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We are not cut from the same cloth: Unveiling the exclusionary bias of sanitary policies for food production in Colombia

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Abstract

The paper scrutinizes Colombian sanitary regulation through a decolonial lens, highlighting its role in marginalizing alternative production methods. Drawing on empirical experience and qualitative analysis, the author unveils the colonialist underpinnings of these regulations, which prioritize industrial norms and stigmatize traditional practices as inferior. By exploring international influences and exemplifying exclusionary biases, the paper advocates for reform to foster inclusivity, equity, and sustainability in the food production sector.

Key words

Colombia, sanitary policies, food and beverage, exclusion, colonialism.

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1 Introduction

In the early years of my career, I dedicated myself to the study of law. At the end of that first period, I had the opportunity to learn about TWAIL and more broadly, about Latin American decolonial thought. In 2018, however, my life would change, and I would end up dedicating myself to something for which I had not prepared: food production in a country like Colombia. The company that my parents had founded more than 30 years ago needed hands, and I was entrusted with the quality and food safety department.

Of course it was not an easy task. Because of my background as a lawyer, at first, I sat down and studied Colombian regulations, to get an idea of how quality control and food safety should work. But this was not all. I had to understand from start to finish how the company's production process worked. However, my parents' vision was to maintain traditional artisanal production methods, so the study of factors and variables was even more complex. And it was here, when I began to realize that something was wrong: the national regulation established a certain model of production in which there was no room for other means of production, even if they were traditional or native ones. A suspicion that would be soon confirmed in the periodic visits from the sanitary authorities and audits of some customers in which the exclusionary biases of the regulation became evident.

Sanitary policies and regulations are instruments used by States to protect health as a matter of public interest.[1] Hence, in most countries, a large number of measures are usually justified to ensure that the development, production, marketing and distribution of medicines, food and beverages is carried out in a responsible manner and that it does not endanger the health, welfare and life of people, animals and, in some cases, plants. And this is not wrong in the abstract. However, the way in which this is done is often problematic insofar as it is marked by colonialist biases that reproduce, among others, dynamics of exclusion. As I argue in this article, these biases are also the result of the capitalist notes that food regimes have in the world; after all, as Bernstein has pointed out, there is an inseparable relationship between agriculture and capital accumulation.[2] In fact, evidence shows that these regimes have been built to impose a particular model of production and consumption that favors only a few[3] —

[1] Lisette Pérez Ojeda & Rafael Pérez Cristiá. 'Fortalecimiento de la regulación sanitaria en las Américas: las autoridades reguladoras de referencia regional' (2016) 39:4 *Revista Panam de Salud Pública,* at 294.

[2] Henry Bernstein. 'Agrarian Political Economy and Modern World Capitalism: The Contributions of Food Regime Analysis' (2016) 43:3 *The Journal of Peasant Studies*, at 611.

[3] A good example of this can be seen in the discussions on the food sub-regimes of the current model. For example, what is known as 'food from nowhere' is built on the harmonization of production standards, substitutability within the supply chain, restriction of national regulations and the loss of the cultural meaning of food. On the other hand, 'food from somewhere' was born as a response to the industrial logic of 'food from nowhere' and is based on the consumer culture that values social and ecological embeddedness; however, the truth is that in practice transnational elites have found a way to manipulate it to capitalize on conscious consumption. That is why today some propose a third sub-regime that is under development: the 'food from here', guided by the re-localisation movement that seeks

according to some authors, rich countries; according to others, economic elites.[4] What is clear, however, is that they are built on the transformations of class relations to capitalize on them to the fullest.[5]

While it is true that the basis of sanitary policies and regulations is the protection of public health, what often happens is that under this pretext and based on the scientific findings of the Global North, certain models of production and consumption are promoted. Models that are not necessarily compatible, coherent or respectful of local customs, dynamics or needs.[6] These models end up becoming stigmatizing and excluding scenarios. Hence, sanitary regulation might be seen as a complementary tool of food regimes and becomes a mechanism to exclude from the productive sector a large part of the population, as is the case of peasant families and Indigenous communities. A fact that seriously impacts the subsistence of traditional and artisanal production methods that have existed in our countries for centuries. Not to mention how this reduces the possibility of achieving a sustainable food policy that some call 'food sovereignty'.[7]

This happens at least in the Colombian case, where a meticulous sanitary regulation has been developed regarding the production and commercialization of food

to develop new forms of agency within food chains. See Rike Stotten, 'Heterogeneity and Agency in the Contemporary Food Regime in Switzerland: Among the Food From Nowhere, Somwhere Sub-Regimes', (2024) 105 *Review of Agricultural, Food and Environmental Studies*, at 251; Raj Patel. 'The Long Green Revolution', (2013) 40:1 *The Journal of Peasant Studies*, at 1.

[4] There is no consensus on the definition of what a food regime is, although the authors do tend to agree on the periodizations and what characterizes each of them. Thus, some, such as Stotten, define them as those systems that rule a governed structure of production and consumption on a world scale, while others, such as Friedmann & McMichael, recognize that they are dynamics that occur over a period of time in the political economy of food. Similarly, while the most popular periodization is the one proposed by Friedmann & McMichael (British-centered regime, the US-centered regime and the corporate power regime), others such as Otero propose other approaches such as the neoliberal regime to refer to the last period. See Stotten, 'Heterogeneity and Agency in the Contemporary Food Regime in Switzerland: Among the Food From Nowhere, Somewhere Sub-Regimes' (2024), at 251; Harriet Friedmann & Phillip McMichael. 'Agriculture and the State system: The rise and decline of national agricultures, 1870 to the present' (1989) 29:2 *Sociologia Ruralis*, at 93; Gerardo Otero. 'The Neoliberal Food Regime in Latin America: State, Agribusiness Transnational Corporations and Biotechnology' (2012) 33:3 *Canadian Journal of Development Studies,* at 282.

[5] Patel (2013).

[6] For example, the work of Gerardo Otero, among others, shows how the current model of food consumption (what he calls the *neoliberal diet*) is a result of the food policy that the United States has promoted after World War II, and in particular since the 1980s, when its food production system began to generate surpluses and began to promote international trade, as well as the discourse of food security. With this, they managed to impose dependence on addictive foods that have no true nutritional values, erasing, little by little, the traditional diets of each country. Thus, by prioritizing the accumulation of capital over people's health, structural damage was caused, both in the food production systems of each country, and in people's lives. In fact, there are multiple empirical studies that show how the *neoliberal diet* is responsible for the higher incidence of diseases such as type 2 diabetes, heart disease, cancer and, of course, obesity in regions such as Latin America. See: Gerardo Otero. 'La dieta neoliberal y «comida» chatarra' (2019) 2:6 *Observatorio de Desarrollo,* at 4; Gerardo Otero. 'La dieta neoliberal' (w.d) 1 *Cuadernos de Cultura Alimentaria, Salud y Medio Ambiente,* at 4.

[7] Rosângela Pezza Cintrão, 'Segurança alimentar, riscos, escalas de produção - Desafios para a regulação sanitária' (2017) 5:3 *Vigil Sanit Debate, Rio De Janeiro*, at 3.

and beverages that, under the banner of food safety and public health, ends up promoting an elitist production model that prevents most of the population, particularly those living in rural areas, from being part of the national production system. To that extent, the existing sanitary regulation is designed by and for a few, without recognizing the living conditions of a large part of the country that today lives in rural, peripheral and remote areas and that in the end, could be responsible of feeding almost the entire country.

In this paper, based on my empirical experience, complemented by qualitative and normative studies I will analyze Colombian sanitary regulation for food production (foodstuff).[8] I will explain how it is characterized by colonialist bias that leads to the exclusion of all sources and means of production that do not follow an industrial logic. In that sense, I understand as a colonial bias the civilizing mission of law.[9] I use this term to refer to those biases inherited and replicated from the colonial Project through law. Then, I understand exclusion and discrimination as forms of domination and exploitation as patterns that are repeated in the successive discourses of development and globalization.[10] In the specific context of this article, the civilizing mission is understood as an aseptic mission that starts from the premise that the production methods employed by Indigenous communities, peasants and all those who do not coincide with the industrial rubric are dirty.[11] Either they adapt to the imposed model, or they are eliminated from both, national and international markets.

