

ARGENTINE FOOD CODE (2007)

Joint Resolution 97/2007 and 301/2007

Introductory note:

Some Spanish-speaking countries have a department, ministry or institute of “bromatology” that has the competence to regulate and control all food that is marketed. They often issue a Food Code for this purpose. Bromatology is usually translated as food science. It is the science that studies the composition, properties, manufacturing and food storage processes, its inputs and raw materials.

In most countries, food laws (or a Food Code) cover the composition, properties, manufacturing and storage of foods. But they do not, normally, cover marketing.

This is not a law passed by Congress nor decreed by the President. It is only a resolution by two ministers, neither of whom has competence to regulate marketing.

Note that the Argentine Food Code, incorporating the International Code, states specifically that it does so “only in so far as the provisions are within the area of ‘bromatology’”, which ipso facto excludes marketing.

Ministry of Health Policies, Regulations and Health Relations and Ministry of Agriculture, Livestock, Fisheries and Food

ARGENTINE FOOD CODE

Joint Resolution 97/2007 and 301/2007

Resolved hereby that the International Code of Marketing of Breast-milk Substitutes of the World Health Organization (WHO), Geneva 1981 be incorporated into the Argentine Food Code.

Buenos Aires, 11 July 2007

CONSIDERING Law 18.284, the International Code of Marketing of Breast-milk Substitutes of the World Health Organization (WHO), Geneva, 1981, and Record No. 1-0047-2110-3593-05-1 and its addendum No. 1- 0047-2110-2708-05-1 of the National Registry of the of Drugs, Food and Medical Technology Administration; and

WHEREAS:

Government accepted international commitments under the World Summit and Plan of Action for Nutrition (FAO / WHO) adopted at the International Conference on Nutrition, Rome, December 1992, and those accepted by the 47th World Health Assembly, WHO, 1994 the former Ministry of Health and Welfare decided to accept all the terms of the International Code of Marketing of Breast-milk Substitutes of the World Health Organization (WHO), Geneva, 1981 and its subsequent amendments introduced at the 47th World Health Assembly, Eleventh Plenary Meeting, May 9, 1994 by Resolution 54/97 of the former Ministry of Health and Welfare.

The National Commitment to Mothers and Children sets as a goal, among others, to ensure that sixty per cent of infants receive breastfeeding at least until the fourth month of life, in order to get all the nutritional, immunological and emotional benefits derived from breastfeeding.

The frequency and duration of breastfeeding are influenced by many factors, both cultural as others, including the promotion of breastmilk substitutes, which makes it necessary to take corrective measures to regulate the advertising of infant foods.

It is important that infants receive appropriate complementary feeding, usually starting from 4 to 6 months, every effort should be made to use locally available foods and that such foods should not be used as substitutes for breastmilk.

The improper use of breastmilk substitutes is an inappropriate and unnecessary feeding practice.

The WHO and the United Nations Fund for Children (UNICEF) have been insisting for many years on the importance of maintaining breastfeeding and encouraging it where it tends to be neglected, as a means to improve infant and young child health and nutrition.

The aim of the Code of Marketing of Breast-milk Substitutes is to contribute to safe and adequate infant nutrition, protecting and promoting breastfeeding and ensuring the proper use of breast milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution methods.

In order to renew world attention on the impact of feeding practices in the survival of infants and young children, WHO and UNICEF have jointly developed the "Global Strategy for Infant and Young Child Feeding".

This involves developing a "National Plan" for the adoption and adaptation of the Global Strategy and strengthening inter-programmatic and inter-sectorial activities that lead to its implementation.

With those objectives in mind, on 4, 5 and 6 May 2005, in Buenos Aires, the Subregional Meeting to Implement the Global Strategy for Infant and Young Child was held.

Among the conclusions and recommendations of that Meeting is the recognition that "the effective implementation of laws in place is deficient, and this calls for greater intra- and inter-sectorial coordination."

While the former Ministry of Health and Social Welfare, by Resolution 54/97, dated 5 June 1997, adopted in its entirety the Code of Marketing of Breast-milk Substitutes of WHO, Geneva, 1981 and subsequent amendments, it is appropriate to incorporate the relevant provisions of the Code into the Argentine Food Code, to ensure their best application throughout the country, in the field of food science (bromatology).

