



PRINCIPLES FOR
HUMAN RIGHTS
IN FISCAL POLICY

Fiscal Policy and Human Rights: Taxation and Market Regulation to Guarantee Health, Food, and Environmental Rights

AUTHOR

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for Human Rights in Fiscal Policy N° 4

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SUMMARY



Among the **Principles for Human Rights in Fiscal Policy**, the power-duty of the States to encourage and/or discourage behaviors and correct externalities through specific instruments of fiscal policy ([Principle 12](#)) stands out. This principle highlights the regulatory function that fiscal policy can and should have over economic agents' behavior in order to promote conditions for progress in the access to the rights to health, adequate food, and a healthy environment.

Explicitly related to the environment, [Principle 4](#) decrees States' duty to guarantee that their fiscal policy is environmentally sustainable. This means that the State is obligated to mobilize the necessary resources to achieve a healthy and sustainable environment, prevent the foreseeable damage to human rights and at-risk populations due to climate change, and protect biodiversity, soils, oceans, and nature in general.

In the framework of these principles, this document stresses fiscal policy's potential to drive forward State obligations in health, food, and environmental sustainability. In particular, this paper develops a series of theoretical and empirical arguments that show the tax potential of taxing goods and services that negatively impact health, food, and the environment, such as alcohol, tobacco, ultra-processed foods, carbon emissions, or single-use plastics. For example, green and health taxes can be helpful for mitigating the lack of information regarding the negative impacts of consuming these goods or as a political strategy so that people can internalize the cost of consumption in the long term.

Additionally, this paper re-examines a series of normative arguments—both specific and general—that justify the implementation of these kinds of fiscal instruments and whose sources can be identified in the specialized reports and recommendations of several international and regional human rights agencies as well as in papers published by international development and financial agencies. Overall, they are focused on the health, social, and economic costs originated from the consumption of tobacco, alcohol, ultra-processed foods, and sugar-sweetened beverages as well as the different public policy strategies that governments can use to mitigate such costs.

In addition to stating the benefits of this kind of taxation—such as reducing the production and consumption of goods and services that are harmful to the environment and health or the additional resources it may involve for the State coffers—, this paper includes some warnings and challenges to ensure that these fiscal instruments comply with other relevant principles, like the fair taxation sub-principle ([Sub-Principle 3.1.](#)), and that they are not regressive (for example, compensation measures through expenditure as called for in [Sub-Principle 12.2.](#))





INTRODUCTION



Throughout history, there has been a discussion among economists about the role of fiscal policy⁰¹. While some think that fiscal policy should have a proactive role—generating changes in supply and demand that stimulate economic growth and the market participants' decisions through prices—, some others think that fiscal policy should be neutral and only play its role by collecting and allocating public resources.

Concurrently, in the field of human rights, there has been a debate in recent years about the role of fiscal policy regarding States' obligations towards respecting, protecting, and guaranteeing human rights. Although, for a long time, these kinds of policies were excluded from the analysis and evaluation of compliance with international treaties on human rights, in the last decade, some bodies and special procedures of the universal human rights system have focused their attention on the fiscal policies of States and the way they contribute to or hamper the realization of human rights (Lozano *et al.*, 2019: 35).

This paper argues that instruments that stem from fiscal policy, such as taxes, can encourage or discourage behaviors and have the potential to contribute to obligations related to the realization of the rights to health, food, and a healthy environment.

This exercise is carried out within the framework of the **Human Rights Principles and Guidelines on Fiscal Policy**. It aims to go into greater depth in research on the usefulness of fiscal policy instruments for rights enjoyment and, given the strategic importance of this issue, to extract applicable public policy guidelines with a human rights approach for the Latin American and Caribbean region.

As opposed to Hayek, Barro and some other thinkers from the “Chicago School”—who state that fiscal policy should not influence investment decisions because it generates inefficiencies and distortions in the markets (Jiménez, 2012: 25)—, this paper's position is clearly defined. We believe fiscal policy can and should be a tool to enact a regulatory exercise when clear market

failures are detected. In this case, taxing goods and services that negatively impact health, food, and the environment, such as alcohol, tobacco, ultra-processed foods⁰², carbon emissions, or single-use plastics.

As will be shown throughout the text, there are solid arguments, both theoretical and empirical, that justify the use of fiscal policy instruments for these purposes. Likewise, there is a belief that fiscal policy has an intrinsic connection to the fulfillment of States' human rights obligations. Not only through rights funding and the redistribution of income and wealth but also through incentive management, which has direct repercussions on habits and behaviors that are closely linked to the protection and guarantee of rights.

The methodology used in this paper pivots on the review and synthesis of the theory behind so-called green and health taxes (or Pigovian taxes), the state-of-the-art literature on the subject, and, in a broad sense, the normative instruments that stem from international human rights law and other fields apart from human rights. Among the latter, there are reports from international agencies (World Bank, Organisation for Economic Co-operation and Development, among others) and related academic papers that are used as secondary sources.

The paper is structured as follows: In the first section, there is a presentation of the theoretical analysis and of the political economy that frames the issue of health and green taxes in the region and also in the context where the public issue at hand emerges. In the second section, the normative standards on the subject are presented, making a clear distinction between human rights standards and standards from other sources. The third section offers a review of the relevant empirical evidence that allows for identifying the impact of these measures, of some practices that are in tension with consolidated normative standards, and of the obstacles or challenges identified while implementing these policies. In the last section, the paper's main conclusions are presented, and a proposal for public policy guidelines with a human rights approach is formulated.



01 | It is important to clarify that, although the concept of fiscal policy includes both taxes and public spending, this paper will exclusively focus on fiscal policy in terms of taxes. This does not exclude some discussion on public expenditure associated with the collection of the analyzed taxes.

02 | There is a debate among civil society organizations about the language used to refer to these kinds of goods. Although WHO and PAHO use the term ultra-processed “foods,” some consider that the proper term would be ultra-processed “products” because only those that are natural could be considered “food.” In this paper, we will follow the standard term used by WHO and PAHO.

2.

THE PUBLIC PROBLEM AND PIGOVIAN TAXES

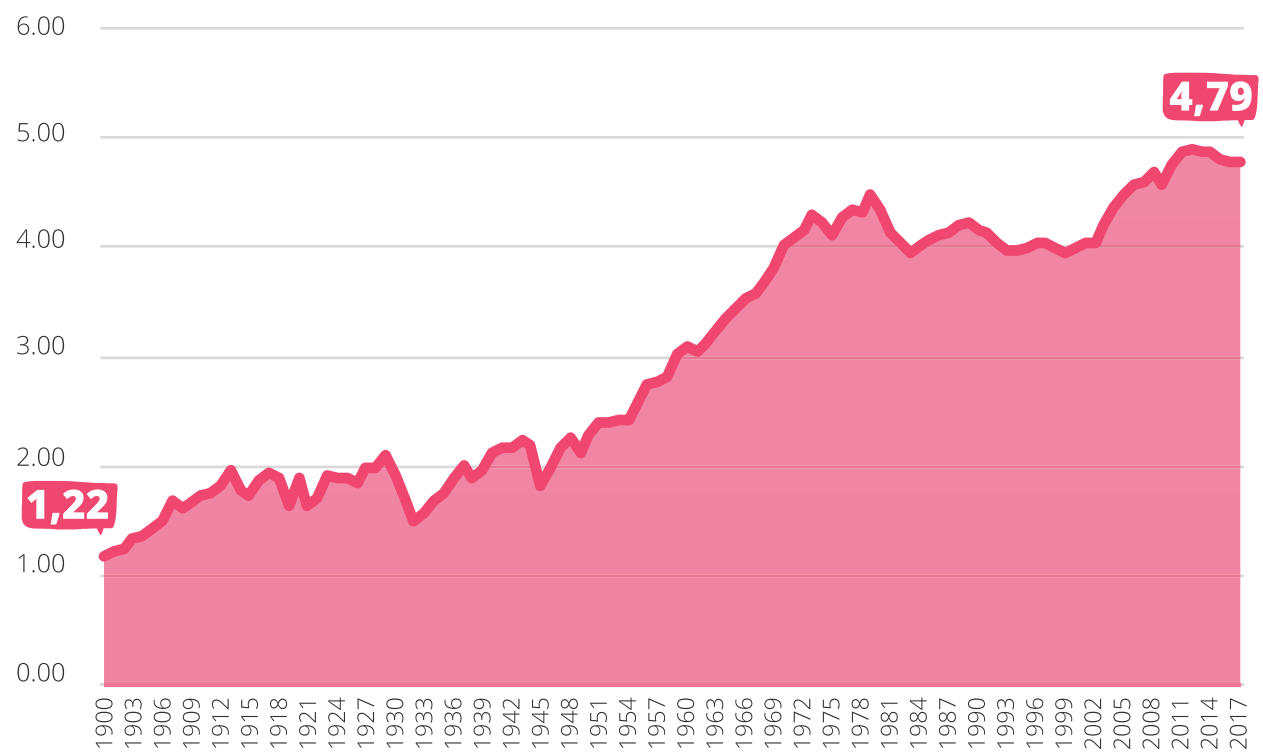
2.1 Context

The implementation of fiscal instruments such as Pigovian taxes is of paramount importance given the context and the current data on environmental, food, and nutrition issues, as well as public health.