To this end, I will begin by presenting some of the main international influences that have played an important role in the configuration of current sanitary regulation for food production in Colombia, and then I will analyze and exemplify how these exclusionary biases can be appreciated. Specifically, I will deal with the analysis of the

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[8] In Colombia, there is a general regulation for the production of food products, however, in the case of some specific ones, special rules have been issued, given the greater risk they present for human consumption. This is the case for meat products, processed fish and aquaculture products, dairy products and any other processed food with a high health risk.

[9] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870 – 1960* (Cambridge University Press, 2001)

[10] For example, Ntina Tzouvala shows how civilisation is a construct that comes from the international system to exclude while deceiving them with an inclusive discourse that in the end benefits global capitalism. This binary system is the common denominator during the history of humanity, the only thing that changes are the extremes of the relationship. Ntina Tzouvala, *Capitalism As Civilisation: A History of Internacional Law* (Cambridge University Press, 2020). In the context of food regimes, this can be seen, for example, in the work of McMichael, who shows how each of the historical regimes also corresponds to colonial, development and globalization projects. See Philip McMichael, 'Feeding the world: Agriculture, development and ecology', in *The Socialist Register* 2007 (Merlin Press, 2006), at 174.

[11] This is undoubtedly part of what some authors call a colonial legacy. As a result of the colonial processes that Latin America went through, contempt for the native, for the Indigenous, for the black was engraved in our systems and in the narratives of power; in general, because of the different, which materializes through the coloniality of power and knowledge. Romina Lerussi & Romina Anahí Sckmunck, 'Colonialidad del Derecho' (2016) 8:2 *Sortuz. Oñati Journal of Emergent Socio-Legal Studies,* at 74; Anibal Quijano, 'Coloniality of Power, Eurocentrism, and Latin America' in *Nepantla. Views from Wouth* (Durham, 2000), at 533; Catherine Walsh, 'Interculturalidad, colonialidad y educación' (2007) XIX:48 *Revista Educación y Pedagogía,* at 27.

general approach of this type of regulations, the quality control model imposed for the production and distribution of food and beverages and the impacts it has on the articulation of the control and surveillance competences of the sector. And finally, I will present some conclusions in this regard.

2 The influence of international law on the adoption and design of sanitary policies and regulations

First, it is important to point out the influence that both international law and globalization exert on the domestic sanitary policies and regulations of some Latin American countries. Since the 1970s there has been some pressure on countries to adopt a liberal view of food policies, prioritizing a capitalist logic in the production and control of food.[12] However, to understand these processes I must refer, at least briefly, to the way in which the contemporary food regime has been conceived.

The literature on the economic policy of agriculture shows how there have been at least three major food regimes. At first, there was the British-centered model, where what was sought was the production of cheap food and the use of raw materials from the colonies. However, after World War II this changed. It was the US that began to direct international food relations, especially through what the doctrine has called the Green Revolution. In essence, the United States, under a philanthropic discourse promoted with the support of the Rockefeller Foundation, began to promote a specific model of production by financing access to fertilizers, irrigation, hybrid seeds and in general to inputs that would serve to massify the crops of certain raw materials such as 'miracle wheat'. In this way, subsidies and technology became the Trojan horse. Thus, under the discourse of ending world hunger, the US advanced with its neoliberal policies to reduce the internal regulation of countries in exchange for subsidies and support, which in turn, for some authors such as Patel, was a strategy to stop the advance of communism in certain regions of the world.[13] Thus, what actually happened was the promotion of a system that put above local cultures and economies and the structural causes of poverty and hunger, the accumulation of capital and the concentration of power.

More recently, the food regime has been defined by transnational companies. For this reason, authors such as Friedmann and McMichael have called it the corporate regime. In essence, this new regime is characterized by the liberalization of the market,

[12] Catia Grisa et al., 'Las políticas alimentarias y la politización de la alimentación: la experiencia latinoamericana', in Jean-Francois Le Coq, Catia Grisa, Stéphane Guéneau & Paulo Niederle (eds.), *Políticas públicas y sistemas alimentarios en América Latina* (e-papers, 2021), at 35.

[13] Patel (2013).

accumulation by dispossession, environmental destruction by the increase in industrialized production, and the relocation of production and consumption. And it is precisely here where international law has played a decisive role, since it is through international organizations such as the World Trade Organization that this type of policy has been promoted and established. But here, the States also play an important role. Otero, for example, emphasizes that States continue to be determinant in this regime, because in the end, they are the ones who give in to the deregulation of certain issues and the adoption of policies that benefit corporations in specific aspects such as intellectual property; and why not, also by concluding international treaties that, far from representing national interests, benefit transnational elites.[14] However, the focus of this article is on sanitary policies and that is why the external influences that have shaped national policies in this area will be analyzed below. To this end, it is pertinent to highlight at least three levels of influence: the World Trade Organization, the United Nations System (including the World Health Organization and the Food and Agriculture Organization) and, last but not least, the transnational economic elites.

2.1 World Trade Organization

Together with the signing of the Marrakesh Agreement and the establishment of the World Trade Organization (WTO), a series of thematic agreements were signed aimed at eliminating barriers to international trade in goods and services. Under the narrative of the free market, the WTO has functioned as an institution that has legitimized the interests of the economic elites and the most developed countries. In fact, there are authors who argue that it has been decisive in establishing a new imperial order[15] by establishing, instead of colonization, new forms of domination through the definition of the rules of the market.[16] Chimni shows how the sovereign economic decision-making authority has been ceded to institutions such as the WTO through the different agreements that have been signed in that kind of fora, even though the organization is in fact at the service of the interests of the transnational capitalist class and the most

[14] This occurs, generally, in those areas where there is foreign investment. In fact, the literature refers of the *regulatory chill effect* generated by this type of treaties. See: Enrique Prieto-Ríos. *Systemic Violence of the Law: Colonialism and International Investment* (Rowman & Littlefield, 2021), and Paula Robledo Silva & Daniel Rivas-Ramírez, 'Cuando la leyenda de El Dorado se hace realidad: análisis sobre las tensiones entre los intereses económicos y los derechos de los pueblos indígenas', in *Derechos humanos y la actividad empresarial en Colombia: implicaciones para el estado social de derecho* (Universidad Externado de Colombia, 2019). Likewise, it has been pointed out that this type of international agreements serves to break multilateralism when that model does not accede to its particular interests. For this reason, they are classified as an instrument of strategic bilateralism. See: Aoife O'Donoghue & Ntina Tzouvala, 'TTIP: The Rise of 'mega-market' trade agreements and its potential implications for the Global South' (2016) 8(2) *Trade, law and development*, at 181.

[15] Paulavi Arora & Sukanya Thapiyal, 'Digital colonialism and the World Trade Organization' (2019) 11 *Third World Approaches to International Law Review: Reflections*, at 1.

[16] Yasuo Fukuda, 'WTO regime as a new stage of imperialism: Decaying capitalism and its alternative' (2010) 1:3 *World Review of Political Economy*, at 485.

powerful states.[17] In addition, as I have already said, the WTO has been fundamental in establishing the corporate or neoliberal food regime that governs international agricultural relations today.[18]

However, due to the focus of this paper, I would like to zoom on three of the WTO agreements: the Agreement on Technical Barriers to Trade (TBT), the Agreement on Sanitary and Phytosanitary Measures (SPS) and the Agreement on Agriculture (AOA), which together aim to establish non-discriminatory practices among the States to avoid disguised protectionism and thus reduce barriers to international trade, among other things.[19]

To this extent, the Agreement on Technical Barriers to Trade seeks to ensure that technical regulations, standards and conformity assessment procedures are not discriminatory and do not create obstacles to international trade. The Agreement on Sanitary and Phytosanitary Measures establishes, in general terms, the basic principles on food safety and health standards for animals and plants. Furthermore, the Agreement on Agriculture recognized the need for considering food security while emphasizing that trade could improve food availability in scarcity situations.

