



Republic of the Philippines
Department of Health
OFFICE OF THE SECRETARY

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15 September 2006

Honorable THOMAS J. DONAHUE
President and Chief Executive Officer
CHAMBER OF COMMERCE of the
UNITED STATES of AMERICA
1615 H Street, N. W.
Washington D.C. 20062-2000

Dear Pres./CEO Donahue,

Permit the undersigned to first extend the warmest felicitations from **Her Excellency, GLORIA MACAPAGAL ARROYO**, President of the Republic of the Philippines, and myself as the incumbent Secretary of the Department of Health.

We acknowledge receipt of your letter dated 11 August 2006 which was subsequently endorsed to the Department for Health on 23 August 2006, through the Office of the Deputy Executive Secretary for Legal Affairs Manuel B. Gaité, directing us to take action on your letter. You have expressed the association's concern on the implementation of the revised rules and regulations (RIRR) of the Milk Code (Executive Order No. 51) and have presented two main problems; first, the prohibition on "all marketing of infant formula to children up to three years of age" and the next in treating "infant formula as a potential health hazard by warning labels without any scientific justification".

Accordingly, we wish to apprise you that based on a petition filed by PHAP before our Honorable Supreme Court, the latter had initially denied the issuance of a Temporary Restraining Order (TRO) but subsequently reversed itself upon the filing of a Motion for Reconsideration by PHAP and accordingly issued the TRO even without requiring respondents to comment. Thus the TRO has effectively restrained the Department in implementing the RIRR "until further orders from the Court". Much as we disagree with the TRO's issuance, we would of course abide by it. Some of the matter you have mentioned in your letter are part of the Comments we have already submitted before the Supreme Court and is now subject of the Court's eventual decision.

Having said that however permit me to just clarify other averments in your communication which may not be entirely correct. The RIRR does not prohibit infant formula; what it does attempt to regulate is the indiscriminate advertising and promotions of such product that is not founded on scientific evidence or clinical studies. The period whereby advertising is regulated is only up to twenty four (24) months, not thirty-six (36) months, and this is consistent with existing World Health Assembly Resolutions and the Infant and Young Child Feeding Convention to which the Philippines is a signatory to. On the matter of potential hazards associated with infant formula, kindly be informed that in WHA 58.32 on Infant and Young Child Nutrition (2005), FAO/WHO experts "concluded that intrinsic contamination of powdered infant formula with *sakazaki* and *salmonella* were causes of infection and illness" and that since infant formula "may contain pathogenic microorganisms", it must be "prepared and used appropriately; and where applicable, that this information is conveyed through an explicit warning on packaging".

Both the World Health Organization (WHO) and the UNICEF have endorsed the application and implementation of the RIRR as steps in the right direction as well as being consistent with local and international agreements.

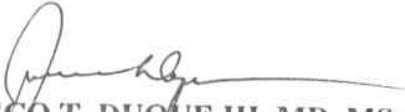
It is also not true that we have not allowed the concerned companies to participate in the discussions leading to the formulation of the RIRR. They have been consulted every step of the way and the fact that some of their positions were not included in the final version is a consequence precisely of democratic consultation. We wish to re-assure you however that even as we may disagree on certain points we have always opened our doors to all concerned and have been very receptive to many of their suggestions. It is our position that much more can be done through dialogue than in open confrontation where no one can emerge victorious. We are particularly aware that due process and consultation is at the very heart of democratic traditions. The very crafting of the RIRR took a total of nineteen revisions in a period of more than four years and twenty years since the promulgation of the initial IRR in 1986. The Department may have erred on other matters or even on the side of prudence, but violating "due process", whether procedural or substantive, is something we were never guilty of. Before the TRO was granted by the Supreme Court, we have been in open discussion with PHAP and others on the transitory arrangements and we have bent over backwards in many respects as evidence by the attached letter herein (ANNEX "A").

While we regret that this matter should go to the extent of having an action filed against the Department of Health; we nonetheless welcome it as a possible venue for all parties to better understand their respective positions and hopefully arrive at a solution, both amicable and advantageous to all concerned.

With the aforementioned, permit me once again to extend our profound greetings and best wishes to you and your association and wish you all the success in your every endeavor.

Thank you for your time and we hope to have adequately responded to your concerns with some clarity. Once again, my personal regards.

Very truly yours,


FRANCISCO T. DUQUE III, MD. MSc.
Secretary of Health
Republic of the Philippines

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