

Regulatory measures for the protection of adequate and healthy diet in Brazil: a 20-year analysis

Medidas regulatórias de proteção da alimentação adequada e saudável no Brasil: uma análise de 20 anos

Medidas regulatorias de protección para una alimentación adecuada y saludable en Brasil: 20 años de análisis

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Abstract

Regulatory measures are among the strategies for the promotion of adequate and healthy diet recommended by the Brazilian National Food and Nutrition Policy (PNAN). Although other actions in the promotion of adequate and healthy diet have made strides in Brazil, regulatory measures have made slow progress. The study aimed to identify and describe factors related to the development and implementation of the principal regulatory measures for the protection of adequate and healthy diet in Brazil in the last 20 years. This qualitative document study assessed a series of federal regulatory measures for the protection of adequate and healthy diet proposed or in discussion from 1999 to 2020. They include the regulation of food advertising, regulation of food product marketing in schools, implementation of mandatory front-of-package labeling on foods, and taxation of sugary drinks. Most of the barriers identified were strategies in corporate political activity led by the private sector, especially by the food industry. The Corporate political activity practices used in the various stages of policy processes include legal actions against the State, substitution of policies (suggesting voluntary or ineffective alternatives), opposition, fragmentation, and destabilization with attempts at support from the community. During the study period, none of the measures was approved. Given this scenario, barriers to the approval of regulatory measures for the protection of adequate and healthy diet need to be overcome in Brazil.

Nutrition Programs and Policies; Food Publicity; School Feeding; Sweetened Beverage

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Introduction

In 2017, poor diet was one of the principal risk factors for mortality and years of life lost in various countries. Improved diet could prevent one out of five deaths in the world ¹. In Brazil, the consumption of natural or minimally processed foods has been replaced by ultra-processed foods ², which are associated with obesity and other chronic noncommunicable diseases (NCDs) ³. The environment in which people live, study, and/or work is one of the determinants of this food consumption and can promote or hinder access to healthy foods ⁴.

Thus, the improvement of public health depends on the adoption of measures for the promotion of adequate and healthy diet focused on environments to enable and protect healthy eating, especially based on regulatory measures ⁴. However, these measures directly impact actors that employ market and corporate political activity practices to expand the presence of ultra-processed foods in the diet and to influence decisions by governments and public opinion in their favor ^{5,6}. Such measures are thus solutions that require political determination and government leadership ⁷.

The Brazilian National Food and Nutrition Policy (PNAN) of the Brazilian Ministry of Health proposes to respect, protect, promote, and ensure the human rights to health and food ⁸. In the policy, the government commits to developing healthy policies and create health-friendly environments. The policy also supports the State's capacity and responsibility to use the necessary measures for the protection of health and the health sector's commitment to linking and developing inter-sector actions.

Brazil made strides in recent decades in structural policies that played a fundamental role in the fight against hunger and in the promotion of adequate and healthy diet ⁹. In 2014, an update was published to the *Dietary Guidelines for the Brazilian Population*, which acknowledges the role of the food environment in food choices and makes recommendations to avoid ultra-processed foods and to overcome obstacles to the adoption of healthy eating habits, serving as an important instrument for orienting policies, but without regulatory status ¹⁰. The classification of foods in the guidelines was used as the basis for the *Pan American Health Organization Nutrient Profile Model* and has been acknowledged and used internationally ^{3,11}.

Regulatory measures have not made the equivalent progress. Initiatives to restrict advertising of unhealthy foods ¹², regulate the marketing of foods in schools ¹³, include front-of-package nutritional labeling on foods ¹⁴, and tax unhealthy food products ¹⁵ were submitted for review by policy decision-making bodies. Still, there are no studies that have consolidated this history and analyzed what may have contributed to their non-adoption. The current study thus aims to identify and describe factors related to the development and implementation of the main measures for protection of adequate and healthy diet in Brazil in the last 20 years.

Methods

This is a qualitative document analysis. We selected four regulatory measures for the protection of adequate and healthy diet at the federal level (Legislative and Executive Branches), proposed or in discussion, from 1999 and 2020, which are recommended by international agencies to reduce the supply of and demand for ultra-processed foods and to overcome barriers to achieving adequate and healthy diet ^{16,17}: regulation of food advertising; regulation of marketing of foods in schools; implementation of front-of-package nutritional labeling; and taxing of sugar sweetened beverages.

Based on the authors' experience, we identified the main regulatory instruments proposed or in discussion during the period in question, the theme of which centers on the four regulatory measures analyzed here. The regulatory instruments were the following:

- (a) Regulation of food advertising proposed by the Brazilian Health Regulatory Agency (ANVISA);
- (b) Regulation of marketing of foods in the school environment, proposed by the Ministries of Health and Education;
- (c) Proposal for front-of-package nutritional labeling on packaged foods, conducted by ANVISA;
- (d) Taxing of sweetened beverages and tax incentives for manufacturers of beverages whose syrups (concentrated beverage extracts) are produced in the Manaus Free Zone, Amazonas State, Brazil.

