

The regulation of ultra-processed food products: the challenge of ruling the market

A regulação de produtos alimentícios ultraprocesados: o desafio de governar o mercado

La regulación de productos alimenticios ultraprocesados: el desafío de gobernar el mercado

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Abstract

The relationship between the consumption of ultra-processed food products and the increase in obesity and the risk of noncommunicable diseases (NCDs) has prompted international organizations to mobilize governments to regulate the reduction of the levels of sugars, fats and sodium in such products. The article analyzes the understanding of different strategic subjects about the health risks associated with the ultra-processed food products, and the public intervention adopted to modify their composition, in compliance with the Brazilian National Food and Nutrition Policy (PNAN). This is a qualitative empirical investigation, in which representatives of 12 institutions were interviewed. The theoretical framework of Depth Hermeneutics was adopted in conjunction with Discourse Analysis. This study focused on the generic theme "Agreement and Regulation" and the stated matrix "Consent Regulation" Considering a scenario of global circulation of the ultra-processed food products, not disciplined by international standards, the measure of public intervention was to establish Agreements with some food corporations, in opposition to the compulsory regulation. This measure was criticized by the subjects of the Public Sector and Civil Society, as the relevance of the topic to public health requires clear rules for the reduction of key nutrients as well as sanctions. Contrarily, the subjects of the Regulated Sector consider this measure sensible and of the government's understanding. Although there are differences among the subjects, it appears that the Agreements, as opposed to regulation, disregard the provisions of PNAN 2012 and represent a setback in view of their particular characteristics, whose results will slowly interfere in the nutritional improvement of the ultra-processed food products.

Industrialized Foods; Control and Sanitary Supervisions of Foods and Beverages; Nutrition Policy; Health Surveillance

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Introduction

Among other elements, emerging health and nutrition risks arise from the intensive use of technological processes¹ associated with ultra-processed food products, due to their unbalanced nutritional composition². Consisting almost entirely of low nutritional value ingredients, such products stand out among the risk factors for obesity and other chronic non-communicable diseases (NCDs)^{3,4}. These diseases make up the epidemiological scenario of most countries^{5,6}, including Brazil, whose rise has been persistent since 1989^{7,8}. Recent data on the health of Brazilian adults indicate that 39.2% have high blood pressure; 15.9%, diabetes; 25.9%, obesity and 60.3%, overweight⁹. Such situation shows the increase in caloric consumption and risk nutrients related to ultra-processed food products (industrialized breads, soft drinks, snacks, cookies, breakfast cereals, etc.¹⁰, which already make up 20% of the caloric food intake¹¹).

The increase in NCDs has led international organizations to recommend regulation of the nutritional components of ultra-processed food products to reduce the levels of sugars, fats and sodium^{6,12}; advertising restriction of these products to children; warnings on their labels; regulation of their commercialization in schools and the increase in taxation to limit their consumption⁴.

Controlling the consumption of ultra-processed food products is a challenge, both due to marketing strategies and the omission of information about their nutritional characteristics, which make people dependent on the market, often without ethical rules and limits, imposing them the purchase of products that are against the precepts of health. The corporate practices of transnational companies promote the homogenization of consumption patterns, weakening culture and eating practices¹³. In addition to concentrating economic power, these companies still institute political action strategies that result in interference in national public health decisions¹⁴.

Due to the worsening of the epidemiological panorama of food and nutrition, the Brazilian government set off initiatives to replace regulatory practices¹⁵. In 2007, the Brazilian Ministry of Health, following international recommendations⁵, signed a Cooperation Agreement with Brazilian Association of Food Industries (ABIA) to assess the sector's potential to gradually reduce the levels of free sugar, both trans and saturated fats, and salt in the ultra-processed food products¹⁵.

In 2009, Brazilian Health Regulatory Agency (ANVISA) evaluated the nutritional composition of 24 ultra-processed food products, regarding the sodium content, sugars, both saturated and trans fats¹⁶, showing worrying results. Instant noodles, cookies, corn snacks, soft drinks, sausages and the like showed high values for these nutrients. Thus, successive agreements were signed with entities representing the industries to firstly reduce the sodium content in these categories¹⁷, although the epidemiological context also points to urgency for the reduction of the other risk components. These Agreements¹⁵ are the essential parts of this article.

