

Appendix – Carbonating the World

Food and Nutrition Regulation: Latin America Leads the Way

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While most countries around the globe have thrown out a welcome mat to the soft-drink industry, several countries in Latin America have recognized the role of sugar-sweetened beverages (SSBs) and unhealthy foods more generally in soaring rates of obesity and diabetes. And they have started passing laws to discourage consumption.

Mexico

National regulatory and policy responses

In 2008, Mexico's Secretary of Health established an expert panel to develop healthy-beverage recommendations.^{1,2} In addition to specific recommendations for limiting consumption of unhealthy beverages, the expert panel also proposed myriad ways to regulate beverages. Many of those recommendations have now been codified into law and implemented, including: working with the Secretary of Public Education and schools on restricting the availability of SSBs in all schools; following strict guidelines regarding fruit juice, water, and fat-free milk; and prohibiting the advertising to children of many SSBs and other foods on television. While the expert panel also recommended that advertising of SSB, juice, whole milk, or whole-milk-yogurt-based drinks also be prohibited on radio and the Internet there is currently no regulation in Mexico that addresses children's advertising through the radio or Internet.

In 2010, Mexico's Secretary of Health, in collaboration with the Mexican National Institute of Public Health (INSP), published a National Agreement for Healthy Nutrition (*Acuerdo Nacional Por La Salud Alimentaria*).³ That agreement not only highlighted the economic and social costs associated with overweight, obesity, and related chronic diseases, but also outlined 10 priority objectives and the role that each type of stakeholder (industry, municipalities, civil society, academic and professional organizations, and unions) should play in carrying out these objectives. The priority objectives specifically related to SSBs and sugar are: "3. Decrease the consumption of sugar and fat in beverages; 7. Decrease the consumption of sugars and other caloric sweeteners added to foods, among others by increasing the availability and accessibility of foods with reduced or without caloric sweeteners added." In a country facing epidemics of obesity and type 2 diabetes, this agreement likely helped further the governmental actions that resulted in the 2013 beverage and junk-food tax regulations.

Those policy initiatives paved the way for Mexico's National Strategy for the Prevention and Control of Overweight, Obesity, and Diabetes ("National Strategy").⁴ The primary objective of that strategy is to promote health and increase the sustainability of national programs to reverse the epidemics of obesity and chronic diseases, especially type 2 diabetes. The National Strategy includes an action plan for reducing the consumption of foods and beverages high in calories and with little nutritional value, and it addressed food and beverage advertising targeted to children. With respect to food and

beverage advertising directed to children, Mexico's National Strategy defines children's television viewing hours as 2:30 PM to 7:30 PM Monday through Friday and 7:00 AM to 7:30 PM on Saturday and Sunday.⁵ It states that only products that comply with nutrition requirements outlined by the Secretary of Health may be advertised during the children's television viewing hours. However, if it can be guaranteed that no more than 35 percent of the viewing audience is under 12 years of age, any food or beverage product may be advertised during the children's viewing hours or if the program is a soap opera, news, movie not suitable for children, sports coverage, or a sports event itself. That is further described below regarding Mexico's Law on Advertising to Children. (*Carbonating the World* discusses the weakness of using a threshold of 35 percent for limiting advertising to children.) Bloomberg Philanthropies invested \$16.5 million into advocating for the food- and beverage-related national regulations described below.^{6,7}

Beverage tax

At the end of 2013, the Mexican government adopted a law for "Special taxes related to production and services" (IEPS, for its acronym in Spanish).⁸ The law states that flavored beverages; concentrates, powders, syrups, flavored essences, or flavor extracts used to produce flavored beverages; and syrups or concentrates used to prepare flavored beverages are taxed if they contain any added sugars. The tax is 1 Mexican peso per liter. The same law applies a 25 percent tax to energy drinks. The law also levies an eight percent tax on non-basic foods that have 275 kcal or more per 100 grams, including snacks, baked goods, chocolate and other chocolate-derived products; flans and puddings; sweetened fruits and vegetables; peanut and hazelnut spreads; sweets with *dulce de leche*; grain-based foods; and ice creams, snow cones, and ice pops.