We triangulated data from various sources (Box 1): official websites of the Federal Government, the Brazilian National Congress, public policy councils, civil society and private sector organizations, and international agencies, in addition to media information. For each case, searches were performed on timeframes, stakeholders, information on barriers to approval of the measures, and potential enablers to reverse the absence of regulatory action. The principal bills of law under review or shelved were identified by a non-exhaustive search in the databases of the Brazilian National Congress or in documents that consolidated such bills.

The sources of political inertia and the leverages for expanding the discussion on the matter, promote the measures' adoption, or lobby for their approval, described by Swinburn et al. ⁷, were used for classification of barriers and enablers, respectively. The structure proposed by Mialon et al. ¹⁸ was used to provide details on corporate political activity practices.

Box 1

Data sources and types of documents searched.

DATA SOURCES	TYPES OF DOCUMENTS
Brazilian National Congress (Chamber of Deputies and National Senate)	Bills of laws, opinions by rapporteurs, videos, and shorthand notes from public hearings
Brazilian Supreme Court (STF)	Jurisprudence and other relevant documents
Brazilian Ministry of Health	Technical materials and notes, management reports, standards and proposals for standards, national plans, and other relevant documents
Brazilian National Health Regulatory Agency (ANVISA)	resolutions, proposals of resolutions, public consultations, reports on public consultations, regulatory impact analyses
National Cancer Institute (INCA)	Technical materials and notes and other relevant documents
Brazilian Ministry of the Economy * and Internal Revenue Service	Technical notes and standards, Pluriannual Plan
Brazilian Ministry of Education	Technical materials and notes, standards and proposals for standards, and other relevant documents
Inter-Sector Chamber for Food and Nutritional Security (CAISAN) **	Technical notes, reports, accounting documents, food and nutritional security plans
Council on Food and Nutritional Security (CONSEA) ***	Conference reports, depositions, and recommendations
National Health Council (CNS)	Recommendations
World Health Organization (WHO) and Pan American Health Organization (PAHO)	Progress reports on policies developed by countries on noncommunicable diseases (NCDs)
World Cancer Research Fund (WCRF)	NOURISHING reports on progress with food and nutrition policies developed by countries
Civil society organizations: Alliance for Adequate and Healthy Diet, Brazilian Consumer Defense Institute (IDEC), and ACT Health Promotions	Documents, notes, position papers, campaigns, petitions, and news stories on the topics
Food industries and representative associations: Brazilian Association of Advertisers (ABA), Brazilian Association of Food Industries (ABIA), Brazilian Association of Soft Drink and Nonalcoholic Beverage Industries (ABIR), National Council on Advertising Self-Regulation (CONAR), and Labeling Network	Documents, notes, position papers, campaigns, and news stories on the topics

* Formerly the Brazilian Ministry of Finance;

** Consisting of 21 ministries responsible for the management and implementation of the Brazilian National Policy for Food and Nutritional Security (PNSAN);

*** Advisory body to the Federal Government responsible for monitoring public policies in food and nutritional security.

The principal frameworks were numbered and included in Boxes S1 and S2 (Supplementary Material: http://cadernos.ensp.fiocruz.br/static//arquivo/suppl-e00153120-eng_7104.pdf), and the documents were consulted and listed in Box S3 (Supplementary Material: http://cadernos.ensp.fiocruz.br/static//arquivo/suppl-e00153120-eng_7104.pdf). The enablers and barriers discussed in the following results are described in detail in Boxes S1 and S2 and can be identified by the superscripts.

Results

Regulation of food advertising

The PNAN emphasizes the need to adopt measures for regulating the advertising of unhealthy food products, especially those targeted to children (A3, A10). The regulation of food advertising have strong backing in Brazil's legislation (A1, A2, P1, P10), but there is no specific regulation on food advertising aimed at discouraging the demand for unhealthy food products, with the exception of the Brazilian Standards for Marketing Foods for Infants and Toddlers, Teething Rings, Pacifiers, and Baby Bottles (P2).

The regulatory attempts on food advertising were systematically blocked by the regulated sector (P4, P7, P8, P10, P11)¹⁹. The principal proposal was the regulatory process on this matter conducted by ANVISA from 2006 to 2010.

