



## **Why does Codex matter? Baby Milk Action IBFAN Briefing**

The Codex Alimentarius Commission is an important body that has relevance for many international campaigns dealing with trade because:

- Codex Standards and guidelines are benchmarks used by WTO in trade disputes.
- Many of the human safeguards are discussed at Codex– food safety, nutrition, GM, food sovereignty, labelling, protection of indigenous foods, sustainability etc.
- Establishing a strong Codex Standard or guideline of a specific issue can help governments enact legally binding safeguards.
- A strong Codex standard can be a ‘safe harbour’ in trade disputes.
- If NGOs ignore Codex, corporate influence is unchallenged.

However, few people know of its existence or understand how it works in practice. One thing is certain - the food industry is acutely aware of the power and importance of Codex standards so never ignores Codex.

Corporations dominate the meetings and work hard to ensure that any restrictions to marketing and health safeguards are kept to a minimum (except when high standards are in their interest).

### **1 What is Codex?**

Codex is a joint United Nations body created in 1963 by the **World Health Organisation (WHO)** and the **Food and Agriculture Organisation (FAO)** to develop food standards, guidelines and codes of practice under the Joint FAO/WHO Food Standards Programme. The establishment of the World Trade Organisation (WTO) in 1995 gave Codex a new status and importance. WTO is mandated to refer to Codex Standards in trade disputes so governments use Codex as a basis for legislation. (see [www.wto.org/english/thewto\\_e/thewto\\_e.htm](http://www.wto.org/english/thewto_e/thewto_e.htm))..

**The stated purpose of Codex is to protect the health of the consumers and to ensure fair trade practices in the food trade.** However these dual objectives are often incompatible and interpreted by the food industry in a very narrow way: ‘*consumer protection*’ is seen only as improving food safety and the quality of processed packaged foods, while ‘*fair trade*’ is interpreted as **the facilitation of trade**. The critically important health and nutrition issues and the wider aspects of fair trade are often ignored, as is the impact of free trade on indigenous foods, food security, sustainability. These concerns are often viewed by industry and industry-friendly governments as irrelevant ‘political’ issues, making it difficult to raise them effectively.

In the absence of strong, objective chairing and good NGO representation (throughout the many years it can take to set a standard), industrialized countries and industry lobbyists and associations

have a free hand to use Codex to protect their market and export interests – promoting the international trade of processed packaged foods. Considerations of developing countries are for the most part overlooked. (The Codex Trust Fund is an attempt to address the imbalance between countries, but not all countries are eligible or able to get involved. )

**This is how the Codex “Understanding the Codex Alimentarius” describes itself:**

“ The Codex Alimentarius, or the food code, has become the global reference point for consumers, food producers and processors, national food control agencies and the international food trade. The code has had an enormous impact on the thinking of food producers and processors as well as on the awareness of the end users – the consumers. Its influence extends to every continent, and its contribution to the protection of public health and fair practices in the food trade is immeasurable.....The Codex Alimentarius has relevance to the international food trade. With respect to the ever-increasing global market, in particular, the advantages of having universally uniform food standards for the protection of consumers are self-evident. It is not surprising, therefore, that the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement) both encourage the international harmonization of food standards. Products of the Uruguay Round of multinational trade negotiations, these Agreements cite international standards, guidelines and recommendations as the preferred measures for facilitating international trade in food. As such, Codex standards have become the benchmarks against which national food measures and regulations are evaluated within the legal parameters of the World Trade Organization (WTO) Agreements.”  
[ftp://ftp.fao.org/codex/Publications/understanding/Understanding\\_EN.pdf](ftp://ftp.fao.org/codex/Publications/understanding/Understanding_EN.pdf)

## 2 IBFAN’s work in Codex, the EU and trade agreements

IBFAN works to protect the sovereign right and duty of all governments to bring in laws based on the *International Code of Marketing of Breastmilk Substitutes* and the Resolutions of the World Health Assembly (WHA) - the world’s highest health policy setting body. The WHA Resolutions on infant feeding are minimum requirements for all countries. Under the CRC governments also have human rights obligations to regulate corporations so that breastfeeding (and the use of culturally appropriate, sustainable, bio-diverse foods) is protected.<sup>1</sup> IBFAN has worked since 1995 to incorporate the WHA resolutions into the Codex standards on foods and formulas marketed for babies. The Codex *Code of Ethics for International Trade in Food including concessional and food aid transactions* (cac/rcp 20-1979) includes further strong safeguards.<sup>2</sup>

Governments can use the WTO process as a tool for consumer protection. If Codex standards incorporate Resolutions already passed at the World Health Assembly countries do not have to waste valuable resources providing scientific proof to a WTO panel that their laws are necessary on health grounds. The Codex standards should be a ‘safe harbor.’

Trade agreements such as TTIP and TPP are having a chilling effect on governments and the growth of the dairy industry is central to many discussions. Governments are being pressured to harmonise their laws with bad EU laws that mirror the industry demands that focus on expanding the market for fortified formulas and foods. As a WTO member, the EU is obliged to notify the WTO Technical Barriers to Trade (TBT) Committee of any draft new legislation that could affect

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<sup>1</sup> IBFAN first worked on Codex issues in 1987, but developed a more focused strategic approach in 1995 when the 1981 Codex standard on infant formula started to be revised. IBFAN’s aim is to support developing countries in their efforts to bring the Codex standards into line with the [International Code of Marketing of breast-milk Substitutes and the Resolutions](#) which are adopted at the World Health Assembly – the world’s highest health policy setting body. *The International Code* requires that the composition of breastmilk substitutes meets Codex standards.