However, as with most agreements that have been signed under the WTO, the overall promises are blown away when looking at the filigree of the agreements, and in particular the way in which they are implemented. There is a lot of literature that shows the colonial biases that free trade has. After all, many of the empires that resorted to colonization were in pursuit of facilitating trade.[20] These critiques reveal not only how they impose west-centered standards that serve the interests of the Global North, but, as we have already said, erode the economic policy of developing countries and deepen global inequalities.

For example, the United Nations Special Rapporteur on the right to food has stated that the Agreement on Agriculture must be wound down, among other reasons, because it reproduces trade patterns that for centuries have subjugated and denigrated former colonies, agricultural workers, peasants and Indigenous peoples.[21] But also, because it has failed to meet any of its objectives: it has not succeeded in establishing a

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[17] B. S. Chimni, 'International Institutions Today: An Imperial Global State in the Making' (2004) 15:1 *European Journal of International Law*, at 1.

[18] For example, see Stotten (2024).

[19] World Trade Organization, 'Understanding the WTO Agreement on Sanitary and Phytosanitary Measures' (May 1998), https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm (accessed 16 August 2025).

[20] Gunes Gokmen, Wessel N. Vermellen & Pierre-Louis Vézina. 'The Imperial Roots of Global Trade' (2020) 25 *Journal of Economic Growth*, at 87.

[21] Michael Fakhri, 'The Right to Food in the Context of International Trade Law and Policy', 22 March 2020, *Report of the Special Rapporteur of the Right to Food*, https://digitallibrary.un.org/record/3879225?ln=en&v=pdf (accessed 16 August 2026).

liberal global market, nor has it allowed the poorest countries that depend on agriculture to benefit from it. On the contrary, it has only protected the most powerful countries and large corporations.[22] Although the Agreement has some exceptions to mitigate the effects it could have on countries that depend on food imports or that are less developed, in practice they are sparsely applied.[23] In addition, the design of the Agreements and the WTO prevents countries from reforming policies to support agriculture, which would allow them not to depend on these measures.[24] The situation has been aggravated since the 1990s and no progress or changes have been made towards the Agreement.

The Agreement on Sanitary and Phytosanitary Measures has not been without its criticism either. As with the other two, it is a Global North-centric Agreement, which imposes a series of technical criteria based on Western science. This in turn leads to it promoting a series of asymmetries of power, but also in the burdens for the fulfillment of the obligations it contains — which translates into a technocratic governance of exclusion that reinforces colonial hierarchies in international trade.[25]

In the Uruguay Round of negotiations, the Latin American countries insisted that sanitary and phytosanitary measures should not end up being used as disguised barriers to trade and that the diversity of agricultural systems and food practices should be recognized, as well as the protection of traditional knowledge and practices related to agriculture and food. This was largely because it was clear to them that the conditions, needs and processes were different from those in the Global North. However, this ended up taking a back seat in the Agreement and the vision of the countries of the Global North on agricultural systems and food safety practices prevailed.

In fact, at the end of the 1990s, a consultant of the Latin American Integration Association warned that the countries of the region were facing new challenges in food production because of the internationalization and globalization processes to which they had to be linked.[26] Thus, once again under the discourse of development and joining global value chains, it was necessary to adapt their agricultural and production

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[22] Michael Fakhri, 'A History of Food Security and Agriculture in International Trade Law, 1945-2017', in *New Voices and New Perspectives in International Economic Law* (Springer, 2020), at 55.

[23] Fakhri, 'The right to food in the context of International Trade Law and Policy' (2020).

[24] Michale Fakhri, 'Letter to the Director General of the World Trade Organization, May 4 of 2022', in *Wind down the WTO Agreement on Agriculture. In defence of food sovereignty* (Focus on the Global South & All India's People's Science Network, 2022) https://focusweb.org/wp-content/uploads/2022/06/Wind-down-WTO.pdf (accessed 24 August 2025).

[25] Belinda V. Baum, 'A book review on Lukasz Gruszczynski and Joanne Scott "The WTO Agreement on Sanitary and Phytosanitary Measures" (Oxford University Press, 2023)' (2024) 19:2 *Asian Journal of WTO & International Health Law and Policy*, at 509.

[26] Fernando A. Lecuma Cañizares, *Análisis de la situación de la aplicación de las normas sanitarias y fitosanitarias de la OMC en la Región* (ALADI, 1996), at 5.

processes, otherwise they would be left out of the market. He also emphasized that after the Agreement on Sanitary and Phytosanitary Measures, the Latin-American states had to make regulatory and institutional adjustments to comply, 'within a framework of international competitiveness, where the market is the central axis of the activity'.[27]

In the same study, it was pointed out that in addition to the direct impact that the Agreement had on sanitary legislation and policies, another important effect was produced. Fearing sanctions and embargoes due to the alleged risk of transmitting diseases and pests through imports/exports, which had been expressly recognized by the international instrument, local authorities adopted a stricter and more rigid position. An absurdity, considering that a large part of the Indigenous peoples of Latin America died as a result of diseases that colonizers brought with them. Thus, the States began to apply sanitary and phytosanitary requirements in an extremely severe manner and on many occasions without any technical or scientific evidence for them, just to minimize the risks before the WTO.[28]

Colombia ratified its accession to the WTO Agreements through Law 170 of 1994 and thus assumed the obligation to comply with the provisions of those agreements. Hence, since then, all the rules (at least of a national nature) that have been adopted regarding the sanitary regulation of the country take as a direct basis the international commitments assumed with respect to the two special agreements that I have already referred to.[29] However, as I show below, by adopting sanitary regulations compatible with international trade law, Colombia has generated barriers to access to the national market for some groups of the population.

2.2 United Nations

The United Nations has likewise been subject to significant critique. There is ample literature that shows that the organization, instead of changing colonial rubrics, perpetuates them, even from its own structure and institutions[30]. It has also served to reproduce Eurocentric international law and despite its efforts to change the panorama, it has ended up subjecting countries to a system that privileges hegemonic powers and

[27] Ibid.

[28] Ibid.

[29] Julián Tole Martínez, *Colombia, entre los TLC y la OMC: ¿Liberación o administración del comercio internacional?* (Universidad Externado de Colombia, 2019).

[30] Harold Karan Jacobson, 'The United Nations and Colonialism: A Tentative Appraisal' (1962) 16:1 *International Organization*, at 37.

neoliberal economic agendas.[31] Chimni highlights, for example, how this is largely due to the increased role that the United Nations has given to the private corporate sector.[32]

It is in this context that I am interested in highlighting some scenarios in which this has occurred and that have an impact on national regulations for food production. On the one hand, the Convention on Biological Diversity, together with the Cartagena Protocol on Biosafety, which regulates, among other things, issues related to Genetically Modified Organisms (GMOs) and more specifically, Living Modified Organisms (LMOs). Both have been ratified by Colombia through laws 165 of 1994 and 740 of 2002, respectively.

The issue of GMOs has been widely discussed, among other things, because it brings us back to one of the classic discussions of food policy: productivity vs. nutritional values of food, food sovereignty and biodiversity.[33] In addition to this, there are multiple criticisms of the adoption of standards or regulations on the matter from the international sphere, because with this, we fall back into asymmetrical power relations. There are some studies that show, for example, how the strict regulations of the European Union have direct effects in regions such as Africa.[34] However, in our case, one issue is especially important: the hypocrisy and opportunism behind this issue.

GMOs were initially developed and promoted by the Global North. Let's not forget that the United States, during the Green Revolution, brought genetically modified seeds to Mexico and other countries to increase crop productivity.[35] In fact, it was precisely that characteristic that promised, at the time, to tackle world famine. It was the Global North that brought this technology to the Global South and making these seeds the general rule, made food producers dependent on them. This, of course, was accompanied by other actions and strategies, such as the imposition and promotion of the *neoliberal diet* that ended up privileging the consumption of ultra-processed foods that depend on these GMOs.[36]

Now that other dynamics of consumption have gained strength, such as those that explain 'food from somewhere' and 'food from here'[37], where consumers no longer want to consume food produced with GMOs, corporations and regulators have begun

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[31] Giusi Russo, 'The UN and the Colonial World: New Questions and New Directions' (2022) 57:2 *Journal of Contemporary History*, at 212.

