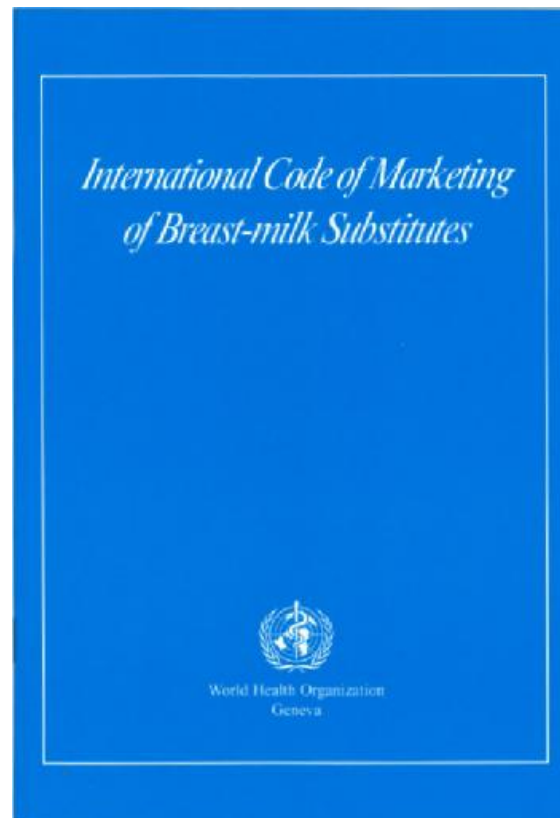




Nestlé Investigation  
of Reported Non-Compliance with the  
International Code  
of Marketing of Breast-milk Substitutes





# Nestlé Investigation of Reported Non-Compliance with the WHO International Code of Marketing of Breast-milk Substitutes

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18.02.2009

## EXECUTIVE SUMMARY

Nestlé is committed to supporting the best start in life for babies. This means protecting and promoting breastfeeding and ensuring that when alternatives are needed, these are of the highest quality. For caregivers who need alternatives to breast-milk, our objective is to replace dangerous and inappropriate breast-milk substitutes such as plain cow's milk or rice water, with nutritious formula products that meet international nutrition standards for infant health. Our objective is also to replace foods which are low in nutritional value and yet commonly fed to infants and young children, by offering nutritious protein- and micronutrient-rich cereals, baby foods and fortified milks which contribute to optimal growth and development.

Nestlé recognises that the WHO Code is an important instrument for the protection of infant health in countries, particularly where public health concerns are heightened and governments less well developed. Nestlé was the first company to voluntarily implement the WHO Code in developing countries and since that time, has put into place extensive procedures to embed it into the Company practices. This means in part training Nestlé personnel and partners about it, and monitoring and auditing our own Code compliance. Our practices are also examined by an outside social auditing company.

This report details Nestlé's investigation of 169 allegations of non-compliance with the WHO International Code of Marketing of Breast-milk Substitutes. These 169 allegations appear in a document "Breaking the Rules – Stretching the Rules" released in December 2007, by the International Baby Food Action Network (IBFAN). IBFAN's document cites allegations collected over a 3 year period from around the world. In 2004, IBFAN had made 200 allegations, of which we found 24 that had been or needed correction.

### Some of the key findings are relating to Nestlé:

Out of the 169 allegations in the 2007 "Breaking the Rules", 9 cases of non-compliance with the WHO Code, or national legislations were found to be verifiable. These include 3 cases of using the stylised corporate bird logo, 2 labelling errors and 4 cases of infant cereals where descriptions or a photo of a baby might be interpreted as under 6 months of age. The use of the logo and labelling errors had been corrected some time ago. In the 4 cases involving infant cereals, the photos and descriptions are being corrected. It should be noted that while the baby photo and descriptions may be ambiguous, the product labels were consistently labelled for "6 months" in large type. In addition, including all products up to 6 months of age under the WHO Code is a stricter interpretation than most countries themselves apply.

Slightly less than half (84) of the 169 IBFAN allegations were cases in developing countries.

There were no allegations of Nestlé promoting infant formula to the public in the developing world.

Many IBFAN allegations in the developing countries were related to cereals and baby foods marketed for use above 6 months of age, which are not formulated or marketed as breast-milk substitutes. They are therefore not within the scope of the WHO Code of Marketing of Breast-milk Substitutes and were therefore not valid cases of non-compliance with the WHO Code. There were also many allegations about practices which are permitted by the Code. Together these make up the vast majority of the reported allegations in the developing countries.

More than half of the IBFAN allegations (85) were cases in the developed world - Europe, the US, Canada, and Australia. All but two of these allegations were in accordance with national and EU decisions regarding application of the WHO Code in their countries, and cannot be considered violations neither by the governments nor by Nestlé. IBFAN applies criteria in these countries which are contrary to governmental decisions concerning how the Code should be applied in those countries.



# THE INTERNATIONAL CODE OF MARKETING OF BREAST-MILK SUBSTITUTES

## 1- Nestlé Actions to Monitor and Assure WHO Code Compliance

### Training, testing and compensation on WHO Code knowledge.

Nestlé Nutrition is the subsidiary of Nestlé SA, responsible for manufacturing and marketing of all nutrition products, including Medical Nutrition, Sports Nutrition, Weight Management and Infant Nutrition. Nestlé Nutrition management requires proof that each staff person involved in marketing of breast-milk substitutes is knowledgeable about the WHO Code. It has extensive measures to train personnel on the WHO Code, monitor its own practices, and identify violations and take corrective action. Nestlé infant food marketing personnel are tested regularly on their knowledge of the WHO Code, and their performance on the tests is a criterion upon which salary increases and promotions are based. Code violations are also taken into account regarding decisions on salary increases, promotions, and if serious enough, lead to termination of employment.

The content and frequency of the WHO Code training take into consideration the management level of the employee concerned and on the connection of the employee's job with infant nutrition - the more direct the contact with infant food products, the greater the intensity of training. Training occurs on the job, through written instructions, training sessions and formal training workshops. Nestlé has a web-based coaching and assessment tool that provides, on a permanent basis, guidance to our medical delegates in their interaction with healthcare professionals, self-testing of their knowledge including Code knowledge, and enables on-going supervision by their manager.

Nestlé regularly communicates the requirement to follow the WHO Code not only to staff, but also to importers, distributors and major retailers of Nestlé infant formula.

At the country level, the Nestlé company CEO along with the Nestlé Nutrition manager is responsible for the implementation and monitoring of the policy.

### Nestlé WHO Code Quality Assurance System

In all developing countries, Nestlé has implemented an extensive WHO Code Quality Assurance system, built along the lines of ISO quality assurance systems. The manual, containing approximately 60 pages of policies and procedures, gives detailed operational guidelines to all Nestlé employees in their daily conduct of business related to Infant Food to ensure compliance at all levels with both the WHO Code of Marketing of Breast-milk Substitutes and local regulations. The procedures include built-in checks to ensure that potential code violations are avoided.

### Corporate Audits

Corporate headquarters carries out nine to twenty-five audits on Code compliance within countries each year worldwide. Nestlé employees are aware that their actions are subject to audits. Audit results are communicated to top management, and where violations occur, these are reported to the Nestlé CEO. Code violations result in punitive measures. Persons responsible for them will be punished by losing bonuses, salary increases or even being fired.

Nestlé produces annual summary reports to the Audit Committee of the Board of Directors on internal monitoring, external reporting and corrective actions taken regarding non-compliance.

Nestlé has named a person at Corporate Executive Board or Management level ultimately responsible for the implementation and monitoring of the policy.

Nestlé has in place systems for taking corrective action on all allegations of non-compliance, provided that there is information with sufficient detail to permit this.

### **Ombudsman System**

Each Nestlé Market has a person designated as Ombudsman who is outside of line management, to whom suspicions of WHO Code violations can be reported in a confidential manner. There is also a Corporate Ombudsman, who is a member of the Executive Board of the Nestlé Group, for reporting allegations if an employee is uncomfortable with reporting in his or her own national company. He is separate from Nestlé Nutrition and is a member of the Nestlé Executive Board.

### **External audits of Code compliance**

Audits of WHO Code compliance, conducted by qualified social auditing firms began in 2005, and 3 audits in Africa have been completed by Bureau Veritas, one of the world's leading certification and audit firms. Information concerning audits of South Africa, Mozambique and Nigeria in 2005, Sri Lanka in 2007 is available on the website [www.babymilk.nestle.com](http://www.babymilk.nestle.com). In 2008 Bureau Veritas conducted audits in Malaysia and Indonesia. These external audits will continue on an ongoing basis.

### **Summary of Nestlé WHO Code Application in Developing Countries**

Major points of WHO Code implementation are as follows:

- Nestlé applies the WHO Code to both starter formula (0-6 months of age) and follow-on formula (6-12 months). It is the only major manufacturer to apply the Code to follow-on formula.
- Nestlé prohibits labelling and marketing of complementary foods before 6 months of age. It is the only major manufacturer to do so.
- Nestlé prohibits all communication and contact with the public regarding starter and follow-on formula.
- Nestlé prohibits labelling of all other products in any way which could allow them to be considered to be a substitute for breast.
- Nestlé prohibits any kind of incentives, material or financial, to reward health workers for prescribing formula.
- Any item allowed by the Code to be donated to hospitals may not have an infant formula brand on them including any small items given to doctors (ballpoint pens, etc.).
- Nestlé prohibits donations of free supplies to hospitals, but permits them on written request from orphanages or other social institutions.
- Nestlé prohibits giving health workers free samples that can be passed on to patients, and gives only two cans of formula to a health worker when a new product is introduced, so that it can be examined by Health workers.
- Nestlé prohibits all bonuses and salary increases to its staff to be based on breast-milk substitute sales or prescriptions written by health workers.
- Requests for funding of attendance to scientific conferences for health professional must be done with the knowledge and approval of the institution. No family members' trips may be funded.
- No trips of a non-scientific nature may be funded.
- Nestlé prohibits entertainment of health workers.



## 2- Government, Company, and NGO responsibilities under the WHO Code

In May 1981, the 34th World Health Assembly adopted the World Health Organization (WHO) International Code of Marketing of Breast-milk Substitutes. The Aim of this Code as stated in the Article 1, (page 13), is *"to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution"*. The Code calls upon governments to take action appropriate to their social and legislative framework and their overall development objectives to give effect to the principles and aim of this Code"<sup>1</sup>.

The International Code of Marketing of Breast-milk Substitutes is a recommendation (rather than a regulation) to all WHO Member States.<sup>2,3</sup>

Many countries around the world including the European Union, have implemented the WHO Code in national measures or directives as 'appropriate to their social and legislative framework and development objectives'. Some countries, including the United States, Canada, and Japan, have decided that it is not appropriate to implement the WHO Code in national measures, and have used other means to fulfil the aim of the Code.

Regarding monitoring adherence to the Code, the WHO Code calls on all governments around the world to monitor the application of the Code, and companies are asked to cooperate with government monitoring (Article 11.2). Nestlé cooperates with all governments and is a strong advocate of government monitoring, so as to enforce the WHO Code and to create a level playing field among all competitor and establish a common compliance behaviour among all key stakeholders, including the health care community.

Regarding the WHO Code's reference to companies' unilateral responsibility, the Code says *"Independently of any other measures taken for implementation of this Code, manufacturers and distributors of products should regard themselves as responsible for monitoring their marketing practices according to the Principles and Aim of this Code"* (Article 11.3). Nestlé adheres to all national measures which have implemented the Aim and Principles of the Code as appropriate to their social and legislative framework. For example, in countries of the European Union, Nestlé monitors its practices according to the Aim and Principles of the Code as implemented through the European Infant Formula Directive. Nestlé does the same in regard to the WHO Code as implemented by all countries around the world. In countries such as the US and Canada, where governments have decided that it is not appropriate to implement the Code through national measures, Nestlé follows national decisions.

In addition to the responsibilities of companies spelled out in the WHO Code, Nestlé voluntarily and unilaterally implements the WHO Code in all developing countries (over 155 countries), where public health concerns are heightened and government actions may be weaker than in countries with well developed institutions. If the WHO Code is stronger than the national Code in these countries, Nestlé follows the WHO Code. Detailed instructions on how the implementation is carried out for each Article in concrete terms by Nestlé are attached in Appendix 3.

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<sup>1</sup> Reference: WHO Code, Preamble p. 12, Article 11.1 and Annex 3

<sup>2</sup> Reference: Appendix 2, legal opinion of Professor Jean Michel Jacquet "WHO Code of Marketing of Breast milk Substitutes" University of Geneva.

<sup>3</sup> International Code of Marketing of Breast-milk Substitutes, Page 7, Page 12, and Appendix 2, 1981, WHO

Regarding action of non-governmental organisations, Article 11.4 calls on non-governmental organizations to report violations to governments and to companies: *"Non-governmental organizations, professional groups, institutions and individuals concerned should have the responsibility of drawing the attention of manufacturers or distributors to activities which are incompatible with the principles and aim of this Code, so that appropriate action can be taken. The appropriate governmental authority should also be informed"*.

The International Breast Feeding Action Network (IBFAN), reports allegations of violations of WHO Code in a publication prepared roughly every three years. However IBFAN's interpretation of the WHO Code differs with the decisions of governments in North America and Europe as to how the WHO Code should be applied in those countries. IBFAN applies its own interpretation of the Code even when this disagrees with the decisions made by these developed countries. Neither governments nor companies of those countries agree with this interpretation of the Code. Thus over half of the alleged violations contained in the IBFAN report on Nestlé, occur in developed countries where the government authorities permit the activities cited<sup>1</sup>.

The governmental public health policy decisions in the US, the European Union, and countries including Canada and Australia, on how to apply the Code are respected by all manufacturers and distributors of infant formula products in those countries.

Thus in the developed world, Nestlé fulfils obligations implementing the Code and monitoring its own practices in keeping with those governments' decisions. This is also the only way to respect each countries prerogative to "take action appropriate to their social and legislative framework and their overall development objectives to give effect to the principles and aim of this Code". It is also the only way to create a level playing field for all manufacturers, as referred to by the Code Article 11.1. At the same time, Nestlé unilaterally implements the WHO Code in developing countries.

<sup>1</sup> Reference: If the WHO Code were to be applied universally, then, for example, the United States government would be considered a significant WHO Code violator. Through the WIC (Women, Infants, and Children) Nutrition Program, the US government provides free infant formula to approximately half of the infants born in the USA every year. This would be a Code violation as the free formula does not necessarily only cover the period during which the formula is needed. Data shows that infant mortality decreased (from 10 per 1000 in 1990, to 6 per 1000 in 2006). The US Department of Agriculture, which administers the WIC program, believes that the provision of infant formula to poor families has a very positive effect on infant health. The WIC program, along with the Food Stamps Program is also credited with decreasing levels of anaemia, failure to thrive and nutritional deficiency among children.

# FINDINGS

## 1. Reported Violations by Region and Country

A total of a hundred and sixty-nine (169) alleged violations attributed to the Nestlé Company<sup>4</sup> are described in the “Breaking the Rules, Stretching the Rules” report issued by IBFAN in late 2007, during a three year monitoring period.

Slightly less than half of allegations relate to from developing countries (84 allegations), while eighty-five (85) of them came from developed countries.

Allegations of Code violations:

- 9 European countries (57 Allegations),
- Canada (16 Allegations),
- USA ( 9 Allegations),
- Australia ( 3 Allegations),
- 5 African Countries ( 7 Allegations),
- 3 Latin American Countries ( 7 Allegations),
- 5 Asian Countries (37 Allegations),
- 3 Middle Eastern Countries (33 Allegations)

- **In Developing Countries**

In developing countries, regarding Nestlé, there were 84 reported incidents of non-compliance with the Code:

### Promotion to the Public

There were no allegations of promotions to the public.

### Promotion at point of sale

There were six allegations related to promotions of breast-milk substitutes at the point of sale<sup>5</sup>. None of these were validated as violations of the Code by Nestlé. As an example, the allegation No. 45 refers to a pharmacy in Argentina promoting Nan AR at a special discount of 40%. This was an initiative of the pharmacy, not Nestlé and it is against Nestlé policy. While Nestlé works with retailers to ensure that they fully understand the WHO Code and intervenes with them to stop non compliance such as this, Nestlé can only do so if and when made aware of its occurrence. Unfortunately, in this case, the incident was reported long after it took place and without specifics such as address or location: we therefore cannot take corrective action

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<sup>4</sup> Gerber was acquired by Nestlé in September 2007 and does not produce infant formula. The process of aligning Gerber policies to Nestlé's 6 months policy in developing countries is underway. For these reasons allegations related to Gerber are not treated in this report.

<sup>5</sup> Nos. 8, 16, 36, 43, 45, 52

## Promotions in health care facilities

While the WHO Code aims to prevent direct contact of companies with mothers, it permits contact with health care professionals for the purposes of informing them of matters of a scientific and technical nature regarding infant food products. People working in health care facilities must be up-to-date on the latest scientific information in order to be in a position to advise mothers appropriately. In addition, companies are permitted to donate equipment and materials which bear a Company logo, but not those bearing any infant formula logo (Articles 4.3 and 6.8). The IBFAN report cites 30 allegations<sup>6</sup> related to promotions at hospitals.

While most of these allegations refer to cases that are clearly permitted by the Code, we agree that 3 fall into a grey area (Nos. 28, 38, 39). These all relate to the use of the stylised corporate logo on materials given to hospital workers or used in hospitals and on one item given to the public. One of these items had been developed in conjunction with the national Ministry of health. While this is a Nestlé Nutrition logo and not the logo of an infant formula brand, nevertheless it is a logo that is used on infant milks. All these materials had been withdrawn since 2006, and will not be reissued.

## Labelling

There are 2 allegations related to labelling (Nos 1, 23). In one of these cases (No.1), the bird's nest logo was removed at the request of the Tanzanian government (although no other government has requested this) and this is not a violation. In allegation No.23, an infant cereal is labelled with both 6 months and 4 months. Whereas Nestlé policy is indeed to label cereals in developing countries as appropriate for infants from 6 months of age, the Malaysian law *requires* a mention on the label to the effect that "*cereals are not to be given to infants below 4 months of age*", This has led to a dual labelling, but for the moment it must be labelled in such a manner in order both to comply with the WHO recommendations and remain within the Malaysian law. Again this is not a violation.

## Material incentive to health workers

IBFAN cites 24 allegations<sup>7</sup> of promotions in health care facilities to health care professionals. Only one of these (No. 72) had to do with infant formula, and it was found to be in compliance with the WHO Code. This was an advertisement in a professional paediatrics journal containing scientific and factual information about an infant formula, along with the requisite information about the superiority of breastfeeding. This is allowed by the Code and does not constitute efforts promote infant milks to the public. Small useful items given to health workers such as pencils, thermometers or calendars with the corporate (as opposed to infant formula brand) are authorized by Article 4.3 and Article 6.8 of the Code.

## Misleading text or pictures

Thirteen allegations were made about misleading text and advertising<sup>8</sup>. Of these we consider 9 to be in compliance with the Code<sup>9</sup>. However 4 allegations regarding misleading text and advertising of infant cereals needed attention (see below).

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<sup>6</sup> No. 17, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 46, 49, 56, 57, 60, 66, 67, 68, 69, 75, 76, 79, 82, 83

<sup>7</sup> No.4, 5, 12, 13, 14, 18, 20, 25, 44, 47, 50, 51, 54, 55, 62, 63, 70, 71, 72, 73, 74, 77, 80, 84

<sup>8</sup> Nos. 3, 6, 7, 15, 21, 22, 41, 42, 58, 64, 65, 78, 81

<sup>9</sup> Nos. 6, 7, 21, 22, 41, 58, 64, 65, 78

## Free Supplies to Hospitals

There were 9 allegations of free supplies to hospitals: 2 relating to complementary food (Nos. 19, 59) and 7 relating to infant formula<sup>10</sup>

Complementary food when not marketed as a breast-milk substitute does not fall into the Scope of the WHO Code, and thus it is completely permissible to give samples of cereals. All the allegations related to free supplies infant formula to hospitals were found to be untrue, as the products were not donated by Nestlé. Most are cases of straightforward *sales* of formula to hospitals for distribution where necessary by health care professionals, which is not prohibited by the Code. Some were too vague to validate – IBFAN needs to provide information about the alleged incident – for e.g. Nestlé refuses to give free or low price supplies of infant formula to hospitals. We are the only company which does not do this.

## Not sufficiently documented for verification

There were nine (9) allegations where we could not find evidence of them having occurred or not enough information was given to enable follow up<sup>11</sup>. As an example, stating only "Health workers provide mothers with samples of Nan HA and Lactogen 1 infant formula" (allegation No. 11) does not give information whether the formula had been bought (not a Code violation) or donated (would be a Code violation if true but Nestlé is alone among the companies in NOT doing this). Such allegations are vague and imprecise and need to be documented if they are to be verifiable. Information such as which hospital, which doctor, when, is needed in order to be able to investigate further.

**Table 1 : Allegations by Type and Food Category in Developing Countries**

Developing Countries	Infant Formula	Follow - on Formula	Complementary Food (Cereals)	Corporate Identity	Valid complaints
Promotion to Public	0	0	0	0	0
Promotion at point of sale	2	1	2	1	0
Promotion in Health care facilities	14	3	8	5	3
Labelling	1	0	1	0	0
Material incentives to health workers	1	0	7	16	0
Misleading text or pictures	7	0	6	0	4
Free supplies	7	0	2	0	0
<b>Total</b>	<b>32</b>	<b>4</b>	<b>26</b>	<b>22</b>	<b>7</b>

<sup>10</sup> Nos.2, 9, 10, 11, 48, 53, 61

<sup>11</sup> Nos. 8, 9, 10, 11, 45, 48, 52, 53, 61

- **In Developed Countries**

Nestlé judged that 2 of the 85 allegations in developed countries violated national implementation of the WHO Code (Nos. 141 and 155). In the Netherlands (No. 141) it was considered that the claim could be misinterpreted and had already been stopped in 2006. In Belgium (No. 155), we made an error omitting instructions from the label about preparation and storage of the product. This had been caught by Nestlé Nutrition and corrected approximately 2 years prior to the IBFAN report. In all other eighty-three cases, Nestlé actions are entirely in agreement with the governments' decisions on WHO Code implementation in their country.

**Table 2: Allegations by Type and Food Category in Developed Countries**

<b>Developed Countries</b>	<b>Infant Formula</b>	<b>Follow - on Formula</b>	<b>Complementary Food (cereals)</b>	<b>Corporate Identity</b>	<b>Valid complaints</b>
Promotion to Public	18	8	8	0	0
Promotion at point of sales	4	8	8	0	0
Promotion in Health care facilities	9	2	1	0	0
Labelling	4	1	1	0	2
Material incentives to health workers	3	2	0	0	0
Misleading Text or Pictures	4				1
Free supplies	3	1	1	0	0
<b>Total</b>	<b>45</b>	<b>21</b>	<b>19</b>	<b>0</b>	<b>2</b>

## 2. Summary of Findings

In investigating the alleged Code violation in Africa, Latin America, Asia, and the Middle East, it was found that seventy-seven (77) cases out of the eighty-four (84) allegations, there was no promotion to the public of breast-milk substitutes, and that most of the practices being called 'violations' dealt either with complementary foods for children over 6 months of age, not covered by the WHO Code, or are practices which the WHO Code allows.

