

ADDRESSING AND MANAGING CONFLICTS OF INTEREST

IN THE PLANNING AND DELIVERY
OF NUTRITION PROGRAMMES AT
COUNTRY LEVEL

Report of a technical consultation
convened in Geneva, Switzerland,
on 8–9 October 2015



World Health
Organization

TECHNICAL REPORT

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Abbreviations

BINGO	Business-interest nongovernmental organization
CIP	Comprehensive implementation plan on maternal, infant and young child nutrition
CODE	Code of Marketing of Breast-milk Substitutes
COI	Conflicts of interest
FBDGs	Food-Based Dietary Guidelines
FENSA	Framework of Engagement with Non-State Actors
HFSS	Foods high in fat, sugar or salt
GIFA	Geneva Infant Feeding Association
IBFAN	International Baby Food Action Network
ICN2	Second International Conference on Nutrition
NCDs	Noncommunicable diseases
NHD	Nutrition for Health and Development
PINGO	Public-interest nongovernmental organization
PPP	Public-private partnership
SUN	Scaling Up Nutrition movement
UN	United Nations
WHA	World Health Assembly
WHO	World Health Organization
WHO GCM	WHO Global Coordination Mechanism
WTO	World Trade Organization

Foreword

In response to the emerging challenge of conflicts of interest in nutrition, the Department of Nutrition for Health and Development at WHO headquarters convened a WHO technical consultation on “Addressing and managing conflicts of interest in the planning and delivery of nutrition programmes at country level” in Geneva, Switzerland, on 8–9 October 2015.

The consultation on this complex issue is the beginning of a process with the aim of developing risk assessment, disclosure and management tools to safeguard Member States against conflicts of interest in nutrition programmes. The ultimate goal is to help promote the Comprehensive implementation plan on maternal, infant and young child nutrition as part of the achievement of the Sustainable Development Goals.

The outcomes of this consultation informed the WHO Secretariat report which was presented to the Executive Board at its 138th session in January 2016 and which will be discussed at the Sixty-ninth World Health Assembly in May 2016.

In early April 2016, the United Nations General Assembly in New York adopted a landmark resolution which proclaimed 2016–2025 the United Nations Decade of Action on Nutrition. WHO will work with governments and other relevant stakeholders, including international and regional organizations, civil society, academia and the private sector, to actively support the implementation of the United Nations Decade of Action on Nutrition.

In this context, WHO’s role is to provide evidence-based policy advice to its Member States, to disseminate examples of best practice, to encourage political commitment and to lead international action. Appropriate handling of conflicts of interest is also needed and WHO is committed to assisting with practical tools, based on the outcomes of this consultation and the wealth of experience that countries are now developing.



Dr Francesco Branca
Director of the Department of Nutrition
for Health and Development

Scope and purpose

This report provides a summary of the discussions during the meeting. The outcomes of this consultation informed the WHO Secretariat report which was presented to the Executive Board at its 138th session in January 2016 and which will be discussed at the Sixty-ninth World Health Assembly in May 2016. This publication contains the report of a technical consultation and does not necessarily represent the decisions or policies of the World Health Organization.

The report should help Member States and their partners in their efforts to make informed decisions on the appropriate nutrition actions required to promote the Comprehensive implementation plan on maternal, infant and young child nutrition and to achieve the Sustainable Development Goals. The report is intended for a wide audience including policy-makers, their expert advisers, and technical and programme staff of organizations involved in the design, implementation and scaling up of programmes on nutrition for public health.

Executive summary

Why was this meeting convened?

The Comprehensive implementation plan on maternal, infant and young child nutrition, endorsed at the Sixty-fifth World Health Assembly in 2012 in resolution WHA65.6, recommends the creation of “a supportive environment for the implementation of comprehensive food and nutrition policies” and calls on Member States to “establish a dialogue with relevant national and international parties and form alliances and partnerships to expand nutrition actions with the establishment of adequate mechanisms to safeguard against potential conflicts of interest”. In decision WHA67(9) the Sixty-seventh World Health Assembly, held in 2014, requested the Director-General “[...] to convene informal consultations with Member States to complete the work, before the end of 2015, on risk assessment and management tools for conflicts of interest in nutrition, for consideration by Member States at the Sixty-ninth World Health Assembly”. In response to this request, a technical consultation was convened on 8–9 October 2015 in Geneva with the aim of supporting efforts to address governance gaps on conflicts of interest in order to safeguard nutrition policy development and implementation at country level.

Who were the participants of this meeting?

A variety of international experts from low-, middle- and high-income countries across the six regions gathered and shared their knowledge and experiences on addressing conflicts of interest in nutrition. Participants included WHO and external experts in the areas of risk assessment, disclosure and management of conflicts of interest, nutrition and pharmaceutical sciences as well as other areas. These experts came from academia, civil society, ministries of health and the United Nations (UN) system. All experts participated in their individual capacities. Representatives of Member States participated as observers. The list of all participants of the meeting is provided in Annex II.

What were the objectives of this meeting?

As the first stage towards the development of conflicts of interest risk assessment, disclosure and management tools, this meeting aimed to set up the discussion, identify key areas of work and start the collection of best practices and country case studies. The objectives of

this consultation were to: (i) develop definitions, criteria and indicators to help identify and prioritize conflicts of interest in the development and implementation of policies recommended by the Comprehensive implementation plan on maternal, infant and child nutrition at the country level; (ii) identify situations in which the development and implementation of these policies involve interactions between governments and non-State actors (with a focus on the private sector) which may lead to conflicts of interest; and (iii) identify a list of tools, methodologies and approaches that may help identify and manage conflicts of interest. This was viewed as an essential first step before other actions could follow. The outline of the work undertaken during the meeting to achieve these objectives is presented in the agenda in Annex III.

What were the outcomes of this meeting?

This document is a report of the meeting and does not contain any official WHO recommendations.

- Some of the main conclusions of the consultation included the fact that Member States have a duty to ensure that undue influence – either actual or perceived – for interests other than the public good is not exerted on individuals or institutions responsible for public decision-making, in order not to affect integrity and public trust.
- It also concluded that conflicts of interest can be financial or non-financial and direct or indirect; that Member States have a duty to take into account diverging interests between different actors in society, and between different government actors; and that conflicts of interest may arise at different stages in the policy process: (i) when making a decision on the need to establish a policy or a programme; (ii) when the policy or programme is set up; (iii) when it is implemented; and (iv) when it is monitored. The second and third stages in this process are those at which the possibility of engagement with the private sector is more common, and a set of tools is needed to identify and address conflicts of interest.
- The consultation further concluded that, when Member States initiate a policy discussion, an initial risk assessment is required. This may involve mapping the different interests, understanding corporate tactics and understanding the level of risk associated

with different types of engagement with public and private actors. In order to prevent conflicts of interest, Member States could establish guidelines on who should participate in groups responsible for policy-setting and normative work; rules on disclosure and the transparency of interests; and policies to manage conflicts of interest (including divestment, screening, recusal, sanctions for violations, post-employment policy rules and codes of ethics).

- When Member States decide to establish partnerships, the establishment of clear rules of engagement may mitigate conflicts of interest. These rules might set out clear governance structures and terms of reference; establish that clear priority must be given to public health goals; set rules for partnership defining the roles of the different actors; and require disclosure and transparency of interests. Global policies, such as the International Code of Marketing of Breast-milk Substitutes or the Global Strategy for Infant and Young Child Feeding, can be good references to help protect partnerships from undue influence.

- Other useful practices include transparent and independent monitoring, rules for sponsorship, lobbying registers and policies to protect whistle-blowers. Complementary actions include the capacity-building of public officials on management of conflicts of interest and the strengthening of civil society through public awareness.

What are the next steps after this meeting?

The outcomes of this consultation informed the WHO Secretariat report which was presented to the Executive Board at its 138th session in January 2016 and which will be discussed at the Sixty-ninth World Health Assembly in May 2016. Upon presentation of these outcomes, a decision by Member States will be made on the next steps with regards to WHO's work on conflicts of interest in nutrition.

1. Introduction

The Sixty-fifth World Health Assembly¹ in 2012 indicated that global efforts to improve nutrition should focus on six global nutrition targets to be achieved by 2025, and endorsed a Comprehensive implementation plan on maternal, infant and young child nutrition (CIP).²

The CIP recommends the creation of “a supportive environment for the implementation of comprehensive food and nutrition policies” and calls on Member States to “establish a dialogue with relevant national and international parties and form alliances and partnerships to expand nutrition actions with the establishment of adequate mechanisms to safeguard against potential conflicts of interest”.³ In this light, Member States, through resolution WHA65.6, requested the Director-General to “develop risk assessment, disclosure and management tools to safeguard against possible conflicts of interest in policy development and implementation of nutrition programmes consistent with WHO’s overall policy and practice [...]”.³

In response to this request, the Department of Nutrition for Health and Development (NHD) of the World Health Organization (WHO), in collaboration with internal partners, established a work stream to analyse definitions and relevant issues for further discussion by Member States at the Sixty-seventh World Health Assembly, held in Geneva in May 2014. In decision WHA67(9), the Health Assembly requested the Director-General “to convene informal consultations with Member States to complete the work, before the end of 2015, on risk assessment and management tools for conflicts of interest in nutrition, for consideration by Member States at the Sixty-ninth World Health Assembly”.⁴

In response to this request, a technical consultation was convened on 8–9 October 2015. Participants included experts in the areas of risk assessment, due diligence, management of conflicts of interest, and others

areas.⁵ Participants had been invited because of their understanding of relevant issues or their practical experience in dealing with conflicts of interest. Member States were invited to participate as observers. This work is separate, but parallel to, the ongoing discussion on the WHO Framework of engagement with non-State actors (FENSA). The main difference between the two sets of work is that the present consultation focuses on Member States management of conflicts of interest in nutrition while FENSA covers WHO’s internal risk management when engaging with non-State actors.

The objectives of the meeting were to:

1. identify conflicts of interest associated with the planning, implementation, monitoring and evaluation of nutrition programmes in public health;
2. describe the current assessment and management tools already applied by some countries;
3. present examples of country case studies concerning conflicts of interest in nutrition from high-, middle- and low-income countries.

The expected outcomes were:

1. definitions, criteria and indicators to help identify conflicts of interest in the development and implementation of policies advocated by the CIP at country level;
2. examples of situations in which the development and implementation of policies advocated by the CIP involve interactions between governments and non-State actors (mainly private sector) which may lead to conflicts of interest;
3. examples of tools, methodologies and approaches that may help identify and manage conflicts of interest.

