

---

# Nestlé's investigations and responses to the allegations made in IBFAN's Report "Breaking the Rules, Stretching the Rules – 2017"



---

## Our commitment to compliance

We welcome IBFAN's focus on the responsible marketing of breastmilk substitutes through the publication of its triennial report "Breaking the Rules, Stretching the Rules – 2017", and its continuous efforts to bring incidences of non-compliance to the attention of manufacturers to improve industry standards. In order for non-compliance incidences to be addressed without delay, we ask all stakeholders to raise their concerns directly with us as soon as they are identified.

At Nestlé, we are committed to a strong compliance culture, as reflected in the [Nestlé Corporate Business Principles](#). We ensure our company acts in accordance with our principles through internal reporting and audits and external verification. Employees, suppliers and stakeholders are encouraged to report practices or actions believed to be inappropriate, non-compliant with our policies or illegal, and we investigate all complaints with impartiality. We cease any activities associated with confirmed incidences of non-compliance and appropriate response measures are implemented. We learn from each confirmed incidence of non-compliance and work diligently to rectify any of those activities.

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 measures and mechanisms as outlined in our [Nestlé Policy and Procedures for the Implementation of the WHO International Code of Marketing of Breastmilk Substitutes](#). In countries that are considered to be higher risk<sup>1</sup> and where the code has not been implemented, we follow our policy. This is supported by mechanisms including a 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, [FTSE4Good](#) and [ATNI](#)

## Achieving optimum growth, development and health for infants and young children is a shared responsibility

In 2016, the UN General Assembly proclaimed a 'Decade of Action on Nutrition', a major step towards mobilising action on reducing hunger and improving nutrition around the world. The resolution invites national governments and other stakeholders, including international and regional organizations, civil society, the private sector and academia to actively participate. According to José Graziano da Silva, FAO Director-General, "This resolution places nutrition at the heart of sustainable development and recognizes that improving food security and nutrition are essential to achieving the entire 2030 Agenda,... Children can't fully reap the benefits of schooling if they don't get the nutrients they need."

To achieve optimal growth, development and health, the World Health Organization (WHO) recommends, "infants should initiate breastfeeding within one hour of birth and be exclusively breastfed for the first six months of life. Thereafter, to meet their nutritional requirements, infants should receive adequate and safe complementary foods while breastfeeding continues up to two years of age and beyond. Around the age of 6

---

<sup>1</sup> Higher risk countries are countries where the health and nutrition of children are under greater risk. These countries are defined within the FTSE4Good criteria as those countries with more than ten per 1000 mortality rate under the age of five and more than 2% acute malnutrition (moderate and severe wasting) in children under five years of age.

months, an infant’s need for energy and nutrients starts to exceed what is provided by breast milk, and complementary foods are necessary to meet those needs. If complementary foods are not introduced around the age of 6 months, or if they are given inappropriately, an infant’s growth may falter”.<sup>2</sup>

The aim of the WHO Code is to “contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding, and by ensuring the proper use of breast milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution”.<sup>2</sup>

Nestlé’s purpose is to enhance quality of life and contribute to a healthier future. Supporting the first 1000 days of life is fundamental to this purpose. We believe breast milk is the best nutritional choice for an infant. Breastfeeding plays a critical role in a baby’s growth and development during the first 1000 days. It is a privilege for us as a company to accompany many millions of parents, babies and caregivers all over the world on this journey, and to do all we can to make sure children have the best possible nutritional start in life. That is why we promote and support the WHO infant feeding recommendations, and why we are committed to supporting breastfeeding and optimal nutrition of infants and young children in the 1<sup>st</sup> 1000 days of life.

## Investigations of reported breaches

As with each of the previous editions of the Breaking the Rules, Stretching the Rules report, we have investigated all reported concerns pertaining to Nestlé Infant Nutrition and Wyeth Infant Nutrition contained in the Breaking the Rules 2017 report. Each Nestlé operating company subject to an allegation in the report was asked to investigate and provide a response based on the following three basic principles:

1. Nestlé must follow the WHO Code as implemented by national governments everywhere in the world.
2. The [Nestle Policy and Procedures for the Implementation of the WHO International Code of Marketing of Breastmilk Substitutes](#) 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.
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***

Each 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 in order to allow us to take remedial action where required. The responses are also reviewed and approved by the Global Code Compliance Committee comprising two Executive Board members, one of which is the Head of Group Governance and Compliance and the other, the Group WHO Code Ombudsman.