In view of this epidemiological context, Brazilian National Food and Nutrition Policy (PNAN) was updated. The guideline of the first edition – “guarantee of safety and quality of products and provision of services in the food area” – which is focused on the inspection and control of traditional health risks – harmlessness¹⁸ – was replaced, in the 2012 edition¹⁹, by the guideline – “control and food regulation” – addressing the integrality of food risks, incorporating those related to the “nutritional profile” and emphasizing the regulatory strategy.

Considering the aforementioned statements, this study analyzed the comprehension of different strategic subjects about the health risks related to the ultra-processed food products and their resulting public intervention, focusing on the generic theme “Agreement and Regulation” and the matrix statement “Consent Regulation”. From the manifest speeches, it was possible to identify the convergent and divergent points on the recognized risks and injuries, the arguments for food regulation, the commitments to public health and the limits of action for public intervention on the nutritional profile of the ultra-processed food products.

Methodological trajectory

This is a qualitative empirical investigation aiming to understand the view on public regulation of health risks related to ultra-processed food products, made explicit by different subjects, based on the assumption that the meanings that constitute and build the discursive reality – risks of the ultra-processed food products and regulation – can be explored through the use of language.

Theoretical reference

- **Depth Hermeneutics**

To investigate the individuals' opinions about the regulation of ultra-processed food products, the method of Depth Hermeneutics²⁰ was chosen as a theoretical framework to deal with the senses mobilized by symbolic forms – opinions, ideas, beliefs, etc. For Thompson²⁰, symbolic forms are significant and ideological manifestations expressed by the subjects, inserted in a specific socio-historical context, which take place both in the scope of daily life and in the sphere of institutions, structured in the discursive dynamics of interrelationship between meaning and power. To unravel such symbolic forms, we followed the interpretative process proposed by Depth Hermeneutics, which has three distinct and complementary analytical dimensions: Formal or Discourse Analysis, Socio-historical Analysis and Interpretation/Reinterpretation²⁰.

The Discourse Analysis examines the constitution of the symbolic forms, their internal structural features, distinctive elements and their inter-relationships. The analysis of the interviews was adapted to the proposals of the Discourse Analysis structured by Orlandi²¹ and Minayo²², respecting the flexibility admitted by Depth Hermeneutics²⁰, which allows to problematize the determination of the meaning processes of the word or text and understand how the subjects interrelate and construct their speeches, constituted of ideologically determined meanings, which explain their position in a given socio-historical context^{21,22}.

With the empirical material, we followed the exploration of the discourse²¹, *corpus* configuration (identification of the discourse regularities that were grouped into four generic themes); the structuring of the discourse-object – which allowed the formulation of five matrix statements based on the recurrence of ideas identified in the generic themes, observing the similarities or divergences and the conflicts and contradictions in the arguments used to construct the meanings; and the discourse analytical reconstruction – interpretation of the matrix statements based on the theoretical aspects to analytically reconstruct the discourses and make explicit the political-ideological interests of the subjects, regarding the risks of food and regulation. The discourses articulated to the social context (socio-historical analysis) allow to clarify the object under analysis in its complexity, reaching Interpretation/Reinterpretation, according to the theoretical model proposed by Thompson²⁰.

This *Article* focuses on the generic theme “Agreement and Regulation” and the matrix statement “Consent Regulation”.

Subjects

Thirteen subjects were interviewed, defined by the criteria of approximation with the study object, by monitoring the discussions at national and international levels; accumulated experience; and compatible hierarchical position to express the interests of the linked institution (Box 1).

The subjects who were interviewed belong to one of these four categories: Public Sector (PS), Regulated Sector (RS), Civil Society (CS) and International Organization (IO).

From February to June 2013, individual face-to-face interviews were conducted in Brasília and São Paulo, lasting one hour (average). They were made from a semi-structured script previously tested (Box 2). The interviews were recorded and transcribed by the researcher. The institution category linked to the interviewee was identified by codes: PS, RS, CS and IO. The code was followed by a number for each interviewee.

The research was approved by the Ethics Committee of the Faculty of Health Sciences, University of Brasília (opinion n. 117/2012).

Box 1

Characteristics of the institutions surveyed and the number of respondents, 2014.