In 2006, ANVISA launched *Public Consultation n. 71/2006* for the drafting of a Technical Regulation on the advertising of food products with low nutritional value and high amounts of sugar, saturated fat, trans fat, and/or sodium. The proposal provided for measures on advertising to include warning phrases on the risks of NCDs related to the excessive consumption of foods with high amounts of critical nutrients, limits on the times of the day for advertising, and bans on free prizes, cartoon characters, and advertising strategies targeted to children (P3). The proposals faced heavy opposition from the industrial food and advertising sectors, represented by the Brazilian Association of Food Industries (ABIA) and the National Council on Advertising Self-Regulation (CONAR), who claimed the unconstitutionality of the ANVISA regulation on grounds that the Federal Government can only regulate commercial advertising through a Federal Law, besides claiming that advertising is protected by freedom of expression. Meanwhile, civil society supported the proposal, on grounds of the normative competence of ANVISA as delegated by the Federal Law that created the agency, as well as supported by the Constitution, the Statute of Children and Adolescents, and the Consumer Defense Code (P4)¹⁹.

In the attempt to avoid restrictive regulation, in September 2006 the regulated sector altered the CONAR Code of Advertising Self-Regulation, recommending that advertising not use imperative appeals to consumption by children, not suggest industrialized food products as substitutes for basic meals, and avoid exploiting the potential benefits from consumption of a specific product. This modification was used to argue that there was no need for regulatory standards. There were also meetings between CONAR, ABIA, and the Brazilian Association of Soft Drink and Nonalcoholic Beverage Industries (ABIR) and then-Minister of Health and the Executive Chief of Staff, in addition to mobilization of some legislators to lobby ANVISA and interrupt the regulatory process (P4)¹⁹.

In the ANVISA public hearing (2009), industry gave signs that it would oppose the regulation in the courts, while civil society pressured for its publication. On the occasion, another attempt at self-regulation by industry was announced (P4). In 2010, ANVISA issued *Regulation n. 24/2010* determining that advertising of foods with high amounts of sugar, fats, and sodium and beverages with low nutritional value had to be accompanied by warning messages on the health risks associated with their excessive consumption. However, the restriction on advertising targeted to children, presented in the public consultation, was retracted, leading to harsh criticism from civil society, even while acknowledging the importance of the published regulation (P5)²⁰. Nevertheless, opposition by the regulated sector suspended the effect of *Regulation n. 24/2010* through court proceedings that challenged the competence of ANVISA to regulate the matter, backed by an opinion issued by the Office of the Federal Attorney General (AGU, P8)¹⁹.

In 2014, the National Council on the Rights of Children and Adolescents published *Resolution n. 163/2014*, defining targeted advertising and marketing communication aimed at children and adolescents (P10). The regulated sector reacted again, rejecting the legitimacy and applicability of this and other provisions on advertising for children (P11). Meanwhile, the Brazilian Ministry of Health published the current version of the *Dietary Guidelines for the Brazilian Population* and the *Dietary Guidelines for Children Under Two Years of Age*, which explicitly point to advertising of UPFs as one of the obstacles to adequate and healthy diet (A12, P16).

In 2017, a ruling by Brazil's higher courts convicted a company for the first time for abusive advertising of ultra-processed foods targeted to children (P13). Despite this precedent, civil society continued to be essential for preventing backstepping in the standards and laws regulating the matter, including a demonstration by more than 90 civil society organizations in 2020 (P17) against a proposal issued to the Public Consultation by the National Secretariat for Consumers and the Brazilian Ministry of Justice, which aimed at flexibilization of the definition of abusive advertising targeted to children and expanding the possibilities for the regulated sector to conduct such practices (P15).

The lack of a specific law regulating food advertising is still a challenge. Many bills of law have been submitted to the Brazilian National Congress ²¹, but none has been passed thus far due to difficulties such as slow review and the influence of vested commercial and economic interests contrary to the regulation, such as the ultra-processed food and advertising industries.

Regulation of food marketing in schools

The PNAN points to the importance of encouraging the creation of institutional environments that promote healthy eating, including schools (A10). The Brazilian National School Feeding Program (PNAE), created in the 1950s, orients the supply of school meals in public schools. The program's guidelines were revised in 2006, including provisions on the foods that are supplied, educational activities, respect for local culture, adaptation to the nutritional recommendations, and support for sustainable development (E7). However, the specific marketing of food products in schools was not addressed.

Ruling n. 1010 of 2006 by the Brazilian Ministries of Education and Health issued the first guideline on the restriction of marketing of unhealthy foods, but with nonbinding status (E5). That same year, the Brazilian Ministry of Health published an analysis of local legislations, revealing the action by the food industry through court action to interfere in local progress, and concluded that there was a need to pass a Federal Law (E6).

