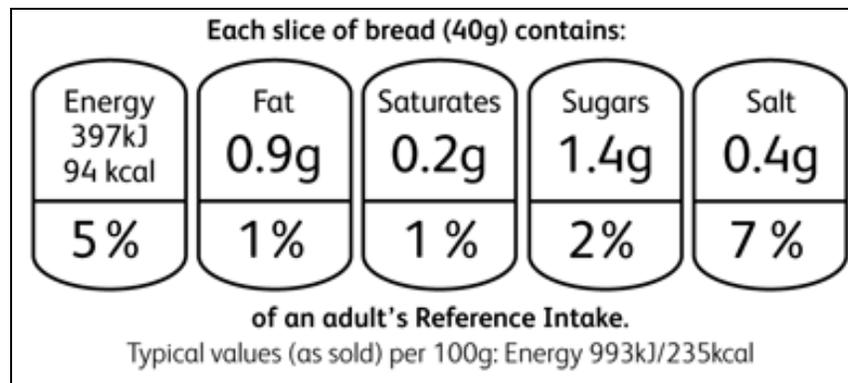


Figure 1. Nutrition labeling based on the battery system used and GDA on the front side of food packaging proposed at the UK. Source: Food and Drink Federation.

Considering the background provided by the Health Commission in this Second Report, the Chamber of Deputies voted on the Draft Law with the proposed indications being approved.

### c. Third Constitutional Process

After approval of the Draft Law in the Chamber of Deputies, it is sent to the Senate Chamber, where the indications included by the Chamber of Deputies are discussed.

Given the lack of agreement on the amendments proposed by the Deputies, especially in relation to the labeling and compulsory nature of a higher number of hours of physical education, it is the decision to send the project to the Mixed Commission, made up of an equal number of Deputies and Senators, who sat in various discussions. On April 19<sup>th</sup> and 21<sup>st</sup> 2011, the Senate and the

<sup>2</sup> GDA: labeling system in the form of "stacks", based on the recommendations of the Dietary Reference Report for the Diet of the UK Food Policy Medical Committee. Each cell presents the contents of calories and nutrients (total sugars, fat, saturated fat and sodium) and expresses them in percentage according to the nutritional needs according to the Daily Reference Values for a healthy person of average weight and average level of activity physical. Available at: <http://www.gda.cl/>

Chamber of Deputies, respectively, approved the proposals of the Mixed Commission. On April 25 of the same year, the text approved by the Congress was communicated to the Executive.

It should be mentioned that, in regards to the project generated in the Second Constitutional Process, no major changes were incorporated, except for two articles. The provisions of article 8, were added the obligation that the publicity in mass media should carry a message that will be defined by the Ministry of Health to promote healthy living habits. In addition, an article was included that obliges to declare the contents of soy, milk, peanuts, eggs, seafood, fish, wheat or nuts, if the food has it, in their packaging (article 9).

In addition, the Executive indicated certain modifications (in its form, but not in its text) to the Draft Law, which were submitted to a vote by the Senate and the Chamber of Deputies, some of them being approved; being thus totally processed the Draft Law by the National Congress on May 3<sup>rd</sup> 2012. Now, the procedure continues in the Constitutional Court, since the initiative of Law contains matters specific to the Organic Constitutional Law of Education. After the review by the Constitutional Court, the Draft Law continues its course, going to the completion process in the Senate. On June 12<sup>th</sup> 2012, the Executive Power communicates to the National Congress the approval of Law No. 20606, being published on July 6<sup>th</sup> 2012.

#### **d. Food Sanitary Regulations**

As previously mentioned, the provisions contained in Law No. 20606 made it necessary to amend the Chilean Food Sanitary Regulation. For this purpose, Decree No. 977 of 1996 (which approves the Sanitary Food Regulation) was revised through the promulgation of Decree No. 12, on April 12<sup>th</sup> 2013, published in the Official Gazette on December 17<sup>th</sup> of the same year, which was repealed due to certain updates made in Decree No. 13, promulgated on April 16<sup>th</sup> 2015 and published on June 26<sup>th</sup> of that same year, and which entered into force on June 27<sup>th</sup> 2016.

Decree No. 12 includes, among other things, some provisions that regulate advertising and prohibit commercial hooks for children. The most relevant items are those related to nutrient limits and labeling (Article 120). In this sense, on the limits of critical nutrients, they were defined by the category of foods and consider a reference portion. For products, whose portion of sale differs from the reference portion a calculation of these nutrients in a proportional way must be made. In the same article, the characteristics of the label that must contain the food in case of exceeding the established limits are described. The label must have the legend “High in” (“Alto en” in Spanish) followed by the name of the critical nutrient(s) exceeded. It is specified that the size of the label should be equal to 7.5% of the surface of the package and that the color may be red, blue or green depending on its color (Figure 2).



Figure 2. Labeling proposed in Decree No. 12. Source: Decree No. 12.

Finally, this regulatory modification was discarded as it was considered that the freedom of colors for the “High In” food label could confuse the consumer; besides it would leave out food recognized as unhealthy and not standardized per 100 grams for the definition of the limit.

Decree No. 13, diverge of Decree No. 12 in important aspects. For instance, food is divided only in two the categories: liquid and solid. It requires labeling descriptors for sugars, saturated fats and sodium if the food contains additions of sodium, sugars, honey, syrups and/or saturated fats that exceed the established levels. In the case of energy; its content should be labeled when sugars, honey, syrups, or saturated fats have been added (excluding sodium) and the set limits are exceeded. Likewise, the labeling exceptions are indicated, which correspond to foods which have not had added sugars, honey, syrups, sodium or saturated fats. Also, foods that are marketed in bulk, portioned, fractionated and prepared at the request of the public, even if these are packaged at the time of sale. Likewise, excluded are formulas for infants, pastes and minced (except those containing added sugars), processed cereal-based infant food, food for medical use, foods for weight control regimens, supplements for sportsmen, sugar and calorie free sweeteners.

It should be noted that the limits of the nutritional components defined will enter into force progressively, as transitional articles have been defined for this purpose. In Table 3, the limits of nutrients are presented, being more and more strict.

<b>Nutrient</b>		<b>Entrance into force</b>	<b>24 months after</b>	<b>36 months after</b>
Energy	Solid (kcal/100 gr)	350	300	275
	Liquid (kcal/100 ml)	100	80	70
Salt	Solid (mg/100 gr)	800	500	400
	Liquid (mg/100 ml)	100	100	100
Sugar	Solid (gr/100 gr)	22.5	15	10
	Liquid (gr/100 ml)	6	5	5
Saturated fats	Solid (gr/100 gr)	6	5	4
	Liquid (gr/100 ml)	3	3	3

Table 3. Maximum limits established free from labeling of energy, sodium, total sugars and saturated fats in foods. Source: Food Sanitary Regulations, Decree No. 13, 2015

On the other hand, the characteristics of the labeling are indicated in Decree No. 13. The label should be an octagonal symbol with a black background and white border and the inside should contain the text “High In” followed by the nutritional component that is above the permitted level (Figure 3). In addition, within the same symbol should be included the phrase “Ministry of Health” in white letters. Exceptional situations are also described, together with the location of the label(s), depending on the type of packaging (Article 120a).



Figure 3. Mandatory label on products with nutritional components that exceed the levels established by the Food Sanitary Regulation. Source: Food Sanitation Regulations, 2015.

Likewise, Decree No. 13 contains the specifications related to the labels where it is pointed out that they must be in Spanish as well as in the case of imported products whose labels are printed in another language. The use of an overprint or modification of the label shall be permitted. Also, it is specified that the characters used in the label should be visible and easy to read under normal circumstances of purchase and use (article 109).

It also includes the prohibition to advertise to children under 14 years of age foodstuffs that have in their nutritional composition energy, sodium, sugars or saturated fats in amounts that exceed what is established by the same regulation, along with the use of commercial hooks related thereto. In addition, it is specified that these foods cannot be sold, marketed or promoted within pre-school, primary or secondary schools (article 110a).

As mentioned, Decree No. 13 includes four transitory articles, indicating the date of entry into force of the Decree, which was 12 months after its publication in the Official Gazette (art. 1). In addition, a special term is defined to comply with the labeling of the descriptor "High In" for micro and small enterprises, corresponding to 36 months after the entry into force of the Decree (article 3). Finally, an article is included that indicates that an Advisory Commission sited in the Ministry of Health must issue a report that evaluates the implementation of the Law 20606, the adaptation of the technological processes and the impact on the perceptions and attitudes of the

consumers, considering the opinions of other Secretaries of State that are competent in the matter and, in addition, will recommend, if necessary, modifications to the Sanitary Regulation of Foods (Article 4).

### **3. Reactions to Law No. 20.606 from the national industry**

To construct this section, although several sources of information were used, it is important to highlight interviews with key informants, since this contributes to the contrast of the different positions that have been generated since the implementation of the new regulation. However, the names of those key informants were not mentioned to preserve confidentiality.

One of the main controversies referred to Law No. 20606 has to do with the calculation of limits established in the Sanitary Regulations of Food, since it considers a standardized portion in 100 grams. For example, if 100 grams of a food product exceeds the established limits, regardless of the selling portion of the product, it must carry a warning label. The problem arises when the consumer does not know that the 100 gr of product has the content of critical nutrients. So if one only looks at the labeling warning, they may think that it is that portion that has the content of high critical nutrients.

On the other hand, it is also questioned that for the definition of critical nutrients limits the only two categories were solids and liquids, ignoring the fact that the nutritional composition varies within different types of food. There are products that are not comparable to each other, such as cereals, legumes and seeds, because they naturally have a high caloric content compared to fruits or vegetables and dairy products. In addition, many experts agree that new regulatory implementations on labeling may confuse consumers. For instance, if "light" and "regular" products carry the same warning label, even if differences in their critical nutrient content are quite noticeable. Another issue with the scope of the Law, should do with the fact that the labels were cataloged as "descriptors". Therefore, although some of its nutritional characteristics are naturally present, addition of sodium, sugars and/or saturated fats, so that it falls within its regulation, and may lead to even labeling for the characteristics that the food has in its natural condition For example, with two types of chocolates of different quality, since one of them is characterized by having a high content of stearic acid<sup>3</sup>, which increases as the cocoa content increases; implementing the Law both will be labeled. .

On the other hand, about advertising restrictions, the National Association of Advertisers of Chile has indicated that freedom of expression is an impassable value and that advertising is a legitimate form of communication that aims to make people aware of the products and services available in the market. They added that the Chilean market has a system of self-regulation and advertising ethics that has been responsible for ensuring that content is truthful and responsible, protecting consumers through policy control, by demanding ethical standards of information. Therefore, they argue that the country must raise awareness about the importance of leading a healthy life, through the diffusion of healthy styles, favoring education over prohibition (ANDA, 2013).

---

<sup>3</sup> Saturated fat whose health benefits have been proven by science.

On the other hand, although micro and small companies have until 2019 for labeling, it is believed that the application of the Law should further consider their situation, since there are about 18,625 small companies that are affected by its application, which, by the way, represent about 97% of operators in the sector and 7% of industry sales. Therefore, some voices suggest that it is necessary to evaluate the impact on food SMEs, because access to capital and technology is scarce, so that their adjustment options (ASEXMA, 2014). In fact, it is important to evaluate the impact of the application of the law on the food industry at the national level, since 25% of the companies in the country belong to the food sector.

