

UNICEF Lao PDR Concerns:

FTSE Inclusion Criteria for the Marketing of Breastmilk Substitutes 12 November, 2012

Background:

UNICEF Lao PDR was requested to meet with the FTSE4Good assessment mission to Lao PDR 14-16 November, 2012 (PricewaterhouseCoopers). UNICEF Lao PDR, however, considered participating in the assessment as inappropriate least this is construed as UNICEF's tacit endorsement of the FTSE4Good criteria and assessment process which UNICEF Lao PDR considers to be seriously flawed. This document outlines UNICEF Lao PDR's concerns with the FTSE4Good inclusion criteria and process in order to explain why UNICEF Lao PDR declines to meet the FTSE4Good assessment mission.

Section 1: Analysis of Inclusion Criteria

FTSE4Good Inclusion Criteria: "Risk categories of 'higher-risk' and 'lower-risk' countries"

UNICEF comment: The global application of the Code is at its very essence and to have basically given permission to Nestlé to knock themselves out in terms of advertising their products in "low risk" countries does a great disservice to the mothers and babies in those countries. This is not in line with the UNICEF mandate to stand up for the rights of ALL children. It is a bit like saying, "apart from a lack of functioning brakes, the car is safe to drive".

UNICEF's experience over many years shows that the only way to hold companies to account is through effective national legislation, in relation to which UNICEF learns from Euromonitor that companies are fighting on a country by country basis. Yet the FTSE4Good criteria legitimizes the corporate strategy of arguing for self-regulation and voluntary codes, or at least a seat at the table in drafting legislation, which allows the very behavior that we know undermines breastfeeding and infant health, putting company profits first.

UNICEF follows the World Health Assembly position that the Code is global and applies in all countries. Parents and infants in industrialised countries deserve the same protection from inappropriate and unethical marketing. According to the American Academy of Paediatrics, if 90% of US families could comply with the medical recommendations to breastfeed exclusively for 6 months, the United States would save \$13 billion per year and prevent an excess 911 deaths. We also note that, in a rapidly urbanising world, there are pockets of significant poverty within cities in relatively wealthy countries.

Moreover, the low-risk/high-risk demarcation would require international organisations such as UNICEF to maintain dual sets of analyses and oversight tools. For agencies committed to improve child survival and maximize funding to achieve it, allocating resources across dual approaches should not be necessary. Doing this would present a waste time and funds.

FTSE4Good Inclusion Criteria “Acknowledgment that, independently of any other measures taken by governments to implement the Code, manufacturers are responsible for monitoring their marketing practices according to the principles and aim of the Code, and for taking steps to ensure that their conduct at every level conforms to their policy in this regard.”

UNICEF comment: The FTSE4Good Criteria requires companies to “ensure that their conduct at every level conforms to their policy in this regard” (our emphasis). The Code requires companies to ensure that their conduct conforms to the principles and aim of the Code, NOT their own policy. UNICEF respectfully submits that, as each company authors their own policies, it would be easy for companies to ensure that policies are written in such a manner as to ensure they are met.

UNICEF notes that according to Nestlé’s 2011 public response to the 2010 Breaking the Rules report, Nestlé only accepts 3% of global violations to be valid within their own company policies. UNICEF at field level in Lao PDR would expect very little improvement for infant and child mortality to come about from a 3% improvement of company behaviour, assuming that Nestle fully addresses the 3% of violations that it admits to.

FTSE4Good Inclusion Criteria: “Note that these requirements for low risk country operations will be reviewed by the FTSE4Good BMS Committee within a period of 5 years for revisions to bring them, over time, in-line with high risk requirements.”

UNICEF comment: There is no specific time period to bring the requirements for lower risk countries in-line with higher risk countries and thus with the WHA recommendations on global Code implementation. This note in the Criteria does not provide a reasonable timetable for a gradual implementation of the Code in lower risk countries. This only outlines a date at which FTSE begins discussing a time-table for compliance in all countries; “over time” could mean the next 30, 40 or 50 years.

What has been the influence of companies on Criteria development and has it been appropriate? Are we to believe it is pure coincidence that FTSE4Good Criteria divides the world into High risk/Low risk countries in exactly the same manner as Nestlé and Danone? Nestlé refers to “higher and lower risk” Criteria in public statements, implying that they now form the internationally agreed Criteria in terms of Code implementation, and also implying that UNICEF is in agreement with this. UNICEF specifically rejects this distinction, as it undermines the Universality of the Code, and the WHA mechanisms that regulate and clarify the Code. UNICEF notes that after all WHA is the global decision-making body, and practically all countries in the world are Member States.