The PNAE issued new guidelines in 2009, prohibiting the acquisition of beverages with low nutritional value, limiting some foods such as sweets, ready-to-eat meals, and foods with high amounts of sodium or saturated fat and guaranteeing a minimum percentage of funds for the purchase of food produce from family farming and minimum amounts of fruits and vegetables per week (E15). In 2020, parameters aligned with the *Dietary Guidelines for the Brazilian Population* were established, but none of the standards mentions marketing of foods (E36).

From 2010 and 2015, recommendations and voluntary actions were published by the Brazilian Ministry of Health and the Inter-Ministerial Chamber on Food and Nutritional Security (CAISAN) for private schools and/or municipalities (A13, E16-E18, E23-E25). Especially from 2015 to 2019, commitments were assumed (A14-16) and normative provisions were proposed by the Executive Branch (E26) to regulate marketing and food advertising in schools. These featured the regulation by the Ministry of Health of marketing and advertising of unhealthy foods in public and private schools, supported by then-Brazilian Ministry of Social Development since 2009 and involvement by the Office of the Chief of Staff in 2018, but without the political support of the Brazilian Ministry of Education (E16, E26).

In the Legislative Branch, various bills of law have been reviewed since 2001 (E1-E4, E8, E9, E10, E19, E20, E21). *Bill of Law n. 1,755/2007*, which bans the sale of soft drinks in primary schools, is the oldest bill still under review (E8). In 13 years of review, it has received various amendments and favorable opinions from some members of Congress (E8), the Brazilian Ministry of Health (E12, E22, E32), and civil society (E30, E33, E34), and contrary opinions by the food industry and members of

Congress aligned with this industry (E8, E29, E33, E35). The bill has been awaiting a vote on the floor of Congress since 2017 (E8).

In the Judiciary Branch, the National Council of the Office of the Public Prosecutor recommended that its members discourage or ban sales or offers of industrialized or ultra-processed products in school dining halls and canteens (A25).

Support from civil society and public policy councils was identified in the following areas: awareness-raising activities in the Chamber of Deputies (A23); participation in public hearings (E33); campaigns (E29) and documents with updates to the list of municipalities that regulate the marketing of foods in schools (E31); mobilization of approval for proposals in local and national health and food security conferences; and recommendations to the Federal Government (A4, A6, A8, A9, A17-A20, A23, A24, A26, E28, E34).

In relation to the regulated sector, soon after the approval of the bill of law by the Committee on Social Security and Family in 2016, Coca-Cola (United States), AMBEV (Brazil), and PepsiCo (United States) committed not to sell soft drinks in schools with students 12 years or younger (E27). In 2020, the agreement was expanded to include ABIRE³⁵. Still, the implementation of this commitment proved to be unpracticable. This strategy was used to hinder the review of the bill of law or undermine it, arguing that the regulation was unnecessary and/or that the three companies' voluntary agreement was preferable (with its weak recommendations) (E27, E33, E35).

Front-of-package nutritional labeling on foods

The PNAN (A10) acknowledges nutritional labeling as a fundamental regulatory measure for adequate and healthy diet and for guaranteeing the right to information. Simple and easy-to-understand nutritional labeling helps guarantee the basic right to adequate and clear information on the composition and risks of foods, as provided by the Consumer Defense Code (A2). The front-of-package warning model is based on this premise and allows easily and quickly identifying the products that contain excessive amounts of nutrients associated with NCDs. A study in the Brazilian population proves that the use of warnings is the best option for achieving the regulatory objectives²¹.

Although Brazil is one of the first countries to adopt mandatory nutritional labeling of packaged foods, the same leadership has not occurred with the implementation of front-of-package labeling (R1).

In 2013, the National Council on Food and Nutritional Security (CONSEA) recommended to ANVISA the improvement of nutritional labeling to facilitate understanding and counteract misleading and abusive information on food labels (R2). The following year, ANVISA established a working group on the matter (R3), culminating in the proposal of three warning models, two of which proposed by agencies under the Executive Branch, namely the red circle (Ezequiel Dias Foundation) and the black octagon (CAISAN), and the black triangle, proposed by civil society (Brazilian Consumer Defense Institute, IDEC – and the Federal University of Paraná, UFPR), in addition to the nutritional traffic light model proposed by the regulated sector (ABIA, R4). In 2017, CONSEA also recommended the adoption of a warning model (R6). That same year, IDEC launched the campaign called “Adequate Labeling Now!” with the objective of informing and engaging the population in the push for comprehensible food labeling (R7). The regulated sector soon joined ranks to defend the nutritional traffic light with the creation of the “Labeling Network” (R8). This Network consists of 20 organizations linked to the food and beverage industry, in addition to profiles on social networks and a webpage, besides organizing events one of which even included the president of ANVISA (R8) – and mobilized famous healthcare professionals to defend a purported “freedom of choice” that the nutritional traffic light offered to the population (R9, R11).

