

THE INTERNATIONAL CODE OF MARKETING OF BREAST-MILK SUBSTITUTES

# Protecting Infant and Young Child Nutrition from Industry Interference and Conflicts of Interest



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## Acronyms

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**COI:** conflicts of interest

**FCTC:** Framework Convention on Tobacco Control

**IYCN:** infant and young child nutrition

**PPPs:** public-private partnerships

**UNICEF:** United Nations Children's Fund

**WHA:** World Health Assembly

**WHO:** World Health Organization

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The industry's globally coordinated marketing and political activities create conflicts of interest and policy gaps, foster maternal vulnerabilities, and create new [Commercial Milk Formula] markets that are harmful to human and planetary health.

– *Lancet Breastfeeding Series, 2023*

## 1. Introduction

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The **International Code of Marketing of Breast-milk Substitutes**<sup>1</sup> was adopted by the World Health Assembly (WHA) in 1981 to establish minimum requirements for regulating the marketing of breastmilk substitutes, feeding bottles and teats. It aims to stop the aggressive and inappropriate marketing of these products.

Some governments have made great progress and substantially implemented the Code into national law. Yet many more have not – or have only adopted weak breastfeeding protection and promotion policies.

The **baby food industry** is responsible for two key factors that have limited progress on Code implementation:

- **industry interference** in policy-making and implementation processes; and
- **conflicts of interest (COI)** they create throughout these processes and in health care systems.

Types of **industry interference** in policy development and implementation have included lobbying political leaders, threats of litigation against governments and promoting voluntary measures or self-regulation. These activities are coordinated on a global scale. They are executed by manufacturers and distributors, along with the many trade associations and front groups that work on their behalf.

These corporate actors have created **COI** in many areas relevant to the Code, including policy development and implementation, health professional training and decision-making, and the development of scientific research. These conflicts exist within many countries, and at the regional and international levels.

Industry interference and COI can be particularly damaging in the field of breastfeeding and infant and young child nutrition (IYCN), because the goals of the baby food industry are often **directly opposed** to those of policy makers and health professionals:

- The **baby food industry** seeks to increase their product sales and profits.
- **Policy makers and health professionals** aim to increase breastfeeding rates and improve health and nutrition outcomes by regulating the industry's harmful marketing practices.

Globally, little action has been taken to prevent industry interference and protect against COI. This is despite WHA resolutions that have addressed deficiencies in the original Code, which had weak provisions on COI and did not adequately address industry interference.

This factsheet explains the clear need to keep the baby food industry at arm's length in two key areas:

- To protect against industry interference in policy-making and implementation processes; and
- To prevent COI within these processes and in health care systems.

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<sup>1</sup> International Code of Marketing of Breast-milk Substitutes. Geneva: World Health Organization; 1981 (<https://www.who.int/publications/i/item/9241541601>, accessed 1 February 2023).

Governments **should impose strong regulatory systems** to ensure that the food industry does not violate citizens' human rights to adequate food and nutrition. It is recognized, however, that such efforts may face **formidable resistance** from a food industry seeking to protect its economic interests.

*The Special Rapporteur on the Right to Food, 2016*

## Key terminology:

### **What is meant by 'the Code'?**

After passing the original Code, the WHA has kept the Code up to date by passing subsequent resolutions<sup>2</sup>, which aim to address changing circumstances and close loopholes in the original document.

The WHA has also called on governments to implement the **WHO Guidance** on ending the inappropriate promotion of foods for infants and young children<sup>3</sup>.

The original Code, subsequent **WHA resolutions**, and WHO Guidance are collectively referred to as 'the Code'.

### **What is the 'baby food industry'?**

In this document, the term 'baby food industry' is used as an umbrella for the corporations that engage in the manufacture and distribution of products commonly referred to as baby food, which includes any milks that are specifically marketed for feeding infants and young children up to the age of 3 years (commercial milk formula), including infant and follow-up formulas and drinks for young children (often referred to as growing-up or toddler milks), commercially produced foods that are marketed as being suitable for infants and young children from the age of 6 months to 36 months, feeding bottles and teats.

### **What is meant by the terms laws, legislation, regulations and policies?**

Countries have varied terms and definition for legal instruments. In this document, the terms laws, legislation, regulations and policies are used interchangeably to mean binding legal measures, unless specified otherwise.

## 2. How the baby food industry engages in industry interference

Industry interference describes actions taken by the baby food industry – either directly or indirectly – to thwart, distort or weaken public health policies.<sup>4</sup>

**Manufacturers and distributors** often directly engage in industry interference, which is reinforced by the indirect interference by many **trade associations and front groups**. It occurs during policy development and implementation, involving wide-ranging tactics and activities.