[32] Chimni (2004).

[33] Ernesto Hernández-López, 'GMO Corn, Mexico, and Colonniality' (2020) 22:4 *Vanderbilt Journal of Entertainment & Technology Law*, at 725.

[34] Mercer Martin, 'A New Neocolonial Threat: The Harmful Impact of European GMO Policy on African Food Security' (2022) 26:3 *Drake Journal of Agricultural Law*, at. 365.

[35] Patel (2013).

[36] Otero (2012).

[37] Stotten (2024).

to disqualify the use of these products. However, this poses a major problem for most producers in the Global South: their ability to produce food that has been grown with Non-GMO seeds is scarce. The food system and the prevalence of neoliberalism in general force them to use the seeds that can give them the greatest profitability, and unfortunately these are the GMOs.

But GMOs are not the only issue where the UN has been influential. I think mention should also be made of the efforts made by the FAO and WHO in developing the *Codex Alimentarius*. This tool has been designed from the standpoint of international trade to ensure food safety and guarantee a minimum quality for everyone in the world.[38] Although it is an instrument that lacks binding force, countries such as Colombia have expressly recognized its mandatory and subsidiary nature in national sanitary regulations.

Likewise, I cannot fail to mention that the *Codex Alimentarius* is frequently used by the WTO, which ends up reinforcing its effects on States, among others, because, as with its Agreements, they have a marked preponderance of Global North-centric interests and paradigms — which put health, colonial practices and food sovereignty, the economic interests of corporations and strong States first.[39] However, I will not dwell on this aspect, since a good part of these critiques are presented when analyzing Colombian national regulation.

2.3 The transnational corporate elites

Finally, I cannot overlook the fact that economic powers also play a determining role in how sanitary regulation models are shaped around the world. After all, economic power helps to *run the world*.[40] That is why I must draw attention to global value chains and how they articulate with transnational corporate elites.

Global value chains have radically transformed the world economy by breaking down production into geographically dispersed stages and then integrating them again through transnational networks of companies. While these chains have allegedly generated benefits in terms of efficiency and economic growth, they have replicated and perpetuated capitalist practices throughout the world.[41] In fact, in the seek to reduce

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[38] Mariëlle D. Masson-Matthee, *The Codex Alimentarius Commission and its Standards* (Springer, 2007).

[39] Scott C. Tips, *Codex Alimentarius, Global Food Imperialism: A Compendium of Articles on Codex* (FHR, 2007); Katheryn Russ et al, 'What You Don't Know About the Codex Can Hurt You: How Trade Policy Trumps Global Health Governance in Infant and Young Child Nutrition' (2021) 10:12 *International Journal of Health Policy and Management*, at 983.

[40] David Kennedy, *World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton University Press, 2018).

[41] Ronald W. Cox, *Corporate Power, Class Conflict and the Crisis of New Globalization* (Lexington Book, 2019).

costs and maximize profits, they often exploit cheap labor, precarious working conditions and produce an unbridled competition to investment attraction.[42]

This dynamic has a significant impact on the regulatory capacity of the nation states where these value chains operate.[43] In a highly competitive global environment, governments are often under pressure to relax labor, environmental and tax regulations to attract investment and maintain competitiveness in value chains. In addition, multinational companies can leverage their economic and political power to influence policymaking, thereby weakening the ability of states to regulate and protect the interests of workers, the environment and other vulnerable groups.[44] Ultimately, this can lead to a race to the bottom in terms of labor and environmental standards, exacerbating social and economic inequalities at both the national and international levels.

But this is not all. There is also the role played by transnational corporate elites in the implementation and replication of regulation and sanitary control models designed by and for the Global North in countries of the Global South. I borrow this concept [expression of transnational corporate elites] from Diliara Valeeva. She defines it 'as a group whose members occupy key positions in the global corporate world' that 'reflect current transformations taking place among globalizing upper classes' in which national and regional elites play an essential role by connecting transnationally.[45] However, I use this category more broadly than Valeeva, in the understanding that I also attribute to the transnational corporate elites the power to influence regulatory decision-making, in accordance with their interests.[46]

It is the case, for example, of IFS Management GmbHs, owned by the French Federation of Commerce and Distribution Companies and the German Federation of Distribution, which developed the International Featured Standards (IFS) – Food

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[42] Donella Caspersz, Holly Cullen & Hinrich Voss, 'Modern slavery in global value chains: A global factory and governance perspective' (2022) 64:2 *Journal of Industrial Relations,* at 165.

[43] Celine Tan, 'The Law of Global Value Chains as Transmission Nodes for Global Inequality', (13 November 2020) *AfronomicsLaw* https://www.afronomicslaw.org/2020/11/13/the-law-of-global-value-chains-as-transmission-nodes-for-global-inequality (accessed 16 August 2025); Carolina Moehlecke, Calvin Thrall & Rachel L. Wellhausen, 'Global Value Chains as a Constraint on Sovereignty: Evidence from Investor-State Dispute Settlement' (2023) 67:1 *International Studies Quarterly,* at sqad007.

[44] This is not new. This has been a patent practice in the history of multinationals, even before they were labeled this way.

[45] Diliara Valeeva, *The Transnational Corporate Elite Network: nature and properties* [Thesis] (Universiteit van Amsterdam, 2021), at 21.

[46] It is important to clarify that I am talking about the interests of the elite and not of the class, since Valeeva has explicitly recognized that the category of transnational corporate elite includes people who are not necessarily part of the transnational capitalist class.

aiming to respond to the criteria of the Global Food Safety Initiative since 2002.[47] These are beginning to gain relevance in the domestic contexts of the Global South through the arrival and penetration of transnational companies headquartered in the Global North. Specifically, when they enter national retail markets and begin to strengthen commercial relations with national producers and suppliers for food processing, for example, of *maquilas* or own brands, they impose the obligation to comply with these standards without the possibility of adapting them to local Latin American realities.[48]

A good example of this is what happens with business groups such as *Casino Guichard Perrachon*, which requires its suppliers, through its distribution chains in Colombia such as *Grupo Éxito* (made up of the main supermarkets in the country such as *Carulla, Éxito, SuperInter, SurtiMax* and *SurtiMayorista*) to implement this standard. For this purpose, it also imposes and charges the food and beverage producers that supply to them to carry out periodic audits by firms certified and authorized by the IFS.

In this way, national companies (generally small and medium-sized) end up having to comply with even higher standards and requirements than those imposed by local regulations to participate in the retail market, which in some cases is an oligopoly dominated by these transnationals. But these types of issues generate an additional negative effect, since due to the high knowledge and financial costs of implementing these standards, they end up excluding a good part of the national competitors, generating (additional) access barriers for traditional, artisanal and, in some cases, entrepreneurial producers.

3 The approach to sanitary policies and regulations in Colombia

Although we are going to focus on the Colombian case, the evidence shows that a common feature of sanitary policies and regulations throughout Latin America has to do with establishing the obligations that producers, distributors and retailers of food and beverages must fulfill to ensure the protection of the public health of all citizens.[49] To this end, the laws regulating the matter usually establish provisions aimed at defining who may engage in this activity, how they must carry it out and how they must control the quality and safety of the food they produce or distribute.

Normally, these regulations allow any person (whether natural or legal) to prepare, produce or distribute food and beverages when they fully comply with all the

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47 Aleksandra Nikolic, Alen Mujcinovic & Anela Memic, 'International Food Standard – IFS', in *Proceedings of the 24th International Scientific-Expert-Conference of Agriculture and Food Industry* (Sarajevo, 2013).

48 Ricardo Ortiz & Silvia Mirta Gorenstein, 'La conquista de las trasnacionales: Estrategias empresarias y marcos regulatorios en los mercados agroalimentarios' (2016) 262 *Nueva Sociedad,* at 67.

