

# 30 years of the Code in Latin America

A review of various experiences in the  
implementation of the International Code of  
Marketing of Breast-milk Substitutes in the  
Region between 1981 and 2011



**Organización  
Panamericana  
de la Salud**

Oficina Regional de la  
Organización Mundial de la Salud

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Marketing of Substitutes

of Breast Milk in the Region between 1981 and 2011



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*Oficina Regional de la  
Organización Mundial de la Salud*

Healthy Living Course

Family and Community Health Area

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# Index

Presentation .....	1
Acknowledgments .....	2
Executive Summary.....	3
Introduction .....	5
Methodology.....	13
The International Code of Marketing of Breast-milk Substitutes: A brief history .....	15
The risks of not breastfeeding for babies and mothers.....	17
National experiences	
Argentina .....	23
Bolivia.....	26
Brazil.....	27
Chile.....	29
Colombia.....	30
Costa Rica.....	32
Cuba .....	36
Ecuador .....	37
El Salvador.....	38
Guatemala.....	40
Honduras.....	42
Mexico.....	42
Nicaragua.....	44
Panama .....	44
Paraguay.....	45
Peru .....	46
Puerto Rico.....	48
Dominican Republic.....	49
Uruguay.....	50
Venezuela .....	51
Lessons learned.....	53

## Annexes

1. Frequently Asked Questions about the Code.....	57
2. Model letters used to report violations of the Code and national laws.....	65
3. Additional Resources and Websites .....	69

## Tables

Table 1. Status of the Code in the countries of the Latin American Region, 2011 .....	10
Table 2. Breastfeeding indicators: results of the latest survey .....	20

## Figures

Figure 1. The Code in Latin American countries: its adoption in a timeline.....	11
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## Boxes

Box 1. Summary of the International Marketing Code of Breast Milk Substitutes.....	7
Box 2. Summary of relevant World Assembly Resolutions of Health on Infant and Young Child Nutrition.....	8
Box 3. Breastfeeding and the Millennium Development Goals .....	21

## Reflections on 30 years since the historic 34th World Health Assembly

Reflections by Dr. Stephen Joseph.....	22
Reflections by Lic. Annelies Allain.....	55

## Abbreviations

ASM	World Health Assembly
Code	International Code of Marketing of Breast-milk Substitutes and relevant resolutions of the World Health Assembly
IBFAN	International Baby Food Action Network
ICDC-IBFAN	International Code Documentation Center or International Documentation Center Mention of the Code
PAHO/WHO	Pan American Health Organization/World Health Organization
UNICEF	United Nations Children's Fund

## Presentation

Breastfeeding is the foundation of life, providing short- and long-term health benefits for both mother and child. For this reason, it should be promoted as a cultural and behavioral norm, not interchangeable with artificial feeding.

Just as there are measurable benefits of breastfeeding, both in the most  
In both the wealthy and the disadvantaged, there are also measurable risks arising from its absence. The decision about how to feed an infant should not be described as a choice  
not as a lifestyle choice but as a reproductive choice that optimally promotes the health of the mother-child dyad throughout life. The International Code of Marketing of Breast-milk Substitutes, adopted 30 years ago by the World Health Assembly, was created in response to concerns that inappropriate marketing of breast-milk substitutes was causing a large number of infant deaths. The Code and subsequent relevant Assembly resolutions constitute the underlying policies for all efforts to protect, promote, and encourage breastfeeding. They must be enforced by law or other appropriate measures in every country; and any company that violates it by putting profits above the survival of the most vulnerable citizens in our globalized society must be monitored and sanctioned.

This publication by the Pan American Health Organization on the 30th anniversary of the Code contains a historical overview of each national process in its implementation, the background of the sanctions applied, and an analysis of the lessons learned during this three-decade process.

I hope this work can become a source of reference and inspiration for governments, health workers, and stakeholders seeking to promote optimal infant feeding practices.

Mirta Roses Periago  
Director

Pan American Health Organization

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## Executive Summary

The International Code of Marketing of Breast-milk Substitutes, adopted 30 years ago by the World Health Assembly, was created in response to concerns that inappropriate marketing of breast-milk substitutes was causing a large number of infant deaths. The Code and subsequent relevant Assembly resolutions constitute the underlying policies for all efforts to protect, promote, and encourage breastfeeding.

We can now say that the Latin American and Caribbean region is witnessing intense activity in implementing measures related to the Code. Thus, upon reaching its 30th anniversary, the Code has been incorporated as a law covering all or almost all of its aspects in seven countries (Brazil, Costa Rica, Guatemala, Panama, Peru, the Dominican Republic, and Venezuela); as a law covering many aspects of the Code in six others (Argentina, Bolivia, Colombia, Mexico, Nicaragua, and Uruguay); and as a law covering some aspects of the Code in three (Cuba, Paraguay, and Puerto Rico); while three others have a code or voluntary policy (Chile, Ecuador, and Honduras); and only one (El Salvador) has some measures drafted but not yet enacted. <sup>1</sup> *However, it is worth noting that only five of the 16 countries with a law have regulations, which implies a very low possibility of its effective implementation.*

Eight of the 20 countries analyzed conducted their last Code monitoring in 2010, six between 2007 and 2009, and only three prior to that date. Among the various situations generated by the monitoring of baby food marketing, it is possible to count concrete measures taken in several cases, including warnings, demands for changes in labeling design, and even confiscation of merchandise. However, at the same time, and in other circumstances less favorable to its implementation, there have been situations in which pressure from large companies has allowed them to evade their obligations to comply with current regulations and thus continue violating the law.

A historical overview of each national process, the background of the sanctions applied and an analysis of the application of the Code over three decades leaves us with a summary of experiences and Lessons *Learned*:

- It is not enough for a country to have adhered to the Code if this is not reflected in a national law, nor a law will be sufficient if it is not properly regulated to effectively enforce it. Likewise, there must be political will to monitor it and apply sanctions.

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<sup>1</sup> Original classification from the International Code Documentation Centre (ICDC-IBFAN). See Table 1.

- An intelligent surveillance strategy should provide for making public any sanctions that are imposed.  
apply, since the possibility of damage to their image is of much more concern to companies than the potential amount of a fine.
- Permanent monitoring is essential because companies operate in several fields at the same time.  
and are distracting; they may be applying for label approval at the same time that the product is on the market with a different design.
- Globalization as a general phenomenon, and Free Trade Agreements (FTAs) in particular, make it difficult to implement national measures, even though no free market protection regulation should be placed above the genuine protection of community health. In this regard, the interests of the Ministries of Economy, Industry and Commerce, and Health are increasingly conflicting, as the former attempts to expedite negotiations for trade agreements (especially with Free Trade Agreements), while the Ministry of Health must primarily ensure the health of consumers.
- The role of the IBFAN network (International Baby Food Action Network) has been fundamental in bringing to light the problem posed by the indiscriminate and aggressive advertising of breast milk substitutes and its negative impact on breastfeeding, as well as in deepening the processes of implementing the Code.
- Health Sciences training schools should incorporate into their curricula the treatment of the Code, as part of the development of professional ethics.
- When faced with the possibility of drafting and presenting a bill to parliament  
Regarding the Code, it would be worth considering some aspects:
  - Request technical assistance from PAHO, UNICEF and the IBFAN network.
  - Analyze other laws in the Region, particularly those on which the IBFAN network has provided advice, and keep in mind the Model Law that IBFAN drafted for the Americas.  
Latina2 .
  - Do not forget that the Code and subsequent relevant resolutions form a single body  
body and all of them must therefore also be part of the law.
  - Ensure considerable lobbying capacity to ensure that the spirit in which the bill was drafted is not changed during the legislative process, in line with the Code itself.

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2 Available at [http://www.ibfan-alc.org/nuestro\\_trabajo/archivo/codigo/introduccion-ley-modelo.doc](http://www.ibfan-alc.org/nuestro_trabajo/archivo/codigo/introduccion-ley-modelo.doc) (last accessed 14/04/2011)

## Introduction

“That inadequate feeding practices are the cause of malnutrition, morbidity and mortality of infants in all countries and that incorrect practices in the marketing of infant substitutes Breast milk and related products can exacerbate these important public health problems.”

Preamble to the Code, ASM 34.22 (1981)

The International Code of Marketing of Breast-milk Substitutes, adopted 30 years ago by the World Health Assembly, was created in response to concerns that inappropriate marketing of breast-milk substitutes was causing a large number of infant deaths. The Code and subsequent relevant Assembly resolutions constitute the underlying policies for all efforts to protect, promote, and encourage breastfeeding (*Boxes 1 and 2*).<sup>3</sup> Indeed, on May 21, 1981, the 34th World Health Assembly approved WHA Resolution 34.22 by 118 votes in favor, one against (USA), and three abstentions (Argentina, Korea, and Japan). This resolution gave rise to the document that emerged from a 1979 technical consultation and was reviewed and discussed by scientists, politicians, consumer groups, and representatives of infant food manufacturers and distributors.

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It is worth noting that only five of the 16 countries with law have regulations for it, which implies a very low possibility of effective application of it.

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Since the law's enactment, Latin America and the Caribbean have stood out as the region that began implementing it the earliest. Thus, Nicaragua in 1981, the Republic of Peru in 1982, and Guatemala a year later became pioneers worldwide in having national laws related to the Code (Figure 1). But even more surprising is that a year before its entry into force, that is, in 1980, Colombia, through its Ministry of Health, issued Decree 1220, which *"regulates the promotion, labels, packaging, and containers of foods that substitute and complement breast milk,"* inspired by drafts already circulating in diplomatic circles.

In the Latin American and Caribbean Region, the Pan American Health Organization (PAHO/WHO) together with the United Nations Children's Fund (UNICEF) has always supported Member States in implementing and monitoring the Code. Furthermore, the activity of local groups and the regional network IBFAN (International Baby Food Action Network) has been and continues to be highlighted, and its members have been involved in

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<sup>3</sup> In this publication, the word “Code” shall be understood to mean, whenever it appears, the set of regulations composed of the International Code of Marketing of Breast-milk Substitutes itself, as well as all relevant resolutions of the World Health Assembly.

very effective way in national monitoring processes but also in legislation and application processes effective implementation of regulations relating to the marketing of breast milk substitutes.

This document discusses some experiences and lessons learned in the 30 years since the Code was approved regarding the application of sanctions and other legal remedies to companies that have violated the Code in Spanish- and Portuguese-speaking countries in the region.

In another order, the evolution of Member States' behavior with respect to the Code and its subsequent relevant resolutions of the World Health Assembly (WHA) is analyzed, as well as its status in each country.

But it also includes testimony from eyewitnesses of those memorable sessions of May 1981, in which the final text of the Code was finally approved by an overwhelming majority.

We can now say that the Latin American and Caribbean region is witnessing intense activity in implementing measures related to the Code. Thus, upon reaching its 30th anniversary, the Code has been incorporated as a law covering all or almost all of its aspects in seven countries (Brazil, Costa Rica, Guatemala, Panama, Peru, the Dominican Republic, and Venezuela); as a law covering many aspects of the Code in six others (Argentina, Bolivia, Colombia, Mexico, Nicaragua, and Uruguay); and as a law covering some aspects of the Code in three (Cuba, Paraguay, and Puerto Rico); while three others have a code or voluntary policy (Chile, Ecuador, and Honduras); and only one (El Salvador) has some measures drafted but not yet enacted (Table 1) . *4 However, it is worth noting that only five of the 16 countries with a law have regulations, which implies a very low possibility of its effective implementation.*

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4 Original classification of the International Code Documentation Centre (ICDC-IBFAN). See Table 1.

## Box 1. Summary of the International Marketing Code of Breast Milk Substitutes<sup>5</sup>

1. Objectives	Protect and promote breastfeeding through appropriate marketing and distribution of breast milk substitutes.
2. Scope	<p>The Code applies to breast-milk substitutes when they are marketed or otherwise indicated as suitable for use as a substitute for breast milk in part or in whole.</p> <p>Breast milk substitutes include foods and drinks such as:</p> <ul style="list-style-type: none"> <li>• infant formula</li> <li>• follow-up milks</li> <li>• other dairy products             <ul style="list-style-type: none"> <li>• teas and juices for babies</li> </ul> </li> <li>• cereals and vegetable mixes</li> </ul> <p>It also applies to baby bottles and teats.</p> <p>Since exclusive breastfeeding is recommended for 6 months<sup>6</sup>, all foods Complementary foods marketed or otherwise presented for use before six months of age are breast milk substitutes.</p>
3. Advertising:	No consumer advertising of the above-mentioned products is permitted.
4. Samples:	Samples are not permitted for mothers, their families, or health workers.
5. Health Services: No commercial	promotion of products in health services, i.e., no product displays, posters, calendars, or distribution of promotional materials. "Maternity nurses" or similar personnel paid by companies may not be used.
6. Health care workers: Gifts or	samples may not be given to health care workers. Product information that is given to them must be objective and scientific.
7. Donations or su-free ministers:	Donations or low-price sales of breast milk substitutes are not permitted anywhere in the health care system. <sup>7</sup>
8. Information:	Informational and educational materials should explain the benefits of breastfeeding and the health risks associated with bottle feeding, as well as the cost of using infant formula.
9. Tags:	Product labels must clearly state the superiority of breastfeeding, the need to consult a health professional before using the product, and contain warnings about health risks. They must not contain images of babies or other objects, nor carry text that idealizes the use of infant formula.
10. Quality:	Unsuitable products, such as sweetened condensed milk, should not be promoted for infants. All products must be of high quality (Codex standards). Alimentary and take into account the climatic and storage conditions of the country where are used.

<sup>5</sup> Source: ICDC-IBFAN.

<sup>6</sup> ASM 54.2 at [http://www.who.int/nutrition/topics/WHA54.2\\_itycn\\_sp.pdf](http://www.who.int/nutrition/topics/WHA54.2_itycn_sp.pdf) (last accessed: 24/03/11)

<sup>7</sup> ASM 47.5 at [http://www.who.int/nutrition/topics/WHA47.5\\_itycn\\_sp.pdf](http://www.who.int/nutrition/topics/WHA47.5_itycn_sp.pdf) (last accessed: 03/24/11)

## Box 2. Summary of relevant World Health Assembly Resolutions on Infant and Young Child Nutrition

8

Year	Number	Relevant content of the Resolution
1981	WHA34.22	<p>• Adoption of the Code by the AMS. (118 votes in favor, 1 against, 3 abstentions)</p> <p>• Adoption and compliance with the Code are a minimum requirement. Member States are urged to integrate the Code into its national legislation or regulations or to take other appropriate measures to implement it.</p>
1982	WHA35.26	<p>• Recognizes that the commercial promotion of breast milk substitutes contributes to a increase in artificial feeding and calls, once again, on Member States to ensure compliance with the Code at national and international levels.</p>
1984	WHA37.30	<p>• Requests the Director-General to collaborate with Member States in implementing and monitoring the compliance with the Code and to study the issue of the promotion and use of foods that are unsuitable for infants and young children.</p>
1986	WHA39.28	<p>• Urges Member States to ensure that small quantities of medicine substitutes are breast milk that is needed for a small number of infants is obtained through normal institutional purchasing channels and not through free or subsidized supplies related.</p> <p>• Calls on Member States to pay attention to the following:</p> <p>• That any food or drink given to the baby before complementary feeding is nutritionally necessary as it can interfere with breastfeeding, and its use should not be promoted or encouraged during that period.</p> <p>• That the practice of giving infants follow-up milk is not necessary.</p>
1988	WHA41.11	<p>• Requests the Director-General to provide legal and technical assistance to Member States for the drafting and implementation of national measures to give effect to the Code.</p>
1990	WHA43.3	<p>• Draws attention to the Joint WHO/UNICEF Declaration on "The Protection, Promotion and Support of Breastfeeding: The Special Role of Maternity Services" which was the basis of the Baby-Friendly Hospital Initiative, launched in 1992.</p> <p>• Urges Member States to ensure that the principles and objectives of the Code are given full expression in national health and nutrition policies and activities.</p>
1994	WHA47.5	<p>• Reiterates the call made in 1986, 1990 and 1992 for an end to "free supplies" cough or subsidized" and extends the prohibition to all services within the health care system. This replaces the provisions of Article 6.6 of the Code.</p> <p>• Provides guidelines for the donation of breast milk substitutes in situations of emergency.</p>
1996	WHA49.15	<p>• Requests Member States to ensure that:</p> <ol style="list-style-type: none"> <li>1. Complementary foods are not marketed or used in a way that could undermine exclusive and sustained breastfeeding.</li> <li>2. Any financial support given to health professionals will not create conflicts of interest.</li> <li>3. Monitoring compliance with the Code is carried out independently, transparently, and free from commercial interests.</li> </ol>
2001	WHA54.2	<p>• Establishes the worldwide recommendation of exclusive breastfeeding for "6 months", with introduction subsequent introduction of complementary foods and continued breastfeeding until two years or more.</p>
2002	WHA55.25	<p>• Approves the Global Strategy for Infant and Young Child Feeding, which limits the role of companies to:</p> <ol style="list-style-type: none"> <li>1. Ensure the quality of their products, and</li> <li>2. Comply with the AMS Code and relevant resolutions, in addition to national measures.</li> </ol> <p>• Recognizes the role of optimal infant feeding practices in reducing risk of obesity.</p> <p>• Warns that micronutrient interventions should not undermine breastfeeding.</p>