The New York Times reported that the beverage and junk-food tax laws were a result of a "strong push by the Nutritional Health Alliance" (*Alianza por la Salud Alimentaria*).⁹ That alliance is composed of civil associations, non-governmental organizations, and professionals working for "the effective recognition of infant rights and of food, water and health through the development and urgent implementation of a comprehensive policy to combat the obesity epidemic and malnutrition."¹⁰

A little more than a year after the beverage tax was implemented on January 1, 2014, the Mexican Supreme Court ruled that the tax was constitutional. Part of the reason for that ruling was the stance of the World Health Organization (WHO). The Mexican Supreme Court noted that the WHO stated "that countries like Mexico should adopt fiscal means to influence the prices of products whose consumption of which involves the ingestion of 'empty calories.'"¹¹

In its first year, the tax generated an estimated 31 billion Mexican pesos (about US\$2 billion) in revenues, which represents almost a third of what the health sector spends on obesity-related chronic-disease treatment.¹² Juan Rivera Dommarco, the director of the Center of Research of Nutrition and Health at the INSP, estimates that about 60 percent of those revenues were related to SSBs.

Before the beverage tax was in place for two years, in October 2015 the Mexican Congress succumbed to industry pressure and voted to reduce the tax by 50 percent for SSBs that have up to 5 g of added sugars for every 100 ml (a Coke has about 11 g per 100 ml) or 50 Mexican cents per liter.¹³ That happened despite the fact that both national and international organizations were advocating for a *higher* tax.¹⁴ However, ten days later, the Senate voted to reverse the ruling to reduce

the beverage tax by 50 percent.¹⁵ Therefore, going into 2016, the Mexican beverage tax law will remain, in the end, unchanged.

The INSP is still calling for a doubling of the tax to two Mexican pesos per liter.¹⁶ INSP also states that 5 g of added sugar per 100 ml is not an acceptable healthy limit according to the WHO's recommendation that an adult should consume no more than 25 g of added sugar per day.¹⁷

Marketing regulation

Mexico passed the General Health Law of Advertising (*Reglamento de la Ley General de Salud en Materia de Publicidad*) regarding the nutrient content of food and non-alcoholic beverages that are advertised on both public and cable television. That law was aimed at protecting children who have the right to satisfy their “dietary needs, health, education, and healthy recreation for sound development.”¹⁸ The law promotes a healthy diet by restricting the advertising of unhealthy foods on television (a child-oriented show is defined as one having an audience that has at least 35 percent of viewers being between 4–12 years old) and in the cinema. Overall, the law states that food and non-alcoholic beverage advertising cannot promote habits that undermine good nutrition.

Some critics have complained that the law is seriously flawed. For instance, it excludes *telenovelas* (Mexican soap operas), sports events, and news. INSP surveys found that 44 percent of schoolchildren cited *telenovelas* as being among their favorite television programs.^{18,19} A study conducted between August and December 2014 on the implementation of the law found that 27 percent of the ads shown during restricted times (see above) were for the four initially regulated food and beverage categories (flavored beverages, snacks, confectionary, and chocolates). Of those ads, 48 percent were shown during *telenovelas*, 21 percent during non-children's movies, and 12 percent during sports programs—programs exempt from advertising restrictions, but are watched by many children.²⁰ The remaining eight regulated food and beverage categories began to be covered in January 2015 and have not yet been evaluated. The *Alianza por la Salud Alimentaria* (Alliance for Healthy Food) points out that children and adolescents may be exposed to substantial advertising for unhealthy foods if they keep watching television after the children's programs have ended or watch “adult” or “family” programs that older family members are watching.²¹ Children may also see advertising for unhealthy foods if they keep watching children's programming outside of the regulated hours. Researchers at INSP believe that the criteria to define children under the law should be extended to 16 years of age following international recommendations.²² The Alliance for Healthy Food would extend that to include everyone up to 18 years of age because “food and beverage advertising does not only increase the vulnerability of boys and girls, but of adolescents as well, limiting in this way their ability to choose healthy behaviors.”²³

Rivera and the Alliance for Healthy Food also believe that the Mexican government should expand its regulatory policies to include the marketing ploy of including a toy or any other type of incentive in a packaged food product. The alliance also has recommended that the General Health Law of Advertising should cover Internet advertising of foods and beverages targeted to children and, ideally, adolescents.^{24,25}

School regulation

In mid-2014, Mexico's Secretary of Public Education passed the Guidelines on the Sale and Distribution of Prepared and Processed Food and Beverages in all public schools.²⁶ Those guidelines built off of a 2010 governmental agreement that established similar guidelines around food and beverage sales in primary schools.²⁷ The main aim of the guidelines is to promote healthy eating and drinking habits, particularly in the most vulnerable groups. The guidelines prohibit the sale or distribution of beverages and foods that are high in simple sugars, refined carbohydrates, fat, or sodium. Servings of beverages for middle and high schools are limited to 250 milliliters (one cup), with no more than 10 calories, 55 milligrams of sodium, and a limit on non-caloric sweeteners (100 mg/250 ml) per portion; drinks may not contain caffeine or taurine, which are common in soft drinks and energy drinks. In addition, all schools are required to provide drinking water and promote the exclusive consumption of water and *not* promote any other type of beverage.