CONNECTION OF INSTITUTIONS	INSTITUTIONAL PROFILE	NUMBER OF INSTITUTIONS/	DESIGNAÇÃO DAS INSTITUIÇÕES
Public Sector	Institutions competent to approve and or assist in the construction of legal and technical instruments related to food risk control	5/6 *	Brazilian Health Regulatory Agency (ANVISA), General-Coordination of Food and Nutrition (CGAN), Brazilian Ministry of Agriculture, Husbandry and Supply (MAPA), House of Congressmen of the National Congress * and the Federal Council of Nutritionists (CFN).
Regulated Sector	Institutions of national importance that represent the food product industries, including transnational conglomerates, and that regularly participate in the food regulation process at the national level.	3/3	Brazilian Association of Food Industries (ABIA), Brazilian Association of Dietetic Food Industries (ABIAD) and Brazilian Association of Pasta and Industrialized Bread & Cake (ABIMA).
Civil Society	Institutions that participate in the social control of health and food actions.	3/3	Brazilian National Health Council (CNS), Brazilian National Council on Food and Nutrition Security (CONSEA) and Consumer Protection Institute (IDEC).
International Agency	Institution that works to encourage member countries to improve their health actions, following the guidelines of the World Health Organization (WHO), including food and overweight control.	1/1	Pan-American Health Organization (PAHO)
Total	-	12/13	-

* In the House of Congressmen, two parliamentarians were interviewed.

Box 2

Sequence of interview questions.

INTERVIEW QUESTIONS
1. What are the responsibilities of the government and other sectors involved in the process of regulating the risks arising from overweight-related foods?
2. How do you evaluate the strategy of expanding the food regulation activity by the public authorities to contain overweight?
3. How can health surveillance with a focus on food act to interfere with overweight?
4. What are the easy and difficult ways to intervene on the risks of overweight-related foods?

Results

The rationale adopted to address the risks attributed to the ultra-processed food products and the regulatory mechanisms is different when it is expressed by different subjects. In their fields of competence, each develops influencing strategies and acts to adapt political action to their interests. By means of differentiated contributions of symbolic and material capital²³ and social commitments that are not always attuned, the subjects follow specific trajectories that lead to different processes of understanding public policies.

When exploring the discourse achievements of the matrix statement “Consent Regulation”, regarding its enunciative function, it is observed that reaching a healthy product does not depend only on legal provisions, but involves a regulatory governance established between the interested parties, articulating the internalization market values and a healthy product. These discourse achievements are examined as for the differentiation of their meanings and the changes in their formulations between one set of interviews and another, aiming to delimit and interpret the game of concordances and conflicts that cross the expectations of a healthy food product.

Regulation: voluntary or compulsory?

In order to regulate market practices in the area of health, it is essential that there is a possibility or evidence of risks to the population’s integrity. The IO subject’s discourse is generic, but it addresses the elements that are necessary to trigger a regulation process for the ultra-processed food products: *“The relationship between the consumption of industrialized foods and these diseases [NCDs] is clear. (...) they have some research showing (...) that their energy density is usually higher than in natura foods (...), which favors the overweight (...) and related diseases...”*.

However, regulating is a technical and political initiative and, therefore, it is the convergences and divergences of the PS, RS, CS and IO subjects’ discourses that mark the regulatory environment explored below. Between the approach of recovering the State’s regulatory power and the approach of an institutional reform that aims to reduce bureaucratic processes and facilitate economic activities, the reflections of the CS and PS subjects are divergent. For the CS2 subject, the creation of regulatory agencies has boosted the State’s regulatory activity: *“...the Brazilian State has returned to an active role, (...) regained its regulatory role. (...) It is a capitalist system driven primarily by profit, if there are no clear rules, (...) the consequences for the population are dramatic”*. For the PS5 subject, the regulatory agencies do not fulfill their formal role: *“...I have doubts about the role of the agencies as an institutional model for the State’s arm (...). They end up being more hostages to the market than obeying the State”*.

Seeing the urge to improve the nutritional profile of the ultra-processed food products, the government decided to institute formal pacts (Agreements) with entities representing the industries, jointly establishing flexible and long-term goals¹⁵. However, RS1 subject states: *“We have made an Agreement with the Ministry of Health”*. The personal pronoun “we” takes on the connotation of imposition, unilateralism as if the initiative of Agreement¹⁵ and the decision to carry out the act fell predominantly on the subject who speaks. In fact, the formal initiative of this Agreement¹⁵ came from the government in order to minimize the negative impacts on health and identify a probable acceptance by corporations when compared to mandatory regulation.