It should be noted that Nestlé does not market infant cereals, baby foods and growing-up milks as breast-milk substitutes. Clarification of the definition of "breast-milk substitutes" is provided in Appendix 1 of the official WHO Code publication and does not include complementary foods. Complementary foods are instead defined by WHO Code (page 13 of the Code last paragraph) as breast-milk supplements, not as breast-milk substitutes, an important distinction.

However, we found that while the majority of the allegations, were without foundation, there were 7 cases which we agree were non-compliant or borderline. We had already taken action on 3 of these some years ago. The other 4 are currently being corrected.

Nestlé is the only company to market infant cereals as of 6 months of age in the developing world, respecting the WHA Resolution 58.32. While the cereal packages were thus clearly labelled with six months of age, the photography on one poster (No. 42), as well description of child development on a package, poster and booklet, (Nos. 3, 15, 81) could be interpreted to describe a child younger than six months. The photograph had been changed in 2006 and the text on developmental stages is currently being revised in consultation with health authorities and medical opinion leaders.

It should be noted that WHO Expert Consultation that led to the World Health Assembly Resolution 54.2 concluded that six months is an optimum duration for exclusive breastfeeding as a global public health recommendation, but that needs of each individual baby can vary. Mothers should therefore consult their health professional about when it is appropriate to start giving complementary foods to their baby.

For a case by case analysis of each allegation in the IBFAN report, refer to *the Detailed Results*.

### 3. Frequent Allegations based on Misinterpretations of the WHO Code

As it may be difficult to understand why so many allegations were found not to be Code violations, listed below are some of the most common misinterpretations contained in the IBFAN Report.

- **Not a violation: Infant formula information leaflets given to nurses and found in a maternity hospital.**

These leaflets, labelled for professional information only and written in a technical or scientific language that is beyond the general public's comprehension, are given to health workers to inform them about new products. In an allegation (No 26) cited in China, which we investigated, no leaflets that had been intended for Health Care Professionals were found in an area where the public could have seen them.

- **Not a violation: Ads in medical journals for infant formula.**

This is completely permitted by the WHO Code as these ads are destined to a discerning health professional audience. Ads containing health claims also often go through a government or professional vetting committee.

- **Not a violation: Hospitals giving formula to mothers when they leave the hospital when this formula has been bought from Nestlé.**

Nestlé gives no free supplies of infant formula to hospitals, and it is the hospitals' decision to buy formula from Nestlé, or from another company, and give a tin to formula-feeding mothers as they leave the hospital. However, we do not encourage this practice.

- **Not a violation: Providing infant cereal samples for children above age 6 months.**

Many allegations have to do with infant cereals marketed for use above the age of 6 months. The WHO Code itself (Appendix 1) explicitly indicates that complementary foods are not covered under the Code, unless specifically marketed as breast-milk substitutes - which cereals are not. Nestlé is the only major manufacturer not to market infant cereals below 6 months of age, in those countries where the WHO Code is voluntarily applied.

- **Not a violation: infant cereal and baby food brands e.g. Blue Bear logos on small items of utility given to health care workers.**

As cereals and baby foods are not, and are not marketed as, breast-milk substitutes, marketing of them is not prohibited by the Code. The Blue Bear is never used with breast-milk substitute products, but only with cereals and other complementary foods. These items are not part of any scheme to promote infant food products.



- **Not a violation: The Nestlé bird's nest corporate logo on infant formula tins.**

The bird's nest has been the company logo, in various forms since 1867, and it neither promotes infant formula feeding nor breastfeeding. The logo was designed by Henri Nestlé, the company founder, whose name means "little nest" in German.

- **Not a violation: Giving pencils, hand towels or pens to Doctors with the corporate logo on them.**

The WHO Code prohibits material or financial inducements to promote products within the scope of the Code. This article of the Code was included to prevent tying of rewards for health workers to writing of prescriptions or sales of breast-milk substitutes. It was also included to prevent expectation of receiving gifts of meaningful value. This point was reviewed by the Nestlé Infant Formula Audit Commission, headed by former US Secretary of State Edmund Muskie, who found that items of such nominal value "would not be likely to induce the recipient to promote Nestlé infant formula products." The WHO Code does not prohibit marketing, but restricts it.

Small items such as pencils or pens or hand towels with the Company logo do not constitute financial incentives or inducements as giving commissions to doctors for each formula prescription, or significant gifts would do. The WHO Code specifically allows giving useful materials and equipment to health care facilities, and permits them being marked with the corporate logo but no breast-milk substitute brand.

- **Not a Nestlé violation: Sales promotions by supermarkets, not known by Nestlé.**

We do not provide reduced cost formula to supermarkets to use in promotions, and if we are informed about these promotions, we ask supermarkets to stop them. However, as the IBFAN allegations reach us 1-3 years after they have occurred, by this time it is too late to do anything about them.

## 4. Recommendations for future Monitoring

Nestlé wishes to learn of all concerns regarding our marketing practices for it is only then that we will be able to correct mistakes or better inform our partners. We recognise that there are no perfect monitoring system in such complex arena as Code application and/or national legislations in so many countries. However, in order to make NGO monitoring more useful to further WHO Code compliance, Nestlé respectfully suggests the following:

- **When allegations are recorded, please send them to the company immediately** so that investigation can take place and corrections made if necessary, rather than assembling them over a one to three years period for publication. Companies could be more effective and a stronger dialogue established in this way.
- **Send allegations to Government.** As stated in the Article 11.2 of the WHO Code of Marketing of Breast - Milk Substitutes regarding the monitoring of the application of the Code "appropriate nongovernmental organizations, professional groups, and consumer organisations should collaborate with government to this end".
- **Teach correspondents the difference between complementary foods marketed for use after 6 months of age, and breast-milk substitutes.** A very large part of the allegations have to do with cereals and other baby foods which, unless specifically marketed as a breast-milk substitute, do not fall within the scope of the WHO Code.
- **Be vigilant on TV advertising of baby milks in developing countries.** We find a significant number of non-Nestlé breast-milk substitutes advertised on TV and other mass media. TV advertising of infant formula itself is also occurring in developing countries such as China.
- **Attempt to get more information about infant formula donated to hospitals and health professionals.** Nestlé does not donate supplies to hospitals, except for products for children who have specific medical conditions, where the formula is not sold in normal retail channels. However, we are aware that donations to hospitals in developing countries is still a common practice among some companies, and we are interested in collaborating with organizations whose aim is to stop this practice.
- **Raise Code violations at distribution and retail levels directly with the trade**

Along with manufacturers, the WHO Code also assigns responsibilities to distributors directly. While manufacturers can inform distributors of their infant foods about the Code and recommend Code compliant trade activities, their capacities to sanction distributors' violations or shortcomings are limited under international as well as most national trade laws. By raising infringements at distribution and retail level directly with distributors or retailers concerned, Government monitoring bodies and NGOs would significantly contribute to improvement of Code compliance.
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- **Accept the EU Member States' implementation of the WHO Code, as well as decisions taken by countries such as Canada and USA regarding WHO Code implementation. National decisions concerning WHO Code application should be respected, and companies will not go counter to national decisions in EU, US, Canada, Australia, and other developed countries in this respect.**

## 5. Detailed Results by region

### AFRICA

#### Tanzania (1)

COUNTRY	ALLEGATION	FACTS
<p><b>Look! No birds!</b></p> <p>1 Ref : BTR 2007-p74</p>	<p>The laws of several countries consider the Nestlé picture of the mother bird feeding its chicks as idealising. Only in Tanzania, where the authorities actively monitor the law, were the birds removed. In nearby Uganda and other countries with similar laws, Nestlé gets away with it.</p>	<p>The birds' nest has historically been our corporate logo from the origin of the company some 140 years ago. For many people around the world it has become synonymous with the Nestlé name. It is protected by trademark laws in most countries in the world, including in Eastern and Southern Africa. Tanzania is the only country in the world which has asked Nestlé to remove it from the infant formula package and we have complied. In all other countries the authorities have not taken the view that this logo can induce mothers to stop breastfeeding and they allow it. This allegation is unfounded.</p>



Mozambique (2)

COUNTRY	ALLEGATION	FACTS
Mozambique 2 Ref : BTR 2007-p70	Nestlé offers free supplies of <b>Nan</b> formula for babies of HIV-positive mothers in a hospital in Mozambique even though the <i>UN HIV and Infant Feeding Framework for Priority Action</i> supports the ban on supplies in accordance with the Code and subsequent resolutions.	Nestle does not offer free supplies of infant formula to hospitals, nor do we give free IF for babies of HIV-positive mothers. In Mozambique as well as throughout Africa, Nestlé is known for strictly following that policy. Governments, or the hospitals themselves, do however buy infant formula for feeding babies who in their opinion need those products, and for their programs aiming at preventing virus transmission from HIV-positive mothers to their babies. In Mozambique the government buys our infant formula for such programs through official tender procedures. Nestlé infant formula can therefore be found in hospitals, but those come from government supplies and in no case from free supplies by Nestlé. This allegation is completely false.

COUNTRY	ALLEGATION	FACTS
Mozambique 3 Ref : BTR 2007-p80	In Mozambique, the label of Nestlé <b>Cerelac</b> originating from South Africa indicates that the product is suitable from six months next to the Stage 1 stamp. The back of the box defines Stage 1 to mean when baby: <ul style="list-style-type: none"> <li>- is able to sit with support</li> <li>- plays with toes and grasps feet</li> <li>- enjoys watching things</li> <li>- progressively develops control of muscles and nervous system</li> </ul> All these stages of development occur when baby is much younger than six months which encourages mothers to initiate early complementary feeding.	Please refer to the "summary of findings" section related to "developing countries". We agree that this language can be misleading and the label is being changed due to the ambiguity cited. This is not compliant with the WHO Code.



Ghana (2)

COUNTRY	ALLEGATION	FACTS
Ghana 4 Ref : BTR 2007-p70	At least three hospitals in Ghana receive digital thermometers from Nestlé, without any approval from the health minister, as is required by the national law.	Article 5.1 of Ghana's LI 1667 states that "No manufacturer or distributor of a designated product shall directly or indirectly donate any equipment or material to a healthcare facility unless it is with the prior approval in writing of the Minister given after consultation with the Board." In Ghana, Nestlé complies with the above by submitting all material or literature intended for health care professionals to the Ministry of Health, for onward submission to the Food and Drugs Board for their vetting and approval. This is done prior to the circulation or distribution of any material in Ghana. Materials are only distributed following the receipt of written approval from the Food & Drugs Board. • This procedure was followed in this case. Apparently this allegation was made without a thorough investigation of the facts from either the Ministry of Health or the Food and Drugs Board: the 2 State Agencies monitoring compliance in Ghana. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Ghana 5 Ref : BTR 2007-p81	Health workers receive pens with a Blue Bear clip and the <b>Cerelac</b> brand name as well as the slogan "Baby's right start on cereals." The Nestlé name used prominently on formulas is also featured.	The allegation here is centred on the name of the company "Nestlé" which appears not only on our infant formula packaging, but other Nestlé products as well. <ul style="list-style-type: none"> <li>• Article 4.3 of the WHO Code states that ".....Donations of equipment or materials may bear the donating company's name or logo but should not refer to a proprietary product that is within the scope of the code, and should be distributed only through the health care system"</li> <li>• Article 5.2 of Ghana's Breastfeeding Promotion Regulation LI 1667 states: "No person shall donate or distribute within a healthcare facility equipment or material that bears the name, logo, graphic, trademark or any other description of a designated product (Infant Formula)."</li> <li>• Nestlé complies with the requirements of both the WHO Code and LI 1667. The company name "Nestlé" on a CERELAC branded pen does not violate either the WHO Code or Ghana's local legislation: LI 1667. a)"Nestlé" is not a brand name of an infant or follow-on formula but rather it is the name of the company. It is used here to identify the company and its cereals but is not linked to marketing of infant formula.</li> <li>• CERELAC is a complementary food marketed for infants above 6 months of age. It is not an infant formula and thus does not fall under the scope of the code. This allegation is unfounded.</li> </ul>



**Burkina Faso (1)**

COUNTRY	ALLEGATION	FACTS
Burkina Faso 6 Ref : BTR 2007-p85	Even going by its own standard, Nestlé falls short. For example as recent as March 2006, in Burkina Faso, a developing country in West Africa, a booklet found in a clinic recommends the use of Cerelac milk cereals from 4 to 6 months. The booklet claims that between 4 to 6 months, breast milk or formula are no longer sufficient for baby's nutritional needs and delaying the introduction of complementary food may cause nutritional insufficiency and alter the baby's growth curve. It also implies that Cerelac will help to "resist infection" and speed up healing.	This is an <b>outdated booklet that Nestlé stopped using around the year 2000</b> , before WHO changed its recommendation about weaning age. Since then we have changed our policy to recommend introduction of infant cereals from 6 months of age. At the same time, we changed the brand design. The booklet referred to by IBFAN shows the old discontinued brand design. It would not make any sense for Nestlé to disseminate in 2006 materials that refer to a brand which has been replaced several years ago. This allegation is unfounded.



**Botswana (1)**

COUNTRY	ALLEGATION	FACTS
<p>Botswana 7 Ref : BTR 2007-p85</p>	<p>An advertisement published in February 2006 by a supermarket in Gaborone, Botswana, recommends the product as suitable as of 4 months, in contravention of the country's national law.</p>	<p>This is a wrongful behaviour from the part of the supermarket, using old packaging packs hot dating from the late 90's, showing 4 months.</p> <p>We take seriously our responsibility to inform the trade about WHO Code recommendations, and all our contracts with distributors include specific reminder about our policy concerning marketing of breast-milk substitutes. Retail shops can make mistakes. In this particular case, we have called the supermarket's attention to this obsolete packaging bearing incorrect age positioning and their managers have confirmed they would remedy the error. This allegation relates to activity by a supermarket and not by Nestlé.</p>





## ASIA

### Indonesia (13)

COUNTRY	ALLEGATION	FACTS
Indonesia <b>8</b> Ref : BTR 2007-p68	Sales promoters in supermarkets in Indonesia push <b>Lactogen 1</b> , <b>Lactogen 2</b> , <b>Nan 1</b> , <b>Nan H.A.</b> and <b>Pre Nan</b> .	Nestlé does not promote infant formulas in supermarkets. Nestlé works with our retailers to ensure that they understand the Code. With respect to this allegation, more detailed information and evidence are needed to assess it, such as identification of supermarkets, date and location. This is likely to be an individual shop keeper initiative contrary to our mutual understanding. If IBFAN had informed us at the time it happened Nestlé Nutrition staff could have contacted this shopkeeper to ensure better understanding of the Code. Without timely information about this, Nestlé cannot influence the supermarkets' behaviour. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Indonesia <b>9</b> Ref : BTR 2007-p69	A number of hospitals receive discounts from Nestlé whenever they purchase <b>Lactogen 1</b> , <b>Nan 1</b> , or <b>Pre Nan 1</b> formulas.	Nestlé Indonesia never gives discount for infant formulas, neither to hospitals nor to the retail trade. Sales of infant formula to hospitals are always made on normal trade terms, in accordance with the hospitals' official procurement procedures. This allegation is completely unfounded.

COUNTRY	ALLEGATION	FACTS
Indonesia <b>10</b> Ref : BTR 2007-p69	Health personnel in a hospital in Batam distributes <b>H.A.</b> to mothers when they are discharged.	Nestlé's policy prohibits any promotion and free supplies of infant formula to hospitals. Nestlé Indonesia strictly adheres to this policy. Hospitals may still on their own initiative purchase infant formulas at normal retail prices from retail shops/ pharmacies and give them for feeding babies who in their judgment cannot be breastfed. This is the proper role of the health care personnel and beyond the control of Nestlé.

COUNTRY	ALLEGATION	FACTS
Indonesia <b>11</b> Ref : BTR 2007-p69	Health workers provide mothers with samples of <b>Nan H.A.</b> and <b>Lactogen 1</b> infant formula.	The information is not complete enough to enable us to investigate this allegation. It is Nestlé's policy to prohibit sampling of infant formula, except in strictly defined cases which are in accordance with WHO recommendations. We are continuously making efforts to ensure awareness about these restrictions within the medical profession, to avoid Health workers using our infant formula in sampling initiatives.



COUNTRY	ALLEGATION	FACTS
Indonesia <b>12</b> Ref : BTR 2007-p70	Doctors in a Jakarta hospital receive pens in a leather case bearing the Nestlé Nutrition logo.	The WHO Code (art. 6.8 and 7.3) allows manufacturers to give inexpensive items of professional utility to health workers. Company name and corporate logo may be shown on those items, but not infant formula brands or logos. The pens Nestlé Indonesia give to some medical contacts, on a very occasional basis only, bear only the corporate logo of Nestlé Nutrition. Also, as they are inexpensive (less than USD 10.-), they cannot constitute a material inducement for the sales or promotion of infant formula. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Indonesia <b>13</b> Ref : BTR 2007-p72	Clocks displaying the Nestlé company name are found in wards and nurseries of hospitals.	Both WHO Code (art. 6.8 and 7.3) and Indonesian Code allow manufacturers to give inexpensive items of professional utility to health facilities, when the items bear only the company name and/or corporate logo, but no infant formula brands or logos. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Indonesia <b>14</b> Ref : BTR 2007-p72	A hand towel bearing the Nestlé company logo is seen in the examination room of one hospital.	Both WHO Code (art. 6.8 and 7.3) and Indonesian Code allow manufacturers to give inexpensive items of professional utility to health facilities, when the items bear only the company name and/or corporate logo, but no infant formula brands or logos. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Indonesia 15 Ref : BTR 2007-p82	Hospitals receive Blue Bear posters and stickers which promote Nestlé complementary foods. These materials are displayed on walls and entrances in public areas of hospitals. One of the posters, "Time for growth. Time for Nestlé cereal," promotes <b>Nestlé bubur susu</b> (milk porridge) through the all familiar Blue Bear mascot. The association of growth with cereals may promote the use of the product before it is necessary. The Developmental Nutritional Plan, a concept hatched by Nestlé, tells Indonesian mothers that "The Nestlé Growth and Development Nutrition program is not focused on baby's age but depends on when the baby is ready to take first solid food." This encourages moms to try complementary foods before their babies are 6 months old despite the global public health recommendation for six months exclusive breastfeeding.	Please refer to the "summary of findings" section related to "developing countries". Nestlé agrees that this language is ambiguous and it is being changed. This is not compliant with the WHO Code.



COUNTRY	ALLEGATION	FACTS
Indonesia 16 Ref : BTR 2007-p82	A billboard promoting Nestlé cereals doubles as a sign board for a health care facility centre.	As it is positioned for use after 6 months of age, Nestlé Infant Cereal is a complementary food and not a breast-milk substitute. Normal advertising and promotion of complementary foods are contradicting neither the WHO Code nor the national Code. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Indonesia 17 Ref : BTR 2007-p82	Hospitals put up an information poster entitled “Breast milk is the best food for babies” but mothers are likely to be nonplussed by the ambiguity of the poster which lends equal weight to breastfeeding as to Nestlé complementary foods. It also promotes the Nestlé name featured prominently on formula products.	This concerns complementary food which is not covered in the scope of the Code. Nestlé Infant Cereal is not marketed as a breast-milk substitute and is not in competition with breast feeding, Complementary foods are valuable nutritious and necessary supplements to an older infant’s diet. This is not a Code violation. The Nestlé company name appears on many products, not just infant formula. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Indonesia 18 BTR 2007-82	Measuring tapes are provided to hospitals for use in paediatric wards and clinics. The tapes carry a picture of the Blue Bear mascot and the corporate logo.	Measuring tapes are low-cost service items needed by health care professionals for their professional practice. The Blue Bear icon does not relate to infant formula, and the WHO Code allows professional utility equipment donated to doctors and hospitals to be identified by the logo of the donating company. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Indonesia 19 BTR 2007-82	In Indonesia, Malaysia and the Philippines mothers receive free samples of Nestlé cereals from health facility personnel.	As stated above, Nestlé Infant Cereal is not a breast-milk substitute. Sampling of cereals thus a permitted activity. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Indonesia 20 BTR 2007-86	In Indonesia, Nestlé sponsors various health seminars for doctors and midwives including one on exclusive breastfeeding and another one on improvement of babies’ health. In one hospital, a staff was reported to have been sponsored for a tour to Singapore.	Sponsorship of health seminars for the continuing education of doctors and midwives is allowed by both WHO and national Codes. This allegation is unfounded.

Malaysia (5)

COUNTRY	ALLEGATION	FACTS
Malaysia 21 BTR 2007-76	An ad in the <i>Medical Tribune</i> professional journal promotes the DHA content in <b>Lactogen 1</b> for optimal brain development and visual acuity (see box on Damage Control).	This advertisement carries the Malaysian Ministry of Health approval code which is given by the Vetting Committee of the Malaysian Code of Ethics for Infant Formula Products. (Lactogen 1 journal ad approval code - 05-KK/B/P/I-07/04 Untuk Professional Perubatan) [text means 'For Health Professional'] According to the WHO International Code of Marketing of Breast-milk Substitutes article 7.2, manufacturers are allowed to provide information to the health professionals regarding their products provided the information is scientific and factual. Furthermore, the Malaysian Code of Ethics for Infant Formula Products, article 4.5 allows the distribution of vetted scientific and educational materials to the medical and health professional. This allegation is unfounded

COUNTRY	ALLEGATION	FACTS
Malaysia 22 BTR 2007-76	Another ad in a Malaysian Medical Association publication promotes <b>Nan 1</b> and <b>Nan 2</b> with the slogan " <i>There are times when a baby needs to fight back</i> ". A pair of boxing gloves is shown hanging from a baby crib to back the claim that the products help infants develop and maintain good immunity.	This advertisement carries the Malaysian MOH approval code which is given by the Vetting Committee of the Malaysian Code of Ethics for Infant Formula Products. (NAN 1 & 2 journal ad approval code: 05-KK/B/P/I-43/06 Untuk Professional Perubatan) [text in brackets means 'For Health Professional'] According to the WHO International Code of Marketing of Breast-milk Substitutes article 7.2, manufacturers are allowed to provide information to the health professionals regarding their products provided the information is scientific and factual. Furthermore, the Malaysian Code of Ethics for Infant Formula Products, article 4.5 allows the distribution of vetted scientific and educational materials to the medical and health professional. This allegation is unfounded





COUNTRY	ALLEGATION	FACTS
Malaysia 23 BTR 2007-81	The label of cereal samples distributed in Malaysia recommends the product as suitable as of 6 months on the front but lowers the age range at the back with the statement that the product should not be given before 4 months.	This label is simply obeying the Malaysia law. The statement at the back of the of the label is a requirement of the Malaysian Food Regulations where under 391(10a) which states: "There shall be written in the label on a package containing cereal-based foods for infants and children a) in not less than 10 point lettering, the words "NOT TO BE GIVEN TO INFANTS BELOW 4 MONTHS OF AGE"....The authorities have already initiated a change in the regulations so as to indicate 6 months. However, this change has yet to come into effect. In this case, Nestle is simply following Malaysian law. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Malaysia 24 BTR 2007-83	A 3 year calendar cum obstetric table found in a private hospital advertises Nestlé Infant Milk Cereals with Chamomile and Orange Blossom with the slogan "Hush Little Baby .....Baby that sleeps well grows well." The calendar shows a picture of a baby and Blue Bear sleeping soundly and pack shots of the products which purportedly help promote good sleep in babies.	This refers to an infant cereal which is a complementary food and not marketed as a breast milk substitute. This product does not fall under the WHO Code or the Malaysian Code. Under article 2 of the Malaysian Code of Ethics, the scope of the code is defined as follows: "This code covers the basic principles of marketing and product information for all Infant Formula Products (including feeding bottles and teats) in Malaysia." This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
<p>Malaysia 25 BTR 2007-83</p>	<p>A bag advertising the “Nestlé Nutrition Plan” is given to health workers in a private hospital in Penang.</p>	<p>The “NESTLE NUTRITION PLAN” refers to the introduction of solid foods which are not within the scope of the WHO code or the Malaysian Code. This allegation is unfounded.</p>



China (11)

COUNTRY	ALLEGATION	FACTS
China 26 BTR 2007-72	<b>Lactogen</b> information leaflets are displayed in the nursing centre of the maternity ward of a hospital in Hefei.	Both WHO Code and the Chinese authorities, allow manufacturers to inform the medical profession about their infant foods products, either in face-to-face meetings or through printed materials. These leaflets are destined to the medical profession only and can be clearly identified as such by the mention: "for health care professionals only". Their content is generally expressed in scientific or technical language that exceeds the common understanding of the general public. Moreover, in the case of the hospital in Hefei, our investigation shows that our medical detailing materials were not exposed to the public but were placed inside the area reserved for staff only. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
China 27 BTR 2007-72	A Nestlé poster of a mother and a baby is displayed in a hospital in Shanxi, conjuring an image of warmth and love. A paternal version of the poster is also available. In addition, the company supplies the hospital with pictures of babies and animals to decorate its walls.	Those posters are materials designed in cooperation with healthcare facilities to inform parents about the benefits of breastfeeding and common infant diseases (such as neonatal jaundice). This material is fully in line with both WHO and the Chinese Codes as it contains no infant formula illustration, and no formula brand. As allowed by articles 4.3 and 6.8 of the WHO Code, they only mention our company name and corporate logo. This allegation is unfounded.





