

Briefing Paper on the Ethical Issues Concerning the Marketing of Breast - Milk Substitutes, and Other Ethical Issues Relating to Nestlé (with responses from Baby Milk Action annotated in italics)

Introduction

This briefing paper has been produced by the Central Finance Board of the Methodist Church (CFB). It attempts to set out the ethical issues, not to reach conclusions. Where any opinions appear to be given they should not be viewed as representing CFB policy. Similarly, they should not be considered as representative of the views of the Methodist Church in general or the Public Life and Social Justice team in particular.

The paper constitutes the initial stage of a consultation process designed to enable the Methodist Church through its Joint Advisory Committee on the Ethics of Investment (JACEI) to assess the ethical suitability of Nestlé as a potential investment, and to advise the Central Finance Board of the Methodist Church accordingly. The consultation will pay particular attention to Nestlé's performance with respect to the International Code of Marketing of Breast-milk Substitutes. Other aspects of Nestlé's business will also be considered in arriving at a conclusion.

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1. Review of Key Issues Relating to Breast-milk Substitutes

- 1.1 Definitions

The major ethical concern regarding Nestlé relates to the marketing of breast-milk substitutes, as described in the International Code of Breast-Milk Substitutes. These concerns essentially refer to milk-based substitutes, although *Article 2 of the Code states: "The Code applies to the marketing, and practices related thereto, of the following products: breastmilk substitutes, including infant formula; other milk products, foods and beverages, including bottle-fed complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breast-milk; feeding bottles and teats. It also applies to their quality and availability, and to information concerning their use."*

Nestlé disputes that 'complementary infant foods' are covered by the Code, despite the fact that UNICEF has stated in writing to Nestlé that they are covered as set out in Article 2. In its monitoring IBFAN includes complementary foods marketed as replacements for breastmilk (e.g. for feeding during the 6 month period when exclusive breastfeeding is recommended). In addition UNICEF has clarified, in writing, that company representatives cannot use complementary foods to circumvent the prohibition on seeking direct or indirect contact with pregnant women or mothers of infants and young children (children up to three years of age), specified in Article 5.5 of the Code. UNICEF has stated the prohibition is absolute. Complementary foods are otherwise outside the scope of the Code and subsequent, relevant Resolutions adopted by the World Health Assembly, except for the general point in Resolution 49.15 (1996) that: "that complementary foods are not marketed for or used in ways that undermine

exclusive and sustained breast-feeding.” So, for example, Nestlé’s practice of promoting powdered whole milk in the infant feeding sections of pharmacies alongside more expensive infant formula is covered by this Resolution.

The controversy relating to milk-based nutritional products described in this briefing paper refers exclusively to standard infant formula. It is important to distinguish between standard formula and other nutritional supplements. Milk-based nutritional supplements are mostly used to feed individuals with impaired digestive systems. These include premature babies, children, or adults with diseases of the digestive system, people with HIV/AIDs, and the elderly who can no longer eat ordinary food. As such products are clearly life enhancing and are not controversial. *Note that this definition is at odds with that used in the International Code of Marketing of Breastmilk Substitutes, which covers all breastmilk substitutes and not just ‘standard infant formula’. Nestlé, in common with other baby food companies, is increasingly ‘medicalising’ infant feeding. For example, it has launched a ‘hypo-allergenic’ formula in the UK marketed for use with infants at risk of allergy. The same claim cannot be made in the US after legal action was taken against Nestlé after infants fed on the formula suffered from anaphylactic shock. Nestlé’s promotion of formula for use in HIV interventions and of breastmilk fortifiers is something that continues to cause concern.*

The whole question of the production and sale of standard infant formula products is, on the other hand, hugely controversial. Certain groups and individuals believe that the benefits of breastfeeding are so great that sales of standard infant formula products should be strongly discouraged, if not banned. *Note: this is not the position of Baby Milk Action and it is misleading to suggest otherwise. Baby Milk Action stresses that the International Code and subsequent, relevant Resolutions are intended to protect mothers who artificially feed their infants as well as to protect breastfeeding. Much of Baby Milk Action’s work is aimed at improving labelling and composition of baby foods.* Infant formula is produced by 26 companies, but the standard formula market is dominated by three companies. Nestlé is the largest, trading under the ‘Nestlé Nidina’ and ‘Nestlé Beba’ labels in Europe, and ‘Nestlé Nan’ in Africa. Second largest is the US pharmaceutical company Wyeth (formerly known as American Home Products) which sells the ‘SMA’ and ‘Nursoy’ brands, followed by the Dutch company Numico which trades under the Nutricia label. It should be noted that both Nestlé and Wyeth are also leading producers of other nutritional supplements.

1.2 Infant Formula in Developed Countries

From the beginning of the twentieth century until the 1960s medical opinion in developed countries such as the UK favoured bottled infant formula over breast-feeding. There were a number of reasons for this. It was thought that boiling bottled feed made it more hygienic than breast-milk. As a result of the Great Depression of the 1930s, and wartime austerity in the 1940s, many children in the US and Europe suffered from malnutrition. Hence governments at that time thought it desirable for babies to grow as rapidly as possible, so infant formula, which may have a higher calorific value than breast-milk, was the preferred choice of many doctors.

However since that time the consensus of medical opinion has swung round so that breast-milk is now regarded, without doubt, as the best choice for young babies. There have also been other major changes in standard medical advice about the best way to feed babies. Until the 1970s many doctors advocated ‘training’ the baby by limiting feeding to once every four hours, but now it is accepted that babies, particularly young ones, should be fed upon demand.

It is generally accepted that in normal circumstances breast-milk provides the ideal nutrition for babies prior to weaning. However, the primary reason for advocating breastfeeding lies in the fact that in the first six months of life an infant's immune system is not fully developed. The child's mother's milk contains her antibodies, which help the infant fight infection; if both the mother and baby are exposed to an infection, the mother's immune system automatically produces antibodies which protect the baby. Obviously standard milk formula cannot contain such custom-made antibodies. It is for this reason that *the World Health Assembly adopted a Resolution in 1994 (47.5) calling for complementary feeding to be fostered from about 6 months of age. A 2001 Resolution (54.2) was adopted re-stating this as a global public health recommendation of: "exclusive breastfeeding for six months ... with continued breastfeeding for up to two years of age or beyond."* This wording is used in the *Global Strategy on Infant and Young Child Feeding adopted in 2002 under Resolution 55.25*

The benefits of breastfeeding as regards anti-bodies are unquestioned. However, medical science suggests that there are a number of additional health benefits from breast-feeding, particularly in terms of reduced risk of childhood diabetes and allergic diseases such as asthma. It is also claimed that breastfeeding helps develop an emotional bond between mother and child, which is beneficial for the later psychological development of the child. Lastly, research indicates that a prolonged period of breastfeeding is also beneficial for the mother in terms of a slightly reduced risk of breast cancer.

However, apart from the important exception of antibodies in the first six months of life, the medical benefits from breastfeeding compared to using infant formula in developed countries are not particularly great. The campaign against standard formula baby milk is based upon the principle that 'breast is best'. However, this seems to ignore the social changes that have taken place in Europe and North America over the past thirty years. It might have been possible for most Western women to breastfeed their newborn babies every few hours in the 1950s, when they stayed at home. Now, it is simply impractical, if not impossible, for women who go out to work to breastfeed their child exclusively. While a minority of women may work in places where crèches are readily available, for most women such an option is not available. In such cases the use of standard formula milk-based feeds are essential, unless society decides that a women's right to work should be downplayed, as it was in developed countries in the 1950s, and may be today in some developing nations. *Note: this sweeps aside a great deal of research on health benefits of breastfeeding in industrialised countries, ignores the fact that breastfeeding rates in countries such as Norway are over 90% at 4 months and negates the Governments targets for increasing breastfeeding rates. It also typifies the campaign as 'against standard formula baby milk' when the ethical issue relates to appropriate marketing not the availability of the product.*

1.3 The Use of Infant Formula in Developing Countries

The above issues are also applicable to the sales of infant formula in developing countries. However, there are also very real concerns which are specific to developing countries. In particular they relate to the marketing of infant formula in countries where there is no general access to pure water. There is little dispute that standard infant formula is safe in developed countries where high quality drinking water is available, and where bottles and preparation equipment can be effectively sterilised *and where increased risk of illness can be treated (for example, an artificially-fed child in the UK is up to 10 times more likely to be hospitalised with gastro-enteritis than a breastfed child).*

In developing countries these factors are often not present, so using impure water can easily lead to the baby developing stomach infections such as amoebic dysentery. In adults such infections are unpleasant, but the patient usually recovers. However for a young child they can be fatal. It is alleged that during the 1960s and 1970s when infant formula was widely used in developing countries, the use of such products may have resulted in the deaths of hundred of thousands, if not millions, of babies each year. Baby Milk Action claims that this is still the case. Its website quotes UNICEF (press release January 1997) that:

"Marketing practices that undermine breastfeeding are potentially hazardous wherever they are pursued: in the developing world, WHO (the World Health Organization) estimates that some 1.5 million children die each year because they are not adequately breastfed. These facts are not in dispute."