FTSE4Good Inclusion Criteria: “10 per 1000 under-5 mortality rate”

UNICEF comment: This is unacceptable to UNICEF, particularly given our equity focus on child survival. There are significant poverty disparities within the low-risk countries and breastfeeding is vital to the survival of the most disadvantaged. For example, in the US, according to CDC the infant mortality rate in 2006 was 12.9 per 1000 live births among

babies born to black or African American mothers (placing them in the high risk category), compared with 5.6 per 1000 live births among those born to white mothers. Yet industry aggressively advertises infant formulas on TV, including into the homes of those “higher-risk” families.

FTSE4Good Inclusion Criteria: “More than 2% acute malnutrition (moderate and severe wasting) in under-5s”

UNICEF comment: Malnutrition is measured in two categories: acute and chronic. It is inexplicable why only one, but not two, of these indicators has been included. The majority of under-5 global malnutrition is found in chronic stunting (low height and weight for age). Acute malnutrition (wasting) occurs in specific, limited situations where there is drought, famine, flood or other disasters.

Analysis of both wasting and stunting indicators together is therefore much more accurate to assess malnutrition status. UNICEF can only assume that FTSE is either disinterested in, or chooses not to allow, a full and comprehensive picture of global malnutrition within the Criteria.

This is in direct contrast to the World Health Assembly Resolution 63.23 (2010), which notes that chronic malnutrition comprises more than 90% of the global malnutrition burden, and that the promotion of breast-milk substitutes and some commercial foods **undermines progress** (our emphasis) in optimal infant and young child feeding:

“Aware that worldwide malnutrition accounts for 11% of the global burden of disease, leading to long-term poor health and disability and poor educational and developmental outcomes; that worldwide 186 million children are stunted and 20 million suffer from the most deadly form of severe acute malnutrition each year; and that nutritional risk factors, including underweight, suboptimal breastfeeding and vitamin and mineral deficiencies, particularly of vitamin A, iron, iodine and zinc, are responsible for 3.9 million deaths (35% of total deaths) and 144 million disability-adjusted life years (33% of total disability-adjusted life years) in children less than five years old;...

Acknowledging that 90% of stunted children live in 36 countries and that children under two years of age are most affected by undernutrition;

Recognizing that the promotion of breast-milk substitutes and some commercial foods for infants and young children undermines progress in optimal infant and young child feeding.”

Chronic malnutrition (stunting) indicators are available in virtually all countries. Given chronic stunting comprises the majority of global malnutrition, companies have a clear interest for chronic malnutrition (stunting) data to be invisible. We note that WHA 63.23 is one of the ten Resolutions that been omitted from the FTSE4Good Criteria.

FTSE4Good Inclusion Criteria: “Company policy should be publicly available and include: Acknowledgement of the importance of the International Code....

UNICEF comment: Acknowledging the “importance” doesn’t mean anything. It does not constitute a specific undertaking or requirement to comply with it. There are no sanctions –

such as removal from the index – if companies do not comply with the Code. This criterion is therefore assessed to be meaningless.

FTSE4Good Inclusion Criteria: “...and subsequent relevant WHA resolutions¹.”

UNICEF comment: The list of six WHA resolutions in the Criteria is incomplete and highly selective. There are ten resolutions missing from the list. These are 35.26, 37.30, 41.11, 43.3, 58.32, 59.11, 59.21, 61.20, 63.23 and 65.6. UNICEF is committed to upholding the Code and all subsequent resolutions. It is not possible to pick and choose.

FTSE4Good Inclusion Criteria: “The assessment of a company against these criteria will take into account any credible evidence that a company has deliberately and consistently attempted to undermine public policy frameworks that aim to implement the Code in any country”.

UNICEF comment: How does FTSE4Good plan to seek credible evidence?

Baby Milk Action and IBFAN are in ongoing communication with Nestlé about violations and have informed FTSE of concerns and asked them to be raised with the BMS Committee (which included Nestlé in the Index despite having the Breaking the Rules, Stretching the Rules 2010 report in its hands at the time).