The International Code of Marketing of Breastmilk Substitutes applies to the marketing, and practices related thereto, of the following products: breastmilk substitutes, including infant formula; other dairy products, foods and beverages, including bottle-fed complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breastmilk; feeding bottles and teats; as well as to the quality and availability of these products and information related to their, and that for this reason they need to be included in the Argentine Food Code.

Inappropriate feeding practices lead to infant malnutrition, morbidity and mortality of infants in all countries, and inappropriate practices in the marketing of breastmilk substitutes and related products can contribute to these major public health problems.

Every child and every pregnant and lactating woman has the right to adequate food as a means of attaining and maintaining health.

The health of infants and young children cannot be isolated from the health and nutrition of women, their socioeconomic status and their roles as mothers.

Breastfeeding is an unequalled way of providing ideal food for the healthy growth and development of infants; that it forms a unique biological and emotional basis for the health of both mother and child; that the anti-infective properties of breastmilk help to protect infants against disease; and that there is an important relationship between breastfeeding and child-spacing.

In the light of the foregoing considerations, and in view of the vulnerability of infants in the early months of life and the risks involved in inappropriate feeding practices, including the unnecessary and improper use of breastmilk substitutes, the marketing of breastmilk substitutes requires special treatment, which makes usual marketing practices unsuitable for these products.

Manufacturers and distributors of breastmilk substitutes have an important and constructive role to play in relation to infant feeding, and in the promotion of the aim of this Code and its proper implementation.

The National Food Commission (CONAL) has expressed its favourable opinion on the International Code, and in view of the fact that it is a document issued by the World Health Organization (WHO), agrees that it should be incorporated, without modification, into the Argentine Food Code, respecting the terms of the International Code of Marketing of Breastmilk Substitutes exclusively in its bromatological aspects (i.e. those referring to food science), as well as its modifications and those that may be published in future.

The permanent Legal Departments of the bodies concerned have taken the necessary steps within their competence.

This is done by virtue of the powers conferred by Decree 815/99.

The **Minister of Health Policies, Regulations and Health Relations** and the **Minister of Agriculture, Livestock, Fisheries and Food** hereby

RESOLVE:

Article 1 - The International Code of Marketing of Breastmilk Substitutes of the World Health Organization (WHO), Geneva 1981, and its subsequent modifications (by WHA Resolutions) and those that may in future be published, shall be incorporated into the Argentine Food Code as Article 1359 bis, with regards exclusively to its bromatological aspects, as follows:

(NOTE: From here on the text is almost identical to the International Code. Where it differs, it has been highlighted in yellow.)

“Article 1359 bis:

a) The aim of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization (WHO), Geneva 1981 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 breastmilk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.

a) The International Code of Marketing of Breastmilk Substitutes applies to the marketing, and practices related thereto, of the following products: breastmilk substitutes, including infant formula; other milk products, foods and beverages, including bottle-fed complementary foods, when marketed

or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breastmilk; feeding bottles and teats. It also applies to their quality and availability, and to information concerning their use.

c) For the purposes of implementing the International Code of Marketing of Breastmilk Substitutes of the World Health Organization the **following definitions shall apply**:

“Complementary food” means any food, whether manufactured or locally prepared, suitable as a complement to breastmilk or to infant formula, when either becomes insufficient to satisfy the nutritional requirements of the infant. Such food is also commonly called “weaning food” or “breastmilk supplement.”

“Marketing” means product promotion, distribution, selling, advertising, product public relations, and information services.

“Distributor” means a person, corporation or any other entity in the public or private sector engaged in the business (whether directly or indirectly) of marketing at the wholesale or retail level a product within the scope of this article, in accordance with the International Code of Marketing of Breastmilk Substitutes of the World Health Organization. A “primary distributor” is a manufacturer’s sales agent, representative, national distributor or broker.

“Container” means any form of packaging of products for sale as a normal retail unit, including wrappers.

“Label” means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to, a container of any products within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization.

“Manufacturer” means a corporation or other entity in the public or private sector engaged in the business or function (whether directly or through an agent or through an entity controlled by or under contract with it) of manufacturing a product within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization.

“Sample” means single or small quantities of a product provided without cost.

“Marketing personnel” means any persons whose functions involve the marketing of a product or products coming within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization.

“Infant formula” means a breastmilk substitute formulated industrially in accordance with applicable Codex Alimentarius standards, to satisfy the normal nutritional requirements of infants up to between four and six months of age, and adapted to their physiological characteristics. Infant formula may also be prepared at home, in which case it is described as “home-prepared.”