→  
Continued

## Box 2. (Continued)

Year	Number	Relevant content of the Resolution
2005	WHA58.32	•Requests Member States to: 1. Ensure that no claims are made regarding nutrition and health information on labels or information on breast milk substitutes, unless authorized by national legislation. 2. Be aware of the risk of intrinsic contamination of the powdered infant formulas and ensure that they are declared on labels. 3. Ensure that financial support and incentives for programs and health professionals working in the field of infant and young child feeding do not create conflicts of interest.
2006	WHA59.11	•Member States should ensure that the response to the HIV pandemic does not include donations of breast milk substitutes or their promotion that do not comply with the provisions of the Code.
2006	WHA59.21	•Commemorates the 25th anniversary of the adoption of the Code. Applauds the Innocenti Declaration 2005 and requests WHO to mobilize technical assistance for the implementation of the Code and its surveillance.
2008	WHA61.20	Urges Member States to: <ul style="list-style-type: none"> <li>•Redouble efforts to implement and monitor national measures and to prevent conflicts of interest.</li> <li>•Investigate the safe use of donated breast milk to human milk banks for children vulnerable, respecting national legislation and religious and cultural beliefs.</li> </ul>
2010	WHA63.23	•Develop and/or strengthen effective legislative, regulatory or other measures to control the marketing of breast milk substitutes. <ul style="list-style-type: none"> <li>•Ensure that nutritional and health claims will not be allowed for foods for infants and young children.</li> <li>•Urges infant food manufacturers and distributors to fully comply with their responsibilities under the Code.</li> <li>•Support Member States in their efforts to develop and/or strengthen effective measures of a legislative, regulatory or other type of marketing control of substitutes from breast milk.</li> </ul>

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8 Source: ICDC-IBFAN

**Table 1. Status of the Code in Latin American countries, 2011**

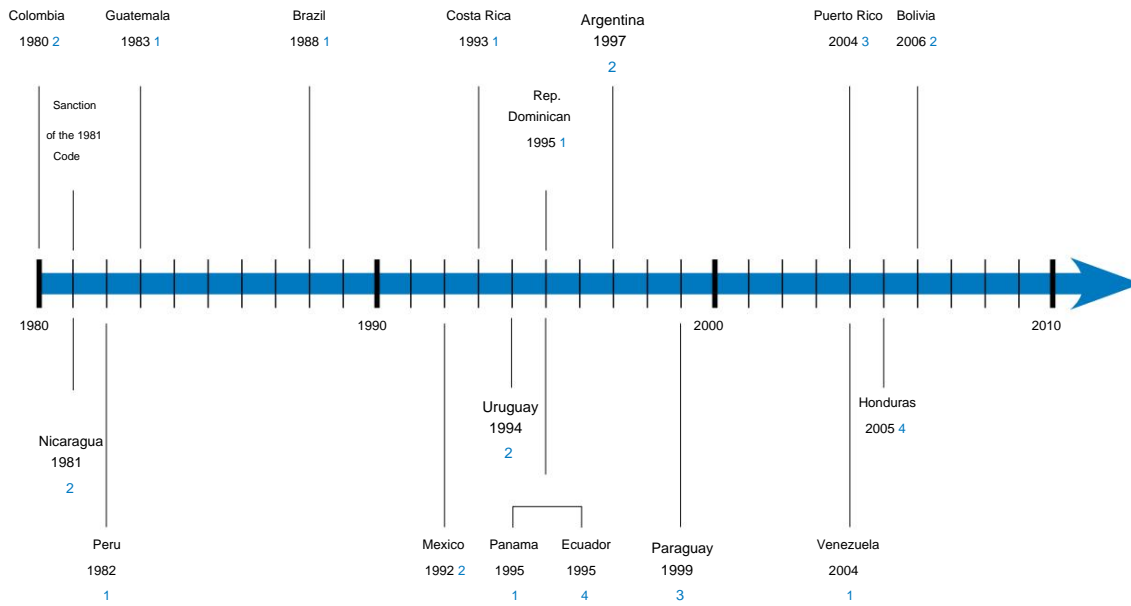
Country	Legal framework	Category ICDC9	Regulation	Last monitoring	Sanctions applied
Argentina	Resolution 54, 1997	2	NO	2007	NO
Bolivia	Law 3460, 2006	2	YEAR	2008	NO
Brazil	Law 8069/90, 2001	1	YEAR	2010	YEAR
Chili	Some provisions in other laws	4	NO	1999	NO
Colombia	Decree 1397, 1992	2	NO	2003	NO
Costa Rica	Law 7430, 1994	1	YEAR	2005	YEAR
Cuba	A stranger	3	?	?	?
Ecuador	Law 101, 1995	4	YEAR	2009	NO
El Salvador	Some provisions in other laws	7	NO	2010	NO
Guatemala	Decree Law 66, 1983	1	YEAR	2008	YEAR
Honduras	Agreement 4780, 2005	4	NO	2005	NO
Mexico	Some provisions in other laws	2	NO	2009	NO
Nicaragua	Law 295, 1999	2	NO	2010	?
Panama	Law 50, 1995	1	NO (in process)	2010	NO
Paraguay	Law 1478, 1999	3	NO	2010	NO
Peru	Decree 009-2006-SA	1	NO	2010	YEAR
Puerto Rico	Law 79, 2004	3	NO	2010	NO
Dominican Republic	Law 8-95, 1995	1	YEAR	2007	YEAR
Uruguay	Decree 315, 1994	2	NO	2008	NO
Venezuela	Law, 2007	1	NO (in process)	2010	YEAR

9 The International Code Documentation Centre, ICDC-IBFAN, periodically publishes a State of the Code by Country, which ranks countries according to their degree of implementation of the Code, on a scale of 1 to 9.

This table lists the countries in the Latin American region based on that classification: 1. The law covers all or almost all aspects of the Code 2. The law covers many aspects of the Code 3. The law covers some aspects of the Code 4. There is a code or voluntary policy

7. Measure drafted but not yet decreed

**Figure 1. The Code in Latin American countries:  
its adoption over time**



- References
- 1 - The law covers all or almost all aspects of the Code
  - 2 - The law covers many aspects of the Code
  - 3 - The law covers some aspects of the Code
  - 4 - There is a voluntary code or policy
  - 7 - Measure drafted but not yet decreed

The graph shows, in a timeline, the year in which each of the countries in the region for which precise data is available passed its first national standard (regardless of its rank) related to the Code. In the case of Chile, Cuba, and El Salvador, it was not possible to obtain more precise information about the reference date.



## Methodology

Given the accumulated experience with the Code's birth, implementation, and subsequent monitoring by the IBFAN network, as well as its particular insertion into the political processes that drove its implementation in each country, it would be impossible to ignore it as a central source of information for this work. This is even more so since the implementation of the Global Breastfeeding Trends Initiative (WBTi)<sup>10</sup>.

through whose instruments national processes of analysis and discussion could be generated regarding the particular situation of each component of the Global Strategy for Infant and Young Child Feeding<sup>11</sup> approved by the WHA in 2002.

Thus, a round of expert consultations was held, targeting the national coordinators of the IBFAN network in the countries of the region, as well as other prominent figures, some of whom were members of the IBFAN Policy Committee for Latin America and the Caribbean. They were asked to respond to a brief questionnaire that included five points:

1. Experiences and lessons learned from applying sanctions and judicial processes to companies that violate the Code or national law.
2. Examples of letters sent to companies to point out their violations
3. Evolution of the country in terms of its position with respect to the Code and subsequent resolutions.
4. Year of last monitoring.
5. Data on the Law (No., year) and its Regulations (yes/no).

A thorough Internet search was also conducted, targeting Ministries of Health and other government departments in the countries of the Region that contained information on regulations governing the marketing of breast milk substitutes.

A third source of consultation were the documents and memoirs of the Consultant himself, accumulated in three decades of work on the subject.

In addition, questionnaires were sent to two personalities who were part of the discussions. nes that, within the 34th AMS, gave rise to the final text of the Code.

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<sup>10</sup> See: <http://www.worldbreastfeedingtrends.org/> (last consulted 04/09/2011)

<sup>11</sup> Available at: [http://www.who.int/nutrition/publications/gi\\_infant\\_feeding\\_text\\_spa.pdf](http://www.who.int/nutrition/publications/gi_infant_feeding_text_spa.pdf) (last consulted 04/09/2011)



## The Code of Marketing of Substitutes Breast Milk: A Brief History<sup>13</sup>

“Without NGOs... there would never have been a Code. The WHO simply  
I wouldn't have had the courage to go on.”

Dr. Halfdan Mahler, former Director-General of WHO <sup>12</sup>

As in few other areas of research, there are thousands of studies that demonstrate the inescapable differences and results between breastfeeding and bottle feeding. Perhaps this enormous scientific output has been a necessary response to the historical human tendency to develop alternative feeding methods from the very beginning of life.

Not to delve into the long history of infant nutrition, we'll say that by the end of the 19th century, baby food was already being sold in Argentina and Mexico, within our region, and that, during the early years of the 20th century, what was initially conceived as a product for infants who could not breastfeed for very specific reasons, quickly transformed into a multi-million dollar business, not always linked to health protection. So much so that in 1939, Cicely Williams, a prominent Jamaican pediatrician, made a harsh case against the companies in her lecture titled "Milk and Murder," after witnessing how young children were becoming ill and dying from consuming sweetened condensed milk, which at that time (and for many decades to come) was commonly recommended as suitable for feeding young infants.

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In 1939, Cicely Williams, a notable Jamaican pediatrician, made a strong case against the companies in her lecture entitled "Milk and Murder" after seeing how children were getting sick and dying from consuming contaminated milk. sugary soda.

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By the 1960s, the negative impact of these marketing policies was already evident on the prevalence of breastfeeding (and on child health) around the world. Derrick Jelliffe coined the name "Commercialogenic Malnutrition" as a medical diagnosis that summarizes the novel origin of an old pathology, and which he would use a few years later as the title of a publication. In 1974, "The Baby Killer" was published as a result of a report on two pediatricians with extensive experience working in Africa who also denounced the aberrant marketing strategies of infant formula companies.

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12 Allain A. Fighting an old battle in a new world. How IBFAN monitors the baby food market. Uppsala: Dag Hammarskjöld Foundation, 2005. p 3.

13 Extracted from Vallone Fernando. Small, big customers: advertising of breast milk substitutes in Two Argentine pediatric journals from 1977 to 2006. Salud colectiva [online journal]. 2009 Apr [cited 2011 Apr 21]; 5(1): 87-105. Available at: [http://www.scielo.org.ar/scielo.php?script=sci\\_arttext&pid=S1851-82652009000100006&lng=es](http://www.scielo.org.ar/scielo.php?script=sci_arttext&pid=S1851-82652009000100006&lng=es).

In 1978, U.S. Senator Kennedy conducted an investigation into formula marketing practices in developing countries in the U.S. Congress and called on representatives of the largest infant formula companies. 14 The following years were marked by complaints, hearings, rulings, and sanctions of various kinds, but it was already clear that unscrupulous infant food marketing practices would inevitably lead to some form of regulation.

When the WHO convened a meeting of experts in 1979 to update its recommendations on Infant and Young Child Feeding, it could only discuss the draft of what would be approved two years later (in May 1981) by the 34th World Health Assembly as the International Code of Marketing of Breast-milk Substitutes. By then, marketing policies for infant foods had frighteningly surpassed the limits of what was imaginable.

The Code was drafted in collaboration with the infant formula industry.

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The fact that so many resolutions have been passed, and that this amendment process seems endless, speaks to how difficult it is to prevent harmful practices.

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The WHA passed a series of subsequent resolutions to strengthen the Code and in response to the use of clever new marketing practices aimed at increasing sales outside the Code's original scope. The fact that so many resolutions have been passed, and that this amendment process seems endless, speaks to how difficult it is to prevent harmful practices. However, the continued and transparent application of the Code by governments and compliance with it by food companies could also bring benefits to the companies themselves.

For example, they would all be on a level playing field when competing with each other, as there would be a common ground represented by the Code itself.

They could exploit their actual compliance with the law through publicity, and their public image would improve. They could secure better investments for their companies, given published rankings such as the *Corporate Hall of Shame*<sup>15</sup>, which many shareholders consult before deciding on their future investments. They would be able to reduce their costs by stopping the huge investment in advertising and other prohibited forms of promotion. They would prevent the spread of boycotts organized by consumer groups, such as the one against Nestlé that has been going on for over 30 years. 16 They would truly fulfill their social responsibility and could positively impact public health and food and nutritional safety policies.

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14 Nestle M. *Food Politics: How the Food Industry Influences Nutrition and Health*. Berkeley: University of California Press; 2002. See Senator Kennedy's investigation at [http://www.youtube.com/watch?v=1-\\_yitXcHU0](http://www.youtube.com/watch?v=1-_yitXcHU0).

15 Available at <http://forums.industryweek.com/showthread.php?t=1579> (last accessed 04/21/2011)

16 See [http://en.wikipedia.org/wiki/Nestl%C3%A9\\_boycott](http://en.wikipedia.org/wiki/Nestl%C3%A9_boycott) (last accessed 21/04/2011)

## The risks of not breastfeeding for babies and mothers

“If a new vaccine were to become available that could prevent a million deaths per year or more infant deaths, which was also low cost, safe, administered orally, and that did not require a cold chain, it would become an immediate public health imperative.

Breastfeeding can do all this and more.....”

Lancet 1994;344:1237-41

### The risks of not breastfeeding for babies and mothers

Breastfeeding promotes infant survival, health, and brain and motor development. While breastfeeding provides lifelong benefits to both mother and child, the risks of not breastfeeding are much more pronounced in childhood. Not breastfeeding carries greater risks:

•For babies:

o **Dying:** During the first two months of life, infants who are not breastfed are nearly six times more likely to die from infectious diseases than breastfed infants; between 2 and 3 months, non-breastfed infants are four times more likely to die than breastfed infants. Even at 9-11 months, non-breastfed infants are 40% or more more likely to die than breastfed infants.<sup>17</sup>

o **Suffering from acute illnesses:** such as diarrhea, respiratory infections, middle ear infections and others in both developed and developing countries<sup>18</sup>.

o **Suffering from chronic diseases:** In adulthood, people who who have been breastfed have lower blood pressure, serum cholesterol and type 2 diabetes.<sup>19</sup> Many studies, although not all, have also shown that there is a lower risk of overweight and obesity.

o **From a lower development of their intelligence:** Longer breastfeeding duration,

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Breastfeeding

shows that it improves IQ in

an average of 6 points.

While this is important for the child individually, a national increase final IQ

It has benefits for national development and economic competitiveness.

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<sup>17</sup> WHO Collaborative Study Team. The role of breastfeeding on the prevention of child mortality due to infectious diseases in developing countries: a pooled analysis. Lancet. 2000;355:451-5.

<sup>18</sup> Ip et al., Breastfeeding and maternal and infant health outcomes in developed countries. Evidence Report/Technology Assessment. 2007(153):1-186.

<sup>19</sup> Horta et al., Evidence on the long-term effects of breastfeeding. Systematic reviews and meta-analysis. Geneva: World Health Organization; 2007.

compared to one lasting less than a month, shows that the IQ improves by an average of 6 points<sup>20</sup>. While this is important for the individual child, a national increase in IQ has benefits for national development and economic competitiveness.

•For mothers:

- o **Suffering from breast and ovarian cancer:** Breastfeeding benefits the mother by reducing the risk of suffering from ovarian cancer and premenopausal breast cancer<sup>21</sup>.
- o **Type 2 diabetes:** In a study of two large cohorts of women conducted in the United States, a 15% reduction in the risk of diabetes was found for each year of breastfeeding<sup>22</sup>.
- o **Overweight after childbirth:** Breastfeeding helps the mother lose weight after childbirth, particularly during the period of exclusive breastfeeding<sup>23</sup>.
- o **Anemia:** A longer period of amenorrhea also favors the replenishment of the mother's iron stores, which were diminished or consumed during pregnancy and childbirth; therefore, the risk of anemia is reduced.<sup>24</sup>
- o **Short birth intervals in the absence of modern contraceptives:** Breastfeeding prolongs postpartum amenorrhea and, in the absence of modern contraceptives, prolongs the birth interval<sup>25</sup>.

The WHO recommends:

- early initiation of breastfeeding, within the first hour of birth;
- exclusive breastfeeding (defined as not ingesting water, other liquids or food) cough) for six months (180 days);
- uninterrupted breastfeeding for two years or more, with the timely, appropriate and safe addition of complementary foods, supplied correctly.

As infant mortality declines, the proportion of mortality occurring during the neonatal period increases. This justifies the particular importance of implementing interventions aimed at preventing neonatal mortality, in order to achieve the Millennium Development Goal (MDG) related to child survival (Goal 4).

