

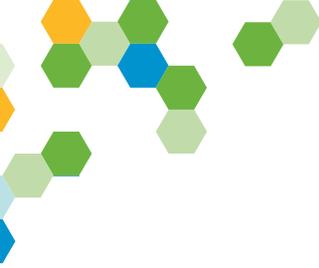


SPECIAL REPORT

Regulation is not the same as Prohibition: The major challenge of regulating the food industry in Peru

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1. BACKGROUND
2. WHAT THE LAW AND ITS REGULATION SAY?
3. THE CONTROVERSY BETWEEN THE INDUSTRY AND THE REST OF ACTORS

AUTHOR

1. BACKGROUND

Understanding the rules that regulate the food industry means, essentially, understanding how such regulation works in terms of food safety control for having an impact in public health.

In Peru, the National Food Safety System is built on the **Law No. 1062, Food Safety Law** (Ley de Inocuidad de los Alimentos), which through its **regulation –approved by Supreme Decree No. 034-2008-AG–** establishes the powers of the three national official authorities, who have the responsibility of: i. ensuring that the food is suitable for human consumption; ii. protecting the consumers from food-borne diseases, always having into account the vulnerability of the different groups within the population (such as children, teenagers and the elderly); iii. conducting educational programs which allow communicating effectively the safety aspects to food industry and consumers.

The organizational structure of the Sistema Nacional de Inocuidad de Alimentos (SINIA) is not integrated in the country yet, and it consists of three national official bodies: the agricultural sector, through the **Servicio Nacional de Sanidad Agraria-SENASA, which is responsible for the production and the primary processing of food**; the health sector, through the **Dirección General de Salud Ambiental-DIGESA, which is responsible for monitoring industrialized food** and some processed food services; and the production industry, through the **Instituto Tecnológico Pesquero-ITP, which is responsible for the entire food chain of hydrobiological products**.

Moreover, the country has the **Comisión Permanente de Inocuidad Alimentaria (COMPIAL)**, a body which coordinates public sector authorities, headed by de Ministry of Health. In accordance with the regulation of the Food Safety Law, such Committee is responsible for coordinating and monitoring the enforcement of this Law at the different stages of the Government, as well as with the consumers and different economic operators involved in any of the stages of the food production chain.

The Food Safety Law and its Regulation set a reference framework, although each sector has its particular management and control strategies and activities. It is proposed that an agreement was reached within COMPIAL, in order not to duplicate efforts and do improve traceability all along the chain.

However, there is no public policy on food safety. The management of food safety control is conducted through food establishments monitoring, and it is endorsed in the respective regulations; it has a national scope and is supported by its Devolved Directorates on Health, Agriculture and Fishing and its Decentralized Directorates on Health.

“In terms of food safety, nowadays there is no comprehensive national strategy, nor a national program based on the principles of risk analysis”

Since 2009, the decentralization process –with the effective transfer of functions– has implied that local and regional governments face responsibilities that haven't been previously taken for food safety management; however, they need support and training to take over local duties on food safety control.

The good intentions of middle management levels, and even of institutions, are not returned with politically-endorsed measures at the highest level, which could translate them into better budgets and prioritization of projects. At government's highest level, food safety is not important and, generally, the budget allocated to safety activities on each sector (human or financial resources, etc.) is insufficient. It should be noted that the government prioritizes the foreign trade policy, since food is a great commercial interest product, instead of doing it as a government policy for domestic market. Moreover, official health authorities link to work on food safety issues due to exports.

In terms of food safety, nowadays there is no comprehensive national strategy, nor a national program based on the principles of risk analysis, thus lines and priorities on the public policy management cannot be supported and, instead of it, guidelines of international bodies are only used as a benchmark.

There is not yet any response mechanism to health alerts or

emergencies related with food-borne diseases which integrate articulately the three sectors, according to their functions. There is a substantial loophole in the food quality aspect, since there is no authority concerned by this issue.

With regard to the legislation, there are also loopholes in the regulation on safe production and marketing of food, such as physicochemical, quality, traceability criteria, among others; legislation on functional food and supplements is also needed.

Nevertheless, it should be highlighted the progress that Peru has made on the regulations' issue in order to achieve a safety food for national consumption by implementing Good Manufacturing Practice (BPM) (which in Spanish is: Buenas Prácticas de Manufactura), the Hygiene and Sanitation Program (which in Spanish is: Programa de Higiene y Saneamiento) (PHS) and even Hazard Analysis and Critical Control Point (which in Spanish is: Análisis de Peligros y Puntos Críticos de Control) (APPCC) systems (a mandatory requirement for processed food production establishments). However there is still much to be done in respect of health surveillance, since the compliance with the law is verified in only 10% of food businesses.