The programme of the consultation started with the presentation of a background paper, intended to kick-start discussion of definitions, indicators and examples of potential tools. This was followed by three sessions organized around particular nutrition policy issues – promotion, protection and support of breastfeeding; fortification and reformulation of food products; and prevention of childhood overweight – where the presentation of WHO-recommended interventions and specific case studies fed working group discussions to identify actual and perceived conflicts of interest and to

1 All documentation for the Sixty-fifth World Health Assembly is available at: http://apps.who.int/gb/e_e_wha65.html

2 Comprehensive implementation plan on maternal, infant and young child nutrition. Geneva: World Health Organization; 2014 (http://www.who.int/nutrition/publications/CIP_document/en/, accessed 8 May 2016).

3 Resolution WHA65.6. Maternal, infant and young child nutrition. In: Sixty-fifth World Health Assembly, Geneva, 21–26 May 2012. Resolutions and decisions, annexes. Geneva: World Health Organization; 2012:12 (WHA65/2012/REC/1; http://apps.who.int/gb/ebwha/pdf_files/WHA65-REC1/A65_REC1-en.pdf, accessed 8 May 2016).

4 Decision WHA67(9). Maternal, infant and young child nutrition. In: Sixty-seventh World Health Assembly, Geneva, 19–24 May 2014. Resolutions and decisions, annexes. Geneva: World Health Organization; 2014:62 (WHA67/2014/REC/1; http://apps.who.int/gb/ebwha/pdf_files/WHA67-REC1/A67_2014_REC1-en.pdf#page=1, accessed 8 May 2016).

5 See Annex II for the full list of participants.

identify tools, methodologies and approaches to prevent and manage such conflicts.

No conflicts of interest were declared by participants and previously completed declaration of interest forms had

already been reviewed and cleared by the Secretariat. In addition, publication of participants' resumés online had not prompted any comments that would discourage any individual's inclusion.

2. Background paper

A background paper prepared by Professor Andrew Stark was presented to introduce the discussion. This paper is presented in Annex I.

The paper proposed a number of definitions. The first defines a conflict of interest as “a set of conditions in which professional judgement concerning a primary interest [...] tends to be unduly influenced by a secondary interest”.⁶ According to the author of the background paper, this definition applies equally to individuals and to institutions. It is important to note that, with this definition, the judgement of an official or institution does not actually have to be influenced by an undue secondary interest for there to be a conflict, there simply has to be the potential for undue influence to occur. The definition covers both actual and perceived conflicts of interest. It also specifies that a conflict arises when a private interest has the potential to *unduly* influence judgement – in other words, by introducing factors other than those concerning the public interest.

The paper also proposed some more specific definitions:

1. An **actual conflict of interest** arises when a vested interest has the potential to unduly influence official or agency judgement/action through the monetary or material benefits it confers on the official or agency.
2. A **perceived conflict of interest** arises when a vested interest has the potential to unduly influence official or agency judgement/action through the non-monetary or non-material influences it exerts on the official or agency.
3. An **outcome-based conflict of interest** arises when a vested interest, involved in the policy-making or policy-implementation process, seeks outcomes that are inconsistent with the demonstrable public interest. This applies to issues where there is consensus on the public interest and where a particular interest, by the nature of its mission, pursues goals that are in contradiction with that interest.

The background document presented a list of conflicts of interest, which were conceptualized as posed by financial interests, whether directly by for-profit companies or indirectly through the mediating structures of academic or civil society organizations. The paper suggested, however, that conflicts of interest that arise from for-profit private

sector interests require tighter management than those that arise purely from other non-State actors.

Three risk indicators were proposed in the background paper for actual conflicts of interest:

- **High-risk Indicator (1):** the private interest's capacity to benefit the official/agency is significant.
- **High-risk Indicator (2):** the official/agency's capacity to affect the private interest is significant.
- **High-risk Indicator (3):** the private interest's stake in the outcome is critical to its survival or success.

Four risk indicators are proposed for perceived conflict of interest:

- **High-risk Indicator (1):** a private interest is sufficiently powerful within the country's economy that the official/agency might accede to its wishes even if they do not believe that doing so is in the public interest.
- **High-risk Indicator (2):** a private interest is sufficiently powerful within the country's public decision making apparatus that it begins to occupy not simply a private but also a quasi-public role.
- **High-risk Indicator (3):** an official/agency's endorsement of a private company or its products is sufficiently significant that public trust and credibility are at stake.
- **High-risk Indicator (4):** an official/agency's support for a private company amounts to undue preference or favouritism, an undue advantage in the private market place.

A high-risk of an outcome-based conflict of interest was said to exist when a private sector entity's involvement, whether or not an actual or perceived conflict of interest exists, would be inconsistent with the public interest as indicated by:

- **High-risk Indicator (1):** the normative importance of the nutrition policy goal in question in terms of its universally agreed upon impact and urgency.
- **High-risk Indicator (2):** the existence of empirical standards such as research protocols, evidence-based policy-making and best practices in implementation.

Finally, the paper presented a number of examples of potential tools for preventing or managing conflicts

6 Thompson DF. Understanding financial conflicts of interest. *N Engl J Med*. 1993;329:573–6.

of interest. Example approaches for identifying and preventing conflicts of interest include:

- **Disclosure and transparency**, involving complete transparency at the individual and institutional levels.
- **Divestment**, whereby the individual or institution rids itself of any interest which might impede judgement (e.g. sells shares, donations, gifts received).
- **Screening** of officials with conflicting interests to prevent them from being involved in relevant regulatory or policy areas of work.
- **Recusal and prohibition** apply when divestment is not possible and involves officials removing themselves from, or being prohibited from participating in, particular regulatory or policy decisions.

In order to manage or mitigate conflicts of interest, in cases where it is not possible to prevent them, the suggested approaches include:

- **Pluralism and diversity**, whereby as wide a range of interests as possible are represented to dilute the influence of private actors, or ensuring that a number of agencies or officials are involved in decisions.
- **Sanctions**, with effective enforcement, for violation of conflicts of interest guidelines. These can include reprimands, fines or dismissal.
- **A conflict of interest unit** can be established to assess interests, thus ensuring that the responsibility for assessing whether there is a conflict does not rest with the individual concerned.

2.1 Discussion of the background paper

2.1.1 Definitions

There was considerable discussion of the proposed definitions. There was some concern that the general definitions proposed were not sufficiently precise and that the specific definitions in the background paper did not conform with standard legal practice. It was suggested that it might be preferable to define individual and institutional conflicts of interest separately⁷ and to

draw on other existing definitions.⁸ Some concern was expressed that the definitions proposed in the background paper leave a lot of room for interpretation and that, while they are necessarily subjective, it would be useful to make them more categorical and, where possible, introduce a quantitative element (e.g. relative contribution of funding from a particular source, how important the products in question are for a particular company's business).

There were three particular areas of concern:

- **Perceived and actual conflicts of interest:** there was concern about defining actual conflicts of interest as being those of monetary or material value, while perceived conflicts of interest are defined as being non-monetary. It was suggested that many non-pecuniary conflicts of interest are "actual" rather than "perceived". The legal experts present at the consultation also pointed out that many of the conflicts of interest presented as "perceived" in the background paper would be considered as "actual" conflicts of interest in current conceptualizations of conflicts of interest.
- **Outcome-based conflicts of interest:** there were comments that this proposed definition – which has not been previously described in the literature and was contrary to legal practice – is highly problematic. The scientific definition was criticized by legal experts as being incompatible with commonly accepted ideas on conflicts of interest. A number of participants felt that this concept should not be introduced. One reason is that it is not always possible to know the outcome in advance. Another is that it is possible to have conflicts of interest that do not conflict with the public interest. The author of the background paper responded that this definition was intended to supplement, rather than replace, the existing set of definitions for particular situations.

It was also suggested that the definitions should be expanded to ensure that they incorporate indirect conflicts of interest. One example could be the membership of an advisory committee representing a professional association that receives funding from a private interest.

It was also added that it would be useful to give a definition of intellectual bias.

⁷ Lo B, Field MJ, Institute of Medicine (US) Committee on Conflict of Interest in Medical Research, Education, and Practice, editors. Conflict of interest in medical research, education and practice. Washington (DC): National Academies Press; 2009.

⁸ OECD guidelines (Managing conflict of interest in the public service – OECD guidelines and country experiences. Paris: Organisation for Economic Co-operation and Development; 2003); the United Nations standards of conduct for international civil servants (United Nations International Civil Service Commission. Standards of conduct for the international civil service. New York (NY): United Nations; 2013 (<http://icsc.un.org/resources/pdfs/general/standardsE.pdf>, accessed 8 May 2016); Peters A, Handschin L, editors. Conflicts of interest in global, public and corporate governance. Cambridge: Cambridge University Press; 2012; Rodwin MA. Conflicts of interest and the future of medicine: The United States, France and Japan. New York (NY) and Oxford: Oxford University Press; 2011; Rodwin MA. Medicine, money and morals: physicians' conflicts of interest. New York (NY) and Oxford: Oxford University Press; 1993.

2.1.2 Indicators

There was some concern that a detailed discussion of the proposed indicators would be premature given that no final agreement had been reached on the definitions. It was argued that these indicators were intended to help Member States in the process of risk assessment by describing different types of risk. Participants were asked to consider whether it is possible to identify critical points in the policy-making and implementation processes where identification and handling of conflicts of interest would be most important.

There was also some concern that elaboration of indicators implies that conflicts of interest will only be managed or mitigated, while the primary focus should be on avoiding such conflicts through prevention. The importance of linking identification of conflicts of interest to options for their prevention and management was highlighted.

It was suggested that the proposed indicators are too subjective and entirely qualitative. It was pointed out that to some extent this is inevitable, and that decisions on conflicts of interest would always involve a subjective judgement. However, inclusion of some quantitative elements wherever possible was proposed. Once again, it was suggested that the guidance to Member States should include a list containing examples of types of conflicts of interest and an assessment of their seriousness.

A specific example from Brazil was mentioned. The National Cancer Institute has defined a method to assess the products, policies and practices (“3P assessment”) of private sector entities and their divergence from, or opposition to, the principles, missions, goals, policies and recommendations of the public authorities in the public interest. This is used to give a formal response to proposals of support from or engagement with the private sector: proposals are rejected if any product, policy (including goals, missions, visions) or practice of the commercial entity diverges from or opposes the authorities ones.

2.1.3 Methodologies and tools for prevention and management of conflicts of interest

Disclosure of financial interests was recognized as being necessary for identifying conflicts of interest, but disclosure was seen as insufficient to manage or prevent conflicts of interest.

There was discussion of one aspect of the divestment strategy already in use by, for example, government leaders, which concerns the donating of gifts received to charities in order to avoid perceived conflicts of interest. There was concern that this could still create conflicts of interest and it was recognized that refusal of any gift is the preferred option.

