

# Infant feeding, trade and the European Union

IBFAN/Baby Milk Action, October 2001

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## Background

The International Baby Food Action Network (IBFAN) is made up of over 150 groups in over 90 countries, three quarters of which are in the developing world. On the 20th September, the Dutch IBFAN group WEMOS convened an expert meeting to examine the issue of whether trade agreements are posing real threats to the adoption and implementation of the *International Code of Marketing of Breast-milk Substitutes* and subsequent relevant World Health Assembly Resolutions.<sup>1</sup>

This paper includes some of the recommendations which the experts felt were necessary to safeguard the sovereign right of nations to bring in and keep controls which they consider necessary to protect infant health and sustainable development. Baby Milk Action presented these to the EU Commission for Trade, following its series of meetings with 'civil society.' The Commission's responses are included on the final page.

For over 20 years IBFAN, together with UNICEF and other partners, has played a key role in supporting governments in their efforts to bring in effective legislation to protect infant and maternal health. To date, over 116 countries have adopted and implemented at least parts of the *International Code* in national measures and over half the world's population are now, to some degree, protected in law by it. Because the *International Code* is intended as a minimum requirement for all countries, many governments have implemented controls which go further.<sup>2</sup>

## Why the *International Code* is important

The *International Code* does not ban the sale of any product, but it does - among other things - call for a ban of promotion of all breastmilk substitutes. It aims to protect breastfeeding and ensure that parents receive adequate objective information about infant feeding.

Breastfeeding is an essential lifeline for millions of infants.<sup>3</sup> It also provides optimal nutrition, confers benefits to women's health, has no adverse effects on the environment and can reduce family poverty, which is a major cause of malnutrition. But breastmilk is a product which is not packaged or placed on the market, yet still has to compete in a rapidly growing market which is fuelled by corporations with enormous promotion budgets. The \$7.9 billion annual promotion budget of the leading manufacturer of breastmilk substitutes (for all its products) is four times the size of WHO's total annual

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<sup>1</sup> Throughout this paper, the *International Code* refers to *International Code of Marketing of Breastmilk Substitutes* and subsequent relevant World Health Assembly Resolutions.

<sup>2</sup> IBFAN/ICDC. *State of the Code by Country 2001*

budget and 8 times that of UNICEF's. In the last 4 years sales of breastmilk substitutes have increased in volume by 13.6% to \$10.9 billion. If every baby in the world were to be artificially fed for 6 months the market would grow to \$36 billion. The *International Code* and policies which seek to protect breastfeeding challenge and limit this growth.

It is a major challenge for the EU to ensure that companies operating from within it do not undermine breastfeeding and infant health as they conduct their normal business. For this reason we were pleased to hear that the Commission is seeking ways to ensure that WTO rules and policies do not hinder these efforts and impact negatively on health. We are asked to accept that trade can be a tool for development which can alleviate poverty. In the context of infant feeding, if this is to be more than an empty promise, several changes and/or clarifications in the existing WTO rules and policies and technical advice must be made.

### **National sovereignty, status of the *International Code* and the WHA**

For many years IBFAN has noted how economic pressures of one kind or another are used to dissuade governments from fully carrying out their commitments and responsibilities under the *International Code*. The threats to the *International Code* are not so much at the level of formal WTO disputes but at the level of bilateral, 'behind-the-scenes' pressures where the WTO, Codex or WTO agreements are used. Governments have been expected to harmonise, deregulate and encourage a free market. Health Ministries have come under pressure from their own Ministries of Trade, from other governments, from institutions like the IMF, the World Bank, and from industries, with the possibility of trade sanctions, withdrawal of investment or other adverse economic consequences.

For example, before the Zimbabwe Government brought in its strong law, a consortium of manufacturers lobbied Parliament complaining that the Regulations were "*not supportive to economic growth and development. They also do not support trade liberalisation and foreign investment.*" One company even threatened to pull out investment in the country, arguing that "*it would not be economically viable for the company to continue operating under such regulations.*"<sup>4</sup>

IBFAN is also concerned about the way that responsibilities for health are shifting. One of the experts at the Amsterdam meeting, Samuel Ochieng from Kenya commented: "*For enhanced implementation of the Code we need to lobby towards the Ministry of Trade as this department has become much more influential than the Ministry of Health.*" He went further to note that the Kenyan Government was recently 'encouraged' by the United States to go along with the WTO during the coming Qatar meeting. "*If we didn't support a new Round, the preferential treatment in trade with Kenya by the US would be reconsidered.*"

