



2010 External Report on Nestlé's WHO Code compliance

INTRODUCTION

Nestlé supports the best start in life for babies. This means protecting and promoting breastfeeding and ensuring that, when alternatives are needed, these are of the highest quality and are marketed responsibly and in line with the *International Code of Marketing of Breast-milk Substitutes* (WHO Code).

Nestlé recognizes that the WHO Code is an important instrument for the protection of infant health, in particular in countries where public health concerns are heightened. Nestlé is committed to making sure that each employee operates in compliance with the WHO Code and in a way consistent with the *Nestlé Policy and Instructions on implementing the WHO Code*, last revised in July 2010.

In the 152 countries with high infant mortality and malnutrition rates as defined by UNICEF – classified as 'higher-risk', Nestlé is committed to following the WHO Code as a *minimum requirement* and to applying national legislation when this is stricter than the Code. In all other countries (classified as 'lower-risk'), Nestlé follows national regulations and/or other measures implementing the WHO Code, such as the EU Directive 2006/141/EC.

Since the adoption of the WHO Code Nestlé has implemented extensive procedures to embed it into our organisation and practices and to ensure compliance with it. This means training our personnel and partners involved in the marketing of breast-milk substitutes, monitoring and auditing our compliance with the Code, and reporting about our compliance record. More information about our procedures can be found on the [Nestlé Baby Milk website](#).

This report, intended for interested stakeholders, describes the results for 2010 of Nestlé's compliance with the WHO Code and our Policy for the implementation of the Code. It is a summary prepared for reporting purposes and is not intended to give any enforceable rights to third parties.

Information comes from internal and external sources. Internal sources are the corporate audit reports and the Internal WHO Code Ombudsman system. External sources are external, independent audits commissioned by Nestlé and information coming from external stakeholders (including NGOs and consumers).

Internal audits

Internal audits on WHO Code compliance are carried out in more than 20 countries every year. Nestlé employees are instructed that their actions are subject to audits and that Code violations may result in disciplinary measure.

In 2010, Nestlé subsidiaries in 27 countries around the world were audited for WHO Code compliance by Nestlé corporate auditors, 17 of which were higher-risk countries.

Audit results are communicated to top management, and where serious violations occur, these are immediately reported to the Nestlé CEO. In addition, Nestlé produces an annual summary report on WHO Code compliance for the Audit Committee of the Board of Directors.

Internal Ombudsman System

Each Nestlé subsidiary operating in a higher-risk country has a designated internal Ombudsman to whom concerns over WHO Code compliance can be reported by employees in a confidential manner and outside of line management.

In addition, a member of the Executive Board of the Nestlé Group acts as the WHO Code Corporate Ombudsman to whom any employee can report concerns or potential non-compliance.

External independent audits

Nestlé commissions at least three external audits on WHO Code compliance a year. Since 2004, Bureau Veritas, a global auditing company, has been commissioned to review Nestlé infant food marketing practices and compliance with the WHO Code in several countries in Africa, Asia and Latin America. In 2010, Bureau Veritas audited Nestlé's operations in the Philippines, India and Ghana.

Inputs from external stakeholders (NGOs, consumers, and members of the public)

Nestlé encourages all stakeholders and the general public to directly communicate to us in detail any concern they may have regarding our marketing of infant formula, so that we can continually improve our practices. A [complaint form](#) is available on Nestlé Baby Milk website to this effect.

All concerns raised directly with Nestlé are taken seriously and investigated, provided that there is sufficient information to permit this. When an inappropriate practice is identified, corrective action is taken as quickly as possible.

EXECUTIVE SUMMARY

Summary of Results

All concerns received relative to non-compliance with the Code, whether raised internally or externally, were investigated. When a breach was identified, corrective action was taken as quickly as possible.

Internal and external monitoring of Nestlé's adherence to the WHO Code in 2010 shows that the level of compliance is high:

- No evidence of systematic or deliberate contravention of the WHO Code was found.
- 13 concerns of non-compliance with the Code directly attributable to Nestlé and requiring corrective action were raised (please refer to Table 1).
 - o 7 of these were reported via internal corporate audits.
 - o 6 were raised by external sources (2 through external audits and 4 through external stakeholders).
- In addition to these 13 concerns, 8 additional concerns regarding promotion of Nestlé products at point of sale were raised. While these were all carried out at the initiative of third parties (retailers and distributors), Nestlé took a pro-active role in all cases where the third party could be identified to communicate to them the importance of compliance with the WHO Code and national legislation. These concerns are outlined in Table 2 of this report.
- All areas of concern requiring remediation have been corrected.