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20 Kramer et al., Breastfeeding and child cognitive development: new evidence from a large randomized trial. *Arch Gen Psychiatry*. 2008;65(5):578-84.

21 Collaborative Group on Hormonal Factors in Breast Cancer. Breast cancer and breastfeeding: collaborative reanalysis of individual data from 47 epidemiological studies in 30 countries, including 50302 women with breast cancer and 96973 women without the disease. *Lancet*. Jul 20 2002;360(9328):187-95.

22 Stube et al., Duration of lactation and incidence of type 2 diabetes. *JAMA* 2005; 294 (20):2601-2610.

23 Hatsu et al., Effect of infant feeding on maternal body composition. *Int Breastfeed J*. 2008;6(3):18-.

24 Chaparro and Lutter. Beyond survival: Comprehensive practices during childbirth care, beneficial for nutrition, and the health of mothers and children. Washington DC: Pan American Health Organization; 2007.

25 Kennedy and Visness. Contraceptive efficacy of lactational amenorrhea. *Lancet*. Jan 25,1992 339(8787):227-30.

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## Breastfeeding

It helps the mother lose weight after giving birth, particularly during the period breastfeeding an exclusive.

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Early initiation of breastfeeding and exclusive breastfeeding for the first six months of life can make the greatest contribution to reducing neonatal and early childhood mortality, thereby advancing progress towards achieving MDG 4. Furthermore, breastfeeding contributes to all the other MDGs (Box 3).

Although breast milk is important for all babies, it is even more important for those born prematurely, very small, and/or at high risk. Human milk banks, where donor milk is pasteurized to ensure its biosafety, can play an important role in feeding high-risk newborns. Under the leadership of the Brazilian government and in collaboration with PAHO and UNICEF, the Latin American network of Human Milk Banks is expanding.

Promoting breastfeeding is one of public health's best bets. It has an enormous impact on reducing infant morbidity and mortality, as well as preventing chronic non-communicable diseases in both the infant and the mother. It is also highly sensitive to change as a result of public health interventions. Research has shown that individual maternal behaviors can be favorably modified, and that these individual changes collectively contribute to a positive national trend in breastfeeding patterns.

In the Americas, there is considerable room for improvement in the timing of breastfeeding initiation, exclusive breastfeeding, and continued breastfeeding (Table 2). While almost all newborns, including those delivered by cesarean section, can be placed at the breast within the first hour of life, the current rate of breastfeeding ranges from 26% to 79%. Exclusive breastfeeding, one of the key family practices promoted by PAHO/WHO and UNICEF, also has low coverage; in many countries, it ranges from only 8% to 64%. Urgent action is needed to ensure that virtually all infants are placed at the breast within the first hour of birth, that they are exclusively breastfed for the first six months of life, and that breastfeeding continues.

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In the Americas, there is a ample space for better-rare the start time from breastfeeding, exclusive breastfeeding goes and breastfeeding continued.

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26 Lutter et al., Backsliding on a key public health intervention: the case of breastfeeding promotion. Amer J Public Health. 2011 (to be published).

**Table 2. Breastfeeding indicators: results of the latest survey**

Country	Year	Early initiation of breastfeeding (during the 1st hour of life) (%)	Lactation maternal exclusive < 6 months (%)	Average duration of breastfeeding maternal (months)	Reference
Argentina <sup>27</sup>	2006	Not available	55.0	Not available	Ministry of Health, 2010
Bolivia	2008	63.3	60.4	19.4	ENDS, 2009
Brazil	2006	42.9	38.6	14.0	PNDS, 2008
Chili	2010	Not available	43.5	Not available	Ministry of Health, 2008-2010
Colombia	2010	56.6	42.8	17.0	Demographic and Health Survey, 2011
Costa Rica	2006	Not available	10.0	12.0	INEC, 2007
Cuba	2006	Not available	26.4	Not available	Ministry of Public Health, 2006
Ecuador	2004	26.4	39.6	16.2	ENDEMAIN, 2005
El Salvador	2008	33.0	31.4	20.5	FESAL, 2008
Guatemala	2008/09	55.0	49.6	21.0	ENSMI, 2010
Honduras	2005	78.6	29.7	20.3	ENESF, 2006
Mexico <sup>28</sup>	1999	Not available	20.3	9.0	González-Cossío et al., Rev. Salud Public of Mexico. 2003
Nicaragua	2006/07	54.0	30.6	18.4	ENDESA, 2008
Panama	2009	Not available	27.7	6.3	ENASSER, 2010
Paraguay	2008	31.2	25.1	12.1	ENDSSR, 2009
Peru	2004	42.2	63.9	19.6	ENDES Continues, 2004
Puerto Rico <sup>29</sup>	2009	Not available	Not available	Not available	Pediatric Nutrition Surveillance System (PedNSS), US CDC
Dominican Republic	2007	65.2	7.7	10.7	Demographic and Health Survey, 2008
Uruguay	2006/07	60.0	57.1	7.5	Ministry of Public Health, 2007
Venezuela	2007-08	Not available	27.9	4.0	INN, Ministry of People's Power for Health, 2009

<sup>27</sup> The ENNyS (2007) reports that 54.9% of infants are breastfeeding between 12 and 15 months and 28.0% between 20 and 23 months age.

Official data from the 2006 survey have not been officially released. Unofficial data show a slight improvement.

<sup>29</sup> Only 55.3% of babies were ever breastfed. The other indicators were not published by the US CDC due to problems with the quality of sampling.

### Box 3. Breastfeeding and the Millennium Development Goals

#### MDG 1: Eradicate extreme poverty and hunger

The children most vulnerable to stunting are those under two years of age, and unfortunately, the effects of this condition can be irreversible. During this period of life, poor breastfeeding and inadequate complementary feeding put children at risk of malnutrition and the serious consequences this disorder entails. Breastfeeding provides all the energy a child needs for the first six months of life and 35 to 40 percent of the energy requirement in the second year. Furthermore, it is a important source of essential fatty acids, vitamin A, calcium and riboflavin.

#### MDG 2: Achieve universal primary education

Breastfeeding contributes to children's cognitive development and learning skills by providing essential fatty acids, which are vital for the formation and maintenance of myelin in the brain.

#### MDG 3: Promote gender equality

Optimal breastfeeding practices in promoting adequate nutrition for boys and girls will help ensure gender equality from birth through its effects on growth, health, and learning skills.

#### MDG 4: Reduce child mortality

Given the impact that breastfeeding has on reducing neonatal and infant mortality (the most important components of mortality in children under five years of age), the value of its widespread promotion and its protection through national measures in line with the spirit and letter of the Code should not be overlooked.

#### MDG 5: Improve maternal health

For this MDG, too, promoting breastfeeding offers potential to reduce the incidence of anemia, type 2 diabetes, breast and ovarian cancer, obesity, and short birth intervals. Furthermore, breastfeeding exclusive accelerates the mother's postpartum weight loss.

#### MDG 6. Combat HIV/AIDS, malaria and other diseases

A policy for infant and young child feeding is essential to reducing vertical transmission of HIV, whether through avoiding breastfeeding or providing antiretrovirals to breastfeeding women living with HIV. See Frequently Asked Questions About the Code (Annex 1).

#### MDG 7: Ensure environmental sustainability

Breastfeeding increases family and national resources; it is a safe and environmentally friendly way of feeding. It does not require the use of natural resources for its manufacture and transportation. It is associated with environmental sustainability because it does not require dairy industry products (milk, bottles, pacifiers, etc.). Fuel for food preparation (wood or gas) requires fewer pharmacists and health equipment because children get sick less and it doesn't mean tons of cans and bottles to throw away.

#### MDG 8: Develop a global partnership for development

Ensuring optimal nutrition for infants and young children requires multisectoral work that includes government, civil society, and the private sector. At the same time, it ensures that all children in the world will have the opportunity to develop their full human potential, contributing to a global and developed society.

## 30 years after the historic 34th World Health Assembly, Reflections by Dr. Stephen Joseph

Dr. Stephen Joseph, pediatrician, is a member of the U.S. National Academy of Sciences (National Academy of Sciences) and member of the Board of Directors of the African Medical Research Steering Committee (African Medical Research Board). He was a Director of the American Public Health Association and the National Council for International Health. Currently living in the state of New Mexico, USA

"I was the Assistant Administrator for Technical Cooperation at the Agency for International Development (USAID) from President Carter's administration to President Reagan's new administration. Essentially, I was the Agency's highest-ranking health official."

The new Administration, under pressure from Nestle and the baby food industry, reversed the Carter Administration's position of support for the WHO Code.

Because I felt that this position was completely incompatible with my position at USAID and my responsibilities as a physician and pediatrician, I (and my colleague Tony Babb) announced that we were resigning from our government positions in protest if the U.S. did not endorse the Code at the World Health Assembly.

I was a member of the U.S. delegation to the World Health Assembly in 1981 and several years prior. The U.S. opposed the Code's adoption (with three abstentions). I continued my statements before the vote and resigned from my position. This became a public fact, and I hope I helped draw attention to the importance and urgency of protecting breastfeeding and the Nestlé boycott.

You can find the mini-story in the memoirs of the New York Times, the Washington Post, and elsewhere.

That was many years ago and unfortunately, companies producing breast milk substitutes have taken advantage of the HIV/AIDS epidemic to push back the promotion of breastfeeding<sup>31</sup>.



31 Interview conducted via email on 04/23/2011

## National experiences

"It is not enough for a country to have adhered to the Code if this is not reflected in a national law. It is not a national law is not sufficient if it is not properly regulated to make its application effective. A regulated law is sufficient if there is no systematic monitoring of trading practices. cialization of baby food in order to assess its compliance. It is not enough for a law to be regulated and its compliance is systematically monitored if there is no enforcement body sanctions and the political will to implement them."

Pan American Health Organization, 2011

### Argentina

**Legal Framework: Resolution 54, 1977**

**ICDC-IBFAN Category: 2. The law covers many aspects of the Code**

**Regulation: NO**

**Last monitoring: 2007**

**Sanctions applied: NO**

Argentina was, as previously stated, the only Latin American country that abstained from voting on Resolution WHA34.22 of May 1981, which sanctioned the validity of the International Code.

However, a year later, the Argentine Society of Pediatrics signed the then-called "Code of Ethics for the Marketing of Infant Formulas," whose counterpart was a group of companies in the infant food sector. This established certain conditions to be met in the marketing of breast milk substitutes based on what the Code itself declared. However, point 2.1 of this document states verbatim that "*Advertising promotion, whether individual or collective, of these products is not permitted, **except for professionals and in scientific publications and events***" (emphasis added).<sup>32</sup> But beyond this commitment, as we will see, the companies do not appear to have changed their marketing practices.

Furthermore, the country has had a law since 1969<sup>33</sup> regulating food production and marketing within the framework of the Argentine Food Code. Article 20 of this law stipulates that "*the National Executive Branch, together with its National Health Authority, must maintain all regulations pertaining to this legal framework up to date by means of resolution.*" Thus, although there is no specific law on the subject to date, the Code has achieved a certain legal status, which we will briefly explain below.

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<sup>32</sup> Code of Ethics for the Marketing of Infant Formulas. Arch Arg Ped 1982; 80(3): 387-389.

<sup>33</sup> Argentine Food Code. Law No. 18,284. Buenos Aires, Argentina: Official Gazette, 1971. (Sept. 20, 1971).

In 1997, the then Minister of Health signed Resolution 54/97, by which approves the Code's validity in the country. Although it would seem that, in view of the aforementioned text of the law, this Resolution should have become part of the body of the law, a new administrative measure was necessary to make this happen; this was the Joint Resolution of the Secretariat of Health Policies, Regulation and Relations and the Secretariat of Agriculture, Livestock, Fisheries and Food (No. 97/2007 and 301/2007, respectively), published in the Official Gazette on July 11, 2007. Thus, the Code became part of Chapter XVII of the Argentine Food Code (although there are currently no specific regulations for its application). Its supervisory body is the National Food Institute (INAL) and the provincial Ministries of Health are responsible for food safety.

Thus, the National Food Institute is the entity responsible for authorizing new products, which includes their labeling. When accessing the National Food Institute's website, one can access a form suitable for filing complaints about the quality and safety of foods (which include breast milk substitutes by default), although nothing is reported regarding other aspects of their marketing. Thus, some measures taken in this regard can be counted, such as the recall of Enfamil AR in July 2005 due to contamination with *Enterobacter sakazakii*,<sup>34</sup> of Nutrilón Prematuros (for the same reason) in January 2007,<sup>35</sup> and of a batch of Neocate formula in October 2009,<sup>36</sup> due to unspecified contamination.

In recent years, several bills have circulated in the legislative arena attempting to replace the current weak legal framework regarding the Code. However, to date, none of them have made it to parliamentary debate.

Regarding compliance assessments with the Code and the law, in 1997 the IBFAN network conducted the first and, to date, only national monitoring<sup>37</sup> published individually. Since then, the local group has reported new developments and is included in the regional and global reports the network produces every three years. These reports repeatedly report violations; more recently, in 2009, an investigation was published<sup>38</sup> on advertising for breast milk substitutes in pediatric journals from 1977 to 2006, demonstrating its persistence over 30 years beyond existing codes and laws.

The IBFAN network coordinator in Argentina has conducted sustained direct contact with baby food producers and marketers over the years. While companies typically respond with evasive and roundabout responses, some successful efforts have been noted, such as the withdrawal of a television advertisement for the artificial juice Zuko, which was shown to be bottle-fed.

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34 [http://www.anmat.gov.ar/webanmat/retiros/alimentos/retiros\\_julio\\_2005.asp](http://www.anmat.gov.ar/webanmat/retiros/alimentos/retiros_julio_2005.asp) (last accessed: 03/24/11)

35 [http://www.anmat.gov.ar/webanmat/retiros/alimentos/retiros\\_enero\\_2007.asp](http://www.anmat.gov.ar/webanmat/retiros/alimentos/retiros_enero_2007.asp) (last accessed: 03/24/11)

36 [http://www.anmat.gov.ar/webanmat/Comunicados/Prensa/2009/RETIRO\\_NEOCATE.pdf](http://www.anmat.gov.ar/webanmat/Comunicados/Prensa/2009/RETIRO_NEOCATE.pdf) (last accessed: 03/24/11)

37 Monitoring of the International Code of Marketing of Breast-milk Substitutes, Argentina 1997.

38 Vallone F. Small, big customers. Advertising of breast milk substitutes in two Argentine pediatric journals between 1977 and 2006. *Salud Colectiva*. 2009;5(1):87-105.

### The Nestlé case and its 1+ milk

As the market for milks aimed at infants and young children has been increasing and segmented, and in this sense any product aimed at children from one year of age seems to be (according to the companies' criteria) outside the Code, we find it interesting to comment on the exchange of letters that took place in the years 2000-2001 between the then very active LACMAT Foundation (national coordination of the IBFAN network for many years) and the company Nestlé, regarding the advertising of its product Nido Crecimiento 1+ for children from the age of 18.  
year of life.

The company argued that its product was actually a "dairy food" and not milk, and that, based on the Code's definition of "infant formula," it fell outside the standard because it was available for children over one year of age.

However, despite the fact that Nestlé never gave up on continuing with the advertising, its position was completely ruined by the impossibility of answering a few simple questions from LACMAT:

1. What would be the difference between milk and dairy food, given that the formulation of the product in question is that of fortified milk, and that it is also presented in many advertisements directly as a "milk for children over one year old";
2. that the definition of breast-milk substitute in the Code includes *"any food marketed or otherwise presented as a partial or total substitute for breast milk, whether or not it is suitable for that purpose"*; and
3. It would be necessary to provide scientifically validated information that supports the convenience of feeding a one-year-old child with milk (or *"dairy food"*) of animal origin instead of breast milk, since the provision of this type of food necessarily competes directly with the mother's milk production.

The last monitoring carried out in the country dates back to 2007 and was part of the global report. Breaking the Rules – Stretching the Rules 2007 by ICDC-IBFAN available in electronic format<sup>39</sup>.

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<sup>39</sup> Available at [http://www.ibfan.org/code\\_watch-btr.html](http://www.ibfan.org/code_watch-btr.html) (last accessed 20/04/2011)

## Bolivia

**Legal Framework: Law 3460, 2006**

**ICDC-IBFAN Category: 2. The law covers many aspects of the Code**

**Regulation: YES**

**Last monitoring: 2008**

**Sanctions applied: NO**

In August 2006, after eight long years since its initial proposal, Law No. 3460 on the Promotion of Breastfeeding and the Marketing of Breastfeeding Substitutes was approved. <sup>40</sup> However, no sanctions have yet been applied nor have any legal proceedings been initiated, because the drafting of the law's regulations took more than two years. Work is now underway on a "sanctions regulation," the preliminary version of which is almost ready (March 2011).

