



Baby Milk Action response to CMA Infant formula and follow-on formula market study

Background

Baby Milk Action/IBFAN UK is the UK member of the International Baby Food Action Network (IBFAN) a network of over 250 citizens groups in more than 100 countries that was founded in 1979. Since then, IBFAN has worked in collaboration with WHO and UNICEF and civil society partners to improve maternal and infant and young child health through the protection, support and promotion of breastfeeding and optimal complementary feeding, helping many governments, including all EU member States, to bring in and implement legislation to control harmful marketing. IBFAN has worked to ensure that legislation is based as closely as possible on the global recommendations adopted at the World Health Assembly: the [International Code of Marketing of Breastmilk Substitutes](#), and the 20 WHA Resolutions and decisions that clarify, strengthen and keep pace with science and marketing developments.¹

The International Code is embedded in many global declarations, standards and strategies, including Codex standards on formulas and baby foods, the [Codex Code of Ethics](#) for International Trade in Food, the [EU Action Plan of Childhood Obesity](#) 2014-2016 and the [Political Declaration on NCDs and Framework for Action](#) adopted in the [Second International Conference on Nutrition](#) in November 2014.

IBFAN is a partner with WHO and UNICEF in the production of the biennial report, [Marketing of breast-milk substitutes: national implementation of the international code, status report 2022](#). As of March 2022, the report found a total of 144 (74%) of the 194 WHO Members States (countries) had adopted legal measures to implement at least some of the provisions in the Code. Of these, 32 countries have measures in place that are substantially aligned with the Code. The UK currently scores 40/100 on the Global Code Status Report.²

Based on our 44-year experience of monitoring marketing practices and assisting Governments in implementing legislation, it is clear that the commercial pressure from manufacturers, and the exporting countries that support them, is a key reason why so many laws contain loopholes that lead to inadequate protection of maternal and child health. In attempt to close these loopholes since 1995, IBFAN has attended [Codex Alimentarius meetings](#) with the aim of bringing global trading standards into line with UN health recommendations. The poor Codex Standard for Follow-up milks, adopted in 1987,³ was used by the industry to get round the marketing restrictions of the Code, claiming that the products were not breastmilk substitutes. This led to the rapid growth of the global market for this totally unnecessary, and risky ultra- processed product. The weak FUF standard has since been used by exporting countries in [attempts to stop governments bringing in more health protective marketing controls](#).^{4 5}

While governments have the sovereign right to adopt any legislation they consider necessary to protect child health (as long as it does not violate international trade principles) the clear reference to the International Code in the Preamble

¹ Breastfeeding constitutes one of the single most effective ways to reduce inequalities, to fulfil the child's right to life and to the enjoyment of the highest attainable standard of health. The International Code and Resolutions are designed to ensure that all parents receive objective and truly independent information, to remove obstacles to breastfeeding and ensure that breastmilk substitutes are used appropriately.

² [Marketing of breast-milk substitutes: national implementation of the international code, status report 2022](#) WHO, UNICEF and IBFAN, 2022.

³ CODEX STANDARD FOR FOLLOW-UP FORMULA CODEX STAN 156-1987 (amended 1989) <https://www.babymilkaction.org/wp-content/uploads/2022/12/Codex-FOF-89.pdf>

⁴ Compilation of IBFAN Press Releases, consultations responses to Codex since 2006. <https://www.babymilkaction.org/archives/34620>

⁵ Russ K, Baker P, Byrd M, et al. *What you don't know about the Codex can hurt you: how trade policy trumps global health governance in infant and young child nutrition. International Journal of Health Policy and Management* 2021; **10**(12): 983-97. Baker et al. *Globalization and Health* (2021) 17:58. *Advocacy at Work During the Codex Committee on Food Labelling Meeting INTERVENTIONS AT WTO AND CODEX RELATED TO NATIONAL IMPLEMENTATION OF THE WHO INTERNATIONAL CODE OF MARKETING OF BREASTMILK SUBSTITUTES*. Kathryn Russ*

in the revised Follow-up milk standard that was adopted in 2023 covers all formulas 6-36month, will at least mean that any country could bring in laws to ban the promotion of all these products up to 36 months, without fear of triggering costly, time-consuming challenges, challenges that have a chilling effect on policy-making. The UK should take full advantage of this change and widen the scope of its legislation.

Addressing Conflicts of Interest and transparency and ensuring that health policy setting is protected from undue commercial influence continues to be a cross-cutting and critically important aspect of this our work.⁶ Because health professional bodies play such a critical role in advising governments Baby Milk Action founded the Baby Feeding Law Group (BFLG) in 1997. Together with IBFAN, NGO partners and MEPs, we prompted changes that improved the transparency and structure of the EU's scientific advisory bodies and led to better advice on baby foods.⁷ The formation of the [Conflicts of Interest Coalition](#) (endorsed by 160 Public Health NGOs, including 4 UK Royal Colleges) also helped in the strengthening of the [UN Political Declaration on NCDs](#), launched at the UN General Assembly that year.

