

Anna Cecilia Malmström
European Commissioner for Trade
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels
Belgium



4th May 2015

Urgent request to strengthen the Commission Proposals pursuant to Regulation (EU) No 609/2013 on baby formulas and foods

Dear Commissioner Malmström

I am writing on behalf of the *International Baby Food Action Network* (IBFAN), the global network of 273 groups in 168 countries that monitors the baby food industry and works for policy coherence with World Health Assembly Resolutions on infant and young child feeding.

Since you have responsibility for ensuring that the EU Trade policy respects safety, health and social standards and also that it upholds European values such as human rights, social and environmental protection we are asking that you step in to ensure that the above proposals, drawn up by DG SANTE, support and encourage, rather than block, Member States who wish to carry out their obligations under the *International Code of Marketing of Breastmilk Substitutes*, subsequent relevant World Health assembly Resolutions and the *Convention on the Rights of the Child*. These obligations are embedded in many EU policy commitments, for example the *EU Action Plan of Childhood Obesity*, the *Second International Nutrition Conference Political Declaration and Framework for Action*, and the *EU Charter of Fundamental Rights*.

Since governments already face substantial pressures when attempting to implement health protective policies, surely the '*smooth functioning of the internal market*' should not be an additional pressure and should not take precedence over such important health and human rights obligations? Overleaf I have pasted three responses that we received from DG Trade in 2001 when Pascale Lamy was post. I believe that these answers are still relevant.

At present, despite some improvements to some of the provisions, the draft regulations present a serious health and food safety risk that will waste public resources and mislead parents. (1) They will undermine health in the EU generally and increase the risk of childhood obesity. They will also exacerbate the problems faced by the 120 million Europeans who are at risk of poverty or social exclusion, the 100 million Europeans who lack access to piped water in their homes and the 66 million who lack access to adequate sanitation. Artificial feeding also adds to the environmental burden. Given that 800 litres of water are needed to make a 1 litre of milk and 4700 litres for 1 kilo of milk powder the protection of breastfeeding could be considered an essential part of a package of measures to preserve water. (2) All women - those who decide to breastfeed and those who decide to bottle feed - have the right to truly objective information and support that is free from commercial influence.

Commissioner Malmström, I do hope that you can see that unless they are changed, the regulations will set a very bad model for policy setting globally - especially at Codex Alimentarius where the products in question are at the centre of a struggle between the powerful producer nations and developing countries, where breastfeeding is quite literally a lifeline(3). It cannot be right that the EU claims, on the one hand, to uphold high values, yet is now aligning its policies with those being pushed by the powerful corporations.

With many thanks and hoping that you can ensure that the necessary changes (outlined overleaf) are made.

Yours sincerely

Patti Rundall, OBE, Policy Director, IBFAN Global Advocacy

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Baby Milk Action
34 Trumpington St.
Cambridge CB2 1QY

.....
+ 44 (0) 7786 523493
prundall@babymilkaction.org
www.babymilkaction.org

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Baby Milk Action, the UK member of the International Baby Food Action Network (IBFAN), stops misleading marketing by the baby feeding industry. We protect breastfeeding and babies fed on formula to prevent unnecessary death and suffering.

Questions put to the European Commission for Trade in 2001.

IBFAN Question: *Trade agreements should not undermine implementation of the International Code of Marketing of Breast-milk Substitutes and subsequent relevant World Health Assembly Resolutions at national level*

COMMISSION ANSWER: *In principle yes: the Commission subscribes to the view that international agreements, particularly, but not exclusively those related to protection of the environment or human health, and international trade rules should be mutually supportive.*

IBFAN Question: *In matters of health WTO will defer to the decisions of the World Health Assembly, the world's highest health policy setting body (its Conventions, Resolutions etc)*

COMMISSION ANSWER: *International agreements/organisations should be mutually supportive, and their relationship clarified where necessary and useful*

IBFAN Question: *For the optimum health in infants in both Europe and Third Countries EU legislation should be brought in line with the International Code and subsequent relevant Resolutions.*

COMMISSION ANSWER: *To the extent that the EU and its Member States subscribe to them - to a large extent, these are issues of Member State competence.*

Summary of the MINIMUM changes that must be made if the proposals are to meet the EU's Internationally agreed commitments and current health policies:

- 1. The Regulations must meet the minimum requirement of the International Code and subsequent relevant WHA Resolutions, taking full consideration of their global impact.** Policy coherence with the EU's International obligations and commitments is essential.
- 2. The Regulation must provide Member States with legal certainty that they can regulate marketing according to national health priorities, policies and international Human Rights commitments and obligations.** As mentioned above, all EU MS have ratified the *Convention on the Rights of the Child* so are bound to it by international law with clear obligations. The Commission does not have the right to undermine a human right international law or misinterpret duty/obligation under it. Nor does it have the right to determine whether a national measure is justified. Such things up to the courts. We know that several Member States have tried to implement WHA recommendations and have faced problems. For example, Malta was sent a letter from the Commission about its law in 2014. Soon after the law was replaced with one far less health protective.
- 3. The labelling and composition (specifically sugar level and age of use) of baby foods must be in line with WHO recommendations.** The Commission has been asked to deal with high sugar levels in baby foods since 2006, when it joined forces with the US in opposition to Thailand's proposal at Codex Alimentarius. (4) A request to EFSA to examine this issue and excess sugar in Young Child Formula should be submitted without any delay.
- 4. There must be prior authorization by an independent expert body such as EFSA of the safety and beneficial effect of ALL ingredients – including those voluntarily added – and of foods claiming to be *Foods for Special Medical Purposes***
- 5. The regulations must forbid cross-promotion of formulas for older babies and baby foods it infant formula.**
- 6. The marketing of Formulas fo Young Children must be strictly controlled in line with WHA recommendations and the EU position at Code us be in support of WHO recommendations.**
- 7 Exports must be in languages easily understood by consumers.**

Notes:

1 *Potential economic impacts from improving breastfeeding rates in the UK.* Pokhrel S, et al. Arch Dis Child 2014;0:1–7. Doi:10.1136/archdischild-2014-306701

Advertisements of follow-on formula and their perception by pregnant women and mothers in Italy, Cattaneo A, et al. Arch Dis Child 2014;0:1–6. doi:10.1136/archdischild-2014-306996

2 *Formula for Disaster, Weighing the impact of Formula Feeding Vs Breastfeeding on Environment.* <http://bpni.org/ibfan-newswire-2014/9>
Economic Commission for Europe & World Health Organization Regional Office for Europe Meeting of the Parties to the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes Working Group on Water and Health Seventh meeting Geneva, 26 and 27 November 2014 www.unece.org/fileadmin/DAM/env/documents/2014/WAT/11Nov_26-27_WGWH/item_5_informaldoc_WRD_meeting.pdf 2 <http://www.euro.who.int/en/health-topics/environment-and-health/water-and-sanitation>

3 Press release: *New EU rules will trick parents into buying expensive and unnecessary products that will fuel the obesity crisis* <http://www.babymilkaction.org/archives/3200>

Press Release: *Trade vs Health – global meeting fails to safeguard infant and young child health* <http://www.babymilkaction.org/archives/2640>

4 Press Release: *EU and US block Thailand's proposal to reduce sugar in baby foods, IBFAN 2006*