Thus, and according to the report *"Look what they're doing! Bolivia VI Monitoring of the International Code of Practice for Breast-milk Substitutes 2008,"* <sup>42</sup> 42 companies continue to systematically violate the Code and national law. According to sources from IBFAN Bolivia, experience shows that the law is a dead instrument if there is no clear political decision to apply it, defining specific norms and regulations in a timely manner to effectively protect families, mothers, and children.

Apparently, letters sent from government agencies to companies that violate the Code and the Law are sporadic, and complaints from the IBFAN Bolivia network are thus left without support.

Bolivia has demonstrated a very positive evolutionary trend in the international arena, supporting various forums such as the World Health Assemblies and even assuming, on some occasions, a leadership role. Also positive has been the support provided for the approval of several subsequent resolutions. Furthermore, Bolivia has attempted to translate its position into concrete national operational strategies and programs to improve breastfeeding and proper nutrition, for example through the "Zero Malnutrition Program," which emphasizes health promotion and breastfeeding, and has approved measures such as "bonuses" to encourage health check-ups for children and their mothers. However, these actions encounter obstacles when there is no necessary continuity to provide an effective legal framework to sanction advertising violations by companies and/or corporations, whose activities undermine the progress of the aforementioned strategies and programs.

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<sup>40</sup> Available at [www.derechoteca.com/gacetabolivia/ley](http://www.derechoteca.com/gacetabolivia/ley) (last accessed: 03/25/2011)

<sup>41</sup> Available at [www.lexivox.org/packages/lexml/buscar](http://www.lexivox.org/packages/lexml/buscar) (last accessed: 25/03/2011)

<sup>42</sup> Publication of IBFAN - AIS - CODEDCO - FUNAVI – Bolivia, with the support of the Ministry of Health and Sports, the National Breastfeeding Committee, IBFAN, ICDC, UNICEF, and PAHO–WHO, available at <http://www.nutrinet.org/services/digital-library/func-startdown/1283/> (last accessed: 03/25/2011)

Finally, it should be noted that the latest monitoring of the marketing practices of the companies producing and marketing baby food dates back to 2008 and is available on the Internet<sup>43</sup>.

## Brazil

**Legal Framework: Law 8069/90**

**ICDC-IBFAN Category: 1. The law covers all or almost all aspects of the Code**

**Regulation: YES**

**Last monitoring: 2010**

**Sanctions applied: YES**

In the same year the Code was approved in 1981, Brazil created the National Breastfeeding Incentive Program (PNIAM), coordinated by the National Institute of Nutrition (INAN) of the Ministry of Health. A few years later, and inspired by the same Code, Brazil approved the Marketing Standards for Infant Foods (NCAL - Resolution of the National Health Council of December 20, 1988).

The Infant Food Marketing Standards were revised into the Brazilian Infant Food Marketing Standard (NBCAL) in October 1992.

According to the Ministry of Health's own website<sup>44</sup>, the Brazilian Standard for the Marketing of Infant Food was a milestone in the history of breastfeeding in Brazil, because it was a legal instrument to regulate the promotion of trade and the proper use of foods sold as substitutes or complements to breast milk, as well as teats, pacifiers and bottles.

Between 1998 and 1999, the Ministry of Health began receiving a growing number of complaints of violations of Resolution 31/92, generally related to the entry of new imported products into the market, in addition to the increasing use of the Internet as a mass promotional medium.

Between 1999 and 2000, the Technical Area of Child Health and Breastfeeding of the Ministry of Health, in order to comply with the recommendations of Art. 11 paragraph 2 of the Code and to achieve the objective set at the World Summit for Children of ending the free distribution of breast milk substitutes in health services, carried out in collaboration with the

IBFAN network, the Public Ministry<sup>45</sup>, PROCON, the State and Municipal Health Secretariats, the Brazilian Society of Pediatrics and the Health Surveillance of the States themselves, courses on the

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<sup>43</sup> Publication of IBFAN - AIS - CODEDCO - FUNAVI – Bolivia, with the support of the Ministry of Health and Sports, the National Breastfeeding Committee, IBFAN, ICDC, UNICEF, and PAHO–WHO, available at <http://www.nutrinet.org/services/digital-library/func-startdown/1283/> (last accessed: 03/25/2011)

<sup>44</sup> Available at [http://portal.saude.gov.br/portal/saude/cidadao/visualizar\\_texto.cfm?idtxt=24231](http://portal.saude.gov.br/portal/saude/cidadao/visualizar_texto.cfm?idtxt=24231) (last accessed: 02/04/2011)

Brazilian Standard for the Marketing of Infant Foods in several of them, accompanied by monitoring compliance with the standard by industries, professionals, and health services.

In 2000, the Ministry of Health's Technical Area for Child Health and Breastfeeding formed a working group to prepare a revised Standard for the Marketing of Infant Food. This standard included experts from the Ministries of Health and Agriculture, the Senate's Parliamentary Advisory Service, the IBFAN network, UNICEF, PAHO, the Brazilian Pediatric Society, the Advertising Self-Regulation Council, the National Institute of Metrology, Standardization and Industrial Quality, representatives of the infant food, pacifier and bottle industries, and breastfeeding program consultants.

The text prepared by the Working Group, following the evaluation of the Technical Area of Child Health, was published as part of Ministerial Order 2051 of 2001 and in part as Resolutions of the Council of the National Health Surveillance Agency (ANVISA), following a public consultation (RDC 221 and 222/2002).

IBFAN continued to provide ongoing support to the National Health Surveillance Agency's training and monitoring efforts. For World Breastfeeding Week 2005, Ordinance GM1449 was published, creating a Working Group to establish criteria for the first official monitoring of the Marketing Standard for Infant and Young Child Food, Pacifiers, and Bottles.

Meanwhile, on January 4, 2006, Law 11,265 was published, regulating the marketing of foods for infants and young children, as well as childcare products. Food companies had 12 months to comply, and those producing teats, pacifiers, and baby bottles had 18 months.

Brazil thus has a rich legal framework for regulating the marketing of baby food, based on the Code but with more detailed definitions and interesting advances. The legal bases on which its Brazilian Standard for the Marketing of Food for Infants and Early Childhood Children, Bicos, Pacifiers and Breastfeeding Products (NBCAL)<sup>46</sup> are based are the Federal Constitution itself, the Child and Adolescent Statute (Law No. 8069/90), and the Consumer Protection and Defense Code (Law No. 8078/90).

A noteworthy case that demonstrates how the control system also works preventively is the introduction of Gerber, a company that sells complementary foods, into the Brazilian market. Historically, the company uses a logo with a baby face, which is famous throughout the world and which caused a lawsuit (with a completely opposite outcome) in Guatemala. When Gerber attempted to enter the Brazilian market, by strict ordinance

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45 The Public Prosecutor's Office is an independent body that does not belong to any of the three branches of government— executive, legislative, or judicial. It enjoys autonomy within the structure of the State. It cannot be abolished, nor can its powers be transferred to another institution. This body's role is to oversee compliance with laws that defend the national heritage and social and individual interests, conduct external oversight of police activity, initiate public prosecutions, and issue recommendations for improving public services. Taken from [http://www.brasil.gov.br/sobre/brasil-1/amazon/Ministerio-Publico/br\\_model1?set\\_language=es](http://www.brasil.gov.br/sobre/brasil-1/amazon/Ministerio-Publico/br_model1?set_language=es) (last accessed 20/07/2011)

26 Available at <http://www.ibfan.org.br/legislacao/index.php> (last accessed: 04/02/2011)

of the Brazilian Standard for the Marketing of Infant Foods (which prohibits images of infants or young children also on labels of transitional foods, which goes beyond the Code itself), the company had to withdraw its position, and its products are now sold in the country without the legendary logo. Similarly, the Oetker firm redesigned the label of its infant tea based on monitoring work carried out jointly by IBFAN Brazil and the Brazilian Institute for Consumer Protection (IDEC).

Also in the case of infant formulas, bottles and teats are no longer advertised on TV, radio, and national magazines, and today all milks in general carry explicit warnings about the risks of using these products on infants. However, there are other examples where regulation seems to be giving way, such as the case of the Isomil teddy bear, previously removed from the label and now replaced. Finally, we will say that the country's latest monitoring dates back to of the year 2010.

## Chili

**Legal Framework: Some provisions in other laws**

**ICDC-IBFAN Category: 4. There is a voluntary code or policy**

**Regulation: NO**

**Last monitoring: 1999**

**Sanctions applied: NO**

The country currently does not have a legal framework regulating the marketing of baby food. While it is true that at the time of writing this report (April 2011) the National Congress was debating a bill on Food Labeling and Advertising<sup>47</sup> that aims to *"establish the provision of clear and simple information about the nutritional composition of foods, facilitating their selection at the time of purchase and encouraging companies to produce healthier foods"*<sup>48</sup>, it was finally approved on April 20, 2011, but subject to the President of the Nation vetoing the article relating to the prohibition of advertising of breast milk substitutes.

We must say that while this is happening, companies persist in violating the Code through a variety of strategies, and due to the legal loophole, they have never been sanctioned. The only monitoring of the Code in Chile dates back to 1999.

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<sup>47</sup> Based on the recommendations of the World Health Organization (WHO) and prepared by a group of national experts, national and renowned international experts

<sup>48</sup> Castillo C. Chilean children have the right to healthy food. Center for Investigative Journalism (online); Available at <http://ciperchile.cl/2011/04/14/los-ninos-chilenos-tienen-derecho-a-alimentos-saludables/> (last accessed 04/15/2011)

## Colombia

**Legal Framework: Decree 1397, 1992**

**ICDC-IBFAN Category: 2. The law covers many aspects of the Code**

**Regulation: NO**

**Last monitoring: 2003**

**Sanctions applied: NO**

In 1980, ahead of the Code's approval in 1981, the government adopted the proposal submitted to the World Health Assembly of that year (which was not approved) and issued Decree 1220 of 1980 through its Ministry of Health, which *"regulates the promotion, labels, packaging and containers of foods that substitute and complement breast milk."*

Later, within the framework of the four-year Plan for the Promotion, Protection and Support of Breastfeeding, Decree 1220 was repealed by Decree 1397 of 1992<sup>49</sup>, which was signed by the then President of the Republic of Colombia, Dr. Cesar Gaviria Trujillo, and the Minister of Health, Gustavo de Roux.

The Ministry of Social Protection currently has a proposal to update Decree 1397 of 1992, incorporating subsequent World Health Assembly resolutions, international experiences with this regulation, and lessons learned from subsequent Code monitoring. The IBFAN network is supporting the Ministry to ensure this initiative completes the legal process for approval.

Within the framework of successive international monitoring of the IBFAN network, Colombia has carried out I have carried out three evaluations of the Code and of what concerns Decree 1397 of 1992 of the Ministry of Health, which subscribes to it and regulates the marketing of infant formula and breast milk supplements.

The monitoring activities have been endorsed by the Ministry of Health (now the Ministry of Social Protection), the National Institute for Food and Drug Surveillance, and UNICEF, and have received technical support from the International Network of Baby Food Workers (IBFAN). IBFAN Colombia reports its results to the authorities designated as responsible for food standards and inspection, surveillance, and control in the country.

As a noteworthy fact, the letter sent by the IBFAN Colombia Coordination to the Food and Drug Surveillance Institute is mentioned, presenting the complaint of the linked sale of the Similac Advance product by the Abbott Company. This product, called 1 Infant Formula with Iron, indicated for babies from 0 to 5 months, is accompanied by a gift

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<sup>49</sup> Available at [http://www.presidencia.gov.co/prensa\\_new/decretoslinea/1992/agosto/24/dec1397241992.doc](http://www.presidencia.gov.co/prensa_new/decretoslinea/1992/agosto/24/dec1397241992.doc) (latest consulted 15/04/2011)

of another 8 oz Similac Advance infant formula with iron and indicated for babies from 0 to 5 months "Ready to use, do not add water." However, IBFAN Colombia does not know the answer to this question. request.

Another notable event resulting from the 2000 Code Monitoring was the meeting held by the Ministry of Social Protection and the National Institute for Food and Drug Surveillance (INFDA) to the baby food industry, including Nestlé, Wyeth, and Abbott. The meeting's objective was to draw attention to the use of inserts and folding cartons in baby food packaging that promote other products produced by the same company. IBFAN Colombia provided technical support at the meeting, presenting evidence of violations of the Code and Decree 1397/92 in order for the health authorities to take the appropriate measures. As a result of the meeting, the INFDA determined that packaging should not promote other products produced by the companies, as this type of advertising is prohibited in the country. The Food and Drug Administration (FDA) has given the baby food industry a six-month deadline to withdraw this advertising. According to IBFAN, this measure does not amount to a sanction.

There are no clear sanctions or legal proceedings in the country against companies that violate the Code, given that Decree 1397/92, which regulates advertising of children's food, only contemplates sanctions related to good manufacturing practices.

Noncompliance with the Code and Decree 1397/92 is consistently confirmed, with the continued provision of samples and donations of infant formula to health institutions, sponsorship of events and conferences, and point-of-sale advertising, among others.

While control measures are weak in the country, this is not the case for surveillance activities in which civil society, especially the community, educational agents, and health professionals, has been participating. It is also important to highlight the political will to comply with the Code and Decree 1397/92, expressed in policies, plans, and programs across the country. At the national level, the Ten-Year Breastfeeding Plan 2010-2019 is in place.

202050 "A public imperative for the protection and adequate nutrition of children under two years of age, from the Ministry of Social Protection."

Among the specific objectives of the Plan is mentioned "Consolidate the regulatory framework related to breastfeeding and its articulation with policy developments in early childhood and food and nutritional security". One of its Goals indicates the design of a "System of surveillance and control of violations of the Code of Breast Milk Substitutes, implemented with social participation and operating by 2015". Among the actions are described-

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50 Available at [http://www.google.com/url?sa=t&source=web&cd=5&ved=0CDUQFjAE&url=https%3A%2F%2Fwww.icbf.gov.co%2Ficbf%2Fdirectorio%2Fportal%2Flibreria%2Fpdf%2FPlanDecenaldeLactanciaMaterna2010-2020Nov17de2010.pdf&ei=bryoTZesEsWEtgfPkDdDw&usq=AFQjCNFpAeoiolAlltU-4CXD3SRtEM5png&sig2=\\_LL\\_ItNbUtsYekN7DXO\\_Vw](http://www.google.com/url?sa=t&source=web&cd=5&ved=0CDUQFjAE&url=https%3A%2F%2Fwww.icbf.gov.co%2Ficbf%2Fdirectorio%2Fportal%2Flibreria%2Fpdf%2FPlanDecenaldeLactanciaMaterna2010-2020Nov17de2010.pdf&ei=bryoTZesEsWEtgfPkDdDw&usq=AFQjCNFpAeoiolAlltU-4CXD3SRtEM5png&sig2=_LL_ItNbUtsYekN7DXO_Vw) (last consulted 04/15/2011)

tacan: (1) definition and implementation of a system for monitoring the standards and the Code of Substitutes, (2) development of a Code of Ethics to avoid conflicts of interest that may affect breastfeeding.

Likewise, the Public Policy on Food and Nutritional Security of the Capital District 2007-2015 expresses the political will to protect breastfeeding in its Guideline "Promotion, Protection and Defense of Breastfeeding and Healthy Infant Nutrition," which states that the Capital District "will ensure compliance with national and international standards that protect breastfeeding and healthy infant nutrition and will develop surveillance and control actions for producers and marketers of breast milk substitutes and infant foods."

Furthermore, the Breastfeeding-Friendly Rooms strategy, implemented by the District Secretariat for Social Integration in the Capital District, in kindergartens serving children under 2 years of age, in companies, and in the community, defines compliance with the Code, subsequent World Health Assembly Resolutions, and Decree 1397/92 as one of its quality standards. To this end, teachers and families are trained, Intersectoral Breastfeeding-Friendly Support Networks are consolidated, and Citizen Agreements are signed to guarantee the right to healthy infant nutrition.

Although compliance with the Code is expressed in national and departmental policies, inspection, surveillance, and control measures are still very weak because the standard does not adopt the resolutions of the World Health Assembly and does not stipulate sanctions for noncompliance.

Regarding the monitoring of the Code's implementation, the country participated in the international monitoring program conducted in 2003 by the ICDC-IBFAN, along with other countries in the region such as Argentina, Brazil, Costa Rica, Mexico, Peru, the Dominican Republic, and Uruguay.

## Costa Rica

**Legal Framework: Law 7430, 1992**

**ICDC-IBFAN Category: 1. The law covers all or almost all aspects of the Code**

**Regulation: YES**

**Last monitoring: 2005**

**Sanctions applied: YES**

In 1986, Executive Decree No. 17273-S established the National Breastfeeding Commission (CNLM), whose primary purpose is *"the promotion of breastfeeding through actions related to the healthcare, educational, legal, research and dissemination fields."*

In 1985, a Code support committee coordinated by the NGO CEFEMINA was created, and a draft of the Code adapted for Costa Rica was developed and submitted to the Legislative Assembly. The bill failed to move forward because some deputies argued that some articles were inconsistent with the Commercial Code, and it was shelved by the Legislative Assembly's Social Affairs Committee.