Moreover, it is important to note that the country has three official food laboratories (DIGESA, SENASA and ITP), as well as some municipal governments have

“The information, education and communication component is not clearly defined and prioritized from the State within the food control system”

food control laboratories. There are also 32 private laboratories accredited by INDECOPI, which is the Official Accreditation Body, where analysis of food, beverages and water for human consumption are carried out to support official authorities and food sector in general.

Added to the aforementioned is that the information, education and communication component is not clearly defined and prioritized from the State within the food control system, certain weakness is even apparent on every sector with regard to this issue.

The same is true in the case of control and regulation of the processed food industry. A clear example of controversial regulation of industry in terms of a little or poorly oriented communication, publicity and law is the Law on the promotion of healthy eating, called “*Junk-food Law*” in Peru (which in Spanish is “*Ley de la Comida Chatarra*”).

As occurred with the fight against tobacco, the fight against obesity is emerging as a social and political confrontation among the following actors:

- Public health advocates.
- Industries of processed food and highly sugar-sweetened beverages.
- Big advertising companies which live off the advertisement of those products.

- Mass media which are economically dependent of such advertising.
- Advocates of individual rights who think that the State should not regulate what its citizens can or cannot eat.
- The audience who has got used to consume processed food and beverages in bottles and cans because it save them time and it is a part of modern life.
- Politicians who lean towards one side or another depending on electoral vagaries.

The present report will therefore review the type of regulation that this Law, and its recent regulation, involves; which puts once again on the table the discussion on consumer freedom of choice, State’s role in regulating the industry, employers’ interests and the objectives of national and global public health.

2. WHAT THE LAW AND ITS REGULATION SAY?

The Law N° 30021- Law on the promotion of Healthy eating for Children and Teenagers (*ley de Promoción de la Alimentación Saludable para Niños, Niñas y Adolescentes*) was adopted on May 17th, 2013 at the Congress with 57 votes in favour and 4 votes against.

This rule regulates the promotion and protection of

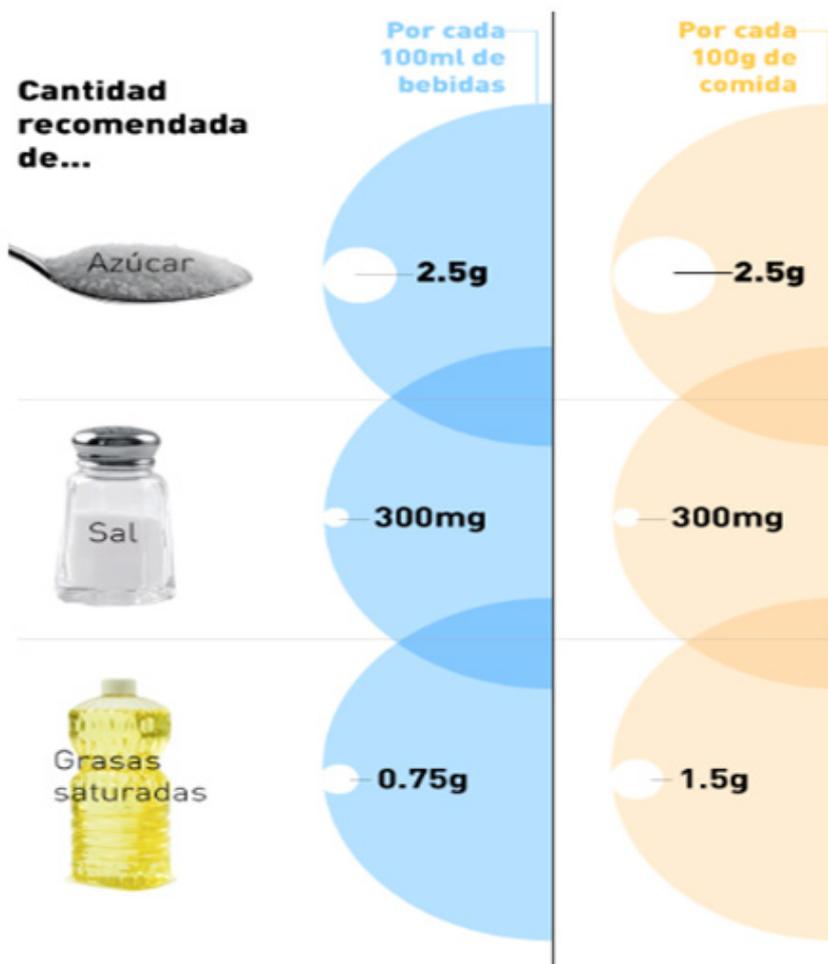
the right to public health of children and teenagers through education, promotion of physical activity, implementation of healthy school meal programs on educational centers, as well as the monitoring of all kind of information addressed to such audience, all of that with the purpose of reducing and eliminating overweight and obesity-related diseases and chronic non-communicable diseases.