49 Jean-François Le Coq, Paulo Niederle, Catia Grisa & Stéphane Guéneau, 'Políticas y sistemas alimentarios en América Latina: elementos de introducción', in Jean-François Le Coq, Paulo Niederle, Catia Grisa & Stéphane Guéneau (eds.), *Políticas Públicas y Sistemas Alimentarios en América Latina* (e-papers, 2021), at 9.

requirements of the State. Regardless of whether the production is artisanal or industrialized, the producer must comply with these requirements; therefore, as shown throughout the paper, Colombian health regulation promotes an industrialized model, which excludes any other form of production.

The requirements that need to be met can be classified in two groups: the enabling requirements and the quality and safety requirements that must be maintained during the exercise of the activity. In this regard, it is important to point out that although in some cases the standards refer to 'food factories' that carry out technological operations, the definition of what is considered as technological is so broad that it includes even artisanal and/or similar methods.[50]

Within the group of enabling requirements we find those that are imposed for the State authorities to expressly authorize either the start-up of a food factory or the production or circulation of any food or beverage. The regulations usually establish specific rules on the characteristics that the buildings must have in architectural terms, but also regarding the availability of sanitary services and drinking water, waste disposal, etc. In the case of Colombia, it is established by Decree Law 19 of 2012, which is regulated by multiple resolutions that will be cited throughout this paper.

On the other hand, those that have to do with product production permits vary depending on the type of food or beverage and the risk they represent for public health. Thus, for example, in Colombia there is a system that classifies such authorizations into *registros*, *notificaciones* and *autorizaciones*, and in essence, no food or beverage that does not have any of them can be produced or distributed for commercial purposes, except in the case of natural foods without any type of transformation.[51] Normally, these usually focus on documentary issues, ranging from the simple characterization of the products, to the contribution of nutritional and microbiological studies of each one of them.

But the requirements imposed by this type of regulations do not stop there. In addition to the qualification requirements, there are also obligations that must be fulfilled in operational terms. In this sense, there are imposed rules that limit the freedom on how to carry out the production processes, the controls that must be executed in the different administrative and productive stages, the systems to be implemented and even the composition of the team of collaborators that will participate in the process, most of which respond to an industrial logic of production. And I must point out that although the expression 'industrial' could include traditional and artisanal means of production, in this case I use the modern notion of the 'industrial' (established

[50] For example, Resolution 2674 of 2013 of the Ministry of Health understands as technological operations, all those actions that are developed in a sequence of stages or operations that are applied to raw materials to obtain a food. To that extent, procedures such as manual extraction of juices or cutting of vegetables are included.

[51] Decree 3168 del 2015. Article 37 of Resolution 2674 of 2013 of Ministry of Health.

after Ford's model of production appeared), where *clean as a whistle* automated mass production processing occurs.[52]

However, it is important to note that although the focus of these sanitary standards is precisely to adopt preventive measures regarding public health, the way in which it does so is from a scientific perspective and foreign to national knowledge, dynamics and realities. Let me look at a couple of examples.

In terms of enabling requirements, for example, to obtain a food production permit in Colombia, it is required to submit, in addition to the basic identification documents, a description of the ingredients or compounds of the product, together with their maximum consumption dose.[53] If it contains additives (such as gelatins or sweeteners of any kind), the quantity and maximum consumable dose must be indicated; if it contains compound ingredients (such as vinegar or mayonnaise), the ingredients that compose it must be specified; and when the products contain caffeine, the information on the quantitative composition must be provided with their respective technical supports.

Other requirements associated with the presentation of nutritional and technical studies of the product are also established. Thus, when a nutritional or health property is claimed (such as cholesterol-free or gluten-free), even if it is a natural consequence of the ingredients (or because none of the ingredients naturally contain that specific nutritional or health component), technical studies must be provided to prove it. An issue that may be fundamental nowadays, when consumers are increasingly demanding more information and basing their choices on what they see on packages. Perhaps this can be better understood with an example.

In recent decades, the number of people allergic to gluten has been increasing. Paradoxically, this seems to be the result (at least to some extent) of the consumption habits imposed by the food systems of the Global North where wheat is an essential raw material to produce most of the foods consumed today on a global scale. Recent studies show how the 'Western diet' based on wheat (essentially wheat flour) is triggering an increase in celiac disease, particularly in children and adolescents.[54] This has led to consumers starting to buy, almost irrationally, only those foods that claim to be gluten-free or bear the stamp with the crossed-out wheat symbol. Consequently, the inclusion of this type of information in food labeling has become increasingly important, becoming a commercial necessity for food producers.

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[52] David A. Houshell, 'Automation, Transfer Machinery, and Mass Production in the U.S. Automobile Industry in the Post—World War II Era' (2000) 1:1 *Enterprise & Society,* at 100.

[53] Articles 38, 39 y 40 of Resolution 2674 of 2013 of Ministry of Health.

[54] Vijole Bradauskiene et al., 'Wheat consumption and prevalence of celiac disease: Correlation from a multilevel analysis' (2023) 63:1 *Critical Reviews in Food Science and Nutrition*, at 18.

However, according to Colombian sanitary regulations, within the sanitary registration and therefore, in food labeling, it would only be possible to declare that a product is gluten-free if scientific and technical evidence is provided to prove it. Although this would seem to be a logical requirement, the truth is that it applies even to foods that are naturally gluten-free. Thus, for example, potato, plantain or yucca/cassava-based products -to give an example of three foods that are fundamental in the Colombian diet-, which are naturally gluten-free, could only be declared as such (on the packaging) when, at the time of requesting the manufacturing permit from the National Institute for Drug and Food Surveillance (Invima, which is the sanitary authority), it is scientifically and technically proven that they do not contain gluten. A support that, regardless of whether it is easy to produce, generates an additional technical and economic burden to any producer who wants to declare it. To that extent, if tomorrow the members of the Sikuani Indigenous community (in the department of Meta) decided to produce and commercialize *mañoco* (*yuca* -cassava- *brava* flour) or *casabe* (bread made with cassava flour) with the gluten-free seal, they would have to assume this technical and economic burden for it (among other reasons, because consumers in general do not have knowledge or awareness about the natural properties of food).

In terms of location, we see for example that the current regulation in Colombia establishes some measures that, although they are based on scientific reasons, do not recognize the rural and informal circumstances in which about 23% of the Colombian population lives, and thus make it impossible for this sector to participate in the production and processing of foodstuffs.[55] A portion of the inhabitants that also coincides with those who live in the periphery and who continue to honor and use traditional production methods, within the possibilities they have in the absence of the State, for whom this type of requirements constitute an additional barrier to participate in the national productive system.

Thus, for example, measures that seem objectively justified, such as the fact that the place where food is produced must be isolated or separated from any type of housing, constitute a significant barrier to access for the rural population.[56] Let's think of the case of peasant families that produce food from their crops and animals, such as canned fruit or dairy products like cheese or curds, who must have an independent building that meets technical and locative characteristics, when their own homes in

[55] According to the 2018 National Population and Housing Census, 7.1% of Colombians live in populated centers and 15.8% in dispersed rural areas.

[56] In Colombia, Article 6 of Resolution 2674 of 2013 of the Ministry of Health and Social Protection establishes as an essential requirement for the authorization of food and beverage production the existence of a facility that is separate from any type of housing.

many cases do not even have the minimum, such as a paved floor or the airtight division of spaces.

Measures such as these constitute a significant barrier to access, even for people who live in major cities where basic services and suitable physical conditions are available. Thus, for example, this requirement of a production plant separate from housing becomes a limitation for the emergence of enterprises, from below, that can grow gradually, even within the industrial model promoted by the State.