IBFAN's 'Breaking the Rules, Stretching the Rules 2010' report

In 2010, the International Baby Food Action Network (IBFAN) published a report entitled "Breaking the Rules, Stretching the Rules 2010", which described IBFAN's concerns of non-compliance with the WHO Code by all major infant food manufacturers, including Nestlé, collected over a period of three years.

This report describes a total of 130 concerns about Nestlé's infant food marketing practices in different countries. Like with past reports, Nestlé reviewed, investigated and responded to each concern raised. Our full response to IBFAN's report is available at: <http://www.babymilk.nestle.com/who-code-compliance/allegation-and-nestle-responses/Pages/default.aspx>

The high number of concerns raised in IBFAN's report can be explained by the difference in interpretation of the WHO Code between IBFAN on one hand and most governments, members of the scientific community and companies on the other hand.

In IBFAN's view, the Code should be applied in the same way in all countries, even when this is contrary to the decisions taken by governments of lower-risk countries. Nestlé believes that in lower-risk countries, with strong public health policies, high rates of literacy, scientific and medical understanding, good access to clean water and low rates of child mortality and malnutrition, governments should determine how information on infant feeding should be communicated. Therefore in lower-risk countries Nestlé follows all national regulation or other measures implementing the WHO Code. In the 152 higher-risk countries, Nestlé follows the WHO Code as a minimum requirement, applying national regulations when these are stricter.

A second point of controversy is that in IBFAN's view the WHO Code should cover not only breast-milk substitutes, but all products for children up to 2 years of age, such as cereals and baby foods marketed for use above 6 months. Most governments and members of the scientific community do not agree with this interpretation of the Code. The WHO Code itself clarifies that complementary foods are not covered by it unless specifically marketed as breast-milk substitutes.

Summary of Nestlé's response to IBFAN report

Of the 130 matters raised in the IBFAN report, 72 related to *lower-risk* countries, 57 to *higher-risk* countries, and one was unspecified:

- More than half of the concerns contained in IBFAN's report (72 out of 130) related to activities permitted by national regulation of lower-risk countries.
- Many concerns (46 out of 130) contained in IBFAN's report related to complementary food and growing-up milk products which are not under the scope of the WHO Code.
- In higher-risk countries, 4 areas of concern requiring remedial action were identified and corrective action taken.
- 3 reported concerns related to activities carried out by third parties (retailers and distributors) on their own initiative.

FINDINGS

1. WHO Code related concerns attributable to Nestlé and requiring remedial action

The table below summaries all concerns about activities directly attributable to Nestlé and which required corrective action. Each concern raised is described as well as the remedial action taken.

Table 1. WHO Code related concerns requiring remedial action		
No.	Description of concern	Description of remedial action taken
1.	<p><i>Sales incentives for staff</i></p> <p>Annual bonus schemes for Nestlé Trade Marketing and Medical Delegate employees included Infant Formula sales objectives and therefore did not fully comply with the Nestlé Policy and Instructions.</p> <p><i>Source: Internal audit</i> <i>Location: Latin America</i> <i>Country classification: Higher-risk</i> <i>Reported in December 2010</i></p>	<p>Existing personal objectives were cancelled and replaced with field coverage and training objectives. All employees were reminded that no objectives related to volume of sales of infant formula may be included in personal objectives.</p>
2.	<p><i>Incentives to healthcare professionals</i></p> <p>Gifts were raffled to doctors and civil servants in a public relation event.</p> <p><i>Source: Internal audit</i> <i>Location: Latin America</i> <i>Country classification: Higher-risk</i> <i>Reported in December 2010</i></p>	<p>These gifts did not target any particular healthcare professional and could therefore not be intended to incentivize any healthcare professional to recommend Nestlé infant formula product. However, it was agreed that this type of activity would not be repeated in the future.</p>
3.	<p><i>Labelling</i></p> <p>Labelling of an infant cereal brand in one country did not indicate that the product could not be fed to infants below 6 months of age and did not recommend that mothers should continue breastfeeding is recommended after the introduction of complementary foods.</p> <p><i>Source: Internal audit</i> <i>Location: Latin America</i> <i>Country classification: Higher-risk</i> <i>Reported in December 2010</i></p>	<p>New labelling guidelines for baby foods (including infant cereals) were issued to be applied by all higher-risk countries and product labels were reviewed to be in line with the new guidelines.</p>
4.	<p><i>Informational and educational materials</i></p> <p>The mandatory messages required by the WHO Code were missing from one brochure intended to reach mothers through healthcare professionals.</p> <p><i>Source: Internal audit</i></p>	<p>All written, audio or visual materials dealing with the feeding of infants and intended to reach pregnant women and mothers were reviewed to ensure that the mandatory messages are stated.</p>

