



**ALIMENTANDO
POLÍTICAS**

Dec.2018

**PROMOTING
FRONT-OF-PACKAGE
NUTRITIONAL LABELING
POLICIES IN BRAZIL AND
ARGENTINA**

Executive Summary 05

I. Introduction 06

II. Approaches and Results 07

III. Final Remarks 10

IV. Implications and Recommendations 11



Executive Summary

The present report is an outcome of the research project entitled “Front-of-package labeling: a collaborative regional study on MERCOSUR member countries” (IDRC-Canada 108644-001). The general aim of this study is to provide evidence in order to promote effective front-of-package labeling (FOPL) policies in Brazil and Argentina, and to provide inputs in support of political dialogues in other Southern Common Market (MERCOSUR) countries.

This document gathers some clear and precise legal arguments that favor the promotion of regulatory references to implement FOPL with information on critical nutrients of foods and non-alcoholic beverages under the applicable international standards. It summarizes the current legal framework on labeling and packaging in Argentina, Brazil and MERCOSUR, and considers the World Trade Organization (WTO)’s regime for this matter. It concludes by recalling that these countries have the power to take new and autonomous steps in terms of labeling regulations to protect the right to health both in general terms and, particularly, in terms of consumers’ health.

I. Introduction

The warning model of FOPL aims to provide information on high levels of critical nutrients associated with particular health problems (sugar, fats and sodium) in food products. It has been recommended as an effective measure so consumers may learn more about the nutritional composition of foods and beverages.

In late 2017, after three years of discussions by the Working Group on Nutritional Labeling, the Brazilian Health Surveillance Agency (*Agência Nacional de Vigilância Sanitária* – Anvisa) – sanitary authority – started a regulatory process to discuss changes in the country's provisions on nutritional labeling, bearing in mind the intention to adopt a warning model of FOPL¹.

On its turn, Argentina's National Ministry of Health and Social Development held a series of meetings under its Advisory Commission on Healthy Diets to take new steps in the issue of FOPL². Besides, several legislators presented bills in connection with it³.

In MERCOSUR – which includes the membership of Argentina and Brazil –, member countries have committed to implement FOPL with nutritional information as an improvement in the available information regarding packed food products, in order to help curbing the increasing overweight and obesity epidemics in the sub-region⁴.

The current regulation on nutritional information in Argentina and Brazil⁵, and also at MERCOSUR level, have not been effective in terms of helping the countries' consumers to make informed decisions aiming at healthy options. The lack of clarity and poor readability of the information on nutritional facts panel is complemented by nutritional claims that promote some health and nutrition features of the products, without emphasizing nutritionally negative ingredients with the same intensity.

In order to contribute to the current dialogues and policies in this field, this publication brings a mapping of the current laws and regulations on food labeling and packaging in Argentina, Brazil, MERCOSUR and under the WTO, to identify the possibilities, limits and consequences of promoting changes in the internal regulations of countries, even if the necessary adaptations should somehow appear to sever regional harmonization aspects.

II. Approaches and Results


One of MERCOSUR's⁶ attributions is the power to approve general norms to facilitate trade among its member countries. The effect of such power is that all member countries undertook the commitment to implement the norms approved by the block. The Resolutions approved by the MERCOSUR's executive body – the Common Market Group (*Grupo de Mercado Comum* - GMC) – have binding effect for all member States, while the way each country incorporates them to their normative framework depends on its legal system. This practice is known as “harmonization of norms”.

In Brazil such harmonization-role is generally performed by Anvisa, which must approve its institutional actions by a decision of the majority of the members of its Directorate. In some specific cases regarding animal and vegetal products, such decisions are issued by the Ministry of Agriculture, Livestock and Food Supplies (*Ministério da Agricultura, Pecuária e Abastecimento* - MAPA). This harmonization-process occurs by means of autonomous regulations entitled “Collegiate Directorate Resolution” (*Resolução da Diretoria Colegiada* - RDC).

In Argentina, such harmonization takes place via the incorporation of GMC Resolutions to the Argentine Food Code (*Código Alimentario Argentino* - CAA),⁷ which is updated and amended by the National Food Commission (*Comisión Nacional de Alimentos* - CONAL) – an essentially technical body in charge of advising, providing support and following up on the National Food Control System (*Sistema Nacional de Control de Alimento*)⁸.