However, even when the evidence is brought to Nestlé’s attention, the company rejected the vast majority of violations reported, for example refusing to stop its policy of labelling formula with logos claiming it ‘protects’ babies, which have been rolled out in 120 countries, and directly and indirectly targeting pregnant women and mothers of infants and young children in violation of Article 5.5 of the Code. Nestlé rejected Baby Milk Action’s call at the shareholder meeting in April 2012 to respect the Indian Government’s position that sponsoring health worker events breaks Indian Law, stating it was not for Baby Milk Action to tell the company what to do. Where Nestlé has stopped violations it is generally following shaming campaigns. For example, it dropped its claim that its formula is “The new ‘Gold Standard’ in infant nutrition” after receiving thousands of emails from the general public. It represents only a very small proportion of violations in the Breaking the Rules report that Nestlé did stop.

FTSE Criteria: “Explicit confirmation that complementary (weaning) foods and drinks will not be promoted for the use of infants under the age of six months in these countries.”

UNICEF comment:

Please note that “weaning foods” is a term only used once in the 1981 definition of complementary foods. UNICEF recommends to avoid this use of “weaning” as weaning implies taking the baby off the breast.

¹ The subsequent resolutions are; WHA 39.28 (1986), WHA 45.34 (1992), WHA 47.5 (1994) WHA 49.15 (1996), WHA 54.2 (2001), WHA 55.25 (2002)

The Code covers foods and beverages including bottle-fed complementary foods which are “otherwise represented to be suitable ... for use as a partial or total replacement of breastmilk” following the provisions of Article 2. So, if corporations indicate through its information materials or on a label that a product can be fed through a feeding bottle, the product will be deemed to be a breastmilk substitute. Similarly, If a product is marketed or represented as suitable for use when a baby reaches a certain development milestone that usually occurs when a baby is much younger than six months, the product will be deemed to be a breastmilk substitute. This is so even if there is a clear “six months” indication on the label. While it is conceded that babies develop differently at different stages, public health messages that appear on labels and information materials must reflect global public health recommendations or those subscribed by national health authorities.

The following resolutions support UNICEF’s interpretation and are helpful in formulating regulatory and compliance guidelines in the marketing of complementary foods.

WHA39.28 [1986]: Any food or drink given before complementary feeding is nutritionally required may interfere with the initiation or maintenance of breastfeeding and therefore should neither be promoted nor encouraged for use by infants during this period.

WHA49.15 [1996]: Member States are urged to ensure that complementary foods are not marketed in ways that undermine exclusive and sustained breastfeeding.

WHA63.23 [2010]: Member States are urged to end inappropriate promotion of food for infants and young children practices.

Note: Some labels indicate that products are suitable for babies when they “sit with support”, “play with toes and grasp feet”, “enjoy watching things”; events which normally occur when babies are two to four months old.

FTSE Criteria: “Companies have a valid and important engagement role in the development of effective and appropriate legislation.”

UNICEF comment: This FSTS4Good criterion itself is in direct contradiction to the Code. The Code tells governments to call on **UNICEF** and **WHO** for assistance in the development of legislation to implement the Code – not on companies. Given companies’ commercial interest in achieving the weakest possible regulations – or stalling their adoption for as long as possible, it is inappropriate to allocate companies a role in the legislative process.

Companies would have to “break the code” to meet the FTSE4Good Inclusion Criteria. In this regard, Nestlé’s own Instructions show that it attempts to influence the process of implementation by pushing for 'national codes' instead of allowing governments to implement the marketing standards with independent monitoring and enforcement of legislation that puts public health interests before commercial interests. Nestlé’s instructions state: "Implementation and interpretation of the Code in each country is the responsibility of the government (usually the health authorities). Nestlé Market Managers should make every effort, in co-operation with our competitors wherever possible, to encourage the development of clear and unambiguous national codes where these do not yet exist."

UNICEF knows from experience that endorsing companies' involvement with legislation related to the Code does not serve to strengthen compliance with the Code. The Code was also adopted as a "minimum requirement". (WHA 34.22) UNICEF's global experience is that when companies become involved in "helping" with legislation, they work to ensure that it is never strong - certainly never stronger than the Code itself, particularly with regards to the scope of the products covered by the legislation. "Engaging in legislation" is actually the recourse of companies when they fail in their priority of stopping the development of legislation. When companies see it is going ahead and they cannot stop it, they then make their generous offer to help - and the FTSE Criteria now endorses this process. The UNICEF Representative in Lao PDR witnessed this strategy in action, conducted by Nestlé, in Kyrgyzstan.

