
Findings of Nestlé’s investigations of the allegations made in IBFAN’s Report “Breaking the Rules, Stretching the Rules – 2014”



A call for a collaborative approach to promote and support breastfeeding

At the heart of Nestlé’s business is the support for good nutrition for infants. This is why we believe we have a role to play in the promotion of sound child feeding practices, including the promotion and support of breastfeeding. At the same time, when, in consultation with their healthcare providers, mothers and families have determined that optimal breastfeeding is not possible, infant formula is the only suitable breastmilk substitute (BMS) recognised by the WHO. In this context, it is important that babies have access to a high quality and safe alternative that provides them with essential nutrients. This is why we have a global public [commitment to market our breastmilk substitutes responsibly](#).

Monitoring of the marketing practices of BMS manufacturers: a shared responsibility

Nestlé has always done its utmost to comply with the WHO Code as implemented by national governments everywhere in the world and strives to continuously improve. To ensure that we fulfil our public commitment to market breastmilk substitutes responsibly, we have put in place several compliance initiatives in the 152 countries considered to be higher risk in terms of infant mortality and malnutrition^{1,2} such as, among others, a mandatory WHO Code training programme for employees involved in the marketing of BMS, an extensive monitoring system to report instances of non-compliance and a number of good governance mechanisms. These mechanisms include our network of 60 internal WHO Code Ombudspersons, the “[Tell Us](#)” compliance reporting system that enables external stakeholders to raise any concerns they may have with Nestlé via the internet or by telephone and independent verifications performed by Bureau Veritas and [FTSE4Good](#). It is possible that some instances of non-compliance with our [Policy and Instructions on the Implementation of the WHO Code](#) escape our attention given that Nestlé operates in 197 countries worldwide with over 339,000 employees. The environment in which Nestlé operates is an increasingly complex one, characterised by a vast number of distribution points, which are often small outlets with whom we have no direct relationship. However, when we detect any instance of non-compliance, we immediately deploy the necessary resources to remedy it.

¹ Countries are considered as “Higher Risk” based on prevalence in children less than 5 years of age of mortality more than 10 per 1000 and more than 2% acute malnutrition based on data found in the most recent edition of UNICEF’s State of the World’s Children.

² The development of the Nestlé Policy for the Implementation of the WHO Code was necessary because many ‘higher risk’ countries have not fully implemented the Code. According to the WHO, only 37 out of 199 member states had passed laws reflecting all its recommendations and subsequent resolutions as of 2011.

We would like to highlight IBFAN's efforts to relentlessly promote and support breastfeeding and its careful attention to the responsible marketing of breastmilk substitutes through the publication of its report "*Breaking the Rules, Stretching the Rules – 2014*". We have for years sought to engage with IBFAN in order to directly address their concerns as they arise and we reiterate our willingness to engage constructively with IBFAN and all other interested stakeholders in the hope that we can make fruitful progress together. We believe this engagement would be a valuable opportunity to make a positive contribution to the lives of mothers and children and ensure that every child has the best start in life.

We therefore value third party monitoring as a way to continuously improve our practices. We take all allegations of violation of the WHO Code reported to us seriously and we investigate each of them thoroughly. We voluntarily and regularly subject ourselves to extensive monitoring exercises, notably through more than 30 internal and independent external audits each year and the FTSE4Good Index BMS Verification process in the two countries selected every 18 months. We transparently make the [results of our progress](#) available on our website.

We have applied the same principle to the IBFAN Breaking the Rules 2014 report and have thoroughly investigated each of the allegations made in the report concerning Nestlé Infant Nutrition and Wyeth Infant Nutrition³ and we are reporting our findings in the following pages.

Investigation methodology

We have investigated all the concerns pertaining to Nestlé Infant Nutrition and Wyeth Infant Nutrition which have been raised in the Breaking the Rules 2014 report. The market where the allegation came from was asked to investigate the allegation benchmarking it against national government regulations implementing the WHO Code as well as the [Nestlé Policy and Instructions on the Implementation of the WHO Code](#), and to report on its status. The assessment of non-compliance was based on 3 basic principles:

1. Nestlé must follow the WHO Code as implemented by national governments everywhere in the world.
2. The [Nestlé Policy and Instructions on the Implementation of the WHO Code](#) must apply when it is stricter than the national regulations in 152 countries that are considered to be higher risk in terms of infant mortality and malnutrition.^{4,5}
3. As a minimum in higher risk countries, Nestlé does not promote infant or follow on formulas for children under 12 months of age. In these countries, we also do not market complementary foods for children under six months of age.⁶

³ Though Nestlé acquired Wyeth Infant Nutrition on November 30, 2012, i.e. almost 2 years into the period covered by the BTR 2014 report, we have investigated and reported on all allegations relating to this business contained in the BTR 2014 report.