Despite the expectations that all regulations approved by MERCOSUR will be internalized and no local regulations should remain that could become a barrier to trade, experience has shown that there is a certain level of normative autonomy among the studied countries, both when MERCOSUR regulations are not harmonized nationally, or when countries' legislators approve laws on new obligations at national level, including regulations in connection with labeling rules.

The following board presents key examples of autonomous regulations in Brazil and Argentina that are not harmonized under MERCOSUR:

BRAZIL		
Normative instrument	Object	Impact on labeling
Law no. 10.674/03 ⁹	Gluten labels	"CONTÉM GLÚTEN" ("Contains gluten") "NÃO CONTÉM GLÚTEN" ("Does not contain gluten")
Law no. 11.105/05 ¹⁰ and Ordinance no. 2.658/03 ¹¹	Safety regulations and inspection mechanisms for activities involving genetically modified organisms (GMOs) and GMO-derived ingredients.	Yellow triangle with a large T indicating that the product contains GMOs. 
Anvisa's RDC 26/15 ¹²	Label on the main allergenic foods (wheat, rye, barley, oat and their hybrid varieties; crustaceans; eggs; fish; peanuts; soybeans; milk from all types of mammals; almonds, hazelnuts, cashew nuts, Brazil nuts, macadamia nuts, walnuts, pistachios, pine nuts and natural latex)	"ALÉRGICOS: CONTÉM [NOME DO INGREDIENTE]" ("Allergy sufferers: Contains [ingredient's name]") "ALÉRGICOS: PODE CONTER [NOME DO INGREDIENTE]" ("Allergy sufferers: may contain [ingredient's name]").
Anvisa's RDC 135/17 ¹³	Labels on food products for lactose-free diets.	Food products for lactose-restricted diets under 100mg/100g or ml per 100g or ml of the ready-to-consume food item as per the producer's description must include one of the following tags: "isento de lactose" ("lactose-exempted"), "zero lactose" ("zero-lactose"), "0% lactose" ("0% lactose"), "sem lactose" ("lactose-free") or "não contém lactose" ("does not contain lactose") close to the food's commercial description. Food products for lactose-restricted diets under 100mg and 1g per 100g or ml of the ready-to-consume food item as per the producer's description must include one of the following tags "baixo teor de lactose" ("low lactose level") or "baixo em lactose" ("low lactose") close to the food's commercial description.

ARGENTINA		
Normative instrument	Object	Impact on labeling
Amendment of article 1383 of the CCA ¹⁴ and Joint Resolutions 201/2011 and 649/2011 ¹⁵	Labels for products containing wheat, oat, barley and rye (TACC)	"SIN TACC" ("No TACC"), and the following symbols.  
CAA; Chapter VIII	Dairy foods	Regarding pasteurization, it is necessary to include a label on the package with the words "leche entera pasteurizada" or "leche entera pasteurizada" ("whole pasteurized milk").
CAA; Art. 233bis.	Sugar-based products with artificial or nature-identical flavoring substances.	Graphic representation of the fruit or substance that characterizes the product's flavor including the expression "sabor a..." ("flavor identical to...") plus the name of the product's characteristic flavor in reasonably large, highlighted and visible letters, plus the tag: "artificialmente aromatizado" ¹⁶ ("artificially flavored"), with letters of the same size as the product's description.

In Brazil's case, most of the above-mentioned regulations are based on health protection and on the consumer's right to correct information¹⁷. However, in Argentina, sanitary criteria are not generally resorted to as justifications or foundations for the CAA's provisions, despite the fact that public health and consumers' access to information count with provisions in the country's National Constitution, in the Consumers' Defense Law and in the CAA.

It is also important to recall that regulatory provisions stipulated under agreements signed by WTO member States^{18, 19, 20} establish general obligations to avoid trade barriers among nations and promote international trade. In this regard, some sectors closely linked to the food industry have asserted²¹ that FOPL in one country could be considered as a barrier to international trade, since it imposes conditions that are not mandatory in other countries.