In this sense, the food industry has already taken several initiatives to reduce the impact of new requirements. Among these would be to consider the possibility of changing the composition of the food they produce to avoid a probable decrease in their sales. In this context, two potential effects are seen: on the one hand, regarding small and medium producers, they would be forced to take on hiring new professionals and investments in proximal analyzes for the construction of the tables of nutritional information. The other scenario contemplates the fact that when modifying the food composition to avoid a warning label, with ingredients that have no nutritional contribution or whose effects on the health of the population are not adequately tested (as with use of certain sweeteners in the manufacture of jams). Also, not all processed foods can be reformulated; for example, in the case of chocolates. In this case; if the fat content is reduced for avoiding the “High in Saturated Fat” icon, the product could fall outside the definition of chocolate.

On the other hand, it has been estimated that between January 2015 and March 2016, out of a total of 8,000 products, 1,550 have been reformulated to reduce at least one critical nutrient, which means that companies have modified one of every five products to make it healthier. This will not necessarily mean that they are exempt from the warning label. In addition, it is estimated that the industry has spent approximately 21 million U.S. dollars on re-labeling, design change, new graphics and labeling losses that can no longer be used. On the other hand, there are estimates of losses to the industry that could reach about 50 million U.S. dollars, due to the valuation of food in stock that could not be marketed for not having the new labels by the deadlines set in the regulations. In addition to the above, there is concern regarding the cost of reformulations and the impact on sales of food products (Aguirre, 2016).

#### **4. History and content of Law No. 30021 in Peru and its Regulations**

The national household-nutrient component survey (ENAHOCENAN) from July 2009 to June 2010 found that the percentage of overweight children from ages 5 to 9 living in the urban area was 18.1%, while the obesity percentage was 12% and for the whole country the percentage was 15.5% and 8.9% respectively for overweight and obesity. Per data from the Ministry of Health, 8 out of 10 obese children will continue to be obese when they are 35 years old. In addition, according to data from the Ministry of Education, 90% of school-age children are not in the habit of playing sports. So, it could be said that there is a tendency not to engage in physical activities, all of which are associated with excessive time dedicated to the internet, network games and activities of a sedentary nature<sup>4</sup>.

---

<sup>4</sup> Draft Law No. 774/2011-CR. Law of Prevention and control of the risks of the consumption of foods or foods with high contents of nutrients and excess of calories. January 30, 2012.

Based on these data collected by the relevant ministries, Congress was obliged to propose a special regulatory framework for healthy food security that would reflect international principles and guidelines applicable at the national level guiding the consumer towards good standards and, at the same time, warning about the risks of consuming food that is harmful to health.

Therefore, the following Drafts Law related to food safety were raised in the Peruvian Congress:

**Proposition N°774 / 2011-CR: “Draft Law that proposes the prevention and control of the risks of the consumption of food or foods with high contents of nutrients and excess calories”**

On the 30th of January 2012, the National Solidarity Parliamentary Group, on the initiative of the Congressman Gustavo Bernardo Rondón Fudinaga, presented the “Draft Law proposing the prevention and control of the risks of eating food or foods with high nutrient content and excess calories.”

In the explanatory memorandum of the mentioned Draft Law, it is pointed out that the consumption of so-called “junk food” has increased alarmingly in the last decade in Peru. The nutritive profile of this kind of food can be defined as hypercaloric, hyperproteic and with a high fat content. There is no one specific indicator that has caused the increase of consumption of the so-called "junk food", low in nutrients and high in calories and fat, or why it is consumed frequently in Peruvian society, but the conclusion of its origin is multifactorial.

The Draft Law is framed within the context of the State policies of the National Agreement, specifically in the Fifteenth State Policy on the Promotion of Food Security and Nutrition, in which the State undertakes to establish a food security policy that institutes the availability and access of sufficient quality food to the population which aids in securing an active and healthy lifestyle within the concepts of integral human development.

From that perspective, the Draft Law aims to “protect the person, the family and the community against the health, social, environmental and economic consequences of the excessive consumption of prepared and/or industrialized products that contain high saturated fat contents, salt and sugars. For purposes that are commercialized in a responsible manner, without affecting human health" (art.1). To this end, it determines that these provisions will apply to "all natural or legal persons who consume, market, import, supply, prepare and prepare processed foods and produce industrialized foods with high saturated fats, salt, and junk food sugars".

In this way, the Draft Law establishes that:

A. All establishments selling “junk food” must place posters with the following description (art. 3) in a visible place: "EXCESSIVE CONSUMPTION OF THIS TYPE OF FOOD IS HARMFUL TO HEALTH"

B. It should be included in the packaging, wrapping, labels, posters and commercials of establishments selling prepared food and industrialized food with high saturated fats, salt, sugar and preservatives, as well as phrases and images alluding to the health damage that could cause excessive consumption (art. 4): "THE EXCESSIVE CONSUMPTION OF THIS TYPE OF FOOD IS HARMFUL TO HEALTH"

C. Packaging and wrapping of industrialized products and/or foods with a high content of saturated fats, salt, sugar and preservatives should be printed in 25% of their main faces, phrases or warning images which describe risks to good health.

For producers, importers and distributors of prepared and/or industrialized products containing high saturated fat, salt and sugar content to be able to adapt their products and, in general, all kinds of packaging or wrapping to the provisions. The Draft Law, establishes a term of 180 days from its validity (First Transitory Provision). Likewise, an exception is made for imports of prepared and/or industrialized products containing high saturated fat, salt and sugar content that, at the date of publication, are confirmed by purchase orders in embarkation, travel or process of internment to the country (Second Transitional Provision).

Finally, the Draft Law, in its attempt to avoid subordination of the rule to a regulation, expressly states that the lack of regulation of the law would not prevent its enforcement or enforceability (single final disposition).

This project was referred to the Commission of Defense of the Consumer and Regulatory Agencies of the Public Services to the Commission of Health and Population.

### **Draft Law No. 775/2011-CR "Law prohibiting the sale of junk food in public and private schools"**

On January 30, 2012, the National Solidarity Parliamentary Group proposes a Draft Law prohibiting the sale of junk food in public and private schools prohibiting the sale marketing and sale of food or prepared food and processed food, which present a sanitary condition with high contents of nutrients with indicators of excess, within the Public and Private Educational Institutions of Regular Basic Education.

### **Draft Law No. 1038/2011-CR "Health promotion law for the protection of consumers of children and adolescents"**

The explanatory memorandum states that according to the Pan American Health Organization (PAHO), overweight and obesity rates have reached epidemic proportions worldwide. That is why Peru is also affected by this serious problem, which has transcended borders and mainly affects children and adolescents<sup>5</sup>.

---

<sup>5</sup> Draft Law No. 774/2011-CR. Law of Prevention and control of the risks of the consumption of foods or foods with high contents of nutrients and excess of calories. January 30, 2012. ([http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Contdoc01\\_2011.nsf/d99575da99ebf305256f2e006d1cf0/665b98d45da198ce05257995007257c4/\\$FILE/PL00774300112.pdf](http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Contdoc01_2011.nsf/d99575da99ebf305256f2e006d1cf0/665b98d45da198ce05257995007257c4/$FILE/PL00774300112.pdf)) (Revised August 10, 2016) Page 2

Another important argument of the Draft Law is that overweight and obesity occupy the fifth place as a cause of mortality worldwide. Per estimates made by international agencies in 2011, there were more than 42 million obese or overweight five-year-old children, of whom almost 35 million live in developing countries.

They also mention that it must be kept in mind that obesity is considered internationally as one of the causes of noncommunicable diseases (hereinafter "TNCs") which constitute a serious threat to human health as well as for socio-economic development as a country. Therefore, in order to reduce the risk of developing TNCs, it is necessary for children to avoid consuming foods that do not contribute essential nutrients and which contain high amounts and/or concentrations of saturated fats, trans fats, sugars, sodium, and artificial additives such as sweeteners, preservatives, flavorings and/or dyes. Thus, it has been determined that poor physical activity, lack of education and awareness activities linked to the promotion of unhealthy eating habits. This consumption of unhealthy products are factors that contributes to the problem of overweight and obesity that in recent years has been increasing, especially in children and adolescents.

In this sense, the Draft Law gives relevance to the role that advertising and other forms of marketing assume with respect to the consumption habits of food and beverages aimed at children and adolescents, which will directly influence food preferences and will contribute to establish patterns of consumption among children and adolescents. The following is a flowchart describing the influence of advertising in decision-making:

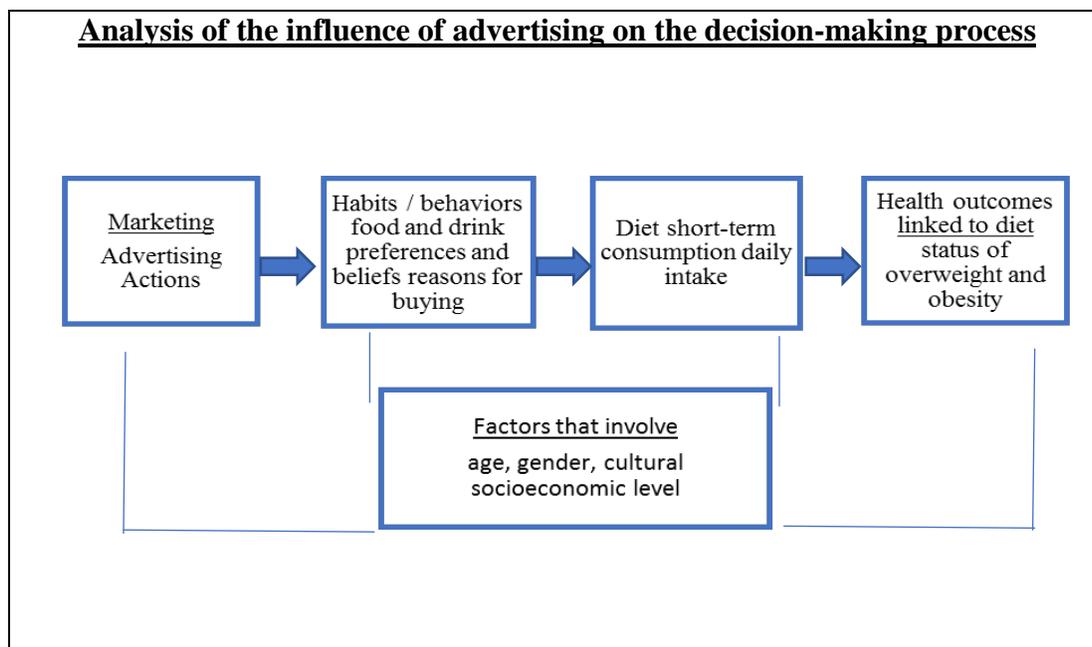


Figure 4: Analysis of the influence of advertising on decision-making. Source: Food Marketing to Children and youth Threat or Opportunity? Institute of Medicine USA 2006 (IOM 2005)

Specifically, to support the development of this Draft Law, the conclusions of the Executive Directorate for Food and Nutrition Surveillance-DEVAN on the "Nutritional Status of Peru" of July 2009-June 2010 were taken into consideration, proving the prevalence of overweight in the most vulnerable population such as children under 5 years, 5 to 9 years, especially adolescents and adults.

This project sought, through various multispectral actions, to reduce and/or eliminate the serious consequences caused by excess weight in children and adolescents, since overweight and childhood obesity generate a wide range of complications due to the increased risk of noncommunicable diseases, which could even lead to premature death. Therefore, the Draft Law proposed four actions together:

- i. Education actions and awareness about healthy eating habits.
- ii. Implementation of kiosks and/or healthy dining rooms in public and private educational institutions at the initial, primary and secondary levels.
- iii. The promotion of sport and/or daily physical activity in schools, public and private, as well as through advertising.
- iv. Advertising aimed at children and adolescents.

The draft Law is divided into 5 titles, which are as follows:

- First Title. - General Provisions.
- Second Title. - Education and promotion of healthy eating.
- Third Title. - Kiosks and/or healthy dining rooms in public and private educational institutions.
- Fourth Title. - Promotion of sport and/or physical activity.
- Fifth Title. -
  - a) Advertising of food and non-alcoholic beverages.
  - b) Offenses and penalties.

