

Comments by the International Code Documentation Center (ICDC) and IBFAN-GIFA

on the *Draft Clarification and Guidance on Inappropriate Promotion of Foods for Infants and Young Children*:

Scope :

Point 5: It needs to be clarified whether all a,b,c,d and e have to apply for promotion to be assessed as inappropriate or one of the points is sufficient. We are of the opinion that if any of the a-e. points takes place, the promotion in question should be qualified as inappropriate.

Point 7 : The definition of food suggests that the guidance deals also with all breastmilk substitutes. Therefore, for clarity, in point 8, LAST SENTENCE, the words "including breastmilk substitutes ***“(recommendation 2) should be inserted after “any products”.*** , **Recommendation 1:**

This recommendation is limited to the 2003 Guidance on CF, which means to complementary foods only. We recommend extension to 36 months.

The 'locally available' is opening the door to any imported products as all are then locally available. It would be thus appropriate to add: "*indigenous, nutrient rich foodstuff*" as per WHA 54.2; 2001.

This recommendation should cover also optimal breastfeeding (the latest WHO guidance on it) and the WHO guidance on safe preparation of powdered infant formula; the latter could be also inserted as part of the Recommendation 2.

Recommendation 2:

Take text from the report as it is more specific, does not leave out subsequent relevant WHA resolutions and the 'and beyond' , thus ensuring coverage of GUMs. New text would thus read: ***Implement, enact, monitor and enforce all provisions of the International Code of Marketing of Breast-milk Substitutes and relevant subsequent WHA resolutions as a minimum. This should include any milk products (liquid or powdered) marketed for young children up to two years or beyond (including follow-up formula and growing-up milks).***

Recommendation 3:

This recommendations is providing and implicit green light for promotion of commercial complementary foods defeating the purpose of the guidance regarding emphasis on the use of suitable locally available foods, which we presume does not mean Cerelac or other commercially manufactured and imported products. Yet this is not made clear either.

The section 4.3.5 from the STAG report about insuring that international instruments, such as Codex Alimentarius and guidelines are robust and coherent with the Code and WHA resolutions should form part of this recommendation as policy coherence is key to implementation.

Add, at the end of this recommendation, the following clarification: “ The Code and resolutions should be considered “international standards” and steps taken in conformity with relevant international standards or which use these international standards as a basis should not be viewed as an

unnecessary obstacle to international trade. Member states may introduce stronger laws if they are able to show that international standards are ineffective or inappropriate for the fulfilment of the legitimate objectives pursued by the national measure.”

This statement is important trade as arguments are always used by industry linked groups to prevent countries from implementing laws which are stronger than the International Code which industry attempts to reduce to its lowest common denominator, i.e. infant formula only.

WHO strives to put in place human rights based approaches thus reference to the CRC General Comment No. 16 - STATE OBLIGATIONS REGARDING THE IMPACT OF THE BUSINESS SECTOR ON CHILDREN'S RIGHTS would be useful to emphasize in this recommendation..

Recommendation 4:

Under ‘Specifically, messages and labels **should**’, first bullet: add after ‘importance’ the word ‘**early**’ followed by the rest of the sentence.

Furthermore, the labels in case of powdered infant formula (PIF) should carry an explicit warning that these products are not sterile and in the instructions on preparations follow WHO Guidance on safe preparation of PIF.

Under ‘Messaging and labeling **should not**’, third bullet: Add after ‘commercial products are’ the wording “**convenient, nutritious or inherently superior**” followed by the rest of the sentence.

We are also concerned that the 4th bullet in this section is only referring to the promotion of ‘feeding bottles’. The International Code covers ‘bottles **and teats**, which also means any other product, such as dummies, intended for sucking by infant.

Recommendation 5:

Regarding cross-promotion, we propose that the second bullet should also contain the following text: *Companies should be prohibited from promoting breastfeeding or participating in other health campaigns as it allows them to use such programmes for public relations purposes and be seen as health partners, giving rise to conflicts of interest for public interest actors, resulting in undue influence, in particular in policy-making arena.*

Recommendation 6:

We propose WHO adds in the first sentence “*and to fund or conduct programmes involving infant and young child feeding as per the WHA resolution 58.32[2005] which emphasize the need to avoid conflicts of interest*”.

Recommendation 7: This recommendation does not cover any promotional activities carried out via internet, social media and other electronic or virtual means.

Additional Comments:

One critical area is not touched upon in the **draft of the Clarification and guidance on inappropriate promotion of foods for infants and young children** and that is the pressure used by manufacturers at national level to prevent development and adoption of adequate regulation which implements the International Code and WHA resolutions and as well as regulations which would put end to inappropriate promotion of the food discussed in this draft Guidance.

The STAG report clarified for WHA that “Products should not be promoted using brands/labels/logos that are the same/similar to those used for breastmilk substitutes”. This clarification is not included in the draft Guidance and we believe that it should be incorporated. Linked to that, include a statement explaining that the prohibition should apply notwithstanding the intellectual property rights of companies should be included. Rationale: IP is THE main argument used by industry-linked groups at the national level to oppose such restrictions. They claim that the brand names and logos are "registered trademarks" which they have a right to use. Many countries back down when arguments like these are thrown at them by diplomatic offices and trade associations on behalf of companies. (We can provide WHO with recent examples). This is compounded by the fact that trade ministries at national level may not have a full overview and understanding of the WTO principles and countries' ability to act to protect their public interest. As a result and often, they impose self censorship and insist on the removal of restrictive clauses in health legislation on the slightest hint of objection from industry.

ICDC/IBFAN-GIFA, 5 August 2015