For other RS subjects, the Agreement is a demonstration of the government’s wisdom and understanding between the parties, recognizing the complexity involved in changing the formulas to bring them closer to products with a “healthy profile”. For them, regulating to remedy failures through mechanisms other than voluntary agreements would be an inconvenient attitude: *“...it is radicalism, a regulation (...) it does not give the flexibility like the Agreement. The Agreement is a matter of understanding (...) saying that industrialized foods have to be regulated, I am against these controls”* (RS1).

The understanding of the RS about the measures – Agreement and Regulation – is paradoxical. The first is seen as a symbol of dialog, common, rational and educational; in short, protector of the market. Regulation, on the other hand, represents radicalism, control, authoritarianism, inefficiency and inflexibility. Food regulation, a regulatory practice, instituted more than six decades ago by the Brazilian Ministry of Health²⁴ and, nowadays, by its autarchies, whose function is to act to protect collective health interests and to make competition between companies fair; now it becomes a con-

troversial instrument as the RS1 subject previously expressed. For him, the food market introduces itself as a sovereign and self-regulating space, dismissing any type of imposition of rules and sanctions for non-compliance with them.

In the scope of the PS and CS groups, the speeches do not follow a uniformity regarding the Agreements. There are three positions: (a) favorable: it is up to the government to circumvent the divergences of interests with the industries, *"...the government needs to be a partner of our industries"* (PS4); *"It is a governance measure combined with the industrial segment"* (PS3); (b) conditioned to the preservation of the supremacy of the public interest and other prerogatives of the State: *"I see no problem in signing Agreements, as long as there are no counterparts that will damage the State"* (PS1) and *"These Agreements are necessary, but insufficient and timid with regard to their goals"* (CS1); and (c) contrary, considering that the content negotiated is relevant to public health, feasible and legal: *"I am in favor of having regulations, even if a deadline is established (...) for the democratic construction of the rule"* (PS5) and *"...It [government] must have clear rules and even sanctions"* (CS2).

Three scenarios emerge from the speeches above. The first points to an absence of internal harmony between the arguments of the CS subjects who, despite belonging to the same field of speech, express different socio-political views on the Agreement¹⁵; similar effect was registered in the scope of the PS subjects. Another indicates the absence of a harmonious understanding of regulation. This involves a list of legal and compulsory, technical and administrative control measures to protect the population against health risks arising from production systems²⁵. Regulating (with regulation) is the process undertaken by ANVISA, which implies extensive studies, involvement of interested parties, public consultation, before its approval/conclusion²⁶. The third scenario shows the agreement as an expression of understanding and flexibility between the government and the industrial sector, comparing itself implicitly to regulation.

The consensus construction between the government and the food corporations formalized in these agreements demonstrates the receptivity and predisposition of these entities to cooperate. However, the result obtained from this consensus can result in balanced concessions or losses for one of the parties, including for public health. The Brazilian government's option not to regulate, dismissing its prerogative in favor of the Agreement¹⁵ can be understood as a setback in favor of the market, since a regulation could have been elaborated, through a participatory and dialogical process, with a legal negotiated deadline for effectiveness, following ANVISA's practice. This is the impression of the CS2 subject: *"I think there is this present vision – public-private partnership, (...) I realize there is a risk (...) of privatization, of granting power as if the market could regulate"*.

It should be noted that the increase in the prevalence of NCDs and their association with the consumption of ultra-processed food products is already accumulating serious individual and collective consequences that impose a high cost on the society. Only the State is able to transform this demand into an object of public interest in the health agenda as expressed in PNAN 2012¹⁹. This was explained by the PS5 subject: *"No one can expect the market to be spontaneously compatible with social rights, especially health, because it is geared towards profit. So it must always be regulated, socially controlled and with the State..."*.

For the Agreement construction¹⁵, initially for the sodium content reduction, the government called only the corporations of the industries of greater economic relevance. The CS and PS subjects criticize this restriction: *"...the society was not summoned and neither was the academy (...). Who took part in this Agreement was the Ministry of Health and the industries supported by ANVISA..."* (CS1). The PS2 subject highlights: *"Doing politics is to dialog, because democracy is made from this. This does not mean alignment. This means dialog, search for convergent agendas..."*. These arguments express a clear confrontation between the "exercise of democracy" and the "extension of representation". Extending democratic practice in public spaces requires the participation of all those that are interested in the deliberations whose impact is on the collective body²⁷. The absence of the organized civil society in this institutional dialog compromises both the legitimacy of the deliberations, and demonstrates a setback in participatory management.