## Findings of the investigations of all reported breaches

<b>Confirmed incidences of non-compliance</b>	
▪ Incidences of non-compliance attributable to Nestlé which require corrective action.	3
▪ Incidences of non-compliance attributable to third-parties, most of which Nestlé has neither direct control of nor contractual relationship with.	5
▪ Incidences of non-compliance which had already been addressed before the release of the report	6
<b>Incidences where responses to allegations were already provided to IBFAN</b>	<b>14</b>
<b>Concerns which were not clear or specific</b>	<b>4</b>
<b>Incidences which were reported as non-compliant by IBFAN even though they were compliant with national legislation</b>	<b>20</b>
<b>Incidences which were reported as non-compliant by IBFAN even though they were compliant with the Nestlé Policy and Instructions, where local law is not sufficient</b>	<b>109</b>
<b>Total number of incidences</b>	<b>161</b>

<sup>2</sup> <http://www.who.int/nutrition/publications/infantfeeding/breastmilk-substitutes-FAQ2017/en/>

## Confirmed incidences of noncompliance which require corrective action

Nestlé has implemented a WHO Code Compliance System, which consists of a set of Compliance and Good Governance mechanisms, both at Corporate (HQ) and Market (local) levels. Its purpose is to enable the controlling and monitoring of incidences of non-compliance with local legislation implementing the WHO Code and the Nestlé Policy and Procedures. Through monitoring activities which include internal monitoring, internal and external audits, internal and external grievance mechanisms, incidences of non-compliance are identified to allow us to take corrective action where required.

In the 2014 to 2017 report, we acknowledge 14 breaches that were non-compliant with national regulations implementing the WHO Code and / or the [Nestle Policy and Procedures for the Implementation of the WHO International Code of Marketing of Breastmilk Substitutes](#). Of those, 3 required corrective action, 5 were independently initiated by 3<sup>rd</sup> parties and 6 were addressed before the release of the report.

### a. Incidences of non-compliances attributable to Nestlé which require corrective action

The table below represents the 3 cases (incidences of non-compliance confirmed by our investigation) which require corrective action from Nestlé.

Country	Instance of Non Compliance	Corrective action
Afghanistan	(ref. p. 167) Billboard advertising for CERELAC was still in place in 2015 (date of IBFAN picture) whereas the new local code implementing the WHO Code released in 2012 includes in its scope Complementary Foods. We would appreciate it if IBFAN could provide the location where the picture was taken.	We have instructed Nestlé Afghanistan to continue searching for any billboards which are not compliant with local law and to remove them immediately.
China	(ref. p. 172) On the Nestlé website, the age range 4-6 months indicates that babies can swallow non-solid foods. This could imply an early introduction of Complementary Foods before 6 months, although the disclaimers on our products strictly comply with our commitment to support exclusive breastfeeding until 6 months.	We have instructed Nestlé China to modify the website in order to strictly comply with Nestlé's commitment to support exclusive breastfeeding until 6 months.
China	(ref. p. 186) The stage 1 and stage 2 Illuma products were replaced with drops next to stage 3 and 4 products due to a prohibition in local law on displaying products.	We have instructed Nestlé China to modify the website page to ensure that promotion of stage 3 & 4 products cannot be misinterpreted as promotion of stage 1 and 2 products.

### b. Incidences of non-compliance attributable to third-parties, which Nestlé has neither direct control of nor contractual relationships with.

Nestlé operates in a fast changing environment with an increasing level of complexity, including the emergence of the fast growing eCommerce channel. Nestlé's product range has a wide reach going through direct and indirect distributors to reach formal and informal channels including large and small retailers. Many of the independent retailers and distributors do not have a contractual relationship with Nestlé. Nestlé

respects the limitations set by local regulations and anti-trust laws. We have no direct influence on third party businesses with no direct-service relationship with Nestlé.

We train our business partners (with whom we have a contractual relationship) on the importance of compliance with local legislation implementing the WHO Code and on the Nestlé Policy and Procedures, because we believe that the responsible marketing of breastmilk substitutes is a shared responsibility. That is why we regularly communicate guidelines to them concerning the responsible marketing of breastmilk substitutes and check on their implementation.