2 Code and subsequent resolutions. In: Nutrition and Food Safety. Geneva: World Health Organization (<https://www.who.int/teams/nutrition-and-food-safety/food-and-nutrition-actions-in-health-systems/code-and-subsequent-resolutions>), accessed 6 June 2023).

3 Maternal, infant and young child nutrition: Guidance on ending the inappropriate promotion of foods for infants and young children. In: Sixty-ninth World Health Assembly, Geneva, 13 May 2016. Geneva: World Health Organization; 2016 (Report by the Secretariat; [https://apps.who.int/gb/ebwha/pdf\\_files/WHA69/A69\\_7Add1-en.pdf?ua=1](https://apps.who.int/gb/ebwha/pdf_files/WHA69/A69_7Add1-en.pdf?ua=1), accessed 6 June 2023); welcomed in Resolution 69.9. Ending inappropriate promotion of foods. In: Sixty-ninth World Health Assembly, Geneva, 28 May 2016. Geneva: World Health Organization; 2016 ([https://apps.who.int/gb/ebwha/pdf\\_files/WHA69/A69\\_R9-en.pdf?ua=1](https://apps.who.int/gb/ebwha/pdf_files/WHA69/A69_R9-en.pdf?ua=1), accessed 6 June 2023).

4 Webinar 1: Addressing food and beverage industry interference in policy-making. 3 March 2022. UNICEF; 2022 ([https://mcusercontent.com/fb1d9aabd6c823bef179830e9/files/4d8beb97-6cf7-8f10-617f-436bf91a79f6/UNICEF\\_GHAI\\_Webinar\\_1\\_Industry\\_Interference\\_Summary\\_of\\_Key\\_Points\\_and\\_Resources.pdf](https://mcusercontent.com/fb1d9aabd6c823bef179830e9/files/4d8beb97-6cf7-8f10-617f-436bf91a79f6/UNICEF_GHAI_Webinar_1_Industry_Interference_Summary_of_Key_Points_and_Resources.pdf), accessed 12 June 2023).

## Common interference tactics used by the baby food industry

<b>Protecting the industry's reputation and brands</b>	Companies engage in corporate washing, meaning contributing to or associating with social causes or organizations to improve public perception and legitimize their presence in public health discourse and policymaking. <sup>5</sup>
<b>Influencing policy-making</b>	<p>The industry seeks to influence policy-making through direct and indirect lobbying of governments and multilateral bodies to prevent the adoption of Code regulations, delay their implementation and promote policy alternatives (e.g., self-regulation or voluntary measures, which evidence shows are ineffective and serve to weaken and delay legal measures).<sup>6</sup></p> <p>Several companies have repeatedly committed to conduct responsible marketing and improve breastfeeding and child nutrition, yet these same companies fund many of the lobby groups working against these commitments.<sup>7</sup></p> <p style="background-color: #FFF2CC;">Such lobbying, for example, led to a long delay in the adoption of new marketing regulations in South Africa; in Thailand, it resulted in the watering down of the scope and strength of new marketing regulations; in the United States, between 2007 and 2018, the six largest baby food companies together spent US\$184.2 million on lobbying political leaders and government agencies.<sup>8</sup></p>
<b>Threatening countries with legal action</b>	<p>Types of threatened legal action include domestic litigation and threats of international trade disputes. This tactic can involve bringing legal challenges, or intervening in or aiming to influence ongoing disputes.</p> <p style="background-color: #FFF2CC;">Between 2015 and 2018, the government of Thailand faced repeated interventions in the World Trade Organization from the US, New Zealand, the EU, Australia, and Canada, questioning the scientific rationale for its proposed new Milk Code regulations, alongside multiple complaints about the proposed regulations not conforming to Codex standards.<sup>9</sup> In the Philippines, when the government moved to strengthen its Milk Code regulations, a lobby group representing US companies appealed to the Supreme Court to rescind the new regulations, resulting in a 398-day delay to adoption.<sup>10</sup></p>
<b>Generating economic concerns</b>	The baby food industry generates economic concerns, such as stressing the economic importance of the industry and economic dangers of regulation.

5 Marketing Exposed: A Global Public Health Threat for Food Policy. Global Health Advocacy Incubator (<https://uppindustrywatch.net/>, accessed 12 June 2023).