The Agreements¹⁵ that were signed in 2007 break with the Brazilian institutional tradition of food regulation to deal with both harmlessness and nutrition problems. In the past, with the regulation by participatory construction with interested parties, it became possible to adopt mandatory rules to add iodine to the salt²⁸, and iron and folic acid to flours²⁹.

This change in strategy was beneficial for industries in a double sense, as it allowed greater flexibility to establish the level of sodium reduction and the deadline for adapting their products. Also, it avoided punishments for eventual non-compliance with the Agreements, according to the CS and PS subjects: *"...the government's activity (...) is more related to the sense of relaxing than tightening the regulation"* (CS1). *"...as it was not possible to approve the rule, an Agreement was made, as there was an interest in not harming the national industry"* (PS6).

Transnational corporations preserve their interests, maintaining an active channel of international articulation that allows the circulation of criticisms, pressures and mobilization within the scope of the World Health Organization (WHO), the United Nations for Food and Agriculture Organization (FAO), the countries and civil society organizations, with regard to the ultra-processed food products. Thus, they guide their entities to anticipate the defense of their interests. These entities call on their members to rethink of the formulas of the products, foreseeing an incisive action by the governments, according to what is stated in the speech *"...the multinationals brought this idea (...) that extends to the rest of the world. So, they received the instruction that, at a certain moment, they would have to start thinking (...), we started long before the government addressed the problem"* (RS1). Here, it is possible to observe another attempt by the RS to play a role in questioning the performance of the Brazilian government.

The influence of intergovernmental bodies in national processes is seen as a mixture of dependence and impotence, implying a partial loss of national sovereignty to define rules, even in the face of relevant justifications, according to the speech of PS4: *"...agreeing on a regulatory measure involves an international agreement, because it is about Mercosur [Southern Common Market] (...) The regulatory agenda advancement [nutritional components] will depend on international tension, (...) and on arrangement, support from society..."*. In the final section of this speech, it is observed that the government expects and foresees relevant demands from society, in the definition of processes and decisions. Theoretically, civil society could promote controversial issues such as the regulation of the nutritional components of the ultra-processed food products, leading to decisions beyond what was signed in international pacts or voluntary agreements.

On the market side, the RS subjects' speeches show that the relationship established with supra-national and intragovernmental bodies is the place (locus) where they express their intentions and exert influence on decisions, despite reporting an apparently limited performance: *"...we participate in the discussion within Brazil and indirectly (...) as an observer in the Codex Alimentarius (...), for positioning, not voting, nor vetoing (...). And in Mercosur, we (...) participate in the different commissions through ANVISA"* (RS3). When appropriate, such instances are reported as having a higher status than that of the State; for example, when the RS1 subject mentions the deadline elasticity for adjusting the sodium content in the formulas of the ultra-processed food products: *"In our formulas, we will arrive by 2020 as recommended by the WHO..."*.

To keep the food market competitive, companies invest in technologies and quality control mechanisms that rationalize the use of resources and increase profits. From this, there is a multiplication of products based on relatively cheap raw materials, nutritionally unbalanced and highly profitable formulations, which contradict the RS's arguments: *"who dictates the food qualities is the food itself or the land"*. Aware of this marketing strategy, the RS3 subject subtly and thoughtfully reveals the intentions of the industry concerning the ultra-processed food products: *"...there is a very large increase in the supply of products with (...) more sugar, excessive-fatty products..."*.

Competitiveness in the food market exposes differences of interests and the existence of a stratification system among companies. There is a power hierarchy among corporations, which subject smaller industries and politically less expressive entities to almost obligatorily follow the procedures of the first-rate industries to remain in the market: *"We are the majority (...) the 200 first companies in the country in production. If we lower the product [the nutritional levels], the others will have to follow, otherwise they will lose market share. Our companies take the lead to set an example..."* (RS1).