The Euromonitor states that companies are fighting a rearguard action against legislation on a country by country basis.

FTSE4Good Inclusion Criteria: "In addition for operations in high risk countries companies must provide to the FTSE BMS Committee, on request, copies of all related marketing literature and product labelling and inform the Committee when there are material changes to promotional material and activities."

UNICEF comment: Is the FTSE BMS committee proposing to vet all promotional materials and labels from all high risk countries? Do they have the required staff levels to cope with number of materials, and expertise to be able to analyse changes? On what basis will analysis of these materials be conducted? This is a huge task, and will require translation of product promotion materials from many languages other than English. Is FTSE planning a sub-committee in each country to undertake this task? UNICEF wonders if this demonstrates FTSE basic lack of understanding of the actual scope and size of the industry and its products.

UNICEF notes that Baby Milk Action asked if the BMS Committee had done this as it would show Nestlé is violating the Code and Resolutions systematically. For example, Nestlé has added "protect" logos to its labels in 120 countries, which - along with other claims and idealising text and images - violate article 9 of the Code. Baby Milk Action was told the BMS Committee has not requested materials.

FTSE Criteria: "Any company found to be seriously not complying with its policy, will be given notice that they will be removed from the index at the sole discretion of the FTSE4Good Policy Committee."

The only sanction in the FTSE4Good Inclusion Criteria is to remove companies from the index, and the only requirement for a company not to be sanctioned is to continue to comply with its own policy. This appears to be a closed and self-justifying circle. If the policy is weak, then this criterion is meaningless. In the case of high risk countries FTSE should be verifying compliance with the Code or the national regulations, whichever is stronger.

Therefore, despite implications of the importance of the Code throughout the documents, in practice FTSE has no sanctions in place to hold companies accountable to comply with the full Code and subsequent WHA resolutions.

UNICEF notes that Nestlé was added to the Index in March 2011 on the basis of its presentation of its policies and management systems. Evidence that it was violating the Code and Resolutions - and its own claim to respect them - since then should have been sufficient for Nestlé to have been excluded as it shows its presentation of its policies is not reflected in reality. Unfortunately this did not happen following the previous assessment.

FTSE wrote to Nestlé regarding sponsorship of health worker events in India, describing this matter as a 'grey area' and seems to have accepted Nestlé's justification for the practices, which it clearly intends to continue. Yet these practices have been described by the Indian Government as breaking its legislation. For quotes and correspondence see: <http://info.babymilkaction.org/news/campaignblog160412>

Further, in August 2012 Indian authorities confiscated Nestlé products that break labelling requirements. Baby Milk Action also raised concerns about labels with FTSE at a meeting on 20 February 2012, noting that it appears these were not even noticed by the assessors when they visited India as they were not mentioned in FTSE's letter to Nestlé.

See media report at:

<http://www.indianexpress.com/news/haryana-goes-after-Nestlé-baby-food/983986/>

Nestlé was not excluded following the Indian assessment - and can even use the FTSE letter to claim its sponsorship is a 'grey area' so undermining the Indian Government. This raises serious questions about what is to be gained by informing the assessors and the Committee of violations. For FTSE to be credible at prompting change it would have to act to exclude companies found to have misled the Committee. Accepting Nestlé's justification for violations - or even a commitment to stop when it is caught out - is insufficient as that invites companies to make untrue claims about their activities.

And from FTSE's letter to Nestlé following the 2011 assessment:

The FTSE4Good BMS Marketing Committee concluded, using the information from the assessment outlined above, that Nestlé was overall making good and reasonable efforts to implement its BMS marketing policies in the two "high risk" countries visited and hence was, on balance, meeting the criteria. Nestlé has therefore maintained its inclusion in the index. However there were a number

The fact that the FTSE letter made some vague reference to concerns about the use of special display cabinets for BMS in Zambia, and conference attendance for health professionals in India does not provide evidence of any attempt to systematically monitoring Code compliance as part of the verification process. And it is clear that these concerns were seen as an afterthought and did not have any bearing on whether or not the company was deemed to be meeting the criteria. In any case, Nestlé shrugged off these concerns in their reply, and remains on the index.