However, although the WHO has referred to infant death from malnutrition or water-borne disease, it has never made any official statement about infant death being due to infant formula marketing, *nor has Baby Milk Action suggested that it has. It should be recalled, however, that when Baby Milk Action was called on to defend a boycott advertisement before the Advertising Standards Authority, including the use of the statistic, "Every day, more than 4,000 babies die because they're not breastfed. That's not conjecture, it's UNICEF fact" it did so successfully and one of the organisations sending supporting statements was WHO.*

It seems fair to state that the marketing standards of the leading infant formula companies in developing countries in the 1960s and early 1970s were well below what would now be deemed acceptable. (This is of course true for many other industries with 'legacy issues'). A number of accusations have been made about marketing practices used in that time:

- a) The use of strident marketing campaigns stating that infant formula was better for babies than breast-milk, despite all evidence to the contrary.
- b) Handing out free samples to new born mothers, as well as to health professionals.

Giving free samples to mothers of new born babies in hospitals is a particularly iniquitous practice, as if a mother stops nursing a baby for more than a few days, she loses the ability to produce breast-milk. In many developing countries infant formula, like most Western consumer goods, is very expensive compared to average incomes. In other words, giving mothers free samples of infant formula in the hygienic environment of a hospital will cause her breast-milk to dry up. Once she returns home, she will have no alternative but to try and feed her baby on infant formula, even though this could often be made with dirty water that might lead to dysentery. It is well documented that many families in developing countries lack the income required to purchase enough formula to adequately feed a baby, so that the provision of free samples of infant formula could lead to babies suffering severe

malnutrition, and even death by starvation. However, it is also documented that instead of breast-milk some babies may receive cow's milk, goat's milk, plain tea, sugar water, rice water or plain water that may also be detrimental to their healthy development.

That said, it is important to note the massive rise in the standards of living which has occurred in many developing countries over the last thirty years, particularly in South East Asia. In countries such as Thailand, Taiwan, and South Korea rapid economic growth has meant that in urban areas at least clean water is now generally available and incomes are high enough to make infant formula an affordable item for most people. One aspect of this process of rapid development has been economic empowerment for women, an increasing number of whom are entering professional and business life. In poor agricultural societies where the vast majority of men and women work on the land, and live nearby, breastfeeding is a relatively easy option. Once women have prolonged commutes to work in nearby cities, with minimal provision of crèches and nurseries, leaving their babies at home with relatives, to be fed on infant formula, is the only practical alternative. In Western Europe maternity leave legislation economically empowers women who wish to stay at home and breastfeed their babies in the first six months to do so. In developing countries such legislation may not exist.

Note: again it is important not to lose sight of the fact we are considering Nestlé's baby food marketing practices. Morphine can be necessary, useful and used safely, but that does not excuse it being aggressively marketed.

1.4 History of Growing Concern over the Marketing of Breast-milk Substitutes

There was growing public concern about the marketing of infant formula in developing countries from the early 1970s onwards. *Note: Baby Milk Action dates the campaign from the 1930s when concerns were raised about the impact of sweetened condensed milk being promoted for 'delicate infants'.* In the UK this was led by the development charity War on Want. In 1976 War on Want produced a report, *The Baby Killer*, alleging that the aggressive marketing campaigns of Nestlé and other companies producing breast-milk substitutes was responsible for significant infant death.

Public concern grew in the second half of the 1970s which led to many non-governmental organizations (NGOs) advocating a boycott of Nestlé and Wyeth products. It also led to a US Senate Inquiry into the subject in 1977. Finally, in 1979 two international organisations got together to devise an International Code of Marketing of Breast-milk Substitutes. These were the United Nations Children's Fund (UNICEF) and WHO, *which convened an international meeting, involving government, health bodies, baby food companies and NGOs.* The Code was adopted by the WHO's 34th Assembly in May 1981. The preamble to the Code states that:

'Considering that when mothers do not breastfeed, or only do so partially, there is a legitimate market for infant formula and for suitable ingredients from which to prepare it; that all these products should be made accessible to those who need them through commercial or non-commercial distribution systems, and they should not be marketed or distributed in ways which may interfere with the protection and promotion of breastfeeding;

Recognising further that inappropriate feeding practices lead to infant malnutrition, morbidity and mortality in all countries, and that improper practices in the marketing of breast-milk substitutes and related products can contribute to these major public health problems'.

The key points of the Code as established in 1981 were:

- a) No advertising of breast-milk substitutes.
- b) No free samples or supplies are to be given to mothers.
- c) No promotion of products through health care facilities.
- d) No contact between company marketing personnel and mothers.
- e) No gifts or personal samples to health workers.
- f) Information to health workers should be scientific and factual only.
- g) All information on artificial feeding, including the labels, should explain the benefits of breastfeeding and the costs and hazards of artificial feeding.
- h) Unsuitable products should not be promoted for babies.
- i) Babies should not be depicted on infant formula packaging.
- j) Labels should be set out in local indigenous languages.

In 1984 Nestlé agreed to accept and adhere to the Code, and at that time many of the various NGO boycotts were *suspended*. The implementation of the Code in developing countries was put in place by Nestlé through the *Nestlé Instructions*, which were developed in consultation with WHO and UNICEF, *though never approved by these bodies as Nestlé implies*. However, in 1986 NGOs alleged that Nestlé and Wyeth were in breach of the Code's by switching from advertising to giving free samples to hospitals in developing countries. In 1986 the WHO Code was tightened up to prohibit the giving of such free samples. At the same time the International *Nestlé Boycott Committee (INBC)* which Baby Milk Action and other boycott coordinating groups formed announced the re-launch of the boycott of Nestlé products on the grounds that the company *had broken its undertaking and was continuing to violate the International Code and Resolutions in a systematic and institutionalised way, as demonstrated by monitoring conducted by the International Baby Food Action Network (IBFAN), to which Baby Milk Action belongs.*, The boycott which continues to this day. In 1993 Nestlé announced that it would not permit free samples to be given unless specifically requested by Governments for certain restricted social welfare cases.

1.5 HIV/AIDs

The prevalence of HIV/AIDs in sub-Saharan Africa has brought forward a new ethical question concerning the supply of standard infant formula. According to the charity *Medecins Sans Frontieres* HIV/AIDs currently infects more than 2.5 million children world- wide. In 2003 700,000 children were newly infected with the HIV virus, 90% of these in sub-Saharan Africa. Half of all children with HIV die before they reach the age of two.

It is known that an HIV infected mother has a 20% chance of passing the virus onto her baby through her breast-milk, and it is estimated that in 1990-2000 1.7m infants in Africa were infected with HIV in this way. Up to December 2000 it is estimated that 3.8 million children have died from AIDs, with 3.4m of these being infected by their mothers, with some 1.1-1.7m infected solely through drinking breast-milk infected with HIV. In sub-Saharan Africa it is believed that 90 out of every 1,000 pregnant women are HIV positive. Of these 90 pregnancies, 27-36 babies are expected to contract the HIV virus *in utero*, during labour, or through breast-milk. In this context the provision of free infant formula could save infant lives on a substantial scale, rather than the opposite.

According to an article in the *Wall Street Journal* (5th December 2000), in 2000 the two largest formula producers, Nestlé and Wyeth, offered to give free infant formula in tightly controlled circumstances to HIV infected mothers in southern Africa, including the use of generic packaging with no reference to either company. This offer was refused by the United Nations Childrens Fund (UNICEF), calling it a breach of the Code. Wyeth and Nestlé were therefore inhibited from supplying free infant formula on the grounds that UNICEF would have accused them of breaching the WHO Code. UNICEF's Director Carol Bellamy told the *Wall Street Journal*:

'We don't believe that Nestlé and the other major formula makers have a particular role to play in the AIDs crisis. What they should do is comply with the (WHO) code.'

At same time UNICEF's sister organisation, UNAIDS, was critical of this decision. In many sub-Saharan countries even a small portion of standard formula often costs more than an average family's weekly income. Hence the provision of free formula is crucial if infant formula is to play an important role in the prevention of HIV infection via infected breast-milk. UNAIDS Director Peter Piot was quoted in the *Journal* as saying that UNICEF:

'They're having difficulty accepting that the world has changed'the UN must look beyond the fierce battles of the past in an effort to save lives.'