Thus, RS1 expresses the market vision that stands as the savior of the economy and of the State itself, expressed by the generation of jobs, contribution to the trade balance and taxes that guarantee the state machine functioning: *"...we produce, we employ, we pay taxes, export, we have been there for 150 years"*. Discourse that simultaneously indicates economic and political force, and implicitly²³ intimidates the government, compelling it to retreat from making political arrangements that negatively affect the business interests of the regulated sector to save it from possible retaliation.

In this sense, the PS4 subject's discourse praises this adaptation in the action of the public power before the market: "...it is no longer possible to carry out that vigilance (...) of assessing, apprehending, (...) as in the old days (...). Today, modern health surveillance works with stakeholders, partnerships and is a (...) contemporary movement. (...) gives responsibility to the industry (...) gives it the voluntariness...".

Recognized as legal and necessary in situations of risk to public health, administrative acts are depreciated and evaluated as outdated and inopportune in the contemporary context for those guided by the motto "market can everything". It should be noted that the PS4 subject's position, presented above, is not hegemonic, according to the following speech: "...ANVISA cannot escape this responsibility, (...) it must regulate and cannot be in the wake of the market" (PS5). The divergence between this manifestation and the previous one indicates that there is no harmony in the understanding of public-private interaction by the PS subjects and that the Agreements may fall short of the responsibilities of the public authorities towards the market and, therefore, be insufficient to deal with the health care needs of the community.

Discussion

The prevention and control of NCDs, particularly overweight, requires urgent and articulated actions by the public authorities, which are confronted with the logic of neoliberal policies of food corporations that are supported, on the one hand, by maximum profitability and wide market freedom and, on the other, by the weakening of state power and resistance to the compulsory regulation measures of the ultra-processed food products³⁰. By mobilizing themselves to influence the design of public policies in favor of their interests³¹ and to propose non-regulatory measures with extensive deadlines³⁰, the conduct of these corporations ends up delaying the containment of these diseases. The results of this study show the complexity of the clashes, controversies and obstacles that cross the subjects' speeches that are involved with the strategy to reformulate the ultra-processed food products.

It is noted that these corporations have massified the offer of ultra-processed food products due to their economic advantages: cheap raw materials, reduced production costs and highly palatable products³², supported by an advertising apparatus that promotes sales^{32,33}, even if it is ethically questionable³⁴. However, despite the negative impacts of ultra-processed food products on the health and nutrition of the current population and of future generations³⁵ who are willing to consume them, these products are profitable for those who produce them, revealing the incompatibility between the purposes of the market and those related to health, according to PS5.

Unfortunately, it is the consumer who bears the burden of this global process of food corporations, since the introduction of ultra-processed food products in the food routine is not the result of strictly rational choices, but is influenced by social dynamics and stimulated by the advertising apparatus that exacerbates the consumption of these products³³. For Bourdieu³⁶, the driving force of the market threatens cultural goods (including eating habits and practices) in contemporary neoliberal society, and technological innovations and economic enterprises do not make these goods multi-diversified nor do they promote consumer satisfaction; they are profitable goods and indifferent to cultural ties, acceptable to the "maximum public" of all countries.

Hence, it is possible to understand the interface between the food market globalization, the food transition and the international dissemination of risk factors for NCDs^{6,37}. With the intensification of NCDs and their association with the ultra-processed food products^{5,6,32,34}, this neoliberal ideal of full market independence is undone, and the State is summoned and pressured to intervene in defense of public health, even if this implies conflicts between private interests and social demands³⁸ in favor of a healthy product.

In view of this, social scientists point out that the sovereignty of national states has weakened with the economy globalization¹; assumes the role of local and global political dialog, since it is relativized and subjected to strong and constant influences of international food trade rules and agreements, especially those led by the *Codex Alimentarius* Commission to deal with matters of quality and health safety standards³⁹. This loss of state autonomy was highlighted by PS4 and RS1. There is also constant pressure from public authorities to make more flexible rules and procedures in order to enhance the free market³⁹, such as the formalization of the Agreements¹⁵. Among the practices adopted by food

corporations to mobilize the public agenda in favor of their interests are the lobbying practice, the threat of job cuts, the closure of industrial activities, lawsuits, etc.³¹ The RS1 duly clarified this economic power of corporations in the face of the state apparatus.

Thus, presenting different justifications, the subjects linked to the RS and the PS point out, respectively, that they follow the guidelines of the multilateral organizations and that the national regulatory agenda advancement depends on international deliberations, characterized by prolonged debates and slowness in the results. At the time, the RS subject states the WHO has granted a longer deadline to adapt the formulas of the ultra-processed food products compared to those defined in the Agreements.