Since there is no specific law to protect breastfeeding, the National Breastfeeding Commission is coordinating with the Nutrition Section of the Ministry of Health to regulate advertising through the general health law.

In August 1992, on the occasion of the first World Breastfeeding Week and in response to the Innocenti Declaration, the First Lady of the Republic signed the "Joint Declaration for the Promotion of Breastfeeding in Costa Rica." One of the commitments was to control the marketing practices of breast milk substitutes. Thus, the National Breastfeeding Commission sent two representatives and a lawyer from the Legislative Assembly to a course on the Code coordinated by the IBFAN group of Guatemala in October 1992. Later, with legal advice, a draft Law for the Promotion of Breastfeeding was drafted. It was submitted to the Legislative Assembly on November 30, 1992, as file No. 11657, and published in Official Gazette No. 67 of April 7, 1993.

This law comprised seven chapters and 25 articles intended to regulate everything related to the marketing of breast milk substitutes, with their corresponding subsequent regulation. On January 13, 1993, the Minister of Health signed a declaration on the control of the trade of breast milk substitutes, with the purpose of preventing the entry of agents of infant food production companies and the free or low-cost donation of breast milk substitutes in the country's maternity wards, both public and private, while the law was being approved.

After a year of discussion with various entities and the infant products industry, the Legislative Assembly's Social Affairs Committee issued a majority opinion on the Breastfeeding Promotion Act on November 23, 1993.

With the collaboration of the First Lady of the Republic, the "Law for the Promotion of Breastfeeding" was successfully introduced into the legislative agenda of the extraordinary session for approval as a Law of the Republic. The Costa Rican Chamber of Industry and Commerce, alleging unconstitutionality, interceded with the Ministry of the Presidency, and the law was again removed from the legislative agenda.

Representatives of the National Breastfeeding Commission, IBFAN, the Legislative Assembly and the Chamber of Industry and Commerce of Costa Rica held a series of meetings to discuss the terms of the law, during which a series of discussions and confrontations arose and finally common agreements were reached, presenting a single document to the plenary session of the Legislative Assembly, which was unable to approve the bill because of the change of government in May 1994.

Throughout the discussion phase in the Social Affairs Committee and during the drafting of the new bill, a large number of letters of support were received from around the world, which had a very positive impact on the Costa Rican government. These efforts were led by the IBFAN group of Costa Rica.

In August 1994, on the occasion of World Breastfeeding Week, the representative of the First Lady of the Republic, at the opening ceremony, announced that the Government was committed to including the Breastfeeding Promotion Law in the legislative agenda. Thus, on August 25, 1994, the Legislative Assembly converted it into a Law of the Republic. On September 14, 1994, the Executive Branch approved it and it was published in the Official Gazette on October 21, 1994, as Law No. 743051.

The purpose of this law is to "promote safe and sufficient nutrition for infants through family education and the protection of breastfeeding. To this end, specific support will be given to programs and activities that promote it, and the advertising and distribution of breast milk substitutes for complementary foods, when marketed as such, and related utensils will be regulated." It consists of eight chapters and 33 articles.

This Breastfeeding Promotion Law establishes the legal framework for the regulation and advertising of breast milk substitutes, limiting the indiscriminate use of these products and promoting appropriate breastfeeding practices.

The regulations for this Law were published in Official Gazette No. 174 on September 13, 1995, as Decree No. 24576-S and are effective upon publication. The body responsible for enforcing it is the National Breastfeeding Commission, an entity attached to the Ministry of Health and comprised of state agencies involved in infant nutrition.

The Breastfeeding Promotion Law granted a one-year grace period—until October 1995—to infant food companies to adapt their labels. Nestlé SA, aware of the law, sent labels to the National Breastfeeding Commission for review on three different occasions, and on all three occasions, the labels were rejected for violating the law. The labels reviewed were NAN1, NAN2, Nestogen 1, Nestogen 2, and Nido Crecimiento.

Nestlé then made some minor corrections to the labels, but they still violated the law, so they were rejected again in January 1996. In March 1996, Nestlé requested a hearing with the Minister of Economy, Industry, and Commerce to discuss the issue. The hearing was held with the presence of representatives from the Minister of Economy, Industry, and Commerce, the National Breastfeeding Commission, staff from the National Office of Standards and Measures, and representatives of the multinational company. The hearing concluded that if the labels violated the law, they should not be approved and the product could not be distributed in Costa Rica.

The National Breastfeeding Commission receives unofficial news that is

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51 Available at: [http://www.google.com/url?sa=t&source=web&cd=3&ved=0CCYQFjAC&url=http%3A%2F%2Fwww.roltec.go.cr%2Fdecretos%2F7430.pdf&ei=5VaXTbzjHYLBtgf4zOSCDA&usg=AFQjCNE\\_bknmGWma0xV91y6SdHqQnUx9Q&sig2=xUIB9rGZX89Jm3yL48t7Ew](http://www.google.com/url?sa=t&source=web&cd=3&ved=0CCYQFjAC&url=http%3A%2F%2Fwww.roltec.go.cr%2Fdecretos%2F7430.pdf&ei=5VaXTbzjHYLBtgf4zOSCDA&usg=AFQjCNE_bknmGWma0xV91y6SdHqQnUx9Q&sig2=xUIB9rGZX89Jm3yL48t7Ew) (last consulted: 04/02/2011)

Several Nestlé milk trucks were held in customs and were prevented from entering the country for violating Law No. 7430. On July 11, 1996, Nestlé submitted new labels, but they still violated the law and were again rejected. The labels were resubmitted on July 29, 1996, and the noncompliance with the regulations in Chapter 6, Article 28 persisted: "*The slogan "Breast milk is the best food for infants" contained on the labels of breast milk substitutes, complementary foods, and other milks must be printed on the front of the package near the product name and must contain a font of no less than 3 mm"* and Article 27, paragraph "*Images of breastfeeding children or other images that may idealize the use of bottles."*

To demonstrate the good intentions of the National Breastfeeding Commission, it is approved affix a sticker, correcting non-compliance with articles 27 and 28 on a temporary basis and for only 6 months. On August 19, 1996, the Nestlé company presented labels that fully complied with the Law and its Regulations, and the labels were approved as presented: NAN1, NAN2, Nestógeno 1, Nestógeno 2, and Nido Crecimiento.

In January 1998, when monitoring was carried out, it was found in commercial establishments that the formulas NAN1, NAN2, Nestógeno 1, Nestógeno 2 and Nido Crecimiento have the original labels that were presented for the first time in July 1996 and that they do not comply with the Law and its Regulations in several articles, not finding in the market any label approved by the National Commission of Breastfeeding in August 1996. Consequently, the National Commission of Breastfeeding initiates a series of complaints to the Minister of Health, the Minister of Economy, Industry and Commerce, Office of Standards and Measures, the Ombudsman's Office and the Consumer Protection Agency.

In October 1998, the Ombudsman's Office decided to admit the case of the National Breastfeeding Commission against the Nestlé company for non-compliance with Law No. 7430, as appropriate, to be submitted to study by the Special Protection Area Directorate. With these complaints, the Office of Standards and Measures of the Ministry of Economy, Industry and Commerce carried out a monitoring again and, in coordination with the National Commission on Breastfeeding, filed a formal complaint with a Notarial Deed to the Consumer Protection Agency on December 7, 1998, in which the non-compliance with Law No. 7430 and its Regulations by the Nestlé company was confirmed, even four years after the Law was published in the Official Gazette of the Republic of Costa Rica.

Thus, the Consumer Protection Agency initiated a legal process and called a hearing for the Nestlé company and the National Breastfeeding Commission to formally present the charges on January 19, 1999. However, the company never appeared at the hearing. Representatives of the National Breastfeeding Commission filed the corresponding complaints and requested that the National Consumer Commission enforce the law, withdraw the product from commercial establishments, and require the company to pay the corresponding fines.

The Office of Standards and Measures of the Ministry of Economy, Industry and Commerce carries out Again, a monitoring of breast milk substitutes on September 16, 1999, found Nestlé company is found to be in breach of the law in the following formulas:

- Nestógeno 1, of the Law, article 17, paragraph by and c of the Regulation, article 27, paragraph a and b and Article 28.
- Nestógeno 2, of the Law, article 17, paragraph by c of the Regulation article 27, paragraph a and b Article 28.
- Also, of the Law, article 17, paragraphs b and c of the Regulation article 27, paragraph a and b and Article 28.

On September 30, 1999, the National Consumer Commission, by vote No. 63499, declares RESPONSIBLE FOR VIOLATION of article 31, paragraph, of the Law on the Promotion of Competition and Effective Consumer Protection and as such the corresponding sanctions are imposed on the COMPANY NESTLE COSTA RICA SA

More recently, through Decree 35904-S52, published in Official Gazette No. 76 on April 21, 2010, the Costa Rican government banned "the use of bisphenol in baby bottles and other containers used for child nutrition" due to its toxicity. The last monitoring of the Code dates back to 2005.

## Cuba

**Legal Framework: Unknown**

**ICDC-IBFAN Category: 3. The law covers some aspects of the Code**

**Regulation: Unknown**

**Last monitoring: Unknown**

**Sanctions applied: Unknown**

We are unable to provide updated information on Cuba regarding the Code. According to records available at the International Code Documentation Centre, in 1993 the Ministry The Cuban Ministry of Public Health reported that "The only breast milk substitute that exists in the country – Lactosan – is sold only in pharmacies, by medical prescription, and is indicated only for children of mothers who have not been able to breastfeed."

At that time, and at the request of the IBFAN body specialized in Code, the Cuban authorities reported that administrative sanctions are applied in case of violation of the measures

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52 Available at: [http://www.pgr.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.asp?param2=&nValor1=1&nValor2=67711&nValue3=80351&nValue4=NO](http://www.pgr.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.asp?param2=&nValor1=1&nValor2=67711&nValue3=80351&nValue4=NO) (last consultation: 04/02/2011)

planned. We can then interpret that, if there are no commercial products available to the population at this time, these administrative measures should be directed to health care services and not to companies marketing breast milk substitutes.

The International Code Documentation Centre has reported that it has placed Cuba in Category 3 of its *State of the Code by Country*<sup>53</sup> because it interprets that the country has health legislation (not marketing legislation) that contemplates the use of breast milk substitutes. The latest information that the International Code Documentation Centre has on Cuba dates back to 1993.

## Ecuador

**Legal Framework: Law 101, 1995**

**ICDC-IBFAN Category: 4. There is a voluntary code or policy**

**Regulation: YES**

**Last monitoring: 2009**

**Sanctions applied: YES**

The country has its Law 101 of 1995 for the Promotion, Support and Protection of Breastfeeding, regulated in 1999. However, although inspired by the Code itself, the analysis of its contents shows that it falls below the minimum standard set by the Code itself<sup>54</sup>. However, its new National Constitution, as well as the Organic Law on Health and the most recent National Breastfeeding Policy of 2009, constitute solid reference instruments so that the situation can improve in the short term.

In this regard, the 2008 IBFAN network report within the IMTLM<sup>55</sup> (or WBTi in its English acronym) formulates the following diagnosis and proposal:

### Weaknesses

- Although the Law for the Promotion, Support and Protection of Breastfeeding stipulates some Of the articles of the code of marketing of substitutes, there are still legal loopholes that prevent its full application.
- There is a total lack of knowledge on the part of health personnel and the population to be able to promote its compliance.
- Lack of resources for breastfeeding promotion, and for disseminating and enforcing the code by health workers and companies that manufacture and market infant substitutes.

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<sup>54</sup> Vallone F. Technical support to the Ministry of Public Health, MSP and Ministry of Social Development Coordination, MCDS to improve breastfeeding practices in Ecuador. Final report, March 31, 2010.

<sup>55</sup> Global Breastfeeding Trends Initiative - WBTi. National Report, Ecuador. 2008

- The National Breastfeeding Committee (CONALMA), responsible for enforcing law many of the provisions established for the code, are not in operation, so there is no body regulating its compliance.

#### Proposals for action

- Disseminate and promote the law and its regulations, and the Code among health personnel, the community, activity in general and women in particular.
- Restore the functioning of the National Breastfeeding Committee and its commission advisory technique to achieve progress in compliance with the law and the Code and evaluate progress in the short, medium and long term.
- Carry out a review of the Law for the Promotion, Support and Protection of Breastfeeding and its regulations, for the inclusion of all articles established in the Code and to improve its compliance.

In 2009, the first *Training Certification on the International Code of Marketing of Breast-milk Substitutes* was held in the country, organized by the IBFAN network, PAHO, UNICEF, and the International University of Quito. As a result, the first national monitoring of the Code was conducted, the results of which confirmed a low level of compliance among companies that produce and market breast-milk substitutes.

## El Salvador

**Legal Framework: Some provisions in other laws**

**ICDC-IBFAN Category: 7. Measure drafted but not yet enacted**

**Regulation: NO**

**Last monitoring: 2010**

**Sanctions applied: NO**

Despite state commitments to promote and protect breastfeeding, there is still no law protecting, promoting, and supporting breastfeeding in the country. Therefore, there is no experience in imposing sanctions and prosecuting companies that violate the Code.

However, efforts to obtain regulations on this matter have been underway since the 1980s, processes in which the Breastfeeding Support Center (CALMA) has been one of the central actors and the one who drafted the first bill.

In 1990 the principles established by the Innocenti Declaration (signed by 32 governments and 10 United Nations agencies<sup>56</sup> in Florence, Italy) were resumed and in April 1992 the

promulgates a Declaration of Protection, Promotion and Support for Breastfeeding as well as institutional breastfeeding standards by the Ministry of Public Health and Social Assistance (MSPAS).

In 2002, the Breastfeeding Support Center, supported by UNICEF, held a Consultation Forum with all stakeholders regarding the Law and promoted the formation of an Alliance for Breastfeeding Legislation, with the participation of numerous NGOs and cooperation agencies.<sup>57</sup> On August 28, 2003, a draft law was submitted to the Legislative Assembly through civil society, achieving massive support from all political parties. However, the bill has remained shelved to date.

Between 2002 and 2006, various awareness-raising and lobbying activities and campaigns were carried out at different levels, a strategy coordinated by the Ministry of Public Health and Social Assistance, UNICEF, and the Breastfeeding Support Center.

Following this effort in the last five years, IBFAN Latin America provided support through its regional representation in Guatemala and Argentina for the document review process, obtaining approval. With the support of IBFAN and the Breastfeeding Support Center, the Breastfeeding Committee formulated a new draft in June 2006. This document was then submitted to the Technical Secretariat of the Presidency of the Republic, which initiated another consultation process with ministries and social welfare institutions.

In January 2010, the Committee on the Rights of the Child, at its 53rd session and 54th session, based on a report submitted by IBFAN and the Breastfeeding Support Center on the situation of breastfeeding, recommended that El Salvador establish its own legal framework for breastfeeding; the document was submitted to the Minister of Health in April of that year.

In El Salvador, three evaluations of compliance with the Code have been carried out: the first in 1999, the second from October to December 2002, and the third from May to June 2010. The National Breastfeeding Committee conducted a qualitative study of the health care system, commercial establishments, advertising, and product labeling. This study aimed to foster vigilance and regulation in the promotion of breastfeeding substitutes. The findings of the first two evaluations revealed violations of the Code, a finding that continued to be reflected in the latest study, conducted in 2010.

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<sup>56</sup> Source: [http://www.unicef.org/argentina/spanish/ar\\_insumos\\_LMHospitalAmigo.PDF](http://www.unicef.org/argentina/spanish/ar_insumos_LMHospitalAmigo.PDF) (last accessed 04/20/2011)

<sup>57</sup> CRS, Save the Children, Plan El Salvador, World Vision, AID, American Red Cross, Salvadoran Red Cross, CARE, BASICS, MSPAS, ASONDES, UNICEF, CALMA

## Guatemala

**Legal Framework: Decree Law 66, 1983**

**ICDC-IBFAN Category: 1. The law covers all or almost all aspects of the Code**

**Regulation: YES**

**Last monitoring: 2008**

**Sanctions applied: YES**

Guatemala has a National Commission for the Promotion of Breastfeeding (CONA-PLAM) since 1979 (officialized in 1981). The first goal of the National Commission for the Promotion of Breastfeeding was to promote the adoption of the Code as law, which occurred in 1983 (Decree Law 66-83), making it the second country in Latin America (after Peru) to adopt it. This law was also regulated in 1987 by Government Agreement No. 841-8758.

It can be said that, in general, the country has a good system for monitoring the law and its regulations through the Directorate of Consumer Care and Assistance (DIACO), part of the Ministry of Economy, which is responsible for applying sanctions according to the severity of the violation detected. However, in recent years, this system has been weakened, as evidenced by the increase in advertising (for example, in public spaces), which was nonexistent years ago.