The guidelines created a "Committee on School Consumption." Every primary school is supposed to establish such a committee, with members, especially parents, committed to the development of measures concerning the sale of packaged foods and beverages in schools. School principals, teachers, and administrators are not permitted to participate in committee actions. The committee is also supposed to train school-food workers to implement the guidelines.

Brazil

In 2009 Brazil's national Health Surveillance Agency (Anvisa, in Portuguese) tried unsuccessfully to regulate the advertising of unhealthy foods. Resolution RDC Anvisa 24/10 would have mandated that any advertising (especially that targeted at children) of foods high in sugar, sodium, or saturated or trans fat would have to disclose the health risks associated with the excessive consumption of those substances.²⁸ The food industry, especially the Brazilian Association of Food Industry (ABIA) and the Brazilian Association of the Soda and Non-Alcoholic Beverage Industries, as well as public relations and advertising firms, expressed fierce opposition. The National Council for Advertising Self-Regulation immediately called for the suspension of that resolution.

Industry's first argument was that all food is healthy if consumed in moderation and balance because good nutrition does not have to do with any one food, but the overall diet.²⁹ The critics also argued that any regulation by Anvisa was unconstitutional and that the consumption of unhealthy foods was an individual's responsibility. Taken together, the industry associations contended that any regulation of "unhealthy foods" was paternalistic, anti-democratic, and abusive to the public. The industry brought many lawsuits,³⁰ and ultimately the resolution was suspended. The federal attorney cited doubts about how the nutrient content of food was to be defined; and Anvisa also had doubts about how to issue the resolution.

According to the nonprofit Brazilian Institute for Consumer Protection (IDEC is its acronym in Portuguese), industry forced the government to withdraw resolution 24/10.³¹ In 2009, there was public debate about the resolution, but that was the last time the government formally brought together all stakeholders to discuss the matter.³² Though industry's litigation was successful, to counter the government's initiative and indicate that industry was concerned about public health, the ABIA and the Brazilian Association of Advertisers (ABA) promoted self-regulation. As a result, 24 large companies signed a pledge to limit food and beverage advertising to children less than 12 years of age. Those companies included Coca-Cola Brasil, Nestlé Brasil, Parmalat Brasil, and PepsiCo.³³

In 2011, the Brazilian Ministry of Health passed the Strategic Action Plan to Confront Non-Communicable Diseases (NCDs) in Brazil 2011–2022. That plan described many actions to prevent NCDs and many actions around “healthy eating” related to processed foods and to the regulation of processed foods.³⁴ Specific highlighted actions include measures to reduce the salt and sugar content of foods and to regulate food advertising targeted at children. It also called for improving food labeling standards and regulatory actions on the advertising of food, non-alcoholic beverages, and infant foods.³⁵ In 2014 the Ministry of Health published “Dietary Guidelines for the Brazilian Population,” which strongly endorsed the traditional diet and discouraged consumption of processed foods and fast foods.³⁶

Brazil’s strategic plan also encourages the use of advocacy and legal efforts. Advocacy actions might include self-regulation initiatives around food advertising and support of civil society organizations representing the public interest to defend the regulation of food advertising.³⁷ Meanwhile the Ministry of Health, in collaboration with Anvisa and other government entities, would seek multi-sectoral collaborations to strengthen and monitor the effectiveness of regulations around food and beverage advertising, especially targeted to children.³⁸

Despite the support of representatives of the Ministry of Health, Ministry of Education, and Anvisa for regulating food marketing, Brazil has made little progress. Existing legislation is not enough, because food advertising still misleads children. The huge influence of multinational food and beverage companies blocks the progress of laws and regulations. According to IDEC’s research, the attempt to regulate food marketing was suspended after the legal challenges by industry.

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Marketing regulation

In 2006, Brazil passed Law 11.265 on the Regulation of the Marketing of Foods to Infants and Young Children.³⁹ That law regulates the marketing and practices related to infant formulas; fluid or powdered milk; milks of vegetable origin; and complementary and cereal-based foods designed for infants or young children, as well as other foods or beverages (milk- and not-milk based) marketed for infants or young children.