6 Erzse, A., Karim, S.A., Foley, L. et al. A realist review of voluntary actions by the food and beverage industry and implications for public health and policy in low- and middle-income countries. *Nat Food* 3, 650–663; 2022 (<https://doi.org/10.1038/s43016-022-00552-5>, accessed 12 June 2023).

7 Baker P, Russ K, Kang M, Santos TM, Neves PAR, Smith J, Kingston G, Mialon M, Lawrence M, Wood B, Moodie R, Clark D, Sievert K, Boatwright M, McCoy D. Globalization, first-foods systems transformations and corporate power: a synthesis of literature and data on the market and political practices of the transnational baby food industry. *Global Health*. 2021 May 21;17(1):58. (10.1186/s12992-021-00708-1, accessed 12 June 2023).

8 Baker et al. The political economy of infant and young child feeding: confronting corporate power, overcoming structural barriers, and accelerating progress. *Lancet* 2023; 401: 503–24; published online 7 February 2022 (third in a series of three paper about breastfeeding; all papers in the series available at <https://www.thelancet.com/series/Breastfeeding-2023>, accessed 12 June 2023).

9 Russ, K., Baker, P., Byrd, M., Kang, M., Siregar, R. N., Zahid, H., & McCoy, D. What You Don't Know About the Codex Can Hurt You: How Trade Policy Trumps Global Health Governance in Infant and Young Child Nutrition. *International Journal of Health Policy and Management*, 10 (Special Issue on Political Economy of Food Systems), 983-997; 2021. (10.34172/IJHPM.2021.109, accessed 12 June 2023).

10 Baker, P., Zambrano, P., Mathisen, R. et al. Breastfeeding, first-food systems and corporate power: a case study on the market and political practices of the transnational baby food industry and public health resistance in the Philippines. *Global Health* 17, 125; 2021 (<https://doi.org/10.1186/s12992-021-00774-5>, accessed 12 June 2023).

<p><b>Consolidating market positions</b></p>	<p>Large corporations use sustained merger and acquisition activity to further market consolidation in many countries and regions.<sup>11</sup> This tactic can increase their market power and their political influence.</p> <p>In many national and regional markets, only a few formula companies dominate; these markets – such as the US, Brazil, South Africa and Indonesia – are considered oligopolistic.<sup>12</sup></p>
<p><b>Diverting attention away from corporate responsibility</b></p>	<p>Companies seek to shift attention away from their responsibility and instead blame individuals for their behaviours and choices (e.g., blaming mothers for not preparing formulas correctly when their babies become sick).</p> <p>Another method they use to divert attention is positioning themselves as supporters of women’s right to information, when in fact they are misinforming and misleading women by making false claims about their products and undermining women’s confidence in breastfeeding.</p>
<p><b>Influencing science to distort evidence</b></p>	<p>The industry seeks to influence science and skew evidence to be in their favour, and to conceal or cast doubt about the harms of their products and practices.<sup>13</sup></p> <p>This tactic not only supports companies’ marketing, but also helps them foster a favourable image and legitimacy with consumers, health professionals and policymakers.<sup>14</sup></p>
<p><b>Making unfounded health claims</b></p>	<p>Companies imply that their commercial milk products are equivalent to or superior to breastfeeding through unfounded health claims and inappropriate marketing tactics.<sup>15</sup></p>
<p><b>Using ‘free choice’ and ‘nanny state’ narratives</b></p>	<p>The industry uses narratives that portray government action as interference. It does this through promoting rhetoric related to personal liberties and freedom of choice, as well as the so-called nanny state.</p>
<p><b>Exploiting loopholes</b></p>	<p>After successfully lobbying to weaken regulations, industry exploits loopholes. It seeks out ways to undermine strong implementation of measures, aiming to skirt obligations under national and international law.</p>

11 Baker P, Russ K, Kang M, Santos TM, Neves PAR, Smith J, Kingston G, Mialon M, Lawrence M, Wood B, Moodie R, Clark D, Sievert K, Boatwright M, McCoy D. Globalization, first-foods systems transformations and corporate power: a synthesis of literature and data on the market and political practices of the transnational baby food industry. *Global Health*. 2021 May 21;17(1):58. ([10.1186/s12992-021-00708-1](https://doi.org/10.1186/s12992-021-00708-1), accessed 12 June 2023).

12 Baker P, Russ K, Kang M, Santos TM, Neves PAR, Smith J, Kingston G, Mialon M, Lawrence M, Wood B, Moodie R, Clark D, Sievert K, Boatwright M, McCoy D. Globalization, first-foods systems transformations and corporate power: a synthesis of literature and data on the market and political practices of the transnational baby food industry. *Global Health*. 2021 May 21;17(1):58. ([10.1186/s12992-021-00708-1](https://doi.org/10.1186/s12992-021-00708-1), accessed 12 June 2023).