But we can cite as a very important precedent for surveillance the so-called "Gerber Case" that occurred in the 1990s. We will say first that Guatemalan law "prohibited the use of labels that associated infant formula with a healthy, chubby baby; specifically, the law prohibited pictures of idealized babies on baby food packaging intended for children under 2 years old. Furthermore, Guatemalan law required that labels carry a statement stating that breastfeeding is nutritionally superior."<sup>59</sup>

### The Gerber Case

In 1993, the Gerber company requested the renewal of eight health registrations from the Food Registration and Control Department, at which time, upon reviewing the labeling, it was detected that the company owed:

- Put the important notice on the label: *Breast milk is the best food for infants*;
- Place the exact age of introduction, which could not be less than 6 months (at that time Gerber marketed a strainer that mentioned "start in two weeks");
- Omit the image of the infant from labels (including the logo);
- Do not induce bottle feeding;

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<sup>58</sup> Available at [http://portal.mspas.gob.gt/images/files/docs\\_dgrvcs/DRCA/regulaciones/leyes%20y%20reglametos/DTO66\\_83.pdf](http://portal.mspas.gob.gt/images/files/docs_dgrvcs/DRCA/regulaciones/leyes%20y%20reglametos/DTO66_83.pdf) (last accessed: 03/25/2011)

<sup>59</sup> Corporate Rights vs. Human Need, 17-Nov-1999, available at <http://www.rachel.org/?q=en/node/4964> (last accessed 09/04/2011)

- Be in Spanish language;
- Do not give samples or advertise them;
- That all informational material should be authorized by the Ministry of Public Health and Social Assistance (MSPAS);
- Do not carry out misleading advertising (since it promoted the use of baby bottles on the labels of juices).

The company argued that it wasn't a substitute food, and therefore the law didn't apply to them; they insisted that it was a complementary food, beneficial given the country's high malnutrition rate, and that they fulfilled a social function. Furthermore, they claimed the image of the infant was their logo and trademark, and they couldn't omit it from their products. Furthermore, Guatemalan law defined a *complementary food* as including locally prepared products, and Gerber's products were imported, so these items didn't apply to them.

They offered to produce educational materials in Mayan languages to "*help the country with its nutritional problem*," but this was rejected. People from the company's Latin American and international ranks came to the country for visits. Gerber filed an appeal for revocation because it disagreed with the Ministry of Public Health and Social Assistance's request.

The process lasted two years, and the final decision was that they should comply with the request except for the logo, as they had registered the trademark in Guatemala. The then Minister of Health was extremely supportive but had to give in to commercial pressure.

The case was referred to the Constitutional Court to avoid removing the company's logo from the labeling. The court ruled in favor of Gerber, interpreting it as a trademark right, not advertising or publicity.

Gerber also presented the case to the US House of Representatives. This was a very complicated situation for a small country, as its trade balance was at stake. Ultimately, the President of the Republic ordered the access and sale of these products, allowing the company to continue using its logo while making the other requested label corrections. Thus, the sanitary registration was granted for another five years.

In light of this experience it is worth analyzing the circumstances in which the same company agreed to enter the Brazilian market (see Brazil in this section).

To date, five national monitoring sessions of the International Code, the Act and its Regulations have been conducted: in 1991, 1999, 2003, 2005, and the most recent in May 2008. All were initiated by the IBFAN network and continue to demonstrate systematic violations of current regulations.

## Honduras

**Legal Framework: Agreement 4780, 2005**

**ICDC-IBFAN Category: 4. There is a voluntary code or policy**

**Regulation: NO**

**Last monitoring: 2005**

**Sanctions applied: NO**

The country has a Standard for the Promotion and Protection of Breastfeeding<sup>60</sup>, published as Agreement No. 4780 on November 8, 2005. This instrument has a relative value. Since it is not a law in itself, there is no record of sanctions against companies, much less legal proceedings for violations of the Standard.

However, it must be acknowledged that Honduras has made some progress with the creation of the National Commission on Breastfeeding and Complementary Feeding, the design of a National Plan on Breastfeeding and Complementary Feeding 2009-2013, highlighting the support provided by PAHO, UNICEF, and the IBFAN network in the pursuit of effective implementation of the Standard, and even more so, the ability to make the necessary leap to a law for parliamentary approval. The last monitoring of the Code dates back to 2005.

## Mexico

**Legal Framework: Some provisions in other laws**

**ICDC-IBFAN Category: 2. The law covers many aspects of the Code**

**Regulation: NO**

**Last monitoring: 2009**

**Sanctions applied: NO**

In Mexico, there is currently no specific law regarding breast milk substitutes. In 1992, the Ministry of Health and manufacturers of breast milk substitutes established a commitment regarding the promotion, distribution, and delivery of their products to health workers. This document was subsequently ratified on May 30, 1995, and September 11, 2000. Finally, in 2007, infant formula manufacturers presented their commitment to the Secretary of Health:

*"Ensure that the marketing of breast milk substitutes is carried out in accordance with the*

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<sup>60</sup> Available at <http://www.bvs.hn/RHP/pdf/2005/pdf/Vol25-2-2005-7.pdf> (last accessed: 04/02/2011)

*principles of the International Code of Marketing of Breast-milk Substitutes and the resolutions adopted by the World Health Assembly and by the Official Regulations of Mexico in this regard...*<sup>61</sup>.

Representatives of seven leading companies signed the document, listed at the bottom. ten other scientific and health protection societies acted as “witnesses”.

Currently, the Regulation of the General Health Law on Advertising (last modification: 05/31/2009) establishes in its Chapter III (Art. 25) that<sup>62</sup>:

“Advertising and promotion of infant formulas must:

I. Promote breastfeeding, for which it will clearly indicate its benefits;

II. Expressly indicate that the use of infant formulas is recommended only

in the following cases:

a. Due to the child's intolerance to breast milk,

b. Due to the absence of the mother and

c. Due to the mother's inability to provide milk or for any other well-founded health reason, and

III. Include information on the correct handling of formulas, their preparation, and the specific care that bottles must undergo before offering them to infants.”

This confirms that, although the legal instrument appears to be intended to protect breastfeeding, it authorizes advertising for breast milk substitutes, which is absolutely prohibited in the Code. Furthermore, there is no record in the country of sanctions being applied for continued noncompliance with the commitments made by the breast milk substitute industry. The last monitoring of the Code was carried out in 2009.

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61 Available at [http://www.generosaludreproductiva.gob.mx/IMG/pdf/acuerdo\\_firmado.pdf](http://www.generosaludreproductiva.gob.mx/IMG/pdf/acuerdo_firmado.pdf) (last accessed 04/12/2011)

62 Available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/142.pdf> (last accessed 04/12/2011)

## Nicaragua

**Legal Framework:** Law 295, 1999

**ICDC-IBFAN Category:** 2. The law covers many aspects of the Code

**Regulation:** NO

**Last monitoring:** 2010

**Sanctions applied:** Unknown

Nicaragua currently has a law (No. 295, of 1999) for *the Promotion, Protection and Maintenance of Breastfeeding and Regulation of the Marketing of Breast Milk Substitutes*<sup>63</sup>, whose wording addresses many of the aspects developed in the Code itself. Although Law 295 is not regulated, it does have a chapter on sanctions (Chapter XIII) and empowers the National Breastfeeding Commission to apply the corresponding punitive measures.

But it is interesting to note that in 1981 Nicaragua was the first country in Latin America to have a *Decree for the Promotion, Promotion and Protection of Breastfeeding*. (Decree Law No. 912 of 23/12/1981), a few months after the approval of the Code by the World Health Assembly.

The last monitoring of the Code dates back to 2010, and the data is still being processed.

## Panama

**Legal Framework:** Law 50, 1995

**ICDC-IBFAN Category:** 1. The law covers all or almost all aspects of the Code

**Regulation:** NO (in process)

**Last monitoring:** 2010

**Sanctions applied:** NO

On November 23, 1995, Law 5064 , "Whereby breastfeeding is protected and promoted," was passed and published in the Official Gazette four days later. However, 15 years later, it still lacks regulations that allow for its full implementation. During 2010, PAHO supported the national government with a consultancy and various activities aimed at closing this legal gap, and the process through which this legal instrument could finally be enacted is currently well advanced.

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63 Available at [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/78AC25EE0A85178E06257242005B177B?OpenD](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/78AC25EE0A85178E06257242005B177B?OpenD) document (last accessed 04/12/2011)

64 Available at <http://bdigital.binal.ac.pa/DOC-MUJER/descarga.php?f=leyes/ley50nov1995.pdf> (last accessed: 15/04/2011)

For the time being, then, there is no full enforcement of the Law, and companies continue to systematically violate it with their practices. Proof of this is that in 2010, as another result of PAHO support, the first monitoring of compliance with the Code was conducted, which demonstrated the alarming situation in this regard.

## Paraguay

**Legal Framework: Law 1478, 1999**

**ICDC-IBFAN Category: 3. The law covers some aspects of the Code**

**Regulation: NO**

**Last monitoring: 2010**

**Sanctions applied: NO**

Paraguay has Law 147865, enacted on October 8, 1999, "*On the Marketing of Breast-milk Substitutes.*" It has never been regulated, so its enforcement is weak. However, in 2008-2009, a legal professional was hired to study it and recommend that only three of the law's articles should be regulated in light of the Code and its subsequent resolutions. Furthermore, the current law contains numerous legal loopholes for its implementation, and it has been recommended that a new draft be drafted, changing its title to take as a reference the IBFAN network's Model Law for Latin America "*On the Protection of Breastfeeding.*"

According to information gathered, there is no record in the country of sanctions or legal proceedings against companies for violations of the Code or Law 1478. Those that are applied are the regulations regarding quality and labeling, at the time of product registration with the regulatory body, the National Institute of Food and Nutrition (INAN). At that time, the company is notified of the observations and corrections necessary for the product to be registered and authorized by the National Institute of Food and Nutrition for subsequent circulation and marketing.

Currently, dairy companies in the country (all of which produce fluid milk) have been forced to withdraw labels containing images of infants from circulation, in order to comply with Article 9 of the Code. Regarding Article 7, which refers to health workers, the Ministry enforces the prohibition on promoting products in health facilities, although scientific societies and many professionals continue to maintain relationships that generate conflicts of interest with the promotion of optimal infant feeding practices.

Regarding Art. 11 of application and surveillance, the government has made several efforts to have

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65 Available at <http://py.vlex.com/vid/comercializacion-sucedaneos-leche-materno-36084447> (last accessed: 04/15/2011)

with a monitoring system and its implementation; for this purpose, professionals from various management areas have been trained, and although the system is still very weak, work is slowly being done to strengthen its development of the same.

In the country, only one scientifically rigorous monitoring exercise was carried out in 2009-2010, resulting in a list of significant complaints about marketing practices that continue to ignore, even beyond the law itself, an international instrument that requires all companies to ensure compliance.

## Peru

**Legal Framework: Decree 009-2006-SA**

**ICDC-IBFAN Category: 1. The law covers all or almost all aspects of the Code**

**Regulation: NO**

**Last monitoring: 2010**

**Sanctions applied: YES**

The Peruvian government implemented the Infant Nutrition Standards Regulations through Supreme Decree No. 020-82-SA66 in 1982, becoming a leading country in adopting the Code's guidelines. The Regulations consisted of two fascicles:

- Fascicle I. Rules for feeding children from zero to two years of age.
- Fascicle II. Standards for the marketing of breast milk substitutes and complementary infant foods. This fascicle implements the provisions of the International Code in Peru.

Subsequently, in light of the results of the monitoring of compliance with the Regulations, there were persistent requests for their amendment to incorporate the relevant subsequent resolutions of the World Health Assembly. Several attempts at amendment were made, committees were formed, and proposals were developed, but no improvements were made to the Regulations. The IBFAN network actively participated in these processes.

It wasn't until 2004 that the Infant Nutrition Regulations were revised and updated; a Commission was formed for this purpose, in which the IBFAN network once again participated. The final document was approved by Supreme Decree No. 007-2005-SA in January 2005. This document was intended to incorporate subsequent Resolutions related to the feeding of infants and young children.

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66 Available at <http://www.google.com/url?sa=t&source=web&cd=2&ved=0CB4QFjAB&url=http%3A%2F%2Fwww.bvindicopi.gob.pe%2Fregtec%2Fds007-2005-sa.pdf&ei=Tr6oTcLCE4K4tweDwOHdBw&usg=AFQjCNHdiG1yf5fnLyF-dFHdIbq8ZLnlUQ&sig2=SKXkVTQsHX29GHCVFRTjw> (last accessed: 04/15/2011)

After its approval, the Regulation was objected to and questioned by companies, who lobbied heavily for its repeal. After intense negotiations, a new version of the Infant Nutrition Regulation was approved in 2006 by Supreme Decree No. 009-2006-SA67. This Regulation refers, in its recitals, to subsequent resolutions ASM 39.28, ASM 47.5, and ASM 54.2.

Between March and April 2010, the IBFAN network monitored compliance with some of the provisions of the Infant Nutrition Regulations in 30 health facilities in the city of Lima (14 Ministry of Health facilities, 3 Armed Forces and Police facilities, 3 Social Security (ESSALUD) facilities, and 10 private clinics). This monitoring was supported by UNICEF.

During June, July, and August 2010, IBFAN monitored 17 health facilities in four regions of the country: Loreto Region (4 from the Ministry of Health, 1 from the Social Security ESSALUD); Apurímac Region (2 from the Ministry of Health, 1 from the Social Security ESSALUD); Huancavelica Region (4 from the Ministry of Health); and Ayacucho Region (4 from the Ministry of Health, 1 from the Social Security ESSALUD). This monitoring was supported by PAHO.

Despite the years that have passed since its enactment, only the following sanctions have been achieved for non-compliance with the Regulations on Standards for Infant Feeding:

- In 2004, companies were sanctioned with warnings through Resolutions of the District Health departments of the Ministry of Health:

Bagó Laboratories of Peru SA

Abbott SA

Wyeth Pharmaceuticals

Mead Johnson a/c Bristol Myers Squibb Laboratories SA

Continental Distributor - ORDESA

- In reports sent at the request of Congressman Antero Flores-Araoz, it is stated that in the 2004, the Technical Secretariat of the Commission for the Suppression of Unfair Competition of the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI) initiated an investigation into the advertising of breast milk substitute products. It requested information from laboratories and companies that market breast milk substitute products on the advertising they had carried out for said products over the previous 18 months. After concluding the preliminary investigation stage, the Commission for the Suppression of Unfair Competition of the National Institute for the Defense of Competition and the Protection of Intellectual Property reported that it was evaluating the advertising of the companies in question, in order to decide whether to initiate any ex officio sanctioning procedures that might be appropriate for non-compliance with the Infant Food Regulations.

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67 Available at [http://www.google.com/url?sa=t&source=web&cd=1&ved=0CBgQFjAA&url=http%3A%2F%2Fapps.contraloria.gob.pe%2Fpvl%2Ffiles%2FD.S.%2520009-2006-SA%2520-%2520Aproven%2520Reg.%2520Alimentaci%25C3%25B3n%2520Infantil.pdf&ei=jr6oTdrylomCtgfql-3fBw&usq=AFQjCNE3ilzBoRVhZfjL8Dgq3DiDHR3M7g&sig2=ftLhnfwTnJNQTgupMt5a\\_A](http://www.google.com/url?sa=t&source=web&cd=1&ved=0CBgQFjAA&url=http%3A%2F%2Fapps.contraloria.gob.pe%2Fpvl%2Ffiles%2FD.S.%2520009-2006-SA%2520-%2520Aproven%2520Reg.%2520Alimentaci%25C3%25B3n%2520Infantil.pdf&ei=jr6oTdrylomCtgfql-3fBw&usq=AFQjCNE3ilzBoRVhZfjL8Dgq3DiDHR3M7g&sig2=ftLhnfwTnJNQTgupMt5a_A) (last accessed: 04/15/2011)

advertising. He also noted that to date (May 2005), the Commission had already initiated a sanctioning action against Laboratorios Bagó del Perú SA. He also reported that, starting in January 2005, the Technical Secretariat in question sent "preventive letters to various medical centers nationwide, in order to inform them of the rules and restrictions that must be met regarding the dissemination of advertising for breast milk substitutes and complementary foods for children."

- On July 6, 2005, the Commission imposed three Tax Units on Laboratorios Bagó del Perú SA for failure to comply with restrictions on advertising breast milk substitutes and complementary foods for children.

On the other hand, the countless and continuous complaints filed on various occasions, most of them based on monitoring carried out by IBFAN, have not resulted in sanctions for those who violate the Regulation despite the enormous efforts made in this regard.

On some occasions, the Ministry of Health sent monitoring reports to Public Health Facilities, requesting explanations and/or corrections to the situations found. The Ministry of Health has also presented some of the monitoring reports at public events.

## Puerto Rico

**Legal Framework: Law 79, 2004**

**ICDC-IBFAN Category: 3. The law covers some aspects of the Code**

**Regulation: NO**

**Last monitoring: 2010**

**Sanctions applied: NO**

Aside from Law 79 of 2004,<sup>68</sup> which prohibits the provision of breast milk substitutes to newborns in hospitals (except with medical advice or the mother's consent), there are no laws that adopt the Code and regulate the marketing of infant food.

