



Baby Milk Action/IBFAN UK comment on the proposal by the Australian Competition & Consumer Commission (ACCC) to re-authorize the Manufacturers and Importers Agreement (MAIF) regarding the marketing of infant formula (0 to 6 mo.), follow-up formula (6 to 12 mo.) and drinks for young children (12 to 36 mo.)

22nd March 2021

Baby Milk Action – the UK member of the International Baby Food Action Network – supports the comments submitted by IBFAN and is pleased to submit additional comments on the ACCC draft determination on the MAIF agreement. Below we outline the rationale for our recommendation that the MAIF agreement is not renewed.

The MAIF agreement should not be renewed and a full review of Australia’s regulatory framework for the marketing of all baby feeding products should be undertaken as soon as possible. As a first step, we strongly support the ACCC draft determination to increase the scope of any authorisation to include toddler drink products and that FSANZ includes all products from 0-36 months (including ‘Toddler milks’ and drinks) in its forthcoming review of standards applying to infant formula. The aggressive marketing, deceptive claims and cross branding of these products with infant formula, has fuelled the rapid growth of the market for these unnecessary and risky products. The promotion undermines confidence in breastfeeding (both below and beyond 6 months) and public health messages regarding healthier alternative for those babies who are not breastfed.^{1 2}

We commend Australia’s national targets for 80% of infants to be fully breastfed for around six months of age.³ However we note that although 93% of children aged 0 to 3 years received *some* breastmilk, only 29% were exclusively breastfed as recommended by the WHO and by Australia’s National Health Council.⁴ If the 80% target is to be met we believe Australia must adopt binding regulations in line with the International Code and subsequent relevant World Health Assembly resolutions⁵ alongside effective enforcement mechanisms and independent and transparent monitoring and reporting.⁶

Brand stretching, ultra-processed products (UPFs) and risks to human and planetary health: Follow on formulas are ultra-processed products that were invented by the baby food industry in an effort to sidestep the marketing restrictions of the 1981 International Code. In 1986, a WHA resolution (39.28) declared them not necessary, but the adoption of the weak Codex Follow-on Milk Standard in 1987 legitimised them and the market grew. The risks of UPFs to health and the planet are substantial and only now being recognized. They contribute not only to dental caries and obesity but to increased consumption of non-food ingredients such as stabilizers, emulsifiers and thickeners. Many UPFs no

¹WHA Resolution 69.9 (2016) urges Member States to implement WHO’s Guidance on ending the inappropriate promotion of foods for infants and young children ¹(69/7 Add1 13 May 2016), The Guidance clearly recommended that “*Products that function as breast-milk substitutes should not be promoted. A breast-milk substitute should be understood to include any milks (or products that could be used to replace milk, such as fortified soy milk), in either liquid or powdered form, that are specifically marketed for feeding infants and young children up to the age of 3 years (including follow-up formula and growing-up milks). It should be clear that the implementation of the International Code of Marketing of Breast-milk Substitutes and subsequent relevant Health Assembly resolutions covers all these products*” The Guidance also forbade cross promotion of these products.

² IBFAN/ICDC’s *Breaking the Rules Stretching the Rules 2017* and numerous other reports document violations of the International Code and WHA resolutions. See also the [WHO/UNICEF INFORMATION NOTE](#)

³ National Health and Medical Research Council. *Infant Feeding Guidelines: Summary*. Canberra (AUST): National Health and Medical Research Council; 2013.

⁴ Australian Bureau of Statistics for the reference period 2017-2018

⁵ *International Code of Marketing of Breast-milk Substitutes* and subsequent relevant WHA Resolutions <https://www.who.int/nutrition/netcode/resolutions/en/>

⁶ WHA Res 49.15: “*monitoring the application of the International Code and subsequent relevant resolutions is carried out in a transparent, independent manner, free from commercial influence.*”

longer resemble their plant or animal sources yet with skillful marketing can appear healthier than plain milk or other fresh or minimally processed foods. Many contain palm oil derived from deforestation and UPF packaging generates much of the plastic waste that enters marine ecosystems. The Greenhouse Gas Emissions related to follow-on and toddler formulas is also a serious problem. According to a study by Dr Julie Smith¹⁴, of the Australian National University, *“The most alarming finding in our latest research is a very large proportion of greenhouse gas emission impact is associated with the so-called growing up milks or toddler formula ... In China, nearly half of the sales of milk formula is toddler formula.”*⁷