	<p><i>Location: Latin America</i> <i>Country classification: Higher-risk</i> <i>Reported in December 2010</i></p>	
5.	<p>Free or low-priced supplies</p> <p>Request forms for infant formula samples given to healthcare professionals for the purpose of professional evaluation were not properly completed and the total number of samples given to each healthcare professional was not monitored.</p> <p><i>Source: Internal audit</i> <i>Location: Africa</i> <i>Country classification: Higher-risk</i> <i>Reported in November 2010</i></p>	<p>Knowledge of the Nestlé WHO Code Management System, including procedures to provide samples to individual health workers for the purpose of professional evaluation, was reinforced through training.</p> <p>A stamp on each request form is now mandatory with the objective of avoiding any confusion on healthcare professionals' signatures.</p>
6.	<p>Promotion in healthcare facilities / to healthcare professionals</p> <p>Informational and educational materials provided to healthcare professionals were found to possibly be in non-compliance with new national rules. However, these new rules may be in contradiction with the national code itself.</p> <p><i>Source: Internal audit</i> <i>Location: Asia</i> <i>Country classification: Higher-risk</i> <i>Reported in August 2010</i></p>	<p>Pending clarification from local authorities on the interpretation and application of the new rules, Nestlé decided to align its informational material on the requirements of the new rules.</p>
7.	<p>Labelling</p> <p>The label of a growing-up milk for children aged 3 years and above did not carry a disclaimer that this milk product was "Not to be used as a breast-milk substitute".</p> <p><i>Source: Internal audit</i> <i>Location: Africa</i> <i>Country classification: Higher-risk</i> <i>Reported in March 2010</i></p>	<p>The labels were changed to include the disclaimer, which aims at warning users that infants should not be fed with milks formulated for older children.</p>
8.	<p>Promotion at point of sale</p> <p>A milk section in a pharmacy was designated by a shelf-top banner produced by Nestlé containing the text 'Infant Formula & Growing Up Milks' and the strap-line 'See the Difference' (a sentence associated with a brand of growing-up milk).</p> <p><i>Source: External audit</i> <i>Location: Asia</i></p>	<p>Nestlé recognized that the proximity of the two statements could be misinterpreted as idealizing its infant formula and immediate action was taken to remove the 'See the Difference' strapline from the banner in question.</p>

	<p><i>Country classification: Higher-risk</i> <i>Reported in October 2010</i></p>	
9.	<p>Promotion at point of sale</p> <p>Some branded growing-up milk promotional materials were found in some retail outlets despite recent regulatory changes in the country that prohibited promotion in public places of growing-up milks.</p> <p><i>Source: External audit</i> <i>Location: Africa</i> <i>Country classification: Higher-risk</i> <i>Reported in September 2010</i></p>	<p>The production of all these promotional materials by Nestlé had ceased following the enactment of the new legislation, and an instruction had been sent at the time to all sales persons and third party distributors and merchandisers requesting for all old materials in the market to be re-called.</p> <p>The instruction was re-communicated to internal sales staff and third party distributors and merchandisers to re-emphasise the importance of monitoring the market for outdated promotional materials, and ensure all remaining materials were recalled and destroyed to prevent redistribution.</p>
10.	<p>Promotion to the public</p> <p>A generic communication was placed by Nestlé in a magazine, aiming at educating consumers about the importance of essential fatty acids, such as DHA and ARA, in a child’s diet. Although no specific Nestlé product or brand was mentioned in the advertisement, DHA and ARA are present in several types of products, including infant formula.</p> <p><i>Source: External stakeholder</i> <i>Location: Africa</i> <i>Country classification: Higher-risk</i> <i>Reported in December 2010</i></p>	<p>That piece of communication included an advice to consumers to check the mention of those generic active ingredients on labels of Nestlé products. As such advice may be misperceived as prompting the consumers to study infant formula labels and buy those that have these active ingredients, that kind of language will not be used anymore from similar communications about DHA and ARA.</p>
11.	<p>Promotion in healthcare facilities / to healthcare professionals</p> <p>Product literature for the exclusive use of healthcare professionals referred to “the new Gold Standard in infant nutrition”.</p> <p><i>Source: External stakeholder</i> <i>Location: Middle East</i> <i>Country classification: Higher-risk</i> <i>Reported in September 2010</i></p>	<p>As this language may be misinterpreted as referring to an infant formula in an idealizing language, the medical leaflet in question was discontinued. Instructions to withdraw any remaining leaflets to doctors were issued by Nestlé.</p>
12.	<p>Promotion in healthcare facilities / to healthcare professionals</p> <p>The Department of Health (DoH) raised in January 2010 concerns about a meeting between a Nestlé representative and healthcare professionals, where a small lunch</p>	<p>Nestlé had not been aware of the March 2009 circular since its distribution had been restricted to the healthcare system.</p> <p>Following receipt of the DoH’s letter, the</p>

