

INTERNATIONAL TRADE AGREEMENTS AND IMPLEMENTATION OF THE INTERNATIONAL CODE OF MARKETING OF BREAST-MILK SUBSTITUTES

Frequently Asked Questions

WHO/UNICEF Information Brief



WHO policy brief on international trade agreements and implementation of the International Code of Marketing of Breast-milk Substitutes

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Frequently Asked Questions



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INTERNATIONAL TRADE AGREEMENTS AND IMPLEMENTATION OF THE INTERNATIONAL CODE OF MARKETING OF BREAST-MILK SUBSTITUTES

Frequently Asked Questions

This Information Brief describes the implications of trade agreements for domestic implementation of the International Code of Marketing of Breast-milk Substitutes for policy makers, regulators and other relevant officials.

The document provides a brief description of the right to regulate under WTO law, including core principles and relevant WTO covered agreements.

To explain the issues in simple terms the document uses a question and answer format.

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Background

The aggressive marketing of breastmilk substitutes creates a major barrier to breastfeeding. In 1981, the International Code of Marketing of Breast-milk Substitutes (the Code)¹ was adopted to protect families from the industry's aggressive marketing tactics. Repeatedly, the World Health Assembly has called on governments to give effect to the provisions in the Code through national, legally-binding regulations.

States have obligations to protect, respect and fulfil the right to health under international human rights law. This includes an obligation to protect and support breastfeeding under Article 24 of the Convention on the Rights of the Child (CRC).² The Committee on the Rights of the Child has recognized the Code as an appropriate measure that States Parties to the CRC are obliged to take in the fulfillment of their obligations under the Convention.³ UNICEF/WHO/IBFAN have identified 136 countries as having Code regulations in place.⁴

Those lobbying against implementation of the Code have sought to argue that certain measures are inconsistent with international trade agreements.

¹ World Health Assembly, Resolution WHA34.22 (1981)

² United Nations Convention on the Rights of the Child (1989) (UNCRC)

³ Implementation Handbook for the Convention on the Rights of the Child, Third Edition, United Nations Children's Fund, 2017, page 360.

⁴ Marketing of breast-milk substitutes: national implementation of the international code, status report 2018. Geneva: WHO, UNICEF and IBFAN; 2018, Licence: CC BY-NC-SA 3.0 IGO

Although most of countries worldwide have implemented the Code in legislation, there has never been a formal legal dispute concerning domestic implementation of the Code under an international trade agreement. International trade agreements recognize the right of States to regulate (including to protect health). Nonetheless, the implications of trade agreements for implementation of the Code has been a topic of discussion in recent years. This can be observed, for example, in the World Trade Organization (WTO) Committee on Technical Barriers to Trade (TBT Committee), where WTO Members have questioned one another concerning specific trade concerns in the context of measures to implement the Code.⁵

World Health Assembly Resolution 59.26 requested the Director-General of WHO to provide support to Member States to frame coherent policies that address the relationship between trade and health.⁶

In this context, this document describes the implications of trade agreements for domestic implementation of the Code for policy makers, regulators and other relevant officials. The document provides a brief description of the right to regulate under WTO law, including core principles and relevant WTO covered agreements. To explain the issues in simple terms the document uses a question and answer format.

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