Brazilian health regulation foresees formal processes, with the active involvement of different representatives (RS, CS, universities and public health institutions – and open participation of stakeholders)²⁶. It is in this environment that scientific evidence, political-ideological positions, expectations and strategic lines are confronted to protect the population from food risks. Under these different views interspersed with conflicting interests, it is necessary to modulate the possible consensus to enable the control of the risks of the ultra-processed food products and the establishment of effective public intervention measures to adjust market practices. Contrastingly, the Agreements¹⁵ interrupt these processes, without allowing a plural and transparent debate, establishing restricted goals and with limited representation of corporations⁴⁰.

On the one hand, there is the need to regulate the ultra-processed food products and, on the other, there is the pressure from the international market – added to the absence of supranational rules and the economic expressiveness of the corporations involved. So, in view of that, the institution of Agreements to replace regulation was the strategy made possible by the Brazilian government to alleviate conflicts with the food market, guarantee its commitment and envision a possible advance. These Agreements were supported by the RS and part of the PS, sensitive to market demands.

However, in previous times, due to the increase in the regulatory function of the State mentioned by the CS2, there was a clash between the government and the food corporations of less economic power, and the regulation was approved, having the rules and sanctions instituted to ensure the addition of specific nutrients in salt²⁸ and flours²⁹.

These Agreements are modalities similar to public-private partnerships in the field of health that are based on the sharing of objectives and/or decision-making between the public and private sectors to achieve results without significant political-institutional wear and tear⁴¹. In Europe, numerous public-private partnerships in the field of health have been leveraged to face the phenomenon of overweight and obesity, aiming to revise consumption habits, as well as reduce components of ultra-processed food products⁴². The “flexible regulation” of the Agreements presumably softens the harmful impacts to public health and, simultaneously, benefits the market, ensuring an extended time for adjustments, without any consequences for non-compliance⁴³. However, this type of “flexibility” can result in excessive concession by the State to corporations as previously addressed by the CS1, PS5 and PS6, and in the commitment to the effective defense of public health interests – healthy products and reduction of NCDs.

The Brazilian Ministry of Health and ANVISA praise the Agreements for the sodium reduction as innovative, legitimate and transparent⁴⁴. Between extolling this practice and discarding its possible merits, considerations are necessary: firstly, the ideological nature of this measure, demonstrated by the waiver of the State’s prerogatives in establishing rules for the market and by the option of flexible and long-lasting Agreements; secondly, weakening of the social control arenas for not involving the civil society representations in the discussions held in the public sphere.

In contrast to signifying advances in food control, being acts of understanding as pointed out by the RS subject or recognition of the industrial sector as a partner, as mentioned by the PS subject, the Agreements represent political-institutional limitations for the exercise of the health surveillance, in particular, in three aspects: (a) they create precedents to avoid regulation in order to reduce the levels of critical nutrients, which is a fundamental action to protect health; (b) they generate situations of institutional incoherence, since compliance with the Agreements cannot be monitored, and (c) they neglect the civil society role in the process of arranging public health measures.

In view of the driving force of the market, the defense of the common good is primarily in the hands of organized civil society, especially that which reaffirms the regulatory character of the State.

One of the central qualities of the “good governance” of any initiative is the representation and participation in decision-making of those affected by the exercise of power⁴⁵. The forced absence of civil society breaks with the practices provided in the 1988 *Brazilian Federal Constitution* of creating public spaces for intervention and for the expression of participatory democracy. Civil society can act as a distinguished member in the defense of the public interest and the primacy of health issues, and, in this case, it can contribute to the approval of impacting targets for the reduction of risk nutrients in the ultra-processed food products.

In a distorted way, although regulation is usually perceived as an authoritarian measure, it is opportune and necessary to prevent increasing health risks and it also provides opportunities for the potential PNAN 2012 guideline implementation¹⁹.

Conclusion

Regulating health risks associated with ultra-processed food products to avoid rising NCD rates is a challenging task for governments, as it implies dealing with the expressive power of food corporations and the limitations of national and international health agencies, in the face of an active civil society. Through the use of participatory strategies and practices, health regulation tries to manage the set of influences and divergent interests with the key subjects, in order to promote a fair, legitimate and extensive result, which is primarily oriented to guarantee healthy products without neglecting market interests.