13 Rollins, N., Piwoz, E., Baker, P. et al. Marketing of commercial milk formula: a system to capture parents, communities, science, and policy. *Lancet* 2023; 401: 486-502; published online 7 February 2022 (second in a series of three paper about breastfeeding; all papers in the series available at <https://www.thelancet.com/series/Breastfeeding-2023>, accessed 12 June 2023).

14 Baker P, Russ K, Kang M, Santos TM, Neves PAR, Smith J, Kingston G, Mialon M, Lawrence M, Wood B, Moodie R, Clark D, Sievert K, Boatwright M, McCoy D. Globalization, first-foods systems transformations and corporate power: a synthesis of literature and data on the market and political practices of the transnational baby food industry. *Global Health*. 2021 May 21;17(1):58. ([10.1186/s12992-021-00708-1](https://doi.org/10.1186/s12992-021-00708-1), accessed 12 June 2023).

15 Changing Markets Foundations, Busting the myth of science-based formula. Changing Markets Foundation; February 2018 (<http://changingmarkets.org/wp-content/uploads/2018/02/BUSTING-THE-MYTH-OF-SCIENCE-BASED-FORMULA.pdf>, accessed 12 June 2023).



### The baby food industry's interference is coordinated worldwide

A complex and sophisticated web of actors work together to interfere in the development and implementation of Code-related regulations. There are vast connections at the international, regional and national levels among companies and those that lobby on their behalf, such as trade associations and front groups. Despite often appearing independent of industry, these groups are in fact funded and coordinated by them.

Figure 1 below illustrates the baby food industry's global influence, including its vast network of trade associations and other corporate-funded influence organizations.<sup>16</sup>

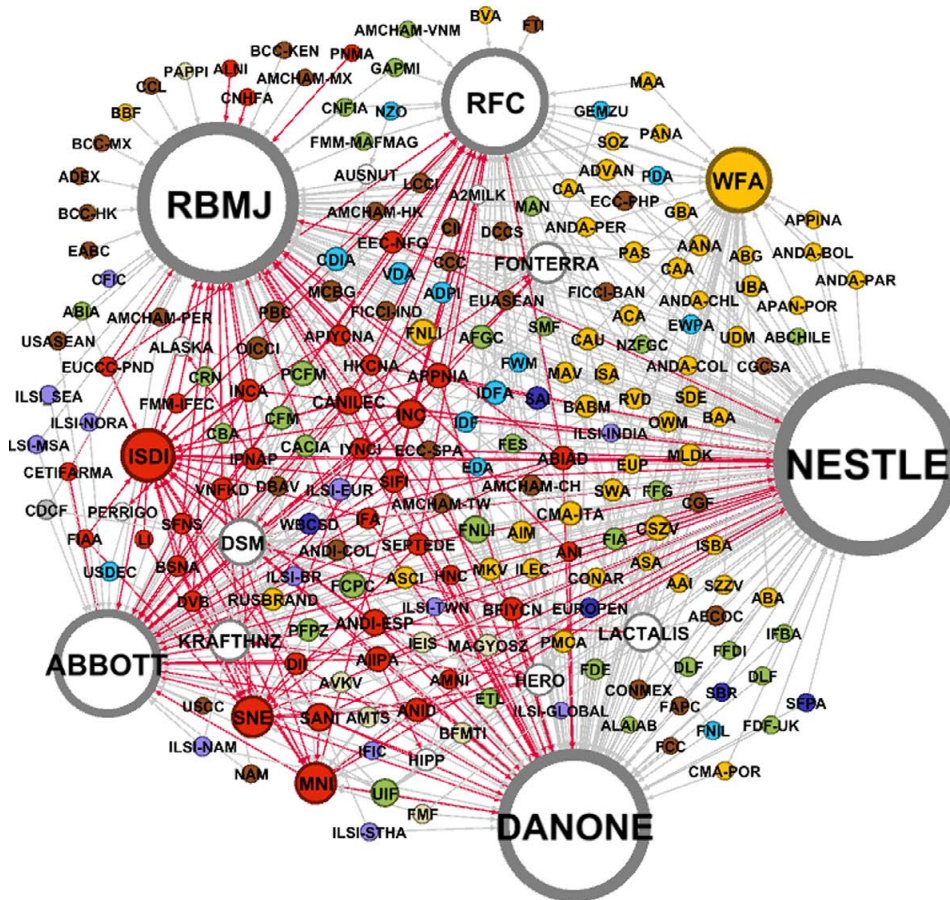


Figure 1. The baby food industry's global political influence network

In this web, circles represent industry actors and lines represent membership, specifically:

- Corporations in the baby food industry (white circles);
- A core network of infant nutrition associations that often lobby directly against strong national breastfeeding protection laws (red circles and lines);
- Branding and advertising associations, which lobby against marketing regulations and promote voluntary industry codes (yellow circles);
- Food, beverage and grocery manufacturers that lobby against many food industry regulations (green circles);

16 Baker P, Russ K, Kang M, Santos TM, Neves PAR, Smith J, Kingston G, Mialon M, Lawrence M, Wood B, Moodie R, Clark D, Sievert K, Boatwright M, McCoy D. Globalization, first-foods systems transformations and corporate power: a synthesis of literature and data on the market and political practices of the transnational baby food industry. *Global Health*. 2021 May 21;17(1):58. (10.1186/s12992-021-00708-1, accessed 12 June 2023).

[Commercial Milk Formula] marketing targets health professionals and scientific establishments through financial support, corporate-backed science, and medicalisation of feeding practices for infants and young children. Conflicts of interest threaten the integrity and impartiality of health professionals.

*2023 Lancet Series on Breastfeeding, paper 2.*

- General industry trade associations, for example chambers of commerce (brown circles);
- Dairy industry trade associations, which also lobby against many food industry regulations (blue circles); and
- Consumer information and industry-funded scientific organizations that promote corporate-friendly science (purple circles).

The ability to recognize these different groups and understand how they promote corporate interests is important for ensuring that they are covered by national measures to safeguard against COI.

### 3. How the baby food industry creates conflicts of interest

The WHO defines **conflicts of interest** (COI) as situations in which a secondary interest has the potential to unduly influence, or may be reasonably perceived to unduly influence, either the independence or objectivity of professional judgement or actions regarding a primary interest.<sup>17</sup>

In the context of regulating IYCN, COI may exist between a government's primary interest – policy-making and implementation to support public health – and a secondary interest of benefitting from a company's vested interests.

COI do not necessarily mean that improper action has occurred, but rather that there is a **risk of it occurring**. COI are not only financial, but can take other forms as well. They can be direct or indirect, and the mere perception of a COI can risk undermining the legitimacy of the primary goal.

There are two main categories of COI in the field of breastfeeding and IYCN:

- COI in government processes to develop and implement policies based on the Code; and
- COI in efforts to implement the Code in health care systems.

Both categories of COI undermine public health goals and impede Code implementation.

#### 1. COI in government processes to develop and implement policies based on the Code

When governments are developing and implementing policies based on the Code, there is a risk of COI arising. Governments' **primary duty** – to protect the public from inappropriate marketing by developing and implementing robust regulations – may be influenced by a **secondary interest**, such as an opportunity to attract private sector funding or support, or any other interest in a company or product that would be covered by the regulations.

Examples of COI in the policy-making and implementation processes include:

- **Revolving doors:** Former industry executives are employed in a regulatory agency;
- **Lobbying:** Closed door meetings are held between industry lobbyists and politicians and government officials;
- **Donations:** Government officials receive gifts or donations from industry groups, or promises of future employment or payment; and

#### Many **WHA resolutions**

specifically address COI: WHA49.15, WHA58.32, WHA61.20, WHA 65.60 and WHA69.9.

*They call on governments to develop processes and tools to safeguard against possible COI in policy development and implementation of nutrition programmes.*

<sup>17</sup> Safeguarding against possible conflicts of interest in nutrition programmes. World Health Organization, Geneva, 4 December 2017. Geneva: World Health Organization; 2018 (Report by the Director-General, [https://apps.who.int/iris/bitstream/handle/10665/274165/B142\\_23-en.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/274165/B142_23-en.pdf?sequence=1&isAllowed=y), accessed 12 June 2023).

- **Access:** Industry executives are given access or appointed to positions in bodies responsible for policy development, implementation or enforcement.

The promotion of **public-private partnerships** (PPPs) since around the end of the 20th century, including by the United Nations, has encouraged private sector involvement in the public sector and administration. These types of partnerships have been utilized on a wide range of issues. In certain circumstances, such as getting schools online and solar panels or other forms of electricity to health facilities, such partnerships have been relatively uncontroversial. For other issues, including in public health, PPPs have faced criticism for helping to legitimize the private sector's role in policy-making and implementation.