Note: If you are going to refer to the Wall Street Journal article, it is recommended that to give some balance, reference should also be made to a follow-up article in the British Medical Journal 6 January 2001: "The milk of human kindness: How to make a simple morality tale out of a complex public health issue." Or the letter sent to the Wall Street Journal by UNICEF Executive Director, Carol Bellamy, 14 December 2000, quoted in the BMJ which stated: "You fail to acknowledge that Unicef is leading the way in addressing mother to child transmission, and you fail to explain fully why Unicef so strongly supports breastfeeding." Research showed, she said, that formula fed infants were four to six times more likely to die of disease than breast fed infants, and "exclusive breastfeeding can save lives, as many as 1.5 million a year. A rush to promote formula feeding, she explained, could lead to the spread of other infectious diseases. Unicef's view is that if formula is to be used, it needs to be done in a targeted manner. The organisation is currently piloting projects in 11 countries to offer women HIV testing and counselling, offering formula to those who then chose to use it. "

Baby Milk Action worked with UNICEF on the HIV intervention project in helping to design labels for infant formula which gave required information in a clear way to increase the chance that the formula would be used safely.

In 2001 the World Health Assembly adopted Resolution 54.2, which calls for action:

'To recognize and assess the available scientific evidence on the balance of risk of HIV transmission through breastfeeding compared with the risk of not breastfeeding, and the need for independent research in this connection; to strive to ensure adequate nutrition of infants of HIV-positive mothers; to increase accessibility to voluntary and confidential counselling and testing so as to facilitate the provision of information and informed decision-making; and to recognize that when replacement feeding is acceptable, feasible, affordable, sustainable and safe, avoidance of all breastfeeding by HIV-positive women is recommended; otherwise, exclusive breastfeeding is recommended during the first months of life; and that those who choose other options should be encouraged to use them free from commercial influences.'

In summary, where replacement feeding is feasible this is recommended for HIV-infected mothers. Where it is not, exclusive breastfeeding is recommended.

Note: This also makes the point that information for mothers should be 'free from commercial influences'. Nestlé is in breach of this Resolution as soon after it was adopted the company set up a Nutrition Institute for Southern Africa with the stated purpose of promoting infant formula for use by HIV-infected mothers.

At the European Parliament Public Hearing into Nestlé marketing of breast-milk substitutes held at the European Parliament in November 2000, UNICEF stated:

‘Many people have questioned the continued relevance of the Code in the context of mother-to-child transmission of HIV through breastfeeding. Let me assure you that there is an even greater need to ensure Code compliance in areas of high HIV prevalence. The Code protects artificially fed children as well as those mothers who decide to breastfeed.

One of its aims, as specified in Article 1, is to ensure the proper use of breast-milk substitutes when these are necessary. If incorrectly prepared, infant formula can be lethal. Over-dilution, the result of unsuitable availability of formula, leads to malnutrition. Under-dilution can cause serious health problems such as kidney failure. This is without discussing whether sanitation and access to clean water, fuel and adequate skills permit safe preparation.’

1.6 Water Availability

The use of impure water in the preparation of infant formula, and the resultant adverse health risks, plays a key role in the ethical issues surrounding breast-milk substitutes. It is worth noting that according to the UN 1.1 bn of the world’s inhabitants lack access to adequate clean water, defined as 50 litres per day for drinking, washing, cooking, and sanitation. The UN stated that 5m people a year die from waterborne diseases, of which 2.2m people a year die from diarrhoeal diseases, most of them infants, due to contaminated water. At the Johannesburg Global Summit on the Environment in 2002 a commitment was made to halve the proportion of the world’s population without safe drinking water by 2015.

The UN stated that 30 countries, the majority of them in Africa, account for 87% of the people without access to safe water. The UN also pointed out that there is actually plenty of available water in the world, and the provision of adequate drinking water for the entire world population would require less than 1% of the world’s ground water. However, the problem is the way water is used. About 70% of the world’s fresh water goes into irrigation of agricultural land, and in some developing countries this figure rises to over 90%. It is generally accepted that the provision of clean water supplies normally involves the development of adequate sanitation services. It is now recognised that these two goals play a crucial role in economic development. According to the NGO, Water Aid, these issues are also materially linked to raising the education level, particularly for women. For example, a Water Aid study in Ethiopia found that providing access to fresh water reduced the time spent collecting water, a task traditionally allocated to women, from six hours to twenty minutes per day.

1.7 The Key Ethical Issues relating to Breast-Milk Substitutes

The aim of this CFB paper is to set out the ethical issues at stake, and not to reach conclusions. The question of infant formula marketing is complicated, technical, and the subject of heated debate. This section will therefore attempt to clarify what we believe are the key ethical issues relating to it:

- a) *Status of Infant Formula*

One question which needs to be addressed is the moral status of infant formula itself. Is it a bad thing in itself, like tobacco or gambling, or is it more like alcohol, where the problems arise from misuse? Many supporters of IBFAN would probably argue that while theoretically infant formula may not be a bad thing in itself, in practice it is a substitute for a very good thing, i.e. breast milk.
- b) *Role of Infant Formula in Child Death*

It cannot be disputed that hundreds of thousands of young children die each year in the developing world due to malnutrition or water-borne disease. However, it may be important to distinguish between baby deaths that arise from the use, or misuse, of infant formula due to inappropriate marketing by leading infant formula producers, and those that are due to other causes. These might include ignorance on the part of the mother, and the grossly inadequate health care systems which exist in much of southern Africa. As described in section 1.6 it is impossible to find pure water in much of Africa. Although the United Nations has pledged to make clean water available to all of the world's population, this is a long way from being achieved.
- c) *Supplying Infant Formula in Areas of Weak Healthcare Systems*

In other words, how morally culpable are the infant formula producers if they act as reasonable suppliers of infant formula to countries with grossly inadequate health care systems, such as those in southern Africa, where misuse of their products then occurs? For the sake of argument, let us assume that they are fully compliant with the International Code, but that their products are still linked to child death. If the misuse of standard formula products arises from ignorance or misunderstanding in the context of inadequate medical systems, is it fair to blame the companies for this? It could be argued that infant formula should be withdrawn entirely from such countries. On the other hand, such a withdrawal could lead to increased infant malnutrition through replacement of infant formula by even more inappropriate substitutes such as goats milk, or sugar water. The prevalence of HIV/AIDs in southern Africa also needs to be taken into account.
- d) *Compliance with the International Code*

One of the key ethical issues surrounding infant formula relates to the extent to which the formula manufacturers are complying with the International Code. A large part of the debate relates to the very different interpretations of the Code made by Nestlé *on one hand* and Baby Milk Action, *the World Health Assembly and UNICEF on the other*. The complexity of this debate can make it hard to see the wood for the trees. While there has been a *some* improvement in the marketing standards used to promote infant formula in developing countries, the key ethical question is whether it is enough.
- e) *Social Responsibility Considerations*

Another ethical issue concerns broader social responsibility considerations. In other words are the infant formula producers showing a narrow legalistic

'compliance' attitude to the Code, but ignoring broader ethical issues? In particular what should they do when marketing formula in developing countries with inadequate healthcare systems. Some critics would argue that it is the role of governments to legislate or provide guidelines appropriate to the social and developmental context of the country concerned, where there exists a lack of capacity to implement and monitor such legislation then, in this day and age, the company must exercise diligence towards consumers with respect to the use of their products. Indeed they should do so without needing to be prompted by government, otherwise company mission statements count for very little.

2. Nestlé Policy on the Marketing of Infant Formula

2.1 History

Infant formula is one of Nestlé's oldest products, having been invented by Henri Nestlé in 1867. It now accounts for less than 2% of total group turnover, but it was the company's principal product until the early 1900s. This corporate history probably explains why Nestlé appears fiercely attached to maintaining its presence in this area, and why the company feels obliged to argue its case so strongly. Given the enormous negative publicity that the subject of 'baby milk' has generated for Nestlé over the last thirty years, on a strict cost-benefit analysis it would probably make sense for the company to exit the standard infant formula market. However, we suspect that a sense of corporate history probably prevents it from doing so. *Note: Nestlé also refers to its baby food business as one of its 'main strategic pillars'. The reason behind this, is that the company is basically a junk-food company (indeed according to investment bank UBS Warburg, nearly half of Nestlé's profit is at risk if effective regulations on unhealthy foods are introduced through the World Health Assembly - this would be higher but for Nestlé's involvement in pet food, cosmetics and bottled water). The baby food business enables Nestlé to portray itself as a 'nutrition' company and to gain the tacit endorsement of the health care system where its promotional materials appear.*

2.2 Nestlé Understanding of the WHO Code

Nestlé's understanding of the WHO code is explicitly set out in a number of company documents. Such an understanding is key to the extent to which the company is indeed complying with the Code as set out in the World Health Assembly (WHA) Resolution 34.22 of May 1981. The following are quotations from the Nestlé Document, *International WHO Action Report*, dated April 2003:

- 'WHA resolutions are recommendations to all member states of the WHO.'
- 'The Code calls upon governments to take action to give effect to the principles and aim of this Code, as appropriate to their social and legislative framework, including the adoption of national legislation, regulations, or other suitable measures.'
- ' "Resolutions passed after the adoption of the WHO Code have the same status as the Code- they are recommendations to all of its member governments." WHO Director General, Gro Brundtland, 1998. "Neither the Code nor any resolution has a real impact and a lasting meaning unless countries implement them according to their national laws and practice. Member states are sovereign; they may, if they choose, implement WHO's recommendations to the letter, they may actually go beyond these recommendations, or they may simply ignore them together."'
- 'Nestlé universally follows all countries' implementation of the WHO Code. Our decision, two decades ago, to voluntarily and unilaterally implement the WHO Code as a minimum in all developing countries is due to the fact that the economic, social, and sanitary conditions in most of those

countries differs substantially from the situation in developed countries like the USA or EU.'