Voluntary Agreements vs Regulation. Globally many studies have concluded that regulating the marketing of baby feeding products is key to establishing breastfeeding supportive environments, and governments are strongly advised to incorporate the International Code and subsequent relevant World Health Assembly resolutions⁸ into legally enforceable measures alongside effective enforcement mechanisms that are free from commercial influence. Breastfeeding rates are invariably higher in such countries than where no legal measures exist.⁹ Voluntary agreements in contrast are rarely backed up by independent accountability procedures and there is no evidence that they reduce the extent and impact of harmful marketing. Indeed, when companies are trusted to carry out educational roles their marketing is hidden and more powerful.¹⁰

The need for Export regulations that hold manufacturers and distributors accountable for their actions in third countries. Australian BMS products are exported primarily to Asian countries where conditions for their use pose serious health risks of malnutrition and increased mortality. While Australia must not conflict with legislation and national provisions, it can play an important role in encouraging compliance with the International Code and Resolutions. Since 1992, the European Union has adopted legislation with the aim of ensuring that the composition and labelling of infant formula and follow-on formula exported to Third countries meets the same standard as products sold within the internal market. EU regulations require exports to meet Codex Alimentarius standards; labelling to avoid the risk of confusion between the age specific products; prohibition of idealization and nutrition and health claims on infant formula. A Council Resolution of 1992 encouraged compliance by EU-based manufacturers with the International code when their products are placed on sale in export markets.¹¹

The need to strengthen Codex standards and Conflict of Interest safeguards

Australia has ratified the Convention on the Rights of the Child and could play a stronger health protective role in setting Code global trading standards. In previous years Australia successfully discouraged the use of health and nutrition claims, however more recently its promotion of the revision of the Codex follow-on formula standard has been problematic. It could make a big difference to global health if Australia were to support the inclusion of adequate references to the International Code and Resolutions into the draft revision of the follow-on formula standard in and ensure that these products are not promoted. While breastfeeding rates in the 2nd year of life are not large in Australia, in one third of the world’s countries it is a lifeline and the majority of children are breastfed in the 2nd year of life.

The mandate of Codex is to protect consumer health and facilitate fair trade. However, these aims are threatened by the commercial and political interests of producer countries and ineffective Conflict of Interest rules. Too often, Codex decisions relating to safety of ingredients and labelling are taken on the basis of political consensus rather than on independent and convincing evidence. The meaningless term *‘history of apparent safe use’* appears three times in Codex formula standards. Since 1995, IBFAN has been tracking the presence and the undue influence of the baby food industry on Codex standard setting. In November 2019, 44% of delegates represented the food and related industries, with 67 sitting on Government delegations. We are pleased that several countries are now taking steps to reduce industry presence on delegations but the problem still exists. Australia’s delegation of six in 2017 included three delegates from industry. In 2019 there was just one industry representative.¹²

⁷ Smith J. 2019. *A commentary on the carbon footprint of milk formula: harms to planetary health and policy implications*. International Breastfeeding Journal, vol 14;49:1-7

⁸ *International Code of Marketing of Breast-milk Substitutes*. Geneva: World Health Organization. 1981 and subsequent relevant WHA Resolutions <https://www.who.int/nutrition/netcode/resolutions/en/>

⁹ WHO, UNICEF, IBFAN. *Marketing of Breastmilk Substitutes: National Implementation of the International Code. Status Report 2016, 2018, 2020*. Geneva: World Health Organization www.who.int/publications/i/item/9789240006010

¹⁰ *Interference in public health policy: examples of how the baby food industry uses tobacco industry tactics WN Vol 8 No 2 (2017)* <https://worldnutritionjournal.org/index.php/wn/article/view/155>

¹¹ Council of the European Communities Directive on Infant Formulae and Follow-on Formulae Intended for Export to Third Countries, 92/52/EEC, 1992. Council of the European Communities. *Resolution on the Marketing of Breastmilk Substitutes in Third Countries by Community-based Manufacturers*, 92/C 172/01, 1992 (EU Resolution). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31992Y0708%2801%29> Commission Directive 2006/141/EC of 22 December 2006 on infant formulae and follow-on formulae and amending Directive 1999/21/EC. *Commission Delegated Regulation (EU) 2016/128 of 25 September 2015* supplementing Regulation (EU) No 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for food for special medical purposes

¹² Codex 2017 <http://www.babymilkaction.org/archives/15887> Codex Nov 2019 <http://www.babymilkaction.org/archives/23295>