Finally, two years after the enactment of this Law, last April, the Ministry of Health set out through the enactment of the Regulation the ceilings for sugar, salt and saturated fats which the processed food sold in school food kiosks should have.

Technical parameters are concentration values of sugar, salt and saturated fats in 100 grams of solid food or 100 milliliters of liquid food and non-alcoholic beverages, as explained in the rule.

Junk-food Law

(Recommended amount per 100g or 100ml of food)



In the case of sugar, it establishes that food should have a maximum of 2.5 grams per 100 milliliters of drink; or a maximum of 5 grams per 100 grams of solid food.

While in the case of salt, a maximum of 300 milligrams per 100 milliliters of drink or 100 grams of solid food is set out.

In the case of saturated fats, it is established a maximum of 0.75 grams per 100 milliliters of drink, and a maximum of 1.5 grams per 100 grams of solid food.

The truth is that more than 80% of processed food sold on the national market exceeds –some of it considerably– the ceilings set out by the Regulation.

The enactment of the Regulation has provoked once again a lively discussion on the advisability and correspondence of regulating the consumption of processed food with high sugar, salt and fats content.

Source: Semana Económica, April 2015

“It has been studied and proved that a sedentary lifestyle is one of the factors that contributes to obesity and overweight”

Recently, the Universidad del Pacífico published a book where this issue is reviewed with regulation examples and empirical cases. The truth is that we find 18% of chronic child malnutrition indicators in Peru, but concurrently we observe that 20% of people under the age of 16 are overweight or are at risk of becoming obese. Besides, 32% suffer from anemia. The study carried out by the Universidad del Pacífico questions whether there is any possibility of reversing the trend and if the State should focus more on malnutrition.

Legislative experts and analysts in this field evaluate the measures adopted with the Law by dividing the content in two groups: (i) everything related to promotion and education on a healthy eating; (ii) everything related to advertising restrictions.

PROMOTION AND EDUCATION ON A HEALTHY EATING

The first group of measures is made up of articles 4, 5, 6 and 7 of this Law. Articles 4 and 7 set as a public policy the promotion of nutritional education, sport and physical activity through information campaigns on mass media and educational programs at the learning centers.

Such measures are positive since are provisions that, instead of being restrictive, reveal a State's proactive attitude with regard to the diffusion of information relative to a healthy eating and sport's promotion, because it has been studied and proved that a

sedentary lifestyle is one of the factors that contributes to obesity and overweight.

In accordance to the law, such public policies will be monitored by an **Observatorio de Nutrición y de Estudio del Sobrepeso y de Obesidad (ONESO)**, which will also gather and provide information regarding overweight and obesity –article No. 5 of the Law–.

Analysts and sectors doubting the rule mention that, although these measures are positive due to their proactive nature, it has not been proved the suitability for solving the identified health problem of public nature. For many, the draft law should have included statistics which prove that public policies proposed can combat effectively these problems.

The fact that population eat junk food is not solely caused by the lack of information on nutrition and the benefits or harms of eating one thing or another. People know that eating junk food is not healthy.

The most probable explanation for keeping on eating it would not be an alleged lack of information, but a lack of resources to buy “healthier” food, since it is proved that a poor diet is directly and inversely linked to a lower income. Thus, junk food often can be the best choice for people with limited resources.

Furthermore, among this group of measures, the one which allows the creation of food kiosks

“The Law has also a section in which analyses the incidence of advertising on dietary habits”

and healthy scholar canteens for regular basic education institutions, either they are public or private, gives rise to a particular concern. According to the Law, such kiosks and school canteens will provide exclusively healthy food and beverages, following the standards set out by the Ministry of Health, from a list of adequate food for each age that is based on the Regulation –article No. 6–.