The authority responsible for ensuring compliance with the advertising standards is the Commission for the Control of Unfair Competition of INDECOPI. The responsible party regarding the standards of health promotion in schools will be the Ministry of Education and the party responsible for enforcing the rules will be the Consumer Protection Commission of INDECOPI.

The Draft Law deals with the same subject matter that the 2 previous one, it was also submitted to the Health and Population Commissions and Consumer Protection and Regulatory Agencies of the Public Services, where they were evaluated and commented upon from civil society and executive power.

## **Draft Law No. 30021/2013 "Healthy Food Promotion Act for Children and Adolescents"**

On Friday, May 17<sup>th</sup> 2013, Law No. 30021 “Healthy Eating Promotion Law for Children and Adolescents” was published in the Official Journal “El Peruano”, which contains many of the initiatives presented in Draft Law No. 1038/2011-CR "Health promotion law for the protection of consumers with children and adolescents".

The Law 30021 has 11 articles and two complementary transitional provisions, which have as objective the promotion and effective protection of the right to public health. The growth and adequate development of the people, through the actions of education, strengthening and development of physical activity. The implementation of healthy kiosks in regular basic education institutions and the supervision of advertising information and other practices related to food and non-alcoholic beverages aimed at children and adolescents to reduce and eliminate diseases linked to overweight and obesity and chronic diseases known as non-transmissible (art.1).

To this end, it is considered as the first primordial axis to incorporate in the national curricular of the regular basic education and of the non-school education, programs of promotion of elementary habits. These habits contribute to improve the levels of nutrition, campaigns and informative talks to promote healthy food, as well as disseminating in the mass media the advantages of it (art.4). Likewise, the creation of a Nutrition Observatory and overweight study as a monitoring tool to provide information and periodic analysis of the nutritional situation of the child population (art.5).

In relation to the second axis, it is established that advertising aimed at children and adolescents under the age of 16 should be in accordance with health promotion policies (art.8). In this sense, the advertising that is included in the product, food and non-alcoholic beverages with trans fats, and high content of sugar, sodium and saturated fats, must be clearly stated, legible, prominent and comprehensible with the following phrases, depending on the case:

- 'High in (sodium-sugar-saturated fats): Avoid excessive consumption'
- 'Contains trans fats: Avoid consumption'

This advertising warning will be applicable to foods and non-alcoholic beverages that exceed the technical parameters established in the regulation (art.10). These technical parameters will be elaborated by the Ministry of Health through regulation in a term no more than 60 calendar days from the validity of the Law and will be based on the set of recommendations issued by the Intergovernmental Health Organization: World Health Organization Health-Pan American Health Organization WHO-PAHO (first transitional complementary provision).

Finally, it is pointed out that in relation to foods with trans-fat content, the regulation will establish a gradual process of reduction until its elimination, per the technical parameters and deadlines established by the regulation.

Regulation of Law 30021 “Law of Promotion of Healthy Food for children and adolescents”

On May 17<sup>th</sup> 2013, the Law on the Promotion of Healthy Eating for Children and Adolescents was approved, Law No. 30021, and with the purpose of regulating it, on June 18<sup>th</sup> of the same year, through Supreme Resolution No. 210 -2013-PCM, the Multisectoral Commission was created in charge of proposing its draft Regulation conformed by:

- A representative of the Presidency of the Council of Ministers, who chairs it;
- A representative of the Ministry of Foreign Trade and Tourism (MINCETUR);
- A representative of the Ministry of Health (MINSAs);
- A representative of the Ministry of Production (PRODUCE);
- A representative of the Ministry of Agriculture (MINAGRI);
- A representative of the Ministry of Education (MINEDU);
- A representative of the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI); And
- A representative of the Ministry of Economy and Finance (MEF).

The work of the Commission began on July 1<sup>st</sup> 2013. As part of the work, representatives of the World Health Organization were invited, and each of the sectors of the Commission briefly outlined its position regarding to the Law No. 30021.

An expert on publicity issues was also invited, who reported on the position of some civil society organizations regarding future regulations. A visit was received from representatives of The Office of Nutrition Service of Nutrition, Labeling, and Dietary Supplements, from the Food and Drug Administration of the Department of Agriculture of the United States Government and the US Embassy in Peru; who presented the actions carried out by the United States Government in public schools in terms of providing healthy food to students and on product labeling issues.

On the other hand, with the objective of gathering inputs and comments on future regulations, meetings were held with guilds and associations involved in the topic, like with the National Society of Radio and Television, National Society of Industries, National Advertisers Association, National Council of Autoregulation, Peruvian Association of Entrepreneurs of Bakery and Pastry, Advisory Council of Children and Adolescents, National Federation of Food, Beverage and Related Workers, and Television Association of Programmers Latin America.

On April 29<sup>th</sup>, 2014, the Draft Regulation for Technical Parameters prepared by the Ministry of Health were published, in accordance with the First Transitory Provision of the Law and was notified to the WTO and the CAN on May 20<sup>th</sup> 2014, granting a deadline for receiving comments which expired on August 18<sup>th</sup> 2014.

Fifteen observations were received on the project (from governments and companies) within the established deadline. Most of the comments received were on the adoption of practices that could go beyond of what was established in international standards and on the use of more restrictive mechanisms than necessary to achieve the legitimate objective. It was also noted that the scope of the regulation covers only processed foodstuffs in specific, without covering other foods that may be equal or more harmful to health.

Likewise, most of the comments received on the Project were not related to the technical parameters themselves, but rather to the lack of an international standard stipulating certain parameters for the labeling of foodstuffs.

The comments received were sent to the members of the Multisectoral Commission for their respective review and analysis.

Subsequently, on April 18<sup>th</sup> 2015, the Ministry of Health published the D.S. No. 007-2015-SA, approving the Technical Parameters Regulation, which differs from the Project that was pre-published and notified to the WTO and the CAN. At this point it is important to note that DS No. 007-2015-SA, unlike the draft regulation notified to the WTO, is based on recommendations made by a panel of experts from the Pan American Health Organization (PAHO): Recommendation No. 10 contained in the recommendations of the Expert Consultation of the Pan American Health Organization on the promotion and advertising of food and non-alcoholic beverages directed at children in the Region of the Americas. Which is also in line with The First Transitory Provision of the Law.

The D.S. No. 007-2015-SA, established the following parameters:

Food	Recommendable
Sugar	Equal to or less than 2.5g per 100ml of drink
	Equal to or less than 5g per 100g of solid food
Salt*	Equal to or less than 300mg per 100 ml of drink or 100g of solid food
Saturated fats	Equal to or less than 0.75g per 100ml of drink
	Equal to or less than 1.5g per 100g of solid food

Table 4. Technical parameters established by the Pan American Health Organization.

\* The value of the recommended salt equals 120mg per 100ml of sodium in drink or 100g of solid food.

Another of the variations contained in the published Decree is that it does not mention the gradual process of reduction of trans fats until their elimination, as established in the First Transitory Provision of Law 30021 since there is already a specific technical regulation for the topic, prepared by the Ministry of Health.

Subsequently, after the publication of Supreme Decree No. 007-2015-SA, which established the technical parameters on processed food and non-alcoholic beverages related to the sugar, sodium and saturated fat content, the Multisectoral Commission intensified its work identifying all those civil society actors who had requested to express their concerns and contributions and who had not been received by the Commission.

The Commission identified 13 organizations and one Congressman of the Republic who were received per the following detail:

1. Chamber of Commerce of Lima.
2. Association of the Beverage and Soft Drinks Industry – Abresa.
3. National Meeting of Palma Aceitera.
4. American Chamber of Commerce of Peru – AMCHAM.
5. Television Association of Programmers Latin America – TAP.
6. National Association of Advertisers – ANDA.
7. National Society of Industries.
8. Peruvian Association of Entrepreneurs of the Bakery and Pastry Industry – ASPAN.
9. National Society of Radio and Television – SNRTV.
10. Foreign Trade Company of Peru – COMEXPERU.
11. National Federation of Food and Beverage Workers – CGTP.
12. Association of Winemakers of Peru.
13. Taxpayers Association of Peru.
14. Congressman of the Republic Jaime Delgado Zegarra.

The sessions were oriented to review and to agree on each of the sections of the regulation and the articles that each of them contained, as well as the Exposition of Motives of the project.

The Multisectoral Commission worked also on the other aspects contemplated by the Law, such as the promotion of nutritional education, the implementation of a nutrition observatory and the study of overweight and obesity and advertising among others who finished their work on June 17<sup>th</sup> 2016.

Through Ministerial Resolution No. 524-2016/MINSA, on July 25<sup>th</sup> 2016, the publication of the Draft Regulation of Law No. 30021, Law on the Promotion of Healthy Food for Children and Adolescents was published in the Institutional Portal of the Ministry of Health.

This project was also notified to the WTO and CAN on September 9<sup>th</sup> 2016, granting a deadline for comments that ended on December 8<sup>th</sup> of that year.

It is important to note that the “Nutrient Profile Model of the Pan American Health Organization” was published in February 2016 and expressly states that “it replaces Recommendation number 10 contained in the Recommendations of the Expert Consultation of The Pan American Health Organization on the promotion and advertising of food and non-alcoholic beverages aimed at children in the Region of the Americas<sup>6</sup>”. The relevance of this assertion is that the technical parameters on processed food and non-alcoholic beverages, related to the sugar, sodium and saturated fat content, that was approved by Supreme Decree No. 007-2015-SA, was based on the above recommendation.

In view of the situation described, the Commission decided that it was appropriate to approve the proposal for technical parameters developed by the Ministry of Health based on the “Model of

---

<sup>6</sup> PAHO, Model of Nutrient Profile of the Pan American Health Organization ", 2016, p. 6

nutrient profile of the Pan American Health Organization” and to integrate it into the draft regulation as an Annex and consequently Supreme Decree No. 007-2015-SA was repealed.

This regulation establishes the technical parameters on foods and non-alcoholic beverages referring to the high content of sugar, sodium and saturated fats referred to in Law No. 30021:

<b>Contains an excessive amount of sodium</b>	<b>Contains an excessive amount of free sugars</b>	<b>Contains an excessive amount of saturated fats</b>
If the ratio of the amount of sodium (mg) of a product to the energy (kcal) of product is $\geq 1$	If in the product, the energy (kcal) from the free sugars is $\geq 10\%$ of the total Kcal of the product	If in the product, the energy (kcal) from saturated fat is $\geq 10\%$ of the product's kcal

Table 5. Criteria for determining excessive amounts of critical nutrients in Peru.

During the comment period, Peru received comments from different countries and stakeholders, which have been referred to the Ministry of Health for analysis, who are currently drafting the final version of the regulation.

## 5. Laws that seek to modify the 30021

Certain Draft Laws have been submitted with the aim of amending Law 30021 promulgated by the Congress:

- 1- Draft Law No. 04343/2014-CR: Proposes to modify various articles of Law 30021, Law of Promotion of Healthy Food for children and adolescents<sup>7</sup>.

The norm was approved in the context of an extensive debate in the plenary session of the Congress, in which some positions were opposed to the final text approved, which basically focuses on the following points:

- a) Prohibition on the sale of “unhealthy” foods and beverages in public and private schools;
- b) Restrictions on the advertising of food and beverages;
- c) The compulsory labeling of warning.

One of the arguments for this Draft Law is that more than ten months have elapsed since the publication of Law No. 30021 and regulatory rules have not been issued yet, since the corresponding entities have precisely encountered disadvantages in the points indicated in the Paragraph above, which warrant a modification of the mentioned regulation.