Despite this limitation on the ability to fully apply the Code, and the fact that in practice it has not resulted in any sanctions against companies in the sector, the IBFAN network's coordination in Puerto Rico has been carrying out numerous training, monitoring, lobbying, and social mobilization activities on the issue. The last monitoring event was in 2010, and the IBFAN network itself is responsible for continuously updating its violation registry.

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<sup>68</sup> Available at [http://www.rcm.upr.edu/mch/pdf/legislacion/ley\\_79\\_2004.pdf](http://www.rcm.upr.edu/mch/pdf/legislacion/ley_79_2004.pdf) (last accessed 04/13/2011)

## Dominican Republic

**Legal Framework: Law 8-95, 1995**

**ICDC-IBFAN Category: 1. The law covers all or almost all aspects of the Code**

**Regulation: YES**

**Last monitoring: 2007**

**Sanctions applied: YES**

There is a specific law in the country regarding the Code; Law 8-9569, which declares the promotion and encouragement of breastfeeding a national priority. It was enacted on September 19, 1995, and its Regulations are No. 31-95 of January 20, 1996.

The country, through the National Breastfeeding Commission (CNLM), systematically monitors the marketing practices of breast milk substitute companies and consistently implements both warnings and confiscations when the first recourse is ineffective. Below we illustrate a case that had repercussions: Hero España and two stories:

1. Following monitoring carried out at points of sale and various supermarkets, it was determined that Hero España was violating Law 8-95 with its Hero Baby products. As a result, the Food Control Department of the Ministry of Public Health and the National Breastfeeding Commission seized said products. As a result of this seizure, Medietic SA, the national representative of Hero España, filed a formal complaint alleging *discriminatory treatment* of the company. In response, the National Breastfeeding Commission, through the Legal Consultancy of the Ministry of Public Health, filed a formal opposition to the claim through a bailiff's act. The result of this is that the claim filed by Medietic SA is void.
2. In several label review meetings, the National Breastfeeding Commission requested that the food industry (in this case, Medietic - Hero Baby) not approve its labels until they complied with our National Law 8-95. However, not satisfied, Hero Baby approached the Ministry of Industry and Commerce, Department of Foreign Affairs, where it reported that the National Breastfeeding Commission was imposing technical trade barriers by not approving its labels. After this meeting with the Ministry of Industry and Commerce, the National Breastfeeding Commission met with the Vice Minister of Health, the company, and the Director of the Department.

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69 Available at <http://www.google.com/url?sa=t&source=web&cd=1&ved=0CBUQFjAA&url=http%3A%2F%2Fmujer.gob.do%2FLinkClick.aspx%3Ffileticket%3DiibQT4FAFxFU%253D%26tabid%3D77%26mid%3D577&ei=3r6oTYDOJlqutwF0oqDeBw&usq=AFQjCNGtxN8PXzDexsmwDIleuAmC3Da3og&sig2=9F4-PceXwmZ6CmHQESTO2A> (last accessed: 04/15/2011)

Food Control, and at this meeting (with support from the International Code Documentation Centre-IBFAN Penang) the company managed to change the labeling of its Hero Baby infant formula to comply with the law.

The last monitoring dates back to 2007 and shows the need for close and permanent monitoring the application of the Law since violations of it persist.

## Uruguay

**Legal Framework: Decree 315, 1994**

**ICDC-IBFAN Category: 2. The law covers many aspects of the Code**

**Regulation: NO**

**Last monitoring: 2008**

**Sanctions applied: NO**

Some provisions of the Code have been in force since 1994 in the National Food Safety Regulations (Decree 315/94). The scope of the provisions set forth in this Decree applies only to foods under the heading: "*General provisions for foods for infants and young children.*" It does not include bottles, teats, and other items used in artificial feeding. This Decree does not cover subsequent World Health Assembly resolutions that supplement the Code, and has implementing regulations with sanctions for noncompliance, but is limited to the capital city of Montevideo.

In 2009, the Ministry of Public Health approved the National Breastfeeding Standard<sup>71</sup> by Ministerial Ordinance, which on page 13 establishes in relation to the Code that "*it will be controlled that the companies that market...do not promote or deliver their products to health personnel or to users of the services of the national integrated health system*", and also establishes that when it is necessary to indicate a substitute for human milk, this must be indicated with a prescription.

medical and offers an example of a prescription on page 25. It also establishes on the same page that the General Directorate of Health (DIGESA) will monitor compliance with the Code and all subsequent resolutions of the World Health Assembly, and adds that for the entry of a new substitute onto the market, the General Directorate of Health will monitor, together with the Children's Program, that the materials, packaging, labels, advertising, and marketing techniques comply with the Code. In the same standard, starting on page 45, the Code and subsequent resolutions of the World Health Assembly are published as an annex.

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<sup>70</sup> Available at: [http://www.ruandi.org.uy/quehacemos\\_presentaciones/reglamento\\_bromatologico\\_decreto315\\_1994.pdf](http://www.ruandi.org.uy/quehacemos_presentaciones/reglamento_bromatologico_decreto315_1994.pdf) (last accessed 04/06/2011)

<sup>71</sup> Available at: <http://www.msp.gub.uy/andocasociado.aspx?3184,17329> (last accessed: 04/06/2011)

While this has been a step forward, it's not entirely clear how the monitoring will be carried out, nor who (from the Directorate General of Health) will do it. This is evidenced by the fact that, to date, no one has been responsible for it, and therefore, companies continue to mislead their products.

Furthermore, the implementation of Good Feeding Practices (GFP) for infants and young children (a strategy implemented by UNDP/UNICEF/MSP in 2006) has become a "Healthcare Target" for all health services in the country that care for pregnant women and young children, as of 2009, by ministerial resolution. This means that all health care institutions must comply with Good Feeding Practices<sup>72</sup> and will receive an external evaluation (very similar to the evaluation of the Baby-Friendly Hospital Initiative) in order to continue receiving an amount in pesos determined by the National Health Fund. If the institution does not comply with Good Feeding Practices and does not obtain accreditation, a sum determined by each partner will be deducted from its payment until it obtains accreditation in a subsequent external evaluation. Therefore, the institutions are working to comply with Good Feeding Practices and achieve accreditation.

Uruguay has participated in monitoring the Code on several occasions. Since 2000, this has been done through the Uruguayan Network for Support to Child Nutrition and Development (RUANDI - IBFAN Uruguay).<sup>73</sup> The most recent monitoring exercise was conducted in 2008 and has demonstrated the persistence of practices prohibited by the Code.

## Venezuela

**Legal Framework: Law, 2007**

**ICDC-IBFAN Category: 1. The law covers all or almost all aspects of the Code**

**Regulation: NO (in process)**

**Last monitoring: 2010**

**Sanctions applied: YES**

The Bolivarian Republic of Venezuela has a set of documents that constitute its legal framework for the promotion and protection of breastfeeding:

- In 2003, with the support of UNICEF and the University Hospital of Caracas, the book was published the Technical Manual for the operation of Human Milk Banks, and a year later the Regulations for the Operation of Human Milk Banks, Institutional and Community Lactariums are defined.

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<sup>72</sup> Good Feeding Practices are made up of 10 practices in the case of maternity wards, and 11 in the case of primary care services; one of those 10 or 11 practices to be fulfilled is the CICSLM.

<sup>73</sup> See at <http://www.ruandi.org.uy/>

- By publication in the Official Gazette No. 38,002 of August 17, 2004, it is put into effect Resolution No. 405, which regulates the labeling of adapted infant formulas and complementary foods for young children, is in force, without prejudice to the elements that allow for the defense and protection of the practice of breastfeeding, as a strategy par excellence for quality of life and health, and for the protection of the rights of children.
- That same year, Resolution No. 444 was signed, which provides for the Protection, Promotion, Support and promote the Breastfeeding Policy and Practice in all health facilities, as a strategy par excellence for quality of life and health that protects the rights of girls, boys and women (published in Official Gazette No. 38,032 of September 28, 2004).
- The Joint Resolution of the Ministries of Health and Labor and Social Security extending the rest period referred to in Article 393 of the Organic Labor Law, in accordance with the article of its Regulations, to nine months from the date of delivery and 12 months in special situations (Official Gazette No. 38,528, of September 22, 2006). •The Official Gazette of the Bolivarian Republic of Venezuela No. 38,763 of September 6  
In 2007, the Law on the Promotion and Protection of Breastfeeding<sup>74</sup> was published, which aims to promote, protect and support breastfeeding as the ideal means for the adequate nutrition of children, in order to guarantee their life, health and comprehensive development.

The Draft Regulations for the Law on the Promotion and Protection of Breastfeeding, drafted in 2009, are currently in the final stages of review for approval by the Ministry of Health and submission to the Assembly for final approval.

Since the signing of Resolution No. 405 in 2004 on labeling, several companies have been sanctioned: Wyeth, Mead Johnson, Gerber, Heinz, and Nestlé; in all cases, permits were withheld until they modified their labels. Currently, companies have improved their labels, but details can still be detected, as well as the use of health claims, in violation of the Law, National Resolutions, and the Code itself.

Likewise, advertising in magazines, billboards, radio, TV, and other media has been difficult to control. Baby contests remain unregulated, even with the approval of the Society of Pediatrics and Childcare and the approval of the Institute for the Defense of People's Access to Goods and Services. Furthermore, scientific events are supported by the dairy and baby food industries despite the accusations and complaints made to scientific societies; although they modify behavior somewhat and are less prominent and obvious, they persist over time.

The IBFAN Venezuela Coordination permanently contributes with examples of violations to the Code. The last monitoring carried out in the country dates back to 2010.

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<sup>74</sup> Available at <http://www.inn.gob.ve/modules/nosotros/pdf/leylactancia.pdf> (last accessed: 04/02/2011)

# Lessons learned

“The Code: an urgent debt to be fulfilled.”

Pan American Health Organization, 2011

A historical overview of each national process, the background of the sanctions applied, and an analysis of the application of the Code over three decades provides us with a summary of experiences and lessons learned.

- These are the four maxims when working on the effective application of the Inter-National Marketing of Breast Milk Substitutes:
  - It is not enough for a country to have adhered to the Code if this is not reflected in a law national.
  - A national law is not sufficient if it is not properly regulated to make it effective.  
goes your application.
  - A regulated law is not enough if there is no systematic monitoring of baby food marketing practices to assess compliance.
  - It is not enough for a law to be regulated and its compliance systematically monitored if there is no enforcement body or political will to apply it.
- The economic scale of each country is currently a strong determining factor of the real possibility of regulating the marketing of breast milk substitutes.
- Companies withstand any attack; they never learn their lesson. Therefore, the application of a certain sanction for non-compliance with the law does not guarantee its repetition over time.
- Financial sanctions are the least likely to affect companies. A smart monitoring strategy should include making any sanctions imposed public, since the potential for damage to their image is of much greater concern to companies than the potential amount of a fine.
- Faced with the slowness of the judicial system to report, follow up and resolve conflicts  
With corporations, you can resort to more agile mechanisms, such as going to a competitive body like the consumer protection agency.
- Continuous monitoring is essential because companies operate in various fields at the same time and are distracting; they may be applying for label approval at the same time that the product is on the market with a different design.

- Companies are always inventing new strategies: Internet first and direct contact  
“door to door” then, are resources through which they also try to avoid their obligations in each country.
- Globalization as a general phenomenon, and Free Trade Agreements (FTAs) in particular, make it difficult to implement national measures, even though no free market protection regulation should be placed above the genuine protection of community health. In this regard, the interests of the Ministries of Economy, Industry and Commerce, and Health are increasingly conflicting, as the former attempts to expedite negotiations for trade agreements (especially with Free Trade Agreements), while the Ministry of Health must primarily ensure the health of consumers.
- Something worrying (and common to our entire region) is that the continuous changes of decision-makers at the executive levels of governments delay processes.
- IBFAN's role has been fundamental in bringing the problem to the surface.  
due to the indiscriminate and aggressive advertising of breast milk substitutes and their negative impact on breastfeeding, as well as to strengthen the implementation processes of the Code.  
In this regard:
  - The development of the IBFAN network in the region, and particularly the membership of many of its members in the countries' health systems (in some cases even working within executive areas), has facilitated the progress achieved in many cases.
  - When there is strong leadership and consistent commitment, social organizations like IBFAN can achieve progress (such as the passage of a law) and advance regulation.
  - Sometimes, the international solidarity of the IBFAN network, through faxes, letters, or emails, has succeeded in halting regulatory rollbacks in a particular country.
- While companies have an unavoidable responsibility to comply with the Code which goes even beyond its transformation into law in each country<sup>75</sup>, the commitment that falls to the health system as a whole and, in particular, to health workers who must ensure that they do not incur in conflicts of interest or violations of the Code itself or, where applicable, the law, cannot be ignored.
- Health Sciences training schools should incorporate into their curricula the treatment of the Code, as part of the development of professional ethics.
- When faced with the possibility of drafting and presenting a bill to parliament, law on the Code, it would be worth considering some aspects:

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75 Art. 11.3 of the Code: “Regardless of any other measures adopted for the implementation of this Code, manufacturers and distributors of products covered by its provisions shall consider themselves obliged to monitor their marketing practices in accordance with the principles and objective of this Code and to take measures to ensure that their conduct at all levels is in conformity with these principles and objective.”

- Request technical assistance from PAHO, UNICEF and the IBFAN network.
- Analyze other laws in the Region, particularly those on which the IBFAN network has provided advice, and keep in mind the Model Law that IBFAN drafted for Latin America<sup>76</sup>.
- Do not forget that the Code and subsequent relevant resolutions form a single body and all of them must therefore also be part of the law.
- Ensure considerable lobbying capacity to ensure that the spirit in which the bill was drafted is not changed during the legislative process, in line with the Code itself.

### 30 years after the historic 34th World Health Assembly, Reflections by Lic. Annelies Allain

Annelies Allain was born in the Netherlands, graduated in languages, and in 1979 was one of the founders of the IBFAN network. He began working at the network's offices in Geneva, but since 1990 he has directed the International Code Documentation Centre (ICDC), a foundation based in Penang (Malaysia) and a world reference on the subject.

"I was at that World Health Assembly in 1981 as one of the IBFAN coordinators, among a group of about 40 NGOs there lobbying to try to isolate the US negative vote. IBFAN had been involved in the three previous projects and had contributed content to each. We were familiar with the positions of the Member States and the industry.

There were many secret discussions and meetings, and we were able to obtain telexes and notes from the US and major corporations through privileged informants who provided them to us. I also remember that there were many notable interventions: by the Secretariat, Mahler's General Directorate, the head of Nutrition, Dr. Goran Sterky; and courageous directors from UNICEF New York. But above all the Member States, the following stood out: Dr. Tolbjorn Mork from Norway, Dr. Ondaye from the Congo, Brazzaville, a man from Algeria, a woman from Switzerland... And, of course, the non-governmental organizations: for IBFAN: Doug Clemente, Andy Chetley, Annelies Allain, Ed Baer, Leah Margulies, Nancy-Jo Peck, Doug Johnson, etc.

Thanks to Dr. Ondaye's quick action, the first vote in Committee A was a roll call (very important since the alternative was a show of hands): 93 votes in favor, 3 against, and 9 abstentions. This voting mechanism is very unusual within the World Health Assembly; there, the name of the game is consensus. We knew that some of the "no" votes were misguided, so we went to talk to some countries like Bangladesh and the Republic of Chad. The next day in Plenary, there was another roll call vote: 118 in favor, one against, and three abstentions (Japan, Korea, and Argentina). We won! It was the best possible result, adopting the Code with only one "no" vote, the U.S. I think it was historic. And I'm glad I was able to help..." <sup>77</sup>

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<sup>76</sup> Available at [http://www.ibfan-alc.org/nuestro\\_trabajo/archivo/codigo/introduccion-ley-modelo.doc](http://www.ibfan-alc.org/nuestro_trabajo/archivo/codigo/introduccion-ley-modelo.doc) (last accessed 14/04/2011)

<sup>77</sup> Interview conducted via email on 04/13/2011



# ANNEX 1

## Frequently Asked Questions about Code 78

### 1. Is the Code still necessary?

*Answer:* Yes, and it always should be. The Code was drafted in collaboration with the infant formula industry. The WHA passed a series of subsequent resolutions to strengthen the original Code and in response to the use of clever new marketing practices aimed at increasing sales outside the original scope of the Code. The fact that so many resolutions have been passed, and that this amendment process seems endless, speaks to how difficult it is to prevent harmful practices. Thirty years of experience trying to protect breastfeeding has shown that what is best for public health—breastfeeding—cannot be reconciled with the profits of formula companies. The Code has done tremendous good. However, it is only as useful as the resources to monitor, apply sanctions, and have enforcement powers. Instead of peaceful coexistence, the interests of the public and private sectors in this case are pitting David against Goliath: underfunded international and non-governmental organizations promoting breast milk—which cannot be branded, patented, or sold—against multinational corporations that make hundreds of millions of dollars each year selling infant formula to mothers whose babies' health and development would improve if they were breastfed instead.