In the same sense, we also find that the access to the facilities, as well as the building of the plant, is required to be paved or covered with concrete,[57] or that cannot be near swamps or marshes.[58] In a country like Colombia, this becomes an even greater barrier for a large part of the population, if they want to participate in the market formally and lawfully. Although in some cases artisanal or peasant producers may have different spaces to live and produce food and beverages, it is questionable that the State requires them to pave access and facilities, when there are not even public roads that meet these conditions in much of the national territory. This in turn leads us to think about how the requirements regarding the transportation of food and beverages deepen the exclusion by implicitly prohibiting the use of traditional means of transportation such as donkeys and horses, widely used in rural Colombia where there are no paved roads; and even in areas where there are not even rural road demarcations.

For example, most of the *panela* (a raw sugar cane processed cube) that is produced by peasants is mobilized in animals as long as the *trapiches* (places where the *panela* is cooked) are in the middle of the mountains, where there are no paved routes. It is important to note that Colombia is a State that is characterized by having a scarce presence in the territory. This implies that it does not have eyes everywhere, and therefore, health controls are not necessarily effective or even executed. However, what I want to show is that people who produce food and manage to participate in the market, even without complying with the sanitary requirements, are exposed to a significant risk that when the health authorities decide to carry out the controls, they will have to assume a sanction that can even reach the closure of their companies.

But these types of requirements do not only apply to the place or facilities where the production of food or beverages is to take place. They are also imposed with respect to the equipment and tools to be used for the process. To that extent, the regulations in force in Colombia prohibit any type of utensil or equipment that is not corrosion resistant, does not have a smooth surface, without cracks or that has places that are

[57] Article 6 of Resolution 2674 of 2013 of Ministry of Health.

[58] Article 32 of Resolution 2674 of 2013 of Ministry of Health.

difficult to clean and disinfect.[59] This implicitly rules out the possibility of using utensils, tables or any other type of artifacts made of wood, ceramic or other natural fibers for food processing. In other words, it forces people and companies that want to participate in the food sector to use plastic, metallic or industrial composite utensils.

This leads to prevent the production of food and beverages through traditional production methods, typical of some communities and cultures, contributing not only to the impossibility of their participation in the food market, but also to the disappearance of this type of knowledge and methods. A good example of this is the case of the traditional production of *tucupi* (a kind of hot sauce), *mañoco* or *casabe* (derived from the *yuca brava*) by communities in the department of Amazonas, which use instruments such as the *catumare*, *sebucán* or *budare*, which are made in an irregular manner with natural and porous fibers.[60]

While it is true that the use of equipment or utensils made of porous materials can pose a risk to public health by increasing the probability of incubation of microorganisms or cross-contamination, this could be counteracted by designing or requiring stricter cleaning and disinfection protocols to ensure the disappearance of this risk.

However, the regulation itself would seem to implicitly provide the rationale for this not to be the case. Just as a series of physical conditions are required for establishments, it also obliges all producers and marketers of food and beverages to have a guaranteed supply of drinking water for at least a full day of production.[61] A requirement that, in contexts such as Colombia's, is contradictory, when close to three million of its inhabitants do not have access to drinking water; and where only 83% of the territory has some type of public water service coverage, which in turn translates into 472 rural municipalities with coverage of less than 25% and 339 with no coverage at all.[62] This imposes a particularly high burden on food producers to make up for the shortcomings of the State, especially in the periphery and rural areas of the country, which in the end, ends up acting as an additional restriction for people living in these areas to be part of the food production system.

Finally, I can bring up another example, now related to the requirements regarding the team of collaborators that must be present in any food or beverage production process. This is the obligation of all producers to have a quality control

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[59] Article 9 of Resolution 2674 of 2013 of Ministry of Health.

[60] Astrid Quintero Prieto, 'Sasón y sabor en el suroriente colombiano: Amazonas y Orinoco' (2013) 4:2 *Comunicación, cultura y política. Revista de Ciencias Sociales,* at 56.

[61] Artículo 32 de la Resolución 2674 de 2013 del Ministerio de Salud y Protección Social.

[62] Ministerio de Vivienda. *Informe Nacional de Monitoreo Sistema General de Participaciones. Agua Potable y Saneamiento Básico. Vigencia 2021* (Ministerio de Vivienda, 2022), at 74.

professional or technician in charge of monitoring and complying with all the technical and sanitary requirements of the production process.[63] Since I will refer later to all that this implies and the negative externalities that the food quality and safety control model has, I will limit myself to pointing out that the requirement to hire a person with training in this area, at a technical or professional level, is yet another bias of the sanitary regulatory system in our countries.

If we continue with the scenario I have referred to in the previous cases, to think that each and every person and company involved in food and beverage processing should hire a person with technical or professional training implies several things. In the first place, it requires, again, a considerable economic capacity since it implies the payment of the salary or fees of such expert; as well as all other legal benefits. Also, it is a requirement based on a rationale disconnected with the national reality – where not only there is not enough supply of professionals and technicians in this field but there are also hundreds of municipalities and territories where there is no supply of this type of services – and generates an additional cause for exclusion of certain places and producers. This is even more serious in the case of Indigenous peoples such as the *Nasa*, who are forced to depend (at least in order to be able to market their products outside their territories) on people from outside the community to carry out procedures and exercise controls that are alien to their traditions and methods and, as will be explained in the following section, even contrary to their worldviews.

These are just some examples of the logic used in the sanitary regulation, which clearly leads to the fact that the only alternative to undertake in the food sector is with an initial economic investment capital that allows the acquisition (owned or rented) and adaptation of a space independent from the houses, which meets all the minimum requirements to operate and the economic and technical capacity to maintain such operation according to the standards demanded by the central power. From there I can conclude that, due to the type of requirements imposed, it is a system that leads to the criminalization of any initiative or form of production that is carried out without complying with the regulation.

4 The quality control model imposed for food and beverage processing

As anticipated in the previous section, one of the requirements imposed on persons and companies that produce and market food is to have a food quality and safety control system. In essence, quality and safety control systems aim to ensure that everything produced complies with the minimum quality standards imposed by sanitary regulations, but also with those self-imposed by the manufacturer as part of its process

[63] Article 24 of Resolution 2674 of 2013 of Ministry of Health.

and value offer. They also aim to prevent food (at any stage of the process) from being victims of contamination, adulteration or food fraud.

Hence, almost all quality and safety control systems are designed from an integral logic, where the different factors and scenarios that affect the food production process are considered. Thus, they have at least specific policies on (food) handling personnel, sanitation of the company and raw materials, traceability of the production process, suppliers of inputs and raw materials, maintenance and calibration of equipment, labeling, production itself, allergen management, sampling plan, quality nonconformities, product return procedures, requests, complaints and claims from customers, and food fraud, among others.

In the Colombian case, as is the case in most of Latin America, this issue was established, at first, in the key of the model of *Good Manufacturing Practices* (GMP), *Buenas Prácticas Manufactureras,* as we have called it in Colombia or *Buenas Prácticas de Fabricación*, as they have been named in other countries such as Chile; derived from the *Codex Alimentarius* developed by FAO and WHO. With this, it began to be demanded that, in addition to the general requirements of qualification and operation, food producers and companies should establish a system and procedure of self-control, which would have to be carried out in principle, by the professional or technician in quality control that was part of the team. This control exercise also became, in the end, the main tool for the sanitary authorities in charge of the inspection and surveillance of food factories to audit compliance with the legal requirements for this activity.

As is the case with general sanitary regulations, the design of each of the elements that make up GMPs contains issues that respond to an industrialized production model, but for reasons of space I will concentrate on the one where this bias is most evident: the need for a sampling plan.

In essence, sampling plans or programs correspond to the way in which food factories submit not only the products they produce, but also everything that has direct contact with raw materials, inputs and foodstuffs to quality analysis. These include, on the one hand, organoleptic evaluations to verify, for example, the conditions of color, odor, flavor and size, among others; microbiological analyses to verify or rule out the presence of live microorganisms; physicochemical laboratories to determine the exposure or chemical or external contamination of raw materials and inputs; and on the other, controls and verifications of the weighing, counting and packaging process of finished products.