There was considerable discussion about the relative merits of pluralism as a strategy. A key area of concern is the imbalance of power and capacity that exists between private sector actors and those in the public sector, civil society or academia. Several participants noted that involving many private sector parties – “pluralizing” influence – actually magnifies the size of private influence over government decisions, rather than diffusing it. The “pluralizing” technique would only effectively reduce preferential treatment of firms in countries where there is a small number of companies which can be included in a national committee or can afford to make comparable financial contributions to joint funds.

It should be recognized that involving private sector actors in a pluralistic process makes it much more likely that the proposed solutions will be non-threatening to industry interests. Furthermore, representing multiple interests in the decision-making process can ensure that the process represents the various interests, but does not prevent or manage conflicts of interest.

Many participants felt that the rise of corporate and venture philanthropy funding and of public-private hybrid organizations, as well as the increasing presence of industry front organizations have made it more difficult for Member States to discern what are truly independent civil society organizations and academic institutions and to clearly distinguish between business-interest nongovernmental organizations (BINGOs) and public-interest nongovernmental organizations (PINGOs).

An important issue to emerge was the “revolving doors” practice that enables people to move from government to the private sector and vice versa. In this light, it was suggested that post-employment policies should be a key aspect of any conflicts of interest approach.

2.1.4 General comments

It was emphasized that the guidance to Member States should include a clear explanation of why it is important to address conflicts of interest, as well as setting out fundamental principles and a detailed list of examples of types of conflicts of interest. Although non-exhaustive, such a list will help Member States to understand the different types of conflicts of interest and the risks these may pose to nutrition programmes.

Another point that emerged strongly was the need to put the emphasis on prevention of conflicts of interest, rather than management. It is important to identify conflicts of interest at the outset and then to take steps to avoid them. This should always be the preferred option.

It was noted that the private sector includes more than food and beverage companies; it also includes pharmaceutical and medical technology companies – all of which benefit from weak nutrition regulations or high levels of nutrition-related illness, products or services.

Venture philanthropists, for example, are private interests and may have a financial interest in nutrition.

There was recognition that the aim is to address the issue in different contexts – from situations where there is undue influence over individual health professionals, or their associations, to those where there is undue influence over government policy. It was suggested that this latter type of influence – over policy – is actually lobbying and exertion of political power and would need to be explicitly exposed as such. There was some concern expressed about the way lobbying had been presented as a legitimate activity in the background paper.

There is a need to explain clearly the differences between “conflicts of interest” and what some conflicts of interest experts have suggested should rather be called “conflicting” or “diverging” interests.⁹ Conflicts of interest refer to conflicts “within” a person or institution – that is, between their primary interest and other, secondary, interest – and not to conflicts between actors who have diverging interests or fiduciary duties. There is also a need to recognize that there are often diverging ideas about the public interest, and that assessment of the public interest needs to take a long-term view and look beyond a narrow, standard use of the term or definition. It was emphasized that corporations employ strategies of influence and that we should make clear to Member States that the regulation of conflicts of interest is an essential but not the only component in the strategies that governments should employ to address this influence. Governments need comprehensive strategies to address industry influence in order to protect their independence, integrity and credibility.

It is important to note that conflicts of interest can affect governmental and intergovernmental agencies as a whole, and not only individual officials. It was proposed that the priority should be to assess and address institutional conflicts of interest. There was considerable discussion

about the increasing dependence on public–private partnerships (PPPs), reflecting the economic and political context of recent decades. From the point of view of some participants, these partnerships not only create conflicts of interest but they can also undermine independence and integrity as well as public trust due to the subtle reciprocity arising from these relationships. Partnerships can also exert a profound influence on government agencies’ public health agendas and priorities. The interactions within these partnerships may undermine integrity and public trust having an important impact on government agencies’ public health priorities, not through any coercion but through a series of acts of subtle reciprocity.¹⁰ There was a proposal that a legal framework for such partnerships is needed.

There was recognition of the real challenges on the ground. Policy-makers trying to help poorer communities face a real dilemma when they receive offers of support from the food or pharmaceutical industry. In addition, while the focus was on conflicts of interest within the health sector, in reality many policy decisions are cross-government. Interference from other ministries – which do not have the same concerns in relation to a particular topic – can occur.

It was suggested that, in the advice to Member States, the language should be more neutral by referring to “interests”, “personal interests” or “financial interests” rather than “vested interests” – since the negative connotation associated with “vested” is not helpful when debating conflicts of interest policies. Moreover, the generally accepted way of analysing conflicts of interest does not employ the term “vested interest”.

However, it was also emphasized that Member States should not be distracted by debates about the language of conflicts of interest from addressing the core concerns that the concept is intended to address.

⁹ Peters A, Handschin L, editors. *Conflicts of interest in global, public and corporate governance*. Cambridge: Cambridge University Press; 2012:4–6, 363.

¹⁰ Marks JH. Toward a systemic ethics of public–private partnerships related to food and health. *Kennedy Institute of Ethics Journal*. 2014;24(3):267–99.





3. Breastfeeding

The second session of the consultation focused on conflicts of interest that may arise in relation to the promotion, protection and support of breastfeeding.

3.1 WHO expert presentation

To set the context, Dr Laurence Grummer-Strawn, of the WHO Department of Nutrition for Health and Development, presented WHO's recommended interventions for the protection, promotion and support of breastfeeding.

One of the global nutrition targets is to increase the rate of exclusive breastfeeding in the first six months to at least 50%. This is an important goal for health, economic and sustainability reasons.

The key priorities are set out in a WHO policy brief on breastfeeding.¹¹ These are to:

- significantly limit the aggressive and inappropriate marketing of breast-milk substitutes;
- strengthen, revitalize and institutionalize practices in line with the Baby-friendly Hospital Initiative¹² in health facilities that provide maternity care services;
- enact six months of mandatory paid maternity leave and policies that encourage women to breastfeed in the workplace;
- ensure that women benefit from home visits, support groups and prenatal and postpartum contact;
- establish communication strategies to increase awareness and support for exclusive breastfeeding.

All of the above priorities need to be backed up with leadership and advocacy by, for example, high-level

champions or national breastfeeding committees. In order to track progress towards the nutrition targets – including breastfeeding – a Global Monitoring Framework for Maternal, Infant and Young Child Nutrition¹³ has been established. In relation to breastfeeding, indicators have been included on births in baby-friendly hospitals, breastfeeding counselling, regulation of the marketing of breast-milk substitutes and maternity protection.

3.2 External expert presentation

Dr Lida Lhotska gave an overview of some of the issues around conflicts of interest in the protection, promotion and support of breastfeeding.

One of the key tools for preventing conflicts of interest is the International Code of Marketing of Breast-milk Substitutes (the Code),¹⁴ adopted in 1981, and related subsequent Health Assembly resolutions. The Code is a minimum standard, which applies to all breast-milk substitutes in all countries, regardless of whether it has been transposed into national law and is binding on countries and manufacturers. Nonetheless, evidence that companies break the rules and that corporate strategies constantly evolve to resist legally binding measures is widespread.¹⁵

In relation to infant and young child feeding, conflicts of interest should be avoided at multiple levels including by health professionals, their associations, government officials and their departments. Interactions with baby food manufacturers could lead to the loss of independence, integrity, trustworthiness and credibility.

Both the Code (as amended by the subsequent Health Assembly resolutions)¹⁶ and the Global Strategy on

11 WHA global nutrition targets 2025. WHO policy brief on breastfeeding. Geneva: World Health Organization; 2014 (http://www.who.int/nutrition/topics/globaltargets_breastfeeding_policybrief.pdf, accessed 8 May 2016).

12 Baby-friendly Hospital Initiative [website]. (<http://www.who.int/nutrition/topics/bfhi/en/>, accessed 8 May 2016)

13 Indicators for the Global Monitoring Framework on Maternal, Infant and Young Child Nutrition. In: Nutrition [website]. Geneva: World Health Organization; 2016 (http://www.who.int/nutrition/topics/proposed_indicators_framework/en/, accessed 8 May 2016).

14 International Code of Marketing of Breast-milk Substitutes. Geneva: World Health Organization; 1981 (http://www.who.int/nutrition/publications/code_english.pdf, accessed 8 May 2016).

15 Breaking the rules – stretching the rules, 2014: evidence of violations of the International Code of Marketing of Breast-milk Substitutes and subsequent resolutions compiled from January 2011 to December 2013. Penang: International Baby Food Action Network and International Code Documentation Centre; 2014 (http://www.ibfan-icdc.org/files/1_Preliminary_pages_5-2-2014.pdf, accessed 8 May 2016).

16 Health Assembly resolutions 49.15, 58.32 and 61.20.

Infant and Young Child Feeding¹⁷ contain provisions on conflicts of interest. Importantly, paragraph 44 of the Global Strategy sets out two appropriate roles for baby food companies.

Analysis commissioned by the International Baby Food Action Network¹⁸ and the Geneva Infant Feeding Association¹⁹ identified the fact that individuals tend to think they are immune to conflicts of interest and “underestimate the extent to which these may affect their judgement and behaviour”.²⁰

There are concerns that the changing landscape, with many multi-stakeholder initiatives, all of which have by the nature of their configuration conflicts of interest built in – such as the Scaling Up Nutrition (SUN) movement²¹ – blurs the lines between public and private interests and the understanding of appropriate roles for each actor. Moreover, the SUN movement’s recent project on conflicts of interest resulted in a redefinition of accepted conflicts of interest theory, thus justifying the multi-stakeholder model instead of questioning the role of industry on decision-making boards.²² The Codex Alimentarius²³ also plays an important role in setting standards relevant to infant and young child feeding, and there are concerns about the adequacy of conflicts of interest safeguards. Actors from the private sector attend Codex meetings in large numbers, represented on government delegations and as nongovernmental organizations (NGOs), which raises questions about the degree to which Codex is independent and consumer protection-oriented.

In conclusion, the rudimentary conflicts of interest safeguards that exist in the infant and young child feeding area are not well known and are not respected or enforced at all levels, from international through national to local or professional associations. There are some concerns about the fact that compliance of baby food manufacturers with the Code is not enforced, focusing instead on the promotion of breastfeeding. In addition, PPPs and multi-stakeholder initiatives are seen as being imposed as the sole model.

3.3 Discussion

There was further discussion of the nature of the SUN movement and its multi-stakeholder arrangements. It was noted that breast-milk substitute manufacturers are not part of the movement.

The marketing of so-called “growing up milks” – which enables the marketing of infant formula brands – was identified as a key problem in recent years as it seriously undermines appropriate infant and young child feeding and often gives rise to conflicts of interest.