Regarding environmental issues, according to the last report by the Intergovernmental Panel on Climate Change (IPCC), the consequences and costs of a global warming of 1.5 degrees Celsius will be much more drastic than previously estimated. The report also states that this temperature rise could happen in 11

years if carbon dioxide emissions are not immediately reduced (IPCC, 2018). According to Our World in Data, carbon emissions have not been significantly reduced in recent years (see Graph 1) despite the multiple international agreements that most countries have signed in the last decades, such as the Kyoto Agreement or the more recent Paris Agreement, where 190 States committed to progressively reduce CO2 emissions, reviewing their targets every five years (Framework Convention on Climate Change, 2015).

Graph 1. Global Average CO2 Emissions Per Capita 1900–2017 (tons)



Source: Our World in Data

On the other hand, single-use plastic production has been growing steadily over the years. In 2015, around 300 million tons of plastic residue were generated, of which 79% currently lies in dumps, landfills, or in oceans or strategic ecosystems, while roughly 12% has been incinerated and only 9% has been recycled (Geyer *et al.*, 2017; UNEP, 2018).

Regarding the goods that are harmful to public health, food, and nutrition, such as alcohol, tobacco, and ultra-processed foods like sugar-sweetened beverages, the situation is also concerning.

For ultra-processed foods, there is evidence showing that the global prevalence of obesity has increased



three-fold since 1975. In 2014, approximately 39% of the adult population was overweight, and in 2016, the number of children under the age of five that suffered from being overweight or obese was 41 million. Furthermore, the increase in the prevalence of childhood overweight has clustered, especially in middle and low-income countries. This is because, in recent years, the problem of malnutrition due to being overweight has ceased to be a problem that is exclusive to developed countries (FAO *et al.*, 2020). Similarly, the number of people with diabetes has increased abruptly. While there were around 108 million people with some type of diabetes in 1980, in 2014, this number rose to 422 million, almost a 300% increase. Besides diabetes, overweight is a major risk factor for cardiovascular diseases, some types of cancer, and other chronic non-communicable diseases (WHO, 2017). Ultra-processed food consumption and unhealthy consumption are highly associated with these types of diseases. In the ultra-processed food group, sugar-sweetened beverages stand out as the products with the highest sugar content that do not provide any significant nutritional content (WHO, n.d.).

Concerning tobacco, each year, more than eight million people die from its consumption. Of these 8 million, seven die from direct use, while the remaining one million die as a consequence of involuntary exposure to second-hand smoke (passive smoking). Of the 1.1 billion smokers worldwide, 80% live in middle and low-income countries, so it can be considered an epidemic in developing countries (WHO, 2019).

As for alcohol, 3 million people die each year due to its harmful consumption, amounting to 5.3% of the total deaths worldwide. Additionally, harmful alcohol use causes at least 200 different diseases and disorders, and 5.1% of the global burden of morbidity is attributable to alcohol (WHO, 2018). According to research published in *The Lancet* magazine, alcohol is the most harmful psychoactive substance for both its users and the people around them. Its negative impact on health even reaches beyond that of heroin, crack, or methamphetamine (Nutt *et al.*, 2010).

➤ 2.2 Market Failures and Pigovian Taxes

The economic theory that establishes a link between the regulatory role of taxes and human rights—and that lies behind the use of fiscal instruments such as health or green taxes—is based on the classic principles of taxation that are followed to correct externalities, as stated by the English economist Alfred Pigou

For all of the above reasons, in recent decades, governments around the world have implemented several strategies and policies to reduce the negative impacts described above as much as possible. In most cases, these strategies have focused on regulation through reform or creation of laws that regulate markets; command-and-control⁰³ strategies for environmental issues and harm reduction⁰⁴ policies for tobacco, alcohol, and ultra-processed foods. Only recently have some governments envisioned strategies involving economic instruments, such as Pigovian taxes or the use of targeted subsidies.

In part, this late venture is due to the interests of the large economic groups involved in these markets, which have an influence on public policy decision-making (Aidt, 2010; PAHO, 2015; WHO, 2014). Imposing an additional tax or surcharge on these goods or activities, alongside the already implemented strategies of command-and-control/harm reduction, would involve a negative impact on the sales and production costs of their goods and services, which goes against their economic profit maximization objective. As a result, the governments that have taken the lead in implementing regulatory policies through economic instruments have faced intense pressure from stakeholders through lobbying and other pressure strategies. These strategies are aimed at hindering and creating an adverse atmosphere for the adoption of these policies. Some of them will be analyzed in greater depth in Section 4.

While this paper only addresses the subject of regulation through taxation, it is also important to mention that governments' direct spending can encourage (or discourage) the consumption or production of the goods that are harmful to public health, nutrition, and the environment, and this is fundamental for the issue at hand. Thus, state policies that subsidize fossil fuels or sectors with significant impacts on the environment—like the cattle industry or public food programs with low nutritional value products—should also be considered in this discussion on fiscal policy and human rights.

in 1920. According to this theory, in the presence of market failures, States must intervene in the markets through their fiscal policy. Among the most common failures are those caused by the negative or positive externalities derived from the market (Pigou, 1920). This happens when the marginal social cost of produc-

03| Normative and regulatory instruments that set standards and limits to productive activities to achieve environmental targets (ECLAC, 2015: 8).

04| Policies, programs, and/or practices that seek to reduce the harm associated with the use of psychoactive substances without the need to end their use (Grover, 2011).

ing or consuming a given good or service exceeds (in case of a negative externality) or is below (in case of a positive externality) the marginal social benefit (Allcott *et al.*, 2019). That is, in some cases, the production or consumption of goods and services can have positive or negative impacts on people who are not involved in the market. If this market is not regulated, people or corporations will produce/consume a lot of this good/service, impacting other people who do not receive a compensation/correction for the generated impacts. Therefore, taxing goods or services that cause negative externalities can increase welfare by restricting the consumption or production up to a point where the marginal social cost and the social benefit are equal—thereby mitigating the negative externality in question (Allcott *et al.*, 2019; Pigou, 1920).

An example of Pigovian taxes are those that exist to contribute to mitigating the negative externalities associated with the consumption of goods that directly affect the health of other people who do not consume these goods, like in the case of alcohol, tobacco, and sugar-sweetened beverages.

The negative externalities associated with alcohol use and abuse present themselves in different kinds of violence (Cogan & Ballinger, 2006; Collins *et al.*, 1997; Peralta & Cruz, 2005), traffic accidents (P. J. Cook, 1981; Hingson & Howland, 1987), and in the public resources allocated to treating diseases associated with alcohol use (Bouchery *et al.*, 2011; Cargiulo, 2007; Dall *et al.*, 2007).

There are similar externalities regarding tobacco use. In addition to the allocation of public resources to treat diseases associated with its use (Dall *et al.*, 2007; Lai *et al.*, 2007; Reynales-Shigematsu *et al.*, 2006), there are also impacts on the health of the so-called “passive smokers” (D. G. Cook & Strachan, 1997; Strachan & Cook, 1997, 1998).

Finally, in the case of sugar-sweetened beverages, the externalities are primarily related to the public resources that are allocated to treating non-communicable chronic diseases derived from the consumption of these products (Brownell *et al.*, 2009; Dall *et al.*, 2007; Wang *et al.*, 2012).

Regarding green taxes, there is copious evidence of the negative impacts of carbon emissions on global warming and the current climate crisis, with all the negative consequences for human beings that this entails (IPCC, 2018). Similarly, the production of single-use plastics

contributes to generating non-biodegradable waste that affects strategic ecosystems that are vital for the planet (Geyer *et al.*, 2017; UNEP, 2018).

In both cases, the negative consequences on health and nutrition rights are evident, considering those that stem from the unregulated consumption of alcohol, tobacco, and sugar-sweetened beverages and the production of goods and services that emit carbon into the atmosphere along with single-use plastics—in the case of the right to a healthy environment.

Taxing the production and consumption of these goods has a double benefit. On the one hand, increasing the price of the goods or services in question discourages the consumption of goods or services that generate externalities⁰⁵, generating environmental, nutritional, or health gains associated with lower consumption. On the other hand, as a secondary benefit, additional resources are obtained by collecting the tax that can be invested to mitigate the negative impacts caused by the externality. Nonetheless, it is important to highlight that this supply of resources should be seen, ideally, as a temporary source; since the main goal is to reduce the production and consumption of these goods, revenue would tend to decrease in the medium and long term.

However, the existence of negative externalities is not the only argument that justifies the State’s regulation of these markets through fiscal policy. Health and green taxes are also a mechanism that encourage consumers to consider the impacts of these goods or services that affect their own health or their environment. This idea stems from behavioral economics, which argues that, in some cases, people are not able to internalize all the costs of consuming certain goods or services, either because of information asymmetries—the consumer does not have all the available information to make decisions that consider all the costs and benefits associated with consumption—or because of intertemporal impatience when consuming these goods—in other words, the agent gives more importance to the benefit of consuming the good in the present without adequately considering the future costs of the consumption (Allcott *et al.*, 2019: 207). In this case, health and green taxes can work as complementary tools to mitigate the lack of information about the negative impacts of consuming these goods⁰⁶ or as a policy strategy so people can internalize the cost of consumption in the long run⁰⁷ (Monroy, 2017).

