

Baby Milk Action Submission to Inquiry on UK-US trade relations



17th November 2017

Baby Milk Action, is a UK-based organisation, founded in 1978 that operates entirely independently of corporate funding. We are the UK member of the International Baby Food Action Network (IBFAN), a global network of 270 citizens groups in more than 160 countries.

Since the adoption of the *International Code of Marketing of Breastmilk Substitutes* at the World Health Assembly in 1981, we have helped governments bring in legislation to incorporate it and the subsequent relevant World Health Assembly Resolutions, hereafter referred to together as *The International Code*. The aim of the *International Code* is to prevent misleading marketing by the baby feeding industry and to protect all children - those who are breastfed and those who are not. Baby Milk Action has attended Codex meetings since 1995, with the aim of improving global trading standards so that products fed to babies are as safe as possible and are marketed according to World Health Assembly recommendations. We have played a key role in strengthening conflicts of interest safeguards at global, regional and national level, in relation to food safety, health and education services and post market surveillance.

Summary answers to the questions posed in this inquiry:

1. **what the UK's priorities and objectives should be in negotiating any such agreement;**
The priority must be to protect children's rights to health in line with UN recommendations
2. **the possible impacts (positive and negative) on specific sectors of the UK economy from such an agreement;**
We envisage no advantages, and fear that there will only be risks to health. A focus on innovation combined with a weakening of marketing safeguards will increase the presence of misleading information and risky products. An expansion of the baby food market is likely to increase rather than reduce risks to child health.
3. **the extent to which any agreement could and should open up markets in services, including public services;**
The opening up of markets in services, in particular health and education services, presents great risks from undue commercial influence. The International Code requires Member States to implement Conflict of Interest safeguards in the provision of health and education services related to infant and young child feeding. This is critically important.
4. **the extent to which any agreement could and should open up markets in public procurement;**
See comment above.
5. **how any agreement should approach regulation, including regulatory harmonisation;**
The International Code and Resolutions and the Convention on the Rights of the Child must be the minimum standard and benchmark in the harmonisation of regulations, including in WTO and Codex negotiations.
6. **what dispute-resolution mechanism should form part of any such agreement;**
The sovereign right of democratic states must take precedence over the commercial interests of foreign investors. The right and duty of Governments to adopt measures to protect health, the environment, consumers or other public policy goals must not be laid open to challenge from external arbitration tribunals.
7. **what involvement, if any, the UK should seek to have in the North American Free Trade Area or any future regional free trade agreement involving the USA.**
Since the US has failed to implement WHA Resolutions, the UK must ensure that any agreement does not permit interference by the US government in UK policy space. The UK Government's resolve to further protect child health through the implementation of WHA Resolutions must not be eroded.

1 what the UK's priorities and objectives should be in negotiating any such agreement;

The UK is a signatory to the Convention on the Rights of the Child and, since 1981, a consistent endorser of the International Code and subsequent WHA Resolutions. As a member of the EU, has brought key sections into UK law. New EU Regulations that will come into force in 2020 contain several new safeguards, for example a prohibition of health and nutrition claims on infant formula and Foods for Special Medical Purposes.

The US, in contrast has failed completely in this regard and has no federal legislation on marketing that protects breastfeeding: infant formula labels do not have to make a statement about the superiority of breastfeeding, there is no restriction on idealising images or words that suggest products are close to breastmilk. US formula labels can include statements that compare artificial milks to breastmilk, make health claims and use images that idealise the products. *For further detail please see Submission by First Steps Nutrition.*

Any agreement with the US must not weaken the UK's commitment to strengthen its policy further in line with World Health Assembly recommendations.

Child Rights Like all states, the UK, as a primary duty bearer, has a legal obligation to protect, promote and support child health and ensure – through appropriate legislation - that *'marketing and advertising do not have adverse impacts on children's rights.'* These obligations are enshrined in many Human Rights and World Health Assembly Resolutions. For example the *Convention on the Rights of the Child* (CRC) The General comment No. 16 (2013) outlines State obligations regarding the impact of the business sector on children's rights. Para 20: *"States should ensure that marketing and advertising do not have adverse impacts on children's rights by adopting appropriate regulation and encouraging business enterprises to adhere to codes of conduct and use clear and accurate product labelling and information that allow parents and children to make informed consumer decisions."*¹

2 the possible impacts (positive and negative) on specific sectors of the UK economy from such an agreement;

Governments have sovereign rights and duties to protect health. Trade agreements can, and often do, undermine national consumer protective policies. The UK must take steps to ensure that U.S negotiators (who will inevitably protect US corporate interests) are not allowed to introduce provisions that might undermine UK potential to safeguard health, the environment.² Intellectual property rights, limits on financial regulation and investor rights often come with threats that governments are required to pay compensation for policies that undermine expected profits. The UK must insist that any agreements do not confer rights to companies to sue Governments for economic harm if health or environmental regulations interfere with profits.