However, we do not always manage to reach the same level of compliance in our distribution channels and, as a result, we do find incidences of non-compliance by third parties. Our own internal audits and commissioned external audits also identify non-compliant practices directly initiated by retailers. The examples in the report are set out below,

- **Vietnam** (ref. p. 167): This case falls into the category of parallel imports. It refers to goods produced and commercialised in one market, and then imported into a second market without the authorisation of the owner of the intellectual property right. Commercial and antitrust laws restrict our ability to influence the sale of our products by third parties and as a result we cannot control their actions. In this specific case, Nestlé did send a letter to the distributor to ensure that they were aware of their obligations under local legislation.
- **Russia** (ref. p. 179): e-commerce platforms proposed price promotions through discounts on infant formula products under the NESTOGEN and NAN brands. We have not been able to trace the websites showing the promotion on the above mentioned products and therefore we request that IBFAN shares with us the details of the websites so we can try to address the underlying issue with the site owners.
- **China** (ref. p. 186): an e-commerce platform idealised our ILLUMA range by including a naked baby picture next to the covered products. We do not support this kind of practice but we could not trace the website where this picture appeared. We would appreciate it if IBFAN could share with us the details of the website in order for us to implement the necessary corrective measures.
- **Russia**. (ref. p. 165 and 183). Two cases of cabinets displaying the whole range of infant formula products were found in 2 medical universities. This is not compliant with the updated Nestlé Policy and Procedures art. 6.3 stating that “Facilities of healthcare systems should not be used for the display of INFANT FORMULA, for placards or posters concerning such products, or for the distribution of materials other than those specified in Art. 4.2 and 4.3 of this Procedure.” We instructed the market to ask the universities to remove the display cabinets. The Paediatric Chair of the Educational Institution where the cabinets are placed opted to keep them, clarifying that the displays are for the demonstration of Infant nutrition products during the Infant feeding educational cycle to the medical students.

The above cases are examples of incidences where third parties need to take steps to comply with local legislation concerning the marketing of breastmilk substitutes. However, enforcement by Nestlé alone is challenging due to the limitations of antitrust and commercial regulations detailed above. We would need the assistance of governments and civil society to bring these breaches to the attention of these businesses as and when they find them in order to encourage them to comply.

### **c. Instances of non-compliance which had already been addressed**

6 instances of non-compliance featured in the report had been detected and addressed before the publication of the report:

- **Indonesia** (ref. p. 159): an SMS was sent to mothers, communicating about the Start Healthy Stay Healthy program, which is Nestlé’s corporate nutrition education program to support optimal growth in the first 1,000 days of life. Although there was no promotion of infant formula, this practice was not in line with either

the Nestlé Policy and Procedure nor the Indonesian legislation implementing the WHO Code. This SMS was sent in 2012 but this practice was stopped.

- **Colombia and Dominican Republic** (ref. p. 164): growth charts and a chart including the Blue Bear and/or NESTUM logos were found in healthcare facilities. However, the products represented under these 2 logos are covered by legislation implementing the WHO Code (Complementary Foods) in those countries and should not appear on this kind of donated material. These materials were donated respectively in 2011 and 2005 and their production has been discontinued. We undertook to withdraw old materials and we would appreciate it if IBFAN could communicate the places where these materials were found so that we can ensure they are withdrawn immediately.
- **Egypt** (ref. p. 158): a Nestlé-owned Facebook page was used for a promotional campaign on growing-up milks products, however these products are covered by legislation implementing the WHO Code in Egypt. However these products, once registered and once the license to trade has been granted by the Ministry of Health, are allowed to be marketed.
- **Botswana** (ref. p. 168): in 2015 an online retailer initiated a promotional campaign on CERELAC (Infant Cereals), however these products are part of the scope of products covered by local legislation on the marketing of Breast Milk Substitutes. The market team sent a letter to the retailer requesting them to cease the activity and followed up with a reminder in February 2016. The campaign was stopped.
- **India** (ref. p. 141): an online platform supplying pharmacy and health care products initiated a promotional offer on LACTOGEN products, however the IMS act and Nestlé Policy and Procedures do not allow such practices. As this platform is not in a direct contractual relationship with Nestlé, a letter was sent in 2016 requesting it to remove the discounts from the site, which it did.
- **Russia** (ref. p. 179): the three pictures show cases of the promotion of infant nutrition products through discounts in supermarkets with and without a direct contractual relationship with Nestlé. A letter has been issued to relevant business partners who have duly ceased these practices.