The UK has ratified the *Convention on the Rights of the Child* (CRC) Article 24 of which calls on governments to provide parents with information on nutrition and breastfeeding. The CRC General Comments Nos. 15 and 16 stress the obligation for States to protect, promote and support breastfeeding through the implementation of the World Health Assembly *Global Strategy for Infant and Young Child Feeding* (GSIYCF) and set a direct obligation that companies abide by the IC and Resolution universally 'in all contexts' Nations that ratified the CRC are bound to it by international law and have clear obligations. No country should try to undermine a human rights international law, nor should it misinterpret Member States' duties/obligations under it.

General remarks

Baby Milk Action/IBFAN UK warmly welcomes this investigation into the factors that influence parents to buy high priced products. However, we believe that the problems do not relate to "barriers to entry and expansion for infant formula manufacturers" but to a deliberate attempt by the world's leading baby food companies to undermine confidence in UK baby food legislation. In order to gain the trust of parents, the marketing of baby feeding products, by necessity, must appear gentle and caring, and by arguing that parents should be allowed to use supermarket tokens, two for one or other point of sale marketing schemes, the companies are attempting to position themselves as being on the side of cash-strapped families.

In fact, nothing could be further from the truth. In order to achieve its purpose (minimal regulation wherever possible), the industry has used the same six interference tactics used by the tobacco industry:(1) manoeuvring to hijack the political and legislative process; (2) exaggerating economic importance of the industry; (3) manipulating public opinion to gain appearance of respectability; (4) fabricating support through front groups; (5) discrediting proven science; and (6) intimidating governments with litigation.⁸

The situation we face today with the ridiculously high formula prices, reflects a failure of successive governments to understand and acknowledge the nature of the baby food industry and its role in misleading and disempowering women simply to expand the global market for a whole range of unnecessary and risky products.

Since infant formula is the sole food of an infant for the first 6 months of life it should be described as a semi-medical product that is not like any other commercial food product. This is why the World Health Assembly, the world's highest health policy setting body, has, every two years since 1981, urged governments to take effective action to ensure parents are properly informed and not misled. There are a multitude of factors related to maternal and child health and development in the short and long term that should be considered long before the supermarket shelf is reached. The initial cost of the product is just one.

⁶ *Interference in public health policy: examples of how the baby food industry uses tobacco industry tactics*, 2017 <https://worldnutritionjournal.org/index.php/wn/article/view/155>

⁷ European Voice, Renee Cordes: *Clamour for Action to bolster Union Scientists' credibility*, 13-19 Jan 2000, Vol 6, No 2, *Scientists bow to call for more transparency.*, 16-22 March, 2000, Vol 6, No 11.

⁸ *Interference in public health policy: examples of how the baby food industry uses tobacco industry tactics*, 2017 <https://worldnutritionjournal.org/index.php/wn/article/view/155>

Answers to General questions

Baby Milk Action strongly supports the comments submitted by First Steps Nutrition and the Baby Feeding Law Group and in this response will focus on other aspects that should be included.

Do you agree with our proposed scope (both the product and geographic scope) and themes for this market study, as set out in paragraphs 40 to 54. If not, what other areas should we focus on and why?

This infant and young child feeding market is fast growing and evolving. In addition to all the products mentioned (infant formula (IF) follow-on formula (FoF), infant or follow-on formula for special medical purposes (FSMPs) and the so called 'growing up' and toddler milks⁹ (referred to by Codex Alimentarius as drinks for young children), the study should include the new products and supplements that are coming onto the market: artificially produced cell-based products, probiotic supplements, commercialised donor milk.¹⁰ The marketing for these products is breaking new ground with claims that breastmilk is somehow deficient. In the past companies referred to breastmilk as the 'gold standard'. Any research on parent's decisions must look at the power of such marketing. It should also look at the safety of ingredients.

FSNT BFLG have explained the ongoing concern about Foods for Special Medical Purposes, that derive from serious loopholes in EU legislation and the adoption in 1999 of the problematic Directive on Foods for Special Medical Purposes. In later years the EU Commission acknowledged that the FSMP Directive had caused problems – problems that have still not been addressed and frequently mislead parents: *"Over the past years, Member States' national competent authorities have reported increasing difficulties with the enforcement of the legislative framework applicable to FSMP. Member States' experts have in particular flagged that an increasing number of products are placed on the market as FSMP in their territory, but that doubts arise in certain cases as to whether the products really correspond to the definition of FSMP and therefore correctly fall within the scope of the FSMP legislation."*

We strongly support the calls to promote the fact that UK legislation (derived from delegated EU regulations) requires that the essential composition of all infant formulas must be similar. However, since the legislation does permit *optional ingredients* parents must be warned that these ingredients, that are invariably promoted as being advantageous, are not backed by credible evidence. Article 5 of EU Regulation 609/2013 called for the Precautionary Principle (PP) but not across all relevant provisions. The UK should use the PP to safeguard against the addition of *'other ingredients, as the case may be'* in IF and FOF. In order to safeguard child health and prevent a mass uncontrolled trial, the UK law should specify that:

1. all ingredients are pre-authorised following rigorous independent scrutiny, (with particular care over new technologies, nanotechnologies and the presence of microplastics;
2. systematic reviews of all available evidence are carried out *independently* of the manufacturers and distributors of the products in question;
3. evidence is reviewed on a regular basis to ensure infants are not exposed to levels of nutrients that might put a burden on their metabolism, (a concern already raised by EFSA)
4. there is regular post market surveillance indicating the frequency of such reviews;
5. food ingredients not listed as essential are kept to the bare minimum;

How do consumers choose which infant formula to use and what factors drive their decisions? What is the relative importance of these different factors?