---

<sup>7</sup>Authors: Eguren Neuenschwander Juan Carlos, Iberico Nuñez Luis, Bedoya de Vivanco Javier Alonso, Galarreta Velarde Luis Fernando, Beingolea Delgado Alberto Ismael, Perez Tello De Rodriguez Maria Soledad

In this Draft Law, questions are raised against different articles of Law No. 30021. In this sense, it is indicated that departing from the provisions of the CODEX Alimentarius would not only mean a gap of the international treaties signed by Peru, but would also ignore the recommendations of the most qualified researchers.

One of the most controversial points in the Law is that of “Advertising Warnings” established in article 10.

The Draft Law No. 04343/2014-CR proposes to set the nutritional information (nonexistent in Peru) through the objective communication of the nutrients that a product counts. It is the consumer who chooses which foods to consume and can control his diet, with accessible and easy to understand information.

The Codex Nutrition Labeling Guidelines (CAC/GL 2-2013) explains the nutrients to be declared, like the energy value, and the amounts of protein, available carbohydrates, fats, saturated fats, sodium and total sugars and the amount of any other nutrient for which a declaration of ownership is made. It is considered important to maintain good nutritional status as required by national legislation or national dietary guidelines.

Regarding the provisions of the Law on trans fats, there is no procedure around the world that assure them to be eliminated. That is why the World Health Organization (WHO) recommendation is that daily consumption be limited to a maximum of 1% of total calories. At the international level, products with trans-fat content are commercialized. The aim of eliminating them completely will create obstacles to international trade within the framework of the World Trade Organization (WTO) rules, and the free trade agreements signed by the country, which is also impossible to meet technologically<sup>8</sup>.

In that sense, it was proposed to amend articles 1, 2, 3, 5, 6, 9, 10 and the First Temporary Complementary Provision of the Law No. 30021. Notwithstanding the modifications requested, for the purposes of this investigation we will only be referring to those related to labeling.

Thus, it is proposed to include in article 1 which describes the object of the law, “malnutrition and anemia” as diseases to reduce and eliminate<sup>9</sup>. In the case of article 10, which determines the obligations for mandatory nutrition labeling, a complete modification has been made, determining the following:

---

<sup>8</sup> DRAFT LAW No. 04343/2014-CR: Proposes to modify various articles of Law 30021, Law of Promotion of Healthy Food for children and adolescents. March 20, 2015. Page 11

<sup>9</sup> The text of the proposed article is as follows:

“Article 1.- Purpose of the Law”

The purpose of this Law is the promotion and effective protection of the right to public health, growth and adequate development of people, through education actions, strengthening and promotion of physical activity, the implementation of kiosks and canteens Health services in institutions of regular basic education and the supervision of advertising, information and other practices related to food and non-alcoholic beverages aimed at children and adolescents to reduce and eliminate diseases linked to overweight, obesity, Malnutrition, anemia and chronic diseases known as noncommunicable

- The food industry must incorporate nutritional information in an accessible way into all the products intended for sale to the final consumer, as well as designing, executing and distributing the necessary information to facilitate consumers' understanding of nutrition labeling.

- The labeling on nutritional information for processed foods is mandatory. The elements to be declared are: energy value, fats, saturated fats, trans fats, carbohydrates, sugars, proteins and sodium; which must be presented in the same visual field indicating the content of each one and the proportion thereof in the recommended daily value defined by the Codex Alimentarius. Energy value, fats, saturated fats, trans fats, carbohydrates, sugars, proteins and sodium; must be presented in the same visual field indicating the content of each one and the proportion thereof in the recommended daily value defined by the Codex Alimentarius. The energy value, saturated fats, sugars and sodium should be highlighted in such a way that the consumer can easily identify them.

- In advertisements, including food and non-alcoholic beverages, should be clearly, legibly prominent and understandable phrases that warn of the high content of sodium, sugar, saturated fats and trans fats calling on reduced consumption, as required under the regulations.

This Draft Law as outlined in the Virtual Parliamentary Record<sup>10</sup> is still in process, in the Consumer Defense Commission and Regulatory Bodies of Public Services and in the Health and Population Commission.

2- Draft Law No. 04808: Law amending the Law No. 30021, Law promoting healthy eating for children and adolescents<sup>11</sup>.

On September 10, 2015, Congressman Elías Nicolás Rodríguez Zavaleta presented the Draft Law No. 4808/2015-CR, in which he requested to amendment article 10 "Advertising Warnings" in the following terms:

*Article 10.- Warnings and Nutrient Declaration*

*In advertising, including food and non-alcoholic beverages containing trans fats and high sugar, sodium and saturated fats, the following phrases must be clearly, legibly, prominently correspond:*

- *“High on (Socio-sugar-saturated fat): Avoid excessive consumption;*
- *“Contains trans fats: Avoid consumption.”*

---

<sup>10</sup> CONGRESS OF THE REPUBLIC OF PERU. Drafts Law presented. File of Drafts Law No. 04343. [Http://www.congreso.gob.pe/proyectosdeley/] (Revised on September 01, 2016)  
The Bill is in the Health and Population and Consumer Defense Commission and Regulatory Agencies of Public Services from 03/25/2015.

<sup>11</sup> Authors: Rodriguez Zavaleta Elías Nicolás, Mulder Bedoya Claude Maurice, Reggiardo Barreto Renzo Andrés, León Romero Luciana Milagros, Bruce Montes de Oca Carlos Ricardo, Pérez del Solar Cuculiza Gabriela Lourdes, Alcorta Suero María Lourdes Pia Luisa.

*This Advertising notice will apply to foods and non-alcoholic beverages that exceed the technical parameters established in the regulation.*

Likewise, processed foods by the industry that are packaged must obligatorily include in their labels the following nutritional information: a) Energy value (kilocalories); b) Total fat by separately entering the amount of saturated fat and trans fats; c) Cholesterol; d) Sodium; e) Potassium; f) Total sugars; g) Dietary fiber; h) Proteins; i) Amount of any other nutrient for which a declaration of ownership is made.

In the same visual field, but separately, the number of kilocalories, total fats, total sugars and sodium contained in the portion indicated on the package, must be noted. Also, this information must indicate the percentage that the said portion represents of the daily value recommended for each nutrient.

The information shall be recorded on the back of the label and/or packaging where it can be easily read and shall be expressed per serving of food, if the number of servings in the package is indicated, or by “100g / 100ml”. Furthermore, the regulation of the Law will establish the considerations that the manufacturers must follow for the application of the present article according to the established in the Codex Alimentarius.

This Draft Law as outlined in the Virtual Parliamentary Record<sup>12</sup> is still in process in the Consumer Defense Commission and Regulatory Bodies of Public Services and in the Health and Population Commission.

## **6. Comments on Law 30021 from the Peruvian national industry**

In recent years, the Law No. 30021 has been discussed by the various sectors involved as public, private and international organizations, mainly because of the effect that that regulation would have in trade.

In this regard, even before the promulgation of such Law, different sectors sent their comments to the Health and Population Commission of the Congress of the Republic of Peru, in order to take them into account when drafting the final text.

Thus, the Peruvian Association of Consumers and Users (ASPEC)<sup>13</sup> requested that there should be an express provision that establishes technically what percentages of saturated fats, trans fatty acids, calories, etc., should contain food to be considered unhealthy or, in its defect, to list exhaustively what these foods are. As the law provides for regulations on advertising issues, the National Association of Advertisers (ANDA) presented for consideration by the Commission its comments contrary to the issuance of such Law because they considered that it does not comply

---

<sup>12</sup> CONGRESS OF THE REPUBLIC. Drafts law presented. File of Draft Law No. 4808-2015-CR [<http://www.congreso.gob.pe/proyectosdeley/>] (Revised on September 01, 2016)  
The Bill is in the Consumer Defense Commission and Regulatory Agencies of Public Services and in the Health and Population Commission. 9/15/2015.

<sup>13</sup> By means of Official Letter N ° 034-2012-ASPEC / PRES, dated May 10, 2012.

with the equality test nor with the precepts established by the Constitutional Court, and even less with article 75 of the Regulations of the Congress of the Republic<sup>14</sup>.

The National Society of Industries (SNI) expressed that the marketing of certain food and beverages should not be prohibited in educational institutions, insofar as they are harmless products, registered in the Sanitary Register of Food and Beverages. Additionally, it also considered that the proposal is mixing up food that has sanitary registration granted by the competent authority, with alcoholic beverages or tobacco, which are not food, and their consumption is not necessary for the population. Therefore, the principles of consumer warning cannot be the same. Concerning Peru's commitments under the WTO and the trade agreements signed, the SNI considers the Law as technical obstacle to trade because it would be forcing countries that trade food products with us to use a particular label, different from the one applied in their countries<sup>15</sup>.

After the promulgation of Law No. 30021, the national industry represented mostly by the business associations expressed concern. The National Industrial Society (SNI) considered that the technical parameters set by the Ministry of Health for Law No. 30021, would restrict the commercialization of 95% of processed food, generating informality in the food and beverages sector, a factor that does not only have an impact on the economy but also on consumer health. At the same time, they considered that the parameters set forth are contrary to the provisions of the Codex Alimentarius accepted by 185 countries, because they have been elaborated without scientific support, since there are no technical studies of the World Health Organization (WHO) or the Pan American Health Organization (OPS) that support such high parameters. There are no worldwide precedents where such restrictive parameters have been applied as they are intended to be impose in Peru, so if not corrected, a measure contrary to international practice. This constitutes a new overregulation, which, if applied, would affect more than 95 percent of formal industrial food products, generating sales losses, affecting the consumer and promoting that the formal industry be displaced by informality. This can confuse the consumer, because only regulating industrialized foods leaves people exposed to consume products of dubious origin or that had been handled in unhealthy conditions and without sanitary guarantee<sup>16</sup>.

On the other hand, the Foreign Trade Society of Peru (COMEXPERU) considered that the objective of the law, far from defending a right, imposes an obligation of providing and consuming food considered to be "healthy". Thus, it considers that norms like this one, whose objective seems so benevolent and paternal are difficult to challenge, and this allows them to be approved without being subjected to a rigorous previous analysis. Even with the support of "international specialists" and other examples such as what happened with Law No. 20.606 in

---

<sup>14</sup> Article 75. Requirements and presentation of proposals. - Proposals of law must contain a statement of reasons for expressing its grounds, the effect of the validity of the proposed norm on national legislation, the cost-benefit analysis of the Future legal standard including, where appropriate, a comment on its environmental impact. If applicable, the respective legal formula that will be divided into titles, chapters, sections and articles. These requirements can only be waived on exceptional grounds (...).

<sup>15</sup> National Society of Industries. Communication submitted to the Congress of the Republic of Peru in the framework of Bill 1038/2011-CR, signed by Mr. Pedro Olaechea Álvarez Calderón, forwarded to the Congress of the Republic of Peru in the framework of Bill 1038 / 2011- CR, May 14, 2012.

<sup>16</sup> SNI. Fundamentalism in the parameters of the Food Law. 10/06/2015 (<http://www.sni.org.pe/?p=3530>) (Revised August 15, 2016). COMEXPERU. An unhealthy law. Weekly 850. From June 27 to July 3, 2016. Page 3

Chile, the Food Labeling Law provides legitimacy for its issuance. In this way, they consider that State intervention could be an option, if the costs associated with regulation (government failures) are less than market failures. To correct the latter, which are generated because individuals do not internalize health costs, it is not enough to intervene in the food market. On the contrary, the State should actively intervene to discourage the various habits that could cause obesity or other diseases. An example of this would be the sedentarism of our children. In this regard, children of this generation have greater access to technological services such as internet, television and electronic games, which promote sedentarism. Therefore, the law of healthy eating should be complemented by new laws that regulate the technological services directed to children and adolescents. In conclusion, the healthy eating law does not respect the rules of good government intervention<sup>17</sup>.