## Reported incidences of non-compliance where responses were already provided to IBFAN

14 reported allegations in the report were already addressed and responses provided to IBFAN or other stakeholders (e.g. BBF in Bangladesh) as and when they occurred. Incidences included in the report are:-

- **Botswana** (ref. p. 135): the Marketing of Foods for Infants and Young Children Regulations in Botswana requires an approval to be obtained before contacting healthcare professionals (HCPs). On November 8 2016, a newsletter intended for HCPs in South Africa was mistakenly sent to 2.4% of HCPs in Botswana due to an administrative error. Nestlé voluntarily reported this error to the authorities as soon as it was identified and a letter of apology was sent to the mistakenly contacted HCPs.
- **Four cases in Nigeria** (ref. p. 148): equipment and educational material was donated to healthcare professionals and consisted of low value items branded with Nestlé's Start Healthy Stay Healthy logo<sup>3</sup>. As indicated at the time, we demonstrated that this is compliant with the National Agency for Food and Drug administration (NAFDAC) in the Marketing of Infant and Young Children Food and Other Designated Products – Regulations 2005 and with Article 4.3 and 6.8 of the WHO Code.
- **Bangladesh** (p. 140): an allegation was sent to Nestlé in 2015 by the Bangladesh Breastfeeding Foundation (BBF) after a publication in a weekly magazine of an article on infant feeding bearing the

Nestlé name and corporate logo. We took this opportunity to look into the matter and after careful review of the facts and the law in Bangladesh we concluded that this publication did not violate the 2013 BMS Act as it did not relate to any products covered by local legislation.

- The rest of the mentioned incidences were:-
  - Use of a social group to promote products among mothers in **Australia**; (Page 183)
  - Use of NNI in product promotion in **Lebanon**; (page 168)
  - Sponsorship of a medical event in **Bangladesh**; (Page 166)
  - Communication to consumers on Follow Up formula in **Hong Kong** (Page 173)
  - 3 cases in **Singapore** of consumer communication, SHSH card in hospital and Jubilee commemorative coin (Page 163, 180)
  - Mention of SMA as nutrition sponsor in educational material in the **UK** (Page 202)

## Concerns that would require IBFAN to provide further details in order to complete our investigations

With further communication from IBFAN concerning the details of alleged violations, we could more effectively rectify any practices found to be inappropriate in the following cases:

- **Myanmar** (ref. p. 141): the hanger that is mentioned indicates, “**Breastmilk is Best**” as per the recommendations from the WHO Code. We could not investigate the allegation, as we were not sure what the violation is.
- **Mexico** (ref. p. 167): the label in the allegation has been discontinued and we could not trace back the product that was the subject this allegation. We would need IBFAN to provide us with more information regarding the location and the date where this product was found.
- **China** (ref. p. 172): the message translated from Chinese indicates, “*Nestlé totally supports and encourages continued breastfeeding and complementary feeding under the guidance of healthcare professionals or organizations*”. Based on such message we are not clear what the violation is.
- **Middle East and North Africa (MENA)**: (ref. p. 138) the statement from the doctor pictured in the video (Head of Nutrition and Paediatric gastroenterology at the Trousseau Hospital, Paris) is in favour of the introduction of complementary foods before 6 months. However we traced this video back to a French website where such a statement is in line with European regulation. We would appreciate it if IBFAN could provide more detail to help us understand why this allegation was reported in MENA.

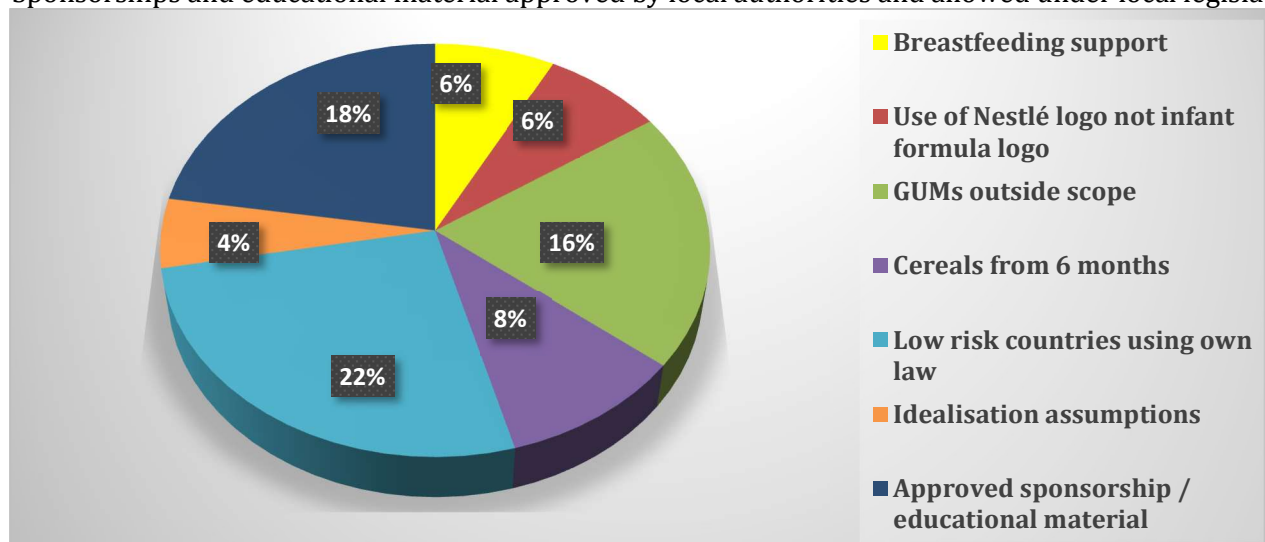
## Reported incidences of non-compliance which are compliant with national legislation and the Nestlé Instructions