In 2008, Resolution 408 was passed that built on a 1990 law.^{40,41} That resolution was designed to promote healthy eating to prevent an increase in morbidity or mortality from NCDs, as well as overweight and obesity among all age groups. It recognized that “infants and young children are the most vulnerable to advertising.” According to the Nutrition Committee of the United Nations, aggressive marketing practices, especially television advertising, directly undermine the right to adequate food and to health. The resolution called for nutrition labels that highlight the sodium, sugar, saturated fat, trans fat, and total fat content of foods, along with education efforts to promote understanding of the labels. It also called for the regulation of advertising for unhealthy foods, especially advertising directed to children. Finally, it recommended limiting advertising for unhealthy foods at certain broadcast times, prohibiting the use of gifts that might promote product purchases, and using warning statements about the risks of excessive consumption, among other measures.

In March 2014, Brazil’s National Council for the Rights of Children and Adolescents (CONANDA, for its acronym in Portuguese) passed Resolution 163 that bans all forms of advertising and marketing to children younger than 12.^{42,43} That resolution defined marketing as any means of promoting

products, services, brands, and businesses. Marketing includes, but is not limited to, print advertising, television commercials, radio announcements, banners, Web pages, packaging, promotions, merchandising, and product placement in TV shows and movies. Furthermore, the resolution applies to marketing at events and public spaces and on television at any hour on programs that are related to children or targeted to adolescent and adult audiences.

Resolution 163 prohibited advertising and marketing that sought to persuade children through the use of such means as: 1) infantile language, special effects, and excess colors; 2) infant music soundtracks or singers using infant voices; 3) images of children; 4) persons or celebrities with appeal to children; 5) child characters or announcers; 6) animated designs, such as cartoons; 7) dolls or similar toys; 8) prizes or collectibles that appeal to children; and 9) marketing promotion with competitions or games that appeal to children.

Chile and Ecuador Set the Pace on Food Labeling and Marketing

Chile

“Pedophiles of the 21st century that violate the human rights of children” is how Chilean Senator Guido Girardi referred to Coca-Cola, Kellogg, McDonald’s, and Nestle at the Second International Conference on Nutrition of the United Nation’s Food and Agriculture Organization.^{44,45,46} Girardi led the effort that, in July 2012, resulted in the passage of the Chilean Law of Food Labeling and Advertising.⁴⁷ That law requires all packaged foods to bear an ingredient label, as well as a nutrition

label that states when a food is high in calories, sugar, sodium, or saturated fat. The law also bars junk-food advertising to children under 14 and limits the advertising and availability of foods in schools.

Law 20.606 could not have been passed in Chile without support from the Ministry of Health, local politicians in Santiago, and the University of Chile’s Institute of Nutrition and Food Technology (INTA), among others. The front-of-package labels will have “stop signs,” though in black and not red, that boldly announce that a food is “high in calories,” “high in salt,” “high in fats,” or “high in sugars.” Therefore, a front-of-package label may bear up to four stop signs. Natural foods that do not have added fat, sugar, or salt, such as vegetables and beans, are exempt from the law. Beverages and other liquid foods, such as soups, will escape labeling only if they have less than 70 calories, 100 mg sodium, 5 g sugar, and 3 g saturated fat per 100 ml. The Chilean labeling law will go into full effect in June 2016. It is already being reported that companies that import processed foods into Chile will stop importing certain products subject to the law, such as Mondelez’s popular Oreo cookies and Club Social crackers.⁴⁸



Example of beverage label that will be required in Chile.

Ecuador

In November 2013 Ecuador passed a Ministry of Health regulation that mandated the printing of a “nutritional traffic light” on the front or back of all processed foods and beverages. Labels must categorize the total fat, sugar, and salt content in a product as being low (green), medium (yellow), or high (red).⁴⁹ Labels may also state, “Does not contain sugar,” “Does not contain fat,” or “Does not contain salt.” The food industry opposed the law, and the World Trade Organization pressured lawmakers to modify the law so that the nutrition label could be put on the back of the package rather than the original mandated front.⁵⁰ While the Consumer Association in Ecuador supported prominent front-of-package labeling, the National Association of Food and Beverage Manufacturers supported the change, stating that front-of-pack labels destroy the brand visibility and the package image. Nevertheless, the back-of-package labels still should be highly instructive to the average consumer.⁵¹



Food labels in Ecuador highlight a high or low content of key nutrients.
Photo by Anny Teran Arango.

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Endnotes

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