Labelling issues- Sustainability labelling/greenwashing:

As mentioned above, in order to gain the trust of parents, the baby feeding industry knows exactly how to position itself as a credible 'partner' that is ready to help solve any current concern. Climate change reduction strategies are just one current concern – there are many others.

⁹Toddler milks are marketed as beneficial, but they're unnecessary and could be harmful

<https://www.abc.net.au/news/2024-03-12/toddler-milk-nutrition-benefits-marketing-parents/103517864>

¹⁰ FDA adverse event report online, of the death of the baby girl from Evolves probiotic. <https://www.fda.gov/media/173048/download>
<https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/infant-health-inc-formerly-evolve-biosystems-inc-667715-09282023>

While expanding the global trade of all manner of unnecessary, risky packaged products, the same companies are undermining confidence in sustainable local agriculture, breastfeeding and biodiverse food systems. As explained by FSNT much [REDACTED] marketing is channelled through social media and influencers and deliberately targets mothers. Research carried out for the Codex discussions on a proposal for ‘sustainability labelling’ showed that most sustainability labelling is industry led.¹¹ IBFAN believes that much of this is “greenwashing” and we are proposing that sustainability labelling should *only* be permitted if strict safeguards are in place, especially when labelling baby foods. Governments should focus on *warnings* rather than on claims, they should be government-led with legally binding appropriate safeguards, they should be substantiated with independent and verifiable evidence, independently monitored and government enforced.¹²

We are advocating that if such safeguards are not in place sustainability labelling should not be permitted. Indeed, the resources needed to legislate, enforce, monitor and substantiate sustainability claims and warnings effectively will be costly. In many cases this will be a counter-productive, wasteful and will utilize critical public health resources to facilitate the needs of the processed food industry. It will certainly not help bring about the “*transformation of the world’s food systems [that] is needed urgently, based on a One Health approach that protects and promotes the health of humans, animals and the planet*”¹³

Other considerations

Global trade of baby feeding products

As mentioned above, Baby Milk Action pays close attention to global food standard setting in an effort to make sure that the UK and all governments do not face commercially inspired challenges, when bringing in health protective laws relating to the safety, composition, labelling and marketing of baby feeding products. We have attended Codex meetings since 1995, when the World Trade Organisation (WTO) was established and was mandated to refer to Codex Standards in trade disputes.¹⁴ ¹⁵ It is clear that law-making processes are increasingly subject to intense lobbying and legal challenges from industry interests and diplomatic interventions from trading partners, so the changes that we have prompted in Codex standards are important. IBFAN shares the concerns of many NGOs regarding trade agreements that include the investor-state dispute settlement (ISDS) mechanism and that this could impinge on the UK’s right to regulate in the public interest.

Other questions have been answered by FSNT and BFLG and we strongly support those responses.

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¹¹ Will bogus sustainability claims on processed foods save the planet? <https://www.babymilkaction.org/archives/38380>

¹² EU agrees directive banning misleading use of environmental claims on many products <https://www.irishtimes.com/business/economy/2024/01/17/eu-agrees-directive-banning-misleading-use-of-environmental-claims-on-many-products/>

¹³ Dr Tedros Adhanom Ghebreyesus, WHO Director-General welcome address: Codex Commission (CAC45. 2022)

¹⁴ Compilation of IBFAN Press Releases, consultations responses to Codex since 2006. <https://www.babymilkaction.org/archives/34620>

¹⁴ Russ K, Baker P, Byrd M, et al. What you don’t know about the Codex can hurt you: how trade policy trumps global health governance in infant and young child nutrition. *International Journal of Health Policy and Management* 2021; **10**(12): 983-97. Baker et al. *Globalization and Health* (2021) 17:58. *Advocacy at Work During the Codex Committee on Food Labelling Meeting INTERVENTIONS AT WTO AND CODEX RELATED TO NATIONAL IMPLEMENTATION OF THE WHO INTERNATIONAL CODE OF MARKETING OF BREASTMILK SUBSTITUTES*. Katheryn Russ*

¹⁵ [Codex green-lights wasteful, sweetened Ultra-Processed drinks for older babies](https://www.babymilkaction.org/archives/39936) <https://www.babymilkaction.org/archives/39936>
After 10 years of struggle, Codex puts child health before trade at last <https://www.babymilkaction.org/archives/37316>