COUNTRY	ALLEGATION	FACTS
China 28 BTR 2007-72	The paediatrician's office in a Shanxi hospital displays large posters on breastfeeding with the product logo of the infant formula appearing prominently at the centre of the posters.	Nestlé China strongly supports breast feeding in many ways, e.g. with installation of breast feeding rooms. This poster, like the poster in a Shanxi hospital mentioned above, has been developed within the framework of a collaborative project with the Ministry of Health to promote breast feeding in China. The birds' nest logo was shown as a reflection of Nestlé's corporate logo. While no infant formula brand logo is shown on this poster, this bird's nest logo does appear on infant milks packages Breastfeeding posters using this logo are no longer printed. When new posters will be devised, we shall see that this logo is not shown to avoid misinterpretation.



COUNTRY	ALLEGATION	FACTS
China 29 BTR 2007-72	A card found in a doctor's office in Xianyang contains the contact details of a Nestlé rep and promotes <b>Nan</b> infant formula with the text "Added DHA/AA makes the formula closer to breast milk and promotes the development of baby's brain." (see <i>Deceiving Moms</i> box under the section on Promotion to the Public).	In Mainland China, no Nestlé medical representative' name card carries the brand name of any product, and certainly not an infant formula brand name. Moreover a card cannot contain a text as long as the one mentioned here. This allegation is untrue. Most likely the so-called card is drawn from an information leaflet destined to health professionals. As explained above, this is professional material allowed by the Code. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
China 30 BTR 2007-72	Cot identification tags are distributed to hospitals in Suzhou. One side of the tag carries the slogan <i>"Breastfeeding is good"</i> while the other side refers to <b>Lactogen 1</b> and <b>Lactogen 2</b> with the text <i>"DHA intact"</i> and <i>"the smell of natural milk"</i> .	Those cot identification tags were used to identify babies hospitalized in neonate intensive care units. Those items are provided as a service to the hospitals upon their management's request. On one side they mentioned "breast-feeding is best" and showed a baby being breastfed, on the other side they had such data as mother's and baby's name, sex, bed number, etc... Although the quality of the reproduction is not very clear; still it can be seen that the material shown in the report does not carry any product brand. Those identification tags were therefore not in violation of the WHO Code. However, to avoid fuelling possible misperception, Nestlé China stopped providing those service items as from 2005. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
China 31 BTR 2007-75	A leaflet distributed among health workers in a Chinese maternity hospital in Anhui with the caption <i>"Keep in step with time, be worthy of your trust"</i> claims that the minerals ratio in <b>Lactogen</b> infant formula is similar to breastmilk	This is an informational leaflet for healthcare professionals only. The mention about the mineral ratio is factual and can be substantiated. This material is therefore compliant with both WHO (art. 7.2) and Chinese Codes. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
China 32 BTR 2007-75	Another <b>Lactogen</b> leaflet warns parents that babies in cities suffer from micronutrient deficiency and claims that <b>Lactogen</b> has the optimal combination for good nutrition.	This is an informational leaflet for healthcare professionals only, and not for parents. It is true that babies who are not breastfed can suffer from micronutrient deficiency if they are not fed infant formula. The mention about the mineral ratio is factual and can be substantiated. This material is therefore compliant with both WHO (art. 7.2) and Chinese Codes. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
China 33 BTR 2007-75	A <b>Nestogen</b> leaflet promotes its international quality and claims that the product is worth more than its value. Harping on its relative low price, the leaflet states that the product is the best choice for the working class, costing only 90RMB (US\$11) per month. The leaflet praises the product's quality which purportedly brings it "even closer to breast milk".	This is a 2004 information leaflet used by our medical representatives when they visited doctors to inform them about the properties of one of our infant formula, Nestogen. The information included the nutrient content and balance of Nestogen, and other factual data intended to help the health professional differentiate that product from other ranges Nestlé formulae and from competitors' brands. Information to health care professionals is allowed by the WHO Code. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
China 34 BTR 2007-81	Blue Bear mascots adorning posters and signboards in hospitals.	Complementary foods are not within the WHO Code scope. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
China 35 BTR 2007-86	The emergency clinic of a maternal and children's hospital in Hefei displays a Nestlé wall calendar which promotes Nestlé milk for pregnant mothers. The slogan on the calendar states "Two cups a day, both mom and baby are healthy".	Nestlé milk for pregnant mothers is a <b>food product for adults</b> . It is obviously not a breast-milk substitute, and is not covered by the WHO Code. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
China 36 BTR 2007-86	A banner outside a hospital store in Gui Yang invites parents to “choose quality, choose Nestlé”. Products in the store include Nestlé infant formula.	The store in question is an ordinary retail outlet, selling all sorts of items and food products. As for the slogan, this is Nestlé China’s corporate slogan; it can be seen on almost all Nestlé products and most company corporate communication in many places in the whole country. This is not a WHO Code violation. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
China wrist bands 37 BTR 2007-65	In some hospitals in China, babies are "branded from birth" with identification tags bearing the Nestlé name and logo.	Article 6.8 of the WHO Code permits the donation of equipment and materials to healthcare system, with a company’s name and logo – but not with a formula product name or brand. Thus, The wristbands, carrying our corporate brand “Nestlé” which is found on all our numerous products for people of all ages, are provided as a service to the hospitals with their approval, and is completely permitted under the WHO Code. This is not a WHO Code violation. This allegation is unfounded.



Philippines (6)

COUNTRY	ALLEGATION	FACTS
Philippines 38 BTR 2007-73	Health workers receive a myriad of gifts which include calendars, cushions, bottle warmers, mugs, pens, jackets, t-shirts and bags. Although no specific product names are mentioned, most contain logos found on infant formula products and slogans such as "Brain building block, healthy digestive system; DHA+ Prebio 1" and "with Bifidus" to publicise components found in products like <b>Nestogen</b> and <b>Nan</b> .	The "Prebio" logo is a trademarked ingredient and can be found on many other Nestlé products like NIDO and CERELAC. The person on the picture is Mrs. Tintin Bersola, a well known spokesperson and supporter of breast feeding in the Philippines. Local authorities made us aware of potential confusion with materials bearing this stylised nest logo. All these materials were discontinued by mid 2006. This is not compliant with the WHO Code.



Promotion by colour, composition and ... a celebrity



COUNTRY	ALLEGATION	FACTS
<p>Philippines 39 BTR 2007-73</p>	<p>A Record Card, given to mothers to take home bears the Nestlé family of birds logo and the Prebio1 promotional device found on the label of <b>Nestogen 2</b>. Idealising text referring to the formula includes claims that the product prevents constipation, strengthens and improves resistance and provides better absorption of minerals for the continued growth of the baby. The record card also advises parents that “Starting 6 months, give your baby Prebio1” unmistakably referring to <b>Nestogen 2</b>. Even though publication of materials like these may be allowed with permission, under the national law, direct promotion by focussing on a specific element in the product violates the spirit and aim of the Code.</p>	<p>The picture below seems to be a mix of several different elements, the Lactogen tin (Mentioning in bold at the top "breast feeding is the best for babies up to two years old", a blow up of the Prebio trademark logo, and the record card. The Nestle family of Birds on our label is part of our Corporate logo. PreBio1 is a trademarked ingredient used in several products including those not intended for infants. All claims have been proven scientifically and this information helps understanding what Prebio1 is and how it is useful for the baby. Importantly, our entire NESTOGEN label has been approved by Philippines' Bureau of Food And Drugs.</p> <p>While not mentioning any infant milk brand, however, the record card given to mothers carries the infant milk nest logo. Thus we agree that this card violated the spirit of the Code. This card had been discontinued in 2006.</p>



COUNTRY	ALLEGATION	FACTS
Philippines <b>40</b> BTR 2007-73	A cardboard Christmas wreath found on the door of the staff room of a health centre promotes <b>Nestogen 1</b> and <b>Nestogen 2</b> with text claiming that their DHA and Prebio1 content helps mental development and results in a healthy digestive system.	DHA and Prebio – are trademarked ingredients and not infant formula brands. These ingredients are used in products other than Nestogen. This wreath does not promote Nestogen. This allegation is unfounded.





COUNTRY	ALLEGATION	FACTS
<p>Philippines 41 BTR 2007-74</p>	<p>In the Philippines, <b>Nestogen 1</b> infant formula with iron is marketed in 180 gram packs with the DHA brand logo and claims that it has DHA and more calcium which function as “<i>brain building block</i>” and “<i>bone builder</i>”. The pack also advertises Nestlé cereal by showing a pack shot and encourages early weaning with the statement “<i>You may start giving your baby new improved Nestlé Baby Cereal, the complete first solid food.</i>” There is no specific age recommendation as to when complementary feeding should be given. Website and hotline are advertised.</p>	<p>DHA is a known component of brain tissue. This is known as a nutrient function claim, it is a proven scientific claim and certainly not an over-claim. Calcium has been scientifically proven as a nutrient necessary for bone building. All scientific health claims on the labels were approved by the Philippines’ Bureau of Food And Drugs. New local Filipino guidelines were released end quarter of 2007 and our labels were changed accordingly (taking out health and nutrition claims) to comply with the new regulations. Our Infant Cereals are now branded CERELAC which carries a Department of Health approval that the product is outside the scope of the Code. CERELAC Infant cereals are positioned from 6 months of age and in line with WHO guidelines. The Website and Hotline, refer to the general Nestle Philippines Website and Hotline. Nestle guarantees its quality and wants to make sure that all consumers know where to go in case of concerns or questions. This allegation is unfounded.</p>



**Damage control !**

“There is certainly no scientific evidence that demonstrates IQ improvement with drinking a certain milk. What is known is that IQ is mainly influenced by genetics, the right stimulation of the child in his or her upbringing and proper nutrition.”



Pedro N. Dy-Liacco, Director  
Communications and Marketing Services Director  
Nestlé Philippines

(source: Business World, May 4–5, 2007)

Editorial note: A court case around the country’s Code-based regulations has Nestlé’s PR machinery doing ‘intelligent’ pre-emptive damage control and disputing its very own promotional message which talks about brain development, ergo, IQ improvement.

COUNTRY	ALLEGATION	FACTS
Philippines 42 BTR 2007-80	A poster in a health facility advertises Nestlé's "Gentle first food" with the picture of a very young baby.	Nestle Baby Cereal brand was discontinued end 2006. All our infant cereals are now branded under CERELAC. As for the picture, we did research independently what would be the age of the child and, of a panel of 30 women and mothers: 25 estimated the baby is 6 months old or above, 5 estimated 5+ months old. While the recommendation for introducing the cereal at 6 months is clearly labelled on this poster, we consider that potential ambiguity on the age of this child this is not totally compliant with the WHO Code. Our company in the Philippines has assured us that this poster has been removed from health facilities.



COUNTRY	ALLEGATION	FACTS
Philippines 43 Ref: BTR 2007- p80	In violation of the national law, cereal products were put on special sale in supermarkets, which became the subject of a cease and desist order.	CERELAC (complementary food for babies starting at 6 months) is outside the scope of the Code thus promotional activities are allowed. Nestlé even has an explicit letter from the department of Health from 1986 stating that CERELAC is not, and has never been, under the local Code. In this case, the Bureau of Food and Drugs unusually, came with a cease and desist order and Nestle of course complied. This allegation is unfounded.



**India (1)**

COUNTRY	ALLEGATION	FACTS
<p>India  <b>44</b>            BTR 2007-86</p>	<p>In India, Nestlé flouts the national law by sponsoring a seminar by the Homeopathic Medical Association of India and providing free lunches and materials for participating doctors. During the event, Nestlé representatives distributed brochures of their products and appealed to participants to prescribe Nestlé infant foods.</p>	<p>The activity as mentioned was not a sponsorship but a scientific seminar held in 2005 under the forum of "Sharing Knowledge and Spreading Health" where scientific / clinical topics are discussed and deliberated. The particular scientific activities referred to were in no way linked to Nestle products and prescription. No non scientific material of any kind were or are being distributed in any of our Scientific Activities under the forum of "Sharing Knowledge, Spreading Health" activities. This allegation is unfounded.</p>

## SOUTH AMERICA

### Argentina (3)

COUNTRY	ALLEGATION	FACTS
Argentina <b>45</b> BTR 2007-68	A pharmacy in Cordoba offers <b>Nan AR</b> at 40 percent discount.	The picture is not clear enough to assess the authenticity of this allegation. However, if confirmed that infant formula was offered at a discount of 40%, the pharmacy would be in violation of the Code. We consistently educate pharmacies and other retailers of our products of the meaning and importance of the WHO Code. If we learn of violations with sufficient identification to follow up, we do so. We will also do so in this case if this information is made available. Accusations that are too vague to enable any corrective action do not help improving Code compliance among the trade; they only cast suspicion over the whole retail sector, which is unfair to those who make efforts in seriously following the manufacturer's instructions towards Code compliance. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Argentina <b>46</b> BTR 2007-82	A consultation room of a hospital in Argentina, where a calendar for "Stage 1" complementary foods shows the company name and the Nestlé Blue Bear.	In line with local regulations and WHO Code. Refers to complementary food which is not within the scope of the WHO Code. It does not refer to breast-milk substitutes. This allegation is unfounded.



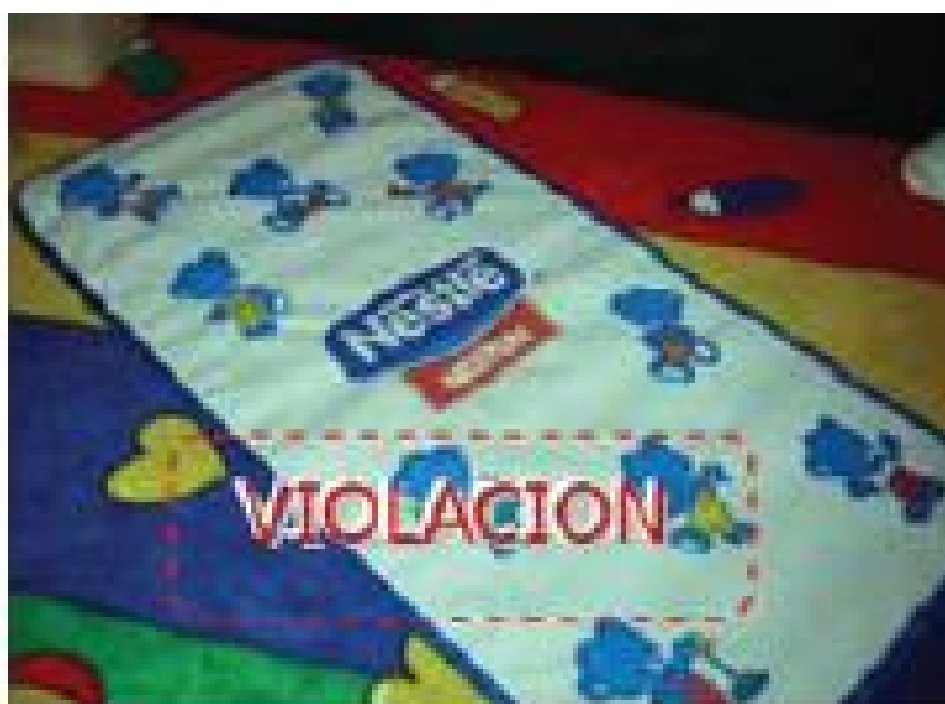
COUNTRY	ALLEGATION	FACTS
Argentina <b>47</b> BTR 2007-86	In Argentina, Honduras and many other countries, Nestlé co-sponsors international courses and seminars on paediatrics and neonatology.	Nestlé commonly sponsors Paediatric and General Medicine congresses, by taking specialist speakers to support continuous medical education. Nestlé only covers all travelling expenses. This is in line with local regulations and WHO Code, and is not a WHO Code violation. This allegation is unfounded.

**Guatemala (3)**

COUNTRY	ALLEGATION	FACTS
Guatemala <b>48</b> BTR 2007-69	Mothers at a Guatemalan health facility receive <b>Nan Sin Lactosa, Nan 1, Nan 2</b> and <b>Nan H.A.</b> from health workers.	The Guatemalan Institute of Social Security (IGSS) usually provides to their affiliates, infant formula under special conditions, e.g. premature babies and with those with diarrhoea, when they leave the hospital. Formulas are supplied through public bids, according to local regulations. Nestle does not donate free infant formula to mothers or hospitals. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Guatemala <b>49</b> BTR 2007-72	Nestlé posters showing the name and logo of the company are put up in several units of a hospital in Guatemala.	Poster displayed in the nursing neonatology chief offices, the General Hospital of Illness, of the Guatemalan Institute of Social Security (GISS) It is promoting breastfeeding, providing specific information about its different phases. Posters bearing company logos are not prohibited by the WHO Code. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Guatemala <b>50</b> BTR 2007-82	A private clinic in Guatemala City which was given weighing scale covers decorated with Nestlé blue bears and a large company logo.	This activity is compliant with the Article 10 of the GISS' Law Decree 66-83. This is also compliant with the WHO Code. This allegation is unfounded.



*Ecuador (1)*

COUNTRY	ALLEGATION	FACTS
Ecuador 51 BTR 2007-82	A paediatric clinic in Ecuador which exhibits a Nestlé <b>Nestum</b> calendar.	In line with local regulations and WHO Code. This allegation is unfounded.





## MIDDLE EAST

### Lebanon (9)

COUNTRY	ALLEGATION	FACTS
Lebanon 52 BTR 2007-69	In a promotion in Lebanon, customers are able to purchase two tins of <b>Nan 2</b> formula at a special price.	Nestle gives <b>no promotion or special price</b> on NAN2 nor any other infant formula at the point of sale. In compliance with WHO article 5.3 and National Code article 5.C, we apply this restriction to all infant formula that Nestlé sells in this country, and have accordingly informed our distributors. IBFAN should clarify where and when the alleged promotion was supposed to have taken place so that we could investigate and take corrective action if needed. Accusations that are too vague to enable any corrective action do not help improving Code compliance among the trade; they only cast suspicion over the whole retail sector, which is unfair to those who make efforts in seriously following the manufacturer's instructions towards Code compliance. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Lebanon 53 BTR 2007-70	A hospital in Lebanon obtains <b>Pre-Nan</b> and <b>Nan</b> infant formula at a discount.	As recommended by the World Health Assembly's Resolutions 39.28 and 47.5, our infant formula supplies to hospitals are made under normal procurement procedures of the hospitals. By way of extra precaution, we follow up on those supplies by monitoring that they are commensurate with the number of deliveries and number of non-breastfed children less than 1 year of age inside the hospital. The hospitals are aware of our policy and appreciate such Code compliance. This allegation is unfounded.



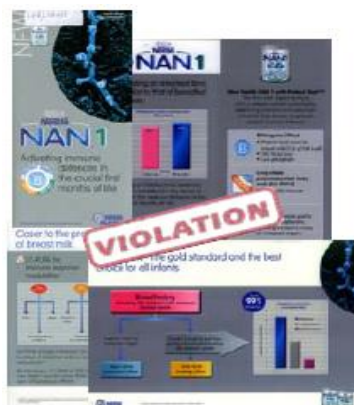
COUNTRY	ALLEGATION	FACTS
Lebanon 54 BTR 2007-70	Paediatricians and nurses of a hospital are invited to lunch by Nestlé.	<u>No</u> doctor or nurse was invited to lunch or dinner as part of a social event. Within the context of a scientific conference or symposium however, we do offer refreshments or dinner to participants, as is the norm for such kind of scientific meetings and within the limits of customary courtesy. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Lebanon 55 BTR 2007-70	Hospital staffs receive diaries with the Nestlé company logo prominently displayed on the front cover.	Those diaries are given to health professionals as an item of professional utility, and they only bear the Nestlé Nutrition logo, but not any product brand or picture. This is fully in line with Art. 6.8 of the WHO Code. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Lebanon 56 BTR 2007-75	In Lebanon, brochures intended for the medical profession idealise Nestlé products in the following manner: A leaflet on <b>AL 110</b> infant formula distributed among health workers at a workshop on neonatology entitled “ <i>Extensive research provides a solution for lactose intolerant infants</i> ” states that its whey/casein ratio of 60:40 allows for an amino acid pattern “ <i>very close to that of breast milk.</i> ”	This is part of a communication to health professionals who are capable of making a discerning reading of the language used. The similarity of the amino acid pattern of infants taking AL110 to those being breast fed is purely factual. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Lebanon 57 BTR 2007-75	A leaflet “Nan 1- activating immune defences in the crucial first months of life” claims that Nan 1 is “closer to the protective properties of breast milk” with bifidus which helps in “creating an intestinal flora similar to that of breastfed infants... to strengthen the immune defences in the crucial first months of life”. The leaflet further claims that the product has “improved amino acid profile allowing a reduced protein intake comparable to that of breast milk”.	As allowed by the WHO Code, information and education to Health Care Professionals. The full content of the leaflet provides a scientific presentation to health professionals of the improvements to NAN 1 compared to previous formula. It also includes a reminder about the superiority of breast-milk and relevant WHO recommendations. This allegation is unfounded.