## **The position of the EU**

While EU policies on infant feeding fail to meet even the minimum requirements of the *International Code* and WHA Resolutions, an imbalance inevitably exists in all trading arrangements with countries with 'stronger' legislation. The EU Council Directive, which among other things requires labels on exports to be in an appropriate language, is an important safeguard.<sup>5</sup> But much more needs to be done to ensure that this Directive is respected, and that other aspects of labelling and marketing, such as health claims, are addressed in EU legislation. At the meeting with Civil Society on 18th September Commissioner Lamy acknowledged the EU's slow progress on the infant feeding issue, and linked it to the strong opposition of the United States to the *International Code* in past years. Perhaps now is the time to lead the way forward and make a real difference by bringing EU infant feeding legislation in line with the UN requirements.

If this were to happen we could be more confident that EU technical assistance is likely to encourage implementation of the *International Code* and WHA Resolutions rather than discourage it. Governments would also be reassured that by taking such action they would not be subject to challenge in a trade dispute - at least by EU-based companies. We have previously informed the EU Commission about the advice given by its staff to policy makers in countries applying for EU membership that they would be wise to limit their legislation to that already implemented by the EU. We have no recent examples of such advice but will keep you informed if new examples come in.

## **Codex Alimentarius - Berlin November 2001**

Discussions on the *Draft Revised Standard for Processed Cereal-Based Foods for Infants and Young Children* (CL 1999/20-NFSDU) are due to take place at the 23rd Codex Alimentarius Session in Berlin in November.

In May this year, despite many years of opposition of the baby food industry (initially backed by the United States), a landmark WHA Resolution was adopted with global consensus which affirmed the importance of exclusive breastfeeding for 6 months. This was an important step which needs to be taken forward at national level and at Codex. The industry has been lobbying for the Codex Standard to allow labelling of products for use from 4 months of age and attempted to delay discussion of the WHA Resolution until after the Codex meeting had taken place. The consequences of an industry victory at Codex cannot be over-stated. Over 60 countries already have policies promoting exclusive breastfeeding for 6 months. If a Codex Standard permits labelling of complementary foods for use from 4 months the industry could use the World Trade Organisation to rule that the policies of these 60 plus governments are unfair barriers to trade.

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## **WTO Dispute panels**

No case relating to breast milk substitutes has come before a WTO Dispute Panel as yet, and if IBFAN's suggestions were to be taken up, the likelihood of this happening in the future would be reduced. But the baby food market is expanding rapidly and becoming increasingly competitive. At the same time, because of its authority to impose sanctions, WTO is tending to assume more weight than UN organisations such as the World Health Assembly. Yet WTO is patently less transparent than UN organisations and much more heavily influenced by industry. It is not unreasonable to assume that industry will attempt to use it to protect its interests - and that it will be successful in doing so.

There are a number of ways that one could limit the possibility of such harmful effects on infant health. One would be to ensure that health/environmental/human rights experts are included in any WTO Dispute Panels which discuss infant feeding. To increase the transparency of the panels public declarations of interest should be required for each Panel member, and for members of any technical advisory board. Many of the problems we foresee lie in the 'grey areas' and the 'details' which can easily be lost on those who have no background in health, development or human rights.

The assumption that developing countries are opposed to such moves because they fear that human rights and environmental arguments will be used to exclude their products from the global market is not credible in the context of infant feeding. Breastmilk is an enormously important national resource which is displaced by breastmilk substitutes - most of which are imported. (see above)

## **Independent funds for research**

In common with other NGOs, IBFAN calls for the EU Commission's Sustainability Impact Assessments to be expanded and built in to the whole process. We were pleased to receive assurance from the Commission that the current assessments have 100% Commission funding.

We stressed the need for independent funding of research during the discussions on access to medicines. We remain concerned about the Commission's assumption that, in relation to HIV and infant feeding, *"the connection and combination of research ambitions and assets [with for profit enterprises] would increase speed and result."*

In our experience the involvement of commercial companies in research can seriously bias the whole process. We were pleased that the EU position at the World Health Assembly at least made reference to the need to research more closely the impact of 'exclusive' breastfeeding on Mother to Child Transmission of HIV.