As mentioned above, we do not consider practices compliant with the local law and Nestlé policy as breaches because one of our business principles is to abide by the laws of the countries where we operate. As already mentioned above, the following three basic principles have to be followed in verifying non-compliances:

1. Nestlé must follow the WHO Code as implemented by national governments everywhere in the world.
2. The Nestle Policy must apply when it is stricter than the national regulations in countries that are considered to be higher risk in terms of infant mortality and malnutrition.
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.***

The majority, (80%) of the reported incidences in the Breaking the Rules 2017 report fall into this category. The sub-categories they fall under are:-

- Breastfeeding support material.
- Use of the Nestlé logo (with no mention of infant formula brands) in educational material.
- Communication concerning Growing-Up Milks, which fall outside the scope of national laws and Nestlé instructions.
- Communication concerning infant cereals and baby foods from 6 months and beyond, which are permitted by local legislation and the Nestlé Instructions.
- Activities in lower risk<sup>4</sup> countries which follow local legislation.
- Communication which we consider does not idealise infant formula.
- Sponsorships and educational material approved by local authorities and allowed under local legislation.



We are determined to reducing instances of non-compliance as much as humanly possible and are willing to engage IBFAN and other actors on bringing this about.

### Next Steps – picking up the pace towards achievement of SDG 3

The WHO reported that in 2016, 52 million children under 5 years of age are wasted, 17 million are severely wasted and 155 million are stunted, while 41 million are overweight or obese. Around 45% of deaths among children under 5 years of age are linked to undernutrition. These mostly occur in low- and middle-income countries. Once considered a high-income country problem, overweight and obesity are now on the rise in low and middle-income countries, particularly in urban settings. In Africa, the number of overweight children under 5 has increased by nearly 50 per cent since 2000. Nearly half of the children under 5 who were overweight or obese in 2016 lived in Asia.<sup>5</sup>

The issue of malnutrition, in all its forms, including undernutrition (wasting, stunting, underweight), needs a collaborative effort. Securing healthy and prosperous futures for mothers and children around the world is an aspiration that unites all concerned stakeholders, including Nestlé. Achieving this, requires constructive engagement and collaboration by all parties. Working together, we can make a huge impact on the health of future generations. Coordinated action on key areas of focus could make a real difference, and Nestlé will continue to play a leading role to create positive change. Hence, we will continue to lead the industry towards

<sup>4</sup> All the other countries with less than ten per 1000 mortality rate under the age of five and less than 2% acute malnutrition (moderate and severe wasting) in children under five years of age are categorized as Lower Risk.

<sup>5</sup> WHO report on Obesity and overweight <http://www.who.int/mediacentre/factsheets/fs311/en/>

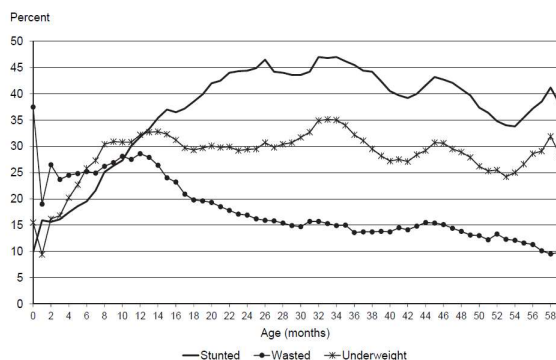
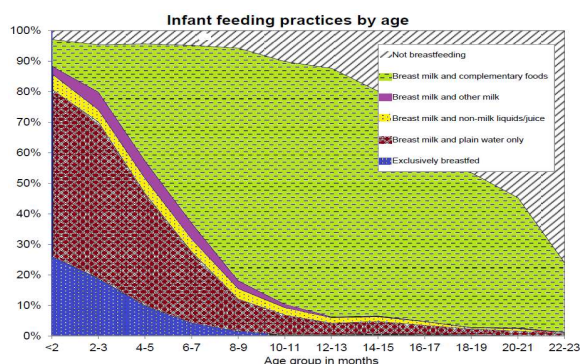
higher responsible marketing standards and to work closely with governments, public institutions and civil society, to carry out the actions needed to benefit future generations. Our regular stakeholder convenings provide crucial opportunities for us to listen and to build a better understanding of our role in addressing critical societal issues. This interaction facilitates collective action and promotes trust and mutual respect.