### 2. Why is the Code not monitored more systematically?

*Answer:* One of the main reasons is the lack of a funding source for breastfeeding promotion in general, and for Code monitoring in particular. Unlike other life-saving interventions, such as vaccines, there has been little or no funding for breastfeeding.

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78 Questions 10 to 14 are translated into Spanish from "The International Code of Marketing of Breast-milk Substitutes, Frequently Asked Questions." World Health Organization. 2006.

Breastfeeding promotion. As a former president of the Argentine Pediatric Society said: "Funding is available for medications and vaccines because there's always someone knocking on the Minister of Health's door trying to sell them..."

### 3. Does the Code have the force of law like the WHO Framework for Tobacco Prevention?

*Answer:* No, the WHO has three types of instruments to be approved within the Assembly World Health Organization:

- Convention: requires 2/3 of the votes, must be ratified within 18 months, becoming thus obligatory.
- Regulation: requires a simple majority, becomes mandatory when the AMS reports to the Member States of its adoption (although a Member State may reject it in part or in whole).
- Recommendation: does not have the legally binding status of a Convention or Regulation, but It implies a moral and political weight.

The Code is classified as a Recommendation, and therefore provides guidelines for countries to follow, although it is not binding in itself. Thus, to have the force of law, it must be legislated and accompanied by the respective implementing regulations, or implemented through a ministerial resolution or other administrative measure at the national level. Without these national measures, the Code and subsequent World Health Assembly resolutions have no legal status in the countries concerned.

### 4. In general, does consumer information not guide decision-making? How is information about breast milk substitutes different?

*Answer:* Generally, information about products on the market provides an important function, helping consumers make informed decisions. However, the biological dynamics of breastfeeding require special treatment. Once they are discontinued, they are difficult to reestablish for the same baby. It has been scientifically proven that breast milk production responds to demand. The more milk a baby sucks, the more milk the breast produces. This demand-response by the mother-infant dyad explains why mothers of twins and even triplets can produce sufficient milk. When a mother begins to give breast milk substitutes, her own production decreases and begins to decline. The fact that she has less milk means she needs to give more formula. This biological phenomenon was well known by marketers, and that is why, before the Code was passed (and even in many places where it is not regulated and monitored), it was common to give away cans of formula or "first give it away, then sell it later."

Breastfeeding is the most intimate form of maternal care for her baby and the antithesis of the market. Breast milk has no and never will have commercial profit potential, but it competes with powerful interests. Therefore, it deserves special social and environmental protection.

## 5. Why is the Code not considered a barrier to trade?

*Answer:* In the opinion of experts, if national legislation is based on the Code and subsequent resolutions of the World Health Assembly and is applied in a non-discriminatory manner, or regulates both domestic and imported products, then they cannot be identified as a barrier to trade.

## 6 Where can I find the best example of a Code template?

*Answer:* In reality, the Code is a single code that, together with subsequent relevant resolutions of the World Health Assembly, constitutes the reference framework for drafting a law. However, for Latin America, there is a model law that can be used as a basis, and it is available at <http://www.ibfan-alc.org/codigo/main.htm>.

## 7. How can I report a violation of the Code?

*Answer:* At the national level, by contacting the authority responsible for oversight, which is always linked to the National Breastfeeding Commission. The IBFAN network also offers the option of filing complaints online on its regional website: <http://www.ibfan-alc.org/denuncias.php>.

## 8. What can I do to ensure that my actions are consistent with the Code?

*Answer:* If you are a health worker, you must be familiar with the Code. In that case, we recommend reading "Protecting Child Health," a publication by IBFAN and PAHO, which can be downloaded from the Internet<sup>79</sup> or requested in hard copy from PAHO national representations. Beyond this, you must take special care to avoid conflicts of interest, which arise when your primary interest, which should be protecting the health of the children and mothers you care for, is interfered with by a secondary interest, such as obtaining a benefit of any kind from a company that markets or produces breast-milk substitutes.

If you are a retailer, you should know that any type of promotion of these products is prohibited. And if you are a manufacturer or distributor of breast milk substitutes and related products, you should thoroughly understand the Code and the laws of each country in which your company operates, and strictly adhere to its contents, since Article 11 of the Code obliges you, regardless of whether or not a national law exists, to strictly comply with it.

## 9. Is it true that the scope of the Code goes beyond infant formulas?

*Answer:* The Code applies to the marketing and related practices of the following products: breast-milk substitutes, including infant formula, other milk products,

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<sup>79</sup> Available at <http://www.paho.org/Celebrando30AnosDelCodigo>.

foods, and drinks, including complementary foods given by bottle, bottles, and teats. This also applies to their quality and availability, and information relating to their use.

Since the Code applies to products suitable for use as a partial or total replacement for breast milk, it should be read in conjunction with current international recommendations for breastfeeding and complementary feeding, such as the WHO Global Strategy for Infant and Young Child Feeding. For example, since the general recommendation is exclusive breastfeeding for six months, any food or beverage promoted as suitable for feeding an infant during this period is a breast milk substitute and therefore falls within the Code. This would include baby teas, juices, and water.

Infant formulas for children with special medical or nutritional needs also fall within the scope of the Code.

[10. What are the limits provided by the Code for the promotion of breast milk substitutes to the public and mothers?](#)

*Answer:* The Code explicitly states that “there shall be no advertising or other form of promotion to the general public” and that “manufacturers and distributors shall not provide... pregnant women, mothers, or members of their families with product samples...” Promotion through any type of sales device, including special displays, discount coupons, and special sales, is prohibited.

Furthermore, no company personnel should seek direct or indirect contact with (or provide advice to) pregnant women or mothers.

[11. What does the Code say about labels and the quality of breast milk substitutes?](#)

*Answer:* Product labels should not contain images of children or other images that idealize the use of breast milk substitutes. Information on artificial feeding included on labels should explain the benefits of breastfeeding and the costs and dangers associated with the unnecessary or incorrect use of infant formula and other breast milk substitutes. Products unsuitable for infant feeding, such as sweetened condensed milk, should not be promoted.

[12. To improve infant and young child nutrition, is it sufficient to work only on the Code?](#)

*Answer:* No, additional measures are definitely required as stipulated in the WHO Global Strategy for Infant and Young Child Feeding endorsed by Member States in 2002. The Global Strategy includes nine operational objectives in line with the International Code of Marketing of Breast-milk Substitutes and subsequent relevant WHA resolutions, the Innocenti Declaration on the Protection,

Promotion and Support of Breastfeeding and the Baby-Friendly Hospital Initiative. In addition to implementing the Code, the Global Strategy also calls for measures to promote:

- ensure that all institutions providing maternity services fully practice  
mind the Ten Steps to Successful Breastfeeding”;
- pass innovative laws that protect the breastfeeding rights of working women, and  
enforce them;
- Develop, implement, monitor and evaluate a comprehensive policy on infant feeding  
and the little boy;
- ensure that health and other related sectors protect, promote and support exclusive  
breastfeeding for six months and continued breastfeeding for up to two years of age or  
beyond, and that they also promote timely, adequate, safe and appropriate complementary  
feeding from six months onwards, and
- provide guidance on infant feeding in exceptional circumstances  
you difficult.

To ensure the full implementation of all its components, the Global Strategy calls on governments to designate a national coordinator with appropriate authority and establish a broad-based body to guide the coordinated multisectoral implementation of the Strategy with all stakeholders.

### 13. Is the Code in compliance with other international human rights instruments?

*Answer:* Today, a wide and growing range of international human rights standards and norms can be called upon to improve and protect from disruptive influences infant feeding and child-feeding practices, including breastfeeding. The United Nations Convention on the Rights of the Child (CRC) is the most comprehensive international human rights framework in this regard. Numerous articles of the Convention support the Code's objective, particularly the right of children to the highest attainable standard of health through, inter alia, the reduction of infant mortality and the promotion of breastfeeding.

The Convention not only reflects the legal obligations of governments to all children and mothers within their jurisdiction, but also provides legal and policy guidance on the protection, promotion, and support of infant and young child feeding. Countries that have ratified the Convention are legally bound by its provisions. In other words, governments can be held legally accountable for actions or omissions that impede the enjoyment of the rights and freedoms proclaimed therein. Therefore, national and international mechanisms for monitoring the implementation of the United Nations Convention on the Rights of the Child must address the implementation of the Code in their activities.

#### 14. How does the Code apply in emergencies?

*Answer:* For most infants and young children in emergency situations, emphasis should be placed on protecting, promoting, and supporting breastfeeding and ensuring timely, safe, and appropriate complementary feeding. There will always be a small number of infants who need to be fed with milk substitutes for the short or long term. This may be necessary if their mother is deceased or absent, or too ill, malnourished, or traumatized to provide adequate nutrition. to breastfeed, until she has recovered and if there is no milk from a milk bank available. Breast milk substitutes should be purchased and distributed as part of the regular food and medicine inventory, and only in the quantities needed. There should be clear criteria for their use, and caregivers should be trained in proper hygiene and nutrition. When breast milk substitutes are distributed uncontrolled in emergency situations, the result is often a dangerous and unnecessary increase in early breastfeeding cessation and the risk of increased mortality and morbidity.

#### 15. How does the Code apply in the context of HIV?

*Answer:* The WHO Guidelines on HIV and Infant Feeding were updated in 2010 to clarify and simplify recommendations on infant feeding in the context of HIV. Current recommendations are guided by several key principles, including recommendations on infant feeding practices for mothers known to be HIV-infected.<sup>80</sup> The key principle in these cases is to increase the chance of their infants surviving HIV-free while protecting the mothers' health. Another key principle states that national or subnational health authorities should advise HIV-infected mothers (whose infants remain uninfected or whose infection status is unknown) either to avoid breastfeeding altogether or to recommend breastfeeding while on antiretroviral therapy.

If governments provide infant formula to infants whose mothers are HIV-positive, they must ensure that it is purchased like any other medicine or health product. WHA 47.5.2(2) urges Member States to ensure that there are no donations of free or subsidized supplies of breast-milk substitutes and other products covered by the Code anywhere in the health-care system. Instead of accepting donations, national authorities should consider negotiating prices with manufacturers and offering breast-milk substitutes at a subsidized or free price, to be used for newborns of mothers living with HIV. It is recommended that the provision of breast-milk substitutes be done in a way that:

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<sup>80</sup> WHO. Guidelines on HIV and Infant Feeding 2010. Available at [http://www.who.int/child\\_adolescent\\_health/documents/9789241599535/en/index.html](http://www.who.int/child_adolescent_health/documents/9789241599535/en/index.html)

- ensure sufficient quantities and uninterrupted continuity in supply over time that children need them individually;
- ensure that children receiving substitutes do not receive mixed breastfeeding.
- does not undermine breastfeeding for most children; and
- do not promote breast milk substitutes to the general public or in the health system health care.

It is also recommended to consult the Strategy and Plan of Action for the Elimination of Mother-to-Child Transmission of HIV and Congenital Syphilis, approved by the PAHO Governing Bodies in 2010. Given the overall level of development in the Americas, this Strategy recommends complete replacement of breastfeeding for infants of HIV-positive mothers. In specific cases where this option is not acceptable, feasible, affordable, or safe, breastfeeding is recommended with an antiretroviral regimen.

## 16. Who is responsible for monitoring the implementation of the Code?

*Answer:* The primary responsibility for monitoring the implementation of the Code rests with governments in collaboration with the World Health Organization. Other interested partners, at the national and international levels, should collaborate with governments in this regard. As established in the Global Strategy for Infant and Young Child Feeding, "Industries (producing infant food) should ensure that their actions, at all levels, are in conformity with the Code, with subsequent and relevant resolutions of the World Health Assembly, and with national measures that have been adopted to give effect to both."

Furthermore, health professionals and health managers have a responsibility to ensure that their professional conduct and their institutions comply with the Code. Non-governmental organizations (NGOs), institutions, and individuals can draw attention to the actions of infant food companies that are not compatible with the Code and inform the government for appropriate action. To encourage collective action, Member States must report annually to the WHO Director-General of Health on their actions regarding the Code, so that the Director-General can report to the WHO on the status of Code implementation every other year.



## ANNEX 2

### Sample letters used to report violations of the Code and national laws

#### Generic model 1:

Date (dd/mm/yy)

[Write the name of the person or position]

[Enter the company name]

[Enter the address]

[Enter the Postal Code]

[Write the city]

Ref.: National Code and/or Law

To my highest consideration:

I hereby address you, in my capacity as [Click here and write the name of the person or position], in order to inform you that we have detected the following violation(s) of the law [Write the law number] in relation to the International Code of Marketing of Breast-milk Substitutes and subsequent Resolutions of the World Health Assembly:

Date: [Enter the date of the violation or report]

Product: [Enter the name of the product/brand]

Medium: [Write the medium where it appeared]

Violation: [Write the reference to the violated article(s)]

Aware of the importance of implementing Law XXXXX for the health of our country's maternal and child population, I hereby transmit this information to you so that you can proceed to remedy the defect; otherwise, we will be forced to take the measures contemplated in the Law and its regulations.

Without further ado, I bid you farewell with my most distinguished consideration.

Signature and position

## Generic model 2:

Date (dd/mm/yy)

[Write the name of the person or position]

[Enter the company name]

[Enter the address]

[Enter the Postal Code]

[Write the city]

Dear Sir/Madam,

Regarding note XXXXX received on day XX of XXXXX, for the review of the label of product XXXXXXXXX, in light of Law No. XXXX, it is indicated that the label design has been observed with regard to:

- 1.
- 2.
- 3.
- 4.

For the reasons stated above, we inform you that this label does not comply with the provisions of the Law on reference requesting that you kindly arbitrate the means to correct the points indicated.

Sincerely

Signature and position

### Generic model 3:

Date (dd/mm/yy)

[Write the name of the person or position]

[Enter the company name]

[Enter the address]

[Enter the Postal Code]

[Enter the city]

Distinguished gentlemen:

After courteously greeting you on behalf of the National Breastfeeding Commission, we are pleased to inform you that we are making a great effort to rescue the practice of breastfeeding.

We take this opportunity to express our deep concern and regret at observing in our monitoring system that your product XXXXXX is being advertised, in which it is omitted to indicate from what age this product should be used, which may harm the mothers.

Without wishing to cause controversy, we ask you to immediately modify your verbal message, explicitly stating the age from which this product can be used. If you do not comply with our request, we will be forced to immediately apply the full force of Law XXXX, in Articles X and XX of its Regulations. This Law's sole purpose is to protect the health and well-being of our children.

Sincerely,

Signature and position



## ANNEX 3

### Additional resources and websites

The following websites may provide additional information on the topics discussed in This document. All websites were current as of April 2011.

#### [Pan American Health Organization/World Health Organization](#)

<http://www.paho.org/Celebrando30AnosdelCodigo>

Includes updated material for the protection, promotion, and encouragement of breastfeeding, including detailed information on the International Code of Marketing of Breast-milk Substitutes, the Baby-Friendly Hospital Initiative, World Health Assembly resolutions, WHO and PAHO documents in Spanish, technical documents, and videos.

#### [International Baby Food Action Network \(IBFAN\)](#)

<http://www.ibfan.org/>

Includes updated material on the Code and its monitoring.

#### [International Code Documentation Center \(ICDC-IBFAN\)](#)

[the Code\)](#)

[http://www.ibfan.org/our\\_network-documentation.html](http://www.ibfan.org/our_network-documentation.html)

Includes updated material on the Code and the State of the Code by Country.

#### [World Alliance for Breastfeeding Action](#)

<http://www.waba.org.my/>

Includes updated material on World Breastfeeding Week and many other topics related to breastfeeding.

#### [La Leche League \(Breast Milk League\)](#)

<http://www.lli.org>

Includes information on breastfeeding support groups and technical information on many topics to support breastfeeding.

### [Latin American Network of Human Milk Banks](#)

[www.iberblh.org](http://www.iberblh.org)

Includes material on human milk banks in the Americas, including conferences, a list of banks in the region, protocols for handling human milk, experiences, photos, contacts, and more.

[WHO publications on infant and young child feeding : \*http://www.who.int/nutrition/publications/infantfeeding/en/index.html\*](http://www.who.int/nutrition/publications/infantfeeding/en/index.html)

Includes updated material for the Implementation of the Initiative Friendly Hospitals (training of health workers and policy makers, with additional sections for scenarios with high HIV prevalence); The Code International Marketing of Breast-milk Substitutes and publications breastfeeding or complementary feeding.

### LINKS

<http://www.linkagesproject.org/>

USAID founded the 10-year project – LINKAGES Project (1996–2006) – to give technical information, assistance, and training to breastfeeding organizations, complementary feeding, maternal feeding practices, and amenorrhea breastfeeding. The website includes tools for counseling, training, counseling, monitoring and assessment of infant and young child feeding.

### [Breastfeeding and vertical transmission of HIV](#)

[http://www.who.int/nutrition/topics/feeding\\_difficulty/en/index.html](http://www.who.int/nutrition/topics/feeding_difficulty/en/index.html)

Includes the most up-to-date material on HIV transmission through breast milk and WHO recommendations and their scientific basis.



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