However, WTO recognizes the States' right to legislate and adopt the measures they may deem necessary to protect the health and lives of their citizens, even when such regulations could somehow represent a barrier to international trade^{22, 23, 24}. In this regard, countries do have the power to establish measures that restrict commercial rights under a treaty whenever these measures may lead to higher protection levels ("trade flexibilities")²⁵.

Thus, two scenarios are possible in this regard: on the one hand, the international community effectively recognized that States have the sovereign power to legislate on public health to the detriment of economic rights, including in areas covered by trade protection provisions. On the other, WTO recognized that policies establishing special requirements for labels linked to unhealthy products, such as in the case of tobacco, do not represent a barrier to trade²⁶.

Therefore, the possibility of making progress in terms of FOPL counts on a two-fold protection under the current international trade regulations: the WTO's jurisprudence and international Agreements.

III. Final Remarks

One of the key conclusions of this analysis is that both States – Argentina and Brazil – have the power to legislate on labeling and packaging without the need to obtain prior approval under MERCOSUR rules. Likewise, both States are entitled to take new measures at the national level by adopting regulations with criteria that differ from those approved by MERCOSUR. Thus, this analysis finds that there is no normative obstacle that could prevent Argentina or Brazil from establishing autonomous regulations on nutritional labeling.

According to WTO^{27, 28, 29, 30, 31, 32} and MERCOSUR^{33, 34} rules, health protection and the right to true and correct information by the population are possible windows of opportunities for approving autonomous regulatory rules in Brazil and/or Argentina without the need for prior discussions and regulations under MERCOSUR.

Besides, both countries have already used their sovereign powers to legislate autonomously vis-à-vis MERCOSUR in other opportunities. There are already some labeling rules in force both in Brazil and Argentina, including the established regulations regarding the inclusion of visual warnings such as in the case of the yellow triangle indicating the presence of GMOs in Brazil and the warning on TACC-free products in Argentina.

FOPL on food products is not only a public health protection measure, but it is also directly linked to the right of consumers to have (and, therefore, to the States' duty to ensure) access to accurate and true information, in addition to the prohibition of misleading advertising, which is also established by national regulations such as the Consumers' Defense Code (CDC) in Brazil and the National Constitution, the Consumers' Defense Law and the CAA in Argentina³⁵.

IV. Implications and Recommendations

Though unilateral regulation is indeed possible from the normative perspective, the possibility that it may be questioned before international bodies and the judiciary powers of each nation has always existed as well. In this regard, it is important for the civil society to collaborate with the ongoing dialogues on the matter by presenting arguments that favor the intended policies, including considerations on rules that may be autonomously in force without harming international trade.

It is important to mention that, despite the fact that under the international rules and norms, MERCOSUR/WTO Member States are not obliged to consult each other within the bloc before they establish regulations, the secretariats of some countries – for instance, Brazil – report such processes to the WTO and MERCOSUR in order to minimize the possibility of being subsequently questioned. Independently of the fact that moving forward with FOPL on food products is neither a violation of trade agreements signed by the country, nor a barrier to trade, such consultations can be seen indeed as a procedure in good faith.

Furthermore, the public calls for participation in opportunities involving social engagement (public grants, public consultations and public hearings) must also be assured.

Bearing in mind the considerations above and after the analysis carried out by the present study, our participant organizations recommend that the States of Argentina and Brazil should take additional steps to promote and enforce regulations on FOPL for food products and non-alcoholic beverages, in order to meet the international standards ruling this matter, and to protect their inhabitants' right to health.

References:

1. Available at: <http://portal.anvisa.gov.br/toma-da-publica-de-subsidios>
2. Primera reunión de la Comisión Nacional de Alimentación Saludable y Prevención de la Obesidad; FUNDEPS. Available on-line at: <http://www.fundeps.org/primera-reunion-de-la-comision-nacional-de-alimentacion-saludable-y-prevencion-de-la-obesidad/>
3. Available at: <https://www.diputados.gov.ar>.
4. World Health Organization and Pan American Health Organization; Argentina; OPS celebra la decisión del Mercosur de implementar el etiquetado frontal en los alimentos. Available at: https://www.paho.org/arg/index.php?option=com_content&view=article&id=10238:ops-celebra-la-decision-del-mercosur-de-implementar-el-etiquetado-frontal-en-los-alimentos&Itemid=234
5. ANVISA. Relatório Preliminar de Análise de Impacto Regulatório sobre Rotulagem Nutricional. Available at: http://portal.anvisa.gov.br/documents/33880/2977862/An%C3%A1lise+de+Impacto+Regulat%C3%B3rio+sobre+Rotulagem+Nutricional_vers%C3%A3o+final+3.pdf/2c094688-aeec-441d-a7f1-218336995337
6. As a South American economic block, MERCOSUR also includes Paraguay, Uruguay, Bolivia and Venezuela. The Bolivarian Republic of Venezuela is currently suspended in regard to all rights and obligations accruing to its condition as a MERCOSUR State party under paragraph 2, article 5, of the Protocol of Ushuaia.
7. The CAA is updated and amended by the National Food Commission (CONAL), an essentially technical body in charge of advising, providing support and following up on the Food Control System established by Decree 815/1999; ANMAT; Código Alimentario Argentino. Available on-line at: http://www.anmat.gov.ar/portafolio_educativo/Capitulo2b.asp
8. Decree 815/1999; ANMAT; Código Alimentario Argentino. Available on-line at: http://www.anmat.gov.ar/portafolio_educativo/Capitulo2b.asp
9. Law No. 10,674/03. Available on-line at: http://www.planalto.gov.br/ccivil_03/leis/2003/l10674.htm
10. Law No. 11,105/05. Available at: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/lei/l11105.htm
11. Executive Ordinance No. 2,658/03. Available at: <http://www.agricultura.gov.br/assuntos/insumos-agropecuarios/insumos-pecuarios/alimentacao-animal/arquivos-alimentacao-animal/legislacao/portaria-no-2-658-de-22-de-dezembro-de-2003.pdf>
12. Available at: http://portal.anvisa.gov.br/documents/10181/2694583/RDC_26_2015_.pdf/b0a1e89b-e23d-452f-b029-a7bea26a698c.
13. Available at: <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=44&data=09/02/2017>
14. Available at: http://www.msal.gob.ar/celiascos/pdf/resolucion-conjunta_131y414-2011.pdf
15. Available at: http://www.msal.gob.ar/celiascos/pdf/resolucion-conjunta_201-2011_y_649-2011.pdf
16. Article 233bis neither establishes what may be considered as “reasonably large, highlighted and visible letters”, nor specifies the fruit amounts a food article must contain to include the fruit’s graphic representation.
17. For instance, the regulations that were questioned in the judicial sphere, such as in the case of gluten and allergenic food labels, which legality was proved in connection with their intended aim.
18. Agreement on technical barriers to trade (WTO) incorporated to MERCOSUR’s regulatory framework by Resolution GMC 58/00. Available on-line at: https://www.wto.org/spanish/docs/s/legal_s/17-tbt.pdf
19. Agreement on the application of sanitary and phytosanitary (SPS) measures; FAO; Agreements on the application of sanitary and phytosanitary measures and agreement on technical barriers to trade. Available on-line at: <http://www.fao.org/docrep/w7638s/w7638s06.htm>
20. General Agreement on Tariffs and Trade (GATT), 1947. Available on-line at: http://www.wto.org/spanish/docs/s/legal_s/gatt47.pdf
21. “Etiquetados de alimentos podrían calificarse como obstáculos al comercio por la OMC”; Diario Gestión. Available on-line at: <https://gestion.pe/economia/etiquetados-alimentos-calificarse-obstaculos-comercio-omc-227667>. Access on Nov. 6, 2018.
- “Gobierno busca con etiquetas de alimentos reducir ciertos sabores, pero privados advierten posible uso de químicos”; Diario El Observador. Available on-line at: <https://www.elobservador.com.uy/nota/-como-las-empresas-uruguayas-le-haran-frente-al-nuevo-etiquetado-de-alimentos--2018911918>. Access on Nov. 6, 2018.
22. “(...) no country will be prevented from adopting the necessary measures (...) to protect the health and life of the individuals and animals or the preservation of plant species and environmental protection”. Mercosur’s Agreement on Technical Barriers to Trade (TBT), Preamble.
23. “(...) Members have the right to take the sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health”; Agreement on the application of sanitary and phytosanitary measures. Article 2. Available on-line at: http://www.wto.org/english/tratop_e/sps_e/spisagr_e.htm
24. “(...) nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures (...) necessary to protect human, animal or plant life or health”; General Agreement on Tariffs and Trade, article XX, item b.
25. An example of this is the case of the Australian law on plain tobacco packaging. The WTO’s Dispute Settlement Body discarded all claims of the tobacco industry by considering that the costs of compliance with plain tobacco packaging did not constitute in itself a trade-restrictive measure, and emphasized that the law providing that tobacco products to be sold in standardized packages to protect public health does not violate Australia’s obligations under WTO rules. A summary of the disputes and publicly available documents can be found on the website of the Australian Department of Foreign Affairs and Trade: <http://dfat.gov.au/trade/organisations/wto/wto-disputes/Pages/wto-disputes-tobacco-plain-packaging.aspx>.
26. In the case of implementing a measure on front-of-package labeling, one could consider that it does not restrict trade and, for instance, it may be easily carried out by means of stickers. In the case of the plain tobacco packaging in Australia, the WTO considered that the costs of compliance with the norm would neither affect imports nor restrict trade.
27. “(...) no country will be prevented from adopting the necessary measures (...) to protect the health and life of the individuals and animals or the preservation of plant species and environmental protection”. Mercosur’s Agreement on Technical Barriers to Trade (TBT), Preamble.
28. “(...) Members have the right to take the sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health”; Agreement on the application of sanitary and phytosanitary measures. Article 2. Available on-line at: http://www.wto.org/english/tratop_e/sps_e/spisagr_e.htm
29. “(...) nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures (...) necessary to protect human, animal or plant life or health”; General Agreement on Tariffs and Trade, article XX, item b.
30. “(...) no country will be prevented from adopting the necessary measures (...) to protect the