Therefore, the main business associations representing the domestic industry have consistently expressed their disagreement with this type of regulation.

## **7. Comparison of the regulatory requirements of both countries**

The nutritional situation in Chile and Peru causes the urgency of establishing legislative strategies to reduce obesity rates and thereby the risk of non-communicable diseases in the population. That is why, in 2012, the Law No. 20606 was published in Chile, while in 2013 the Law No. 30021 was published in Peru.

Both initiatives seek to regulate the school environment, advertising aimed at minors and front labeling of food through the establishment of a warning sign for packaged food that exceed a certain limit of nutrients. Regarding the school environment, both Chilean and Peruvian legislation contemplate the incorporation of programs that include the promotion of healthy habits at different levels of education (pre-school, primary and secondary education in Chile and regular and non-formal education in Peru), incorporating didactic and physical activities that contribute to develop healthy eating habits and warn about the effects of inadequate nutrition. In addition, Chilean law prohibits the marketing and promotion of foods with a high critical nutrient content in the same educational establishments. On the other hand, both legislations establish a system of monitoring the nutritional status of the population. To this end, Chile delegates it to the Ministries of Health and Education, which will monitor the nutritional status of students at all levels of education, while Peru will do so through the creation of a Nutrition Observatory and Study of Overweight.

The second pillar of both Laws corresponds to the regulation of advertising directed to minors, where Chile and Peru approach it differently. In Peru, the specific regulations on advertising directed at children under 16 go hand in hand with health promotion policies. Therefore, foods with trans fats and high content of saturated fats, sugar and sodium should have a phrase aimed at limiting their consumption. In Chile, specific parameters were established for advertising aimed at children under 14 years of age, prohibiting all advertising that promotes the consumption of foods containing warning labels and prohibiting, in addition, the use of commercial hooks that promote consumption thereof.

---

<sup>17</sup> COMEXPERU. An unhealthy law. Weekly 850. From June 27 to July 3, 2016. Page 3

The last main aspect contained in the mentioned legislations, is related to the warning labeling, which seeks to inform the consumer about the content of critical nutrients through the implementation of an established threshold. Both regulations include the limits of critical nutrients, which differ from each other in their technical approaches, mainly. The Peruvian regulation only evaluates sodium, free sugars and saturated fats, establishing a ratio between the nutrient contained in the product and the energy, expressed in kcal. In contrast, the Chilean regulation includes within the limits, in addition to the mentioned nutrients, calories. In addition, the Chilean regulation works the limits of nutrients and calories in portions of 100 gr or 100 ml for solid or liquid foods, respectively; in specifications that will increase progressively in the 36 months after the entrance into force. However, both regulations share their references in establishing the limits of critical nutrients, since they were constructed based on the recommendations of consumption presented by the Pan American Health Organization through the publication of the Nutrient Profile Model.

On the other hand, the controversial points in both cases have been very similar. As mentioned, one of the most debated issues are advertising and constitutional regulations. In Chile, it refers to the fact of restricting freedom of expression, among other things, while in Peru they refer to every law as containing a well-founded statement of reasons, including evaluating the cost-benefit of it, which does not would be contemplated in this case. Concerning the labeling, the industry of both countries openly expressed its concern regarding the interpretation of the information by the consumer. In Chile, the criticisms point out that to establish a label considering portions of 100 gr or 100 ml would not be the most suitable and in Peru they allude to that the phrase of warning resembles the content in alcoholic beverages and tobacco. Finally, the food industry in both countries share that the measures proposed would not only reduce competitiveness, but would also generate marketing problems and affect their sales, also criticizing the deadlines established for the implementation of the legislation and the criteria used for the definition of critical nutrients limits, which by the way are much stricter in Chile.

## **8. General background to the Agreement on Technical Barriers to Trade**

The Agreement on Technical Barriers to Trade (TBT Agreement) is a multilateral agreement signed in Marrakesh in April 1994 following the Uruguay Round of Negotiations (Boza and Fernández, 2014; WTO, 2014; PASO 2011). This Agreement creates a legal structure for the treatment of regulations and technical standards on international trade.

The TBT Agreement recognizes the right of its members to implement measures (technical regulations, standards and conformity assessment procedures) to achieve legitimate regulatory objectives, such as the protection of health, safety of people and the environment, the quality of their exports, prevention of deceptive practices and protection of their essential security interests. Thus, ensuring that such measures are neither discriminatory nor unnecessary barriers to trade (WTO, 2012).

As mentioned above, and as set out in Annex 1 to the TBT Agreement, the measures falling within the scope of the TBT Agreement correspond to:

1. **Technical Regulations:** Technical documents in which the characteristics of a product or related production processes and methods are established, including administrative provisions. They are mandatory.
2. **Standards:** Measures approved by a recognized institution that establishes the guidelines or characteristics of the associated products or processes and production methods. They are of voluntary observance.
3. **Conformity assessment procedures:** Procedures used to ensure compliance with the relevant requirements of technical regulations or standards.

As stated in the agreement, the technical regulations and standards are related to definitions of terminology, symbols, packaging and marking or labeling that can be applied to a product.

The TBT Agreement is applicable to all products (industrial and agricultural), being outside the jurisdiction of the agreement, the specifications of purchase established by governmental institutions for the necessities of production or consumption and sanitary and phytosanitary measures (under the Agreement on the Application of Sanitary and Phytosanitary Measures) (Boza and Fernández, 2014).

#### **a. Principles of the TBT Agreement**

The TBT Agreement is based on six essential principles, detailed below:

1. **Principle of non-discrimination:** This principle seeks to equate access to markets, stating that there must be equal treatment of imported products with similar products of national origin or of a third country. This avoids the asymmetric application of Requirements between imported products and those of national origin.
2. **Prevention of unnecessary obstacles to trade:** It dictates that the application of the technical regulations and norms must not create unnecessary obstacles to international trade. They will not give rise to more restrictions than those necessary to achieve a legitimate objective. This should be based on available scientific and technical information; related processing technology or end uses of the products concerned.
3. **Harmonization principle:** Provides that in the formulation and construction of national technical regulations and standards, the country in question should prioritize the use of international standards. However, this may be excepted when existing international standards prove to be an ineffective means to achieve the legitimate objectives pursued, which could be due to the impact of fundamental climatic, geographic or technological factors.
4. **Principle of transparency:** It establishes that the countries must announce in a public way the intention to introduce or modify in some measure, giving other members the opportunity to present their comments and of them being discussed.
5. **Principle of equivalence and mutual recognition:** This principle urges countries to consider as equivalent the technical measures of other member countries, even if they

differ from their own. The principle excludes the equivalence of the measure when it does not adequately meet the objectives of national measures.

6. Principle of technical assistance and special and differential treatment for developing members: It obliges developed member countries of the WTO to provide technical assistance to other members, if requested. This principle seeks to enable the least favored country to establish and comply with technical requirements, to strengthen its national institutions and to participate in international forums, among others.

## **b. Committee on Technical Barriers to Trade (TBT Committee)**

The TBT Agreement is protected by an institutional framework that ensures compliance. In this sense, Article 13 of the Agreement establishes the Committee on Technical Barriers to Trade (TBT Committee), which is a multilateral forum that discusses regulations and rules that affect or may affect trade. Likewise, the TBT Committee supports its work on the analysis of notifications, trade concerns and trade cooperation (WTO, 2016).

On the TBT Committee, the TBT Agreement stipulates that it shall be composed of the representatives of each of the WTO member countries, who shall meet at least once a year and as often as necessary to give members the opportunity to discuss any issue related to the Agreement. More specifically, the TBT Committee discusses technical regulations, standards and conformity assessment procedures, recording discussions in official minutes and annual reviews, as well as reporting to the WTO Goods Council (WTO, 2015). According to some authors such as Boza and Fernández (2014), the Committee's aim is to promote transparency and consensus-building, raising the concerns of its members regarding technical measures imposed by other members.

## **9. Discussion of the Chilean legislation in the context of the TBT Committee**

Based on the various versions of Law No. 20606 and the amendments made to the Food Sanitary Regulation, several concerns were raised by the member countries of the WTO which were expressed in the different meetings of the TBT Committee held since 2013 to date.

The first concerns were raised at the meeting held in March 2013, where the representatives of the United States, Mexico, Argentina, Colombia, Guatemala and Canada indicated that the content of the law would ignore several principles of the TBT Agreement. The representatives agree that they are not unaware of the importance of reducing obesity levels in the country, but would criticize that the law would not correspond to the most appropriate and least harmful measure to trade. Specifically, they raise concerns about compliance with the principle of transparency. Since, per their opinion, Chile would not have notified the regulatory process in a timely manner. This meant that there was not adequate time for the Committee members to comment on the law. This discussion resulted in the member countries requesting Chile to extend the entry into force of the law, considering a reasonable period of application, to allow the Committee to comment on Chilean measures.

In addition, the same representatives were worried about the warning labels proposed by Chile for certain nutritional components, since their definition would not have been considered in the "Codex Guidelines for Use of Nutritional and Health Claims". The Committee concerned members further considered that the establishment of the limits of critical nutrient does not have sufficient scientific evidence.

Also, the discussion included the fact that the regulation does not specify the use of self-adhesive labels, nor the status of warning labels for small containers, as the same regulation stipulates that such labels should be over 4 Cm<sup>2</sup>. Due to the above, greater specificity is requested for the application of the measure.

On the other hand, the Committee argued that the use of an octagonal warning label on the packaging could deter consumers, causing confusion. This would mean that they exclude from their daily intake foods that could in appropriate portions be part of a healthy diet. Finally, the Committee concerned members suggest that the application of this law would have a negative effect on the countries' exports to Chile.

In their defense, the Chilean representation argues that the introduction of Law 20606 seeks to reduce the worrying levels of obesity of the country; alluding that the transmission of specific health information through a warning system understood by consumers, will allow them to choose healthier eating habits. The representative then clarified that perceptions of the public and private sectors are being collected in the country and that the concerns expressed in the Committee would be communicated to the legislators of Chile.

On the 17<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> of June in the same year, the Committee again meets to discuss issues related to Law 20606. Per the minutes of the meeting, the concerns already submitted by the United States, Mexico, Argentina, Colombia, Guatemala and Canada were added to those of Brazil, Switzerland, Australia and Costa Rica. Again, the importance of generating strategies that address the increase in obesity levels, especially in children, is mentioned. But again, the representatives agree that Law 20606 contradict the provisions of the TBT Agreement. They argue that Chile would be restricting trade more than necessary, without being certain that the application of the proposed measures would allow the legitimate objective (reduction of levels of overweight, obesity and non-communicable chronic diseases).

As in the previous meeting, the representatives stated that the law was not notified and implemented in due time, wherein observations were not generated around it, violating the principle of transparency. Likewise, they added that the requirements related to warning labeling differ from the Codex, thereby violating the principle of harmonization of the TBT Agreement. It was argued that the established nutrient limits lack scientific evidence. They argued that although it has been shown that the intake of certain nutrients could increase the risk of suffering certain diseases, there is no scientific evidence that can establish a risk limit. On the other hand, it was argued that the Chilean measure discriminates against foreign manufacturers, because they would be obliged to adapt their packaging only for the Chilean market. This would create an additional cost. Finally, they requested that Chile postpone the implementation of Law 20606 so that the indications proposed at the Committee can be evaluated. Also, that the various actors that make up the food industry have sufficient time to modify their labeling systems. In addition,

they again demanded clarification on the size of the label for small packages and to define if the use of adhesive labels will be allowed.