COUNTRY	ALLEGATION	FACTS
Lebanon 58 BTR 2007-70	Health professionals in a hospital receive free subscriptions to the medical journal Paediatrics. In one volume, there is an ad for the new Nan 1 and Nan 2 with the slogan "Enhancing immune defences in the crucial first year of life." The ad states how breastfeeding is the best choice for all infants but for infants that are not breastfed, Nestlé introduces state-of-the-art premium infant formulas Nan 1 and Nan 2. The inside back cover advertises Nan H.A. 1 and Nan H.A. 2 with the slogan reducing the risk of allergies in the crucial first years of life for all infants.	As for the substance of the communication about NAN1 and 2 published in the medical journal, firstly this is destined to health professionals, who are capable of making a discerning reading of the communication. Secondly the full content of that communication is a reflection of scientific research and has been thoroughly substantiated. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Lebanon 59 BTR 2007-83	Nestlé company representatives frequently donate unsolicited supplies of <b>Cerelac</b> cereals and brochures to clinics and hospitals.	Cerelac is a complementary food, and is marketed as such in Lebanon, not as a breast-milk substitute. It does not compete with breast feeding and does not fall within the scope of the WHO Code. Samples of Cerelac are given to clinics and hospitals only at their request. All our communications on CERELAC inform the doctor that this is for babies above 6 months. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Lebanon 60 BTR 2007-83	A hospital displays <b>Cerelac</b> clocks in maternity wards, paediatric wards, nurseries and waiting rooms helping Nestlé and Blue Bear reach a public of parents with young babies.	Cerelac is a complementary food, and is marketed as such Lebanon. Thus, it does not fall within the scope of the WHO Code. This allegation is unfounded.



**Saudi Arabia (9)**

COUNTRY	ALLEGATION	FACTS
Saudi Arabia <b>61</b> BTR 2007-70	Nestlé pays to be allowed to supply free <b>Nan</b> infant formula to newborns in a hospital in Saudi Arabia.	Nestlé does not give free supplies to hospitals in Saudi Arabia. In fact Nestlé is the single company to have stopped free supplies in this country, whereas all other manufacturers continue with a practice that is allowed by Saudi health authorities. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Saudi Arabia <b>62</b> BTR 2007-71	Health workers receive invitations to gala events including free dinners in fancy hotels.	Those alleged “gala events” were all scientific symposia on medical themes such as child psychiatry, paediatric intensive care, food allergy, chronic diarrhoea, etc. Those symposia are held with the participation of speakers who are scientific experts having well-established reputation in their field. They aim at providing health professionals opportunities to upgrade their professional knowledge. The WHO Code permits support from companies for educational purposes. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Saudi Arabia <b>63</b> BTR 2007-71	Nestlé desk calendars and desk diaries are given to medical staff in hospitals.	Those calendars and diaries are given to health professionals as an item of professional utility, and they only bear the Nestlé Nutrition logo, but not any infant formula brand or picture. This is fully in line with Art. 6.8 of the WHO Code. This allegation is unfounded.



Desk diaries and calendars promote products.

COUNTRY	ALLEGATION	FACTS
Saudi Arabia <b>64</b> BTR 2007-74	<b>Nan 1</b> is idealised with the statement that it helps in building a healthy gut flora, promotes optimal growth and develops the brain and vision of an infant.	Those claims are based on serious scientific research and can be substantiated. This allegation is unfounded.



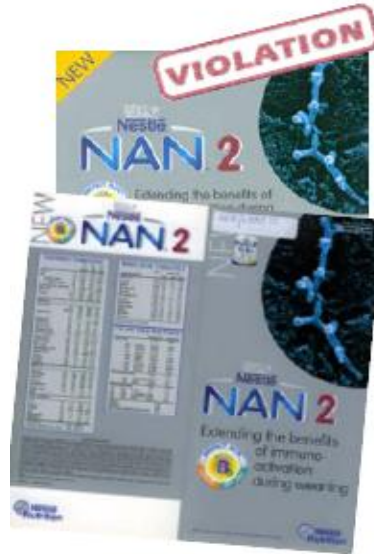
COUNTRY	ALLEGATION	FACTS
Saudi Arabia <b>65</b> BTR 2007-75	The label on a 400gm tin of <b>Al 110</b> formula claims that it “...contains all the vitamins and minerals known to be essential for the development of the infant”. The important notice says “Breastfeeding is the best way of feeding a baby during the first months of life and is preferred whenever possible”. This may send the message that breastfeeding is not always possible and is only best for the first few months of life instead of continuing into the second year of life and beyond as the World Health Organization recommends.	Those claims are based on serious scientific research and can be substantiated. It is a fact that breastfeeding is not always possible. Some mothers cannot or choose not to breastfeed because of illness or other important reasons. Some infants are orphans. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Saudi Arabia <b>66</b> BTR 2007-75	A bigger glossier edition with similar contents is distributed at a neonatal conference in Jeddah, Saudi Arabia. This bigger brochure has an additional page showing how breast milk is the gold standard and the best choice for all infants alongside pack shots of <b>Nan 1</b> and <b>Nan 2</b> .	As allowed by the WHO Code, companies may furnish educational information to Health Care Professionals. The full content of the leaflet provides a scientific presentation to health professionals of the improvements to NAN 1 compared to previous formula. It also includes a reminder about the superiority of breast milk and relevant WHO recommendations. This is wholly consistent with the WHO Code and is not a violation. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Saudi Arabia <b>67</b> BTR 2007-75	Yet another leaflet entitled “ <i>Nan 2 – Extending the benefits of immuno-activation during weaning</i> ” claims that <b>Nan 2</b> is designed to enhance immunity and to modulate immune response and optimise protein profile to ensure good satiety and better digestibility.	This is an error; Nestlé has never communicated such benefit of Nan 2. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Saudi Arabia 68 BTR 2007-76	A bigger and glossier brochure with similar messages is distributed at the conference in Saudi Arabia.	As allowed by the WHO Code, companies may furnish educational information to Health Care Professionals. The full content of the leaflet provides a scientific presentation to health professionals of the improvements to NAN 2 compared to previous formula. It also includes a reminder about the superiority of breast-milk and relevant WHO recommendations. However, it must be noted that that we have never communicated the supposedly benefits described in allegation 67 for Nan2. This allegation is unfounded.



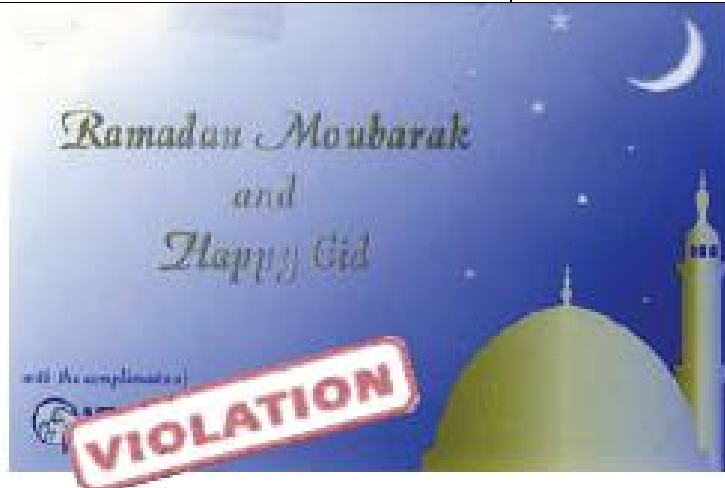
COUNTRY	ALLEGATION	FACTS
Saudi Arabia 69 BTR 2007-83	Hospitals in Saudi Arabia receive clocks and posters as gifts from <b>Cerelac</b> .	Cerelac is a complementary food, and is marketed as such in Saudi Arabia, not as a breast-milk substitute. It thus does not fall within the scope of the WHO Code. This allegation is unfounded.



**UAE (15)**

COUNTRY	ALLEGATION	FACTS
<p style="text-align: center;"><b>Goodwill Hunting - UAE</b></p> <p style="text-align: center;"><b>70</b> BTR 2007-71</p>	<p>Although WHA 58.32 (2005) warns against conflicts of interest regarding financial support for programmes and health professionals in infant and young child health, Nestlé continues to foster relations with health professionals in disturbing ways. Through its Nestlé Nutrition Institute (NNI), Nestlé tries to capture the loyalty of the health profession by offering scholarships to young health professionals from developing countries to pursue post-graduate training. NNI also targets the scientific community by offering “a constant exchange of knowledge and nutrition expertise” through publications, continuing nutrition education and workshops in exotic locations. For NNI’s 2007 Nutrition Workshop in Bali, medical professionals from as far away as the Middle East were invited to participate, all expenses paid. Despite its huge largesse, Nestlé does not always get its way.</p> <p>Also in 2006, another Nestlé plan to sponsor a Postgraduate Certificate Course in Paediatrics in the UAE was scuttled following protests by breastfeeding groups. Five sessions allocated to Nestlé in exchange for sponsorship of tuition fees were scrapped and replaced with sessions by certified lactation consultants.</p>	<p>Nestle Nutrition Institute (NNI) activities are scientific non-branded activities. The main objective of Nestlé Nutrition Institute (NNI) activities is to encourage the exchange of sound scientific knowledge about infant and paediatric nutrition. NNI is committed to encourage breastfeeding practices and to comply with WHO Code regarding the use of breast-milk substitute only when needed. Continuous nutrition education through NNI workshops, NNI publication and sponsoring of international/national conferences targeting only Health Care Professionals are implemented in compliance with WHO Code Article 4 "Information and Education".</p> <p>This was a congress organized by Sharjah University in the United Arab Emirates. On that occasion the local Nestlé company received a letter of appreciation from the University for its ethical stand.</p>

COUNTRY	ALLEGATION	FACTS
UAE 71 BTR 2007-71	Nestlé sends <i>Ramadan</i> and <i>Eid</i> greeting cards to doctors in clinics and hospitals. In addition doctors receive gifts of biscuits and chocolates for the festive season.	Sending greeting cards to social or professional contacts on occasions that are comparable to Christmas or New Year in Western countries reflects elementary courtesy for everybody. On those culturally appropriate occasions, we do give, on a very selective basis (40 small boxes of candies for the whole country), token gifts, the value of which is too low to represent a sales inducement for the recipient doctors. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
UAE 72 BTR 2007-71	Nurses at a health care centre receive a subscription to the <i>Paediatrics</i> medical journal. One volume has an ad for <b>Nan 1</b> claiming its “improved protein efficiency” on the inside front cover with the caption “ <i>Just the right quantity and quality of proteins...a baby needs</i> ”. On the inside back cover is an ad for <b>Nan 2</b> with the caption “ <i>Immunity – You can’t see it. But babies need it</i> ”.	Communications to health professionals is allowed by the WHO Code. Moreover the communication published in this medical journal included a reminder about the superiority of breast-milk and the important notice recommended under Art. 4.2 of the WHO Code. The claims are scientifically factual. This allegation is unfounded.





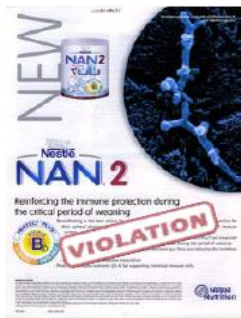
COUNTRY	ALLEGATION	FACTS
UAE 73 BTR 2007-71	Doctors in a mother and child health care centre in Sharjah are given tear-off pads containing a feeding table and information leaflets intended for doctors to recommend a full range of Nestlé formula products including <b>Nan 1</b> , <b>Nan 2</b> , <b>Guigoz 1</b> and <b>Guigoz 2</b> to mothers. The tear off pad has a box for the doctor's seal to show the doctor's endorsement.	Once a doctor determines that an infant cannot be breastfed, he provides a prescription for the mother. These prescription pads have detailed and necessary instructions for a safe and adequate use of formula. They are also designed to facilitate easy identification of the formula which in the doctor's judgment would be appropriate in the specific case of an individual infant. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
UAE 74 BTR 2007-76	An advertisement for <b>Guigoz 1</b> and <b>Guigoz 2</b> in a scientific journal, <i>Middle East Paediatrics</i> , promises “nutrition and comfort for baby, peace of mind for mother.” It shows a picture of a mother and her baby sound asleep, along with pack shots of <b>Guigoz 1</b> and <b>Guigoz 2</b> , and states that the product's new improved formulation offers “digestive comfort and improved nutrition essential for healthy growth and development right from the start.”	Please refer to allegation 72 concerning publications in medical journals. The communication published in the medical journal included a reminder about the superiority of breast-milk and the important notice recommended under Art. 4.2 of the WHO Code. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
UAE 75 BTR 2007-76	Another full page advertisement in <i>Middle East Paediatrics Journal</i> claims that <b>Nan 2</b> reinforces “the immune protection during the critical period of weaning” The ad idealises the product by saying that although breastfeeding is the best choice for all infants, weaning onto new <b>Nan 2</b> with Protect Plus extends the benefits of immunoactivation.	This is an advertisement in a medical journal targeted to health care professionals only. The information in it is wholly scientifically factual. The full message made it clear that for babies that have been weaned the follow-up formula NAN 2 can be a good choice when breastfeeding is not possible. There is a strong message about the superiority of breastfeeding. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
UAE 76 BTR 2007-76	Nestlé gives doctors a pull out brochure with the caption “ <i>The greatest breakthrough in 140 years of science!</i> ” which promotes <b>Nan</b> as the most scientifically advanced class of infant formula. The brochure claims that <b>Nan</b> enhances the immune defences of babies in the first year of life and “ <i>brings them closer to breastfed infants-in nutrition and protection.</i> ” On the whole, the brochure idealises Nan as the superior formula. A more detailed write-up appears in ICDC’s <i>Focus on Nestlé</i> .	NAN is a superior formula compared to other formulas, but not to breast-milk. Indeed there is no language suggesting that Nan is better than breast-milk. This brochure was used as invitation to doctors to attend the scientific launch of the new NAN. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
UAE 77 BTR 2007-76	Under the same campaign, Nestlé invites doctors to “ <i>talk over dinner</i> ” at a 5-star hotel in Dubai, to introduce their latest innovation. A more detailed report appears in <i>Focus on Nestlé</i> .	Please see our reply to allegation 70 about scientific conferences. (To be noted that most of the hotels in Dubai are 5-star hotels). This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
UAE 78 BTR 2007-78	<b>Nan H.A. 1</b> supposedly reduces the incidence of allergic symptoms in infants at risk because it promotes bifidobacteria dominant flora similar to that of breastfed infants, while new <b>Nan H.A. 2</b> is said to extend a bifidobacteria dominant gut flora during the critical period of weaning. A full page advertisement in the <i>Middle East Paediatric Journal</i> found in the UAE propounds this message and makes the claim that, compared to traditional infant formula, with <b>Nan H.A.</b> there is 50% less allergic manifestations during the first 5 years in children with increased risk of allergies and 50% less skin problems in all babies during the first 2 years of life.	Please refer to allegation 72 concerning publications for health professionals in medical journals.  These claims are scientifically substantiated and are based on serious scientific research. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
UAE 79 BTR 2007-78	The brochures below, distributed in the Middle East, are cleverly designed to convince the medical profession that formula is “the modern way of allergy prevention”, whilst charts and diagrams claim that active allergy prevention is justified “for all infants”.	These claims are based on serious scientific research. While all infants can benefit from allergy prevention, as is mentioned in the texts, breast-milk is the best food for them. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
UAE 80 BTR 2007-80	Reported in a mother and child health centre in Sharjah, a 2005 table calendar that flips two ways, one side with displays of different Nestlé products and the other side with a calendar notepad for doctors to write notes. The front page of the calendar has the slogan “Love and nutrition at every stage.” Outrageous recommendations for starting on Cerelac on the pages facing the mother include: “Is he lifting up his head and neck? Your baby’s ready for his gentle first food” “He begins to respond by smiling back at you. Your baby’s ready for his gentle first food.” Following protest by an IBFAN group in the UAE, these misleading recommendations were removed in the 2006 and 2007 Nestlé calendar. Although the slogan “Love and nutrition at every stage” on the front of the calendar remains the same, the text accompanying cereal ads merely refers to “Gentle first food.”	This calendar was amended as stated in the allegation, and a statement on the superiority of breastfeeding was added.  What is the purpose of raising old allegations which have been addressed about materials which have been changed? This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
UAE 81 BTR 2007-80	Despite changes in the UAE, a booklet entitled "How to give your child the best nutrition in 4 easy stages!" found in a Lebanese hospital in 2006, but emanating from the UAE, continues to advise mothers to look for the same signs to decide whether or not her child is ready for its "Gentle First Food", i.e. Nestlé complementary food.	Please refer to the "summary of findings" section related to "developing countries". This is not compliant with the WHO Code., and this label is being changed due to the ambiguity cited.



COUNTRY	ALLEGATION	FACTS
UAE 82 BTR 2007-83	Nestlé gives health care professionals of a UAE hospital tear-off prescription pads which bear the caption "Love and Nourishment at every stage." The pads promote <b>Cerelac</b> and contain pictures of the product for various stages and tick boxes for doctors to use.	Cerelac is a complementary food, not marketed as a breast-milk substitute and thus does not fall under the scope of the Code. This is not a violation of the WHO Code.



COUNTRY	ALLEGATION	FACTS
UAE 83 BTR 2007-83	Many of the above materials promote the Nestlé name as used on formula. Referring to complementary foods on gifts, posters and other materials in health care facilities gives Nestlé the apparent endorsement of the health service. At the same time, it can argue it was not explicitly promoting formula to pregnant women and new mothers...	The Nestlé logo used on Nestlé complementary food differs significantly from the one used on infant formula. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
<p style="text-align: center;">UAE <b>84</b> BTR 2007-86</p>	<p>Nestlé sponsors a continuing medical education course in the UAE, including free lunch. The registration form carries the Nestlé logo.</p>	<p>The WHO Code permits support from companies for educational purposes. The clinical seminar in the UAE was organized in cooperation with the Union of European Neonatal &amp; Perinatal Societies and addressed scientific topics such as Neonatal Gastroenterology and Nutrition, with the participation of internationally reputed speakers. The lunch was modest. The sponsorship was handled in full transparency. This allegation is unfounded.</p>

## CANADA

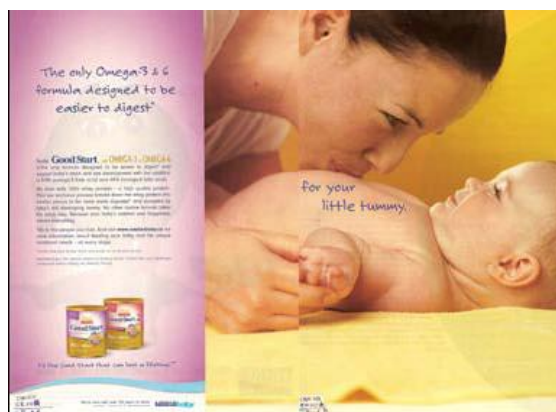
COUNTRY	ALLEGATION	FACTS
Canada <b>85</b> BTR 2007-66	Working mothers in Canada are sent promotion via email with the caption "Are you a busy mom?" The e-mail introduces ready-to-feed Good Start formula with the claims "designed to be easier to digest and easier to feed" and the Good Start that can last a lifetime".	Canada is a developed country and we therefore follow the decision of the national government. In Canada, claims are governed by the Food and Drug Act and all Nestlé claims fully comply with these regulations. In Canada, where the WHO Code is not legislated, Nestlé supports the position of the Canadian Paediatric Society, the Dieticians of Canada and Health Canada. This position is outlined in the document entitled The Nutrition for Healthy Term Infants, which states breast-feeding for as long as possible is best, and that formula is appropriate if mothers choose to supplement or discontinue breast-feeding. In addition, Nestlé complies with the Food and Drug Act and the Competition Act, which regulate the infant formula industry in Canada. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Canada <b>86</b> BTR 2007-66	The same expensive formula is advertised in Canadian Today's Parent: No mixing, no pouring! Ready to go, just add nipple... easier for baby to digest and now is specially designed for moms too". Pictures illustrate how the product is used, and suggest it would benefit women who are on the go, tired of nights time feeds, travel and childcare. A wasteful way of idealising bottle feeding: the bottles are used once, then thrown away.	This activity is permitted under Canada's decision regarding implementation of the WHO Code. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Canada 87 BTR 2007-66	Another product promotion via email claims that Good Start infant formula is designed with amounts of DHA & ARA to support baby's brain and eye development. Yet another explains how Good Start is "easier to digest for baby's developing tummy".	This activity is permitted under Canada's decision regarding implementation of the WHO Code. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details Scientifically substantiated claims are permitted within the Canadian regulations. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Canada 88 BTR 2007-66	A similar advertisement appears in Canadian Today's Parent magazine with the slogan "everything your baby will come starts today", and shows a picture of a mother kissing the head of her baby with the caption "for your beautiful mind."	This activity is permitted under Canada's decision regarding implementation of the WHO Code. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Canada 89 BTR 2007-66	There are many other Good Start advertisements in the Canadian Today's Parent Magazine. Among them: An advertisement for Good Start formula which claims that the product is the only "Omega-3+6 formula designed to be easier to digest and supports baby's brain and eye development."	This activity is permitted under Canada's decision regarding implementation of the WHO Code. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details Scientifically substantiated claims are permitted within the Canadian regulations. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Canada 90 BTR 2007-66	The Cochrane Library has reviewed studies of supplementation with Long Chain Polyunsaturated Fatty Acids (LCPUFAs) such as Omega-3, DHA and AHA and concluded: "At present there is little evidence from randomised trials of LCPUFA supplementation to support the hypothesis that LCPUFA supplementation confers a benefit for visual or general development of term infants. Minor effects on VEP acuity have been suggested but appear unlikely when all studies are reviewed. A beneficial effect on information processing is required to conclude that LCPUFA supplementation provides a benefit when compared with standard formula. Data from randomised trials do not suggest that LCPUFA supplements influence the growth of term infants."	This activity is permitted under Canada's decision regarding implementation of the WHO Code. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details  With respect to claims on the addition of DHA and ARA, Studies have shown that dietary sources of LCPUFA do influence the lipid composition of brain tissue in infants. More specifically, a claim that the addition of DHA and ARA supports the normal development of the brain, eyes, and nerves is permitted within the Canadian regulations. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Canada 91 BTR 2007-66	An advertisement offering "Our Gift for you: 2 free movie rentals and popcorn" whereby Nestlé promises 2 free DVD rentals and popcorn when parents purchase a can of Nestlé <b>Good Start</b> formula. Apart from pictures of <b>Good Start</b> formula, there is also a statement "We're here with over 130 years of infant nutrition research and development, formula that is easier to digest."	This activity is permitted under Canada's decision regarding implementation of the WHO Code. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Canada 92 BTR 2007-67	Upon signing up on the website - www.nestle-baby.ca - Canadian mothers receive gift packages from Nestlé which include a formula sample, a feeding bottle, baby-on-board sticker, an ice pack, a magazine, a diaper back-pack and coupons for <b>Good Start</b> and <b>Alsoy</b> formulas. Mothers also receive the same package if they sign up with the club through subscription cards found in parenting magazines.	Formula samples are only sent to consumers who have registered for the Nestlé Baby Program and have requested a sample. This activity is permitted under Canada's decision regarding implementation of the WHO Code. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Canada 93 BTR 2007-67	A Nestlé baby advertisement in the <i>Canadian House and Home</i> magazine begins with the heading "Everything you need to know to make your baby a star", and invites mothers to join their baby club, promising advice, support and nutrition tips.	This activity is permitted under Canada's decision regarding implementation of the WHO Code. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Canada 94 BTR 2007-68	Participants joining a contest organised by a Canadian maternity clothing store either online or in-store are asked if they wish to receive free samples of Nestlé <b>Good Start</b> formula. ◀	This activity is permitted under Canada's decision regarding implementation of the WHO Code. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Canada 95 BTR 2007-68	Product guides claim how <b>Good Start</b> formula is easier to digest and suggest their benefits of ARA and DHA additives. Shelf-talkers showing images of mother and baby offer inducements for joining the Nestlé Baby Club.	Health claims are factual and can be substantiated. Canada is a developed country and we therefore follow the decision of the national government. This activity is permitted under Canada's decision regarding implementation of the WHO Code. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details.  This allegation is related to a competitor's Baby club. This allegation is unfounded.