In relation to the binding nature of the Code, as described in the presentation, comments in the discussion highlighted the fact that there is a great difference and imbalance between the “hard law” of World Trade Organization rules, which can be enforced, and the “soft law” and human rights frameworks with which compliance with the provisions of the Code is strongly linked.

There was clarification that the “aggressive” marketing practices referred to in the WHO breastfeeding policy brief includes any kind of violations of the Code (and not only particularly aggressive cases).

3.4 Country case studies

Short case studies were presented to give an overview of cases of dealing with conflicts of interest in relation to breastfeeding protection, promotion and support in two countries – Bahrain and Philippines.

Bahrain (Dr Nadia Ghareeb)

Bahrain’s infant food legislation has recently been reviewed and updated and is currently in the process of ministerial approval. Most infant foods are imported, and legislation and standards have, therefore, also been harmonized across the Middle East region.

Nonetheless, examples of conflicts of interest can be found. These include: a breast-milk substitute manufacturer funding, and participating in, a conference for health professionals in Bahrain’s main hospital; donation of baby food-branded equipment and communication materials to hospitals; displays of infant formula in private paediatric clinics, hospitals and pharmacies; provision of goody bags containing product samples during vaccination sessions; provision of free gifts to health workers; and retail promotions. These are all activities that contravene the Code.

One of the conclusions of the presentation was that responsibility for tackling conflicts of interest should be shared between all actors along with monitoring of compliance with the Code.

17 Global Strategy on Infant and Young Child Feeding. In: Nutrition [website]. Geneva: World Health Organization; 2016 (http://www.who.int/nutrition/topics/global_strategy/en/, accessed 8 May 2016).

18 IBFAN (International Baby Food Action Network) [website] (<http://www.ibfan.org/>, accessed 8 May 2016).

19 Geneva Infant Feeding Association – International Baby Food Action Network (IBFAN-GIFA) [website] (<http://www.geneve-int.ch/geneve-infant-feeding-association-international-baby-food-action-network-ibfan-gifa-0>, accessed 8 May 2016).

20 Richter J. Conflicts of interest and policy implementation – reflections from the fields of health and infant feeding. Geneva: IBFAN-GIFA; 2005.

21 Scaling Up Nutrition [website] (<http://scalingupnutrition.org/>, accessed 8 May 2016).

22 Richter J. Conflicts of interest and global health and nutrition governance – the illusion of robust principles. BMJ 2014;349:g5457. doi:<http://dx.doi.org/10.1136/bmj.g5457>.

23 Codex Alimentarius [website] (<http://www.codexalimentarius.org/>, accessed 8 May 2016).



Philippines (Ms Maria–Bernardita Flores)

In the Philippines, legislation (the “Milk Code”) was enacted in 1981 to protect, support and promote infant and young child feeding practices. The law itself is robust, but there is a need for better enforcement, monitoring and application of sanctions. Violations of the Milk Code are still prevalent, and there is concern about conflicts of interest inherent in partnerships – examples include funding from a baby food industry organization for a school gardening project run by the Department of Education and a government research agency partnership with a breast–milk substitute manufacturer.

A number of initiatives and instruments have been introduced to help address conflicts of interest. One development has been the use of social media to monitor and report violations of the “Milk Code”. Another development is the establishment of a legal contract setting out the rules of engagement with the private sector, as part of the Department of Health–National Nutrition Council’s partnership with the media. These rules prohibit media partners from forming partnerships with the manufacturers of breast–milk substitutes, soft drinks, alcohol and cigarettes. The *Code of Conduct and Ethical Standards for Public Officials and Employees* requires officials to resign or divest themselves of shareholdings where there is a conflict of interest and prohibits acceptance of gifts. The *Revised Rules and Regulations of the Milk Code* also contain several provisions to prevent conflicts of interest (e.g. prohibiting companies from engaging with the health system, ensuring that research is free from commercial influence, excluding companies from policy– and decision–making, etc.). Another instrument is the policy on PPPs, which places great emphasis on transparency, accountability and good governance setting out standards of practice. Finally, a transparency seal has been introduced as a mechanism for shifting towards openness and accountability in government.

The lessons learnt in the Philippines include the fact that adequate understanding of the legislation is needed for its correct interpretation and stronger implementation. The involvement of a breastfeeding champion helps reduce conflicts of interest. Requiring companies to seek prior written consent for their marketing activities has been shown to be effective when companies adhere to the requirement. Finally, monitoring conflicts of interest relies on the honesty and integrity of individuals.

3.5 Working group session 1: breastfeeding

For the first working group session, four working groups were asked to identify potential conflicts of interest associated with promotion, protection and support of breastfeeding as well as to describe existing and potential prevention and management tools. They were also asked

to present examples of additional country case studies concerning conflicts of interest in nutrition from high–, middle– and low–income countries. The combined conclusions of the four groups are synthesized below.

3.5.1 Identification of perceived conflicts of interest

- Conflicts of interest can exist at all levels – international and national – in academia and policy-making bodies, in institutions and individuals.
- Industry sponsorship occurs at different levels of the health system: for medical education (including paediatrics and other specialities); for the operation of professional associations; for front line health workers; for health facilities (renovation, equipment, supplies).
- Industry is often involved in policy and standard-setting: participation in committees that set standards and government advisory bodies; participation as part of national delegations to the Codex Alimentarius; influence over the setting of the policy agenda; involvement of eminent experts on industry advisory bodies.
- Whitewashing/greenwashing are strategies that the private sector applies through funding of public goods, donations, corporate social responsibility, etc.
- Other forms of industry sponsorship are undertaken through: sports/education programmes; religious pilgrimages; mothers’ clubs; government research programmes; educational materials and events in schools.
- Industry obtains product endorsement by professional associations.
- Industry exercises undue influence over other groups (e.g. community organizations).

3.5.2 Prevention and management tools

The working groups described a variety of existing and potential tools, and generated the following suggestions:

- Develop a legal framework with regulatory monitoring, binding rules and sanctions.
- Develop a written policy on conflicts of interest and a code of conduct (for experts, professionals, the scientific community) that sets norms for behaviours. The policy would require experts in committees to declare interests and would consider allowing industry participation in committees as technical observers with recusal from particular discussions.
- Use media exposure to raise awareness and establish a culture that stigmatizes corporate tactics to exert undue influence.



- Promote discussion in regional and global forums.
- Use risk assessment and management to ensure accountability.
- Provide education on conflicts of interest in health professional training.
- Foster social participation by increasing the ratio of civil society and academia representation in any multi-stakeholder body. Establish criteria for civil society representatives (e.g. particularly vulnerable groups).
- Integrate a baby-friendly certification process into the public health insurance accreditation process.
- Use and/or learn from existing instruments and tools (e.g. the Global Strategy on Infant and Young Child Feeding, the International Code of Marketing of Breast-milk Substitutes, the WHO Framework Convention on Tobacco Control²⁴).
- Ensure effective whistle-blower protection and introduce post-employment rules to address “revolving doors” between government and industry.
- Promote capacity-building to enhance understanding and the ability to monitor and enforce regulations in Member States.
- Increase public funding for research and policy development.

3.5.3 Examples of additional country practices

Two additional country examples were noted:

- The introduction of a module on professionalism, including conflicts of interest, in all specialist medical education in Sri Lanka.
- The development of criteria for assessing companies’ products, policies and practices and their divergence from the public interest and public health authorities’ missions, policies, practices and recommendations by the Brazilian National Cancer Institute.

²⁴ WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2003 (http://www.who.int/fctc/text_download/en, accessed 8 May 2016).





4. Fortification and reformulation

The third session explored conflicts of interest through the issues of micronutrient fortification and reformulation of foods to reduce levels of fat, sugars or salt.

4.1 WHO expert presentation

Dr Juan Pablo Peña-Rosas, of the WHO Department of Nutrition for Health and Development, gave an overview of WHO's role in the implementation of guidelines on food fortification.

It is important to distinguish food fortification, as discussed here, from home (point-of-use) fortification with micronutrient powders and biofortification of staple crops.

WHO collects data on prevalence and distribution of vitamin and mineral deficiencies. All calculations for national prevalence estimates have to be approved by the Member State concerned.

WHO provides evidence-informed guidelines on nutrition interventions, including food fortification, to help Member States and their partners make informed decisions. Fortification of foods is regulated in most countries and includes the fortification of staple foods and non-staple foods, beverages and condiments. The fortification process must include due assessments of risks and benefits. In addition to scientific evidence, trade agreements play an important role in fortification regulations, and Codex standards help with harmonization of fortification among countries.

It was clarified that donors who have provided financial support for this work do not fund specific guidelines and do not participate in any decision related to the guideline development process.

4.2 External expert presentation

Dr Greg S. Garrett outlined some of the potential conflicts of interest and their implications for food fortification programmes.

The varied nature of the food fortification industry – which comprises small artisanal producers as well as large refineries – means that it can be difficult to regulate. There are a number of steps along the fortification process at which conflicts of interest may arise. In general, the food industry aims to purchase minimal fortification inputs (e.g. equipment, fortificants) in order to keep costs down. There may be conflicts of interest between different government ministries, for example on the levels of taxes to levy on imported pre-mixes. Often, the ministry of finance wins the argument on taxation and high levels of taxation increase the costs of fortification.

There are several reasons why conflicts of interest can occur, including insufficiently compelling arguments on the cost-benefit of fortification, return-on-investment not being returned directly to fortification investors, the low profit margins on staple foods and a lack of clear demand. Furthermore, officials who push legislation on fortification risk being seen as raising staple food prices to the detriment of vulnerable groups in their constituencies. Also, because of the political risk associated with enforcing mandatory legislation, there is inconsistent follow-through and underwhelming use of enforcement strategies to mitigate non-compliance by the food industry.

The adverse outcomes that might result from conflicts of interest include industry challenges or resistance to mandatory fortification, fraudulent labelling (of products that do not meet fortification standards), governments not bringing industry to the table to discuss changes,

governments not fining companies for non-compliance, governments being reluctant to tighten regulation, and opportunities being missed to leverage delivery channels. For voluntary fortification, one risk is that fortification is used primarily as an approach to make a profit from wealthier consumers, bypassing the poorer groups most at risk of micronutrient deficiencies. There is also a risk of private companies seeking to benefit from a “halo effect” from public organizations or technical agencies providing their endorsement.