	<p>was provided, contending that under a circular issued in March 2009, health workers were not allowed to accept samples, gifts, or other benefits, financial or other, of whatever value from any manufacturer or distributor of commercial baby foods.</p> <p><i>Source: External stakeholder</i> <i>Location: Oceania</i> <i>Country classification: Higher-risk</i> <i>Reported in December 2010</i></p>	<p>matter was immediately investigated and a meeting with the DoH was sought to clarify any outstanding issue. All Nestlé activities in the country have immediately been aligned with the new guidelines.</p>
13.	<p>Labelling</p> <p>A study published in the British Medical Journal claimed that the logo used on the label of a Nestlé sweetened beverage creamer – an adult bear holding a cub on its lap - caused parents in Laos to believe that the product can be used to feed infants.</p> <p><i>Source: External stakeholder</i> <i>Location: Asia</i> <i>Country classification: Higher-risk</i> <i>Reported in December 2010 (originally reported in 2008)</i></p>	<p>In order to avoid potential confusion, Nestlé changed the Bear Brand logo to a bear holding a glass of milk.</p> <p><i>Note: This issue was raised in 2008 in a British Medical Journal article. Our corrective action had already been taken prior to the publication of the IBFAN report. This action had been communicated to the authors of the study and published in the BMJ.</i></p>

2. Promotions at point of sale carried out by third parties

The table below summarises concerns regarding promotional activities for Nestlé products at point of sale initiated by third parties (retailers and distributors). These activities were not attributable to Nestlé, however Nestlé seeks to pro-actively communicate the importance of compliance with the WHO Code and national legislation to its trade partners while at the same time ensuring that it complies with the restrictions imposed on it by all applicable antitrust and commercial laws governing its relationship with its trade partners.

Table 2. Concerns related to promotions at point of sale attributable to a third party		
No.	Description of concern	Description of remedial action taken
1.	<p>One wholesale outlet gave quantity-based discounts to clients buying full or half cases of infant formula. This is not in line with the Nestlé Policy and Instructions.</p> <p><i>Source: Internal audit</i> <i>Location: Latin America</i> <i>Country classification: Higher-risk</i> <i>Reported in December 2010</i></p>	<p>A formal letter was sent to Nestlé's cash and carry customers to remind them of the WHO Code and to recommend that they take steps to comply with its provisions concerning promotions.</p>
2.	<p>A wholesaler applied tie-in sales of infant formula to clients, on its own initiative. This was not in line with the WHO Code and local legislation. Nestlé sales force did not promptly highlight the non-compliance.</p> <p><i>Source: Internal audit</i> <i>Location: Asia</i> <i>Country classification: Higher-risk</i> <i>Reported in August 2010</i></p>	<p>The wholesaler, as well as other trade customers of Nestlé, was immediately reminded of the WHO Code and local legal requirements. The wholesaler decided to stop discounting infant formula in its supermarkets open to the public. In addition, Nestlé sales force was retrained with an emphasis on the need to highlight non compliant promotion at point of sale.</p>
3.	<p>Nestlé starter infant formula (for infants below 6 months) was included in a promotional display with a promotional tag on a shelf intended for follow-on formula, although there was no actual price promotion for the starter formula. The displays were initiated by the customer in seven of its stores. Nestlé sales force did not promptly highlight the non-compliance.</p> <p><i>Source: Internal audit</i> <i>Location: Europe</i> <i>Country classification: Lower-risk</i> <i>Reported in July 2010</i></p>	<p>All customers in that country were informed again about the requirements of the EU Directive governing the marketing of infant formula in the European Union. Additionally, training of all concerned Nestlé employees on compliance with the Directive was reinforced.</p>
4.	<p>A supermarket chain discounted a Nestlé infant formula product. Merchandisers warned the Nestlé Internal WHO Code Ombudsman about this act of non-</p>	<p>Nestlé immediately reminded the retailer that price discounts of infant formula are not compliant with the WHO Code's provisions and recommended that they take steps to comply</p>