In contrast to the regulation, the Agreements¹⁵ disregard the provisions of PNAN 2012 and represent a setback in view of their particular characteristics – malleability, restricted social participation, limited scope, with no provision for sanctions and penalties, and long-lasting – whose results will slowly interfere in the nutritional improvement of food products.

Contributors

A. V. A. Figueiredo was responsible for the study design, data collection and analysis, and article writing. E. Recine discussed the study structure, methodology, article approach, and reviewed the final version of the text.

Additional informations

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Resumo

A relação entre o consumo de produtos ultraprocessados e o aumento da obesidade e do risco de doenças crônicas não transmissíveis (DCNT) impulsionou organismos internacionais a mobilizarem os governos para regular a redução dos teores de açúcares, gorduras e sódio nesses produtos. O artigo analisa a compreensão de diferentes sujeitos estratégicos sobre os riscos à saúde associados aos produtos ultraprocessados, e a intervenção pública adotada para modificar a sua composição, em atendimento à Política Nacional de Alimentação e Nutrição (PNAN). Trata-se de uma investigação empírica qualitativa em que foram entrevistados representantes de 12 instituições. Adotou-se o referencial teórico da Hermenêutica da Profundidade em conjunto com a Análise de Discurso. Este estudo se concentrou no tema genérico “Acordo e Regulação” e no enunciado matriz “Regulação Consentida”. Considerando um cenário de circulação global dos produtos ultraprocessados, não disciplinados por normas internacionais, a medida de intervenção pública foi a de instituir Acordos com algumas corporações de alimentos, em contraposição ao regulamento compulsório. Tal medida foi criticada por parte dos sujeitos do Setor Público e da Sociedade Civil, pois a relevância do tema para a saúde pública requer regras claras para redução dos nutrientes-chave e com sanções. Em posição contrária, os sujeitos do Setor Regulado avaliam essa medida como sensata e de compreensão do governo. Embora haja divergências entre os sujeitos, constata-se que os Acordos, em contraposição à regulação, desrespeitam as disposições da PNAN 2012 e representam um retrocesso face às suas características particulares, cujos resultados interferirão lentamente na melhoria nutricional dos produtos ultraprocessados.

Alimentos Industrializados; Controle e Fiscalização de Alimentos e Bebidas; Política Nutricional; Vigilância Sanitária

Resumen

La relación entre el consumo de productos ultraprocessados y el aumento de la obesidad y del riesgo de enfermedades crónicas no transmisibles (DCNT) impulsó a los organismos internacionales para que se movilizaran los gobiernos, con el fin de regular la reducción de los contenidos de azúcares, grasas y sodio en esos productos. El artículo analiza la comprensión de diferentes temas estratégicos sobre los riesgos para la salud, asociados a los productos ultraprocessados, y la intervención pública adoptada para modificar su composición, en atención a la Política Nacional de Alimentación y Nutrición (PNAN). Se trata de una investigación empírica cualitativa en que fueron entrevistados representantes de 12 instituciones. Se adoptó el marco referencial teórico de la Hermenêutica de la Profundidad, en conjunto con el Análisis de Discurso. Este estudio se concentró en el tema genérico “Acuerdo y Regulación” y en el enunciado matriz “Regulación Consentida”. Considerando un escenario de circulación global de los productos ultraprocessados, no disciplinados por normas internacionales, la medida de intervención pública fue la de instituir acuerdos con algunas corporaciones de alimentos, en contraposición con la regulación obligatoria. Tal medida fue criticada por parte de agentes del Sector Público y de la Sociedad Civil, puesto que la relevancia del tema para la salud pública requiere reglas claras para la reducción de los nutrientes-clave y las sanciones que correspondan. En posición contraria, los sujetos del Sector Regulado evalúan esa medida como sensata y de comprensión del gobierno. A pesar de que haya divergencias entre los agentes, se constata que los Acuerdos, en contraposición con la regulación, no respetan las disposiciones de la PNAN 2012 y representan un retroceso frente a sus características particulares, cuyos resultados interferirán lentamente en la mejora nutricional de los productos ultraprocessados.

Alimentos Industrializados; Control y Fiscalización de Alimentos y Bebidas; Política Nutricional; Vigilancia Sanitaria

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