One industry COI strategy within health care systems is co-opting influential experts, particularly academic experts, as their advisors. This is one of many ways in which individuals may be swayed by a competing interest without being aware of it. Industry is intentional about the subtlety of this tactic. It "is most effectively done by identifying the leading experts ... and hiring them as consultants or advisors, or giving them research grants and the like. This activity requires a modicum of finesse; it must not be too blatant, for the experts themselves must not recognize that they have lost their objectivity and freedom of action".

*Marion Nestle and Michael Pollan. Food Politics: How the Food Industry Influences Nutrition and Health, 1st ed., University of California Press, 2013, pp. 111–36. JSTOR (<http://www.jstor.org/stable/10.1525/j.ctt7zw29z.13>, accessed 31 May 2023).*

For IYCN in particular, the harms of commercialisation and privatization are clear. They have increased acceptance of industry sponsorship and influence. PPPs for IYCN fail to account for the fundamental problem of COI. This facilitates industry interference in policy-making and implementation, often allowing business interests to take precedence over public health and nutrition.

## 2. COI in efforts to implement the Code in health care systems

In the context of implementing the Code in health care systems, COI may occur when professional judgment concerning a patient's welfare or the validity of research may be unduly influenced by sponsorship, support or gifts from a corporation.

Health workers and health care systems are obliged under the Code to protect, promote and support breastfeeding. Yet evidence shows that the receipt of gifts, supplies of products, equipment or sponsorship for conferences impacts their professional decision making and advice to patients.<sup>18</sup>

When companies engage with health facilities or health workers through the provision of funding, equipment or materials – or even the smallest of gifts, such as pens or calendars – they intend to influence the attitude of health workers towards the company and its products. This type of marketing strategy has been referred to as "endorsement by association" or "manipulation by assistance".<sup>19</sup>

For many years, this was common practice, so long as the company and the health care worker disclosed the contribution to the institution with which the health worker was affiliated<sup>20</sup>. Importantly, the WHA has addressed this issue in subsequent resolutions:

- **WHA 49.15** in 1996 urged governments "to ensure that the financial support for professionals working in infant and young child health does not create conflicts of interest, especially with regard to the WHO/UNICEF Baby Friendly Hospital Initiative".<sup>21</sup>
- **WHA 58.32** in 2005 called on Member States "to ensure that financial support and other incentives for programmes and health professionals working in infant and young-child health do not create conflicts of interest".<sup>22</sup>
- **WHA 61.20** in 2008 called on governments "to strengthen implementation of the International Code ... by scaling up efforts to monitor and enforce national measures in

18 Becker GE, Ching C, Nguyen TT, et al. Babies before business: protecting the integrity of health professionals from institutional conflict of interest. *BMJ Global Health* 2022;7:e009640.

19 Jelliffe DB, Jelliffe EFP. Human Milk in the Modern World. *Br Med J.* 1978 Dec 2;2(6151):1573.

20 International Code of Marketing of Breast-milk Substitutes. Article 7.5. Geneva: World Health Organization; 1981 (<https://www.who.int/publications/i/item/9241541601>, accessed 1 February 2023).

21 Resolution WHA 49.15, Infant and Young Child Nutrition. In: Forty Ninth World Health Assembly, Geneva, 25 May 1996, Geneva: World Health Organization; 1996.

22 Resolution WHA 58.32, Infant and Young Child Nutrition. In: Fifty-eighth World Health Assembly, Geneva, 25 May 2005, Geneva: World Health Organization; 2005.

order to protect breastfeeding while keeping in mind the Health Assembly resolutions to avoid conflicts of interest”.<sup>23</sup>

While important developments, these resolutions did little to explain what sort of behaviour would actually constitute a risk of COI. Finally, in May of 2016, the WHA welcomed the **WHO Guidance** on ending the inappropriate promotion of foods for infants and young children.<sup>24</sup> and urged governments to implement the Guidance’s recommendations.

The Guidance’s **recommendation 6** states that companies marketing foods for infants and young children should not create COI in health facilities or throughout health systems and provides a list of examples of activities or strategies that constitute COI.<sup>25</sup> Similarly, health workers, health systems, health professional associations and nongovernmental organizations should also avoid such COI.

## 4. How to protect against industry interference and COI

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The Code makes it clear that **governments** are responsible for giving effect to its provisions through national legislation, adding that they may seek the cooperation of WHO, UNICEF and other agencies of the United Nations’ system in doing so. There is no mandate or suggestion for governments to seek assistance from the industry that they are aiming to regulate.

The Code also articulates responsibilities on **health authorities and health care workers** for taking appropriate measures to encourage and protect breastfeeding and promote the principles of the Code, along with prohibiting health care systems and health facilities from being used to promote all products within the scope of the Code.