## 1. Help mothers make the best nutrition choices for themselves and their children during the 1st 1000 days

Unquestionably, breastfeeding is an ideal way to feed an infant and it is an important element in the infant feeding ecosystem. Though breastfeeding rates have steadily increased over the past few decades and most mothers initiate breastfeeding, only slightly more than a third of infants are exclusively breastfed up to the age of six months. Women returning to work is the leading cause for early cessation and numerous women state that they do not receive sufficient support to continue to breastfeed.

We believe women need a conducive environment to breastfeed, including maternity protection and paid leave, access to breastfeeding rooms (especially in the work place), counselling as well as access to fact-based information adapted to their individual context. **Our Global Maternity Protection Policy** at Nestlé gives female employees 14 weeks paid maternity leave, which can be extended up to six months, as well as providing flexible work arrangements, and hundreds of breastfeeding rooms in our facilities. The policy applies to all primary caregivers of a newborn, including male employees and those who adopt children.

The nutrition children receive in the 1<sup>st</sup> 1000 days sets a foundation for health outcomes late in life. Yet in many studies looking at feeding trends in children under 2 years of age, a pattern similar to the attached example is common, especially in low and middle-income countries:



Country information can be accessed in the following web page <https://www.dhsprogram.com/>

The above graph from one of the African countries, shows interference with breastfeeding through the unfortunate practice of giving water to babies in addition to breastfeeding. This happens because mothers think babies need water on its own to quench thirst, even though water is unnecessary when babies are exclusively breastfed. The 2<sup>nd</sup> area of concern shown in the graph is the use of nutritionally inappropriate substitutes or nutritionally inadequate foods during the 1<sup>st</sup> 6 months of life when children are not breastfed. The introduction of nutritionally adequate complementary foods from 6 months is also critical, because this is when malnutrition starts to increase (see the graph on the right). In order to help make a meaningful contribution, we need to work together to address these fundamental issues.



## **2. Support countries as they translate the recommendations of the WHO Code into national regulations**

More than 35 years after its adoption, only 39 countries have implemented all the recommendations of the WHO Code. To accelerate progress, all countries that are yet to do so could, as a starting point, pass regulations aligned with the minimum standards set by the FTSE4Good BMS Criteria, taking into account their specific national context.

The FTSE4Good BMS Criteria have been adopted by two of the largest BMS manufacturers and have been effective in improving company marketing practices. Focusing resources on creating a worldwide level playing field would be a decisive step toward global efforts to protect breastfeeding, which could be followed by incremental progress on other child nutrition issues requiring attention.

## **3. Promote healthy diets for women and children**

Every mother and child deserves the best nutrition. However, parents, caregivers and healthcare professionals often lack the necessary knowledge about appropriate nutrition and eating practices.

At Nestlé, we believe that breastmilk is the ideal nutrition for babies. This is why we support and promote the World Health Organization's recommendation of six months exclusive breastfeeding followed by introduction of adequate nutritious complementary food. We are committed to invest in research to provide innovative and science based nutrition solutions for mothers and children. Where breastfeeding is not possible, we provide breastmilk substitutes. We also provide a wide range of complementary foods which are specifically formulated to meet the nutrition needs of a growing child.

We also invest in research to obtain a deep understanding of the actual eating habits of mothers and infants in the first 1000 days. This serves as an input for our innovations and our education programmes to support parents and caregivers so they can make informed nutritional choices for their families. We share the results of our wide-ranging research on nutrition with healthcare professionals to keep them up-to-date with the latest scientific developments in maternal, infant and young child nutrition.

At Nestlé, we are committed to enhancing the quality of life of mothers and children and to contributing to a healthier future for all, and we welcome opportunities to work with others to make this happen.