In November 2017, the proposals and evidence were debated in a technical panel organized by ANVISA (R9). In the Preliminary Report on Regulatory Impact Analysis of Nutritional Labeling (2018) (R12), the agency assessed the available literature, the economic impacts, and legal and regulatory aspects in the matter and concluded that the front-of-package model was the most appropriate for furnishing nutritional information, in addition to lower cost of implementation since it does not require application on all the products.

The preliminary report was submitted to a Call for Public Submissions (R13), extended for 15 days, after ABIA appealed to the Federal courts claiming lack of time to submit studies and that it had not been heard by the agency. This legal action (R14) slowed the process. The majority (90%) of the 3,579 participants expressed their support for implementation of mandatory front-of-package labeling, besides also supporting the adoption of a warning model and the *Pan American Health Organization Nutrient Profile Model* (R15). During the Call for Public Submissions, the Alliance for Adequate and Healthy Diet held campaigns to mobilize the population to demand approval of the front-of-package model with the triangle format and to guarantee access to clear and adequate information for better food choices (R14).

Although the regulatory process conducted by ANVISA and based on robust evidence concluded that the front-of-package warning model is the most adequate for the Brazilian population, and despite the support for the model obtained in the Call for Public Submissions, the Brazilian Minister of Health and ANVISA executives declared their preference for other front-of-package systems defended by the food industry (R17, R20). In a meeting with industry representatives, the President of Brazil expressed opposition to the warning models, claiming that they could harm the food industry (R18). The Labeling Network financed a study to identify negative impacts on the food industry's sales in case the triangle was adopted (R19).

In September 2019, ANVISA published the Final Report on Regulatory Impact Analysis of Nutritional Labeling (R22). Next, the agency conducted *Public Consultations n. 707/2019* (R23) and *n. 708/2019* (R24) on a proposed standard for improving nutritional labeling, in which it recommended the adoption of the black rectangular model with a magnifying glass and the expression "high in...". This model performed worse than the other warning models, both in assisting the public's understanding of the nutritional content and in reducing the time for identification of excess critical nutrients, besides being defended by the food industry in Canada, where it had also proven less effective than other warning models^{22,23,24}.

The deadline for the regulatory process was extended again, and the public consultations were extended by ANVISA for 30 days with the justification of improving the regulatory quality and awaiting studies from the regulated sector. A request for extension submitted by the Brazilian Animal Protein Association indicates another initiative by the regulated sector to delay the regulatory process (R25).

Taxation of sugary drinks

None of the versions of the PNAN mentions the adoption of fiscal measures for the promotion of adequate and healthy diet (A3, A10). Despite recommendations by international agencies since 2004 (A5) and the fact that the measure had led to positive results in countries that implemented it²⁵, the discussion on taxation for the promotion of adequate and healthy diet only gained traction in Brazil later. In 2014 and 2015, the country finally addressed fiscal measures on unhealthy foods (A14, A15). The expansion of the discussion on the matter was accompanied by an increase in manifestations by civil society, government representatives, and the regulated sector on tax incentives granted to manufacturers of sweetened beverages whose syrups are produced in the Manaus Free Zone and on the sugar sweetened beverages tax. As the distortions in the Manaus Free Zone became public knowledge, the need became clear to correct them to achieve effective taxation on sweetened beverages.

To develop the local economy and attract investors, Brazil has granted tax incentives to the non-alcoholic beverage sector since the 1990s, when the main producers of syrups (the basic inputs for sweetened beverages) installed their operations in the Manaus Free Zone (T15). Since the creation of the Manaus Free Zone, the companies received tax incentives, initially intended as temporary, but which were extended repeatedly, the last time until the year 2073 (T1-T4, T8).

In addition to various tax write-offs on syrups produced in the Manaus Free Zone, there is a dual fiscal incentive in the tax on manufactured products (IPI) resulting from exemption of IPI on syrup produced in the Manaus Free Zone and IPI credits granted on the purchase of syrup from the Manaus Free Zone for beverage manufacturers (T15, T24). As of 2018, syrup manufacturers located in the Manaus Free Zone were exempt from paying the 20% IPI rate (T9, T23). In addition, beverage manufacturers that purchased syrups from the Manaus Free Zone received tax credits equivalent

to the rate granted to this input T15;T24. Thus, beverage manufacturers accrued 20% in IPI credits, despite the IPI exemption for syrup manufacturers, resulting in a dual tax incentive (Box 2). In 2018, the Federal Government reduced the IPI on syrups from 20% to 4% (T23) to decrease the credits to 4%, aimed at increasing tax revenues to subsidize diesel fuel and thereby negotiate an end to a nationwide truckers' strike (T23). The measure sparked debate between the beverage industry, civil society, and government agencies. Senators opposing the measure submitted a bill to attempt to increase the IPI rate and thus increase credits (T27).