### A. Safeguarding against industry interference and COI in policy-making and implementation processes

To safeguard against industry interference and COI in policy-making and implementation processes, governments should ensure that:

#### 1. Companies are not involved in the policy development or drafting process.

In addition to the WHA resolutions referred to above, the WHO Guidance<sup>26</sup> confirms that the involvement of baby food manufacturers and distributors during the drafting process is inappropriate, as it would represent a COI. After all, the regulations being drafted and adopted are intended to prohibit unethical industry practices that harm mothers and babies while increasing sales and profits. Marketing intelligence reports show that the industry is “fighting a rearguard action against regulation on a country-by-country basis”.<sup>27</sup>

Countries can take inspiration from Article 5.3 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), which aims to protect strong tobacco control policies from the harmful influence of the tobacco industry. It requires Parties to the treaty “to protect their public health policies related to tobacco control from commercial and other

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23 Resolution WHA 61.20, Infant and Young Child Nutrition. In: Sixty-first World Health Assembly, Geneva, 24 May 2008, Geneva: World Health Organization; 2008.

24 Maternal, infant and young child nutrition: Guidance on ending the inappropriate promotion of foods for infants and young children. In: Sixty-ninth World Health Assembly, Geneva, 13 May 2016. Geneva: World Health Organization; 2016 (Report by the Secretariat; [https://apps.who.int/gb/ebwha/pdf\\_files/WHA69/A69\\_7Add1-en.pdf?ua=1](https://apps.who.int/gb/ebwha/pdf_files/WHA69/A69_7Add1-en.pdf?ua=1), accessed 6 June 2023).

25 Details are included below in the section Protecting against COI in health care settings.

26 Guidance on ending the inappropriate promotion of foods for infants and young children: implementation manual. Geneva: World Health Organization; 2017 (<https://apps.who.int/iris/bitstream/handle/10665/260137/9789241513470-eng.pdf>, accessed 6 June 2023).

27 Global Packaged Food: Market Opportunities for Baby Food to 2013. Euromonitor International; September 2008.

vested interests of the tobacco industry”. The history of Code implementation suggests that legal measures prohibiting the inappropriate marketing of commercial formula milk products require the same level of protection.

## ***2. The entire regulatory process is transparent and open to public scrutiny.***

Companies should be given an opportunity to comment on draft regulations along with other interested parties, preferably through a **public process** where objections and comments are submitted in writing and placed on public record. In Canada, for example, a government-wide commitment to regulatory transparency means that in the field of healthy eating, Health Canada publishes a table of all correspondence with stakeholders in which views, opinions and information are relayed with intent to inform the development of relevant policies, guidance or regulations.<sup>28</sup>

Closed door meetings with the baby food industry, or any other regulated entity or party representing their interests, should be prohibited and mechanisms put in place to prevent such interactions.

## ***3. The executive process is free of conflicts of interest.***

Regulations to implement the Code generally provide for the establishment of an intersectoral coordinating committee or advisory board to oversee their implementation. Companies involved in the manufacture or distribution of foods for infants and young children, or anyone who currently has – or in the last few years had – any direct or indirect financial or other interest in any such company should be prohibited from serving on such an executive body. Otherwise, this would result in COI that compromise the independence, integrity and credibility of the body that advises the government on the implementation and enforcement of the regulation. As the old proverb goes, **you don’t ask the fox to guard the henhouse.**

## **B. Protecting against COI in health care settings**

To protect against COI in health care settings, it is imperative that companies, health workers, professional associations and NGOs **avoid** engaging in any of the following:<sup>29</sup>

- Providing free products, samples or reduced-price foods for infants or young children to families through health workers or health facilities;
- Donating or distributing equipment or services to health facilities;
- Giving gifts or incentives to health care staff;
- Using health facilities to host events, contests or campaigns;
- Giving any gifts or coupons to parents, caregivers and families;
- Directly or indirectly providing education to parents and other caregivers on infant and young child feeding in health facilities;
- Providing any information for health workers other than that which is scientific and factual; and
- Sponsoring meetings of health professionals and scientific meetings.

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28 Transparency of stakeholder communications for healthy eating initiatives. Government of Canada; 2016. (<https://www.canada.ca/en/services/health/campaigns/vision-healthy-canada/healthy-eating/transparency-stakeholder-communications-healthy-eating-initiatives.html>, accessed 12 June 2023).