According to the Chilean representation in the Committee, the country is evaluating proposals to combat obesity, but always based on the conviction that consumers have to be properly informed in order to make a decision on their diet. In addition, they indicate that the Chilean Government is carrying out the definitive version of the regulation, consulting experts from other countries with the reason to incorporate their contributions. It was pointed out that the implementation process would be delayed longer than anticipated and that in light of the Committee members' comments, implementation timelines could be modified. It is ensured that the warning label will not be an octagonal signal (which is assimilated to the STOP signal) and that other options on size and shape are being evaluated.

The next meeting of the TBT Committee was held on 30<sup>th</sup> and 31<sup>st</sup> of October 2013, where it was also debated around Law 20606. Specifically, they were the representatives of Mexico, Guatemala, Argentina, European Union, United States, Canada and Costa Rica, who rallied. Again, the violations of some of the principles of the TBT Agreement are emphasized; transparency, scientific basis and accordance with international standards. Also, they criticized the establishment of nutrient limits. In their opinion this would generate confusion for the consumer, which would be countered with the objective sought by the Law to inform the consumer when choosing one food or another. In addition, they indicated that the incorporation of warning labels only for products directed to Chilean markets, would cause the generation of additional costs, which will be impacted in the price that is passed on to the Chilean consumer.

For these reasons, Chile is requested to provide updated information on the evolution of the measures to be implemented. They must consider the comments made by the Committee requiring it to respect the principles of the TBT Agreement and not to restrict trade more than necessary based on international law; specifically, in the Codex Alimentarius. It is also requested to seek other mechanisms to combat its health problems ensuring that international trade is not adversely affected. With respect to the time frame of application of a measure; the concern is that there is not enough time given for companies to meet the proposed requirements. Especially when one considers that the manufacturers must make major investments in the industry to even comply with the requirements.

The Chilean representation defended the measure and supports its arguments in the need to combat obesity in the country. On the other hand, it was added that the President of the Republic considered the comments received and that two days later presented the Final Draft to the Comptroller General of Chile. On the 27<sup>th</sup> of September 2013, the Comptroller presented an opinion where additional observations are formulated and translated in another modification to the initial project. Subsequently, the Comptroller issued a new resolution and Decree on the modification of the Food Sanitary Regulations which was published in the Official Gazette. There is also a consideration given of delaying enforcement actions by at least six months after the final date of publication.

In addition, the delegation clarified that the warning label would no longer have an octagonal shape by imitating a STOP signal, but would have the shape of a hexagon whose size would be

defined in relation to the total surface area of the product (7.5% of the surface of its packaging). Finally, he indicated that the possibility of the use of adhesive labels is being considered.

The subsequent Committee held on March 19<sup>th</sup> and 20<sup>th</sup> 2014, also comments on Law 20606. The delegations of the United States, Mexico, the European Union, Australia, Canada, Guatemala and Brazil express their optimism regarding the changes made by Chile in its proposal of regulations (indicated in the report of the previous Committee). However, these modifications were considered insufficient, since the hexagonal image of the warning label can still be confused with the STOP signal. Thus, the argument of why it should be circular or square. They also indicated that with the label proposed by Chile, it is choosing to deny certain types and categories of foods, without considering other alternatives to provide similar information to consumers. Other options could include nutritional and health claims. Or there could be the use of legends with the phrases "low in..." or "without addition of...", which, as mentioned, are justified by scientific studies and are also covered by Codex provisions. The extension of the period of application of the regulation is still considered insufficient. On the other hand, it re-emphasized the lack of scientific evidence to support the nutrient limits proposed. For these reasons, the concerned members at the Committee conclude that the changes made to Chilean regulations continue to be trade restrictive.

Yet, complaints about the late notification of Law No. 20606 to the TBT Committee were resumed, since, this was published in the Official Gazette of Chile in July 2012 and its entry into force was set for a year later, it was not until 2013 that the WTO was informed.

To this, the Chilean delegation presents an argument that does not differ from that already presented in the Committees held previously. Chile seems to think that the collaboration among the participating countries will resolve the pending issues. However, they emphasize that Chile considers that it has not failed to comply with the provisions of the TBT Agreement.

The delegations of Canada, Mexico, Brazil, Switzerland, Costa Rica, Guatemala, and Australia on the 18<sup>th</sup> and 19<sup>th</sup> of June 2014, presented again criticisms and observations that were in sum the same as the previous ones. Based their objections on the noncompliance with the provisions at the TBT Agreement as the discrepancies of the Chilean legislation with the Codex Alimentarius.

For its part, Chile's arguments are based on the need to reduce obesity levels. It was also explained that Decree No. 977 which approves the Sanitary Regulations for Food was modified with the publication of Decrees No. 12 and No. 28 in the Official Gazette in December 2013. However, the change of Government which took place in March 2014, resulted in the Health Authority deciding to revise these Decrees, for which it created a multidisciplinary commission charged with carrying out a thorough exploration to generate new indications and/or proposals for regulations, which will be duly notified to the WTO. Thereby, granting a period of 60 days for its members to submit observations that are duly analyzed and discussed.

Then, on November 5<sup>th</sup> and 6<sup>th</sup> 2014, a new Committee was held, which also discussed Law No. 20.606. The concerns were presented by representatives of Canada, Mexico, the European Union, the United States, Switzerland, Australia, Brazil, Costa Rica and Colombia who

reproached Chile for non-compliance with the TBT Agreement; alluding to the fact that the proposed requirements restrict trade more than necessary. They discussed the principle of transparency, since the notification of an inappropriate time line limited the debate. On the other hand, they substantiated the violation of the principle of harmonization, stating that the Chilean legislation is not based on the Codex Alimentarius. They also add that there is not enough scientific evidence to support the nutrient limits established. Furthermore, they add that there is no scientific justification for the ban on advertising aimed at children under 14; which raises doubts about the decrease in consumption of products with some harmful nutritional component. In this sense, they indicate that the ban on the use of characters that are appealing to minors (also established under Chilean law) as a commercial strategy could be infringing on intellectual property rights because many of these correspond to trademarks.

Again, they urge Chile to extend the period of entry into force of the legislation and to clarify the limits of nutritional components, proposing to differentiate between liquids and solids, always considering what was stipulated by international regulations. They also suggest less stringent labeling measures, coupled with a broader education program for consumers.

In response, Chile asked members to submit comments by October 22, 2014, assuring that they would adopt those that they considered pertinent and achievable to comply with the provisions of the TBT Agreement. In addition, it undertook to respond to all inquiries made.

In the TBT Committee held on May 18<sup>th</sup> and 19<sup>th</sup> 2015, the minutes record that representatives of Canada, the United States, Mexico, the European Union, Australia, Brazil, Costa Rica and Guatemala made comments on the regulations proposed by Chile. Again, they express their support for Chilean concerns regarding the preservation of public health, but they doubt that the proposed measures will have an impact on this, because they are not the most adequate and would negatively impact trade. The following arguments are the same as those presented at previous meetings (non-compliance with the provisions of the TBT Agreement and lack of scientific support, which makes it doubtful that this measure is proportional and effective). In addition, it was suggested that Chile did not provide concrete answers to the observations indicated in other Committees, especially in presenting scientific basis on the nutrient limits. Therefore, once again, Chile is requested to postpone the implementation of its regulatory measures.

In response to these claims, the Chilean representative argued that the comments to the law were received by October 22<sup>nd</sup> 2014; 12 from the WTO members and 16 from the private sector, which were transmitted to the corresponding Chilean regulatory agencies. In addition, they clarify that Chile has not yet adopted a final version of the regulation, ensuring that they are considering reasonable measures to comply with the provisions at the TBT Agreement.

The last Committee in 2015 was held on November 4<sup>th</sup> and 6<sup>th</sup>, where representatives from Canada, Mexico, the United States, Guatemala and Costa Rica showed their dissatisfaction with the latest version of Chilean regulation published in June. It is noted that this version does not resolve what was raised in the observations and debates made by other Committees.

The representative of Chile replied that the regulation was in public consultation for more than 60 days, specifically from August 19<sup>th</sup> 2014 to October 23<sup>rd</sup> of the same year. In that period, around 350 comments were received (citizens, national and international institutions and academics, trade associations, consumer organizations and the food industry) and that responses to each recommendation were grouped by subject and sub-theme and transmitted to their respective formulators. In that regard, on the concerns of WTO members, the Chilean delegation indicated that the replies were transmitted to interested parties through their respective TBT information services on the 28<sup>th</sup> of August 2015 and that, in addition, they were available on the website of the Ministry of Health of Chile. It was also pointed out that the final version of the regulations, published in the Official Gazette on June 26<sup>th</sup> 2015, was properly notified and would enter force 12 months after its publication. It also reiterated that Chile complied with the provisions in the TBT Agreement. Finally, it was added that Chile would be willing to receive any additional request from members regarding the need for information on the implementation of this measure.

Despite the entrance into force of the Law No. 20606 and its regulation in mid-2016, the concerns in the TBT Committee about it has still being raised. Some experts have even anticipated the possibility of a dispute; scenario in which Chile must justify why the Law is the less trade restrictive measure to achieve the objective of reducing obesity rates.

## **10. Discussion of Peruvian legislation in the context of the TBT Committee**

The Law No. 30021 on the Promotion of Healthy Food for Children is an issue that has been addressed within the framework of Technical Barriers to Trade (TBT Committee) of the World Trade Organization Committee since 2013, year in which the Law was issued by the Legislature of Peru. From that date to the present, the Member Countries presented their commercial concerns regarding to the Law through comments and arguments.

In this sense, Mexico, the United States, the European Union, Argentina, Guatemala, and Switzerland have raised their specific trade concerns to Peru with respect to the Law 30021 in the TBT Committee held on June 17<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> 2013. That the Act was not communicated in a timely manner to the WTO by Peru, and they had asked to consider the measure in light of the obligation set out in Article 2.2 of the TBT Agreement, to not restrict trade more than what is necessary to achieve a legitimate objective.

Additionally, they also considered that the use of legends such as "high content", which stipulates the Law in question, leads to the question whether this measure is the least onerous and restrictive available. Likewise, they pointed out that the measure has not been developed on a scientific basis that proves that the use of similar legends to inform consumers about whether a product has a "high content" of a nutrient, as well as a ban on selling those products, reduces the obesity of the target population of children and adolescents in this case.

In this regard, they noted that there are other measures to provide similar information to consumers, without the cost of mandatory labeling of products. For example, Codex recommends mandatory nutrition labeling for these type of nutrients, including saturated fats,

sodium and sugars. In addition, Codex has established voluntary declarations for "poor in" and "no added sugar" foods, as well as the conditions for inclusion of health claims.

Countries mentioned that the Codex Guidelines on Nutrition Labeling (CAC/GL 2-1985 CODEX) states that the information contained in the nutrition statement "should not lead the consumer to believe that he knows exactly how much each person should eat to be healthy". Rather, should make known the number of nutrients contained in the product. Also, there is no scientific data on a risk threshold, the risk increases progressively with intakes higher than the levels recommended by nutritionists.

Peru in that occasion stated that the objective of the measure was to reduce obesity and other risks of noncommunicable diseases, through the organization of educational campaigns in schools. Such as the promotion of healthy eating, promotion of physical activity, the promotion of healthy eating and eating places, information to consumers on the content of processed foods and the supervision of advertising and marketing of food and non-alcoholic beverages especially when targeted at children and adolescents.

Peru also pointed out that the technical regulation implementing the Law was still being drafted, which should be finalized no later than 60 days after the entry into force of the Law, and that it would be notified in accordance with its obligations as a signatory Country of the WTO Agreements and the rules of the Andean Community, granting a period of 90 days for the submission of comments. It should be noted that in Peru, as in most countries, it is not a practice to notify the Laws that are issued, but rather the regulation that derives from said laws.