COUNTRY	ALLEGATION	FACTS
Canada 96 BTR 2007-68	A leaflet <i>Nestlé Baby</i> distributes at a supermarket in Toronto promotes <b>Alsoy 1</b> and <b>Alsoy 2</b> soy formulas “for all the good inside” and suggests that mothers should see soy formula as a “special choice”.	This activity is permitted under Canada's decision regarding implementation of the WHO Code. Please refer to the section on “Government, Company and NGO responsibilities under the Code” for more details. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Canada 97 BTR 2007-73	The label of <b>Alsoy</b> infant formula shows two stylised hearts, one of which bears the claim that the product has Omega 3+6 “nutrients found naturally in breast milk”. The text below this heart claims “Nestlé Alsoy ... is an iron fortified, soy based, DHA & ARA enhanced starter infant formula specially designed for younger babies who are avoiding cow’s milk or milk products.” The preparation instructions are coloured gray, making it difficult to read. The label also shows promotional text for the Nestlé baby club and provides details to join the club. There is no statement on the hazards of inappropriate preparation.	This activity is permitted under Canada's decision regarding implementation of the WHO Code. Concerning the label, it should be known that all labels for infant formula are notified to the government which approves them. The cited complaints about readability and hazards of inappropriate preparation have not been an issue at all with the government. At the government's request, we removed the "Omega 3+6 Gold Heart" since it might be considered to be an implied heart health claim. It is well known that Omega 3 contribute to heart health, but this is not the purpose of using them as ingredients in infant formula. This is not a violation of the WHO Code.



COUNTRY	ALLEGATION	FACTS
Canada 98 BTR 2007-73	The label of <b>Good Start</b> infant formula claims it to be <i>“the only iron fortified starter infant formula specially designed to be easier to digest, and to help reduce your child’s risk of developing allergies.”</i> Like <b>Alsoy</b> , the preparation instructions are printed in a font that is difficult to read. No statement appears on the label to warn about the hazards of inappropriate preparation. Removal of idealising text and images would enable instructions to be larger.	This activity is permitted under Canada’s decision regarding implementation of the WHO Code. Concerning the label, it should be known that all labels for infant formula are notified to the government which approves them. Please refer to the section on “Government, Company and NGO responsibilities under the Code” for more details. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Canada 99 BTR 2007-84	A Nestlé Baby feeding guide distributed in a supermarket recommends cereals as suitable for babies from 4 months. The leaflet claims Nestlé Baby Cereals contain <i>“naturally occurring ingredients that help support the growth of good bacteria in your baby’s digestive system.”</i> By registering on the website of Nestlé Baby, parents will receive free subscription of magazine and cereal samples.	This activity is permitted under Canada’s decision regarding implementation of the WHO Code. Scientifically substantiated claims of this nature are allowed by Canadian legislation. Please refer to the section on “Government, Company and NGO responsibilities under the Code” for more details  Cereal samples are sent to members of the Nestle baby program as the age of their baby approaches 6 months. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
<p>Canada 100 BTR 2007-85</p>	<p>An advertisement for Nestlé Rice cereals in the <i>Canadian Parents Today</i> magazine idealises the use of the product by claiming that it is “easy to digest”, is an “excellent source of iron”, and has “14 essential nutrients and texture and yummy taste babies love.” There is a picture of a little girl being fed by her mother with the caption “Satisfying both sides of the highchair with every spoonful.” The product is recommended for “beginners” without any actual age recommendation.</p>	<p>Canada is a developed country and we therefore follow the decision of the national government. This activity is permitted under Canada's decision regarding implementation of the WHO Code. Please refer to the section on “Government, Company and NGO responsibilities under the Code” for more details. Moreover, complementary food when not marketed as breast-milk substitutes are not under the scope of the Code. This allegation is unfounded.</p>



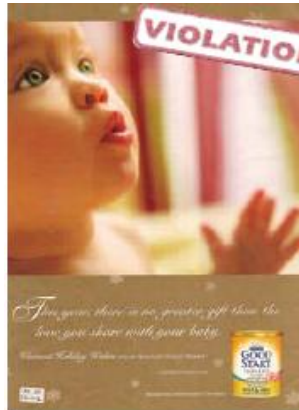
## USA

COUNTRY	ALLEGATION	FACTS
USA 101 BTR 2007-67	Nestlé <b>Good Start Supreme</b> sponsors a TV series, "Real Mums, Real Stories, Real Savvy" (available on <a href="http://www.RealSavvy.tv">www.RealSavvy.tv</a> ) which contains claims about the benefits of probiotics for health and boasts how Nestlé is leading the way in infant nutrition by offering the only formula in the US to contain probiotics, ' <b>Good Start Natural Cultures</b> '.	The USA is a developed country and we therefore follow the decision of the national government. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details In the USA, claims are governed by the Food and Drug Administration and all Nestlé claims fully comply with these regulations. Health claims are factual and can be scientifically substantiated. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
USA 102 BTR 2007-67	The <a href="http://verybestbaby.com">verybestbaby.com</a> website enlists the help of Armin Brott, "America's most trusted Dad", to get fathers involved in feeding their babies with <b>Good Start</b> infant formula. Because a mother would " <i>have so much on her mind</i> ", daddy can help out by remembering " <i>to ask hospital staff for a complimentary 2007 Nestlé Good Start Limited Edition Backpack</i> ", filled with baby essentials, plus a 12oz. sample of Nestlé's latest formula <b>Good Start Natural Cultures</b> which it claims " <i>has beneficial cultures to support a healthy immune system</i> ".	The United States has refrained from adopting the WHO Code into legislation. The Food and Drug Administration regulates the infant formula industry in USA and Nestlé complies with these regulations. The web site <a href="http://verybestbaby.com">verybestbaby.com</a> provides credible and relevant information to expectant and new parents. On the home page, the website recognizes whether you are accessing it from an US or foreign address and "flash" states, that "The content of this site is intended for U.S. residents only. If you do not live in the U.S., please read this special notice." The notice is a thorough statement explaining Nestlé's support and compliance with the WHO Code and includes the statement of breastfeeding as a baby's best source of nutrition, advice on how to continue breastfeeding after returning to work, and guidance on seeking a Health professional's advice if considering the use of breast-milk supplements. The activity is in full compliance with US legislation. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
USA 103 BTR 2007-67	An advertisement in the ► <i>American Parents Magazine</i> (also available in Canada) promotes <b>Good Start</b> formula with the caption “ <i>This year there is no greater gift than the love you share with your baby</i> ”	The USA is a developed country and we therefore follow the decision of its government. This activity is acceptable in the USA. Please refer to the section on “Government, Company and NGO responsibilities under the Code” for more details. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
USA 104 BTR 2007-67	An ad in Spanish in the <i>Healthy Kids</i> magazine says “ <i>Giving him the breast is giving him love</i> ”. The promotional text starts off by saying “ <i>At Nestlé, we believe that breast milk is the best for babies and we are committed to help you when you need it, as we have done for generations of Latino families, in the area of infant nutrition</i> ”. Then it goes on to promote its product with the statement “ <i>At Nestlé we also produce Nan, the number 1 infant formula in Latin America, for the mothers who cannot breastfeed</i> ”. A slogan under the pack shot of Nan says “ <i>Helping them to grow from generation to generation</i> ”.	The USA is a developed country and we therefore follow the decision of its government. This ad is showing a mother feeding her baby, with the slogan: “ <i>Giving him the breast is giving him love</i> ”. This activity is acceptable in the USA. Please refer to the section on “Government, Company and NGO responsibilities under the Code” for more details. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
USA 105 BTR 2007-69	In the US, shelf-talkers in stores in working class areas publicise <b>Good Start</b> as 'WIC approved infant formula' (WIC is a government programme for low-income women and children funded in part by large rebates to WIC from formula companies). The endorsement on the shelf-talker is unnecessary and wholly promotional as mothers buy the formula specified on their voucher, as contracted by each state.	The USA is a developed country and we therefore follow the decision of its government. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details This activity is acceptable in the US. Nestlé is participating in the WIC programme for low income households. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
USA 106 BTR 2007-77	Advertisements for breast milk substitutes are forbidden under the International Code. This basic provision of the Code is flagrantly violated in the US where a voluntary ban on advertising collapsed when Nestlé entered the market in 1985. The ads spill into neighbouring Canada which has no legislation to stop them.	The USA is a developed country and we therefore follow the decision of its government. Please refer to the section on "Government, Company and NGO responsibilities under the Code" for more details. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
USA 107 BTR 2007-77	An advertisement for <b>Good Start</b> formulas in the US magazine <i>New Parent</i> idealises the product with the caption “ <i>Don’t be fooled, not all formulas are alike – If they’re not made with 100% whey, they don’t have COMFORT PROTEINS</i> ”. The ad states that Nestlé takes the extra steps to break whey protein into smaller pieces for easy digestion which they call COMFORT PROTEINS and only Nestlé <b>Good Start Supreme</b> has them. The ad further claims that while breast milk is best, no other formula takes these extra steps and makes a pun on the product name with the slogan “ <i>It’s the Good Start that will last a lifetime</i> ”. A similar ad is found in the <i>Fit Pregnancy Magazine</i> in Canada.	The USA is a developed country and we therefore follow the decision of its government. Please refer to the section on “Government, Company and NGO responsibilities under the Code” for more details These ads are acceptable in the USA. The claims are scientifically substantiable. In the USA, claims are governed by the Food and Drug Administration and all Nestlé claims fully comply with these regulations. Health claims are factual and can be scientifically substantiated. This allegation is unfounded.

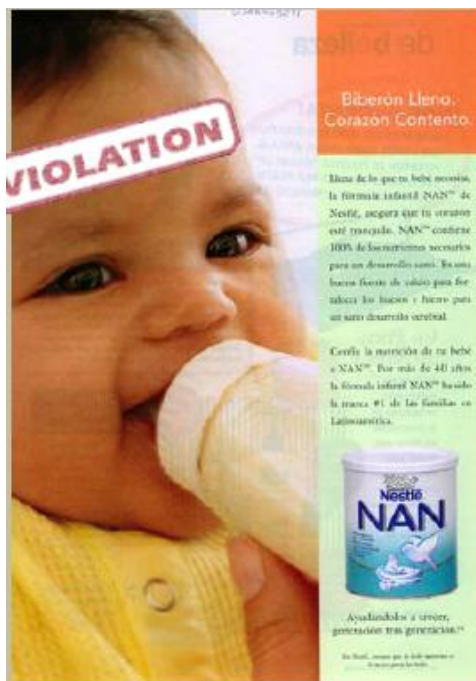


COUNTRY	ALLEGATION	FACTS
<p>USA 108 BTR 2007-77</p>	<p>An advertisement in the US <i>Parenting</i> magazine tells mothers “Now there’s a DHA &amp; ARA formula that helps you both feel good”. It claims that “Nestlé GOOD START SUPREME DHA &amp; ARA, the first and only enriched-lipid formula with easy-to-digest COMFORT PROTEINS. All DHA &amp; ARA formulas are designed to support baby’s brain and eye development with nutrients found in breast milk, baby’s ideal food”. A slogan at the bottom of the ad states “It’s the <b>Good Start</b> that will last a lifetime”. The bottom of the ad gives a toll free number and the URL for the verybestbaby.com website “for more information and expert advice”.</p>	<p>The USA is a developed country and we therefore follow the decision of its government. Please refer to the section on “Government, Company and NGO responsibilities under the Code” for more details</p> <p>In the USA, claims are governed by the Food and Drug Administration and all Nestlé claims fully comply with these regulations. Health claims are factual and can be scientifically substantiated. This allegation is unfounded.</p>





COUNTRY	ALLEGATION	FACTS
<p>USA 109 BTR 2007-77</p>	<p>In the US, an advertisement in Spanish in the <i>Healthy Kids</i> magazine shows a baby with a bottle in his mouth and the slogan “Full bottle, contented heart”. Then it goes on to say “Full of what your baby needs, Nan infant formula from Nestlé gives you peace of mind. Nan contains 100% of the nutrients necessary for healthy development. It is a good source of calcium to strengthen the bones and of iron for healthy brain development”. It calls on mothers to “Entrust the nutrition of your baby to Nan. For over 40 years Nan infant formula has been the number 1 brand for Latin American families”. A slogan beneath a pack shot of <b>Nan</b> says “Helping them to grow from generation to generation”. In small font at the bottom is a bit of lip service: “At Nestlé, we believe breastfeeding is the best for babies”.</p>	<p>The USA is a developed country and we therefore follow the decision of its government. Please refer to allegation 103 and the section on “Government, Company and NGO responsibilities under the Code” for more details.</p> <p>In the USA, claims are governed by the Food and Drug Administration and all Nestlé claims fully comply with these regulations. Nutrition claims are factual and can be scientifically substantiated. This allegation is unfounded.</p>



## EUROPE

### France (1)

COUNTRY	ALLEGATION	FACTS
France 110 BTR 2007-67	In the French magazines <i>Enfant</i> and <i>Femme Actuelle</i> , an advertisement idealises <b>Nidal 2</b> (and indirectly <b>Nidal 1</b> ). The baby " <i>Vincent P ... 8 months, has not been breastfed! There is Nidal for everyone. Nidal 2 helps to provide protection close to breast milk.</i> "	This was in full compliance, with the French legislation as well as the EU Commission Directive 91/321/EEC. It would also be in full compliance with the new Commission Directive 2006/141/EC on infant formula and follow on formulae. This allegation is unfounded.



## Hungary (16)

COUNTRY	ALLEGATION	FACTS
Hungary 111 BTR 2007-67	Mothers receive samples of Beba2 follow-on formula through the mails.	This activity complies with European Union and local regulation - follow-on formulae samples are allowed. (See EU Commission Directive 91/321/EEC and its more recent revision 2006/141/EC.). This allegation is unfounded.
Hungary 112 BTR 2007-68	A hypermarket offers special discounts of up to 20% for the purchase of Nestlé <b>Beba 2</b> follow-on formula.	The European Union legislation and Hungarian regulations allow price promotions are allowed for follow-on formulas. (See EU Commission Directive 91/321/EEC and its more recent revision 2006/141/EC.). This allegation is unfounded.
Hungary 113 BTR 2007-68	<b>Beba 2</b> follow-on formula is promoted as " <i>the perfect food</i> " in a leaflet distributed in a shop.	More detailed information is needed to assess this allegation as this could be an individual shop keeper initiative. Nestlé has never made a claim like this, nor distributed follow-on formula leaflets in the trade. If the incriminating material, date and place where it was distributed can be provided, we will follow up.
Hungary 114 BTR 2007-68	Customers receive free metal storage boxes at a <b>Beba 2</b> promotion at a hypermarket.	Consumer promotions for follow-on formula - a product for infants who are older than 6 months - are allowed according to EU and local regulations. (See EU Commission Directive 91/321/EEC and its more recent revision 2006/141/EC.). This allegation is unfounded.
Hungary 115 BTR 2007-70	One hospital receives unsolicited donations of <b>Alprem</b> and <b>Alfare</b> infant formula for low birth weight babies.	The Nestle policy and practice in Europe is to donate Infant formulae donations <b>only</b> upon hospital request. If this allegation is true we would need to have the name of the hospital, location and date in order to investigate further. This allegation is unfounded.
Hungary 116 BTR 2007-70	Mothers receive samples of <b>Beba 2</b> from personnel of a health facility. In one month, the paediatrician's office receives 50 samples of <b>Beba 2</b> .	Follow-on formula samples are allowed according to Hungarian legislation and are in line with EU Commission Directive 91/321/EEC and its more recent revision 2006/141/EC. This allegation is unfounded.
Hungary 117 BTR 2007-70	Health officers in Hungary receive free Nestlé memo-pads which advertise <b>Beba</b> infant formulas.	This is in full compliance with Hungarian legislation as well as the EU Commission Directive 91/321/EEC and its more recent revision 2006/141/EC. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Hungary <b>118</b> BTR 2007-70	Nestlé provides staff of a clinic with note-pads which not only feature the company logo, but also the Nestlé <b>Beba 1</b> brand name.	This is in full compliance with Hungarian legislation as well as the EU Commission Directive 91/321/EEC and its more recent revision 2006/141/EC. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Hungary <b>119</b> BTR 2007-70	In a hospital, health workers receive penholders which display the Nestlé <b>Beba 2</b> brand name.	This is in full compliance with Hungarian legislation as well as the EU Commission Directive 91/321/EEC. and its more recent revision 2006/141/EC . This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Hungary <b>120</b> BTR 2007-70	Measuring tapes for babies are provided by Nestlé to paediatricians in a health facility. The measuring tapes display both the company logo and the <b>Beba 2</b> brand name.	This mention of follow-on formula is in full compliance with EU Directive and Hungarian legislation. These tapes are at least 5 years old as they were discontinued at that time. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Hungary <b>121</b> BTR 2007-72	A hospital distributes leaflets which idealise <b>Beba 1</b> with a series of claims about its nutrient contents and properties, supposedly supported by the latest scientific research. The leaflet also recommends early weaning at 5 to 6 months.	BEBA 1 leaflets were given only to healthcare professionals for their use. They should not be provided by the hospital to the general public, and we will follow up with the hospital if given further details about this allegation. The official Hungarian recommendation of exclusive breastfeeding is 4-6 months. (Recommendation of the professional board of the Hungarian Paediatricians 2003). The claims are factual, can be scientifically substantiated and they are legal. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Hungary <b>122</b> BTR 2007-72	The outside door of a small town hospital displays a poster advertising <b>Beba 2</b> with Bifidus.	This is in full compliance with Hungarian legislation as well as the EU Commission Directive 91/321/EEC. This poster is at least 4 years old as it was discontinued at that time. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Hungary <b>123</b> BTR 2007-72	Posters and leaflets found inside the hospital advertise the bifidus content of Nestlé products.	These are educational materials are given to health care professionals to inform them about recent innovations in the formula. This is in full compliance with Hungarian legislation as well as the EU Commission Directive 91/321/EEC. and its more recent revision 2006/141/EC. This allegation is unfounded.



Nestlé entices doctors to "win with Bifidus" which is added to Nan 2 and Beba H.A. Start





COUNTRY	ALLEGATION	FACTS
Hungary 126 BTR 2007-81	Whatever the language, 'cosmopolitan' Blue Bear gets his promotional message across. The pictures below show promotional items found in health care facilities.	Those materials are about complementary food and are in full compliance with Hungarian legislation as well as the EU Commission Directive on infant cereals 2006/125/EC. This allegation is unfounded.



Italy (8)

COUNTRY	ALLEGATION	FACTS
Italy 127 BTR 2007-67	The Italian website <a href="http://www.pediatria.nestle.it">www.pediatria.nestle.it</a> has the masthead "Nestlé Nutrition Paediatrics – feeding in evolution" and promotes <b>Nidina 1</b> , <b>Nidina 2</b> and <b>Alfare</b> with promotional text and images of happy healthy babies.	This Website is password protected, only available for bona fide medical Professionals and provides factual information to Health Care professionals only. This activity is fully compliant with the Commission directive 2006/141/EC. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Italy 128 BTR 2007-68	A hypermarket offers discounts for <b>Nidina 2</b> and promotes the products through special displays and shelf-talkers.	Follow-on formula promotions are compliant with Italian regulations as well as the EU Commission Directive 91/321/EEC and its more recent revision 2006/141/EC. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Italy 129 BTR 2007-69	A supermarket provides special sales for <b>Beba 1</b> and <b>Beba 2</b> .	Beba brand is not sold by Nestlé in Italy but imported by small retailers in the North East. Special sales of Beba1 are inappropriate activities, carried out by the retailer without Nestlé's knowledge. If this allegation is to be followed up, more detailed information is needed concerning the location -which city, which store, when the offer was identified. With this information, it will be possible to follow up and work the retailer to avoid further errors of this sort.





COUNTRY	ALLEGATION	FACTS
Italy 130 BTR 2007-69	The same practice is used by another Italian supermarket, for <b>Nidina Comfort 1</b> and <b>Nidina Comfort 2</b> . Shelf-talkers for these products proclaim “convenient price!”	More detailed information is needed to assess this allegation: Please provide us with the point of sales, date and location: Nidina Comfort is mainly sold in pharmacies.

COUNTRY	ALLEGATION	FACTS
Italy 131 BTR 2007-85	An advertisement in <i>Donna e Mamma</i> magazine recommends <b>Mio</b> fruit purees for use from 4 months and idealises the product by equating <b>Mio</b> fruit purees with love.	This refers to complementary food, and is in full compliance with Italian legislation as well as the EU Commission Directives 96/5/EC and 2006/125/EC. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Italy 132 BTR 2007-86	Another advertisement in an Italian magazine <i>Nove mesi</i> entitled “first class weaning” shows many complementary foods under Nestlé’s <b>Mio</b> brand. The foods are classified as from 4 months and from 6 months, with different pictures of Blue Bear to distinguish between them.	This refers to complementary food and is in full compliance with Italian legislation as well as the EU Commission Directives 96/5/EEC and 2006/125/EC. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Italy 133 BTR 2007-86	A new product in the same range, <b>Mio</b> meat purees, was advertised on Italy’s Rai3 TV network as suitable from 4 months and unsalted, claiming this is to help children develop “good habits.”	This refers to complementary food and is in full compliance with Italian legislation as well as the EU Commission Directives 96/5/EEC and 2006/125/EC. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Italy 134 BTR 2007-86	At a promotional event, customer who purchases three Nestle products may win a digital camera or a “veratour” holiday for two. Although no specific brands were mentioned, the display in the hypermarket has a tray of baby food and follow-on formula arranged behind it.	This refers to follow-on formula and complementary food and is in full compliance with Italian legislation as well as the EU Commission Directives 96/5/EEC and 2006/125/EC. This allegation is unfounded.