The letters are available at:

http://www.ftse.com/Indices/FTSE4Good_Index_Series/Downloads/FTSE_Letter_to_Nestlé.pdf

http://www.ftse.com/Indices/FTSE4Good_Index_Series/Downloads/Nestlé_Letter_of_Response.pdf

Section 2: Broad concerns with the process of developing the FTSE4Good Inclusion Criteria:

1. It is concerning and hard to understand why FTSE would consult with companies on the development of independent “Inclusion Criteria”—the Criteria by which companies are to be held accountable for continued inclusion on the Index. This seems to be along the same lines of companies helping engage in developing legislation with the concerns noted above.
2. It is concerning that IBFAN was excluded from meaningful involvement in the development of the FTSE4Good Criteria given that they are the global experts on the Code. It is in the companies’ interest to marginalize an organization that has been critical. UNICEF’s experience is that IBFAN criticism is justified, accurate and proportionate, and shares UNICEF’s a focus on reducing infant and child mortality.
3. UNICEF notes that in 2011, immediately after inclusion, Nestlé was holding public events and the FTSE inclusion as a public relations tool to claim it has ended the controversy, and implying no further improvement by the company is required. UNICEF is deeply concerned that the FTSE4Good inclusion criteria is being exploited to attempt to cease criticism of ongoing Code violations.
4. Nestlé has already published a report commissioned from Bureau Veritas on its activities in Lao, which while recommending some reviews of activities, states: 'no significant evidence came to our attention to indicate that Nestlé Indochina is systematically operating in violation of the WHO Code and Lao PDR Decree in Lao PDR'. From this, presumably FTSE would conclude that the company is already complying to Nestlé's own policies, making the outcome under the stated FTSE4Good criteria a foregone conclusion, despite the reality of objective assessment of marketing practices against the Code and Resolutions.
5. FTSE has not engaged in a meaningful way to address the issue of Nestlé’s continued insistence on issuing their specific instructions on how to interpret and apply the Code. This is central to any systematic approach to assessing Code violations. By emphasising company policy as the key platform, the FTSE4Good inclusion criteria is upholding the view that it is the companies’ interpretation of Code provision that prevails, and ignoring the actual text of the Code as clarified and extended by subsequent World Health Assembly Resolutions. (see pg 6. The International Code of Marketing of Breast-Milk Substitutes: Frequently Asked Questions. (WHO 2008)
http://www.who.int/maternal_child_adolescent/documents/9241594292/en
6. UNICEF notes multiple violations of the Code by companies in Lao PDR – in particular Nestlé and Danone. It is spurious to argue that the larger international companies are holding a higher standard and smaller companies are conducting business with higher levels of violations. This is not true. The assessment of violations noted in the reference section of this document, list Code violations in Laos in 2011 and 2012, and show that most violations were by Nestlé and Danone.
7. A Government survey conducted in Lao PDR in 2011 (Lao Social Indicator Survey) supported by UNICEF notes that formula use is increasing and that the link between formula use and infant morbidity continues. There is strong data in Lao PDR

demonstrating that children are twice as likely to get diarrhoea if they are fed formula than if they are breastfed.

8. UNICEF understands that the head of Nestlé's Public Affairs team, Dr. Gayle Crozier-Willi, plans to be in Lao PDR at the same time as the FTSE4Good assessment, which raises questions about the independence of the assessment and the security of anyone involved in providing information. UNICEF notes that Nestlé staff in other countries have come under pressure in their employment after speaking out about Nestlé violations.

UNICEF believes the independence of the FTSE verification/assessment process is compromised by informing Nestlé in advance when and where the assessment would take place. It gives the company opportunity to "clean up" and to "influence the environment" of only that particular country prior to the assessment (which in any case does not assess whether there are Code violations, but merely whether the company is following its own policies).

References:

- Letter to Mr. Mark Makepeace, Chief Executive FTSE Group from Annelies Allain, Director, International Code Documentation Centre, 7 July 2011
- Personal Correspondence: Baby Milk Action UK with the UNICEF Lao PDR Representative, 8 November, 2012
- Evidence from the Field: Violations of the International Code of Marketing of Breastmilk Substitutes in Lao PDR, 2011-2012, UNICEF Lao PDR, November 2012
- Barennes, Hubert. et al *Investigation of Violations of the Code of Marketing of Breastmilk Substitutes in Lao PDR* (May 2012). Lao PDR

Additional Web Site References:

- <http://info.babymilkaction.org/Nestléftse4good>
- <http://www.nutraingredients.com/Industry/Nestlé-defends-infant-formula-marketing-policies>

Reference documents noted above may be requested:

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**UNICEF Lao PDR
12 November, 2012**