“Breastmilk substitute” means any food being marketed or otherwise represented as a partial or total replacement for breastmilk, whether or not suitable for that purpose.

“Supplies” means quantities of a product provided for use over an extended period, free or at a low price, for social purposes, including those provided to families in need.

(Note: The following two paragraphs, highlighted in yellow, do not exist in the International Code.)

During the period from four to six months of life, breastmilk alone is usually adequate to meet the normal infant's nutritional needs. Throughout this period it can be replaced (substituted) by real breastmilk substitutes, including infant formula. Any other foods such as cow's milk, fruit juices, cereals, vegetables or any other liquid, solid or semisolid foodstuff intended for infants and given

after this initial period, cannot be considered a replacement for breastmilk (or as genuine substitutes thereof). Such foodstuffs are limited to supplement breastmilk or its substitutes and, therefore, the draft code refers to them calling them complementary foods; they are also called weaning foods or supplements of breastmilk.

Products that are not real substitutes for breastmilk, including infant formula, are only within the scope of the Code when they are "marketed or otherwise represented as a partial or total replacement for breastmilk". Thus, where the Code alludes to products used as partial or total replacement for breastmilk it shall not be interpreted as referring to complementary foods unless such foods are actually marketed (such as breastmilk substitutes including infant formula) as suitable for partial or total replacement of breastmilk. As long as manufacturers and distributors do not promote the sale of their products as capable of partially or completely replacing breastmilk, the Code restrictions on advertising and other promotional activities thereof shall not apply to them.

d) Information and education

- Governments shall have the responsibility to ensure that objective and consistent information is provided on infant and young child feeding for use by families and those involved in the field of infant and young child nutrition. This responsibility shall cover either the planning, provision, design and dissemination of information, or their control.
- Informational and educational materials, whether written, audio, or visual, dealing with the feeding of infants and intended to reach pregnant women and mothers of infants and young children, shall include clear information on all the following points: the benefits and superiority of breastfeeding; maternal nutrition, and the preparation for and maintenance of breastfeeding; the negative effect on breastfeeding of introducing partial bottle-feeding; the difficulty of reversing the decision not to breastfeed; and, where needed, the proper use of infant formula, whether manufactured industrially or home-prepared.
- When such materials contain information about the use of infant formula, they shall include the social and financial implications of its use; the health hazards of inappropriate foods or feeding methods; and, in particular, the health hazards of unnecessary or improper use of infant formula and other breastmilk substitutes. Such materials shall not use any pictures or text which may idealize the use of breastmilk substitutes.
- Donations of informational or educational equipment or materials by manufacturers or distributors should be made only at the request and with the written approval of the appropriate government authority or within guidelines given by governments for this purpose. Such equipment or materials may bear the donating company's name or logo, but should not refer to a proprietary product that is within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization, and should be distributed only through the health care system.

e) The general public and mothers

- There shall be no advertising or other form of promotion to the general public of products within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization.
- Manufacturers and distributors shall not provide, directly or indirectly, to pregnant women, mothers or members of their families, samples of products within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization.
- In conformity with the preceding paragraphs, there shall be no point-of-sale advertising, giving of samples, or any other promotion device to induce sales directly to the consumer at the retail

level, such as special displays, discount coupons, premiums, special sales, loss-leaders and tie-in sales, for products within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization. This provision shall not restrict the establishment of pricing policies and practices intended to provide products at lower prices on a long-term basis.

- Manufacturers and distributors shall not distribute to pregnant women or mothers of infants and young children any gifts of articles or utensils which may promote the use of breastmilk substitutes or bottle-feeding.
- Marketing personnel, in their business capacity, shall not seek direct or indirect contact of any kind with pregnant women or with mothers of infants and young children.

(Note: Articles 6 – Health care systems – and 7 – Health workers -- of the International Code have not been included here.)

f) Persons employed by manufacturers and distributors

8.1 In systems of sales incentives for marketing personnel, the volume of sales of products within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization shall not be included in the calculation of bonuses, nor shall quotas be set specifically for sales of these products. This shall not be understood to prevent the payment of bonuses based on the overall sales by a company of other products marketed by it.