05 | Price elasticity of the demand for these goods and services is fundamental here. In other words, how much demand changes as a result of changes in their prices. If price changes lead to significant changes in demand, the good or service is elastic. Otherwise, it is inelastic.

06 | In contexts where there are no clear labeling policies nor awareness campaigns that warn against the negative impacts of consuming these goods and/or services.

07 | Based on the concept of behavioral economy developed by Richard Thaler, which includes policies or programs that offer incentives to agents to achieve proposed objectives, this policy instrument could be understood as a nudge (Thaler & Sunstein, 2009).





NORMATIVE AND PRACTICAL STANDARDS ON FISCAL POLICY AS REGULATORY INSTRUMENTS

➤ 3.1 Normative Standards from International Human Rights Law

To review the normative standards that stem from international human rights law, we surveyed all the human rights documents issued by the universal human rights system and the inter-American human rights system. Specifically, we reviewed resolutions, general commentaries, recommendations, reports, and rulings from the various treaty bodies and special mechanisms of the United Nations that were relevant to the issue of fiscal policy and the rights to health, food, and a healthy environment. Similarly, a review of jurisprudence, minutes reports, thematic reports, country situation reports, and advisory opinions of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights was carried out.

This survey revealed that, although some actors within the international human rights system have developed normative standards that are explicit regarding the use of Pigovian taxes as policies to encourage the enjoyment of human rights, there are also more general normative developments in which these types of tax policies have a foundation in human rights standards.

All of the above can be illustrated with the joint state-

ment on climate change and human rights, issued in 2019 by five UN treaty bodies⁰⁸. It states that:

For States to comply with their human rights obligations and to realize the objectives of the Paris Agreement, they must adopt and implement policies aimed at reducing emissions, which reflect the highest possible ambition, foster climate resilience, and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate-resilient development (OHCHR, 2019: para. 2).

Even if there is no explicit reference to the adoption of green taxes to reduce emissions and foster climate resilience in the statement, the theoretical foundation of these taxes and the copious evidence on its effectiveness and efficacy in protecting the environment make these instruments a good alternative for States to comply with their human rights obligations.

The normative development of the actors in the international human rights system that have worked the most on these issues is presented below.



3.1.1 Treaty Bodies: Committee on Economic, Social, and Cultural Rights

The treaty body within the universal human rights system that has worked the most on producing and developing some form of authoritative doctrine on taxation as a regulatory instrument to protect and guarantee human rights is the Committee on Economic, Social, and Cultural Rights (CESCR)⁰⁹. This doctrine can be found in the recommendations to States that the committee issues after the States' reporting sessions before the committee. These observations mainly focus on health taxes and, to a lesser extent, on fiscal instruments to mitigate climate change and pollution.

Thus, of the 135 recommendations that the committee

has issued over the past ten years to countries with which it has held constructive dialogue during its sessions, 11 final observations explicitly addressed the use of fiscal policy to guarantee and protect health and food rights. Specifically, the CESCR has framed its recommendation on tobacco and alcohol taxation within the protection and guarantee of the right to health, while sugar-sweetened beverages and junk food taxation has been framed as protection and guarantee of the right to health as well as the right to food.

For example, in the concluding observations to Argentina in 2018, while addressing the issue of consumption

08| The five treaty bodies are the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social, and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child, and the Committee on the Rights of Persons with Disabilities.

09| The committee was established under the United Nations Economic and Social Council's (ECOSOC) Resolution 1985/17 of May 28, 1985 to monitor the implementation of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

in terms of obesity and unhealthy foods, the committee stated that *“it regret[ed] the lack of express recognition and protection of the right to food in the constitution”* and that it was *“concerned about the increasing incidence of overweight and obesity, the absence of State measures to reduce the consumption of sugary beverages, and the lack of suitable regulations to restrict the advertising of unhealthy foods.”* It recommended to *“take effective measures to discourage the consumption of unhealthy foods and beverages, including an increase in the tax on sugary beverages”* (CESCR, 2018b: 8).

Similarly, in the concluding observations to Poland in 2016, the committee expressed its concern *“about the increase in child obesity rates and the low rates of breast-feeding, particularly among infants between two and six months of age”* and recommended the introduction of *“higher taxes on junk food and sugary drinks”* (CESCR, 2016: 7).

Furthermore, regarding the issue of tobacco consumption and its harmful impact on health, in its concluding observations to Argentina in 2011, the committee recommended that *“the State party ratify and implement the WHO Framework Convention on Tobacco Control and develop tax and pricing policies”* because it was *“concerned about the high level of tobacco consumption in the State party, especially among women and youth”* (CESCR, 2011: 7). Seven years later, in its review of Argentina in 2018, the committee was much more specific on its recommendations: *“The committee is concerned about the negative health impact of the high rate of tobacco use [and] the insufficient level of tobacco taxes,”* so it recommended the adoption of *“measures for the prevention of tobacco use, in particular a ban on advertising [and] an increase in the tobacco tax to a level sufficient to have a deterrent effect on tobacco use”* (CESCR, 2018b: 9).

Finally, with respect to alcohol, in its concluding observations to Finland in 2014, the Committee stated that it was worrisome that the *“consumption of alcohol and drugs remain[ed] remarkably high among young people”* and *“recommend[ed] that the State party adopt all measures necessary, in addition to high taxes or the prohibition of advertisements, to counter alcohol abuse and drug use”* (CESCR, 2014: 7–8).

It is important to note that these concluding observations are “soft law” in their nature. That is, they are documents that lie between hard binding law and not

law (although closer to the former than the latter). They are normative documents that are not strictly binding (unless they become customary practice for States), but they are not documents of doctrine. They could be regarded as soft law since they were developed by the body that received the function of interpreting and monitoring compliance with the treaty from the treaty itself (or from international law). Thus, its interpretations and doctrines deserve particular consideration and respect.

Considering that the committee has been including this type of recommendation in its concluding observations for nine years, it could be said that they are part of its consolidated evaluation doctrine on fiscal policy and human rights. Although there are differences in the specificity of the recommendations on fiscal policy, it is clear that, for the body in charge of ensuring compliance with the International Covenant on Economic, Social, and Cultural Rights (ICESCR), fiscal instruments that regulate the consumption of unhealthy goods are crucial for protecting and guaranteeing the rights to health and food.

Moreover, in recent years, the committee has increased its focus on climate issues. In 2018, 42% of its concluding observations to States addressed the issue of climate change (HRC, 2019: para. 22).

In a similar fashion, the committee has also developed an emerging doctrine regarding States’ obligations to mitigate impacts on the environment through fiscal policy. In its 2018 statement on climate change and ESCR, the committee stated that *“failure to prevent foreseeable human rights harm caused by climate change, or failure to mobilize the maximum available resources in an effort to do so [...] could constitute a breach of [the legal human rights] obligation.”* Subsequently, it states that complying with these obligations in the context of climate change requires *“protecting human rights, by effectively regulating private actors to ensure that their actions do not worsen climate change; and fulfilling human rights, by the adoption of policies that can channel modes of production and consumption towards a more environmentally sustainable pathway.”* (CESCR 2018a: para. 6, 10). Among the public policy options that are available to States to regulate private economic activity and to channel modes of production and consumption, green taxes can be an effective and efficient way to do so.



3.1.2 Special Mechanisms: UN Special Rapporteurships

The search for broad, explicit developments about the use of these types of fiscal instruments within the universal system regulations made it clear that the documents prepared by the special procedures of the UN system and the reports of the Special Rapporteurs, in particular, were a relevant niche.

For example, in its 2011 report, the UN Special Rapporteur on the right to food highlighted that States should protect the right to adequate food by adopting measures that reduce the negative impacts on public health of the existing food systems and that:

The introduction of food taxes and subsidies to promote a healthy diet constitutes a cost-effective and low-cost population-wide intervention that can have a significant impact [...], as, for example,] the taxation of HFSS foods and beverages can be an effective tool. Price is an important determining factor in consumption levels, and demand elasticity is especially high for snacks and drinks consumed outside the home.

To face the possible negative impacts of the use of these instruments, the report suggests that this “concern can be met by using the public revenue from the tax to make healthy foods more affordable, for it is relative prices that must change” (HRC, 2011: para. 38, 39). Similarly, Special Rapporteur on the right to food, Hilal Elver, devotes an entire chapter to the appropriate economic measures for guaranteeing a healthy diet, stressing the use of taxes on ultra-processed products as a strategy to guarantee the effective enjoyment of the right to an adequate diet (HRC, 2016: para. 84–87).

In line with this, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in its 2012 report, recognizes:

The so-called sin taxes—excise taxes levied on socially harmful goods such as alcohol, junk foods or tobacco—are also used to raise funds for health, and maybe specifically earmarked for health spending. Sin taxes may serve a secondary purpose of discouraging unhealthy behaviors by raising the cost of consumption, which may promote overall public health, [clarifying that these taxes should not be regressive, otherwise they would not be] in accordance with the obligation of States to respect the right to health. (HRC, 2012: para. 17–18).

Later on, in the fiscal measures section of their 2014 report, the Special Rapporteur highlights the use of taxes on sugar-sweetened beverages to control the obesity and overweight epidemic that plagues many countries around the world (HRC, 2014: para. 19–21).