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## 5. Urgent government action is required

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While some governments have made progress and substantially implemented the Code into national law, many have made little progress or have only adopted weak breastfeeding protection and promotion policies. The baby food industry's interference and creation of COI have done immense damage, stalling and blocking progress on implementing the Code in regulations and health care settings.

It does not have to be this way. The above strategies can be used to protect against industry interference and COI – and governments have human rights obligations to implement the Code.

### A. Governments have human rights obligations to implement the Code

The United Nations **Convention on the Rights of the Child** places a duty on Governments to provide their citizens with education and knowledge on “child health and nutrition” and “the advantages of breastfeeding”.<sup>30</sup> Pursuant to this duty, Governments must take appropriate measures to protect the public, particularly parents and caregivers, from the biased and often false information in marketing of commercial milk formula.

Governments are obliged to take appropriate measures to implement the rights articulated in the Convention. In the case of the child's right to health, this includes implementation of the Code.

According to UN human rights guidance, including two UN Special Rapporteurs and the Committee on the Rights of the Child: “Adopting such measures must be recognized as part of States' **core obligations** under the Convention on the Rights of the Child and other relevant UN human rights instruments to respect, protect and fulfil children's right to life, survival and development; their right to safe and nutritious foods, and their right to the enjoyment of the highest attainable standard of health; and to ensure that women's rights are protected from harmful interference by non-State actors, in particular the business sector”.<sup>31</sup>

### B. Key principles governments can use to safeguard policy-making and implementation

Given the negative impact that industry interference and COI can have – undermining infant and young child survival, growth and development – **governments need to take concrete action** to ensure necessary safeguards are in place.

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<sup>30</sup> Convention on the rights of the child. New York: United Nations Treaty Collection; 1989, art. 24 (<https://www.refworld.org/docid/3ae6b38f0.html>, accessed 6 June 2023).

<sup>31</sup> Joint statement by the UN Special Rapporteurs on the Right to Food, Right to Health, the Working Group on Discrimination against Women in law and in practice, and the Committee on the Rights of the Child in support of increased efforts. to promote, support and protect breast-feeding. Geneva: United Nations Office of the High Commissioner for Human Rights; 2016 (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20871&LangID=E>, accessed 22 April 2023).

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Breastfeeding is a human rights issue for both the child and the mother.

*United Nations  
Office of the High  
Commissioner for  
Human Rights, 2016*

### Key principles for policy-development and implementation:

- Use a **human right-based approach**. Code implementation is needed for fulfilment of international human rights obligations to “take all necessary measures to protect, promote, and support breastfeeding, and end the inappropriate promotion of breast-milk substitutes and other foods intended for infants and young children up to the age of three years”.<sup>32</sup>
- Ensure that **mandatory regulations** are developed and implemented through **government-led** processes, and are accompanied by monitoring and enforcement measures. The WHA has stated that voluntary measures are ineffective for Code implementation.<sup>33</sup> Self-regulatory codes and co-regulatory public-private partnerships should be avoided.
- Ensure there is **multisector government engagement** involving the necessary range of departments and agencies to effectuate the regulations. This includes those representing health, business and commerce, trade and investment, food and agriculture, media and communications, consumer affairs, education and relevant enforcement agencies.
- Ensure that the development of an effective **monitoring and enforcement system** is an integral part of the regulatory development process. This system must function in a transparent and independent manner, which is free from industry influence.<sup>34</sup>

## 6. Conclusion

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The baby food industry is responsible for two key factors that have limited progress on Code implementation: industry interference in policy-making and implementation processes, and creating COI within these processes and in health care systems.

The strategies that industry uses to stall or block Code implementation are known; yet so are the ways in which governments and health care systems can counter these industry efforts.

**Urgent action is needed – and possible.** While it can feel like an uphill journey, global coordination can help move these efforts forward. The time for taking action to protect infant and young child nutrition from the baby food industry’s interference and COI is now.

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32 Joint statement by the UN Special Rapporteurs on the Right to Food, Right to Health, the Working Group on Discrimination against Women in law and in practice, and the Committee on the Rights of the Child in support of increased efforts. to promote, support and protect breast-feeding. Geneva: United Nations Office of the High Commissioner for Human Rights; 2016 (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20871&LangID=E>, accessed 22 April 2023).

33 Resolution 63.23, Infant. And Young Child Nutrition. In: Sixty-Third World Health Assembly, Geneva, 21 May 2010, Geneva: World Health Organization; 2010.

34 Resolution WHA 49.15, Infant and Young Child Nutrition. In: Forty Ninth World Health Assembly, Geneva, 25 May 1996, Geneva: World Health Organization; 1996.

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