Although such measure contributes to an increasing distance of children and teenagers from unhealthy food, it is obvious that is not helpful enough that children eat healthy at school, and when they arrive at home their parents order high-fat meals or high-sweetened drinks. The State has not the capacity, nor the power, of controlling what children eat at home. This last argument rather points out an underlying measure, such as an information campaign at national level that educates homes on good dietary habits, options of healthy and cheap food that the State can provide to the poorest strata of population.

ADVERTISING RESTRICTIONS

The Law has also a section in which analyses the incidence of advertising on dietary habits –paragraph IV–. The analysts of this rule expected a suitability analysis of the implemented restrictions due to an alleged direct link or association between commercial advertising and dietary habits of children. However, such premise is not fulfilled when revising the Law.

The advertising, included the one which appears in the product, of foods and non-alcoholic drinks with trans fats and high sugar, sodium and saturated fats content, must display the following sentences in a clear, legible, highlighted and understandable form, depending on the case:

- *“High in (Sodium-sugar-saturated fats): Avoid excessive consumption”*
- *“It contains trans fats: Avoid its consumption”. Such warning will be applicable to food and non-alcoholic drinks which exceed the technical parameters set out in the regulation.*

Those who proposed this Law and uphold it affirm that it is not intended to ban any kind of food, but regulate the type of messages that advertisers use to sell their products. They say that, without any regulation, it is unfair fighting against an industry that spends millions in advertising their products. Additionally, they stated that the costs produced by obesity-related diseases will cost a huge amount of money to the State, thus, it has the right to legislate to protect the health of children and teenagers and ensure its future economic health.

Those opposing to this Law claim that the State has no right to interfere in a matter which is only responsibility of parents. They note that the food choice is the exclusive concern of parents. Besides, they consider

“Facing the proposals of regulation, food industries are thinking about a self-regulation as an alternative”

dangerous that the State may wish to regulate the freedom of expression of advertisers, a regulation seen as the starting point of the further erosion of other social and individual freedoms.

Furthermore, they tell that a poor diet is not the only cause of childhood obesity and that the Government should strengthen their educational programs, because, from their point of view, an educated person is able to choose adequately what to eat. In addition, they assure that a regulation of the processed food industry will imply unemployment and economic losses and therefore advertising companies will lose millions. Some of them go beyond and postulate that this Law will make mass media “dependent” of State’s money due to the decrease in private advertising income, judging it a hidden way to “control” mass media.

The truth is that, facing the proposals of regulation, food industries are thinking about a self-regulation as an alternative, in particular with regard to advertising issues. In 2012, main companies producers of processed food signed an agreement on self-regulation in the framework of the Asociación de Nacional de Anunciantes (ANANDA), which is under compliance supervision by the Consejo Nacional de Autorregulación Publicitaria (CONAR). Other countries of Latin America have copied this agreement, which generally

implies the companies’ commitment not to target food advertising to an audience under 12 and to produce more healthy food.

3. THE CONTROVERSY BETWEEN THE INDUSTRY AND THE REST OF ACTORS

For the dean of the School of Nutritionist of Peru, Oscar Miranda Cipriano, a rule by itself is not going to improve nutrition and health of children and teenagers, if it is not complemented with an educational campaign. The dean recommends promoting the change of habits, informing about how to eat adequately and the consequences of it. Nutritional education should include the school curriculum. The campaign should also help the industry to gradually modify the content of products.

For Comex Perú, the problem that requires the greater attention in the field of health is malnutrition. Furthermore, it has been noted that obesity –not overweight– “is not a latent problem”, since only 0.9% of homes in the country suffer from it. Comex affirms that there are not sufficient national studies which describe it as a public health critical issue in our country, the question should be therefore if the erosion of the freedom of choice and free enterprise that this legislation means are correct.

For this trade, obesity and overweight problems cannot

“From the perspective of the School of Nutritionists, policies which aim at eating and nutrition are needed in various sectors”

be attributed exclusively to an excessive intake of different types of food, because there are many other factors that have a vital role in those problems.

Parameters will enter into force when the comprehensive regulation of the Law was approved, which will include restrictions to the advertising of such food aimed at people under 16, as well as the specific regulation on “healthy kiosks” at schools. The commission in charge of preparing it is composed of the Presidency of the Council of Ministers and the Ministers of Foreign Trade and Tourism, Production, Agriculture, Education and Health.