## **Services and sponsorship**

IBFAN is concerned that trade rules which demand that domestic regulations encourage competition, could favour the corporate provision of the professional 'services' of health workers and educators. This could deny the rights of women and children to information which is free from commercial influence - rights which are enshrined in the *International Code* and subsequent WHA Resolutions. It appears that in Finland there have already been complaints about government subsidies to non-governmental organisations being anti-competitive for corporations.

Corporate sponsorship of services - thinly disguised as philanthropy - is referred to obliquely in the Commission Green Paper (*Promoting a European Framework for Corporate Social Responsibility*). The world's largest corporations have the largest marketing and public relations budgets and are often most keen to provide 'sponsorship' for schools and health care facilities. These companies are aware that such strategies can divert attention away from irresponsible and socially harmful practices and can distort perceptions of the role corporations are playing in society. It is often forgotten that sponsorship is a form of marketing. Within industry circles '*corporate social responsibility*' is closely linked to '*cause-related marketing*' and a public relations sector has grown around this concept.

We have raised our concerns about sponsorship of services with the Commission a number of times and feel that they have not yet been adequately addressed. We would welcome the opportunity to discuss ways the European Community could limit the risks of EU-based companies contributing to such problems, for example, through a ban of marketing in education and health services and/or through the inclusion of social audits.

### **Independent Monitoring.**

IBFAN is calling for much greater emphasis on supporting the development of national resources to implement legislation which is followed through with independent monitoring at national level.

The EU Green paper proposes some important ideas for bringing about greater corporate responsibility in developing countries which could be usefully explored. However these ideas should not be promoted as an alternative to truly independent monitoring tied into national legislation or other regulatory measures based on international codes, conventions etc. DG Trade has a responsibility to encourage the development of national capacity to apply sanctions/fines/legal action to companies found violating international treaties etc

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## Specific recommendations:

IBFAN asked for confirmation that the European Commission for Trade would support certain recommendations in the forthcoming discussions on trade. Below is the Commission's response. IBFAN's will be submitting further responses to the Commission shortly:

- **Member States have the sovereign right to bring in and retain strong non-discriminatory national legislation which they have reason to believe is necessary for the protection of human rights and health.**

**COMMISSION ANSWER:** *Yes, if non-discriminatory, and ultimately, science-based.*

- **Trade agreements should not undermine implementation of the *International Code of Marketing of Breast-milk Substitutes* and subsequent relevant World Health Assembly Resolutions at national level**

**COMMISSION ANSWER:** *In principle yes: the Commission subscribes to the view that international agreements, particularly, but not exclusively those related to protection of the environment or human health, and international trade rules should be mutually supportive.*

- **In matters of health WTO will defer to the decisions of the World Health Assembly, the world's highest health policy setting body (its Conventions, Resolutions etc )**

**COMMISSION ANSWER:** *International agreements/organisations should be mutually supportive, and their relationship clarified where necessary and useful*

- **WTO dispute panels should include health/environmental, human rights experts in any disputes involving infant feeding. Public declarations of interest should be required for each Panel member.**

**COMMISSION ANSWER:** *Currently, panelists are selected from WTO Members, in principle from those who have no interest in the dispute. Proposals have been made for a professionalisation of panels, but this is not accepted by all Members. There are already rules on conflicts of interest in the Dispute Settlement Body, and Panels have the right to consult whichever expert they deem appropriate and necessary to fully understand the issues of the dispute in question.*

- **Regarding the Codex Standard for Processed Cereal-based Complementary Foods which will be discussed in Berlin in November, the EU will support the inclusion of the *International Code* and subsequent relevant WHA Resolutions. More specifically that the scope of the Standard should reflect the recommendation of WHA Resolution 54.2 in relation to complementary foods stating that these products are labelled for use from 6 months of age and older.**

**COMMISSION ANSWER:** *The Commission supports the principle that breast feeding should be used until 6 months, in line with the conclusions and recommendations of the WHO expert consultation on the subject. However, this should not compromise infants for which breast feeding is insufficient. The Commission recognises that some infants may need complementary food from the age of 4 months. The Commission will therefore seek a solution in Codex which supports the principle but also ensures that the particular needs of individuals are taken into account.*

- **For the optimum health in infants in both Europe and Third Countries EU legislation should be brought in line with the *International Code* and subsequent relevant Resolutions.**

**COMMISSION ANSWER:** *To the extent that the EU and its Member States subscribe to them - to a large extent, these are issues of Member State competence.*