**Netherlands (15)**

COUNTRY	ALLEGATION	FACTS
Netherlands <b>135</b> BTR 2007-67	Coupons given out at a baby fair can be used to redeem <b>Nan 2</b> samples. These samples are given out freely to parents regardless of their babies' age although the product is meant for babies aged 6-12 months old. Nestlé representatives also hand out brochures which show a picture of a happy baby holding a bottle.	This refers to follow-on formula which is appropriate for infants as of 6 months of age. This activity is in full compliance with Dutch legislation as well as the EU Commission Directives 91/321/EEC and 2006/141/EC. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Netherlands <b>136</b> BTR 2007-67	Employees of Nestlé receive gift boxes with <b>Nan 2</b> samples, bibs and toys, which they can give to friends with newborns. The box has a statement which reads <i>"May your children grow up happy and healthy. Of course we would like to be a part of that. This package is a first token of that. You received it because someone you know works at Nestlé. So he can tell you exactly how much care and research we put into our products."</i>	This refers to follow-on formula and complementary food appropriate for infants greater than 6 months of age. This is in full compliance with Dutch legislation as well as the EU Commission Directives 91/321/EEC and 2006/141/EC This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Netherlands 137 BTR 2007-74	In the Netherlands, samples of Nestlé Nan 2 bifidus follow-on formula claim that the product contains "a mixture of healthy pro-biotic bacteria". An advertisement on the back of the package promotes its fruit purees from 4 months despite the global public health recommendation for 6 months exclusive breastfeeding.	This is in full compliance with Dutch legislation as well as the EU Commission Directives 91/321/EEC and 2006/141/EC and European Society for Paediatric Gastroenterology Hepatology And Nutrition (ESPGHAN) recommendations, The claims are factual and can be substantiated scientifically. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Netherlands 138 BTR 2007-76	An advertisement in <i>Kraamzorg</i> , a journal for post-natal homecare professionals, claims that "Nan 2 protects because natural bacteria have been added". Promotional text says "...Breast is best but what about bottle fed babies of 6 months and older? Follow-up milk Nestlé Nan 2 or HA2 helps to protect them optimally because Nestlé has succeeded in adding live healthy bacteria bifidus lactus BL to the follow-on milk". The last sentence urges "So give your child natural protection. Advise Nestlé Nan 2, HA2" (which seems to be directed at both mothers and health workers.)	This is in full compliance with Dutch legislation as well as the EU Commission Directives 91/321/EEC and 2006/141/EC The claims are factual and can be substantiated from a scientific point of view. This advertisement regarding follow-on formula was published in a journal for professionals. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Netherlands <b>139</b> BTR 2007-76	One leaflet <i>Bifidus Lactis BL biedt baby's bescherming juist wanneer ze groter worden</i> , (Bifidus Lactis BL gives protection to babies just when they get bigger) distributed with <b>Nan 2</b> samples, states how bifidus bacteria that are present in mother's milk are now available in formula and claims the natural bifidus in Nestlé products offer protection after breastfeeding.	This refers to a leaflet on follow-on formula. This is in full compliance with Dutch legislation as well as the EU Commission Directive 91/321/EEC and 2006/141/EC. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Netherlands <b>140</b> BTR 2007-76	A <b>Nan 1</b> leaflet distributed at a congress for health workers entitled <i>"The new standard in infant nutrition: now comes even closer to mother's milk"</i> proclaims that <i>"until recently even the best standard formula couldn't compete with mother's milk... (but)... now Nestlé has developed a new protein composition... (with)... nutritional qualities... even closer to mother's milk."</i>	All Infant Formula manufacturers endeavour to develop products that could be as close as possible to breast-milk from nutrition view point. There is proof that the blood amino acid pattern of an infant fed Nan1 is closer to that of a breast fed infant in comparison to an infant fed any other infant formula. This leaflet does not claim that Nan1 is better than breast-milk, to the contrary, the leaflet carries the message that breast is best. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Netherlands <b>141</b> BTR 2007-76	A leaflet entitled <i>"Nestlé Nan Sensitive. The answer to small intestinal problems, flatulence and colics"</i> uses an idealising image of a mother cuddling her baby. The leaflet claims that certain ailments that occur in both breastfed and formula fed babies can be resolved by using <b>Nan Sensitive</b> .	Even though claims are scientifically substantiated, we agreed that the communication to Health Care Professional could lead to misinterpretation. This is not compliant with the WHO Code. The product Nan Sensitive was fully delisted in 2006.



COUNTRY	ALLEGATION	FACTS
Netherlands 142 BTR 2007-78	In the Netherlands, where Numico holds sway, Nestlé appears to have rolled out its H.A. campaign with a keen eye on its competitor's materials including an eye-catching leaflet "Nan Hypo Allergene helpt de kans op allergische reacties te verkleinen bij alle zuigelingen" (Nestlé Nan Hypo Allergenic helps diminish the risk of allergic reactions in all infants), distributed during a congress which advertises Nan H.A. as having partially hydrolyzed whey protein which makes for a softer bowel movement, like in mother's milk. Further, the leaflet states that the formula has a "pleasant, milk-like taste!" and claims that preventative use of Nan H.A. is cost reducing, because the prevalence of allergic reaction is proven to be reduced during the first 5 years of life. Charts and diagrams are used to illustrate the claimed properties of the formula.	This educational brochure for health care professionals was issued in full compliance with Dutch legislation as well as the EU Commission Directive 91/321/EEC and 2006/141/EC. The claims are factual and substantiated from a scientific point of view. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Netherlands 143 BTR 2007-79	the leaflet states that the formula has a "pleasant, milk-like taste!" and claims that preventative use of <b>Nan H.A.</b> is cost reducing, because the prevalence of allergic reaction is proven to be reduced during the first 5 years of life. Charts and diagrams are used to illustrate the claimed properties of the formula.	This leaflet is related to follow-on formula in full compliance with Dutch legislation as well as the EU Commission Directive 91/321/EEC and 2006/141/EC. Health claims are factual and scientifically substantiated. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Netherlands <b>144</b> BTR 2007-79	An advertisement for NAN H.A. in a scientific journal "Tijdschrift voor jeugdgezondheidszorg" bears the slogan "NAN AH stronger immune system, less chance of allergy" and assure readers that "from now on on bottle fed children are more likely to have a stronger immune system and are less prone to allergy". It proclaims that "Nestle is the only manufacturer that has proven this evidence based with its partially hydrolysed hypo allergenic Nestlé NAN H.A."	This ad in a scientific journal read by health care professionals is in full compliance with Dutch legislation as well as the EU Commission Directive 91/321/EEC and 2006/141/EC which allow communications of this nature to health professionals. Health claims are factual and substantial from a scientific point of view. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Netherlands <b>145</b> BTR 2007-79	An advertisement for Nan H.A. 2 in the magazine <i>Wij, Jonge Ouders</i> capitalises on the fear parents have of allergies, by claiming that the product can reduce allergies by 50 percent.	This is advertising is related to follow-on formula and was issued in full compliance with Dutch legislation as well as the EU Commission Directive 91/321/EEC and 2006/141/EC. Health claims are factual and scientifically substantiated. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Netherlands <b>146</b> BTR 2007-79	An advertisement in the <i>Kinderen</i> magazine idealises <b>Nan H.A. 2</b> by drawing on similarities with breast milk and claiming that the product results in lesser skin problems, a better immune system and a healthy digestive system.	This advertising is related to follow-on formula in full compliance with Dutch legislation as well as the EU Commission Directive 91/321/EEC and 2006/141/EC. Health claims are factual and scientifically substantiated. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Netherlands <b>147</b> BTR 2007-79	A stall at a fair in Amsterdam distributes a booklet on <b>Nan H.A.</b> " <i>Een boekje open over allergie</i> " which asserts that after breastfeeding, the first choice for a healthy infant should be <b>Nan H.A. 2</b> " <i>scientifically proven</i> " to reduce the risk of allergic reactions and enhance the natural immune system.	This advertising is related to follow-on formula in full compliance with Dutch legislation as well as the EU Commission Directive 91/321/EEC and 2006/141/EC. Health claims are factual and scientifically substantiated. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Netherlands <b>148</b> BTR 2007-79	A leaflet entitled " <i>Omdat ook alle flesgevoede baby's recht hebben op het allerbeste</i> " (Because bottle-fed babies also have the right to the very best) promotes <b>Nan 2 H.A.</b> with the slogan " <i>Sterk merk, sterk kind</i> " (strong brand, strong child). The leaflet misleadingly informs parents that allergy prevention is best done by exclusive breastfeeding, by bottle feeding with <b>Nan H.A.</b> or by mixed-feeding.	This advertising is related to follow-on formula in full compliance with Dutch legislation as well as the EU Commission Directive 91/321/EEC and 2006/141/EC. Health claims are factual and scientifically substantiated. This allegation is unfounded.





COUNTRY	ALLEGATION	FACTS
<p>Netherlands 149 BTR 2007-86</p>	<p>In recommending its complementary foods for babies from 4 to 6 months, a Nestlé leaflet distributed at a baby fair “Negenmaandenbeurs”, held in The Netherlands asserts <i>“You can see that your child is ready for a next step in his development. He starts to play more with his tongue and doesn’t push it out if you put something in his mouth. This is the moment for something new. And you can give it, in addition to the milk.”</i></p>	<p>This refers to complementary food and is in full compliance with Dutch legislation as well as the EU Commission Directives 96/5/EEC and 2006/125/EC. This allegation is unfounded.</p>



Switzerland (4)

COUNTRY	ALLEGATION	FACTS
Switzerland 150 BTR 2007-69	Nestlé distributes free samples of <b>Beba Start H.A.</b> and <b>Beba 1</b> in a pharmacy.	More detailed information is needed to assess this allegation: Please identify the point of sales, date and location. However, it must be noted that distribution of Infant formula samples to Health Care Professionals is allowed and compliant with the Swiss law and EC Directives as of the 1 <sup>st</sup> of April 2008.

COUNTRY	ALLEGATION	FACTS
Switzerland 151 BTR 2007-69	A pharmacy distributes the booklet <i>Guide des Produits pour bébé</i> which contains pictures and promotion of products including the <b>Beba</b> range and special formulas such as <b>FM85</b> , <b>Alprem</b> , <b>Nestargel</b> , <b>Al 110</b> and <b>Alfare</b> .	The booklet, in full compliance with Swiss law, contains education and information of factual nature. It is intended and only distributed to medical professional bearing the mention on the front page: "Medical documentation". It was last distributed in 2004. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Switzerland 152 BTR 2007-69	Another booklet “avec bifidus ... une protection naturelle pour votre bébé” promotes Nestlé products including <b>Beba Spécial</b> , <b>Beba 2</b> and <b>Beba 2 H.A.</b> as diminishing the production of harmful bacteria, actively reinforcing natural immunity and aiding digestion.	These follow-on formulae are marketed in full compliance with Swiss law. Health claims are factual and scientifically substantiated. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Switzerland 153 BTR 2007-86	A gift bag given out to pregnant mothers at a supermarket in Switzerland includes a Nestlé cereal sample and a leaflet entitled “ <i>What to give baby for a complete and balanced breakfast.</i> ” The leaflet contains a question and answer section. To the question “ <i>At what age can infant cereals be introduced?</i> ” the answer is “ <i>Around 4-6 months, as baby’s energy &amp; nutritional needs increase. Milk can be progressively complemented by more diversified foods. At this time, infant cereals provide complementary energy and introduce taste. But before 6 months, it is preferable to give babies infant cereals without gluten.</i> ” The sample Nestlé <b>Ma Première Céréale</b> normalises bottle feeding by showing Blue Bear clutching a feeding bottle.	These products, which are complementary foods, are marketed in full compliance with Swiss law. This allegation is unfounded.

Belgium (3)

COUNTRY	ALLEGATION	FACTS
Belgium 154 BTR 2007-70	Nestlé provides health workers of a health facility in Belgium with free pens. The pens carry the <b>Nan</b> brand name in addition to the company logo.	This is in full compliance with Belgium legislation as well as the EU Commission Directive 91/321/EEC and its revision, 2006/141/EC. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Belgium 155 BTR 2007-73	The label of <b>Nan 1</b> ready-to-feed formula in Belgium carries neither a warning on the health hazards of inappropriate preparation of the formula nor its storage conditions.	This faulty label dates from 2005. It is in error and was not compliant with the WHO Code. Corrections were made immediately. Here below, the new label carrying all recommendations.



COUNTRY	ALLEGATION	FACTS
Belgium 156 BTR 2007-75	In Belgium, an advertisement entitled “voor elke baby, melk op maat” (There’s a milk for every baby) in a professional midwives’ journal, <i>Tijdschrift voor vroedvrouwen</i> , claims the company has a specific formula for each baby: <b>Nan, Nan Pro, Nan H.A., Beba, Guigoz, Nan Transit, Nan Sensitive, Nan Anti Regurgitation.</b>	This is in full compliance with Belgium legislation as well as the EU Commission Directive 91/321/EEC and its revision, 2006/141/EC, which allow advertising Infant Formula in medical publications for professionals. This allegation is unfounded.



Romania (1)

COUNTRY	ALLEGATION	FACTS
Romania 157 BTR 2007-70	In Romania, health workers receive pre-printed <b>Nan</b> prescription pads. The cover of the prescription pad bears the slogan “ <i>The right portion, the perfect proportion</i> ” and shows a pack shot of <b>Nan</b> and a baby hand holding the hand of an adult. Inside there is space on the prescription leaflet to be personalised with the name of the patient and signature and stamp of the doctor.	This is in full compliance with Romania legislation as well as the EU Commission Directive 91/321/EEC and its revision 2006/141/EC. This allegation is unfounded.



Bulgaria (6)

COUNTRY	ALLEGATION	FACTS
Bulgaria 158 BTR 2007-83	Pharmacies give out 2-fold leaflets of the “Nestlé Nutrition Plan.” The leaflet has pack shots of various cereals and jarred food products, all of which are recommended as suitable from 4 months of age.	Age indications are set as per EU Commission Directive 91/321/EEC and its revision 2006/141/EC. This is also concurrent with the advice on the European Paediatric Association (ESPGHAN) and local legislation requirements. The Nestlé Nutrition Plan refers ONLY to weaning food products which are out of the scope of the WHO Code; Baby food products have NEVER been marketed as breast-milk substitutes. The written materials clearly indicate that baby food products are complementary food and that breastfeeding should continue as long as possible. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Bulgaria 159 BTR 2007-84	A shop circulates leaflets entitled “We help children to grow up healthy” which promote Nestlé’s products and incorporate an invitation to parents to join their club.	- “We help the children grow up healthy” is Nestlé’s claim used ONLY for Baby food. Baby food does not fall within the scope of the WHO Code. It should be noted that there is no NESTLE baby club in Bulgaria. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Bulgaria 160 BTR 2007-84	A supermarket promotes Nestlé complementary foods on a special display featuring Blue Bear.	Baby food is out of the scope of WHO code and local legislation allows this practice. Blue Bear is used in Bulgaria, as everywhere in the world, as a symbol of our Baby Food brand. This allegation is unfounded.





COUNTRY	ALLEGATION	FACTS
Bulgaria 161 BTR 2007-84	Nestlé's complementary products are promoted with the famous Blue Bear icon placed nearby in a supermarket.	Baby food is out of the scope of WHO code and local legislation allows this practice. Blue Bear is used in Bulgaria, as everywhere in the world, as a symbol of our Baby Food brand. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Bulgaria 162 BTR 2007-84	A Nestlé promotional campaign has the slogan <i>Buy our product, send letter, gain present!</i> Gifts available include clock with Blue Bear logo and a blue teddy bear. The text in the accompanying ad includes the statement <i>"Mummy, it's very delicious! With Nestlé your baby is growing healthy and happy!"</i>	This promotion is for complementary foods which are not covered by the WHO Code, It is fully allowed by the EU Commission Directive 91/321/EEC and its revision in 2006. This allegation is unfounded.



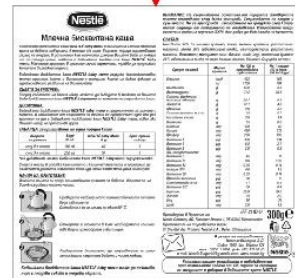
COUNTRY	ALLEGATION	FACTS
Bulgaria 163 BTR 2007-84	The label for Nestlé <b>Baby Menu</b> imported from Switzerland is in French, German and Italian and states the product is suitable for babies from 5 months, on the front, but on its side, the age recommendation in Bulgarian (the local language) is 6 months.	This shows an old packaging of NESTLE Baby Menu infant cereals imported from Switzerland with packaging in French and German. Stickers were applied to side, back and front panel detailing age recommendation and all required information in the local language (ingredient list, preparation, storage conditions). On the example shown, it seems that the front sticker showing age recommendation had been removed by unknown parties. This allegation is unfounded.



### Old packaging



Back panel in Bulgarian – daily feeding regime, way of preparation, ingredient list 7 nutritional table, contacts, etc; recommendation as of 6months as well



Stickers for 6 months

Germany (3)

COUNTRY	ALLEGATION	FACTS
Germany <b>164</b> BTR 2007-85	Nestlé <b>Alete Gemuse</b> vegetable purée jars are promoted in one supermarket in Hannover by shelf-talkers which proclaim: “cheaper!” The product is promoted as suitable for use from 4 months.	This allegation refers to complementary food. This is in full compliance with German legislation as well as the EU Commission Directive 91/321/EEC and 2006/141/EC. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Germany <b>165</b> BTR 2007-85	The same product is sold at another supermarket in Göttingen, with a special display showing a nutrition plan.	This allegation refers to complementary food. This is in full compliance with German legislation as well as the EU Commission Directive 91/321/EEC and its revision 2006/141/EC. This allegation is unfounded.

COUNTRY	ALLEGATION	FACTS
Germany <b>166</b> BTR 2007-85	Yet another supermarket sells <b>Sinlac Spezial Brei</b> (special porridge) promoted as suitable for use from 4 months. The product claims to prevent cow's milk and soy-protein intolerance.	This allegation refers to complementary food. This is in full compliance with German legislation as well as the EU Commission Directive 91/321/EEC and its revision 2006/141/EC. This allegation is unfounded.



## OCEANIA

### Australia (3)

COUNTRY	ALLEGATION	FACTS
Australia 167 BTR 2007-69	Doctors in Australia only need to pick up the phone to receive boxes full of <b>Nan 1 H.A. Gold</b> samples to pass on to mothers.	Samples of infant formula to Health Care Professionals if requested by Health Care Professionals in conformity with local regulation. (clause 7(d)), and the Committee on the Marketing in Australia of Infant Formulas. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Australia 168 BTR 2007-75	At a symposium in Australia, a brochure distributed to nurses promotes the new <b>Nan 1</b> , <b>Nan 2</b> and <b>Nan H.A. Gold</b> . The brochure compares the protein level of <b>Nan 1</b> with breast milk and a conventional starter formula. In addition, the brochure also carries idealising statements such as <i>"New Nan 1 is the first whey adapted infant formula with Bifidus BL and now with protein levels closer to breast milk"</i> and captions like <i>"Enhancing protection with excellent nutrition. Innovation that puts caring first."</i> Nurses also receive Nestlé Nutrition carrier bags.	The brochure provides Medical Information for nurses in conformity with local regulation. No violation was reported to the Committee on the Marketing in Australia of Infant Formulas on this activity which was carried out in 2004 or 2005. Health claims are factual and are scientifically substantiated. This allegation is unfounded.



COUNTRY	ALLEGATION	FACTS
Australia 169 BTR 2007-68	Woolworth chain stores in Australia uses discounts as a promotional tactic to improve sales of <b>Nan H.A. 2 Gold.</b> ►	This allegation refers to follow-on formulae, for infants who are 6 months or older. This is a discount promotion organized by retailer and is allowed. This allegation is unfounded.







## **APPENDICES**

**Appendix 1 "International Code of Marketing of Breast – Milk substitutes" World Health Organization**

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**[HTTP://WWW.WHO.INT/NUTRITION/PUBLICATIONS/CODE\\_ENGLISH.PDF](http://www.who.int/nutrition/publications/code_english.pdf)**

## Appendix 2 WHO Code of Marketing of Breast – Milk Substitutes - Legal Opinion of Professor Jean-Michel Jacquet - University of Geneva

### The International (WHO) Code of Marketing of Breast-milk Substitutes LEGAL OPINION

This is a memorandum of legal opinion for the purpose of clarifying various questions relating to the International Code of Marketing of Breast-milk Substitutes, which was prepared in 1981 under the auspices of the World Health Organisation.

Those questions are raised with particular regard to the "universality" and scope of the Code. However, they cannot be answered without examining the legal nature of the Code and the consequences attached thereto. Moreover, it is impossible to ignore the specific context in which the Code came into operation, to which reference will be made in the following analysis where required.

### I. The Legal Nature of the Code

The Code takes the form of a voluntary instrument, but provision for its implementation machinery has nonetheless been meticulously set out by the WHO Member States.

#### A) A Voluntary Instrument in the International Legal Order

WHO is an international organisation the existence of which dates back to 1948. It is one of the specialised institutions linked by an agreement to the United Nations. As an international organisation it has, like all other international organisations, limited normative powers. However, articles 21 and 22 of its charter enable it to adopt regulations applying directly to States without signature or ratification in the sphere of health and quarantine measures as well as nomenclature of diseases and causes of death. But that is not the case for the International Code of Marketing of Breast-milk Substitutes.

As a matter of strict legal analysis, the Code has its origins in a recommendation by the WHO General Assembly made at its 34th session in 1981.

The form chosen for the recommendation unambiguously indicates that WHO had no intention of casting the text in the mould of a mandatory instrument, which an international treaty or one of the health regulations it is empowered to adopt might have been. International law allows such an approach.

Hence, it follows as a matter of logic that the recommendation does not envisage direct application of the Code, even on a purely voluntary basis, by the Member States. Both the preamble and article 11.1 in fact affirm that the States will take appropriate measures including legislative and regulatory measures, to enable the principles and aims of the Code to be implemented. Moreover, the Code is considered to be a "basis for action".

But that is only the preamble to a recommendation. It makes no declaration to anyone that the Code in itself has a mandatory force binding on the States. In other words, those States not undertaking any action in application of the Code could not be accused of breaching an international obligation, because no such obligation exists.

However, noting that the Code is an instrument devoid of mandatory force in the international legal order is not enough to exhaust the ramifications of the question. Its promoters saw the Code as an instrument for action and as such it comprises various principles designed to ensure its genuine effectiveness.

## **B) An Instrument Not Devoid of Effect**

The effectiveness of the Code can be related to its capacity to achieve or make achievable in the real world the goals set by it, in spite of the absence of binding force. Two aspects make it possible to measure or to enhance that effectiveness. They relate first of all to the addressees of the Code and then to its application and monitoring (this word seems difficult to translate into French).

### *1° Addressees of the Code*

The first category of addressees of the Code is the States. A second category is non-State actors.

#### *a) The States*

The Code targets the States in two different capacities. First of all the States are targeted as principal actors in the health care system of a given country. It is in that capacity that article 4 gives them responsibility for providing information and education essentially directed at pregnant women and young mothers. In that capacity also article 6 puts the health authorities of Member States under a number of obligations calculated to encourage and foster breast-feeding at the relevant medical facilities.

Secondly, the States are targeted as the usual holders of normative powers exercised in the general interest. That is the case when the Code imposes responsibilities for labelling (article 9) products in such a way that the said products do not benefit from overt or more or less covert promotion of the feeding of infants with products substituting for breast-milk instead of breast-feeding. Similarly, it is incumbent upon each State to be vigilant in enforcing certain norms and standards with respect to the quality of the products (article 10). Finally, the State is called upon to play its role as the usual holder of normative powers when article 11.1 confers upon it the task of "giving effect to the Code" by the adoption of laws, regulations or other appropriate measures. This issue will be revisited when considering the proposed application and monitoring *infra*.

#### *Non-State Actors*

These actors are also targeted by the Code, which takes them into consideration in one capacity or another. Without going into details of relevant provisions, the main point is that they belong to diverse categories.

In the first category are health care systems and health staff that are subject to the particular duties respectively provided for in articles 6 and 7 of the Code.