- 'Nestlé voluntarily and unilaterally implements the Code in more than 155 developing countries - we apply the Code to all Infant food products being marketed or otherwise represented as a breast-milk substitute. That means starter formula (0-6 months) and in the case of Nestlé it means follow-on formula (6-12 months). '
- 'Nestlé is in voluntary compliance with the WHO Code in all developing countries (more than 150 nations). We support governments' efforts to translate WHO resolutions into national languages. Nestlé has begun a new monitoring process with governments around the world to ensure compliance with the WHO Code. An initial Report produced in 1999 contained official statements from 54 governments representing over 50% of Nestlé's infant formula sales in developing countries. All provide evidence that Nestlé complies with the WHO Code as is it is implemented in that country.'

Nestlé's interpretation of the Code is based, in part upon a section which says that:

'Products other than bona fide breast-milk substitutes, including infant formula, are covered by the Code only when they are "marketed or otherwise represented to be suitable ...for use as a partial or total replacement of breast-milk."'

The company therefore believes that the Code's references to products used as partial or total replacements for breast-milk are not intended to apply to complementary foods unless these foods are actually marketed as breast-milk substitutes.

2.3 Recent Developments in Code Guidelines

In May 2001 the WHO *re-stated* its recommendation on breast feeding to 'recommended for the first six months of life'. *This was in line with Resolution 47.5 adopted in 1994 which called for complementary feeding to fostered from about 6 months of age. UNICEF wrote to Nestlé in December 1997 setting out that Nestlé's continued failure to change labels of complementary foods constituted a breach of this Resolution. During national demonstrations in the UK in May 2003 Nestlé announced:*

'In line with our clear support for the new Resolution, Nestlé has consequently completed label changes on complementary foods to follow six month recommendation. Nestlé is the only company manufacturing infant formula and complementary foods to have taken this step, in spite of the risk that this may put complementary foods at a commercial disadvantage vis-à-vis competitors' products.'

Baby Milk Action and UNICEF have provided monitoring evidence showing that Nestlé's claim to have changed labels was not fully implemented. It is an irony of the campaign that progress, such as the 9-years of work prompting Nestlé's policy shift on labelling of complementary foods, is then used by the company to attack the campaign as unnecessary!

2.4 Nestlé's Policy and Management Control of Infant Formula Marketing

The importance of infant formula marketing to Nestlé is shown by the fact that the company's Chief Executive, Peter Brabeck, wrote an introduction to a 2001 Nestlé paper called *Infant Feeding in the Developing World*. In it he says:

- ‘Our policy and practice in developing countries since 1984 has meant no public promotion, including no advertising, no advertising leaflets, no “milk nurses”, no samples to mothers, and a very restrictive policy on free formula for evaluation by health professionals. We leave communication to mothers about infant formula in developing countries completely up to health professionals.’
- ‘We also carry out annual audits on WHO Code compliance with a sample of Nestlé companies, and we investigate any substantiated claims made by those who believe we have broken the Code. Many of these we find to be inaccurate, but in a company of over 225,000 individuals, mistakes can be made. If we find that the Code has been deliberately violated, we take disciplinary action.’
- ‘As CEO, I personally review any reports of Code violation discovered either in our audits or in the developing world or through reports from other organisations, and I make sure that the appropriate action is taken.’

Nestlé has also introduced a system of Ombudsmen, i.e. senior managers outside of infant nutrition to whom staff can report concerns. In other words, the company has put in place a system to alert Head Office of possible Code violations. These people work in areas like accounting or public affairs, so they have no incentive to cover up Code breaches.

Note: Auditors can be seen in Nestlé’s 2002 Sustainability Review in front of powdered whole milk next to breastmilk substitutes in the baby feeding section of a shop - a breach of Resolution 49.15. Nestlé has refused to indicate which countries it has conducted audits on. It has commissioned one external audit, into activities in Pakistan, but auditors were told they could not contact NGOs or a Nestlé whistle-blower and could only interview doctors from a list provided by Nestlé. Baby Milk Action wrote to Hilary Parsons, Head of Corporate Affairs, Nestlé (UK) offering to provide documentary evidence to the auditors, but this offer was not passed on. The resulting audit was a white wash. Baby Milk Action has written to Nestlé’s ombudsman asking for a response to the many reported violations where answers had not been received or responses were inadequate. The ombudsman did not reply. Nestlé whistle-blower, Syed Aamar Raza, says he was threatened and offered money to keep quiet when he raised his concerns about Nestlé malpractice. He remains in exile from Pakistan and has not seen his family for 5 years.

2.5 Key Elements of Nestlé’s Position on Infant Formula Sales

Unless Nestlé is guilty of major and systemic duplicity, there seems little reason to doubt that the above statements illustrate the company’s sincere conviction that it is doing its best to conform to its understanding of the Code.

NOTE; Nestlé is guilty of major and systemic duplicity on this issue. Nestlé’s strategy of suggesting the issue is one of interpretation and only Baby Milk Action disagrees with Nestlé’s interpretation is just that - a strategy. Baby Milk Action goes back to the Code and Resolutions and seeks advice from UNICEF’s Legal Officer in case of doubt.

The key elements of this, in the CFB’s opinion, are the following:

Nestlé recognises the Code as consisting of advisory recommendations to governments. It is governments that have the responsibility to implement the Code in their own countries through law and medical standards in the light of their own local conditions. *Note: Nestlé ignores Article 11.3 of the Code which states:*

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

- Nestlé believes the Code set out minimum standards in all developing countries. It does not believe that it applies to developed countries, where the problem of impure water does not exist, and where powerful regulatory agencies such as the Federal Food and Drug Agency (FDA) in the US set their own stringent standards. Nestlé’s position is that it universally follows all countries’ implementation of the Code, following its decision more than two decades ago, to voluntarily and unilaterally apply the WHO Code in developing countries and regions. In developing countries and regions where there is no local code in place, or if the local legislation is less strict or precise than the WHO Code, the Code is used as a minimum standard. Otherwise the local measures apply.
- Nestlé understands the Code as only applying to breast-milk substitutes. This means starter formula (0-6 months) and in the case of Nestlé it means follow-on formula (6-12 months). In the company’s opinion it does not apply to complementary foods such as fruit juices, infant cereals, and other non-milk based weaning products.
- Nestlé believes that it follows the Code principles banning free supplies of infant formula, which it understands to have particular reference to nursing mothers. It does believe however that it is allowed to make small samples of infant formula available to medical professionals for evaluation purposes.
- Nestlé accepts the Code ban on the public advertising of infant formula. However, it believes that the Code allows it to put nutritional information about its infant formula on the side of formula packets. The Code states that the label should state ingredients used, composition/analysis of the product, storage conditions, batch number of date before which the product is to be consumed. The Code also allows ‘scientific and factual information’ to be disseminated to health professionals.

The company claims that all sales of its global infant formula since 1992 have been in accordance with WHO guidelines. Company policy is that any breach of the guidelines must be reported to the company Chief Executive, and that there has not been any significant breach for many years.

Note: This is surprising. Is Nestlé now admitting that it was violating the International Code and Resolutions from 1981 to 1992? At the time it claimed to be abiding by the measures.

However, as shown in Section 3 of this paper, IBFAN alleges that there have been hundreds of Code violations by Nestle in recent years. The CFB has carried out limited database searches and not found recent reports in newspapers or news services accusing Nestlé of significant Code breaches. (The last definite breach appears to have occurred in Pakistan in 1996, and we understand that the company carried out stringent disciplinary measures subsequently, as well as bringing in independent auditors to assess the situation, and make public their conclusions).