The reduction in the IPI rate was also met by legal challenges in the Judiciary. The *Direct Claim of Unconstitutionality n. 5,987* under review in the Brazilian Supreme Court (STF) questions the constitutionality of this reduction (T26). In the discussions in this claim, the Office of the Federal Public Prosecutor and the Federal Attorney General presented documents that were unfavorable to the regulated sector (T39, T40). As a result, in the last three-year period, a series of alterations were made to the IPI.

The Brazilian Internal Review Service, which has opposed the dual tax incentive publicly (T17) and had already published an estimate according to which, for every BRL 100 million (USD 200 million) in revenue from soft drink sales, the manufacturer accumulated BRL 4 million (USD 800 thousand) in credits written off on other taxes or other types of beverages (T15, T18), and announced that the reduction of the IPI on syrups to 4% would decrease the annual tax revenue by BRL 1.5 billion (USD 300 million) (T24).

With the growing need to correct the fiscal distortions in the Manaus Free Zone to achieve an effective sugar sweetened beverages tax, the national debate on sugar sweetened beverages tax also moved forward. CAISAN (T14) defended the taxation of sugary beverages for the prevention of obesity in 2016 and contacted the Brazilian Ministry of Finance to analyze the possibilities for the mea-

Box 2

Tax on Manufactured Products (IPI) on syrups, credits for soft drink manufacturers that purchase syrups, and total tax waiver in the Manaus Free Zone, Amazonas State, Brazil, 2016-2020.

	DECREE n. 8,950/2016	DECREE n. 9,394/2018	DECREE n. 9,514/2019		DECREE n. 9,897/2019		DECREE n. 9,394/2018 *	DECREE n. 10,254/2020
In force	December 2016	May-December 2018	January-June 2019	July- December 2019	July-September 2019	October- December 2019	January- May 2020	June-November 2020
IPI on syrup in Brazil	20%	4%	12%	8%	8%	10%	4%	8%
IPI on syrup from Manaus Free Zone	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt
Credits to soft drink manufacturers that purchase syrup	20%	4%	12%	8%	8%	10%	4%	8%
Total tax waiver in Manaus Free Zone (IPI and other taxes) **	BRL 3.8 billion	BRL 2.3 billion	NA	NA	NA	NA	NA	NA

NA: not available.

* Due to the temporary validity of *Decrees n. 9,514/2019* and *n. 9,897/2019*, *Decree n. 9,394/2018* returned its effectiveness in January 2020, ending in June, when *Decree n. 10,254/2020* went into effect;

** Press release by the Internal Revenue Service on November 26th, 2018 (Brazilian Ministry of Finance, 2018) (consult list of documents in the Supplementary Material: http://cadernos.ensp.fiocruz.br/static/arquivo/suppl-e00153120-eng_7104.pdf).

sure's adoption, and in response, supported the sugar sweetened beverages tax (T15). The National Cancer Institute supported the sugar sweetened beverages tax to combat obesity and 13 related types of cancer (A21). The National Health Council (T16, T41), the Brazilian Ministry of Health (T22), and CONSEA (A25) identified recommendations for an effective sugar sweetened beverages tax: an increase of at least 20% on the prices of sugary beverages; creation of minimum prices for sugary beverage; extinction of the dual tax incentive via reduction of the IPI on syrups; creation of an Intervention Contribution in the Economic Domain on the price of sugary beverages; allocation of revenues from the SSB tax to fund health and or the fight against obesity. Numerous legislative proposals have been submitted in the last decade in favor of the sugar sweetened beverages tax (T5-T7, T10-T13, T29-T33).

The years 2017 to 2020 witnessed an increase in public manifestations by representatives of the Executive Branch, including the Brazilian Ministry of Health and the Brazilian Ministry of Economy, in defense of the sugar sweetened beverages tax (T21, T42) and against the subsidies for the Manaus Free Zone (T21, T36), favoring tax increases in sugary food products, meeting oppositions posted subsequently by members of the National Chamber of Deputies (T37), the President of Brazil (T43), and the Brazilian Ministry of Health (T34). Civil society, represented by the Alliance for Adequate and Healthy Diet and ACT Health Promotion, took the leadership in defense of the sugar sweetened beverages tax and the extinction of credits for sugary beverage manufacturers (T33).

In the regulated sector, the Brazilian Association of Soft Drink Manufacturers, representing regional nonalcoholic beverage manufacturers, aligned itself with the extinction of incentives for the Manaus Free Zone for the nonalcoholic beverage industry (T20). Meanwhile, ABIR (T46), representing the large conglomerates benefiting from the incentives to the Manaus Free Zone, such as AMBEV and Coca-Cola (T35), is one of the main opponents to the reduction of credits and to the sugar sweetened beverages tax (T43). ABIR defends voluntary measures; it argues that the sugar sweetened beverages tax villainizes such beverages; it claims that the extinction of credits will jeopardize economic development; and it questions the existing scientific evidence (T19, T43, T45).