health and life of the individuals and animals or the preservation of plant species and environmental protection". Mercosur's Agreement on Technical Barriers to Trade (TBT), Preamble.

31. "(...) Members have the right to take the sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health"; Agreement on the application of sanitary and phytosanitary measures. Article 2. Available on-line at: http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm

32. "(...) nothing in this Agreement shall be construed to prevent the adoption or enforcement by any

contracting party of measures (...) necessary to protect human, animal or plant life or health"; General Agreement on Tariffs and Trade, article XX, item b.

33. "(...) MERCOSUR Member States have the right to adopt the sanitary and phytosanitary measures necessary to protect the health and lives of individuals"; MERCOSUR; Resolution No. 6/93 "Agreement on the application of sanitary and phytosanitary measures". Article 2.

34. "(...) MERCOSUR Member States may establish or maintain sanitary or phytosanitary measures that represent a higher level of sanitary or phytosanitary protection than what could be attained

by applying measures based on the pertinent international and regional rules, guidelines and recommendations, in case of a scientific justification or if it is an outcome of the protection levels the State deems pertinent in agreement with the provisions established by Article 5". Article 3, in turn, establishes that sanitary and phytosanitary measures may meet higher standards if the State should deem that these levels are appropriate based on an adequate assessment of the current circumstances and of eventual risks for the life and health of individuals.

35. Argentina's Food Code (CAA), chapter V, exhibit I, section 7.

Technical details:

IDEC's Executive Coordinator

Teresa Liporace

Editor

Hélen Freitas

Translated by

Rachel Alves

Proofreading

Hélen Freitas e Laís Amaral

Designer

Designlinhadas

Supervised by

Ana Paula Bortoletto,
André Corrêa e Teresa Liporace

Images

iStock

October 2019

A PROJECT BY

**ALIMENTANDO
POLÍTICAS**

TRANSLATION AND EDITING

idec
Instituto Brasileiro de
Defesa do Consumidor

PROJECT EXECUTION

idec
Instituto Brasileiro de
Defesa do Consumidor

fic  **Argentina**
Fundación InterAmericana del Corazón

SUPPORTED BY

 **IDRC** | **CRDI**

Canada 