3.0 Criticisms of Nestlé by Baby Milk Action

3.1 Description of Baby Milk Action

Baby Milk Action is a non-profit organisation which is the UK *member* of the International Baby Food Action Network (IBFAN). It describes its objective as being:

'To save lives and to end the avoidable suffering caused by inappropriate infant feeding. Baby Milk Action works within a global network to strengthen independent, transparent and effective controls on the marketing of the baby feeding industry. The global network is called IBFAN, a network of over 200 citizens groups in more than 100 countries. A marketing code was introduced in 1981 to regulate the marketing of breast-milk substitutes. Companies continue to violate its provisions - see examples here. Find out how Baby Milk Action works to stop them and how you can help.'

In other words, Baby Milk Action could be described as a campaigning organisation which sees its role as fighting for what it sees as the undeniable good of breastfeeding. There is an adversarial tone to much of its material, with a sense that it is a small NGO trying to achieve its aims despite what it sees as obfuscation by huge, rich companies such as Nestlé and Wyeth.

IBFAN'S Seven Principles

- The right of infants everywhere to have the highest level of health.
- The right of families, and in particular women and children, to have enough nutritious food.
- The right of women to breastfeed and to make informed choices about infant feeding.
- The right of women to full support for successful breastfeeding and for sound infant feeding practices.
- The right of all people to health services which meet basic needs.
- The right of health workers and consumers to health care systems which are free of commercial pressures.
- The right of people to organise in international solidarity to secure changes which protect and promote basic health.

3.2 Activities of Baby Milk Action/ IBFAN

Like many NGOs Baby Milk Action and IBFAN carry out a number of related activities. However, its major function is the production of regular and detailed monitoring reports on what it describes as 'baby milk' marketing throughout the world based upon IBFAN's global network of contacts. IBFAN's most recent monitoring report was *Breaking the Rules, Stretching the Rules 2004, produced in May 2004*. It was claimed that this report: 'Documents how baby food companies idealise their products, ignoring the negative health impact of artificial feeding'.

Baby Milk Action also carries out political lobbying. It presented the evidence from its *Breaking the Rules* report at the House of Commons on 13 May 2004. The meeting was hosted by Lynne Jones MP who has tabled an Early Day Motion (a petition for MPs) calling for the UK Government to support action to end baby food marketing malpractice in the UK and in other countries. Baby Milk Action stated that this proposal received significant support across political parties.

IBFAN and Baby Milk Action also provide expert witnesses to argue its case on a technical basis. For example it sent a delegation in May 2004 to the Geneva

meeting of the World Health Assembly discussing current concerns in infant and young child nutrition. IBFAN experts presented evidence on bacterial contamination of powdered formula and the increased use of bogus health claims to promote artificial feeding.

3.3 IBFAN's Current Monitoring Document

The *Breaking the Rules, Stretching the Rules 2004* Report monitored and analysed the promotional practices of 16 transnational baby food companies and 14 bottle and teat companies between January 2002 and April 2004. The benchmark standards used for measuring marketing practices were the International Code of Marketing of Breast-milk Substitutes and subsequent, relevant World Health Assembly (WHA) Resolutions. The criteria used in producing this Report were to analyse infant marketing on the basis of '*defending breastfeeding and ensuring that breast-milk substitutes are used safely, if necessary, on the basis of adequate information and appropriate marketing*'.

Some 3,000 complaints were received from monitors in 69 countries around the world. After legal checking about 2,000 violations were reported in *Breaking the Rules* and many of these came with photos. Yeong Joo Kean, IBFAN's Legal Advisor said:

"We have 712 pictures of actual violations in the report. There is no way that the companies can deny that they were found in flagrant violation of the Code and Resolutions."

The main criticisms of the food companies in the Report were as follows:

- 'Functional' claims. Companies try to differentiate their formulas by adding a string of additives and then claiming performance benefits for these.
- Free and low-cost supplies continue.
- Exclusive breastfeeding for 6 months continues to be undermined by most companies.
- Information to health professionals. Companies violate the requirement that this is restricted to scientific and factual matters.
- Health facilities and health workers continue to be targeted.
- Sponsorship of medical seminars, conferences and associations of medical professionals is becoming more widespread.

3.4 IBFAN Criticisms of Nestlé

The summary of *Breaking the Rules* identifies Nestlé as controlling 40% of the global baby food market. It goes on:

'That dominant position is unfortunately matched with its record as the worst Code offender. It was the company with the greatest number of reported violations of nearly all the key provisions of the International Code. Nestlé maintains it abides by the Code but that means it abides by its own in-house 'Instructions' which fall short of the International Code. Even within its own narrow interpretation of the Code, Nestlé violates several provisions by promoting infant formula and follow-up formula and by disseminating information materials which are more promotional than 'scientific and factual' as required by the Code. In countries where the Code is not enforced like Thailand and Armenia, Nestlé and other companies shower gifts on health workers and mothers.'

Breaking the Rules has a detailed dossier on Nestlé and other infant formula companies. Regarding Nestlé it makes the following detailed allegations:

- a) Articles 5.1 and 5.4 of the Code prohibit advertising, promotion, and the gift of free samples to mothers.

Nevertheless, a Nestlé distributor is accused of promoting Nestlé Nan by the internet in Argentina. Other allegations include claims that: a Swiss supermarket magazine promotes Nestlé Beba 2 and has a picture of a happy mother and child, and a parents' magazine in Luxemburg advertises Beba Sensitive with the claim that it is: 'nearly lactose free and suitable for infants who are sensitive to lactose'. In Thailand Nestlé is accused of giving out free samples of Lactogen to mothers at home.

- b) Article 5.3 of the Code bans promotional devices at the point of sale. Nestlé is accused of having special posters of Nan in Armenia, and of having sent out sales reps in China. It is accused of handing out samples of Lactogen and Nan1 in shops in Thailand.

- c) WHA Resolution 47.5 (1994) urges an end to free or subsidised donations to products to all parts of the health care system. It is alleged that Nestlé donates unsolicited Nan 1 formula in China, and gives free samples of Nan Soya to mothers in Argentine health facilities. It provides free samples of Lactogen 1 and Nan1 to health facilities in Thailand, and actively promotes Nan 1 and Lactogen 1 to pregnant women there.

- d) Code Article 7.3 prohibits financial or material inducement to health workers.

It is alleged that Nestlé gives free gifts of Nestlé mouse pads and diaries to health workers in Colombia and Costa Rica. The Report states that in Armenia Nestlé gives free baby suits to hospitals with the words 'I love my mum', next to a Nestlé logo. In Indonesia it is accused of distributing posters, diaries, calendars, stationery, and materials on infant care to health facilities which are displayed in waiting rooms and doctors' offices.

- e) Article 9 of the Code requires labels NOT to discourage breastfeeding, and to inform about the correct use of the product and the risk of misuse.

The Report accepts that in most developing countries Nestlé's formula labels do comply with the Code's requirements, but 'in small print'. However, it accuses the company of repeatedly violating Article 9 by making what it calls 'idealising statements'. For example, in China Nestlé Nan 1 labels say: '*Choose quality food, choose Nestlé*'. The Finnish label for Nan claims that it can: '*be used from birth as an addition to breast-milk, or to substitute it*'. In South Africa, the Lactogen 1 label is alleged to imply the product has the same benefits as breast-milk by the claim that it: '*Has all the vitamins and minerals required by an infant for growth and development*'.

- f) Article 4.2 of the Code prohibits information material to have text or pictures which idealises the use of breast-milk substitutes. Article 7.2 only allows product information which is factual and scientific.

Breaking the Rules notes that most Nestlé materials are marked 'for the medical profession', but accuses them of failing to meet the requirements of articles 4.2 and 7.2. In Argentina the company is accused of promoting Nan in professional journals in idealistic terms, e.g. '*closest to mother's milk at lowest price*'. A poster at a paediatric congress in Argentina had the slogan: 'The most intelligent choice when it is necessary to replace

breast-milk; so intelligent that it even prepares itself.’ In Armenia a Nestlé hospital leaflet is alleged to claim that Nan is a fully adapted infant formula, and is close to human milk in content and digestibility.

(g) WHA Resolution 54.2 (2001) recommends exclusive breast feeding for six months.

Breaking the Rules welcomes the fact that Nestlé is the only infant formula manufacturer to agree to change its labels in response to the above recommendation. However, the Report alleges that although Nestlé claimed to be fully compliant with the recommendation by April 2003, in fact there were several examples of it not doing so.