4.3 WHO expert presentation

Dr Bente Mikkelsen, of the WHO Global Coordination Mechanism (GCM) on the prevention and control of noncommunicable diseases (NCDs), presented preliminary findings from the GCM working group on *How to realize governments’ commitment to engage with the private sector for the prevention and control of NCDs*.²⁵

The GCM is a Member State-led mechanism that aims to facilitate and enhance coordination of activities, multi-stakeholder engagement and action in order to implement the Global Action Plan for the Prevention and Control of NCDs 2013–2020.²⁶

A working group was established on *How to realize governments’ commitments to engage with the private sector* to implement the action plan. The focus was on advice for national governments.

The key findings of the working group are yet to be finalized, but are likely to point to the need to be clear about the contribution of different private entities and to be much more discerning about their roles. The need for governments to safeguard public health interests from undue influence is also likely to emerge as a key message, along with the recognition that there is no direct conflicts of interest for many private sector entities to be involved in NCD prevention. A number of essential prerequisites have to be in place prior to any engagement with the private sector, including a mechanism to deal with conflicts of interest. The draft overarching recommendations recognize that governments must protect policies from undue influence by any form of vested interest. Draft overarching recommendations in relation to nutrition specify that governments should elicit clear time-bound commitments from food supply actors to reformulate

processed foods to reduce salt, sugar, saturated fats and trans-fats.

4.4 Discussion

A broader concern was expressed about the impact of conflicts of interest on the governance architecture for global health, particularly through the involvement of multi-stakeholder partnerships.

In relation to reformulation, the limited progress reported in the most recent global NCD status report²⁷ was noted. The question was asked as to whether there are any signs of a move towards a regulatory approach, rather than voluntary self-regulation, to ensure that the entire industry would be required to move forward at the same pace. There was clarification that regulation is highlighted in the NCD report as the most important action for Member States to take.

There was serious concern that fortification strategies have not always lived up to their promise and lack of government capacity to implement, monitor and enforce is a major problem for both fortification and reformulation programmes. Policies are meaningless without implementation capacity, which is linked to the need for countries to strengthen and invest in human resources for health, so that the actors involved are held to account. A further potential issue is that mandatory fortification programmes could disadvantage small local producers and local food economies.

In relation to the GCM, the issue was raised as to whether the working group had considered a recommendation to producers of local foods to increase dietary diversity and to reduce reliance on processed foods high in fat, sugar or salt (HFSS). It was clarified that the working group’s mandate was to focus on HFSS foods, so the important issue of dietary diversity and local foods had not really been considered.

There was also clarification that there are no industry representatives involved in the GCM working groups.

4.5 Country case studies

Short case studies were presented to give an overview of the experience of three countries – Viet Nam, Canada and France – on conflicts of interest in relation to fortification and reformulation.

25 WHO GCM/NCD Working Group on how to realize governments’ commitments to engage with the private sector for the prevention and control of NCDs (Working Group 3.1). In: WHO Global Coordination Mechanism on the Prevention and Control of NCDs [website]. Geneva: World Health Organization; 2016 (<http://www.who.int/global-coordination-mechanism/working-groups/wg-3-1-private-sector/en/>, accessed 8 May 2016).

26 Global Action Plan for the Prevention and Control of NCDs 2013–2020. In: Noncommunicable diseases and mental health [website]. Geneva: World Health Organization; 2016 (http://www.who.int/nmh/events/ncd_action_plan/en/, accessed 8 May 2016).

27 Global status report on noncommunicable diseases. Geneva: World Health Organization; 2014 (http://apps.who.int/iris/bitstream/10665/148114/1/9789241564854_eng.pdf?ua=1, accessed 8 May 2016).



Viet Nam (Dr Mai Bach Le)

Food fortification is one of the strategies used to address micronutrient deficiencies in Viet Nam. There are some products on the market that are voluntarily fortified with vitamin A or iodized salt, along with some multi-micronutrient fortified complementary foods. Iron fortification of fish sauce used to be very prevalent but is now less common after free provision of pre-mix to manufacturers ceased. In addition, since 1998, imported flour must be fortified with zinc and B group vitamins. Manufacturers of other products, such as soft drinks, use vitamin and mineral fortification in order to make health claims.

There are a number of points about conflicts of interest – conflict between big, small and medium-sized companies, conflict between the population's health and the interests of the industry, and conflicts between social development and quality standards (including the lack of, or poor, facilities and technology required for quality assurance) – which favour large companies, and which affect the quality of fortified products and capacity-building of companies.

The technical regulations covering iodized salt and wheat flour fortification were ratified in 2011. Currently, there is no government decree mandating food fortification and iodized salt, or any regulations to handle violation of the technical fortification regulations, but there are plans to strengthen the legislation. One of the challenges is that there are many small and medium-sized industries, and they do not all have the necessary facilities and technology for quality assurance. Another issue is that most factories are not yet ready for fortification, and there is a lack of information on flour fortification. Efforts are under way to improve external monitoring and enhance surveillance, and proposals have been made to strengthen information and education, advocacy, market and situation analyses.

In conclusion, food fortification is a good approach to addressing existing micronutrient deficiencies in Viet Nam, but conflicts of interest do exist. Legislation, monitoring and information as well as education and communication activities will be important in addressing these conflicts of interest.

Canada (Dr Mary L'Abbé)

1. Experience from a recent working group on sodium reduction in Canada was presented as a case study. There are numerous stages in such a process where conflicts of interest can be addressed.
2. Sound scientific basis for action – conflicts of interest can be minimized by clearly establishing the scientific and health case on the basis of scientific reviews and/or expert scientific panels without the involvement of industry.

3. Mandate for action – can be reinforced by the use of key champions (e.g. strong public health advocates and some industry representatives) and a coalescing of different interests that can prompt political commitments.
4. Moving from knowledge to action phase – developing the strategy:
 - a. Manage conflicts of interest by engaging key players effectively by, for example, ensuring the involvement of decision-makers (CEOs, vice-presidents, directors);
 - b. Balance representation between industry and non-industry representations;
 - c. Establish clear terms of reference, with a clear mandate, goal and measures to be employed. It is helpful if these are pre-defined and are not able to be re-negotiated;
 - d. Put in place administrative supports, such as an experienced facilitator and clear rules of behaviour for participants;
 - e. Establish clear phases of work (preparatory, assessment, strategy development and implementation). In the Canadian experience, the working group had not been allowed to consider legally binding solutions and was disbanded by political leaders before the implementation phase could begin.
5. Levers for action and implementation can be important – international comparisons, for example, can help to establish a clear understanding of where the problem lies (which foods, which sectors).
6. Instrument(s) of choice – government actions include regulatory actions, non-regulatory actions that require collaboration, procurement policies and developing common standards out of standards developed in provinces, regions or states.
7. Joint government and industry initiatives can be effective, such as social marketing campaigns and publication of reports to document the experience.
8. Science, media and politics – conflicts of interest need to be recognized and managed in all three areas.
9. Transparent monitoring and sustaining progress – publication of results can be effective in motivating change and ensuring that progress is sustained.

France (Dr Michel Chauliac)

As one element of the French national nutrition policy, the reformulation strategy aims to decrease the intake of salt, sugars, fat, saturated fatty acids and trans-fatty acids. At the same time the aim is to increase intakes of fibre, carbohydrates and omega 3 fatty acids. This approach differs from other reformulation strategies that have, in general, focused more on a single nutrient or ingredient.



The approach chosen was for the French Government to set the rules for reformulation, which the private sector can then choose to participate in on a voluntary basis. The joint initiative by the Ministries of Health, Agriculture and the Economy established voluntary charters of commitments to nutritional improvements. The public sector proposed and controlled the commitments through a standard reference document.

Important elements to note include the fact that the government has to approve commitments proposed by industry. The proposed improvements have to include at least two thirds of the volume of the company's improvable production. Annual evaluations are carried out by an independent third party. A committee of experts from the public sector assesses proposals and examines annual evaluations.

Participating companies are allowed to use a declaration ("company engaged in a process of nutritional improvement encouraged by the State (PNNS)") on some company materials.

After eight years, only 35 commitments have been signed. However, these commitments represent major manufacturers, with progress made in terms of salt, sugars and fats removed from the food supply. This initiative had no negative impact on consumers or company profits. Although the public health outcomes remain inadequate, the benefits are spread across the social gradient.

4.6 Discussion

A clear message emerged once again that prevention is preferable to management of conflicts of interest. This is particularly important at certain stages of the policy process – especially when norms and standards are being set. Prevention and management should be seen as separate steps, and management should only be an option in particular circumstances, along with penalties and sanctions, when prevention is not possible.

It was suggested that the term "stakeholder" should be replaced by "actor", which leaves room to decide whether there is a place for a private sector actor in the process. It should be made clear to Member States that a commitment to inclusiveness does not mean that all non-State actors should be involved in all policy areas. It was suggested, conversely, that there is a case for presumption against engagement with the private sector unless there is a compelling public interest case to justify such engagement. Where that is the case, clear rules to protect against conflict of interest are needed.

It is important to take the time to build capacity and improve understanding of conflicts of interest in Member States. There are good country examples to draw on – such as Brazil and France – and examples of tools such

as the WHO Framework Convention on Tobacco Control. There was some concern that nutrition is moving towards a very pharmaceutical model or biomedical approach, potentially at the expense of other approaches.

It is also important to recognize the role of systemic corruption in exerting undue influence over public servants and to recognize that many countries have no regulations on financial contributions to political candidates, political parties and elected office-holders.

4.7 Working group session 2: fortification and reformulation

The second working group session involved the four working groups identifying potential conflicts of interest associated with fortification and/or reformulation, to describe existing and potential prevention or management tools, and to present additional country case studies. The combined conclusions of the four groups are synthesized below.

4.7.1 Identification of potential conflicts of interest

- The private sector influences the political framing of the problem and the selection of appropriate policy responses (at international and national level) in the following areas: reliance on private money; research investment and prioritization; underlying assumptions; selection of experts, advisers and researchers; partnerships or donors pushing for fortification when it is not needed; de-prioritization of medium- and long-term solutions; private foundations brokering and encouraging a self-regulatory approach.
- The private sector influences governmental decision-making and the global political climate. The lack of independence of advisers on fortification can undermine trust and integrity. Independence of research is important since decisions should be based on evidence.
- Establish stronger conflicts of interest safeguards within Codex Alimentarius.
- At-risk areas: standard-setting, gap assessments (e.g. determining the need for countrywide fortification), evaluating options (e.g. fortification versus other nutrition interventions).
- Fortification of unhealthy and highly-processed foods – illustrating the intertwined relationship between fortification and reformulation given the multiple burden of malnutrition.