In the second category are the manufacturers and distributors of milk and food for infants, targeted in article 8 in particular but also in articles 4, 5, 6.6, 6.7, 9, 10 and 11.

Finally, there is a third category with non-governmental organisations and other groups or like persons given a role of sensitisation which means that they can draw the attention of manufacturers and distributors to activities which they consider incompatible with the principles and aims of the Code as set out in article 11 of the Code.

Article 11 refers to all three categories, which are asked to collaborate with governments in monitoring the application of the Code as the Code does not confine itself to involving several categories of actors: it also concerns itself with processes for implementing its provisions.

### 2° Processes for Ensuring Implementation of the Code

The Code has provided for recourse to two separate processes for ensuring its effectiveness (article 11 of the Code).

The first process is based on the States' normative action (already discussed *supra*). The States are called upon to take measures and to formulate general rules applicable to all manufacturers and distributors of products specified in article 2 of the Code. This procedure is of paramount importance: through it the rules and principles of the Code should with or without certain amendments take on mandatory force (and hence true legal status) within the legal system of those WHO Member States that have passed laws on the subject.

The second procedure is based on "monitoring". This consists of putting in place pursuant to provisions in the actual text of the Code concrete measures and actions which can be taken by addressees of the Code in order to further the application of the rules and principles contained therein. On that basis article 11 covers three categories of addressees already mentioned *supra*: States as actors in health systems (article 11.2, referring to articles 6 and 7); manufacturers and distributors; and finally non-governmental organisations and professional groups. They all bear a responsibility to collaborate with the States (article 11.2) as well as various responsibilities specifically relating to the functions they carry out according to their activities and occupations. Hence the manufacturers and distributors are called upon to act in conformity with the aims and principles of the Code (article 11.3) and to train their staff accordingly (article 11.5). For their part non-governmental organisations are called upon to monitor the activities of the former, draw attention of manufacturers and distributors to conducts which they deem incompatible with the Code, while informing the national authorities (article 11.4).

### C) Direct Applicability of the Code

I have expressed the view that the WHO Member States are not under any obligation whatsoever to apply the Code directly within their respective legal systems. That question was closely related to the legal character of the Code. Nevertheless, it is necessary to return to it briefly.

Given that the Code is by reason of its drafters' intentions a voluntary instrument within the international legal order, the WHO Member States are invited to provide themselves with the appropriate legal instruments for contributing to the achievement of its aims. That course, already followed by a significant number of States, leads to the Code in essence playing the role of an instrument for harmonising the law. The room for manoeuvre available to the Member States in implementing the Code in their own legal systems shows that there could in fact never be unification but merely harmonisation of the law. But the crucial point is that State laws take precedence over the Code in a national context and the Code is designed to retreat in a manner of speaking behind State laws. They alone constitute genuine legal rules to be used and given teeth in the relevant administrative or judicial bodies in the States' legal systems. In this first hypothesis the provisions of the Code for "monitoring" can be rendered applicable insofar as the legislation of the State in question has adopted such provisions. The "monitoring" then becomes an integral part of the rules adopted by the State on the subject matter covered by the Code.

A totally different matter is the situation in those WHO Member States that have not adopted any measures in their legal system for implementing the Code provisions. Where they are concerned, the Code is not a dead letter, because they should take into account WHO's recommendation. But they have not given any of the provisions of the Code mandatory force in their own legal system through adoption of relevant legislative provisions.

However, the Code can be implemented in States belonging to the second group through the Code's own mechanisms designed to ensure it a degree of efficacy, which have been described *supra*.

In that situation two categories of protagonists come into play. The first category consists of manufacturers and distributors of breast - milk substitutes whose activities fall within the scope of the Code. They can perfectly well decide freely and voluntarily to give effect to all or some of the Code's provisions. In that case we have direct application of the Code at the will of one of those addressee categories. Comparison with the States can turn out to be enlightening. When the States decide to adopt a law or any other type of rule intended to make the Code applicable within their legal system, they do not apply the Code directly but refer to it as source material for their future legislation on the subject matter of the Code. When business entities decide voluntarily to give the Code effect they will make direct reference to it in order to bring their practices into compliance with it. They can if necessary back them by drawing up a business code of conduct or code of ethics. Here there is nonetheless a kind of direct application of the Code, voluntarily made by one of the categories of addressees of the Code that chooses to act in compliance with it. The Code is not mandatory, but is nevertheless designed to be effective: the "monitoring" rules it contains aim at achieving this effectiveness.

The second category of protagonists consists of non-governmental or other organisations working in the field of health care for infants. The said organisations can only intervene indirectly, particularly by informing on States as well as manufacturers and distributors in the field to give effect to the provisions of the Code according to their respective occupational functions.

The situation that has just been analysed entails two series of situations in respect of problems that have emerged in relations between manufacturers and distributors on one side and non-governmental organisations promoting breast-feeding on the other.

A difficulty has emerged in relation to interpretation of the Code.

On that question, clear distinctions must be drawn with reference to the two situations highlighted *supra*.

In the first situation, there is the case of a State deciding to adopt legal rules calculated to give effect to the Code. In that case each State has the opportunity to interpret the WHO Code as it sees fit so as to enact its own legislation or regulations on the subject. The problem of interpreting the Code then shifts to that of interpreting rules adopted by the State, for only the latter have mandatory force within its legal framework. When a state has enacted a regulation implementing the WHO Code, only national courts, or specifically designated state institutions has the right to interpret these rules. The problem then loses its specificity.

The second situation is if the State has not adopted any rules relating to the subject matter of the Code. In that case, as already indicated *supra*, the Code will not necessarily be doomed to total lack of effect.



Indeed, manufacturers and distributors may very well take voluntary action leading to significant implementation of the Code provisions. For their part the NGOs may disseminate information about the Code and promote the Code. Of necessity, the Code is then subjected to a certain number of interpretations, since it is the direct point of reference for activities set in train by the various protagonists. One NGO, IBFAN/ICDC, has even gone so far as to draft a model law for the States which reflects its own interpretation of the Code as the basis for subsequent legislation by States.

Here it must be noted that the risk of diverging interpretations is at its maximum. In fact, the situation here is that the aims pursued by the various agents lead them to interpretations likely to differ greatly from the Code.

But in the event of conflict over interpretation, it is difficult to see how the interpretation put forward by one of the parties in the case would be able to prevail over the interpretation put forward by the other party.

Generally speaking, when parties disagree on the interpretation to be given to a legal text upon which their rights or position depend, the only way for them to reach an outcome is to submit their dispute to a judicial body. That body will then have the power to decide in favour of the interpretation it deemed to be the only one worthy of acceptance. Outside such a framework it is to be feared that conflict over interpretation may lead to a dead-end.

Further to the problems raised by interpretation, there is one that has arisen in practice and should be mentioned, namely that of ruling on any alleged violations of the Code that manufacturers and distributors, upon whom the Code imposes numerous responsibilities, may be accused of. Outside the international legal order any breach of a legal rule must be judged by a court in a trial based on the observance of fundamental principles. Moreover, it is then that the link is made between the power to interpret the legal rule and the power to apply the law.

Non-governmental organisations that assume the right to declare that the Code has been violated by a particular business are clearly exceeding their powers. In fact, in the first place their "monitoring responsibilities" under the Code are not of a judicial nature. Secondly, where there is a contention and one side declares that another is in breach of a rule, the truth of the assertion of the side affirming the existence of a breach can only be established by the judgment of an impartial third party in whom judicial authority is vested.

## **II. Universality and Scope of the Code**

### **A) Universality of the Code**

The question of the Code's universality, in my opinion, is somewhat ambiguous. The analysis of the Code in paragraph I of this memorandum should, however, provide the main points for answering that question. A few distinctions must be made.

The question of the Code's universality relates to the question of its territorial scope. Hence, if the Code had been adopted as an international convention made under the auspices of WHO, its territorial scope would be dependent on the State signing and ratifying the international agreement. The Code would have no application to States that did not ratify the convention.

But that was not the case and the Code was only adopted as a recommendation. As a consequence, the recommendation is directed equally to all WHO Member States. But that advantage is counterbalanced by the Code's intrinsic lack of binding force. It could be said, even if the statement appears somewhat ironic, that the non-compulsory nature of the Code applies in equal fashion to all WHO's Member States.

However, it was pointed out above that the Code had made up for its lack of mandatory force by its provisions in respect of its application and monitoring.

Application of the Code lies principally with the States. They are invited by the Code to give effect to its principles and rules through the adoption of appropriate rules within their own legal system. Hence, for a first group of States the Code's provisions served as a basis for the adoption of real legal provisions. The said provisions then become binding in the national legal frameworks. Note moreover that some States have made provision in their legislation for administrative or penal sanctions not appearing in the Code itself.

Given that not all the WHO Member States took that course, it must be conceded that in a second group of States the Code was not given a halfway house for application, as none of the State's rules referred to it or adopted its provisions.

The Code's universality is thus not guaranteed from the viewpoint of binding legal provisions furthering its implementation. There remains then an important distinction between the group of States, which applied some of their legislation to implementation of the Code and those who did not do so.

However, as set out above, the Code is not condemned to remain a dead letter in those States, which have not adopted legislation on its subject matter. In fact, manufacturers and distributors of infant formula can decide on their own initiative to comply with the provisions of the Code or some of them, even in the countries belonging to the second group. They can do so by directly adapting their marketing, labelling and advertising practices. They can also do so by drawing up a code of conduct for their own use, which can be released to the State's health authorities and a certain number of international non-governmental organisations. They can directly employ various practices connected with the monitoring of the Code. But in no event can that place them under a legal obligation. The article 11.3 is to be understood in this sense.

The situation just described certainly does not correspond to a perfectly universal status for the Code. It must merely be noted that the Code is able to produce some effects beyond the circle of countries, which have enacted legislation within its scope. It can very well shape the conduct of manufacturers and distributors when they have decided to comply with it independently of any obligation. In the same way the activity of non-governmental organisations is capable of exerting an influence in all countries.

## **B) Scope of the Code**

The scope of the Code is governed by article 2 thereof, supplemented by the definitions in article 3. Annex 3 of the Code embodies the text of the Executive Board President's interpretative declaration. The official publication of the Code by WHO thus gives that interpretation the status of an authentic interpretation. In contrast to the spatial scope, discussed in the foregoing analysis, the operatione materiae of the Code is here in question.

Article 2 governs the products to which the Code applies, while also taking into account the conditions under which they are used. Thus in essence it covers breast-milk substitutes or other foods for infants suggested for use, with or without modification, as a partial or total replacement of breast-milk.

For this question two situations must be distinguished.

### **1° States Which Have Adopted Legislation or Regulations**

The Code is a voluntary instrument and those States that adopt laws or regulations for the purpose of achieving its aims are in no way obliged to apply the Code to the letter. Perusal of the various laws shows moreover that they have no hesitation in exercising that freedom in deviating to an at times considerable degree from the provisions contained in the Code.

In that connection, article 2 of the Code is no exception. Even though it is sometimes incorporated as it stands in some States' legislation, it seems that other States have had no hesitation in extending the scope ratione materiae of the Code in their own legislation beyond the provisions of the Code's own article 2, consequently targeting products other than those specified in that article.

### **2° States Which Have Not Adopted Legislation or Regulations**

The question of the scope ratione materiae of the Code has a different character in the case of States, which have not adopted rules on this subject.

In that case, the Code may be voluntarily applied by manufacturers and distributors, which carry out their business activities in the country and decide to bring their conduct into compliance with it. The Code provisions then constitute the only written basis for determining its scope ratione materiae.

Those provisions originate in the letter of article 1, and so, as already pointed out, in the explanatory note by the President of the WHO Executive Board appearing in Appendix 3 of the Code. Clearly, those provisions cannot be having a binding force because the Code as a whole has no binding force.

However, article 2 supplemented by article 3 and Appendix 3 is a provision, which is essential to the Code's overall coherence. It reflects the balance reached by the WHO Member States when the Code was being prepared. I fail therefore to see how the manufacturers and distributors, when they decide to apply the Code voluntarily, could be made to agree to comply with the Code beyond its own intent, as expressed in the provisions just referred to. Of course, they could voluntarily decide to do so and apply the provisions of the Code to foods for infants not considered to be breast-milk substitutes. But there is nothing to oblige them to act in that manner. From a strictly legal viewpoint no blame could be levelled at manufacturers and distributors who rely strictly on the scope of the Code as set down therein. The intentions of the drafters of the Code are a very reasonable basis for interpretation of its provisions.

## **CONCLUSION**

Questions about the universality and the scope of the International (WHO) Code of Marketing of Breast-milk Substitutes can only be properly answered if the legal nature of the Code is first analysed:

### **1/ Applicability of the WHO Code**

- The WHO Code is a recommendation from the World Health Assembly to Member States for taking regulatory measures to put it into practice at a national level, as the Member States may deem it appropriate to their social and legislative frameworks and to their development objectives. Universality is thus something the WHO Code only aspires to.

- The Member States are invited to create a legal status inspired by the WHO Code and to monitor the enforcement of the national measures in co-operation with other addressees (healthcare staff, manufacturers, NGOs, etc.), which can inform the national authorities about compliance.

- In countries where no national measures reflecting the WHO Code is adopted, manufacturers can apply the Code on a voluntary basis: only when manufacturers decide to do so would the Code become directly applicable to them. Non-State Actors can intervene by requesting national authorities to issue norms and / or draw attention of manufacturers on alleged malpractices.

### **2/ Interpretation of the WHO Code**

- Only State institutions have the legitimacy to interpret the Code, as implemented by the State. In case of divergence on the interpretation of the Code between Non-State Actors, only a neutral body, vested with judicial authority, can decide if an interpretation is correct or not in a given national context.

- States can refer to Articles 2, 3 and Annex 3 of the Code to establish the scope of their national implementations. States have however the authority to go beyond the Code's recommendations, or be less strict.

Geneva, 5 June 2003

Professor Jean Michel JACQUET

## Appendix 3: Nestlé detailed instructions to implement the WHO Code

### Article 1 Aim of the Code



#### WHO Code

The Aim of this Code is to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.



#### Nestlé Operational Instructions

This must be the aim of all Nestlé infant food marketing practices.



## Article 2 Scope of the Code



### WHO Code

The Code applies to the marketing and practices related thereto, of the following products:

- breast-milk substitutes, including infant formula;
- other milk products, food and beverages, including bottle-fed complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breast-milk;
- feeding bottles and teats.

It also applies to their quality and availability, and to information concerning their use.

Note: The scope is clarified in Annex 3 (p. 33) of the Code:

“During the first four to six months of life, breast - milk alone is usually adequate to sustain the normal infant’s nutritional requirements. Breast-milk may be replaced (substituted for) during this period by bona fide breast-milk substitutes, including infant formula. Any other food, such as cow’s milk, fruit juices, cereals, vegetables, or any other fluid, solid or semi-solid food intended for infants and given after this initial period, can no longer be considered as a replacement for breast-milk (or as its bona fide substitute)”.



### Nestlé Operational Instructions

The instructions apply to the marketing of infant formula covered by Codex<sup>12</sup>.

They also apply to all follow-up formula products, except in the rare instances where they have distinctly different brand/label design which clearly distinguishes them from infant formula.

Note a: Throughout the articles, all those products are referred to as “*formula*” except where otherwise specified.

WHA Resolution 54.2, as a global public health recommendation, recommends exclusive breastfeeding for six months. Therefore no complementary foods, including infant cereals and baby foods, should be marketed for use before six months of age.

Note b: The following Nestlé products are not covered by the Code:

- Complementary foods when marketed for use after six months of age, including sterilized meat, vegetable and fruit preparations for babies, as long as they do not contain instructions for modification and use as a breast-milk substitute.
- Sweetened condensed milk, evaporated milk, skimmed milk, UHT milk, full cream powdered milk, growing up milks. All such milk products shall not contain instructions for modification and use as a breast-milk substitute and shall bear a statement indicating that they are not suitable for use as a breast-milk substitute.

<sup>12</sup> FAO/WHO Foods Standards Programme, Recommended International Standard, Codex Alimentarius Commission, 72-1981.  
See Article 10.2.



### WHO Code

For the purposes of this Code:

- **"Breast-milk substitute"** means:  
any food being marketed or otherwise represented as a partial or total replacement for breast-milk, whether or not suitable for that purpose.
- **"Complementary food"** means:  
any food, whether manufactured or locally prepared, suitable as a complement to breast-milk or to infant formula, when either becomes insufficient to satisfy the nutritional requirements of the infant. Such food is also commonly called "weaning food" or "breast- milk supplement".
- **"Container"** means:  
any form of packaging of products for sale as a normal retail unit, including wrappers.
- **"Distributor"** means:  
a person, corporation or any other entity in the public or private sector engaged in the business (whether directly or indirectly) of marketing at the wholesale or retail level a product within the scope of this Code. A "primary distributor" is a manufacturer's sales agent, representative, national distributor or broker.
- **"Health care system"** means:  
governmental, non-governmental or private institutions or organizations engaged, directly or indirectly, in health care for mothers, infants and pregnant women; and nurseries or child-care institutions. It also includes health workers in private practice. For the purposes of this Code, the health care system does not include pharmacies or other established sales outlets.
- **"Health worker"** means:  
a person working in a component of such a health care system, whether professional or non-professional, including voluntary, unpaid workers.
- **"Infant formula"** means:  
a breast-milk substitute formulated industrially in accordance with applicable Codex Alimentarius standards, to satisfy the normal nutritional requirements of infants up to between four and six months of age, and adapted to their physiological characteristics. Infant formula may also be prepared at home, in which case it is described as "home-prepared".
- **"Label"** means:  
any tag, brand, mark, pictorial or other descriptive matter, written, printed, stenciled, marked, embossed or impressed on, or attached to, a container (see above) of any products within the scope of this Code.
- **"Manufacturer"** means:  
a corporation or other entity in the public or private sector engaged in the business or function (whether directly or through an agent or through an entity controlled by or under contract with it) of manufacturing a product within the scope of this Code.
- **"Marketing"** means:  
product promotion, distribution, selling, advertising, product public relations, and information services.

- "*Marketing personnel*" means:  
any persons whose functions involve the marketing of a product or products coming within the scope of this Code.
- "*Samples*" means:  
single or small quantities of a product provided without cost.
- "*Supplies*" means:  
quantities of a product provided for use over an extended period, free or at a low price, for social purposes, including those provided to families in need.



## Nestlé Operational Instructions

Refer to WHO Code definitions

Note: Throughout the Instructions, the use of the term "*mothers*" includes pregnant women, mothers or members of their close families.

## Article 4 Information and education

### Article 4.1



#### WHO Code

Governments should have the responsibility to ensure that objective and consistent information is provided on infant and young child feeding for use by families and those involved in the field of infant and young child nutrition. This responsibility should cover the planning, provision, design and dissemination of information, or their control.



#### Nestlé Operational Instructions

This provision is addressed to governments<sup>13</sup>.

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<sup>13</sup> See also Article 4.2.

## Article 4.2



### WHO Code

Informational and educational materials, whether written, audio or visual, dealing with the feeding of infants and intended to reach pregnant women and mothers of infants and young children, should include clear information on all the following points:

- (a) the benefits and superiority of breast-feeding;
- (b) maternal nutrition, and the preparation for and maintenance of breast-feeding;
- (c) the negative effect on breast-feeding of introducing partial bottle-feeding;
- (d) the difficulty of reversing the decision not to breast-feed; and
- (e) where needed, the proper use of infant formula, whether manufactured industrially or home-prepared.

When such materials contain information about the use of infant formula, they should include the social and financial implications of its use; the health hazards of inappropriate foods or feeding methods; and, in particular, the health hazards of unnecessary or improper use of infant formula and other breast-milk substitutes. Such materials should not use any pictures or text which may idealize the use of breast-milk substitutes.



### Nestlé Operational Instructions

All infant feeding information intended for mothers, whether of a general educational nature or dealing with the explanation and instructions for the use of infant formula, must contain a statement regarding each of the points (a) to (e) contained in this article of the WHO Code. Specific points from Art. 4.2 will be dealt with in much greater detail in certain educational materials such as mother books and educational posters<sup>14</sup>.

Only information intended for mothers that deals with the explanation and instructions for use of a specific formula may bear corporate and product brands. In order to avoid confusion with other formula products or milk products in-appropriate for use as breast-milk substitutes, they may include the packshot of the specific formula.

These materials are intended for use by health workers in instructing mothers who have to use breast-milk substitutes and may not be given to mothers by company personnel. They are intended to complement information contained on the label, especially when catering to the needs of minority language groups or the needs of semi-literate or illiterate mothers. Such materials must include the information specified in this Article of the WHO Code.

Baby pictures may only be used to enhance the educational value of information and must not idealize formula feeding. The same restraint should generally be observed for pictures or texts used in those informational and educational materials. In case of doubt, the NSBD and PA must be consulted<sup>15</sup>.

<sup>14</sup> See also Article 4.3.

<sup>15</sup> See also note under Article 5.1.

### Article 4.3



#### **WHO Code**

Donations of informational or educational equipment or materials by manufacturers or distributors should be made only at the request and with the written approval of the appropriate government authority or within guidelines given by governments for this purpose. Such equipment or materials may bear the donating company's name or logo, but should not refer to a proprietary product that is within the scope of this Code, and should be distributed only through the health care system.



#### **Nestlé Operational Instructions**

Materials intended for pregnant women and mothers that are of a general nature related to maternal and child health, such as educational posters, educational charts, mother books, breast-feeding booklets, weight/growth charts, vaccination and health cards, height measurement charts, films or slide presentations, videocassettes, CD-ROMs, etc., must not contain illustrations of infant formula or mention the names of individual formula brands. Corporate name or logo may be used. If these materials have been edited by the company in collaboration with the health authorities or the medical profession, this may be mentioned. Such materials should be made available to health care institutions and professionals only upon their request and in accordance with any applicable government requirements or guide-lines.

**Note:** Materials covered under Art. 4.2 and 4.3 may only be given or shown to mothers by health professionals, and when dealing with infant feeding must include the information required by Art. 4.2 of the WHO Code. A note on such material shall clearly indicate that the material may be given or shown to mothers by health professionals only. Mother books may include generic information on formula of an educational nature which explains when the use of a formula may be necessary, and precautions for correct use.

## Article 5 The general public and mothers

### Article 5.1



#### WHO Code

There should be no advertising or other form of promotion to the general public of products within the scope of this Code.



#### Nestlé Operational Instructions

Information relating to formula must not be communicated directly to mothers or the general public either through public media or by personal contact between company representatives and the public. This restriction also applies to information put on Nestlé web-sites.

The restriction under Art. 5.1, as applied to products specified under Art. 2, includes a ban on:

- participation in/sponsorship of baby shows (even when invited to participate by health workers or charitable institutions)
- distribution of gift packs for mothers
- distribution to mothers of materials of a non-educational nature (whether product-related or not): birth certificates, calendars, baby albums, etc. General information on infant feeding and baby care, which includes information on the proper use of infant formula (such as Mother Books and Posters) may only be distributed to mothers by health workers or displayed by them in health care facilities subject to the provisions of Art. 4.2, 4.3, 6.2 and 7.2. Such information may not feature formula brands and may not be used as advertising or promotion aimed at the general public.

**Note:** Educational materials intended for use in instructing mothers must be consistent with these Instructions.



## Article 5.2



### **WHO Code**

Manufacturers and distributors should not provide, directly or indirectly, to pregnant women, mothers or members of their families, samples of products within the scope of this Code.