Nestlé has not produced a formal response to the *Breaking the Rules* report, although one is expected later in the year. However, they have shared their preliminary conclusions with us. The company notes that although the report is dated 2004, many of the allegations are very old, some going back to the 1990s. Nestlé has investigated all 200 allegations of Code violation in the report. They state that of these:

- 88 cases showed no Code violation, as they concerned complementary foods where the Code does not apply;
- 40 were based upon mistaken data;
- 48 were based upon insufficient data to make an accurate assessment possible. The company apparently invited IBFAN to supply more information on these cases, but this did not arrive.
- 17 had some justification, and referred to leaflets sent to healthcare professionals in South Africa and Thailand. The company claims that it immediately tightened up the information on these labels.
- 2 concerned infant formula in Armenia, where a poor translation from Russian had resulted in a technical code violation;
- 1 was a similar mis-translation in Lithuania.

Note: IBFAN has received and responded to detailed comments from Nestlé and the response is available. It is interesting that Nestlé only raised questions over 38% of the violations in the Breaking the Rules report, suggesting that it accepts the remaining 62% are violations. Nestlé’s assertions above do not stand up to scrutiny as the full response demonstrates.

3.5 The Nature of the Debate between Nestlé and Breast-Milk Campaigning Groups

One of the difficulties that make it hard for an independent observer to come to any conclusion about Nestlé and infant formula marketing is the high level of emotion displayed by both parties. It seems fair to state that both Nestlé and Baby Milk Action passionately feel that they are morally right, and have a high degree of suspicion about the other. Indeed, the CFB understands that for many years Nestlé executives refused to share a platform with Baby Milk Action. Apparently, this policy changed in 2001 and Nestlé has since participated in many debates with Baby Milk Action.

We suspect that there may be a tendency for Nestlé executives to dismiss any accusation made by Baby Milk Action/IBFAN on the grounds that this is a pressure group whose whole existence depends upon having corporate targets such as Nestlé to attack. On the other hand some of Baby Milk Action’s literature would seem to feed such suspicions in view of its highly partisan language, which seems to suggest

that Baby Milk Action regards Nestlé as a ruthless multinational company which seeks to maximise profits at the cost of infant lives, and is not above deceit to covers its tracks. An example of this rhetorical tone is shown by an extract from a Baby Milk Action leaflet below:

'Nestlé's idealising leaflets in Egypt and Vietnam

We exposed Nestlé leaflets in Vietnam and Egypt which promote Nestlé infant formulas in an idealising way. We also exposed a Nestlé advertisement in South Africa which encouraged mothers to attend talks on the 'Nestlé Developmental Nutrition Plan' given by the 'Nestlé Baby-Care Friends'.

The response below was sent to Baby Milk Action four months after we wrote to Nestlé. It is likely that we have only received a response as members of the public have also complained to Nestlé, prompted by our Campaign for Ethical Marketing action sheet.

Unfortunately the response from Nestlé's Senior Policy Advisor, Beverley Mirando, demonstrates either ignorance or deliberate dishonesty about the provisions of the Code and Resolutions. At present the company has no intention of stopping these violations. Please keep up the pressure on Nestlé to abide by its responsibilities by supporting our letter-writing campaigns and the Nestlé boycott.

Baby Milk Action has defeated Nestlé in a series of public debates. If Nestlé attempts to speak at your college or organisation, feel free to invite Baby Milk Action to come to debate with Nestlé. In the past Nestlé refused to even speak if we were present in the room, but thanks to pressure from the boycott has backed down from this position.

For updates on the boycott see the Boycott News supplement to our Update newsletter. Also see the Latest News section.

The boycott has been launched by national groups in: Australia, Bulgaria, Canada, Cameroon, Finland, France, Germany, Ireland, Italy, Luxembourg, Mauritius, Mexico, Norway, Philippines, Spain, Sweden, Switzerland, Turkey, UK and USA).

The boycott will continue until Nestlé abides by the International Code and subsequent World Health Assembly Resolutions in policy and practice.'

3.6 Relations between Nestlé, and UN bodies like WHO and UNICEF

This polarised and highly controversial debate does not just occur between Nestlé and Baby Milk Action/IBFAN. Relations also appear strained between the company and UNICEF. For example, in 1997 Nestlé Chief Executive Peter Brabeck flew to New York in an attempt to come to agreement with UNICEF on WHO Code interpretation. Press reports state that UNICEF Director Carol Bellamy walked out of the meeting halfway through, and her deputy refused to discuss HIV, instead haranguing Brabeck over Nestlé's faults. Relations between Nestlé and UNICEF seem to have been extremely poor ever since. Nestlé sources suggest that the press reports were exaggerated:

'Mrs. Bellamy did not voice any criticism of Nestlé at the meeting, but rather listened, then was called out for a telephone call in mid-meeting. She sent a letter to Mr. Brabeck afterwards closing the door to future dialogue, saying that the differences between the organisations regarding WHO Code interpretation were too great to warrant further discussion. However, in spite of these differences, the previous active conflict between UNICEF and Nestlé has been relatively dormant in the past 3 years.'

On the other hand, Nestlé has had a positive working relationship with the WHO and FAO on food safety, helping to design and fund for the past 10 years a food safety education programme for health professionals in Asia. A senior Nestlé manager serves as Vice Chair of this. In addition on the obesity issue, Peter Brabeck was one of two CEO's to accept the then WHO Director General's invitation to the first CEO roundtable with the food industry on obesity and Nestle has had constructive dialogue with WHO ever since. Also the European Food Industry's Task Force, chaired by Nestlé, was the first industry body to come out in support of the WHO global Strategy on Diet, Physical Activity and Health.

Note: The Methodist Church was directly involved in the monitoring report Cracking the Code, published in January 1997 which found 'systematic' violations by Nestlé and other companies. Nestlé also attacked the report as biased.

3.7 Key points of Baby Milk Action's Nestlé Criticisms

Baby Milk Action's criticisms of Nestlé can be classified into two types. The first are factual examples produced by IBFAN where the company appears to be in breach of basic Code principles through actions such as providing free infant formula samples to pregnant women or nursing mothers.

However, the second type is based upon Baby Milk Action's very different interpretation of the role, nature, and scope of the International Code compared to Nestlé.

- *Status of Code.* Whereas Nestlé sees the Code as consisting of advisory recommendations to governments, Baby Milk Action regards it as having the status of a global rulebook. Is the Code a global minimum standard, or are formula manufacturers able to work with local governments to meet their local needs?

Note: Baby Milk Action is mandated by Article 11.4 of the International Code, which states: "Nongovernmental organisations, professional groups, institutions, and individuals concerned should have the responsibility of drawing the attention of manufacturers or distributors to activities which are incompatible with the principles and aim of this Code, so that appropriate action can be taken. The appropriate governmental authority should also be informed." This does not state that the Code should be used as the reference in some countries and not others, nor does any other Resolution.

Similarly, Article 11.3 of the Code states: "Independently of any other measures taken for implementation of this Code, manufacturers and distributors of products within the scope of this Code should regard themselves as responsible for monitoring their marketing practices according to the principles and aim of this Code, and for taking steps to ensure that their conduct at every level conforms to them."

- *Geographical Reach of Code* Nestlé believes the Code sets out minimum standards in all developing countries. Baby Milk Action argues that it applies universally. What happens when local governments implement legal requirements different from the Code? Is it desirable, or unnecessary for the Code to be incorporated in each country's legislation?

Baby Milk Action and IBFAN work to bring the Code and Resolutions into legislation - it is perhaps their main activity. However, Article 11.3 continues to apply. Its wording is very clear "independently of any other measures taken for implementation of this Code..." Resolution 34.22 under which the Code was adopted describes it as a 'minumum' requirement to be implemented in its 'entirety'.

- *Limitations on Code.* Nestlé argues that while the Code refers to 'all countries', this is in the context of the possibility of 'infant malnutrition,

morbidity and mortality'. Since the latter conditions do not arise in developed countries, the Code only applies to developing countries. Of course, developed countries such as the UK tend to have their own detailed codes for marketing of infant formulas in hospitals.

Note: Nestlé has no basis for making this claim. In doing so, it is not at odds with Baby Milk Action, it is at odds with the World Health Assembly. The Code directs governments to UNICEF for assistance in introducing the Code into legislation. UNICEF employs a Legal Officer for this purpose. UNICEF has made it clear in writing to Nestlé that the Code applies to all countries, not to Nestlé's own list of countries.

- *Application of Code to Developed Countries.* Nestlé argues that selling infant formula in developed countries in ways not compatible with the Code is therefore acceptable. Baby Milk Action on the other hand argues that this shows that Nestlé is in breach of it, and is particularly critical of infant formula marketing in the US and Canada. (Given the powers of the FDA in the US, and the tendency of the US courts to levy large fines, it is arguable that these countries can look after themselves).

Note: There was a voluntary ban on advertising in the US until Nestlé entered the market in 1988 with its takeover of Carnation. Nestlé sued the American Academy of Pediatrics and the other baby food companies under anti-trust legislation and began advertising unilaterally. Now all companies advertise. The US has supported the Code and Resolutions since 1994 and Article 11.3 applies there as much as anywhere else.