Discussion

During the study period, none of the measures was enforced. The barriers to the advancement of such measures were mostly led by the food industry through corporate political activity practices like those used by the alcohol and tobacco industries to avoid regulations^{5,26}, corroborating evidence on food industry interference in Latin America²⁷.

In the case of regulation of food product advertising, the private sector's heavy lobbying to block the measures has succeeded in delaying and preventing progress with this agenda. The resolution passed by ANVISA received significant changes to the text's main body and is currently on hold due to the legal actions by industry. Although there is a legal basis for specific standards for food advertising and the matter has been debated for some time, no progress has been made. The regulatory agencies are delegitimized by industry²⁸, and the State has difficulty overseeing, assessing, and punishing violations²⁹.

In this context, repeated violations of the existing standards and the recourse to legal action against the State pose relevant barriers to regulatory progress³⁰ and have been common not only in the case of advertising, but also with front-of-package labeling in Brazil and other Latin American countries^{7,27}. The courts play an essential role in ensuring compliance with the existing provisions for the protection of health and the existence of specific laws and regulations to prevent gaps that might allow diverse interpretations³⁰.

The barriers to the regulation of marketing of foods in schools have included industry lobbying and proposals for voluntary initiatives. Meanwhile, there is the possibility of the measures' local approval, with specific state and municipal legislations as occurred with the ban on smoking in closed environments³¹. However, this debate has persisted for more than 14 years without important progress at the national level.

Based on strides with front-of-package labeling, action by the food industry has been incisive in recent years, with public campaigns on the model defended by industry.

To block progress in countries that attempt to implement measures that might discourage the sale of its products, the food industry also finances research ^{32,33}, as in the case of front-of-package labeling and the sugar sweetened beverages tax. This action not only confuses public opinion and decision-makers, but also seeks to infiltrate industry representatives or scientists financed by them in decision-making spheres ³⁴ such as the ANVISA working group on labeling, identified in this analysis, and by the tobacco industry in Brazilian Ministry of Health working groups to undermine the regulatory process on cigarette pack warnings ³⁵.

In the case of the sugar sweetened beverages tax, incentives for the beverage industry introduce an additional fiscal complexity, hindering the possibilities for reaching the public opinion. This confusion is exploited by the beverage industry, for example, to defend a tax increase since it generates higher tax credits for the industry. In addition, although present in all the measures, in this specific measure there is a noteworthy overvaluation of the industry's economic importance, a strategy previously documented as corporate political activity employed by transnational companies in Latin America to prevent progress with regulatory measures ²⁶.

Voluntary actions were also proposed to replace and avoid regulations. In the case of advertising, the defense is backed by the existence of CONAR. In other cases, the argument claims social responsibility and the possibility of the market and industry themselves correcting the harms from the high consumption of unhealthy food products ⁵. This practice has been adopted by the food industry in France and the United Kingdom to block the adoption of front-of-package labeling ³⁸ and regulation of advertising ⁵.

In all the measures, disagreements were identified between government agencies to achieve common objectives in the resolution of determinant factors for obesity ^{7,37}: between ANVISA and AGU (advertising); between the Brazilian Ministry of Health and the Brazilian Ministry of Education (school environment); between the Brazilian Ministry of Health and ANVISA (front-of-package labeling); and between the Brazilian Ministry of Health, Brazilian Ministry of Economy, and the President of Brazil (sugar sweetened beverages tax). The effective fight against malnutrition in Brazil indicates, for the prevention of obesity, the importance of multi-sector government coordination, with sufficient leadership and authority to conduct well-drafted and coherent policies with robust social control ^{7,9,37}. In 2019, the extinction of CONSEA and the de-structuring of CAISAN ³⁸ undermined the inter-sector linkage and action by civil society.

Policy inertia and the combination of inadequate government leadership, strong opposition to the policies by vested economic interests, and lack of (or insufficient) demand by the population ⁷. Although demands by society were identified in this analysis, examples of inadequate political leadership and aggressive action by transnational food companies contributed to the lack of progress with the measures.

This is the first study to systematically organize the history of the four regulatory measures most widely recommended for the promotion of adequate and healthy diet in Brazil, identifying factors that helped include the issue on the agendas of decision-making spheres and those that hindered their approval. However, the study presents limitations. The inclusion of information on inside access to government, which could have been obtained by the Freedom of Information Act, was not requested. Interviews with the principal actors could support the identification of factors not described in the documents analyzed here. In addition, all the authors of this article have direct involvement in the topic as representatives of either civil society or government.