### **Nestlé Operational Instructions**

## Article 5.2

No samples of formula should be given to the general public. Such samples may only be given to health workers, in accordance with Art. 7.4.

### Article 5.3



#### WHO Code

In conformity with paragraphs 1 and 2 of this Article, there should be no point-of-sale advertising, giving of samples, or any other promotion device to induce sales directly to the consumer at the retail level, such as special displays, discount coupons, premiums, special sales, loss-leaders and tie-in sales, for products within the scope of this Code.

This provision should not restrict the establishment of pricing policies and practices intended to provide products at lower prices on a long-term basis.



#### Nestlé Operational Instructions

Activities at the retail level aiming at promoting sales of formula directly to the consumer are not permitted, i.e.

- no coupon redemption schemes
- no raffles or lotteries
- no point of sale promotions (i.e. deals, gifts, special displays or exhibitions, including display contests)
- no in-store demonstrations
- no company-induced price offers to the consumer at the retail level (consumer discounts, loss-leaders, tie-in sales)
- no incentives or discounts to the trade for the purposes of advertising or promotion at point of sale.

This does not prevent the implementation of a normal trade price structure.

This policy must be communicated to wholesalers and retailers of Nestlé formula products who must be reminded that it is company policy to prevent promotion of formula products at the point of sale. It is the sales staff's responsibility to maintain stock rotation and to ensure shelf-availability and clean and tidy presentation of formula products at the point of sale where it is needed. Shelf or bin markers clearly indicating product name and price are permitted, but promotional advertising is not.

#### Article 5.4



##### **WHO Code**

Manufacturers and distributors should not distribute to pregnant women or mothers of infants and young children any gifts of articles or utensils which may promote the use of breast-milk substitutes or bottle-feeding.



##### **Nestlé Operational Instructions**

See instructions of Art. 5.1.

#### Article 5.5



##### **WHO Code**

Marketing personnel, in their business capacity, should not seek direct or indirect contact of any kind with pregnant women or with mothers of infants and young children.



##### **Nestlé Operational Instructions**

Company personnel involved in the marketing of infant and baby foods, including those whose responsibilities include the provision of information to the health profession about those products, may not solicit direct contact with pregnant women or mothers of infants below six months of age, either individually or in groups, through whatever medium. This restriction applies even to contacts for the purpose of providing information or samples of products not covered by the Code, such as food supplements for expectant and nursing mothers, if such contacts aim at indirectly promoting products covered by the Code. This does not prevent appropriately qualified personnel from responding to complaints or unsolicited requests for information on correct use of formula. Requests for information on health matters, or general information on formula, must be referred to a health worker<sup>16</sup>.

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<sup>16</sup> See also Article 6.4 and 8.2.

## Article 6 Health care systems

### Article 6.1



#### WHO Code

The health authorities in Member States should take appropriate measures to encourage and protect breast-feeding and promote the principles of this Code, and should give appropriate information and advice to health workers in regard to their responsibilities, including the information specified in Art. 4.2.



#### Nestlé Operational Instructions

Addressed to the health authorities.

### Article 6.2



#### WHO Code

No facility of a health care system should be used for the purpose of promoting infant formula or other products within the scope of this Code. This Code does not, however preclude the dissemination of information to health professionals as provided in Art. 7.2.



#### Nestlé Operational Instructions

Nestlé Instructions relating to Art. 5.1, 5.2, 5.4, and 5.5 also apply to Nestlé activities within the health care system.

The distribution to health care facilities of educational materials bearing corporate identification, subject to the requirements of Art. 4, is permitted. Scientific or technical product information and instructions intended to assist health workers in guiding mothers on the correct use of specific formula may only be distributed to health workers<sup>17</sup>.

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<sup>17</sup> See Article 7.2.

### Article 6.3



#### **WHO Code**

Facilities of health care systems should not be used for the display of products within the scope of this Code, for placards or posters concerning such products, or for the distribution of material provided by a manufacturer or distributor other than that specified in Art. 4.3.



#### **Nestlé Operational Instructions**

See Article 6.2.

### Article 6.4



#### **WHO Code**

The use by the health care system of "professional service representatives", "mothercraft nurses", or similar personnel, provided or paid for by manufacturers or distributors, should not be permitted.



#### **Nestlé Operational Instructions**

Company personnel must not be used by the health care system for advising mothers or similar duties. The role of company personnel is covered in Art. 8.2.

## Article 6.5



### **WHO Code**

Feeding with infant formula, whether manufactured or home-prepared, should be demonstrated only by health workers, or other community workers if necessary; and only to the mothers or family members who need to use it; and the information given should include a clear explanation of the hazards of improper use.



### **Nestlé Operational Instructions**

Company personnel may not assist in this work but may provide relevant educational/instruction material to assist health workers in guiding mothers. In case mothers request advice from company personnel, they should be referred to the medical profession or other health workers<sup>18</sup>.

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<sup>18</sup> See Article 5.5.  
See also Instructions pertaining to Article 6.2.

## Article 6.6



### WHO Code

Donations or low-price sales to institutions or organizations of supplies of infant formula or other products within the scope of this Code, whether for use in the institutions or for distribution outside them, may be made. Such supplies should only be used or distributed for infants who have to be fed on breast-milk substitutes. If these supplies are distributed for use outside the institutions, this should be done only by the institutions or organizations concerned. Such donations or low-price sales should not be used by manufacturers or distributors as a sales inducement.



### Nestlé Operational Instructions

Infant formula and follow-on formula may not be donated to health care facilities for any reason, nor may they be sold to health care facilities at a price which is merely token in nature (thus amounting to a *de facto* donation). Sales to health care facilities or systems may be made under normal procurement procedures for hospital supplies, at the best wholesale price. Where national rulings allow, the Company may respond to written requests from orphanages or other social welfare institutions for free or low-price supplies of infant formula or follow-on formula for feeding infants who have to be fed with breast-milk substitutes, to serve social or humanitarian purposes. In such cases, the Company will ensure that such supplies will be made only to *bona fide* institutions and the medical and social grounds for such supplies are clearly documented in accordance with the Company's form hereof or any stricter requirement set forth by national authorities. The label or lid of the products donated or supplied at reduced price must be clearly marked with a sticker stating:

*"Free supply (or reduced-price supply) for use at the discretion of the social welfare institution, only for infants who have to be fed on breast-milk substitutes".*

A record of such donation or reduced-price supply must be kept for at least 36 months<sup>19</sup>.

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<sup>19</sup> See also Article 6.7.



## Article 6.7



### **WHO Code**

Where donated supplies of infant formula or other products within the scope of this Code are distributed outside an institution, the institution or organization should take steps to ensure that supplies can be continued as long as the infants concerned need them. Donors, as well as institutions or organizations concerned, should bear in mind this responsibility.



### **Nestlé Operational Instructions**

In cases where a social welfare institution requests free or reduced-price supplies of formula for use outside that institution, the following instructions must be respected:

1. The institution requesting the supply must inform the Company of the total quantity required for feeding the infants.
2. The Company will reserve the right to determine on a case-by-case basis whether that quantity can be supplied, and will inform the institution concerned of its decision, and the implications for meeting continued requirements.
3. Obligations entered into under this heading must be confirmed in writing, and records of quantities distributed must be maintained for at least 36 months.
4. The Company will supply the requested products to the social welfare institution, not directly to the consumer, together with relevant instructions to the institution to ensure that the products are used correctly.
5. Nestlé will make it clear that use outside an institution of supplies that have been made available on a free or reduced-price basis, is at the discretion and under the responsibility of that institution. Donors as well as institutions or organizations concerned should bear in mind this responsibility.

## Article 6.8



### WHO Code

Equipment and materials in addition to those referred to in Art. 4.3, donated to a health care system may bear a company's name or logo, but should not refer to any proprietary product within the scope of this Code.



### Nestlé Operational Instructions

This refers to materials and equipment intended for professional use by health workers and institutions. As a rule donations of such materials and equipment may not be used as a sales inducement.

Equipment such as incubators and audiovisual equipment (hardware and software other than CD-ROM containing educational/instruction material on nutrition and health care) can only be given to institutions. Such equipment as well as low-cost service items, like diaries and gestation calendars, for the use of health workers may bear the Company name and logo, but no product name or logo.

Equipment exceeding a value of US\$ 50 may only be provided against a written request from the head of the department or institution concerned or in accordance with national regulations, with the approval of a member of the management committee of the local Nestlé company.

Service items given to the medical profession but used publicly in the health institutions including:

- wrist bands
- hospital health cards
- arm/head measuring tapes
- tongue spatulas
- bibs
- plates/cups/spoons
- Alcohol swabs, etc.

may not bear any formula brand but may bear the Corporate logo.

#### List of Materials of Professional Utility which may be distributed to Individual Health Workers

These materials should be inexpensive, i.e. the value would not constitute an inducement to prescribe formula products to the detriment of breast-feeding.

Material intended for health workers (including those attending congresses and conferences) will either have a clear educational purpose or be designed to render a genuine service.

The Nutrition Strategic Business Division (NSBD), Vevey, is not able to act as a distributor for most such materials. Markets should seek local suppliers, importers or agents, order directly and arrange payments themselves. In no case will NSBD absorb costs of materials for market requirements.

Items may not bear any product brand or message, but may include the company name or logo. Such materials are designed for and addressed to a professional audience, not to the general public.

The following list does not relate to materials, including service items that may be requested by, or donated to institutions or associations.

1. In-service aids and professional educational materials:

- charts for recording weight, height or other anthropometric indications,
- wall charts, desk charts or calculators providing reference data (on subjects such as: gestation, evaluation of the newborn, stage of development of the foetus or of the child, stages of pregnancy, immunization, child health and care, etc.),
- materials or equipment designed to assist with record keeping such as:
  - diaries, year planners and calendars,
  - slide storage pockets or boxes,
  - Cardex indices,
  - easybinders or boxes,
  - congress bags or document cases,
- material for the health workers' own continuing education,
- personalized non product-related prescription pads or notepads. Since these could be issued sheet by sheet to the general public, no product brand may appear.

2. Materials and equipment for individual health workers:

Materials and equipment to help health workers in the diagnosis and/or treatment of obstetric, pediatric and/or nutritional problems according to following list: • measuring tapes (e.g. arm/head circumference),

- length measuring devices,
- weighing scales – babies and children,
- skinfold calipers,
- sphygmomanometers,
- cold light,
- reanimation lamp,
- head mirror,
- otoscope,
- stethoscopes (including obstetric and/or foetal),
- clamp for umbilical cord,
- percussion hammer,
- thermometers,
- tongue depressors,
- vacuum forceps,
- delivery mat,
- breast-milk pump.

Similar low-cost professional items may be considered after consultation with the appropriate entity at the Headquarters, Vevey.

**Article 7**                      **Health workers**  
**Article 7.1**



**WHO Code**

Health workers should encourage and protect breast-feeding; and those who are concerned in particular with maternal and infant nutrition should make themselves familiar with their responsibilities under this Code, including the information specified in Art. 4.2.



**Nestlé Operational Instructions**

Health workers' responsibility. Nestlé will cooperate in these efforts by providing upon request, and whenever possible, copies of the official WHO Code and culturally appropriate educational materials (videos, brochures, posters) promoting breast-feeding.

## Article 7.2



### **WHO Code**

Information provided by manufacturers and distributors to health professionals regarding products within the scope of this Code should be restricted to scientific and factual matters, and such information should not imply or create a belief that bottle-feeding is equivalent or superior to breast-feeding. It should also include the information specified in Art. 4.2.



### **Nestlé Operational Instructions**

In their contacts with health workers, Company Personnel have the responsibility to emphasize the superiority of breast-feeding, the WHO Code and to give objective information on scientific and factual matters pertaining to formula and its correct use. Information on formula intended for health professionals should avoid promotional language and content, whether textual or pictorial, aiming at idealizing formula feeding over breast-feeding. These informational materials may include pictures of the product and bear corporate and product brands in order to facilitate identification of the product.

They must mention the information specified in Art. 4.2 of the Code.

Detailed and illustrated preparation instructions, using vernacular languages, may be given to health workers to assist them in instructing mothers who have to use breast-milk substitutes.

All such informational materials should conspicuously mention that they are destined for health workers only and bear a date and a print-code for traceability purposes.

### Article 7.3



#### **WHO Code**

No financial or material inducements to promote products within the scope of this Code should be offered by manufacturers or distributors to health workers or members of their families, nor should these be accepted by health workers or members of their families.



#### **Nestlé Operational Instructions**

No financial or material inducements to promote formula may be offered to health workers or members of their families. Low-cost items of professional utility<sup>20</sup>, or token gifts may be given to health workers on an occasional basis if and as culturally appropriate. No such donations should be used as a sales inducement. Those items may bear the Corporate logo.

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<sup>20</sup> See list in Article 6.8.

## Article 7.4



### WHO Code

Samples of infant formula or other products within the scope of this Code, or of equipment or utensils for their preparation or use, should not be provided to health workers except when necessary for the purpose of professional evaluation or research at the institutional level. Health workers should not give samples of infant formula to pregnant women, mothers of infants and young children, or members of their families.



### Nestlé Operational Instructions

Samples of formula may be provided to individual health workers for the purpose of professional evaluation only in the following instances:

- to introduce a new formula product;
- to introduce a new formulation of an existing product;
- to introduce our formula range to a newly qualified health professional.

In these cases, one or two cans of formula may be given to a health worker for this purpose and one time only, upon receipt of a sample request form filled in by the health worker. Samples must bear the mention "*sample for professional evaluation*". Sample request forms and sample distribution records must be maintained for 36 months. Formula may also be provided for research or clinical validation at the institutional level, subject to completion of a research protocol<sup>21</sup>. In such cases, the formula must bear a sticker: "Formula provided for Clinical Validation – NOT FOR RESALE".

**Important Note:** Clinical validations are not to be used as a sales inducement and are subject to the detailed rules specified in "Nestlé's Clinical Validation Protocol".

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<sup>21</sup> See "Nestlé's Clinical Validation Protocol"



## Article 7.5



### **WHO Code**

Manufacturers and distributors of products within the scope of this Code should disclose to the institution to which a recipient health worker is affiliated any contribution made to him or on his behalf for fellowships, study tours, research grants, attendance at professional conferences or the like. Similar disclosures should be made by the recipient.



### **Nestlé Operational Instructions**

The decision to support scientific activities such as congresses, scholarships, study tours, etc. must be taken on a case-by-case basis by a member of the management committee of the local Nestlé company. In case of doubt, the NSBD and PA, Vevey, must be consulted.

Financial or other support does not imply endorsement by the recipients of Nestlé's policies or activities and shall be provided in a transparent manner. Preference will be given to support for nominees of associations or institutions. Requests for support must be confirmed in writing by a responsible officer of the association/ institution (or his nominee) or by the health professional concerned. Guidelines for support of scientific activities established by the association/institution or by the authorities must be strictly complied with. Records for such support must be maintained for 36 months.

## Article 8 Persons employed by manufacturers and distributors

### Article 8.1



#### **WHO Code**

In systems of sales incentives for marketing personnel, the volume of sales of products within the scope of this Code should not be included in the calculation of bonuses, nor should quotas be set specifically for sales of these products. This should not be understood to prevent the payment of bonuses based on the overall sales by a company of other products marketed by it.



#### **Nestlé Operational Instructions**

Bonuses or incentives based on formula sales must not be paid to sales staff, medical delegates, and other marketing personnel. Remuneration for sales staff and medical delegates must be examined on a country-by-country basis in order to determine the criteria to be established for appropriate compensation, such as clean display, customer service, Code knowledge, etc.

## Article 8.2



### **WHO Code**

Personnel employed in marketing products within the scope of this Code, should not, as a part of their job responsibilities, perform educational functions in relation to pregnant women or mothers of infants and young children. This should not be understood as preventing such personnel from being used for other functions by the health care system at the request and with the written approval of the appropriate authority of the government concerned.



### **Nestlé Operational Instructions**

Company personnel whose responsibilities include the provision of information about infant and baby foods to the health profession may not perform educational functions in relation to pregnant women or mothers of infants and young children.

However company personnel may provide information on weaning practices and complementary feeding to mothers of infants beyond six months of age, subject to their emphasizing that breastfeeding should continue for as long as possible after introduction of complementary feeding<sup>22</sup>.

If the health authorities require Nestlé's assistance for other scientific or educational purposes not related to formula, they must request such assistance in writing and identify the functions.

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<sup>22</sup> See also Articles 6.4.

## Article 9            Labelling

### Article 9.1



#### **WHO Code**

Labels should be designed to provide the necessary information about the appropriate use of the product, and so as not to discourage breast-feeding.



#### **Nestlé Operational Instructions**

Individual country requirements, if any, must be respected in addition to the requirements under this WHO Code Article which are recognized as the minimum requirement<sup>23</sup>.

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<sup>23</sup> See "Labeling" guidelines for details.

## Article 9.2



### WHO Code

Manufacturers and distributors of infant formula should ensure that each container has a clear, conspicuous, and easily readable and understandable message printed on it, or a label which cannot readily become separated from it, in an appropriate language, which includes all the following points:

- (a) the words "Important Notice" or their equivalent;
- (b) a statement of the superiority of breast-feeding;
- (c) a statement that the product should be used only on the advice of a health worker as to the need for its use and the proper method of use;
- (d) instructions for appropriate preparation, and a warning against the health hazards of inappropriate preparation. Neither the container nor the label should have pictures of infants, nor should they have other pictures or text which may idealize the use of infant formula. They may, however, have graphics for easy identification of the product as a breast-milk substitute and for illustrating methods of preparation. The terms "*humanized*", "*maternalized*" or similar terms should not be used. Inserts giving additional information about the product and its proper use, subject to the above conditions, may be included in the package or retail unit. When labels give instructions for modifying a product into infant formula, the above should apply.



### Nestlé Operational Instructions

Nestlé formula labels have to comply with each point contained in Article 9.2 of the WHO Code.

It is important to note that the "appropriate language" will be subject to the decision of the health authorities. In cases where several languages are commonly read and understood by different population groups, it may be necessary to include additional information in the form of on-pack leaflets. In case of doubt, the national authorities should be consulted.

### Article 9.3



#### **WHO Code**

Food products within the scope of this Code, marketed for infant feeding, which do not meet all the requirements of an infant formula, but which can be modified to do so, should carry on the label a warning that the unmodified product should not be the sole source of nourishment of an infant. Since sweetened condensed milk is not suitable for infant feeding, nor for use as a main ingredient of infant formula, its label should not contain purported instructions on how to modify it for that purpose.



#### **Nestlé Operational Instructions**

In the absence of specific national requirements, labels of Nestlé milk products not adapted for infant feeding must bear a warning to that effect. Labels of condensed milks (sweetened or unsweetened) must mention: “(name of product category) is not to be used as a breast-milk substitute”. Similarly, Nestlé powdered milk labels must include the following information: “However (brand name), like liquid cow’s milk, has not been modified for infant feeding and is not to be used as a breast-milk substitute”. In any case, the Dairy Strategic Business Unit’s detailed labeling instructions should be referred to.

## Article 9.4



### **WHO Code**

The label of food products within the scope of this Code should also state all the following points:

- (a) the ingredients used;
- (b) the composition/analysis of the product;
- (c) the storage conditions required; and
- (d) the batch number and the date before which the product is to be consumed, taking into account the climatic and storage conditions of the country concerned.



### **Nestlé Operational Instructions**

To be implemented in accordance with individual country requirements, recognizing that the requirements under this WHO Code Article is the minimum requirement.



## Article 10 Quality

### Article 10.1



#### **WHO Code**

The quality of products is an essential element for the protection of the health of infants and therefore should be of a high-recognized standard.



#### **Nestlé Operational Instructions**

The manufacture and distribution of all Nestlé products is based on this principle.

### Article 10.2



#### **WHO Code**

Food products within the scope of this Code should, when sold or otherwise distributed, meet applicable standards recommended by the Codex Alimentarius Commission and also the Codex Code of Hygienic Practice for Foods for Infants and Children.



#### **Nestlé Operational Instructions**

In accordance with current standards except where otherwise specified by government regulations.

## Article 11 Implementation and monitoring

### Article 11.1



#### **WHO Code**

Governments should take action to give effect to the principles and aim of this Code, as appropriate to their social and legislative framework, including the adoption of national legislation, regulations or other suitable measures. For this purpose, governments should seek, when necessary, the co-operation of WHO, UNICEF and other agencies of the United Nations system. National policies and measures, including laws and regulations, which are adopted to give effect to the principles and aim of this Code should be publicly stated, and should apply on the same basis to all those involved in the manufacture and marketing of products within the scope of this Code.



#### **Nestlé Operational Instructions**

Implementation and interpretation of the Code in each country is the responsibility of the government (usually the health authorities). Nestlé Market Managers should make every effort, in co-operation with our competitors wherever possible, to encourage the development of clear and unambiguous national codes where these do not yet exist.

### Article 11.2



#### **WHO Code**

Monitoring the application of this Code lies with governments acting individually and collectively through the World Health Organization as provided in paragraphs 6 and 7 of this Article. The manufacturers and distributors of products within the scope of this Code, and appropriate non-governmental organizations, professional groups, and consumer organizations should collaborate with governments to this end.



#### **Nestlé Operational Instructions**

It is vital that impartial and effective monitoring procedures, under government responsibility, be included as part of the measures to implement the Code.

### Article 11.3



#### **WHO Code**

Independently of any other measures taken for implementation of this Code, manufacturers and distributors of products within the scope of this Code should regard themselves as responsible for monitoring their marketing practices according to the principles and aim of this Code, and for taking steps to ensure that their conduct at every level conforms to them.



#### **Nestlé Operational Instructions**

Internal monitoring of the correct implementation of these Instructions and/or of the national code if it exists, is an on-going responsibility of Nestlé Market Management.

### Article 11.4



#### **WHO Code**

Non-governmental organizations, professional groups, institutions and individuals concerned should have the responsibility of drawing the attention of manufacturers or distributors to activities which are incompatible with the principles and aim of this Code, so that appropriate action can be taken. The appropriate governmental authority should also be informed.



#### **Nestlé Operational Instructions**

Complaints relating to alleged non-conformity by Nestlé with the WHO Code must be properly documented to allow prompt investigation and corrective action if and as required. For this purpose, a complaint form has been established.

## Article 11.5



### **WHO Code**

Manufacturers and primary distributors of products within the scope of this Code should apprise each member of their marketing personnel of the Code and of their responsibilities under it.



### **Nestlé Operational Instructions**

As stated under "General Remarks", these Instructions must be communicated to all company personnel employed by companies of the Nestlé Group or by agents and primary distributors engaged in the marketing of formula.

## Article 11.6



### **WHO Code**

In accordance with Article 62 of the Constitution of the World Health Organization, Member States shall communicate annually to the Director-General information on action taken to give effect to the principles and aim of this Code.



### **Nestlé Operational Instructions**

Addressed to governments.

## Article 11.7



### **WHO Code**

The Director-General shall report in even years to the World Health Assembly on the status of implementation of the Code; and shall, on request, provide technical support to Member States preparing national legislation on regulations, or taking other appropriate measures implementing and furtherance of the principles and aim of this Code.



### **Nestlé Operational Instructions**

## Article 11.7

Addressed to the Director-General, WHO.