- *Definition of Breast-milk Substitutes.* In Nestlé's understanding the Code only applies to breast-milk substitutes, such as starter infant -formula (0-6 months). In Baby Milk Action's opinion it applies to all products that might replace breast feeding, which includes not only formula but complementary foods such as fruit juices, and infant cereals *under certain circumstances*.

Note: Nestlé repeatedly refers to the Code applying only to starter infant formula (for example, its 'Charter' sets out its 'Infant formula marketing policy for developing countries'). The Scope of the Code is clear: "The Code applies to the marketing, and practices related thereto, of the following products: breastmilk substitutes, including infant formula; other milk products, foods and beverages, including bottle-fed complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breast-milk; feeding bottles and teats. It also applies to their quality and availability, and to information concerning their use."

- *Definition of Advertising.* There are also highly technical disputes between the two sides about the Code ban on the public advertising of infant formula. Nestlé argues that the Code allows it to put nutritional information about its infant formula on the side of formula packets, whereas Baby Milk Action accuses it of promotional material 'idealising' breast-milk alternatives. There are extremely technical arguments about the nature of material on infant formula packaging, i.e. is its role to advise physicians, or is it trying to unduly influence new mothers?

Note: This confuses different issues. This is not about a definition of advertising. The Code is actually quite clear and addresses issues separately. The issue of information on labels is separately and clearly defined in Article 9 of the Code. Promotional materials are different again. There should be no promotion to the general public, under Article 5 of the Code. Information to health workers must be restricted to scientific and factual matters, under Article 7, and there are often concerns that Nestlé materials do not comply. Seeking direct and indirect contact with pregnant women and mothers of infants and young children is banned under Article 5.

4. FTSE4 Good

4.1 Role and Description of FTSE4Good

The FTSE4Good SRI index series incorporates breast-milk substitutes as one of its key ethical criteria. It therefore provides some independent assessment of this contentious area.

FTSE4Good is a family of SRI or ethical stock market indices which was launched in July 2001. FTSE recognised the need for a partner to add SRI expertise to its own skills in index construction, so the FTSE4Good index series was therefore created in association with EIRIS. The underlying concept was to construct a broadly based SRI index for a number of regional markets: the UK, US; Europe, and the world, with the objective of producing a benchmark to measure SRI fund performance in these regions. The following exclusions were then used to filter out unacceptable companies: tobacco producers; companies providing strategic parts or services or manufacturing nuclear weapons systems; manufacturers of whole weapons systems, and owners or operators of nuclear power stations and those mining or processing uranium. The basic philosophy underlying the index was to include only companies moving towards best practice in the areas of the environment, human rights, and stakeholder relationships.

4.2 The Role of UNICEF

Against the background of the dispute over the marketing of infant formula it is important to note that the United Nations Children's Fund (UNICEF) agreed to be associated with FTSE4Good in return for the right to nominate three members of the Advisory Committee. UNICEF also gained the commitment of FTSE to pay it all the net license income FTSE received from its clients in the first twelve months of operation, as well as a 50p charge on each trading screen showing the data. FTSE International hoped that this would generate revenues estimated at \$1m (£600,000) for donation to UNICEF.

4.3 FTSE4Good's Changed Criteria Relating to Infant Formula

From its inception in July 2001 the FTSE4Good index series excluded on ethical grounds eight food and pharmaceutical companies producing breast-milk substitutes on the grounds that they were in breach of the International Code of Marketing of Breast-Milk Substitutes. These companies were: Abbot Labs; Bristol Myers Squibb; Heinz; Meiji Milk; Nestlé; Novartis; Nutrimco, and Wyeth.

However in March 2004 the FTSE Group announced that it was lifting its blanket ban on such companies following an extensive process of public consultation. FTSE4Good stated that from now on it would use 'measurable inclusion criteria.' The announcement stated:

'FTSE will establish a small Expert Committee, comprising academics and experts on the industry, which will review company reports to assess whether they adhere to the FTSE4Good criteria and to make recommendations to the FTSE4Good Policy Committee as to the continuing eligibility of companies.'

As at October 2004 the CFB inspected list of the companies included in the FTSE4Good, and it found that none of the eight was included in that list, despite the recent revision to FTSE4Good's breast-milk substitute criteria. However, it is possible that UNICEF's influence has prevented FTSE4Good from doing so.

Note: The reason Nestlé and other companies are excluded is because they very clearly fail to comply with the inclusion criteria. For example, companies have to have a policy accepting that the Code and Resolutions apply to all countries

(including the US and Canada) and all breastmilk substitutes, not just infant formula.

5. The Methodist Church Position

5.1 History of Methodist Church position on marketing of breast-milk substitutes

In 1992 the Methodist Conference adopted Memorial 101, *Unethical Marketing Methods*, which urging Methodists to inform themselves about the issues involved although the Conference declined to support a boycott of Nestlé products. Note: Memorial 101 states: “urges Methodists to inform themselves about the issues involved and to share in bringing pressure to bear on the relevant manufacturers - Nestlé in Britain particularly.” A major paper discussing the whole subject of breastfeeding was brought to the 1999 Conference (Conference Agenda 19) called *What’s Best for Babies?* The 1999 Conference approved three related resolutions:

- 19/1 Conference receives the report and encourages local churches and Methodist groups to study all the issues and to act accordingly.
- 19/2 Conference calls on Her Majesty’s Government to incorporate into legislation the provisions of the WHO Code and the subsequent resolutions of the World Health Assembly, and monitor their application in the NHS.
- 19/3 Conference encourages Methodists in Britain to support the Baby Friendly Hospital Initiative, and further encourages Methodists in conversation with partner Churches overseas to support BFHI in many countries of the world.

5.2 Methodist Council (2)

The Methodist Council, the executive body of the Methodist Church, was concerned that the 1999 resolution ‘*left the Conference’s position uncertain*’. It therefore submitted a report to the 2000 Methodist Conference called *What’s Best For Babies? (Methodist Council 2)*. This report was received by the 2000 Conference, therefore becoming the definitive statement of the Methodist Church’s position on the issue. This paper noted the following (the following numbers refer to the 2000 Conference Agenda):

- 3. There is no convincing evidence which points to an accommodation, understanding or agreement between Baby Milk Action (Baby Milk Action) and Nestlé in the foreseeable future.
- 4. The British Methodist Church has no way independently of adjudicating on the ongoing disputes between Baby Milk Action and Nestlé. It remains unwise for the Church to be aligned unequivocally with one side or other.

The church needs to be in a position where it can exercise a critical role towards both parties to the dispute, and express its anxieties about the behaviour of both.

- 5.0 The irreconcilable conflict between Baby Milk Action and Nestlé has several dimensions to it.

- 5.1 The WHO International Code of Marketing of breast-milk substitutes is designed to protect mothers and health workers from commercial pressures. The WHO has provoked many interpretations, not to mention the relationship between the Code and subsequent resolutions of the World Health Assembly. On the one side are those who insist that the Code must be applied in every context, irrespective of national law. On the other are those who insist that the Code requires its claims to be incorporated by each government into national legislation in realistic and achievable ways appropriate to their context.

5.2 The disputes about the sort of evidence which might constitute a breach of the Code, and the means by which evidence is to be tested to assure its reliability and truthfulness.

5.3 The failure of international bodies to work together towards a common framework of understanding.

5.4 The confusion between mistakes, inadequacies of management action and intentional malpractice measured against the provisions of the WHO Code.

5.3 Outcome of 2000 Conference

The 2000 Conference:

35/1 Receives the report.

35/2 For the sake of clarity, the Conference records the following judgements:

2.1 In the light of the Christian Gospel, the health, nurture and development of very young babies and their mothers merits the prayerful and practical support of Methodists.

2.2 The Conference is not aligned with either side in the disputes between Baby Milk Action and Nestlé, which have been going on for more than 25 years; the Conference encourages Methodists, local churches and Methodist groups to study all the issues and to act accordingly.

2.3 The Conference endorses continuing constructive engagement by members of the Connexional team with both Nestlé and Baby Milk Action.

6 Other Ethical Issues concerning Nestlé

6.1 Ethiopia

Many people were shocked to read in the financial press in 2001 that Nestlé was suing the government of Ethiopia, one of the poorest countries in the world, for damages of \$6m relating to nationalisation in the 1970s. In December 2002 Nestlé CEO Peter Brabeck announced that the dispute had been settled for a total sum of \$1.5, which would be distributed to humanitarian organisations for famine relief in Ethiopia.