4.7.2 Prevention and management tools

The working groups described a variety of existing and potential tools, and generated the following suggestions:

- Focus on strategies for prevention, rather than management of conflicts of interest.
- Adapt the strategy for prevention of conflicts of interest to the national political context (e.g. stress a regulatory approach or deregulatory tendencies).
- Establish a process which protects governmental policy-making from private sector interference by ensuring that governments are responsible for setting the rules (including penalties) and that there is no multi-stakeholder participation in the norms-setting process. In situations where a multi-stakeholder approach is required, ensure a favourable balance of power for public interest representatives (e.g. ensuring that industry representatives are unable to vote or otherwise disrupt consensus). Industry-influenced institutions and private foundations with investments in products and services regulated by governments should not provide funding or participate in standard-setting, priority-setting or programme delivery. The government should establish clear rules for expert committees to ensure the public interest.
- Provide guidance to, and build capacity of, Member States in relation to both: (i) interpreting scientific evidence; and (ii) addressing conflicts of interest and industry influence more broadly. Build an enabling environment based on research, evidence-based assessments and implementation of WHO guidelines.
- Enforce advocacy and awareness raising.
- Establish monitoring and enforcement by building country capacity to monitor and enforce policies; introduce accountability mechanisms to monitor industry compliance and ensure penalties and disincentives for non-compliance.
- Establish clear performance indicators, clear guidelines and requirements from government. Establish an independent body to set such requirements with the authority to do so. Introduce certification processes that are verified, independent and non-conflicted.
- Use public praising and “naming and shaming” as accountability mechanisms.
- Establish clear engagement frameworks and practical guidelines when engaging the public and private sectors (whether and how to engage; agreement on goals beforehand required).
- Use transparency tools such as mandatory lobbying registries for private lobbyists to register and log details about their communications with government officials; require transparency in all industry-government interactions and use online systems for transactions (e.g. applications and processing of product registration, public consultations, meetings, official comment records, publish verbatim transcripts of meetings between government officials and non-State actors, webcast and video-archive multi-stakeholder consultations, etc.).

4.7.3 Examples of additional country practices

The following two examples were highlighted:

- Philippines: Introduction of a certification seal for industry compliance for both voluntary and mandatory (for staples such as rice, wheat flour, cooking oil and sugar) fortification.
- Brazil: The advisory committee on fortification does not include supplement manufacturers. The government also requires official recorded transcripts to be made of all private meetings between government and industry representatives.



5. Childhood overweight

The fourth session explored conflicts of interest involved in the prevention of childhood overweight.

5.1 WHO expert presentation

Dr Chizuru Nishida, of the WHO Department of Nutrition for Health and Development, gave an overview of WHO-recommended interventions for preventing childhood overweight and obesity. The recommendations were drawn from the Childhood Overweight Policy Brief.²⁸

The policy brief prioritizes five actions:

- Developing coherent public policies, from production to consumption and across relevant sectors, to ensure healthy diets throughout the life-course.
- Ensuring the availability of nationally approved authoritative Food-Based Dietary Guidelines (FBDGs) for all age groups.
- Taking measures to address early life exposure, to improve nutritional status and growth patterns (improving understanding of appropriate child growth, enhancing the food system to support healthy dietary practices throughout the life-course, regulating the marketing of food and non-alcoholic beverages to children, and regulating the marketing of complementary foods).
- Supporting research on root causes of overweight and obesity, including changes in the food system, availability of healthy foods, and strategies to ensure the provision of year-round access to food that meets people's nutritional needs and promotes safe and diversified healthy diets.
- Creating an enabling environment that promotes public actions to prevent sedentary lifestyles from the early stages of life.

Examples of actions to ensure early life exposure to nutritional well-being include the provision of targeted subsidies for nutritious foods to disadvantaged, vulnerable women prior to, during or after pregnancy, and improving infant and young child feeding practices (e.g. through implementation of the Code). Actions to improve the school environment include the implementation of food standards and health-promoting meal-subsidies for all schools, removing incentives for unhealthy dietary practices (e.g. vending machines), provision of fresh drinking water, and regulation to control the availability of fast food outlets near schools. The many actions to improve the community environment and social norms include the development of FBDGs, improving consumer information, regulating marketing to children and imposition of taxes on HFSS foods and sugar-sweetened beverages.

²⁸ Global nutrition targets 2025: Childhood overweight policy brief. Geneva: World Health Organization; 2014(WHO/NMH/NHD/14.6; http://apps.who.int/iris/bitstream/10665/149021/2/WHO_NMH_NHD_14.6_eng.pdf, accessed 8 May 2016).

5.2 External expert presentation

Ms Michele Simon provided an overview of the experience of the United States in engaging with the food industry, specifically in relation to food reformulation and marketing to children.

Voluntary industry changes (industry-wide or individual companies), private foundation partnerships and PPPs are among the approaches to nutrition policy employed in the United States. All of these have little or no oversight, with the exception of PPPs. Federal government regulations for nutrition policy are almost non-existent.

Industry-wide voluntary action has taken place on reducing HFSS food marketing to children, and has been ineffective. Industry-wide efforts have also been made to remove calories from the food supply. In addition, individual companies have made pledges to reformulate. Some private sector activities are brokered by private foundations. For instance, one of the best-known chains of fast food restaurants brokered a pledge on marketing to children with a health-related foundation. Another example refers to a programme which founded an offshoot to broker industry commitments. This raises a number of questions about transparency and accountability.

An attempt by several government agencies to jointly introduce voluntary self-regulation of marketing to children did not succeed. There is evidence, however, that exposing conflicts of interest can have an effect. Media coverage of the endorsement of a children's cheese product by an nutrition and dietetics institution resulted in the institution withdrawing the endorsement. There has also been a backlash as a result of media exposure, amplified by social media, of one of the most marketed non-alcoholic beverage companies funding of scientists who attempt to shift the blame for obesity away from diet. In this way, public shaming and social media can counter the negative impacts of conflicts of interest.

5.3 Country case studies

Short case studies were presented to give an overview of efforts to deal with conflicts of interest in relation to prevention of childhood overweight in two countries – Brazil and Mexico.

Brazil (Dr Fabio Gomes)

Overweight can be an expression of malnutrition resulting from unhealthy and unsustainable food systems. The key to Brazil's approach to preventing conflicts of interest in relation to prevention of overweight is social participation. Since 1998, social participation has been enshrined in the constitution and since 2014 an expanded national policy on social participation was introduced.

In Brazil, the right to food is considered part of the right to education. If a State is not providing food to children it is failing to provide education. Since 2001 at least 70% of core foods in the school food programme have to be local agro-foods and since 2009 the legislation has been extended to the entire public schools network, which includes adult education. At least 30% of the food served in schools has to come from local small or family farms, with priority given to maroons, indigenous people and landless settlers. More than 5000 school food councils have been established, free from private interests. Nonetheless, there have been attempts by the private sector to obtain access to schools. Parents and civil society organizations have been counteracting such efforts by denouncing, for example, the organization of shows by one of the most known chains of fast food restaurants in schools – a practice which is no longer allowed in most states and municipalities and which continues to be banned throughout the country's public schools network.

The National Food and Nutrition Security Council is made up of elected members of civil society (two thirds) and government (one third), and is presided over by a civil society representative. The Council is required to report back to the national conference every four years and to declare any planned changes.

A code of conduct for high-level officials in the federal administration also exists; high-level officials are required to be accompanied by at least one other public civil servant in any meeting with private sector and a record must be kept of the meeting.

The Food, Nutrition and Cancer Institute has developed criteria to evaluate a company's products, practices and policies "3P", including goals, visions, missions when any proposal for engagement with a private company is received. When any products, practices or policies diverge from or oppose public health authorities' policies, missions or practices, the recommendations or proposals are rejected. An assessment of the top 10 largest food and beverage companies using those criteria will be published soon in Portuguese and English. The criteria have also been adopted by nutrition and health professionals' organizations, civil society networks and other organizations working in the public interest in Brazil and Latin America.

Mexico (Dr Lucero Rodriguez Cabrera)

Mexico has a strategy in place for the prevention and control of overweight, obesity and diabetes. The three main areas of the strategy are public health interventions, medical interventions and policy (including fiscal measures).

Conflicts of interest have been encountered since the beginning of the policy process – at the policy design, implementation and evaluation stages. The Ministry of Health was offered private sector funding to establish an education programme, but refused the funding.

Statutory school food guidelines are in place and private interests have attempted to exert influence. There have been efforts by the sweetened sugary beverage industry to provide water in schools. Advocacy has been carried out with school authorities to encourage them to reject any funding, gifts or donations from the food or beverage industry. The school community needs to be empowered to reject the participation of industry in healthy feeding decisions in schools, and sanctions should be implemented for educational authorities that do not comply.

The strategy also includes improvements to food labelling, with statutory front-of-pack labelling and the introduction of an optional quality nutritional seal for foods of low and medium calorie density that meet nutritional standards. Of 532 applications for the quality seal, only 32 have been accepted. The seal is designed to encourage reformulation, although some categories – sodas, chocolates, confectionery and snacks – can never obtain the seal.

A further measure is the introduction of statutory restrictions on advertising of food and beverages to children on television and in cinemas. The challenges of marketing on the Internet, social networks and cable television remain, along with marketing in adult spaces and shows that are also child friendly (e.g. soap operas and sports events).

The final element highlighted was the tax on sugar-sweetened beverages, energy drinks and high-calorie, non-staple foods introduced in 2014. Preliminary results suggest an average decline of 6% in purchases of taxed beverages in 2014 compared to pre-tax levels, and this might have increased to as much as 12% by December 2014, and even up to 17% in lower socioeconomic level households. The tax faced strong opposition from the food and beverage industry and there was a great deal of lobbying in the national congress and interference in the legislative process.

A number of approaches are being used to handle conflicts of interest. These include independent evaluation by the Mexican Observatory of Noncommunicable Diseases and channelling of all interaction with industry through industry associations or chambers of commerce. Other elements that help are a close relationship with academia and parliamentary groups and the refusal by the Ministry of Health of sponsorship by the food industry. The policies and governmental bodies/processes are transparent and open to public consultation. It was emphasized that integrity is key and that any undermining of integrity may be seen as a conflict of interest and have an impact on the credibility of the public institution in question.

5.4 Discussion

There was some discussion of the sponsorship of the Olympics by food and beverage companies. Host countries are not really able to challenge these sponsorship decisions at later stages, but Brazil will try to promote local agro-ecological foods during the Rio games. The Nutrition 4 Growth Initiative²⁹ will meet in Rio in 2016, to coincide with the Olympics, and the organizing committee aims to avoid sponsorship from multinational food and beverage companies.

5.5 Working group session 3: childhood overweight

In the third working group session, the groups were asked to identify potential conflicts of interest associated with prevention of childhood overweight and obesity, to describe existing and potential prevention or management tools, and to present additional country case studies. The combined conclusions of the four groups are synthesized below.