From the perspective of the School of Nutritionists, policies which aim at eating and nutrition are needed in various sectors –such as agriculture,

industry, health, social welfare and education–. Countries where are changing from a diet rich in whole grains to a diet high in fat, sugar and processed food should take measures so that food supplies correspond to population’s health needs.

From WHO, the 194 States which are members of this organization agreed on the Global Plan of Action for prevention and control of non-communicable diseases at the World Health Assembly in May 2013.

One of the nine voluntary targets of this Plan is “to curb the increase of diabetes and obesity”. Moreover, it proposes measures that countries can adopt to fight obesity, such as increasing the consumption of fruits and vegetables, or managing food subsidies and taxes to promote a healthy diet.

Latin America's legislation for regulating and promoting a healthy eating

ORIGIN OF THE INITIATIVE	PROMOTING EXERCISE	REGULATION OF KIOSKS IN SCHOOLS	NUTRITIONAL EDUCATION	INFORMATION AND LABELLING TRANSPARENCY	ADVERTISING REGULATION	OBESITY OBSERVATORY
Chile	o	o	o	o	o	x
Colombia	o	o	o	o	o	x
Parlatino	o	o	o	o	o	o
Peru	o	o	o	o	o	o
Uruguay	x	Δ	o	x	x	x
Costa Rica	x	o	x	x	x	x

Source: own elaboration. o= it is regulated; Δ it is partially-regulated (with reference to the others); x= It is not regulated or applied.

Source: Revista Agraria, No. 152.

WHO's stance: Necessity of a more strict economy to reverse the obesity epidemic

A new study by US experts from California University supports the WHO's position with regard to the need of measures that governments may adopt to reverse the obesity epidemic, preventing the dissemination of ultra-processed food products.

According to WHO, such measures could include:

- Economic incentives for producers who sell healthy and fresh food instead of ultra-processed food, as well as subsidies to cultivate fruits and vegetables.
- Economic disincentives for industries which sell fast food, ultra-processed food and soda, as well as a tax for ultra-processed food and the reduction or elimination of subsidies to producers/companies which use corn for a rapid growth of tissues and excessive amounts of fertilizers, pesticides, chemical products and antibiotics.
- Zoning policies to control the number and type of food establishments.
- A more strict regulation of fast food and soft-drinks advertising, in particular the one which is aimed at children.
- Commercial regulations which deter from importing and consuming fast and ultra-processed food or soft-drinks.
- More effective labeling systems, particularly for ultra-processed food, which includes fast food and soda.

Source: WHO Bulletin, February 2014.

Law on the Promotion of Healthy Eating: Conditions for Advertising

"The advertising which is aimed at children and teenagers under the age of 16 and which is spread by any social mass media should be in line with the policies on health promotion. Therefore, it should not:

- Encourage immoderate consumption of food and non-alcoholic drinks with trans fats, high sugar, Sodium and saturated fats content, in accordance with the present Law.
- Show non appropriate portions of food to the situation that appears on it, nor to the age of the audience at whom it is aimed.
- Use points or techniques which take advantage of the ingenuity of children and teenagers, so that they can get confused or misunderstand the nutritional benefits of that advertised product.
- Raise expectations about a sense of superiority due to its consumption, or about a sense of inferiority resulted from not consuming it.
- Point out as benefits of its consumption being stronger, gaining or losing weight or becoming popular.
- Represent social stereotypes that may originate prejudices or any kind of discrimination related with its consumption.
- Create a sense of urgency or dependence for buying food or soft drinks, nor generate a feeling of exclusivity and immediacy.
- Suggest that parents or adults are more intelligent or generous if they buy such food or beverage than the others who do not do it.
- Neither refer to parents' feelings of affection towards their children based on purchasing the product or not.
- Promote offering gifts, rewards or any other benefit which is aimed at fostering the procurement or consumption of such food or soft drinks.
- Use testimonies of real or fictional characters who are known and acclaimed by children and teenagers in order to induce to consumption.
- Set out suggestions referred to dietary or nutritional substitution of main meals, such as breakfast, lunch or dinner.
- Encourage or justify the fact of eating or drinking immoderately, excessively or compulsively.
- Show pictures of natural products when they are not.

Assertions and terminology referred to healthy or nutrition must be supported by scientific evidence and can be required at any time by authorities, either it is ex officio or upon request of a citizen."

Source: LAW ON THE PROMOTION OF A HEALTHY EATING, LAW No. 30021 (05-2013).

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