Conclusion

This analysis identified various barriers that delayed and/or blocked the implementation of measures to protect adequate and healthy diet and that mainly result from corporate political activity practices by the food industry in various government spheres such as legal action against the State and voluntary or ineffective alternatives, in addition to other factors related to political inertia.

Meanwhile, potential enablers open the way for overcoming barriers. Civil society proved active and represents a potential force to pressure for the adoption of the regulatory measures in question. Likewise, some government actors and technical areas such as the Brazilian Ministry of Health and

the Internal Revenue Service took positions and actions in favor of the measures' adoption, even though still without real effects.

To counterbalance the economic power of industry actors, whose actions can compromise the development and implementation of health policies, it is still necessary to build a broader advocacy base to confront the powerful opposition by private interests^{7,39}. In this sense, it is essential to adopt measures to avoid food industry interference in nutritional policies^{7,40} through the establishment of clear mechanisms for adoption by the Federal Government⁴¹.

In addition to enforcing the current laws and standards, it is necessary to pass and implement consistent and coherent regulatory mechanisms to protect the population's health.

Contributors

All authors contributed to the study design and design, data collection, analysis and interpretation, article writing and final approval of the version to be published. They are responsible for all aspects of the work in ensuring the accuracy and integrity of any part of the work.

Additional informations

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Resumo

Medidas regulatórias estão entre as estratégias de promoção da alimentação adequada e saudável preconizadas pela Política Nacional de Alimentação e Nutrição (PNAN). Embora outras ações de promoção da alimentação adequada e saudável tenham avançado no Brasil, essas medidas progredem lentamente. O objetivo do trabalho é identificar e descrever fatores relacionados ao desenvolvimento e à implementação das principais medidas regulatórias de proteção da alimentação adequada e saudável no Brasil nos últimos 20 anos. É um estudo qualitativo documental que avaliou algumas medidas regulatórias de proteção à alimentação adequada e saudável federais, propostas ou em discussão, entre 1999 e 2020. São elas: regulação da publicidade de alimentos; regulação da comercialização de alimentos no ambiente escolar; implantação da rotulagem nutricional frontal obrigatória de alimentos; e tributação de bebidas adoçadas. A maioria das barreiras identificadas foram estratégias de atividade política corporativa protagonizadas pelo setor privado, principalmente, pela indústria de alimentos. Dentre as estratégias de atividade política corporativa utilizadas em diversas etapas dos processos políticos destacam-se: ações judiciais contra a ação do Estado; substituição de políticas sugerindo alternativas voluntárias ou inefetivas; oposição, fragmentação e desestabilização, com busca de apoio da comunidade. No período estudado, nenhuma das medidas foi aprovada. Diante desse cenário, os obstáculos para aprovação das medidas regulatórias de proteção a alimentação adequada e saudável necessitam ser superados no Brasil.

Programas e Políticas de Nutrição e Alimentação; Publicidade de Alimentos; Alimentação Escolar; Rotulagem de Alimentos; Bebidas Adoçadas

Resumen

Las medidas regulatorias están entre las estrategias de promoción de la alimentación adecuada y saludable, preconizadas por la Política Nacional de Alimentación y Nutrición (PNAN). A pesar de que otras acciones de promoción de la alimentación adecuada y saludable hayan avanzado en Brasil, esas medidas progresan lentamente. El objetivo del estudio es identificar y describir factores relacionados con el desarrollo y la implementación de las principales medidas regulatorias de protección de la alimentación adecuada y saludable en Brasil durante los últimos 20 años. Se trata de un estudio cualitativo documental, que evaluó algunas medidas regulatorias de protección a la alimentación adecuada y saludable federales, propuestas o en discusión, entre 1999 y 2020. Son las siguientes: regulación de la publicidad de alimentos; regulación de la comercialización de alimentos en el entorno escolar; implementación del etiquetado nutricional frontal obligatorio de alimentos; y tributación de bebidas azucaradas. La mayoría de las barreras identificadas fueron estrategias de actividad política corporativa, protagonizadas por el sector privado, principalmente, por la industria de alimentos. Entre las estrategias de actividad política corporativa utilizadas en diversas etapas de los procesos políticos se destacan: acciones judiciales contra la acción del Estado; sustitución de políticas sugiriendo alternativas voluntarias o inefectivas; oposición, fragmentación y desestabilización, con búsqueda de apoyo de la comunidad. En el periodo estudiado, ninguna de las medidas fue aprobada. Ante este escenario, en Brasil, se necesitan superar los obstáculos para la aprobación de las medidas regulatorias de protección a la alimentación adecuada y saludable.

Programas y Políticas de Nutrición y Alimentación; Publicidad de Alimentos; Alimentación Escolar; Bebidas Azucaradas

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