5.5.1 Identification of potential conflicts of interest

- Undesirable potential for industry-oriented or industry-funded philanthropic foundations and/or the private sector to influence priorities and choice of policy approaches.
- Trade liberalization driven by business interests versus weakened governments.
- Private sector reframing of the issue: this can include influencing the agenda and/or priority-setting, shifting blame (e.g. from food to physical activity), shifting responsibility (from institutions to individuals), or shifting proof to one single factor of potential factor effect.
- Interference with legislative processes: lobbying at international (Codex, etc.) and national (parliamentary, ministerial, official) levels to delay or derail regulation; pushing a culture of self-regulation; fostering partnerships that promote a voluntary approach.
- Private sector sponsorship and participation in schools.

29 Nutrition 4 Growth Initiative (<http://nutrition4growth.org/>, accessed 8 May 2016).

- Imbalance of available resources: decreasing levels of public funding means increasing reliance on private finance.
- Decentralized government decision-making on policy increases opportunities for industry influence.
- Revolving door policies between government and the private sector that, for instance, enable senior industry executives to enter priority-setting, law-making, or enforcement roles in governments, and allow senior government regulators to obtain industry positions to shape commercial lobbying and marketing practices.

5.5.2 Prevention and management tools

The working groups described a variety of existing and potential tools, and generated the following suggestions.

- Include social participation in national constitutions.
- Build a bottom-up, public interest social movement.
- Define some exclusion criteria for partnerships involved in public policy.
- Develop tools to distinguish PINGOs from BINGOs and business front groups. Establish criteria for involvement of people with public health interest.
- Enforce capacity-building for Member States in fiscal and regulatory policy development, implementation and enforcement; and for health policy-makers in relation to food systems, trade negotiations and health impact assessment tools, as well as in protecting and maintaining public policy space in trade negotiations.
- Advance the human resources for health agenda to address shortage of health workers.
- Set funding eligibility criteria that prohibit recipients to accept co-funding from a source with conflicts of interest.
- Raise awareness within the food and agriculture systems of their impact on health systems.
- Use the WHO nutrient profiling tool³⁰ to help identify priorities for fiscal policies. Establish government-developed and supported nutrient profiles to ensure clarity.
- Include social movements within WHO forums (e.g. the World Health Assembly) as part of WHO reforms.
- Conduct health impact assessments on global trade agreements.
- Implement the ICN2 framework for action.³¹
- Establish a neutral foundation, with public sector governance, to act as a pool for industry funding to finance research and actions.
- Introduce statutory regulation to control marketing to children and establish rules to ensure that the private sector does not have access to schools.
- Reinforce strategies for accountability (naming and shaming, threat of regulation, use of international comparisons).
- Monitor how industry practices evolve and use social media to expose conflicts of interests and undesirable practices.
- Strengthen promotion of diverse, locally-produced food.
- Use arguments other than health (e.g. costs and economic productivity) to make the case for policies and regulations.
- Establish whistle-blower safeguards to ensure that government officials are not penalized for holding their employers and senior staff to account for failing to follow institutional or individual conflicts of interest policies.
- Ensure that the fact, date and content of oral and written communications between industry and government officials are publicly and proactively disclosed in a accessible Internet-based resource.
- Establish post-employment policies, including defining a “cooling-off” period.

5.5.3 Examples of additional country practices

The following two examples were highlighted:

- India – pressure exerted on free school meals scheme to introduce processed foods.
- Brazil – increased community participation in decision-making.

³⁰ Nutrient profiling. In: Nutrition [website]. Geneva: World Health Organization; 2016 (<http://www.who.int/nutrition/topics/profiling/en/>, accessed 8 May 2016).

³¹ Second International Conference on Nutrition, Rome, 19–21 November 2014. Conference outcome document: framework for action. Rome: Food and Agriculture Organization of the United Nations and World Health Organization; 2014 (<http://www.fao.org/3/a-mm215e.pdf>, accessed 8 May 2016).

6. Final plenary discussions

The final plenary discussion reinforced many of the points made earlier, such as the need to focus on prevention of undue influence and conflicts of interest.

While there may still be a need for more discussions to better distinguish between identification of risks from undue influence and conflicts of interest of individuals and institutions, it was highlighted that the ultimate aim of all these measures was the preservation of institutional integrity, independence, credibility and public trust.

The role of a strong, organized civil society was emphasized.

There was a request to refer to corporate tactics to undermine public health as exactly that and not to sanitize them by referring to conflicts of interest.

Legal experts stated that including a diverse range of participants in a joint venture, partnership or committee might have value as a mechanism to ensure representation

of various interest groups, but it does not effectively cope with conflicts of interest. The conflict of interest of one actor does not balance out the conflict of interest of another. Sometimes it will not be possible to promote inclusiveness and representation of all groups if one wants to effectively manage conflicts of interest.

It is clear from the discussions that a whole range of tools needs to be developed. The importance of capacity-building to equip national policy-makers to recognize, understand and tackle conflicts of interest was again stressed.

Methodologies for assessing the health implications of entering trade agreements would be helpful for health ministers when negotiating with other ministerial colleagues. Human rights impact assessment was mentioned as one possible tool that would help countries address conflicts of interest.



7. Summary outcomes and next steps

In relation to definitions, there had been a useful debate and some important concepts had been highlighted, namely that participants are concerned about undue influence by secondary interests on their primary interest(s) (intra-personal and intra-institutional), either actual or perceived. This is linked to integrity, independence and public trust, and can be monetary or non-monetary, direct or indirect.

It was stressed that the concept of conflicts of interest should not be confused with “conflicting” or “diverging” interests between different actors in society.

The discussion on the specific nutrition topics provided useful information regarding the context in which conflicts of interest can arise and how they can affect nutrition policy.

Conflicts of interest need to be examined at several stages in the policy process:

- i. initially, when governments decide whether to establish a policy;
- ii. second, when governments establish a policy and/or set up a programme;
- iii. third, when implementing policies;
- iv. fourth, when monitoring government programmes and evaluating public policies.

The first three stages are where there is the greatest likelihood of engagement with the private sector, and in each of these stages there should be an explicit assessment to determine whether there are conflicts of interest and if so, how they should be addressed.

Initially, to identify whether a conflict of interest exists, individuals conducting an assessment need to understand the missions, obligations and activities of organizations as well as their primary and secondary interests. If the initial assessment identifies the presence of conflicts of interest then there should be an assessment to determine how important the conflicts of interest are, based on

the potential risks to public policy and the outcomes that might result from the conflicts of interest. Next, there should be an assessment of various options to avoid the conflicts of interest or to cope with them through employment of some management strategy. This assessment should consider the costs and benefits of alternative approaches to avoid or manage conflicts of interest.

There are several tools that are used to manage conflicts of interest. Legislative tools are one way to avoid or mitigate conflicts of interest – the more regulation there is, the easier it is to effectively avoid and adequately address serious conflicts of interest.

Policies that mandate declarations of financial interest are necessary to identify conflicts of interest and to provide the information needed to assess them. Once conflicts of interest of individuals have been identified they can sometimes be resolved through divestment of financial interests or recusal from participation in decisions that can affect their financial interests.

Governmental and private organizations sometimes require, as a condition of employment, that after individuals terminate their employment they cannot work in certain kinds of organization for several years, to prevent them from providing sensitive information about their previous employers.

There is a need for guidelines for public officials and, possibly, professional codes of conduct and sponsorship policies.

There was a lot of debate about PPPs. Several participants emphasized that partnership should not be the paradigm or default mechanism for public health interventions.³² However, if the decision has been made to enter into such a partnership, there are a number of things that

32 Marks JH. Toward a systemic ethics of public-private partnerships related to food and health. *Kennedy Institute of Ethics Journal*. 2014;24(3):267–99.

can be done to try to ensure that the partnership serves the interest of public health.

Before Member States enter into a partnership or joint venture or engage in any form of relationship with private sector actors, they should analyse whether there are conflicts of interest. If conflicts of interest exist, then they need to consider whether or not they should enter into the partnership. If it has been determined that a conflict of interest can be adequately managed and a government enters into a partnership with a private sector actor, then there are several strategies that can be employed, depending on the circumstances.

It can also help to define and limit the roles of various actors that participate in a partnership, establish rules that restrict or regulate any private sector financial sponsorship, and establish rules that specify appropriate governance structures and membership in governance bodies.

To help reduce the risk of improper conduct being hidden, there should be transparency regarding the sources and content of data used to make decisions and regarding

the decision-making process. To guide policy, it helps to specify certain public health goals and existing policies that must be respected, such as the International Code of Marketing of Breast-milk Substitutes, or the Global Strategy on Infant and Young Child Feeding. The goals of the partnership and the activities that they will perform should be specified, as should the stages of the partnership's work.

It also helps to establish a means of independent monitoring of the activities of the partnership, with strong civil society institutions, protection for whistle-blowers, and engagement of independent consumer groups in the policy process and registration of lobbyists and limits on lobbying.

The outcomes of this consultation informed the WHO Secretariat report which was presented to the Executive Board at its 138th session in January 2016 and which will be discussed at the Sixty-ninth World Health Assembly in May 2016.

Annex I: Background paper

Background document developed by an external expert
(NOT A WHO DOCUMENT)

WHO Technical Consultation
on addressing and managing conflicts of interest in the planning and delivery of nutrition programmes at the
country level
(Geneva, 8-9 October 2015)

Disclaimer

The author alone is responsible for the views expressed in this background document. This background document does not represent the views, decisions or policies of the World Health Organization (WHO).

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EDITED VERSION

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Background

The Sixty-fifth World Health Assembly (WHA 65) indicated that global efforts to improve nutrition should focus on six global nutrition targets to be achieved by 2025 and endorsed a comprehensive implementation plan on maternal, infant and young child nutrition (CIP)¹ through Resolution WHA65.6.

The CIP includes action areas for Member States, WHO and other actors and recommends the creation of “a supportive environment for the implementation of comprehensive food and nutrition policies” and calls for Member States to “establish a dialogue with relevant national and international parties and form alliances and partnerships to expand nutrition actions with the establishment of adequate mechanisms to safeguard against potential conflicts of interest”. Resolution WHA65.6 also requested the Director-General to “develop risk assessment, disclosure and management tools to safeguard against possible conflicts of interest in policy development and implementation of nutrition programmes consistent with WHO’s overall policy and practice [...]”.²

The Department of Nutrition for Health and Development (NHD) of the World Health Organization (WHO), in collaboration with internal partners, established a work stream to analyse definitions and relevant issues for further discussion by Member States and reported to the Sixty-seventh World Health Assembly (WHA67). The WHA67 held in Geneva in May 2015 requested the Director-General “[...] to convene informal consultations with Member States to complete the work, before the end of 2015, on risk assessment and management tools for conflict of interest in nutrition, for consideration by Member States at the Sixty-ninth World Health Assembly” (WHA67/65).