On the subject of green taxes, the Special Rapporteur on extreme poverty and human rights, in its report on climate change and poverty, emphasizes that:

“addressing climate change will require a fundamental shift in the global economy [...], decoupling improvements in economic well-being [...] from [...] fossil fuel emissions” and that “States have obligations to adopt legal and institutional frameworks that protect against, and respond to, environmental harm that may or does interfere with the enjoyment of human rights.” Also, they point out that “fiscal policy and carbon pricing can incentivize low-carbon investment and emissions mitigation” (HRC, 2019: para. 25, 43, 44).



3.1.3 Regional System: Inter-American Court of Human Rights

With regard to the inter-American system, the Inter-American Court of Human Rights has emphasized that to uphold the right to life and integrity of the person, “States have the obligation to prevent significant environmental damage within and outside their territory,” and to comply with that obligation “States must regulate, supervise and monitor the activities within their jurisdiction that could produce significant environmental damage” (I/A Court HR, 2017: para. 174, 242b). As in the HRC joint statement, even though the court does not explicitly mention the use of green taxes to regulate and control activities that harm the environment, it is clear that this is one option available to reach that goal.

However, during the review, no human rights document was found that directly stated the regulatory use of taxes to protect and guarantee human rights. The only reference to this type of instrument was found in a thematic report on business and human rights by IA-CHR to the ESCER Special Rapporteur. While denouncing industry lobbying against some regulatory policies, the report points out:

Economic power is thus reflected in the companies’ political and legal ability to influence for their own benefit, for example, when “the transnational corporations lobby for fewer regulations that apply to them (e.g., no regulations on marketing unhealthy food to children or warning labels on processed foods), promote regulations that apply to other sectors (e.g., trade and investment agreements that bind governments to protect corporate investment interests), resist or reject taxes that apply to their products (e.g., taxes on sugary drinks and energy-dense, nutrient-poor foods), and lobby policymakers for subsidies that benefit their businesses (e.g., agricultural and transportation subsidies)” (ESCER Special Rapporteur, 2019: 133).

Even if the report does not have explicit normative standards on the use of taxing sugar-sweetened beverages or energy to protect and guarantee the right to health and a healthy environment, it can be interpreted that some of the strategies that companies use to block this type of initiative go against the effective enjoyment of these rights.



➤ 3.2 Non-Normative Standards from Other Sources

For this review, documents from international and multilateral bodies were considered, such as the World Bank, the International Monetary Fund, the Organisation for Economic Co-operation and Development (OECD), the Economic Commission for Latin America and the Caribbean (ECLAC), the Inter-American Development Bank, the World Health Organisation, and the Intergovernmental Panel on Climate Change. Relevant academic papers that address the subject from

both theoretical and practical approaches were also reviewed (books, working papers, papers published in international indexed journals).

In clear contrast with what happens in the human rights field, the standards that can be found in documents of international bodies and academic papers on green and health taxes are abundant and widely developed.

3.2.1 Health Taxes

The regulations found among the different documents, both from international and academic organizations, focus on the health, social, and economic costs of consuming alcohol, tobacco, ultra-processed foods, and sugar-sweetened beverages and the different public policy strategies governments can employ to mitigate these costs.

Direct and indirect health costs are mainly associated with different types of cancer, cardiovascular diseases, respiratory diseases, diabetes, mental disorders, and early deaths (Sassi *et al.*, 2013; Sornpaisarn *et al.*, 2017; World Bank, 2020; WHO, 2014). In the case of alcohol, the economic and social costs—which are indirect because they are market-generated externalities—relate to productivity losses, health care costs, and high rates of violence and accidents (Allcott *et al.*, 2019; Bouchery *et al.*, 2011; Cargiulo, 2007; Cogan & Ballinger, 2006; D. G. Cook & Strachan, 1997; Dall *et al.*, 2007; Hingson & Howland, 1987). Furthermore, these negative impacts cluster together to a greater extent in medium and low-income countries, and therefore have an even greater impact on narrowing socioeconomic gaps between countries (Sornpaisarn *et al.*, 2017; WHO, 2014, 2017).

Fiscal policy instruments, such as health taxes, are shown as a cost-effective measure to reduce the consumption of these products. There are different types of taxes that can be applied. On the one hand, specific taxes are flat rates on physical units (whether per cigarette, pack, gram of sugar, alcohol content, etc.). On the other hand, there are *ad valorem* taxes which represent a percentage of the price regardless of its content (Bird, 2015).

Even if taxing the final stages of the tax chain, as is the case of *ad valorem* taxes, implies higher costs in tax administration, the increase in consumer prices has the potential to generate the necessary encouragement to reduce consumption, and, in this way, the benefits associated with the reduction outweigh management costs (Sassi *et al.*, 2013: 18). These benefits also include the additional fiscal resources that the tax would generate for national governments.

The decrease in consumption depends to a large extent on the price elasticity of demand for these products. If demand is inelastic—that is, not sensitive to changes in price—the expected effects in reducing consumption and mitigating health, social, and economic costs will not be as effective. The availability of healthy substitutes or the unavailability of equally harmful substitutes is a key issue to obtain the expected effects (Sassi *et al.*, 2013: 9).

Elasticity also depends on the structure of the markets. In markets with greater competition, where companies are price takers, the effects of the decrease in consumption are greater. In markets with monopolies or oligopolies, producers can manipulate the costs structure in the long term through technological changes and thus reduce the product's price despite the tax (Sornpaisarn *et al.*, 2017: 25).

As health taxes are indirect taxes, the tax burden falls more heavily on lower-income consumers and can be considered regressive. However, these consumers, being more sensitive to changes in prices, obtain greater health benefits as well as greater economic benefits in terms of healthcare savings and productivity improvements (Allcott *et al.*, 2019; Sassi *et al.*, 2013; WHO, 2017). In the case of sugar-sweetened beverages and ultra-processed foods, as lower-income households and young people are the most price-sensitive, they also have the greatest health gains (Faulkner *et al.*, 2011).

The fiscal resources generated by these taxes can be used to improve health systems, for prevention programs, or to strengthen the fiscal administration capacities (Sassi *et al.*, 2013; Sornpaisarn *et al.*, 2017; WHO, 2017).

For alcohol, the decrease in consumption in view of price increases changes according to the type of alcoholic beverage and the cultural relationship each country has with each beverage. For example, the decrease in alcohol consumption due to taxes is smaller for wine in countries such as France, Spain, and Portugal (Lepänen *et al.*, 2001), while in Anglo-Saxon countries, re-



ductions in beer consumption are not significant (Rabinovich *et al.*, 2012).

These measures, in addition to having the potential of reducing alcohol and tobacco consumption, also have a considerable impact by deterring new consumers, especially young people in medium and low-income countries (Sassi *et al.*, 2013: 10; WHO, 2014: 6).

State intervention through taxes that seeks to reduce

3.2.2 Green Taxes

The guidelines on green taxes found in the documents of international organizations and academic papers are built upon the premise that fiscal policy should be used as a tool to achieve the full development of countries and the highest welfare of their peoples. Moreover, to reach both goals, environmental protection is crucial, as stated by ECLAC:

Modern tax policy calls for the inclusion of non-fiscal objectives to supplement the traditional one of financing the State. This is essential for turning particular taxes into social or economic policy instruments oriented towards different goals of general interest, such as environmental protection (ECLAC, 2017a: 62).

Ante la abrumadora realidad de los costos ambientales, sociales y económicos que surgen de la producción y el consumo de bienes y servicios que afectan el medio ambiente, los gobiernos pueden incorporar en su política ambiental instrumentos de política fiscal, como los impuestos verdes, para hacer frente a estos impactos negativos. A través de señales de precios, crean incentivos para reducir a un nivel óptimo la producción y el consumo de estos bienes y servicios (Huppes & Simonis, 2009; OCDE, 2010, 2017; Pigato, 2019)

Nuevamente, se justifica la intervención del Estado en Faced with the overwhelming reality of the environmental, social, and economic costs arising from the production and consumption of goods and services that harm the environment, governments can include fiscal policy instruments, such as green taxes, to their environmental policy in order to address those negative impacts. Through price signaling, they create incentives to reduce both the production and consumption of these goods and services to an optimal level (Huppes & Simonis, 2009; OECD, 2010, 2017; Pigato, 2019)

Once again, State intervention in these markets is justified because of the negative externalities they generate. Without State intervention, producers and consumers have no market incentives to internalize the environmental affectations generated. By matching

the consumption of these products can be justified by the existence of negative externalities and by the addictive nature of the consumption of these products that limit the rationality of consumption decisions. Without this, the interventions could be seen as “paternalist” measures, where the State would limit individual liberties or benefit from unhealthy behaviors (Sassi *et al.*, 2013: 8).

private benefit and social cost, this tax ensures that both producers and consumers consider these costs in their supply and demand decisions (OECD, 2010, 2017; Pigato, 2019).

Green taxes comprise taxes on carbon dioxide emission (CO₂), energy, air pollution—either through taxes on motor vehicles or liquid fuels—, single-use plastics and artificial fertilizers and pesticides (ECLAC, 2017a; Pigato, 2019).