Note: As an interesting footnote, on 8 May 2004, Nestlé (UK) CEO Alastair Sykes wrote to the national press denouncing a decision by Breakthrough Breastcancer to turn down a £1 million cause-related marketing deal with Nestlé. In the letter Mr. Sykes, claimed Nestlé abided by the baby food marketing requirements and was a force for good in the world. As an example of its humanitarian work Mr. Sykes referred to the donation to Ethiopia, neglecting to mention the Oxfam campaign that prompted the company to donate the money back rather than fight for and keep a larger sum.

6.2 Coffee Prices

In the 1990s and early 2000s global coffee prices plummeted causing great economic distress in particular to small coffee farmers. This was due to a serious over supply caused among other things by expansion of large-scale coffee farm operations in Brazil and Vietnam. In the late 1980s unroasted coffee beans reached \$3.30 a lb, but by 2003 the average price received by coffee farmers had fallen to \$0.60 a lb, well below the global average production cost of \$0.80 lb. For several years groups like Traidcraft have promoted Fairtrade ground coffee brands such as Café Direct which are produced on the basis of ensuring that their producers receive a price which gives them a living wage, and enables them to care for the environment. Café Direct has done well in the UK ground market, with a claimed market share approaching 10%.

However, the vast bulk of global coffee production is used in instant coffee, which is dominated by two companies: Kraft (Maxwell House), and Nestlé (Nescafe), although the US food group Sara Lee has a significant presence in the ground coffee market. Nestlé is the world's single largest coffee buyer, with a global market share of 14%. In response to the global coffee crisis, various organisations have announced that they would sell Fairtrade coffee. In 2002 the large café chain Starbucks announced that they would promote Fairtrade coffee. In May 2003 the world's largest coffee brokers, Neumann and Volcafe announced an agreement with the US-based Rainforest Alliance with the aim of stimulating the production of 'sustainable coffee', defined as coffee plantations which meet basic environmental and social requirements. At the end of 2003 Kraft announced plans to sell sustainable coffee, but to date Nestlé does not appear to have done so.

On the other hand, the company is a member of the Sustainable Agriculture Initiative and has set up a number of sustainability projects working with small farmers in Central America and Africa. Nestlé argues that the concentration on 'Fairtrade' coffee is misleading, as this is only a minute fraction of the total market. It believes that its policy of buying more coffee directly from farmers, i.e. bypassing coffee brokers, is more effective in enabling more of the price to be passed back rather than being diverted to middle men. The groups' CEO Peter Brabeck has lobbied for structural change in the market place to ease commodity price fluctuations. Further Nestlé makes approximately half of all Nescafe in the developing world thus ensuring more of the added value remains in those countries.

Note: Nestlé often makes the point about buying coffee directly from growers, but buying directly is not the same as paying a fair price. Nestlé has opposed independent monitoring of its procurement policies just as it opposes independent monitoring of its baby food marketing practices.

6.3 Cocoa Plantations

In 2002 serious and documented allegations emerged that some cocoa, the base material for chocolate production, was being produced in West Africa using slave labour, often children. In October 2003 Nestlé put out a statement, *Coca Working Practices*, which stated that:

'Nestlé does not own cocoa farms or plantations in West Africa. Nevertheless Nestlé is committed to ensuring that coca is grown without the worst forms of child or forced labour. As part of our commitment, we have partnered with the global chocolate and cocoa industry and NGOs in an international protocol that lays out a series of action steps designed to ensure that cocoa is grown in a responsible manner.'

6.4 Obesity

In the United States the food industry seems to be increasingly targeted by lawsuits alleging health damage through obesity. Such lawsuits seem modelled on those filed earlier against the tobacco industry. In the UK there is increasing concern that the UK population, like those of many other developed countries, is copying US trends where the majority of the adult population is overweight, and a significant proportion seriously obese. Obesity is linked to a variety of health problems such as heart disease and diabetes.

This problem is perhaps most serious when it involves children. Children in the UK eat less than half the recommended amount of fresh fruit and vegetables each day and the proportion of primary school children who are overweight doubled between 1984 and 1998 to reach 25%. In turn this has been linked to growing diagnosis of Type 2 (late onset) diabetes in children, something previously normally experienced in late middle age. Many health charities are concerned that confectionery

companies are partly to blame for this problem. (There was a major public controversy in the UK in May 2003 when the UK chocolate company Cadbury's Get Active marketing campaign encouraged children to get sports equipment for their schools by saving chocolate wrappers. It was estimated that children had to eat 160 million bars of chocolate to get equipment worth £9m). At that time Dr Wendy Doyle of the British Dietetic Association called for the British Government to introduce regulations restricting food advertising aimed at children, as is the case in Sweden. She said:

'These big food companies have these huge budgets to promote all these things to children. I am sure it is having an impact - the manufacturers wouldn't do it if it did not. Because of the problem of obesity, the Government has to take an active step to stop children being targeted by advertising.'

Nestlé, like Cadbury, has a range of initiatives aimed at schools. It has supported grass roots tennis for over 40 years. More recently it has funded through 4Children the creation of over 600 Make Space contemporary youth clubs and have helped set up sporting activities through these clubs. It awards the Nestlé Smarties Book Prize, for children under 11. It sponsors the schools publication Key Skills in Context, whose section on 'Nutrition' does not warn about the dangers of eating too much chocolate or sweets. Other Nestlé material states:

'The good news is that sensible snacking can play a very important role in a healthy diet and healthy lifestyle. In fact, some experts theorise that our bodies were meant to eat this way. Current research suggests that having numerous smaller meals over the course of the day helps to keep your blood-sugar levels on a more even keel.'

On the other hand Nestlé does state its commitment (*Nestlé and Nutrition*, 2003) to:

'Responsible advertising and marketing to children, and we have internal marketing codes to formalise that commitment. We adhere to voluntary guidelines, such as the International Chamber of Commerce Rules on Children and Young People and Marketing.'

In this context it is worth noting that Nestlé is one of the world's leading food companies in terms of funding research and development to design healthier foods. The company has pioneered a range of products such as 'Sveltesse' that either have lower calories, or can assist in weight reduction. It is also a pioneer of foods that may have positive effects on health, the latter sometimes being called 'functional foods'. A good example would be 'probiotics' i.e. yoghurts containing natural bacteria that actually inhibit the growth of harmful bacteria in the stomach such as *Helibacter pylori* which are linked to the development of ulcers. Over the past 5 years Nestlé has developed or reformulated over 700 products globally to lower fat, sugar and salt. In the UK that has included the removal of TFAs from confectionery products, salt reduction in cereals and in soups and sauces.

Note: Nestlé targets schools in a major way, not only with vending machines, but schemes intended to encourage children to buy confectionery and cereals, many of which are high salt and high sugar. For example, it has a 'box tops for education' scheme where it donates 10 pence to the school in return for cereal tops.

6.5 GM Foods

There is a wide gulf between the US, where GM foods appear to be widely accepted, and Europe where they are regarded with great suspicion by the majority of consumers. Indeed, GM foods were banned by the European Commission until the US government forced the EU to drop this ban under WTO trade rules. Nestlé

has stated that it will use GM foods where permitted, and if customers want them.

Note: Greenpeace has publicised that despite promises to the contrary Nestlé foods in Europe and China (including baby foods) have been found to contain GM ingredients.

6.6 Water Misuse

Globalisation has led many multinational companies to significantly expand the scale of their operations in developing countries. In the food industry, there are growing concerns that soft drink companies may be digging wells that drain the local water table. For example, in January 2004 Christian Aid published a report entitled *Behind the Mask- the Real Face of CSR. Behind the Mask* accused Coca-Cola of starving Indian villagers of water in the southern Indian state of Kerala, where wells are failing to keep up with the demand. This is particularly devastating in a community that is mostly dependent upon agriculture. It stated that villagers are demonstrating outside the company's bottling plant in Plachimada.

There is a similar controversy involving Nestlé in Brazil. It is alleged that a Nestlé plant is depleting an aquifer in a historic spa town in that country. In October 2004 a group of Catholic and Protestant clergy visited the European Social Forum on Water complaining about Nestlé. However production ceased on October 31st 2004. In addition extractions were below the limits set by the authorities. Further the authorities conducted tests, which found extractions to be sustainable, and with no proven links between Nestlé's operations and the allegedly declining water level in other springs in the area.

Note: The latest news from Brazil is that it is not yet clear if Nestlé is stopping its operation. In addition, Nestlé attempted to go back on the agreement it made with the judge that heard the case against the construction of its bottling plant and illegal demineralisation of water. A public hearing was held in the House of Representatives where Nestlé indicated it did not wish to close its bottling plant. It was told it had to honour the agreement made with the court. Nestlé has since bought water parks in neighbouring spa towns. One of the springs in the spa town has already dried up.

There will be the opportunity to meet campaigners from Brazil. Contact Mike Brady of Baby Milk Action for details.

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