In the case of microbiological analyses, sanitary regulations are usually characterized by two things. The first is that they establish the need or obligation to carry out this type of tests to comply with GMP standards. And with this, depending on the type of food or beverage to be elaborated, as well as the inputs and raw materials

used for it, a more or less demanding sampling plan must be adopted. And secondly, because it is the national standard that usually establishes the limits allowed for the presence of each type of microorganism in each product so that they can be accepted for human consumption without endangering people's health.

In general, these types of requirements seem to make perfect sense under the argument of human health. However, a more careful analysis of the scope of the regulation shows that it ends up becoming an excessive requirement, which is not necessarily necessary and does constitute a significant limitation for a large part of the people and companies that produce food in the country. Let us look at one of the many examples that arise from it: the requirement of analysis and control of aflatoxins in raw materials such as plantains.

Aflatoxins are a type of mycotoxin produced by fungi that appear in certain crops, such as corn, peanuts, cotton and other nuts, usually due to poor post-harvest management.[64] Naturally produced toxins whose ingestion can cause medical problems in humans and animals, such as liver cancer, cirrhosis and tissue accumulation.[65] This means that the risk they represent in the abstract for human health is serious and deserves some control. However, although there is evidence that it only occurs in certain raw materials, in Colombia the sanitary regulation establishes that it is one of the microorganisms that must be monitored in most of the foods that come from agriculture, including plantains.

Unlike what happens with foods in which there is more evidence of the presence of aflatoxins (such as peanuts or corn), plantains have a natural protective membrane that is not only thick, but also airtight: its peel (which is much thicker than that of its congener, the banana). To that extent, the raw material is naturally protected from any type of affectation or contamination caused by exogenous and environmental factors, making the requirement of this type of analysis disproportionate and unnecessary. Hence, in other jurisdictions such as Chile, the control of this type of mycotoxins does not apply to this type of food and is mandatory only for those in which there is palpable evidence of their presence.

Likewise, and although the focus of this text is on the colonialist and exclusionary biases of sanitary regulation, I consider it pertinent to point out that in cases such as this one, the standard is designed from an eminently anthropocentric approach, in which the virtues of nature are ignored, as is the case of banana peels. This

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64 Pilar Borgantes-Ledezma, Diego Bogantes-Ledezma y Sixto Bogantes-Ledezma, 'Aflatoxinas' (2004) 46:4 *Acta Médica Costarricense,* at 174.

65 Jesús Rojas Jaimes, Midori Chacón Cruzado, Luis Castañeda Peláez & Alberto Díaz Tello, 'Cuantificación de aflatoxinas carcinogénicas en alimentos no procesados y su implicación para el consumo en Lima, Perú' (2021) 38:1 *Nutrición Hospitalaria,* at 146.

also makes more sense when we see how other areas of sanitary regulation insist on ignoring it to promote the consumption and production of other inputs for packaging and packing, both raw materials and finished products, to promote certain economic sectors of society.[66]

However, in the Colombian case, as in the case of the generalized demand for aflatoxin control in two food groups, other microbiological organisms also occur, which means that food producers must assume a significant burden not only in financial terms, but also in operational terms to exercise this type of control. And here it is worth clarifying that the impact is not only in budgetary terms, because, as a result of the design and cross-cutting operation of GMP, this type of analysis ends up interfering in all other elements that make up the quality control system, from the selection of suppliers to the program of nonconformities and food quality.

But parallel to the case of aflatoxins, I find other examples that show how the control system, beyond pretending to be a true guarantee for public health, stands as a mechanism to restrict the market and exclude from its participation producers other than the industrialized ones that have all the economic capacity to comply with such requirements. This is the case of what has to do with the obligation of companies to strengthen the sampling plan when using raw materials that, like fruits and vegetables, are classified by the regulations as high-risk products. Therefore, the sanitary authorities require not only microbiological, but also physicochemical and toxicological tests to be carried out on each batch of raw materials entering the production process.

To that extent, according to the regulation and the exegetical interpretation usually made by the sanitary authorities in charge of surveillance and control in Colombia, food producers must have evidence of compliance with a strict sampling plan in which the results of the laboratory analysis support the comprehensive control of each batch of raw materials. This undoubtedly constitutes an excessive burden for food producers, which in practice has led them to demand this issue from raw material suppliers to negotiate and receive such raw materials. This leads to the burden of laboratory analysis shifting from the producer of processed foods to the producer of natural foods. Thus, for example, in the snack industry, it is the raw potato supplier who ends up performing the laboratory tests.

However, this leads for obvious reasons to the fact that if the burden is excessive for the grower, it is also excessive for the supplier, even if the supplier can use each laboratory analysis for a larger batch of potatoes. Hence, only large potato producers can afford and comply with this requirement to ensure compliance for their customers,

[66] In fact, in the Colombian case, sanitary regulations prohibit, in general terms, the reuse of elements such as natural fiber sacks, sacks and other similar containers for the transport of raw materials, even when it is guaranteed that there will be no risk of cross-contamination.

leaving aside small producers and farmers who could distribute directly, unless the latter manage to market their crops to large companies that can pay for themselves the requirements of microbiological, physicochemical and toxicological sampling of raw materials. In short, what sanitary regulation achieves in this area is to block the system so that small producers and small suppliers cannot work together.

Finally, it is also worth mentioning how in Colombia, because of the requirement to have drinking water in food factories, it is mandatory to include the physicochemical and microbiological analysis of water in the sampling plan. To that extent, all persons and companies that produce food must, by law, periodically control the pH and chlorine of the water and take samples to the laboratory to carry out the respective microbiological and physicochemical inspection of the water, even when it comes from state aqueducts. This implies, as I pointed out above, that the regulation is used by the State as a tool to evade the burdens arising from its performance obligations and transfers to the producers of food and beverages the periodic control of the quality of the water that it provides. And here it is worth emphasizing, once again, that it becomes a disproportionate burden in a country where a large part of its territory does not have access to drinking water as a result of the shortcomings of the State itself and that without recognizing this situation, it definitively excludes the possibility of the people who live in these territories to participate in some way in the productive system.

In this sense, the inclusion of the obligation to have a sampling plan that includes laboratory analyses of this type leads to the fact that, under the pretext of guaranteeing public health, it becomes a criterion for excluding small, enterprising and traditional competitors from the productive system. Even more so in the case of producers located in rural areas or Indigenous territories who want to make an effort to maintain their production methods and market their products in a context beyond their locality.

As if the above were not enough, it should be noted that for some years now there has been a generalized tendency in Latin America to promote the 'refinement' of food quality and safety control. Specifically, most countries, including Colombia and Chile, have begun to promote the use of the HACCP system (Hazard Analysis- Critical Control Point); a model whose origin is in the NASA agency in the United States, focused on controlling more rigorously the critical points of the production process of food and beverages, in which safety can be compromised.[67] A system that is worth clarifying was originally created to analyze and control the food that astronauts would take into space, so that their characteristics and nutritional qualities would not be affected by exposure during the trip. However, it is worth noting that much of the

[67] Roberto Carro Paz & Daniel González Gómez, 'Normas HACCP. Sistema de Análisis de Riesgos y Puntos Críticos de Control' (2012) *Administración de las Operaciones*, at 1.

design of the system was carried out by the Pilsbury Company, which since 2001 has belonged to General Mills, one of the largest food and beverage companies in the world.

In the Colombian case, at the beginning, the adoption of this model was optional for all food factories, although the regulation established that the State would oversee promoting its adoption and implementation by all, for which it developed a certification process that led to the use of the HACCP seal as an advertising strategy for companies. Later, however, it was made mandatory for factories producing high-risk foods, such as meat, dairy and similar products.

The HACCP system involves a series of procedures and requirements that are more demanding than GMP. In essence, the main difference between this model and GMPs is that it insists on the need to identify those moments in the process in which there is a greater risk or danger for the end consumer. This implies, based on this identification, the establishment of measures to mitigate and control these risks, which in turn leads to the fact that sampling plans can and should become even more demanding in terms of scope and intensity. In addition to this, internal control policies must be developed with greater attention, detail and exigency, to guarantee quality in general terms, but food safety. This has forced those implementing the model to develop product contamination simulation exercises to strengthen the response capacity and risk mitigation for the final consumer, which requires the formation of new specialized teams trained in HACCP to oversee training, implementation and control of the system. In other words, it is no longer enough to have only a professional or technician in quality control, but a whole team is required for this purpose, further complicating things for small producers and people who want to participate in the food production system from rural and community scenarios.