The associated costs of the aforementioned goods and services include climate change, impacts on vital ecosystems for the planet, loss of human lives and multiple human rights violations, private property, infrastructure, and public goods destruction, productivity losses, and reductions in economic growth (Pigato, 2019: 15). These costs are primarily concentrated in medium and low-income countries, while, in general, most of the externalities are generated in high-income countries (Heil & Wodon, 1997).

By incorporating these negative externalities, green taxes are cost-effective policies to reduce costs and raise social welfare by modifying the production and consumption patterns of those goods and services that generate environmental impacts (OECD, 2017; Pigato, 2019). They are cost-effective because they minimize the associated costs of regulating production and consumption more effectively than direct environmental regulations such as command and control. Additionally, as a result of the higher costs derived from the tax, they generate dynamic efficiency gains by stimulating businesses to innovate in clean energy technology without impacting other economic variables in the process that could sabotage economic growth objectives (ECLAC, 2017a; OECD, 2010, 2017).

These taxes can have a double dividend. The first dividend is derived from the benefits generated by reducing the production and consumption of goods and services that harm the environment, such as CO₂ emissions, polluting gases, or non-degradable materials. The second dividend comes from the additional resources received by governments through the col-



lection of these taxes. This additional revenue makes it possible to

- I. Fund development projects that generate additional benefits in other spheres (health, education, infrastructure).
- II. Replace regressive taxes or those that create distortions in wealth or job creation. This second dividend is very important because the additional resources invested in development projects are crucial for medium and low-income countries to mitigate the negative impacts of climate change.

At the same time, together with investments in public goods and services, the elimination of regressive taxes or those that tax job creation leads to equality gains and, thus, to welfare (OECD, 2010: 9; Perthuis & Jouvét, 2015: 132; Pigato, 2019: 7). It is very important to stress that, when used wisely, the benefits of the second dividend (the additional resources these taxes generate) can help consumers accept the costs that the first dividend can represent for them. If, on the contrary, there is no progressive and fair use of these resources and it is used to reduce the fiscal burden of the higher-income population, or in regressive measures, the acceptance of the tax can be significantly compromised. This can even result in widespread discontent, as was the case with the tax on fuels and the yellow vests movement in France, where President Macron used the additional revenue to suppress the wealth tax, a tax that is highly progressive by its very nature (Piketty, 2019, Chap. 13).

There may also be a third dividend for developing countries. A properly designed and implemented green tax policy can stimulate economic activity and growth through productivity and competitiveness improvements that result from technological change, improvements on tax systems (regressive or distortionary tax replacement), and increased investment levels from the new fiscal resources. It can also contribute to

reducing the informal sector by replacing distortionary taxes that affect formality, such as payroll taxes, that increase labor costs and encourage the informal employment of the labor force (ECLAC, 2017; Pigato, 2019).

However, this kind of tax can be regressive in some countries. Although higher-income households consume more carbon or energy-intensive goods and services, lower-income households would allocate a higher proportion of their income toward paying this tax (ECLAC, 2017a; OECD, 2010; Pigato, 2019). Nonetheless, in low and medium-income countries, households consume fewer goods and services that impact the environment—such as cars and appliances—than poor households in high-income countries; in these scenarios, therefore, green taxes are not regressive, and they even tend to be slightly progressive (Parry *et al.*, 2019). In any case, in countries where green taxes are regressive, a targeted compensation measure should be implemented for the households most affected by the measure (Pigato, 2019; Postic *et al.*, 2019). Unconditional cash transfers to vulnerable households and voucher systems have proven to be effective policies for protecting the poorest households from the negative impacts of the energy price increases that some green taxes generate (Beylis & Cunha, 2017).

Therefore, the instrumental use of fiscal policy for regulatory purposes has solid justifications, both from practical (cost-effectiveness) and utilitarian standpoints (due to its multiple benefits). These measures, simultaneously combined with other instruments, are crucial in achieving the commitments of the Paris Agreement and the Sustainable Development Goals (ECLAC, 2017a). Besides contributing to mitigating global warming and the impacts on strategic ecosystems as well as increasing general welfare, the instrumental use of fiscal policy can also raise environmental resiliency and manage the economic and social risks associated with the natural disasters caused by climate change.



4.

CASE STUDIES IN LATIN AMERICA AND AROUND THE WORLD

This section discusses the existing empirical evidence. Different implementation cases of health and green taxes are reviewed to identify the main short, medium, and long-term impacts of using these fiscal instruments as regulatory measures. It also helps to understand the challenges and obstacles faced when designing and implementing such policies; they should be kept in mind even if they are specific to each case.

4.1 Health Taxes

Cases from all over the world related to the implementation of taxes on tobacco, alcohol, and sugar-sweetened beverages are reviewed to analyze the impacts and challenges of health taxes. It is important to note that information and evaluations about taxes on tobacco

and alcohol are more abundant than those about taxes on sugar-sweetened beverages since taxes to regulate the consumption of these products are relatively new, and their adoption by different jurisdictions is just beginning.

TOBACCO

Worldwide and regional evidence of the impact of tobacco taxes on consumption, health, and fiscal resources is compelling. In general, in countries that have implemented a tax on tobacco, it has been found that its consumption along with the number of smokers and new users have been considerably reduced. The same has been found regarding the number of deaths and the diseases associated with cigarette smoking. In addition, governments' fiscal resources have seen a significant increase as a result of these measures.

For example, since 2008, the progressive increase in tobacco taxes in Turkey led to a 12% reduction in cigarette consumption by 2012. Similarly, the proportion of adult smokers fell from 31.2% to 27.1% over the same period. In France, the implementation and gradual increase in tobacco taxes between the early 1990s and 2005 led to a 50% reduction in tobacco consumption. The same was true for the number of deaths associated with tobacco, which showed a 50% reduction over the same period. In Egypt, the increase in tobacco taxes in 2010, which led to a 46% increase in the price of the product, led to a reduction in consumption of 14% and an increase of fiscal resources from this tax of 151% between 2010 and 2012 (WHO, 2014: 7–9).

Regarding countries in Latin America and the Caribbean,

a study that examined 32 studies about the impacts that increasing the price of tobacco had on consumption concluded that, on average, tobacco price increases have a less than proportional impact on consumption. Thus, on average, an 10% increase in the price of tobacco reduces the demand by 3.1% in the short term and by approximately 4.3% in the long term (Guindon et al., 2018).

However, there are significant variations among countries in the region. For example, in Colombia, a 200% increase in tobacco taxes translated into a 23% reduction in consumption in 2017. This decrease came with a 54% rise in fiscal resources from this tax. In Brazil, a 34% rise in the price of cigarettes led to a 19% decrease in consumption, followed by a 50% reduction caused by a price 33% increase between 2012 and 2016 (The Task Force on Fiscal Policy for Health, 2019: 10–11). Regarding Panama, it was estimated that for every 10% increase in tobacco prices, there was a 4% reduction in consumption. In this case, there was evidence of differentiated impacts among demographics: between 2007 and 2013, for urban areas, the prevalence of tobacco use went from 9% to 6.8%, in rural areas from 8.6% to 3.9%, and in indigenous communities from 13.5% to 6.9%. The fiscal resources generated by the measure increased 2.3 times between 2009 and 2015 (Herrera et al., 2017).



Evidence about the impacts that alcohol taxes have on consumption, health, and fiscal resources for governments show a tendency similar to that of tobacco taxes. There is evidence of reductions in consumption, deaths, and diseases directly and indirectly associated with alcohol and increases in government tax revenue.

According to the 2012 Global Status Report on Alcohol and Health, 75 countries had an *ad valorem* tax on alcohol, 75 had a specific tax, and 42 had a unit tax (Sornpaisarn et al., 2017: 50). In Latin America, 18 countries have included some form of alcohol tax in their tax systems. However, most of those taxes are not motivated by the correction of externalities. Seven countries (Argentina, Chile, Guatemala, Mexico, Nicaragua, Paraguay, and Venezuela) have *ad valorem* taxes levied on the value of what is consumed. The logic behind the tax would be that the consumption of these beverages is associated with a “luxury” and, thus, it is the luxury that is taxed. Only three countries (Bolivia, Honduras, Panamá) have specific taxes that tax the volume or the alcoholic content. There is a mixed system in the rest of the countries, partially *ad valorem* and partially with a specific tax (Paraje, 2019).

The impacts of such taxes on consumption change depending on each context and the cultural use of each beverage. However, after reviewing 50 evaluations on the price increases of alcoholic beverages and their effects on demand, it can be stated that, in general, a 10% increase in the price of alcoholic beverages is associated with a decrease of between 5% (in the case of beer consumption) and 7.9% (in the case of distilled beverages). Differences in reduced consumption that were dependent on income were also found: For people in the lowest 25% of the income distribution, in general, the decrease in consumption as a result of a 10% price increase is between 9% and 10%, while for people in the highest 25% of the distribution, it is between 2% and 4% (Elder et al., 2010). There are also differences in the changes in consumption between developing and developed countries. In the former, a 10% price increase leads to a reduction in consumption of 5.6%, while in the latter, that reduction is less, approxi-

mately 4.4% (Selvanathan & Selvanathan, 2017).