⁴ Countries are considered as "Higher Risk" based on prevalence in children less than 5 years of age of mortality more than 10 per 1000 and more than 2% acute malnutrition based on data found in the most recent edition of UNICEF's State of the World's Children.

⁵ The development of the Nestlé Policy for the implementation of the WHO Code was necessary because many 'higher risk' countries have not fully implemented the WHO Code. According to the WHO, only 37 out of 199 member states had passed laws reflecting all its recommendations and subsequent resolutions as of 2011.

⁶ Growing Up Milks, also called Young Child Formulas or toddler milks, are milk products for children above 12 months and they are intended to be used as complementary feeding during the transition to the family diet.

Each market response was then carefully reviewed by an internal committee composed of members of Global Public Affairs and Global Nestlé Nutrition Compliance who assessed them in light of the 3 principles mentioned above and designed a remediation plan where needed.

Findings of the investigation

Acknowledging Nestlé’s efforts

We want to thank IBFAN for acknowledging our determination to cancel promptly an event in South Africa that was not compliant with our Policy after it had brought it to our attention.⁷ We would like to continue this type of proactive collaboration in the future so that potential instances of non-compliance can be addressed quickly. We also thank IBFAN for publishing the erratum regarding p. 25 of the Nestlé Chapter, acknowledging that our product label is compliant with the directives of the Philippines Department of Health.

Instances of non-compliance

Over the period of three years that the BTR2014 Report is covering and across both of our infant nutrition businesses, we found a combined 24 instances of non-compliance with the national regulations implementing the WHO Code and / or the [Nestlé Policy and Instructions for the Implementation of the WHO Code](#) (see summary table below). We were aware of most of these instances prior to the release of this report. We had already ceased eight of the activities prior to the publication of the report. Six (6) activities were carried out by third parties with which we do not have a commercial relationship and we nevertheless have requested that they cease these activities. For the remaining ten (10) instances of non-compliance requiring remediation, markets were instructed to immediately initiate change and they have now all been addressed.

Business Unit	Concerns Identified in the BTR 2014 Report				TOTAL
	Non-compliant activities				
	ceased	conducted by independent party	by 3 rd	requiring correction/remediation	
Nestlé Infant Nutrition	5	6 ⁸		7	
Wyeth Infant Nutrition	3			3	
TOTAL	8	6		10	24

⁷ ref: p.21 of the Nestlé Chapter

⁸ Some third party e-commerce platforms are featuring both Wyeth Infant Nutrition and Nestlé Infant Nutrition products.

Noncompliant activities that have already been addressed

Below are some examples of instances of non-compliance which had ceased before the publication of the BTR report:

Wyeth Infant Nutrition

- China : the Wyeth Infant Nutrition website has been revised to comply with the Nestlé Policy and the lion mascot was removed in 2013;
- Kuwait: the Wyeth Promil Gold pamphlet and hospital discharge bag was discontinued in 2013;
- South Africa and Trinidad and Tobago: the Wyeth Nutrition business in these countries is owned and operated by Aspen, not by Nestlé.

Nestlé Infant Nutrition

- Greece: the NAN Leaflet is no longer in distribution;
- Israel: This ad was not intended for a consumer audience nor to be published in any media but rather created by an agency as a demonstration model for a workshop that took place in 2011. We have asked that this model be completely removed from the website of “The Golden Fish”.
- Zimbabwe: this old Cerelac label had been duly approved by local authorities and the product was also discontinued in August 2013.