During the TBT Committee held on October 30<sup>th</sup> and 31<sup>st</sup> 2013, Mexico, the United States of America, the European Union, Guatemala, Argentina and Canada re-raised their specific trade concerns to Peru regarding the Law 30021, at that time the countries reiterated their concern that Peru was in contravention of Article 2.2 of the TBT Agreement and that the measure had not been notified by that date.

Specifically, the representative of Argentina said that they had been informed of the establishment of a Sectoral Commission of the Ministry of Health of Peru (Ministerial Resolution No. 301-2013 / MINSa) in late May 2013, responsible for drafting the implementing regulation of Law No. 30021. Furthermore, in June 2013, the Presidency of the Ministry Council established a parallel Multisector Commission for the same purpose (Supreme Resolution No. 210-2013-PCM). In this regard, it requests Peru to notify the projects and reports prepared by the Ministry of Health for the Presidency of the Council of Ministers, as well as those prepared by the Multisector Commission.

They also reiterated their concern that the measure be the least restrictive and whether alternatives have been evaluated to achieve the legitimate objective of protection of public health. In this regard, the Codex Committee on Nutrition and Foods for Special Dietary notes baseline nutrient labeling purposes for sodium and saturated fats, which allow consumers to identify foods that have a "high" or "Low content" in certain nutrients. In addition, Codex has established voluntary declarations for "poor in" and "no added sugar" foods, as well as the conditions for inclusion of health claims.

The representative of Peru at that time stated that in effect the Multisector Commission that is preparing the Technical Regulation for the implementation of Law No. 30021 would soon notify a draft regulation on the parameters for the sodium, sugar and saturated fat content that Peru would be taking into account for the labeling established by Law No. 30021. It was reiterated that this project was going to be notify to the WTO granting a period of 90 days to provide comments.

The next meeting of the TBT Committee was held on March 19<sup>th</sup> and 20<sup>th</sup> 2014. At that meeting, the European Union, Guatemala, Mexico, Brazil and Canada presented their specific trade concerns on Law 30021. It was noted that adaptation to the new labeling requirements would require significant investments by manufacturers and would require time to implement new packaging with certain requirements not yet defined. Therefore, they requested to postpone and establish a reasonable period of implementation in accordance with Article 2, paragraph 12 of the TBT Agreement.

During the meeting of the TBT Committee held on June 18<sup>th</sup> and 19<sup>th</sup> 2014, comments were received from Canada, Mexico and Switzerland reiterating their concerns expressed in previous committees. On this occasion, Peru stated that on the 20<sup>th</sup> of May 2014, a draft regulation establishing the technical parameters for determining whether an industrially processed food or non-alcoholic beverage a high content of sugar, sodium or saturated fats, and to gradually reduce trans fats, has been notified by document G/TBT/N/PER/59

It was also pointed out that the comment period for the other members of the TBT Committee was going to expire on August 18<sup>th</sup> of that year, which will be reviewed by the Multisector Commission responsible for preparing the final regulation of the Law No. 30021.

It is important to note at this point that this draft was prepared by the Ministry of Health in accordance with the first supplementary provision of the Law. Which is only part of what will be the final regulation, which will include other topics related to the technical parameters that are also established in the Law.

The next TBT Committee was held on November 5<sup>th</sup> and 6<sup>th</sup> 2014, in which Canada, Switzerland, Costa Rica and Guatemala expressed their trade concerns, noting on this occasion whether the notified draft was based on international standards. Likewise, they point out the need to know the answers to the comments sent in the deadline, as well as the need to have a reasonable period for the industry to adapt its products to the new requirements.

The representative of Peru reiterated that the objective of the Law is to promote healthy eating habits among children and adolescents and that all comments received were sent to the Ministry of Health in a timely manner for its evaluation, and consideration to include them in the final regulation. Likewise, it was reiterated that this regulation is only part of the final regulation, the same one that was still in development by the Multisector Commission established for that purpose. The representative of Peru also noted that the deadlines established by the Andean regulations for the entry into force of technical regulations have been contemplated, at least a period of six-month has been contemplated for the enforcement of the requirements set on the

regulations. Additionally, the Law No. 30021 establishes additional time frames for the entry into force of its regulation.

During the next TBT Committee on the 18<sup>th</sup> and 19<sup>th</sup> of March 2015, the representative of Canada again stated that, while his delegation supported Peru's objective of reducing obesity and other non-communicable diseases. It remained concerned that this measure could depart from International standards and restrict trade more than necessary to achieve its objective. He also requested to clarify whether the proposed regulations are based on international standards and have scientific foundations. Also, the representative of Canada questioned whether less trade-restrictive alternatives have been considered, such as the Codex guidelines on the inclusion of health claims and labeling. Nutritional solutions could inspire alternative solutions to give this information to consumers, without the cost of mandatory labeling of products. Finally, the representative requested information on the evaluation of the observations received at the Ministry of Health.

On the other hand, the representative of the United States pointed out that mandatory nutrition information for all food and alcoholic beverages would provide consumers with the maximum information to make any decision about their food, since all foods contribute to the daily consumption of nutrients, unless the nutritional properties are insignificant, and in that regard, asked if Peru has considered other solutions.

In addition, the said representative also showed interest in whether Peru had considered the recommendations of the World Health Organization/Pan American Health Organization (WHO / PAHO), as well as the guidelines issued by the Codex Alimentarius to determine foods with a high content of nutrients. Finally, the representative of the United States also noted that the Law does not define the font, size, color, or location, of warning messages, and questioned whether other symbols, icons, or pictograms are being considered to complement the warning message.

On that occasion, Colombia, Guatemala and Costa Rica also reiterated their concerns regarding Law No. 30021.

At the TBT Committee held on June 17<sup>th</sup> and 18<sup>th</sup> 2015, Canada, Mexico, the United States, Guatemala, and Costa Rica once again presented their concerns regarding to the Law No. 30021 and its implementation process. Their main comments were that the measure departs from international standards and is more restrictive to trade than necessary to achieve its legitimate objective. Likewise, on that occasion, reference was made to the fact that the definitive technical parameters for the levels of sugar, salt and fats in foods were published on April 18<sup>th</sup> 2015, questioning the fact that if they were based on scientific evidence. Another of the questions asked by those countries was about how labels should be set for food warnings and whether products can be labeled in a customs warehouse in Peru before entering the market.

In this regard, they asked Peru to notify Supreme Decree No. 007-2015-SA, issued on April 18<sup>th</sup> 2015, which establishes the technical parameters for labeling the sugar, salt and saturated fat content in food prepackaged and in drinks. Regarding the scope of the food that would be covered by these labeling measures, countries asserted that nutritional descriptions are a valuable tool for consumers to make their choice, and suggests to consider to extent this labelling measure

to all prepackaged food products. They also added that the Codex and the WHO Global Plan of Action for the prevention and control of noncommunicable diseases advocate the nutritional labeling of all prepackaged foods.

Peru on that occasion argued that the Law No. 30021 was promulgated on May 17<sup>th</sup> 2013, to promote healthy eating in children and adolescents. In its first supplementary provision, this law provides technical parameters for processed foods and non-alcoholic beverages with regards to high sugar, sodium and saturated fats and the gradual reduction of trans fats until their elimination. Peru also noted that the final version of that regulation was published on the 18<sup>th</sup> of April 2015.

Regarding the deadline for the application of this regulation, it was indicated that, although the definitive version has already been published, this regulation is only one of many components of Law No. 30021. This Law provides for many more initiatives, such as the promotion of nutritional education and an observatory of nutritional and obesity surveillance, which will be elaborated in a complete and detailed way by the Multisector Commission created for this purpose. It was also pointed out that, in the short term, it was difficult to stipulate a date for the entry into force of Law No. 30021.

As to the basis on which the nutritional parameters established in Decree No. 007-2015-SA are supported, it was pointed out that these were elaborated based on the recommendations resulting from a consultation with the PAHO experts on promotion and publicity of foodstuffs and non-alcoholic beverages for children. These recommendations were endorsed by the "Plan of Action for the Prevention of Obesity in Children and Adolescents" at the 53rd Directing Council of PAHO and at the "66<sup>th</sup> Meeting of the Regional Committee of WHO for the Americas". Peru argued that, in any case, the nutritional levels established in Decree No. 007-2015-SA are also based on the parameters established by the Codex Guidelines on Nutrition Labeling.

The next TBT Committee was held from the 4<sup>th</sup> to the 6<sup>th</sup> of November 2015, and the representatives from Canada, the United States, Mexico and Guatemala raised their trade concerns reiterating that the measure departs from international standards and restricts trade more than necessary to achieve its objective. They noted with concern that some aspects of the measure are unclear and could disrupt trade unnecessarily and adversely. Peru was also urged to notify Supreme Decree No. 007-2015-SA in a revision of notification G/TBT/N/PER/59, as it departs substantially from the original text.

They also requested that Peru provide more information on the elaboration of the additional components established in the Law No. 30021, as well as the expected completion date for the elaboration of these points by the Multisector Commission. Another comment made by those countries was in relation to the thresholds of sodium and saturated fats proposed by Peru to make a warning about their consumption demandable. Stating that they show a level which is far below what would correspond per the guidelines of Codex so they request that Peru clarify how it has defined the proposed limit and why it has opted for this value.

On that occasion, Peru reiterated and emphasized the importance that its country attaches to the protection of human health. Peru is determined to develop and implement legislation aimed at

reducing the levels of obesity and noncommunicable diseases that affect children and adolescents. As noted in previous TBT Committee meetings, the regulatory provisions for implementing the said Law have not yet been published, which will function as a set of activities designed to protect the health of children and adolescents.

On the other hand, it was reiterated that the technical parameters contained in the published regulation are based on the recommendations derived from the expert consultation of the Pan American Health Organization and WHO on the promotion and advertising of food and non-alcoholic beverages directed to the kids. The values set out in the referred document take into consideration the parameters of the Codex Alimentarius Guidelines for the Use of Nutrition and Health Declarations for sugar, sodium and saturated fats. Therefore, the proposals received from interested parties during the consultation period had been considered by Peru.

Likewise, during the Committees of March 9<sup>th</sup> and 10<sup>th</sup> as well as that of June 15<sup>th</sup> and 16<sup>th</sup> 2016, the United States, Mexico, Canada and Costa Rica, presented to Peru their specific trade concern by reiterating its arguments regarding the Law No. 30021.

Peru again emphasized the importance of reducing the incidence of obesity and other noncommunicable diseases among the vulnerable population, especially among children and adolescents. Which is an objective that this measure aims to achieve. It was also pointed out that Peru is still preparing a complementary measure for the implementation of Law No. 30021, through a Multisector Commission who is working on the complementary regulatory provisions that would be implemented, including the promotion of nutritional education, the implementation of a nutrition observatory and the study of overweight and obesity, among others. There was no specific deadline for the completion of such work.

At this point, it is important to note that the Multisector Commission in charge of regulating the Law No. 30021, completed its work on June 17<sup>th</sup> 2016, and the said draft regulation was notified to the WTO and the CAN on September 09<sup>th</sup> 2016. Accordingly, Peru granted the Members Countries of such Trade Agreements a deadline for comments until December 8<sup>th</sup> of that year.

It is important to emphasize that this project contains a new proposal of technical parameters, based on the new document issued by the Pan American Health Organization, replacing those approved by Supreme Decree No. 007-2015-SA.

Finally, it is also important to note that this issue has been dealt bilaterally with some of the countries with which Peru has signed Free Trade Agreements, within its Bilateral Committees, conform accordingly to the provisions of the TBT Chapter of each Agreement.

## **11. Concluding Remarks**

Because of the alarming nutritional status of Latin American countries, there has been a need to take measures to reduce the overweight and obesity levels of the population. In this regard, Chile and Peru propose and implement two legislative strategies, Law No. 20.606 and Law No. 30021, published in the year 2012 and 2013 respectively.