The UK must retain and protect the **Precautionary Principle** that is embedded in EU and UK baby food and formula regulations.³ The US does not have safeguards in place to prevent risky technologies, hormone-laced milk and GM ingredients reaching the market.⁴ Any legislation covering foods for infants and young children should include specific and stringent application of the PP, so that:

¹ [crc/c/gc/16 site:www2.ohchr.org](http://www2.ohchr.org) 16 June 2011, the UN Human Rights Council endorsed the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" proposed by UN Special Representative John Ruggie. <http://www.businesshumanrights.org/UNGuidingPrinciplesPortal/Home>

² *2017 National Trade Estimate Report on FOREIGN TRADE BARRIERS* Office of the United States Trade Representative <https://ustr.gov/sites/default/files/files/reports/2017/NTE/2017%20NTE.pdf>

³ *Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control. Article 5 Precautionary principle* In order to ensure a high level of health protection in relation to the persons for whom the food referred to in Article 1(1) of this Regulation is intended, the precautionary principle as set out in Article 7 of Regulation (EC) No 178/2002 shall apply

⁴ A post-Brexit trade deal with the US could increase in the amount of cancer-causing toxins in British milk and baby food, *The Independent*. US regulations allow more than 20 times the quantity of harmful aflatoxins in food products, compared to the stricter regime imposed by the [European Union](#).

1. all ingredients are pre-authorised following rigorous independent scrutiny, (with particular care over new technologies, such as nanotechnologies;
2. systematic reviews of all available evidence is carried out *independently* of the manufacturers and distributors of the products in question;
3. evidence is reviewed on a regular basis to ensure infants are not exposed to levels of nutrients that might put an unnecessary burden on their metabolism;^[4]
4. there is regular post market surveillance indicating the frequency of such reviews;
5. food ingredients not listed as essential are kept to the bare minimum;

Obesity: Bad diet is now acknowledged to be the biggest cause of death and disability and the costs of diet-related diseases are fast consuming health budgets and infant and young child feeding is acknowledged to be a critically important factor. Following the EU Parliament vote in January 2016 to reduce sugar levels in baby foods,⁵ the UK will be implementing this key strategy as a key part of its efforts to tackle childhood obesity.

The 2016 *WHO Guidance on ending the inappropriate Marketing of foods for Infants and Young Children is another important safeguard that must be protected*. This Guidance attempts to address the aggressive marketing of the new range of expensive, sweetened and flavored milks that target 6-36 month old children. There is no doubt that the market for these products is growing fast, despite widespread, near universal concern about their harmful health impact. We are working with Member States at Codex to ensure that the revision of the Codex Standard incorporates the WHO 2016 Guidance.

3 the extent to which any agreement could and should open up markets in services, including public services;

The opening up of markets in services, in particular health and education services presents great risks from undue commercial influence. The International Code requires Member States to implement Conflict of Interest safeguards in the provision of health and education services related to infant and young child feeding. This is critically important. We see no advantages and many risks in opening up markets in services.

4 the extent to which any agreement could and should open up markets in public procurement;

See comment above. We see no advantages and many risks in opening up markets in public procurement in relation to health and education.

5 how any agreement should approach regulation, including regulatory harmonisation;

The *International Code and WHA Resolutions* must be the benchmark in the harmonisation of regulations. The UK must insist on this and counter the flawed arguments and pressure so often exerted by corporate lawyers. The UN recommendations are a minimum requirement for all countries and their interpretation is hotly contested by the baby feeding industry at national and global level, including at Codex Alimentarius.

The Codex Code of Ethics for International Trade in Food (CAC/RCP 20-1979 4.4) states that “*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.*”

6 what dispute-resolution mechanism should form part of any such agreement; and

The sovereign rights of democratic states must take precedence over the commercial interests of foreign investors. The right and duty of Governments to adopt measures to protect health, the

⁵ *European Parliament rejects high sugar content in baby foods*, [BMJ 2016;352:i553](http://www.babymilkaction.org/wp-content/uploads/2016/01/bmj.i553.full_.pdf)
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environment, consumers or other public policy goals must not be laid open to challenge before arbitration tribunals, as was proposed under the EU's proposed outcome for TTIP. We oppose fair and equitable treatment (FET) for investors in any trade agreements. It is unacceptable to grant any external arbitration tribunal the power to adjudicate over the scope of FET. This would be an unacceptable transfer of responsibility away from democratic control, and we would oppose such provisions entirely.

The protection of investors has been at the heart of many challenges to sovereign states in the past, and is an unacceptable erosion of democratic accountability and duty. The right to regulate is absolute, and must not be undermined or traded off against powers for foreign investors.

7 **what involvement, if any, the UK should seek to have in the North American Free Trade Area or any future regional free trade agreement involving the USA?**

Foreign investors must not be granted powers or access to arbitration tribunals via mechanisms (such as was proposed by ISDS during the TTIP negotiations). In the area of infant and young child feeding any interference by the US government in UK policy space might erode UK resolve to protect child health through the implementation of the International Code and Resolutions.

The UK has a functioning judicial system, that must be strengthened in favour of environmental and human protection, not undermined or subjugated to the rights of foreign investors. The International Code and subsequent relevant WHA are WHO standards and should never be called TBT when implemented and enforced to protect public health.

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