Noncompliant activities carried out by independent third parties

Six (6) instances of non-compliance identified in IBFAN’s report were carried out by third parties with which we have no commercial relationship. We have requested that they cease these activities but enforcement by Nestlé solely is challenging due to the limitations of antitrust and commercial regulation that we must comply with. We would need the assistance of governments and civil society to encourage these businesses to comply. Examples are as follow:

- **China:** Third parties use e-commerce platforms to sell Wyeth Infant Nutrition and Nestlé Infant Nutrition products on their own initiative with special prices and sometimes gifts. We sent letters underlying the importance of complying with the WHO Code to the two companies managing the e-commerce platforms identified in the IBFAN Report. In addition, we have set up on online monitoring of e-commerce businesses commercialising our infant nutrition products and provide training on the responsible marketing of BMS on an on-going basis.
- **India:** Independent e-commerce initiatives featuring Nestlé Infant Nutrition products have taken place. Nestlé has no direct commercial relationship with any e-commerce platform in India and has already communicated to the party concerned to highlight the non-compliant aspects of their activities.
- **Paraguay:** the Nestum printed ad was not developed or distributed by Nestlé. In Paraguay, age positioning of Nestlé complementary foods is clearly identified as being for children above 6 months of age. We would appreciate the assistance of IBFAN to identify who has developed this advertisement.

- **South Africa:** There are also independent initiatives taken by retailers to promote or provide a price reduction on infant formula. This is against Nestlé Policy for the implementation of the WHO Code and we do not support this practice.

Noncompliant concerns that require remediation

The table below presents the 10 instances of non-compliance that required remediation. Corrective actions have been undertaken to address the identified issue and these are no longer taking place.

<i>Country</i>	<i>Instance of non-compliance</i>	<i>Corrective/Remediation action</i>
Wyeth Infant Nutrition		
Bahrain	S-26 Gold infant and follow up formula are partially concealed by the lion mascot	We have discontinued this advertisement.
Barhain and Kuwait	Distribution vehicles could have been perceived as making allusion to infant formula products	This is no longer taking place
Egypt	S-26 Gold material produced for health care professionals explaining better gastro-intestinal tolerability and role of the product for immune function, visual and mental development as well as optimal growth.	Material had been produced prior to the acquisition of Wyeth Infant Nutrition by Nestlé and had been discontinued as a result of the recent alignment of Policy and practices of the Wyeth Infant Nutrition business to the Nestlé Policy.
Nestlé Infant Nutrition		
Botswana	A pharmacy took the initiative to mark down the price of an expired box of infant formula.	We have reinforced the point with our distributors to request that they follow our policy and procedures, requiring that expired products be swiftly removed from trade outlets.
Cameroon	A material used during a congress of healthcare professionals to provide information on complementary foods did not clearly indicate that the product is intended for children 6 months of age and older.	As per our Policy in higher risk countries and as clearly indicated on product labels, all material relating to complementary food products should specify that they should be introduced to children from six months of age.
China	Contact cards for out of stock products which are a customary practice in outlets in China could be interpreted as inducing inappropriate contacts of store merchandisers with mothers to promote product.	In July 2013, we have destroyed the branded contact cards and informed the local merchandiser to use unbranded cards for stock out information.
Costa Rica	The image of a mother and her baby on some scientific material for the exclusive use of healthcare providers regarding the composition of our infant formula product line may be perceived as idealizing.	We have reinforced with our markets that all scientific material pertaining to infant formula products for the use of healthcare providers should refrain from using potentially idealizing images.
Mexico	The material was created in 2007 by Gerber, before it was acquired by Nestlé.	The document has been fully deleted from the site. Google has been asked to

	This material is no longer in use.. While there were no inbound links to this page from our website from 2011, it may have been possible to access the material through search engines afterwards.	clear the content from their cache as well so that it could not be accessed via search either. We have taken the necessary corrections to ensure that all communication includes the suitability of our range of complementary foods from 6 months onwards
South Africa	A retailer discounted infant formula product as part of an “end of range” clearance.	This is clearly against our Policy and Guidelines. This instance of non-compliance was internally reported on 2 August 2012 by one of our medical delegates and corrective action was taken within 24 hours by our Sales Manager. We continue to reinforce communication to retailers to request compliance with our policy.
Thailand	The “Natural Start” logo was duly approved in April 2012 by the Food and Drug Administration (FDA) in Thailand ⁹	We will discontinue the use of the “Natural Start” logo on our infant formula products by mid-2015. We have made this announcement public on our website .