These measures aim to prevent overweight and obesity in the population, especially children, through the regulation of three aspects: front labeling of products, through warning signals when food critical nutrients exceed a set limit; the sales of foods considered as unhealthy in schools; and the advertising directed at children under 14 years in Chile and 16 years in Peru.

On the implementation of both laws, since the presentation of their draft, a great debate has opened since they established a series of restrictions directed to the food industry. It was necessary to have different discussions where the visions of the main actors involved with the new regulations are reflected. In Chile, these discussions led to modifications to the original text of the legal measure, but not in its intention. In Peru, an intense debate continues the proposed measures and different drafts that have been presented with the objective of modifying what was promulgated by the Peruvian Congress. However, for both the Chilean case and the Peruvian case, these disputes to date have not been resolved. The implementation of frontal labeling has been questioned, arguing that there are technical complications. Meanwhile, the limits of critical nutrients that determines the imposition (or not) of the warning label are questioned. On the other hand, on advertising restrictions, which prohibit advertising of unhealthy foods addressed to minors, the food industry and the marketing agencies stated that are opposed to the freedom of expression.

On the other hand, within the difficulties of the application of both regulations, it emphasizes what happens with the international trade, since the concerns presented by some members of the World Trade Organization in the Committee on Technical Barriers to Trade. In both cases, it was alleged that the new regulations would not comply with the provisions at the Agreement on Technical Barriers to Trade, alluding to transgressing the following principles of transparency, harmonization, prevention of unnecessary obstacles to trade and non-discrimination. The arguments presented are below:

- Transparency: because the first drafts of the new regulations weren't communicated with enough time to consider other members' comments.
- Harmonization: since both regulations aren't based in the Codex Alimentarius.
- Prevention of unnecessary obstacles to trade: because other WTO members think that there is not enough proof that warning labeling is the less trade restrictive way to prevent obesity and overweight.
- Non-discrimination: because although both laws apply also to products of national origin, it will be foreign industries that would be more impacted by the application of the regulations, because they must adapt their products solely and exclusively for the markets of Chile and Peru, which represents only a fraction of its sales.

This has raised considerable concern about the future of the implementation of legislation, as part of the concerns raised could eventually lead to a possible dispute in the context of the World Trade Organization.

Finally, although both regulations are still in an intense debate, it should not be ignored the importance that they have made it possible to question the current food system in Chile and Peru.

### **Bibliographic references**

Aguirre, B. Tagged: big companies will have 50% of their products with warning, and have reformulated 1,550 foods. *The Mercury*. [Online] May 22, 2016. Retrieved at: <<http://www.economiaynegocios.cl/noticias/noticias.asp?id=254368>>. Consulted on: June 27, 2016.

Amigo, H. 2003. Obesity in Latin American children: situation, diagnostic criteria and challenges. *Cadernos de Saúde Pública*, 19 (1): 163-170.

ANDA (National Association of Avisadores de Chile), Chile. 2013, Mar. Let's not miss an opportunity. Magazine of the National Association of Advertisers. 1 p. [On line]. Retrieved at: <[http://www.anda.cl/PDFrevista/rev\\_mym\\_marzo\\_2013.pdf](http://www.anda.cl/PDFrevista/rev_mym_marzo_2013.pdf)>. Accessed April 12, 2016.

ASEXMA (Association of Exporters and Manufactures), Chile. 2014, Oct. Imports and SMEs: new flanks open to the regulation of food labeling. [On line]. Retrieved at: <<http://asehma.cl/importations-and-pyme-se-abren-nuevos-flancos-al-regel-de-etiquetado-de-alimentos/>>. Consulted on: April 24, 2016.

BCN (Library of the National Congress of Chile), Chile. 2012. History of Law 20,606 on nutritional composition of food and its advertising. [Online] Recovered in: <file:///C:/Users/Macarena/Downloads/HL20606.pdf>. Consulted on: September 20, 2015.

Burrows, R.; V. Gattas; Leiva; G. Barrera and M. Burgueño. 2001, Oct. Biological, familial and metabolic characteristics of childhood and juvenile obesity. *Revista Médica de Chile*, 129 (10): 1155-1162.

Boza, S. and F. Fernández. 2014, may. Chile against the regulation on non-tariff measures of the World Trade Organization (WTO). *International Studies*, 178 (46): 65-82.

Decree No. 12. Modifies Supreme Decree No. 977 of 1996, which approves the Sanitary Regulation of Food. Santiago, Chile: Ministry of Health: 2015. 8p. [Published in Official Gazette on: December 17, 2013].

Task Force. Screening for and management of obesity in adults: U.S. Preventive Services Task Force recommendation statement. *Ann Intern Med.*, 157 (5): 373-78. 2. 3.

ODEPA (Office of Studies Decree N ° 13) Modifies Supreme Decree No. 977, of 1996, Sanitary Regulation of Foods, Sanitary Regulation of Foods. Santiago, Chile: Ministry of Health: 2015. 8p.: June 26, 2015].

Decree No. 977. Approves Food Sanitary Regulations. Health Code. Santiago, Chile: Ministry of Health, 1997. 169 p. [Published in the Official Gazette on May 13, 1997].

Figuerola, M. Manager ABChile technique: "Do not demonize food, you have to teach them to eat them". Third. [Online] July 14, 2014. Retrieved in: <<http://diario.latercera.com/2014/07/14/01/contenido/pais/31-168566-9-gerenta-tecnica-de-abchileno-There-to-demonize-the-food-there-that-teach-a.shtml>>. Consulted on: April 15, 2015.

JUNAEB (National Board of Scholarships and Scholarships), Chile. 2014, Jul. Nutrition map report 2013. Department of Planning and Studies, National Board of Scholarships and Grants, Ministry of Education of Chile. 76 p.

Law No. 20,606. On nutritional composition of food and its advertising. Santiago: Ministry of Health, 2012. 3p. [Published in the Official Gazette on: 6 July 2012].

Law No. 20,869. About food advertising. Santiago: Ministry of Health, 2015. 2 p. [Published in the Official Gazette on: November 13, 2015].

Liria, R. 2012, Jul. Consequences of obesity in children and adolescents: a problem that requires attention. Peruvian Journal of Experimental Medicine and Public Health, 29 (3): 357-360.

Moiso, A.; M. Mestorino and A. Ojea. 2007. Fundamentals of public health. La Plata: Editorial from the National University of La Plata Edition. 672 p.

Moyer, V. 2012. Preventive Services and Agrarian Policies), Chile. 2011, Jul. Agreement on Technical Barriers to Trade (TBT). 1 p. [On line]. Retrieved at: <[http://www.odepa.gob.cl/odepaweb/publicaciones/acuerdo\\_obstaculos\\_tecnicos.pdf](http://www.odepa.gob.cl/odepaweb/publicaciones/acuerdo_obstaculos_tecnicos.pdf)>. Consulted on: March 19, 2016.

Oliva, J.; L. González; J. Labeaga and C. Álvarez. 2008, nov.-dec. Public health, economy and obesity: the good, the ugly and the bad. Gaceta Sanitaria, 22 (6): 507-510.

WHO (World Health Organization). 2010. Report on the global situation of non-communicable diseases 2010. Summary of guidance. 9 p. [On line]. Retrieved at: <[http://www.who.int/nmh/publications/ncd\\_report\\_summary\\_en.pdf?ua=1](http://www.who.int/nmh/publications/ncd_report_summary_en.pdf?ua=1)>. Consulted on: September 19, 2016.

WTO (World Trade Organization). 2012, Feb. Technical barriers to trade in the WTO. 341 p.

WTO (World Trade Organization). 2013. Committee on Technical Barriers to Trade. 2013. Minutes of the meeting held on 6 and 7 March 2013. World Trade Organization. 48p.

WTO (World Trade Organization). 2013. Committee on Technical Barriers to Trade. Minutes of the meeting held on 17, 19 and 20 June 2013. World Trade Organization. 55p.

WTO (World Trade Organization). 2014. Committee on Technical Barriers to Trade. Minutes of the meeting held on 30 and 31 October 2013. WTO. 55p.

WTO (World Trade Organization). 2014. Committee on Technical Barriers to Trade. Minutes of the meeting held on 19 and 20 March 2014. World Trade Organization. 59p.

WTO (World Trade Organization). 2014. Committee on Technical Barriers to Trade. Minutes of the meeting held on 18 and 19 June 2014. World Trade Organization. 60p.

WTO (World Trade Organization). Committee on Technical Barriers to Trade. Minutes of the meeting held on 5 and 6 November 2014. World Trade Organization. 76p.

WTO (World Trade Organization). Committee on Technical Barriers to Trade. Minutes of the meeting held on 18 and 19 March 2015. World Trade Organization. 67p.

WTO (World Trade Organization). 2015. Technical barriers to trade. 8p. [On line]. Retrieved at: <[https://www.wto.org/spanish/thewto\\_s/20y\\_s/tbt\\_brochure2015\\_s.pdf](https://www.wto.org/spanish/thewto_s/20y_s/tbt_brochure2015_s.pdf)>. Accessed March 26, 2016.

WTO (World Trade Organization). 2016. Technical barriers to trade: Information. [On line]. Retrieved at: <[https://www.wto.org/english/tratop\\_s/tbt\\_s/tbt\\_work\\_docs\\_e.htm](https://www.wto.org/english/tratop_s/tbt_s/tbt_work_docs_e.htm)>. Consulted on: March 26, 2016.

PAHO (Pan American Health Organization). Support of PAHO / WHO and FAO to the Food Sanitary Regulations for the implementation of Law 20,606 in Chile. Press release. [On line]. June 12, 2015. Retrieved at: <[http://www.paho.org/chi/index.php?option=com\\_content&view=article&id=636:respaldo-de-la-opsoms-y-fao-al-reglamento-Health-of-the-food-for-the-application-of-law-20606-en-chile-&Itemid=1005](http://www.paho.org/chi/index.php?option=com_content&view=article&id=636:respaldo-de-la-opsoms-y-fao-al-reglamento-Health-of-the-food-for-the-application-of-law-20606-en-chile-&Itemid=1005)>. Consulted on: April 14, 2016.

PAHO (Pan American Health Organization). (21 and 22 January 2013, Santiago, Chile). 2013. Seminar successful experiences in the prevention of childhood obesity. PAHO / WHO. Santiago, Chile. 96 p.

Pizarro, T.; L. Rodríguez; J. Riumalló and X. Benavides. 2004. Nutritional intervention throughout the life cycle for the prevention of obesity and other chronic noncommunicable diseases. Cuadernos Médicos Sociales de Chile, 44: 235-240.

Rtveladze, K.; T. Marsh; S. Barquera; L. Sanchez; G. Melendez; L. Webber et al. 2014, Jan. Obesity prevalence in Mexico: impact on health and economic burden. Public Health Nutrition, 17 (1): 233-239.

Tapia, M. Consumer firms criticize labeling law and say it will affect consumer freedom. The Mercury. [Online] September 12, 2014. Retrieved at: <<http://www.economiaynegocios.cl/noticias/noticias.asp?id=123112>>. Consulted on: April 23, 2016.

Vázquez, M and López, J. 2002. Sep.-Oct. The costs of obesity reach 7% of health expenditure. Health economics.

WTO (World Trade Organization), 2014. The WTO Agreements Series. Technical barriers to trade. 152 p. Retrieved at: [https://www.wto.org/english/res\\_e/publications\\_e/tbttotrade\\_e.pdf](https://www.wto.org/english/res_e/publications_e/tbttotrade_e.pdf). Accessed October 2, 2016.

WTO (World Trade Organization). 2016. Committee on technical barriers to trade. 2016. Minutes of the meeting of 4-6 November 2015. World Trade Organization.