It should also be briefly noted that both GMP and HACCP have a direct impact on the supply chain by establishing standards related to GMOs and more specifically to LMOs. This is because they oblige all persons or companies that produce food to include in the labeling of their products a warning as to whether they were manufactured or elaborated with any GMO or LMO raw material. This is a complex requirement for national producers, since it obliges them to have a system for selecting suppliers that have the capacity to certify whether or not the raw materials come from a GMO or LMO. It is, without a doubt, one of those issues that, depending on where you look at it, can be read in one way or another. Thus, for example, it can be a timely and convenient measure for interests of Indigenous peoples, but at the same time, harmful to the interests of other groups such as peasants and small producers that are also excluded by the sanitary model.

This is paradoxical in contexts such as Colombia's, where national legislation obliges Colombian farmers to use commercially certified seeds when cultivating for

commercial purposes, considering the reproduction (use of seeds from other plants) of plants, vegetables and fruits that are not certified by the sanitary authorities to be a risk to public health. This promotes a system of capitalist consumption, which encourages the distribution of foreign products in our territory and prevents the reproduction of ancestral and native plants of our lands — criminalizing the maintenance and respect for the traditional foods of our country. Proof of this is the way in which a woman of Andean peasant descent was persecuted and criminalized for using seeds native to her region to establish a system of community production and supply of vegetables in a neighborhood of Bogota.[68]

5 The distribution of competences in sanitary control, inspection and surveillance

However, a cross-cutting analysis of sanitary regulation would not be complete without looking at the control, inspection and sanitary surveillance system. Normally, this is usually the responsibility of the national authorities to the extent that the regulation is of a national order. For example, in the case of Colombia, this competence lies initially with the National Institute for Drug and Food Surveillance (Invima), which, in addition to inspection and surveillance, has regulatory and sanctioning powers in this area. In essence, in the exercise of these powers, when it is found that there is a violation of sanitary obligations by producers and/or marketers of food and beverages, Invima may impose different sanctions ranging from warnings and fines to the cancellation of authorizations and the closure of factories.

However, regulation enables Invima to delegate the inspection, surveillance and sanctioning of certain establishments, such as those engaged in the commercialization of food or catering, to the territorial authorities that have been created for sanitary purposes. Hence, in some departments, districts and municipalities there are specialized secretariats for this purpose. Likewise, the law allows Invima to delegate the functions of authorization and regulation in certain cases, such as the one that has to do with the Indigenous authorities themselves, even when in Colombia there are still no territorial entities of this nature.

Thus, what happens when it comes to products produced and distributed by Indigenous communities is that their own authorities are the ones who end up authorizing the production and distribution of food and beverages. To a certain extent, this leads to the creation of an exception to national sanitary regulations so that

[68] Nicolás Ibargüen, 'Rosita y el infinito de la semilla' (17 May 2022) *Elemental* (La No Ficción & Ajá, lanoficcion), https://podcasts.apple.com/ca/podcast/rosita-y-el-infinito-de-la-semilla/id1622605620?i=1000561782106 https://open.spotify.com/episode/0OFFUS3DiPxIMJ1OpukG7R?si=ce839ecf57aa4441 (accessed 16 August 2025).

Indigenous communities can maintain their traditional production methods and processes. However, in practice, problems of articulation arise that reaffirm the colonialist biases of the Colombian legal system, which deepen racism and the exclusion of Indigenous peoples.[69]

Although it is true that the Indigenous authorities have the competence to authorize the elaboration of food products by the Indigenous communities themselves, such competence is limited, since it is restricted only to the production and commercialization of products within the Indigenous territories and zones of influence. In the event that such products are distributed in places outside their territory where the general sanitary regulations apply, the permits granted by the Indigenous authorities will lose validity and thus, the products will be illegally produced and marketed. At least this has been the interpretation given by the *Consejo de Estado* when ruling on a nullity action against a sanitary alert that prohibited establishments in Bogota from selling products made by the *Nasa* community.[70] And in certain way, reaffirmed more recently by the Colombian Constitutional Court.[71]

To that extent, although it is true that Indigenous communities have autonomy to regulate and authorize the production of food within their territories, such production is restricted exclusively to that territory. Consequently, in order for Indigenous communities to penetrate the general market, they must obtain the permits granted by the national sanitary authorities and for this, comply with the general requirements established by the national sanitary regulations. Ultimately, this is yet another example of the exclusionary and colonialist bias of the sanitary regulation model adopted and developed in Colombia.

6 Final remarks

Undoubtedly, sanitary regulation for the production and distribution of food and beverages is important and necessary in any country, since it is clear that there is an important effect on the protection of public health and the quality of life of all its inhabitants. But that is precisely why sanitary regulation is an issue that should not be taken lightly by the legislator or the administration, particularly in countries like Colombia where the biological richness of our territory, the ancestral knowledge of our Indigenous peoples and the gastronomic and productive traditions of our peasants,

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[69] Paula Robledo Silva, 'Una aproximación crítica a las competencias territoriales en materia de salud pública', in *Derecho Administrativo Sanitario. Tomo 1. Derecho a la salud, salubridad pública y condiciones sanitarias de las ciudades* (Universidad Externado de Colombia, 2021).

[70] Consejo de Estado, Sala de lo Contencioso Administrativo, Sección Primera. Judgement of June 18th of 2015. Rad. 11001-03-24-000-2011-00271-00. Case Fabiola Piñacue Achicue vs. Invima.

[71] Luis Felipe Cruz &Jesús Medina, '¿Comercializar la coca solo en los resguardos?', *DeJusticia,* 12 February 2019, https://www.dejusticia.org/column/comercializar-la-coca-solo-en-los-resguardos/ (accessed 16 August 2025).

together with characteristics such as our agricultural vocation and the predominance of rural territory in a context of absence and neglect by the State, converge.

In practice, that the sanitary regulation of food and beverages answers to a large extent, not only to the developmentalist model that has been implemented in almost all national policies for decades, but it is also designed to privilege specifically the industrial production systems. There are three main reasons for this: the international influences that have inspired regulation in this area; the interests of the economic elites in maintaining control of the market; and the need for the State to use the food sector as a mechanism to make up for its own shortcomings.

In this context, in these pages I have tried to present, through concrete examples, manifestations of how this model is marked by strong colonialist and exclusionary biases that ensure in a certain way that the sector continues to be dominated by a few, and that the periphery cannot participate in the production of food and beverages. This limits the possibility of development and growth in rural areas, the penetration of new producers in the market and, what is even more worrying, the exclusion and cancellation of ancestral and traditional production methods. So much so that it shields access barriers to the point of criminalizing any form of production that does not meet the requirements imposed by the official model.

This in turn leads to the fact that nowadays a great part of the people and companies involved in the elaboration, production, and commercialization of food in Colombia face the daily risk of being sanctioned by the sanitary authorities, since the complexity of the requirements (as well as the dispersion of regulations that characterizes the sector) makes compliance extremely difficult. And it doesn't stop there. As a result of a series of tax reforms, new and complex barriers to access to the food production sector that deepen the exclusionary biases of the health policy are being created. This is the case of what is happening with the enforcement of a single model of electronic taxation that criminalizes individuals and companies that do not have the technical and physical means for implementation; or with the excessive creation of 'sin' taxes (allegedly on goods and services deemed harmful to public health) that tax foods typical of the Colombian diet, such as *arepas* (traditional corn cakes). However, I will analyze these cases on another occasion.

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Front Cover Image

'There was an academic friend here — where are you?'
by Samir Harb (Instagram: Samir_harbsss)
In memory of Dr Wiesam Essa (1975—2024)
and all the scholars who have been tragically killed in Gaza
by the Israeli war machine.

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