Concerns that would require IBFAN to provide us further details in order to complete the investigation

We would appreciate if IBFAN could provide us with more details concerning some allegations such as dates and location of the picture taken as we cannot trace back the commercialisation of the featured product in the identified country associated. For example,

- **Philippines:** the Gerber product without age indication (ref. p.32) is not part of our Gerber portfolio in the country. The Nestlé Infant Nutrition portfolio in the country explicitly declares age indication.
- **Paraguay:** we cannot trace back the material showing a baby with a diaper on a NIDO+1 product (i.e. intended for children above 12 months of age) on page 39 of the report. We agree that this image may be misleading and we are willing to change. We would need IBFAN to provide us with more information regarding the location and the date where this product was found. Another concern raised on p. 40 regarding Gerber complementary food products would need further information since the sale of the highlighted Gerber product line has been discontinued since 2012 in the country.

⁹ The Thai FDA approval document is available upon request

Discussion on the findings and challenges in the implementation of the WHO Code

One company, one policy: Full alignment of Wyeth Infant Nutrition business

Nestlé bases its operations and acquisitions on a fundamental principle: one company, one policy. This has been applied to the acquisition and integration of the Wyeth Infant Nutrition business. As of 1st April 2014, we confirm that all the Wyeth Infant Nutrition (WIN) businesses conveyed in higher risk markets are fully aligned to the Nestlé Policy and Instructions for the implementation of the WHO Code and have in place similar WHO Code Management Systems (WCMS). In addition, all WIN employees involved in the marketing of BMS in these countries have been trained. From 2015 onwards, compliance of WIN business with the Nestlé Policy and Instruction for the Implementation of the WHO Code will be continuously assessed via the same internal and external audit mechanisms as the Nestlé Infant Nutrition business (NIN), which covers more than 30 countries per year. The same transparency in public disclosure of information regarding our [compliance record](#) will be applied.

Close collaboration between the authorities, civil society and the private sector is key to respecting the aim and the principles of the WHO Code

Given the complexity of the trade and the necessity to respect the limitations set by regulations and anti-trust laws, it becomes increasingly important that WHO Code monitoring actions take a “route to market” approach. Monitoring should include **local and international companies that market their products as** breastmilk substitutes, along with participants in the distribution chain (e.g. wholesalers, distributors and retailers). It is also important to pay attention to fast growing independent e-commerce businesses which are often without a direct commercial relationship with the manufacturer and which are usually openly accessible platforms where any individual or business can engage in sale of BMS. Guidelines and a monitoring framework for all participants involved in the marketing and distribution of BMS to comply with the aim and principles of the WHO Code would be helpful and we would be glad to participate in the elaboration of such tools.

The need for a level playing field and harmonized monitoring mechanisms

[According to the WHO](#), only 37 out of 199 member states had passed laws reflecting all the recommendations made to member states under the WHO Code and subsequent resolutions as of 2011. Hence, it is important that WHO Code monitoring mechanism recognises this unlevel playing field and acknowledges BMS manufacturers who a) comply with the WHO Code as implemented by national authorities and, b) go above and beyond these minimum national requirements in countries where there is a higher risk for children’s health.

The ultimate goal would be to have one transparent, independent and widely agreed upon monitoring mechanism for the marketing of breastmilk substitutes. While working towards that model, alignment of the current assessment methodologies and transparent reporting of findings are crucial as these mechanisms are key to building trust between the private and public sectors.

The development of a uniform monitoring mechanism through constructive engagement with the private sector is essential to enable progress on this topic. In this respect, we believe that the BMS Criteria set by FTSE4Good is a real step forward and that the learnings from the FTSE4Good BMS Criteria verification process should be used as a basis for the development of a widely accepted tool to monitor the practices of BMS manufacturers. The FTSE4Good BMS Criteria is presently the highest standard established with respect to the responsible marketing of BMS and fosters multi-stakeholder dialogue. We invite other breastmilk manufacturers to follow Nestlé's steps and seek inclusion in FTSE4Good Index.

Likewise it is important to move away from a "policing" approach and develop a set of actionable undertakings based on a set of realistic expectations and achievable goals. The elaboration of a framework of engagement with the private sector would contribute to moving the dialogue forward and increasing the resources to 1. Increase the promotion of breastfeeding; 2. Optimise the implementation of the WHO Code and, 3. Increase accessibility to affordable food based solutions to address global nutrition challenges.

We are ready to work collaboratively with IBFAN and will continue to engage with the other parties that are involved in monitoring the practices of breastmilk substitute manufacturers such as the WHO, ATNI and FTSE4Good. Doing so will help to create a virtuous process that will lead to improving the practices within the BMS industry and ultimately benefit those who need good health and nutrition the most: mothers and children.