	<p>compliance.</p> <p><i>Source: Internal WHO Code Ombudsman</i> <i>Location: Latin America</i> <i>Country classification: Higher-risk</i> <i>Reported in October 2010</i></p>	with these.
5.	<p>Within the ‘Milk Corner’ of a supermarket, a special display unit intended for a growing-up milk for children above 3 years was observed to be displaying only growing-up milk for babies above 1 year, whereas the local legislation prohibits special display for the latter category.</p> <p>This activity was led by the retailers and not by Nestlé.</p> <p><i>Source: External audit</i> <i>Location: Asia</i> <i>Country classification: Higher-risk</i> <i>Reported in October 2010</i></p>	<p>Nestlé merchandisers’ team leaders were trained on display restrictions in the trade. In addition, they were given posters and cards for distribution to merchandisers explaining what can be done or cannot be done in the trade. In addition, Nestlé sales managers and distributors’ managers are monitoring shop displays during regular visits to the trade.</p>
6.	<p>In a supermarket, shelves bearing infant cereals shelf-stickers reading “Provide care and affection” were stacked with infant formula products.</p> <p><i>Source: External stakeholder</i> <i>Location: Africa</i> <i>Country classification: Higher-risk</i> <i>Reported in December 2010</i></p>	<p>This concern could not be investigated properly nor corrected. Not enough information was provided to allow Nestlé to locate the outlet. It is possible that the retailer mistakingly placed infant formula on an infant cereal shelf.</p>
7.	<p>In a supermarket, starter infant formula was found to be promoted at special prices.</p> <p><i>Source: External stakeholder</i> <i>Location: Europe</i> <i>Country classification: Lower-risk</i> <i>Reported in December 2010</i></p>	<p>These promotions were undertaken by a third party who imports and distributes the product on its own initiative. This third party was informed that price promotion for infant formula is against the European Directive.</p>
8.	<p>Starter infant formula (for infants below 6 months) was offered at a discounted price in a chain of supermarkets.</p> <p><i>Source: External stakeholder</i> <i>Location: Europe</i> <i>Country classification: Lower-risk</i> <i>Reported in December 2010</i></p>	<p>This promotional activity was carried out by one retailer on its own initiative. The retailer was informed that promotional discount on price of infant formula is against the European Directive.</p>

Table 3. Summary table of all concerns requiring remedial action received in 2010					
Area of alleged non-compliance	Internally reported		Externally reported		Total
	a. Internal audits	b. Ombudsman	c. External audits	d. External stakeholders	
1. Informational and educational materials	1	-	-	-	1
2. Advertisement or promotion to the general public	-	-	-	1	1
3a. Promotion at point of sale attributable to Nestlé	-	-	2	-	2
3b. Promotion at point of sale attributable to a third party¹	[3]	[1]	[1]	[3]	[8]
4. Promotion in healthcare facilities	1	-	-	2	3
5. Free or low-priced supplies	1	-	-	-	1
6. Donations of equipment and materials to healthcare facilities	-	-	-	-	-
7. Incentives to healthcare professionals	1	-	-	-	1
8. Samples to healthcare professionals	-	-	-	-	-
9. Sales incentives for staff	1	-	-	-	1
10. Labelling	2	-	-	1	3
11. Staff training	-	-	-	-	-
TOTAL	7	0	2	4	13

¹ Eight promotional activities at point of sale were carried out by third parties (retailers and distributors) on their own initiatives. Nestlé took a pro-active role in all cases where the third party could be identified to communicate to them the importance of compliance with the WHO Code and national legislation implementing the WHO Code.