Moving forward to specific cases, evidence shows that, in the United States, a 10% increase in the price of alcoholic beverages leads to a 16% reduction in consumption. In addition, it was found that the price increases of distilled alcoholic beverages impact deaths from cirrhosis and car accidents. A 10% price increase for these types of beverages decreases fatalities from car accidents by 7% and deaths from cirrhosis by 9% (P. J. Cook, 1981: 278). In Canada, at two years after the measure was implemented, a 10% price increase in all alcoholic beverages is associated with an 8.6% reduction in all hospital admissions attributable to acute alcohol consumption and a 9.2% decrease in all hospital admissions attributable to chronic alcohol consumption (Stockwell et al., 2013). In India, it is estimated that a 10% increase in the price of alcoholic beverages led to a 4 to 10% reduction in consumption (John, 2008; Musgrave & Stern, 1988). For African countries like Kenya, it has been estimated that this reduction is 3% in the short term and 10% in the long term (Partanen, 1994).

In Latin American countries, the estimated price elasticities of demand differ by the type of alcohol. In Argentina, a 10% increase in the price of wine comes hand in hand with a 3% reduction in consumption, while in Chile, this reduction is almost 8%, and 9.3% in beer (Araya & Paraje, 2018; Urrutia, 2015). In Peru, a 10% price increase leads to a 2.3% reduction in beer consumption; 2.4%, in chicha; and 5.2%, in other beverages. In Ecuador, a 10% increase in the price according to the alcohol percentage in all beverages translates into a 4.4% general reduction in consumption (Chávez, 2016; Villaran Sala, 2019). Unfortunately, for Latin America, there is limited evidence on the impacts of this tax on consumer health. However, there are estimates of the additional resources that have been collected as a result of this tax. For example, in Colombia, one year after a 25% increase in *ad valorem* and specific taxes on alcohol, revenues from this tax increased by 17% (The Task Force on Fiscal Policy for Health, 2019: 8).



SUGAR-SWEETENED BEVERAGES

As with taxes on tobacco and alcohol, the evidence on the taxes on sugar-sweetened beverages has shown potential to effectively reduce consumption of this type of products and increase state revenue in a non-negligible way. Unfortunately, given that the implementation of this measure in different countries is relatively recent, there is insufficient evidence on its impacts on health¹⁰, since they can only be estimated in the medium to long term after the measure is implemented. However, one of the outcomes has been the consumption of healthier beverages—a specific objective of this type of measures that not only seek to decrease consumption of sugar sweetened-beverages but also to promote the consumption of healthier substitutes.

From the evaluations conducted in the countries that have implemented this tax, the cases of the United Kingdom, the United States, South Africa, Mexico, and Chile report an increase in the price of sugar-sweetened beverages, which discredits the theory that companies, due to their market power, can manipulate their cost structure to avoid affecting the final sales price. In several cases, there are also decreases in the consumption of these beverages. In Philadelphia (Pennsylvania, US), the 1.5-cent increase per ounce translated into a 38% reduction in the consumption of these products one year after the measure was implemented (including the sales increase in the city's border areas) (Roberto *et al.*, 2019). The same was observed in the Chilean and Mexican cases. In Chile, the 13 to 18% tax increase on sugar-sweetened beverages with more than 6.5 grams of added sugar per 100 ml led to a 21.6% reduction in consumption.

In Mexico, the 20% tax on sugar-sweetened beverages led to a 6% consumption decrease one year after the measure was implemented (Nakamura *et al.*, 2018; OMS, 2015). In addition, with the available information, tax gains in health and fiscal revenue were estimated. The projections made with the preliminary results show that the tax could prevent 239,000 obesity cases, 39% of which would be in children. A decrease of 61,340 cases of diabetes and gains of 55,300 quality-adjusted years of life were also projected, as well as the prevention of 5,840 disability-adjusted years of life (Basto-Abreu *et al.*, 2019). Finally, a 26% long-term reduction in consumption with fiscal gains and savings on health services of 22.86 billion Mexican pesos (US\$1,687,200,000) is projected. In 2015, the tax generated revenue of approximately 1 trillion dollars (WHO, 2015; The Task Force on Fiscal Policy for Health, 2019).

Finally, in most cases, the measure has also been successful in encouraging the consumption of low-sugar beverages. In the United Kingdom, sales of sugar-free products increased between 17 (Pepsi Zero Sugar) and 50% (Coca-Cola Zero), and the ratio of sugar-free sales changed from 60–40% for Coca-Cola and from 83–17% for Pepsi (Bandy *et al.*, 2020). Furthermore, one year after the measure, Mexico recorded a 7% increase in consumption of the beverages not covered by the tax (sparkling water, juices with no added sugar, milk with no added sugar, and beverages with artificial sweeteners) (PAHO, 2015).

10| While there is no evidence of real impacts, robust estimates of their potential impacts do exist. Vecino-Ortiz & Arroyo-Ariza (2018) have modeled the reductions in obesity and overweight in Colombia for households of different incomes.



IMPLEMENTATION CHALLENGES AND TENSIONS WITH OTHER GUIDELINES AND NORMATIVE STANDARDS

Challenges in the adoption and implementation of health taxes can be summarized as **A)** opposition from interest groups, **B)** potential regressive impacts of the tax, **C)** rise in smuggling and illegal trade, and **D)** substitution by other equally or more harmful products that are not covered by the tax.

A. Opposition from Interest Groups

As stated in the last report from the ESCER Special Rapporteur on business and human rights, there are commonly observed industry practices that hinder the implementation of health taxes (ESCER Special Rapporteur, 2019). The tax forces companies to include the social cost generated by the consumption of their products, so the measure increases their general expenses. In addition, there is a clear conflict of interest because the measure aims to decrease consumption and, therefore, the sales of these products. Considering all of this, when faced with discussion of bills and reforms to adopt health taxes, the industry has adopted different strategies ranging from massive communication and advocacy campaigns to aggressive lobbying strategies. In the various countries where there have been legislative initiatives to implement this type of tax, there is evidence of interest groups intervening to sabotage them.

In Mexico, the industry formed a united front against the tax on sugar-sweetened beverages in 2014 through intense activism in the media. One of their strategies was to position health and nu-

trition experts in the debate, who repeated their arguments against the tax and, consequently, won over the public opinion. Other strategies focused on positioning the tax's alleged economic impacts on the industry, such as a reduction in industry growth, massive layoffs, and even that foreign companies that produced sugar-sweetened beverages would leave the country (WHO, 2015). Something similar happened in Colombia when there were attempts to implement the tax in 2016. The industry managed to prevent the reform article from passing in congress by using lobbying strategies, by positioning a narrative of job loss and impacts on small shopkeepers, and by presenting dubious scientific studies in the media (Liga Contra el Silencio, 2018, 2019). In this case, there were even censorship cases and threats to the security of activists (*The New York Times*, 2017). These same strategies were identified in the Philippines and Mexico when increments and improvements on the tobacco tax were discussed (WHO, 2014).

B. Potential Regressive Impacts of the Tax

One of the arguments used the most by those opposing taxes that protect and guarantee the right to health is their potential impact on lower-income households and consumers. Since taxing these products will increase their prices, lower-income households and consumers will allocate a more significant portion of their income toward paying this tax (Allcott *et al.*, 2019; Sassi *et al.*, 2013). This becomes even more relevant if we consider that the consumption of tobacco, alcohol, and sugar-sweetened beverages is most prevalent among lower-income people, households, and countries (World Bank, 2020; WHO, 2014, 2017, 2018, 2019). This means that health taxes are potentially regressive since the tax burden falls more heavily upon the most disadvantaged. This would cause a contradiction with other normative standards on human rights, as it would have undesired impacts on these levels, resulting in higher socioeconomic inequality. However, the analysis of the potential regressiveness of the tax should be comprehensive, including all the possible effects and elements of the measure.

First, in order to know if the tax is truly regressive, we must examine low-income consumers' sensitivity to the changes in product prices, that is, determine if the demand in this segment of consumers is elastic or inelastic. If the demand is elastic, i.e., it responds to changes in price (decreases if it is a normal good), the regressive impact of the measure is less, both because the consumer will not allocate a portion of their income to these products and because of the economic and health gains derived from a lower consumption of this product. The evidence available on the price elasticity of demand for different countries seems to indicate that young and low-income consumers are the most responsive to health taxes, as they change their consumption patterns (Sassi *et al.*, 2013). This is especially so in tobacco consumption (Chaloupka *et al.*, 2012; Czubek *et al.*, 2010; Gallet & List, 2003; Levy *et al.*, 2004) and the consumption of ultra-processed foods and sugar-sweetened beverages (Faulkner *et al.*, 2011). Even so, for sugar-sweetened beverages, the cases of Chile and the United Kingdom have shown that low-income populations are not always the most responsive to chang-



es in price. This can mainly be explained through a poor tax design that fails to achieve a price increase that is enough to change the incentives surrounding the consumption of these products for the target population. This is the case with Chile, where the recommended rate was a 20 to 25% increase, but the one established was lower (Lin *et al.*, 2011; Nakamura *et al.*, 2018).

In any case, even if the demand among the most vulnerable populations is inelastic and the tax does not discourage the consumption of unhealthy products, the fiscal revenue generated by the tax could generate benefits that exceed the costs of the measure. This net benefit arises from:

- I. The decrease in health problems associated with these products (diabetes, cancer, and noncommunicable diseases in general).
- II. The decrease of out-of-pocket expenditure on health.