8.2 Personnel employed in marketing products within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization shall not, as part of their job responsibilities, perform educational functions in relation to pregnant women or mothers of infants and young children. This shall not be understood as preventing such personnel from being used for other functions by the health care system at the request and with the written approval of the appropriate authority of the government concerned.

g) Labeling

Labels shall be designed to provide the necessary information about the appropriate use of the product, and so as not to discourage breastfeeding.

b. Manufacturers and distributors of infant formula shall ensure that each container has a clear, conspicuous, and easily readable and understandable message printed on it, or on a label which cannot readily become separated from it, in an appropriate language, which includes all the following points:

- The words “Important Notice” or their equivalent;
- A statement of the superiority of breastfeeding;
- A statement that the product should be used only on the advice of a health worker as to the need for its use and the proper method of use;
- Instructions for appropriate preparation, and a warning against the health hazards of inappropriate preparation.

Neither the container nor the label shall have pictures of infants, nor shall they have other pictures or text which may idealize the use of infant formula. They may, however, have graphics for easy identification of the product as a breastmilk substitute and for illustrating methods of preparation. The terms “humanized”, “maternalized” or similar terms should not be used. Inserts giving additional information about the product and its proper use, subject to the above conditions, may be included in the package or retail unit. When labels give instructions for modifying a product into infant formula, the above shall apply.

c. Food products within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization, marketed for infant feeding, which do not meet all the requirements of an infant formula, but which can be modified to do so, shall carry on the label a warning that the unmodified product should not be the sole source of nourishment of an infant. Since sweetened condensed milk is not suitable for infant feeding, nor for use as a main ingredient of infant formula, its label should not contain purported instructions on how to modify it for that purpose.

d. The label of food products within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization shall also state all the following points:

- The ingredients used;
- The composition/analysis of the product;
- The storage conditions required; and
- The batch number and the date before which the product is to be consumed, taking into account the climatic and storage conditions of the country concerned.

h) Quality

a. The quality of products is an essential element for the protection of the health of infants and therefore shall be of a high recognized standard.

b. Food products within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization shall, when sold or otherwise distributed, meet applicable standards recommended by the Codex Alimentarius Commission and also the Codex Code of Hygienic Practice for Foods for Infants and Children.

i) Implementation and monitoring

i.1) Governments shall take action to give effect to the principles and aim of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization, as appropriate to their social and legislative framework, including the adoption of national legislation, regulations or other suitable measures. For this purpose, governments shall seek, when necessary, the cooperation of WHO, UNICEF and other agencies of the United Nations system. National policies and measures, including laws and regulations, which are adopted to give effect to the principles and aim of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization shall be publicly stated, and should apply on the same basis to all those involved in the manufacture and marketing of products within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization.

i.2) Monitoring the application of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization lies with governments acting individually, and collectively through the World Health Organization as provided in paragraphs i.6 and i.7 of this Article. The manufacturers and distributors of products within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization, and appropriate nongovernmental organizations, professional groups, and consumer organizations shall collaborate with governments to this end.

i.3) Independently of any other measures taken for implementation of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization, manufacturers and distributors of products within the scope of that International Code shall regard themselves as responsible for monitoring their marketing practices according to the principles and aim of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization, and for taking steps to ensure that their conduct at every level conforms to them.

i.4) Nongovernmental organizations, professional groups, institutions, and individuals concerned shall have the responsibility of drawing the attention of manufacturers or distributors to activities which are incompatible with the principles and aim of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization, so that appropriate action can be taken. The appropriate governmental authority shall also be informed.

i.5) Manufacturers and primary distributors of products within the scope of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization shall apprise each member of their marketing personnel of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization and of their responsibilities under it.

i.6) In accordance with Article 62 of the Constitution of the World Health Organization, Member States shall communicate annually to the Director-General information on action taken to give effect to the principles and aim of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization.

i.7) The Director-General shall report in even years to the World Health Assembly on the status of implementation of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization; and shall, on request, provide technical support to Member States preparing national legislation or regulations, or taking other appropriate measures in implementation and furtherance of the principles and aim of the International Code of Marketing of Breastmilk Substitutes of the World Health Organization.

Article 2 – Let it be registered and communicated where appropriate. And handed to the National Registration Authority for its publication. When done, let it be filed PERMANENTLY. –

Carlos A. Soratti. — Javier M. de Urquiza.

(It does not say so, but it can be assumed that these two signatories are the ministers.)