Breastfeeding and appropriate complementary feeding top the list of cost-effective interventions to reduce under-5 mortality, saving more lives than other key preventive measures such as immunisation, safe water and sanitation. Jones et al. *How many child deaths can we prevent this year?* The Lancet, Vol 362 July 5, 2003 65-71 Child survival 11)

<sup>2</sup> *Codex Code of Ethics: 4.4 National authorities should be aware of their obligations under the International Health Regulations (2005) with regard to food safety events, including notification, reporting or verification of events to the World Health Organisation (WHO). They should also make sure that the international code of marketing of breast milk substitutes and relevant resolutions of the World Health Assembly (WHA) setting forth principles for the protection and promotion of breast-feeding be observed.*

conditions for imports.<sup>3</sup> Until **18<sup>th</sup> August** WTO Member States and ‘interested stakeholders’ can make comments to the European Union, Internal Market, Industry, Entrepreneurship and SMEs Directorate-General: [GROW-EU-TBT@ec.europa.eu](mailto:GROW-EU-TBT@ec.europa.eu)

IBFAN is encouraging governments to complain about the EU proposals and to consider the EU’s global human rights obligations to drive consumer protection upwards rather than downwards.

According to IBFAN’s International Code Documentation Centre (ICDC): *“Industry often threatens governments with arguments that laws which restrict marketing constitute barriers to trade. In actual fact, these legal measures are not actionable within the provisions of the WTO agreements and other bilateral or multilateral trade agreements, if they apply equally to foreign and domestic products. Countries using the Code as a basis for their laws are not erecting barriers to trade. Many trade regimes recognise public interest laws which give effect to minimum international standards adopted by international bodies. The Code and resolutions should be viewed as “standards” issued by the highest international authority on health. For countries with laws that are more stringent, the burden of proof is on the challenger”*

### **3 Industry/NGO Participation in Codex**

**NGOs** Observers are permitted to make interventions during the annual meetings – usually after Member States have spoken. NGOs can host briefing sessions for Member States. (IBFAN has been granted NGO observer status with Codex and also attends under the name of IACFO (International Association of Consumer Food Organisations.)

**Food Industry Representatives.** Codex tends to facilitate the undue corporate of an important UN body dealing with trade. Corporations attend Codex either as consultants on national delegations or as NGOs in their own right. These BINGOs (Business Interest NGOs) often have very misleading names – for example Monsanto has attended as the *Council for responsible Nutrition (CRN)*.

About 40% of the nutrition delegates are from food industry, and they can even lead government delegations. <http://www.babymilkaction.org/archives/2640>

Every Member Country has a Codex focal point which organises the country’s participation and consultation process prior to Codex meetings. The food industry keeps in regular touch with governments about Codex matters. At one time, the Focal Point for Poland was Nestlé.

### **4 The Codex process**

Codex work is time and resource consuming. Each committee meets for a full week once a year. Codex Standards are developed through 8 stages so take years to complete. Standards are not finalised until Step 8, and are typically not referred to the Codex Commission (CAC) until they reach Step 5. If there is a trade dispute the draft standard – at whatever stage it has reached – is used as the benchmark.

International NGOs focusing on food issues can register as observers and submit comments through Electronic Working Groups between the annual meetings. These comments can be

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<sup>3</sup> The WTO secretariat does not scrutinize legislation, but does do periodic global reviews of each country’s trade policies. Specific regulations may also be examined in the case of a formal trade dispute brought by another member to the WTO’s dispute resolution system. There has been no dispute regarding the EU baby food regulations so far.

shared with national governments to inform their decision-making and help counter the industry messages. But attending physical meetings is – if possible – a huge advantage.

Codex decisions are usually made by consensus. This can be a problem. The German Chair of the Nutrition Committee (CCNFSDU) is consistently biased towards industry. Very often consensus is assumed to have been reached, not when there is a lack of sustained opposition, but when dissenting voices are consigned to the report.

## **5 Codex Trust Fund**

Codex established a Trust Fund in 2003 with the aim of redressing the imbalance in participation from developing countries. IBFAN and IACFO successfully lobbied for the Trust Fund to be publicly funded with no food industry donations. Its important to ensure that this principle is adhered to in future years. Only certain countries are eligible for the Trust Fund and eligibility is reviewed annually. <http://www.who.int/foodsafety/codex/trustfund/en/>

### **Some of the Relevant Codex Committees**

Codex Meetings are annual, apart from General Principles which takes place twice a year.

- Codex Alimentarius Commission (CAC) This takes place in Rome or Geneva. CAC is the body that oversees all Codex work and Standards are moved here for approval.
- General Principles (CCGP) Sets general rules on Codex. A draft Code of Ethics is under review. IBFAN has managed to include International Code.
- Food Labelling (CCFL) May, Canada. Labelling (and some advertising) issues: country of origin, QUID, organic, GM nutrition and health claims.
- Food and Nutrition for Special Dietary Uses (CCFNSDU) Meetings take place in Germany (the secretariat) or in developing countries in alternating years.
- Food additives + contaminants (CCFAC) March, 09 China
- Codex Committee on Food Hygiene (CCFH)
- Codex Committee on Processed Fruits and Vegetables. (Washington, USA)
- Codex Committee on Fish and Fishery Products. (Morocco)
- Codex Committee on Food Import and Export Inspection and Certification System

The Codex website has details of all the meetings. Codex meeting reports contain the contact details for all participants. There are also regional Codex Committees.

[www.codexalimentarius.org/about-codex/en/](http://www.codexalimentarius.org/about-codex/en/)

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