C. The Rise in Smuggling and Illegal Trade

Another challenge of implementing health taxes is the possibility of a rise in the smuggling and illegal trade of the taxed products in the jurisdiction where the measure is adopted (Sassi *et al.*, 2013; The Task Force on Fiscal Policy for Health, 2019). Illegal trade of tobacco is between 9–11% of its global trade (Eriksen *et al.*, 2015), especially in medium and low-income countries that have higher crime and corruption rates as well as lower institutional capacity to effectively address the problem (Joossens *et al.*, 2010). Sales at borders with other jurisdictions that have not adopted the tax may also increase, as was observed in Philadelphia with the tax on sugar-sweetened beverages (Roberto *et al.*, 2019). However, the lack of information does not allow to state causality between health taxes and the rise in smuggling or illicit trade (Sassi *et al.*, 2013). In fact, the little evidence that is available on the subject shows that consumers in countries with lower tobacco tax rates recall seeing more smuggled tobacco products than those in countries with higher rates (Joossens *et al.*, 2010; Joossens & Raw, 1998). Likewise, although there may be a rise in smuggling, it is not of

D. Substitution by Other Equally or More Harmful Products

Designing a good health tax that has a real impact on the effective enjoyment of the rights to health and food—beyond the chosen tax technique (ad valorem tax, specific tax, etc.) and the quantification of the social cost—involves major challenges. One of the most important is to include all the potential

III. The gains in productivity and income derived from the reductions in the rate of sick leave and the increase in quality of life (Allcott *et al.*, 2019).

All of the above is only possible if the resources are invested in public goods and services that, to a greater extent, benefit lower-income households and individuals, such as drinking water infrastructure or improvements on the coverage and quality of the health and public education systems. Fiscal revenue can also be used to fund targeted social programs that compensate the population segments that the measure affects the most (Ozer, 2019). As discussed in the final section, transparency surrounding the use of the funds that are collected is of paramount importance for accepting the tax. So, it is important to combine the policy with communication campaigns that show the benefits of the compensation measures and the targeted social programs that will be possible with the new tax.

significant scale, so the additional revenue generated by the tax would offset the costs associated with smuggling (Maldonado *et al.*, 2018; WHO, 2011).

However, given the possibility that a higher tax creates perverse incentives for smuggling and illegal trade, jurisdictions that have already adopted some form of health tax have reduced their rate to lessen these incentives, especially if they have neighboring jurisdictions without the tax. For example, Finland reduced its alcohol tax by a third after Estonia joined the European Union because, in this neighboring country, alcohol was available at substantially lower prices (Anderson, 2009). This reduction led to increased alcohol consumption and deaths associated with it (Koski *et al.*, 2007). Because of this, measures must be adopted regionally and in a coordinated fashion between cities, states, and countries so that incentives for smuggling, illegal trade, and tax evasion through purchases in other jurisdictions are substantially reduced. Also, the strengthening of tax and customs administrations is paramount for mitigating the negative externalities (WHO, 2014).



ing these potential substitutes a priori is not an easy task, and some products may lie outside the scope of the tax.

For example, for cigarettes and cigars, loose tobacco, smokeless tobacco, and e-cigarettes have been identified as substitutes. In the United States, these products have a specific tax, but their rates vary. In the case of alcohol, some studies show that some drugs such as cannabis or cocaine are substitutes and that their demand increases when alcohol prices rise (Petry, 2001; Sumnall *et al.*, 2004). Even more important is the complex relationship between tobacco and alcohol consumption. Evidence shows

that the demand for tobacco decreases with rises in the price of alcohol, but not the other way around, i.e., alcohol demand does not decrease with rises in tobacco price (Koxsal & Wohlgenant, 2011; Pierani & Tiezzi, 2009). This suggests the need to levy the former more than the latter. Finally, in the case of sugar-sweetened beverages, it is important to include all the products with high sugar content, such as sodas, teas, energy drinks, and juices, in addition to all the products with non-caloric sweeteners¹¹. If this is achieved, the trend of consuming healthier products as a substitution is seen, as is the case of sparkling water in Mexico (WHO, 2015).

➤ 4.2 Green Taxes

A review was conducted to better understand the implications of green taxes, and it focuses on two types of taxes:

- I. Taxes associated with emissions of carbon dioxide, particulate matter, and other gases that cause harm to people's health and the environment.
- II. Taxes on pollutant materials, such as single-use plastics. While the first group focuses on taxing energy sources and cars, the second focuses on plastic bags and bottles.

Implementing taxes on emissions may translate into substantial reductions by encouraging new companies with cleaner production processes and even strengthening the energy supply from renewable sources, as the simulation with different general equilibrium models of a generalized CO₂ emissions tax policy has shown in Colombia (Calderón *et al.*, 2016). However, a similar exercise for the Brazilian, Chilean, and Mexican economies (Mardones & Flores, 2017) suggests that the efficacy of environmental taxes largely depends on the national composition of the energy matrix. In these three particular cases, it was found that if the matrix is more carbon-dependent, a carbon tax would result in a steep increase in electricity prices, without necessarily implying a relevant difference in the level of emissions, so it should be implemented in a coordinated way with other measures to achieve the respective environmental targets.

Currently, a significant proportion of countries have some type of tax on goods and services associated

with the emission of gases that are harmful to health and the environment. The first countries to implement this type of instrument in the early 1990s were Finland, Sweden, Denmark, Norway, and the Netherlands (ECLAC, 2017b). Taxes were related to the energy sector and primarily aimed at reducing carbon dioxide emissions (CO₂), although some countries like Sweden also sought to reduce sulfur dioxide (SO₂) and nitrogen dioxide (NO₂). Years later, many countries from different regions started to implement taxes on emissions, with differences in scope and the goods and services that it covered (ECLAC, 2017a).

The Danish experience, which was one of the firsts cases, set a precedent for the tax's usefulness and efficacy. In 1993, the Danish government adopted a CO₂ tax levied on commerce and industry at 20 kroner (6.71 EU) for each emitted ton. Two years later, this tax represented 15% of the cost of electricity, 23% of the cost of fuel oil, and 35% of the cost of coal, which made it evident that there was an effective increase in the prices of these goods and services. Over time, the tax increased gradually, and a tax on NO₂ emissions was included. By the year 2000, CO₂ emissions had dropped by 10%, and the energy consumption went down by 15% (Bjorner & Jensen, 2002). However, in some cases, such as in British Columbia, Canada, the reductions in emissions resulting from this type of tax were not as significant. In 2008, the province adopted a tax on carbon emissions from fossil fuels. The initial rate was 10 dollars for each CO₂ ton emitted, which gradually increased to 30 dollars per emitted ton by 2012. Over those four years, the tax's impact on the reduction of

11 | While evidence on the health impacts of non-calorie sweeteners (whether natural or unnatural) is still inconclusive, the approach based on the principle of precaution would tend to suggest that the consumption of these products should also be regulated.

diesel emissions was 1.3% and only 0.2% of the province's total emissions (Bernard & Kichian, 2019).

In turn, the French experience with the tax on vehicles shows a tendency towards a sales shift that favors less-polluting vehicles. The market share of CO₂ efficient Class B vehicles went from 20 to 50% in 2008, a year after introducing the tax. However, emissions associated with cars only had a 5% reduction (Teusch & Braathen, 2019).

The revenue generated by these taxes varies depending on their rate and coverage. It is estimated that in Denmark, Italy, Slovenia, and Turkey, the revenue from environmental taxes is around 4% of each country's GDP, while in Mexico, Canada, and the United States, the revenue is nearly 1% of the GDP. In Latin America, revenue in countries such as Brazil, Costa Rica, and Honduras is almost 2%. In some others, it is less

than 1% of GDP, as is the case of Peru, Guatemala, and Colombia. Regarding taxes on fuels, although revenue has been declining in recent years, it still accounts for more than two-thirds of green tax revenue in OECD countries. In Latin America, the revenue from this tax varies among countries: in four years, Ecuador collected 0.11% of its GDP; in 2015, the Dominican Republic collected 0.017% of its GDP, and in Chile, this revenue is equivalent to 0.02% of the GDP (ECLAC, 2017a).

To conclude this section, it is worth mentioning the exercise carried out by the Irish government as an example of the changes that green taxes can bring about in people's behavior: By introducing a 13-cent charge per plastic bag, consumption was reduced by up to 90%, which in turn led to a noticeable improvement in the pollution generated by discarded bags (Convery *et al.*, 2007)

IMPLEMENTATION CHALLENGES AND TENSIONS WITH OTHER GUIDELINES AND NORMATIVE STANDARDS

The challenges faced when designing and implementing green taxes can be summarized in three main groups: **A)** the challenges associated with estimating the tax so that it captures the social costs of emissions and environmental pollution, **B)** the potential regressive effects that these types of taxes can have, and **C)** the effects on competitiveness losses and leakage of emissions to unregulated markets.

A. Tax Design and Efficiency

In the case of direct taxes on the emission of polluting compounds, it is a generalized fact that the tax rates on most greenhouse gases are below their level of efficiency; therefore, the market price system still fails to reflect the environmental costs of the economic decision accurately (Pigato, 2019). This gap between tax rates and social costs, which results from the negative externalities of the production and consumption of these types of goods, mainly arises from the energy subsidies that prevail in many countries and from the technical difficulties of designing the tax correctly, but also from a very

low estimate of costs due to the political economy behind these taxes (McLure, 2014; Perthuis & Jouvet, 2015).

For example, coal, one of the most significant contributors to carbon emissions, is usually taxed at a meager rate, and in some cases, it is not taxed at all. Even if, in most cases, there are green taxes on gasoline, diesel, and natural gas, which are the other contributors, they tend to be taxed below their level of efficiency, which fails to capture the total cost of the negative externalities (Pigato, 2019).

B. Regressive Impacts of the Tax

Regarding the distributional effects of environmental taxes, although most of the findings for "developed" countries have contributed to the idea that this type of tax burden is always regressive, as is the case of Denmark (Wier *et al.*, 2005), studies in "developing" countries tend to show the opposite pattern (ECLAC, 2019), perhaps due to differences in the socioeconomic composition and consumption habits of their populations. In fact, the World Bank points out that, while these taxes may negatively affect the

poorest households' income, this is not an automatic relationship. It can be addressed with other compensatory measures or with tax deductions in other areas. At the same time, the political decision not to act against environmental devastation—in itself—contributes to a regressive scheme where the better-off benefit from under-taxed polluting goods (Pigato, 2019). The experience in Thailand supports this notion because it shows that a tax which has regressive impacts (due to higher electricity costs)



and also deepens poverty may become progressive by “recycling” revenue through social transfer programs (Saelim, 2019).

As far as taxes on fossil fuel consumption are concerned, the Chilean experience points at a mild or moderately progressive result, contradicting some political sectors’ demand to reduce the extent of the tax under the assumption of regressiveness, since a household’s gasoline budget increases as its income increases (Agostini & Jiménez, 2015). Moreover, estimating regressiveness using the Suits Index¹² shows that a rate reduction that sought to counter the assumed regressiveness ended up being regressive in itself, while the actual tax is no less progressive despite recent improvements in the income levels of the studied population. While studying the case of

gasoline taxes in Mexico, Renner (2018) finds that, even if the rate adopted in 2014 is low and does not have considerable effects on household welfare since it only focuses on products associated with CO₂, the transition towards a tax base that includes other types of polluting agents may increase the prices of consumer goods in a way that could end up increasing poverty levels nationwide. Finally, the estimation of a possible tax on gasoline consumption in Costa Rica, where fuel consumption clusters around the wealthiest sectors of society, suggests that it would be progressive. Meanwhile, its side effects—understood as the variation in the prices of goods that depend on gasoline consumption—would be regressive but of a lesser magnitude, and the overall effects would end up being neutral (Blackman *et al.*, 2010).

C. The Effects on Competitiveness Losses and Leakage of Emissions to Unregulated Markets

One of the major reservations that policymakers have about taxing emissions is that they may cause a loss in competitiveness to other markets that do not have the tax. As taxes fall on energy sources, which is an essential input for the production of almost every good and service, the costs of production and the sale price would increase. This would represent a competitive disadvantage in international and domestic markets, especially for energy-intensive sectors. There is also the fear that reducing emissions in one market would translate into the increase of emissions in another market or jurisdiction that does not have this type of regulation, which is known as *leakage* (Baylis *et al.*, 2013; Pigato, 2019).

However, the evidence addressing these kinds of concerns shows that these taxes do not cause competitiveness losses in developed countries (this, in part, because the share of energy costs in the overall cost is very low) and even shows that for devel-

oping countries (such as Indonesia from 1990– to 2015 and Mexico from 2009 to 2015) the increase in energy costs improves the performance of companies by generating gains in labor productivity and profitability through technological change and innovation (Pigato, 2019).

In any case, the benefit of green tax “dividends” could offset potential losses in competitiveness that may arise (Perthuis & Jouvet, 2015). Energy-intensive sectors that see a disproportionate increase in production costs could be compensated with targeted tax credits or other types of fiscal instruments. In addition, to reduce the carbon leakage to other jurisdictions as much as possible, it would be ideal to adopt regulations at the local, regional, and national levels in a coordinated way (OECD, European Unions, Pacific Alliance, etc.) (Smulders & Vollebergh, 1999).

12| An index used to measure public policy progressiveness. Similar to the Gini coefficient, it compares the area under the Lorenz curve to the area under a proportional line. For a progressive tax, the value is positive, for a proportional tax, it is zero, and for a regressive tax, it is negative. The index ranges from -1 to 1, where the first value would be a tax in which the poorest person pays the entire the tax, and the second, in which the person with the highest income pays the entire the tax.



5.

CONCLUSIONS AND GUIDELINES FOR THE IMPLEMENTATION OF HEALTH AND GREEN TAXES

After analyzing the different normative sources and the empirical evidence related to health taxes and green taxes, it could be concluded that these types of fiscal instruments are relevant to guaranteeing the rights to health, food, and a healthy environment. The evidence shows that these taxes generate real impacts in the pursuit of public health, food and nutrition security, and environmental objectives while having relatively low costs. Even if there are some implementation cha-

llenges, they can be addressed in many ways to achieve greater benefits from these instruments and reduce or compensate the associated costs as much as possible.

From the analysis carried out in this study, some guidelines could be further developed so that the taxes can promote the effective enjoyment of the rights to food, health, and a healthy environment.

> 5.1 Health taxes

The design of a tax is important for its effectiveness. When choosing among the different options, the costs and benefits of each alternative should be taken into account. The evidence and experts' recommendations indicate that the tax should be specific, i.e., tax the content of the product.

However, there are differences among products. For taxes on tobacco, for example, the recommendation is to adjust the tax base to the volume, not the weight, of the tobacco because, otherwise, it could incentivize the industry to produce equally harmful but lighter tobacco (WHO, 2014). For alcohol, the recommendation is to adjust the rate to the beverage's alcohol content, just like the recommendation to adjust the rate to the grams of sugar in the case of sugar-sweetened beverages (Sassi et al., 2013). It is important to keep in mind that, while specific taxes are easier to administer, they should be adjusted each year for inflation, which can be less feasible politically (Bird, 2015). Finally, it is crucial to include within the taxed goods those that may be considered as substitutes and have all the same negative externalities and internalities that were discussed in sections two and four of this paper.

• These economic instruments must be complemented with other harm reduction strategies in order for the results to be robust. Some of these strategies are the prohibition of advertising in specific sites and toward particular populations, clear labeling that states the content information, and warning campaigns on the risks associated with the consumption of these products (Sornpaisarn et al., 2017; World Bank, 2020; WHO, 2011).

While the evidence shows that the effects these taxes may cause on smuggling and illegal trade are relatively low, some strategies can be recommended to mitigate these effects, including strengthening tax administrations' tracking strategies for addressing tax evasion, although it is desirable for the same regulation to be adopted in neighboring jurisdictions (Faulkner et al., 2011; Lai et al., 2007; WHO, 2014).



Health taxes may have an initial regressive impact, as they are taxes that do not consider the taxpayer's payment capacity. For this reason, it is very important for the revenue from these taxes to be allocated to the health systems and other public health strategies. In the long run, these investments generate benefits for the lower-income population that offset this regressiveness (Allcott et al., 2019).

Finally, it is important to communicate these initiatives massively by sharing the tax's benefits as well as the use of the new resources it generates so they can be widely debated by the public. Likewise, the dissemination of information is a counterweight to pressure from the industries and interest groups that may block the bills in negotiations, especially when these measures are announced (Buckton et al., 2018).

➤ 5.2 Green Taxes

For green taxes to have effects that can contribute to the effective enjoyment of the right to a healthy environment, they should include the actual social cost of the carbon emissions or the negative externality they seek to offset in their design. If there is a failure to set the rate at the valuation of those costs, the measure may be ineffective (Perthuis & Jouvét, 2015). Also, the tax must be levied on all the activities that cause the negative environmental impacts that the government seeks to mitigate (Renner, 2018b).

The use of the resources from green taxes is very important for achieving the double or triple dividend that this instrument has the potential to generate. While the resources may be used to mitigate the environmental impacts of the production of emission-intensive goods and services, they can also be used to invest in public goods and services, such as infrastructure projects, public schools, and hospitals. On the one hand, these investments reduce the vulnerability of the households and territories that are most vulnerable to climate change. On the other hand, they benefit the most vulnerable households to a greater extent, thus having an impact on inequality levels. In cases where regressive effects are evident due to the price increase of basic goods and services or if there are impacts on the competitiveness of energy-intensive sectors, the extra resources can be used in offset transfers and subsidies (ECLAC, 2017a; Perthuis & Jouvét, 2015; Pigato, 2019; Postic et al., 2019; Renner, 2018).

The extra revenue generated by green taxes can open the field to eliminating or reducing regressive taxes, such as consumption taxes, or distortionary taxes, such as payroll taxes. In this way, these instruments can generate additional equality benefits, economic growth, and the formalization of employment. (ECLAC, 2017a; Perthuis & Jouvét, 2015; Postic et al., 2019).

Finally, just as with health taxes, it is crucial to extensively share information throughout the society regarding the benefits of these instruments along with the use of the resources generated by the tax in order to reduce pressure from interest groups. It is even recommended to apply some compensatory measures to the affected sectors and population groups before implementing the measure to obtain greater support from the public opinion (Aidt, 2010; Pigato, 2019).

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