In response to this request, the Department of Nutrition for Health and Development is convening a technical consultation with experts in the area of risk assessment, disclosure, management of conflict of interest and other areas of expertise, with the participation of Member States as observers.

Purpose

This WHO Discussion Paper is based on a draft background paper commissioned for use as a framework for discussion among experts during the technical consultation on addressing and managing conflict of interest in the planning and delivery of nutrition programmes at country level.

Definitions

General definition

Harvard professor Dennis Thompson defines a conflict of interest as “a set of conditions in which professional judgement concerning a primary interest [...] tends to be unduly influenced by a secondary interest [...]”³. This definition reflects the meaning that many specialists in government and professional ethics would assign to the term “conflict of interest” and is broad in that it applies equally to both individual and institutional conflicts of interest. There are three important things to note about this standard definition.

Actual versus potential conflict of interest

According to this definition, an actual conflict of interest arises when a secondary interest tends – in other words, simply has the *potential* – to unduly influence official judgement or action. Sometimes people use another term and refer, as, for example, the CIP does, to a “potential conflict of interest”. Usually, however, what they mean by this term is what most experts would call an “actual” conflict of interest. An actual conflict of interest already arises, for reasons to be explained below, when there is even a potential for undue influence.

Hence properly understood, a “potential” conflict of interest would have to arise when there is simply a potential *for the potential* of undue influence. Although that kind of circumstance can occur, it is not of central concern here.

Actual versus perceived conflict of interest

A conflict of interest can be both actual and perceived. An “actual” conflict of interest, as noted, arises when a secondary interest has the potential to unduly influence official judgement. So a “perceived” conflict of interest would arise when – even if such a potential does not actually exist – it can reasonably be perceived to exist.

There are a few different definitions of a perceived conflict of interest:

- Some experts say that a perceived conflict of interest arises if, although there is no actual conflict of interest involving an official’s financial connections (fees, gifts, and stockholdings) to a private company, it might appear as if he has them. One US example involves a regulator of federal banks who had financial holding in non-federal banks. He had no official capacity to affect his holdings, but it was deemed that most people would not see the difference between

1 Comprehensive implementation plan on maternal, infant and young child nutrition. Geneva: World Health Organization; 2014 (http://www.who.int/nutrition/publications/CIP_document/en/, accessed 8 May 2016).

2 Resolution WHA65.6. Maternal, infant and young child nutrition. In: Sixty-fifth World Health Assembly, Geneva, 21–26 May 2012. Resolutions and decisions, annexes. Geneva: World Health Organization; 2012:12 (WHA65/2012/REC/1; http://apps.who.int/gb/ebwha/pdf_files/WHA65-REC1/A65_REC1-en.pdf, accessed 6 May 2016).

3 Thompson DF. Understanding financial conflicts of interest. *N Engl J Med.* 1993;329:573–6.

federal and non-federal banks, and so he was deemed to be in a perceived conflict of interest.

- Other experts draw a distinction between actual conflicts of interest posed by an official or agency's financial links to a private company (gifts, fees, stockholdings, research funding) and perceived conflict of interest that can arise from the non-financial relationships that may exist between officials/agencies and private interests. Such non-financial relationships can include close personal attachments, undue political pressure exerted by a company, or a company's close participation in quasi-official roles. The difference is simply that financial connections are, in principle, more verifiable and hence "actual", while non-financial relationships are less tangible, and so whether they exist or not can be a matter of disagreement. If, however, most reasonable people would perceive such non-financial undue influence to exist, then a perceived conflict of interest arises.

The two basic definitions of perceived conflict of interest are equally important and are not inconsistent with each other. However, for purposes of this document, the second meaning will be used.

Undue versus proper influence

Finally, the standard definition equates conflict of interest with the potential for *undue* – or improper – influence. An actual conflict of interest generally refers to influences that are undue because they arise from the monetary connections that an official or agency has with a vested interest, which (as explained below) will generally be a private for-profit business. A perceived conflict of interest generally arises from influences that are undue because they come from certain kinds of non-monetary relationships between an official and a private interest, such as relationships of favouritism, coercion and unequal power.

Both kinds of conflicts of interest, actual and perceived, are to be distinguished from situations in which the influence exerted by a private interest is not undue or improper. Private businesses can engage government in a variety of ways that fall within the range of legitimate interventions: lobbying, presenting briefs and participating in multimember stakeholder platforms. As long as those interventions are made on the merits and are transparent, they do not pose a conflict of interest.

Both actual and perceived conflicts of interest can create serious problems for policy-making and implementation, and a proper understanding of each is important.

Actual conflict of interest

An actual conflict of interest arises when a vested interest – a company for example – gives something of value (e.g. speaking fees, a gift, hospitality, paid travel) to an official. It also arises when an official holds shares or some other financial stake in a vested interest. In other words, the official's own monetary or material benefit has the capacity to influence the objectivity of their judgement. By definition such influence is "undue", since it is – and should be – irrelevant to any judgements or actions the official takes in regard to the public interest.

An *actual* conflict of interest does not arise only if a vested interest *actually* unduly influences the objectivity of the judgement exercised by a public official or agency. Instead, an *actual* conflict of interest arises even if there is only a *potential* for a vested interest to unduly influence the objectivity of the judgement exercised by a public official or agency.

Example:

A multinational breast-milk substitute manufacturer invites officials to several dinners or pays for their travel to scientific conferences. Officials might well claim that they are a person of sufficient integrity that they are able, without considering their own private interests, the monetary or material benefit they have received, to make judgements about infant formula standards that are entirely in the public interest. They might sincerely believe that they are able to arrive at decisions without allowing their private interests to *actually* influence their judgement.

The problem is that no one else can know whether that is true. Judgement is an activity that takes place exclusively within a person's mind, and no one can see into the mind of another. In fact, the official is unlikely to be able to fully assess the quality of his or her own judgement. Studies show that people often think that their judgement is free of bias or undue influence when in fact it is not.⁴

Because we can never tell whether a person's judgement is *actually* unimpaired by whatever private interests he or she might have at stake, we deem an actual conflict of interest to arise when there is simply a *potential* for the official's judgement to be impaired by whatever private interest he or she might have in the outcome of his/her decision-making, regardless of whether his/her judgement was actually impaired or not. That is why, in most jurisdictions, the official would be required to refuse the hospitality or travel subsidies offered by the

4 Chugh D, Bazerman MH, Banaji MR, Bounded ethicality as a psychological barrier to recognizing conflicts of interest. In: Moore D, Cain D, Loewenstein G, Bazerman MH, editors, *Conflicts of interest: challenges and solutions in business, law, medicine and public policy*. New York (NY): Cambridge University Press; 2010.

manufacturer, or else recuse himself/herself from any decisions or actions that could affect its interests.

Perceived conflict of interest

A perceived conflict of interest arises in situations in which it may reasonably be *perceived* that there is a potential for a vested interest to unduly influence the judgement of an official or agency, even if that potential does not in fact exist.

In interpreting what this means, many specialists in government ethics draw the following distinction between perceived and actual conflict of interest. With a perceived conflict of interest – unlike with an actual conflict of interest – the vested interest in question will not have given the official/agency a monetary or material benefit, nor would the official hold financial shares or ownership rights in the vested interest. So if the vested interest is perceived to unduly influence official judgement, it would not – as with an actual conflict of interest – be because the official/agency in some economic way either shares in or has been benefited by the vested interest. Instead, the perceived undue influence must come from some other, non-monetary, non-material, non-economic aspect of their relationship.

Example:

A multinational food manufacturer pressures the government to adopt a particular kind of data system for compiling information about child nutrition, by threatening to withdraw its investments in the country if the government does not comply.

Even if the multinational has provided no gifts to the officials or agency concerned, and even if no official holds shares in the multinational – in other words, even if there is no *actual* conflict of interest – it might “reasonably be perceived” that the judgement of the officials/agency was unduly influenced by a vested interest, i.e., the multinational. The influence is “undue” because its coerciveness encumbered the official’s/agency’s capacity to make an objective and independent judgement as to which data system was most in the public interest. Note that such coercion would not normally constitute an illegal act – it is within the rights of the company to withdraw its investments – but it would constitute the perception of undue influence.

If, by contrast, the company had simply lobbied vigorously for its preferred system, making arguments as to why it thought that system was superior to others on public-interest criteria such as cost and quality, then any influence those arguments might have had would not be “undue”. The company’s efforts at influence would simply be standard lobbying practice, and they would contribute to the process of the government’s making a decision in the public interest.

Note that where the company does behave coercively, it does not matter whether the government acceded to the company’s proposed system or chose another one. Even if it chose another, the government’s judgement still could have been unduly influenced: Perhaps it gave the other company only a two-year contract instead of the five-year contract it would have offered otherwise, and no one would know for sure. All that matters is that the potential for undue influence, in this case a kind of coercion, exists.

Perceived conflict of interest can arise in other ways, as indicated below. For example, instead of being coerced by a private interest, an official might feel favouritism towards it, because of a personal relationship she or he has with the private interest’s executives. But in all cases of perceived conflict of interest, unlike with actual conflicts of interest, the potential undue influence does not arise from the official’s/agency’s own direct monetary, material or economic connection to the vested interest.

In actual conflict of interest, then, the potential for undue influence is economic. It is thus readily visible and measurable: a gift, a fee, an ownership share. In perceived conflict of interest, by contrast, it is psychological: coercion, favouritism or similar. Unlike quantifiable or tangible monetary or material benefits, these are a matter of perception. People can disagree on whether a situation is coercive. But at one point, as more and more people perceive (or would perceive) a particular private sector/government interaction as coercive, then a perceived conflict of interest arises.

Both actual and perceived conflicts of interest violate conflict of interest principles. The bottom line, as most government ethics specialists say, is that actual and perceived conflicts of interest must be treated with equal seriousness.

Institutional and individual conflict of interest

It is important to note conflict of interest can affect government- and intergovernmental agencies as a whole, and not only individual officials.

Example:

If a multinational manufacturer of breast-milk substitutes pays for a training centre for health department personnel, the department would be in an institutional conflict of interest: there would be a potential for the department’s interest in the training support, to unduly influence the independence or objectivity of its judgements/actions concerning the multinational.

Principles

Conflict of interest principles

Conflict of interest principles generally direct our attention to whether officials are free of undue influence from private interests as they engage in the process of decision-making. They do not direct our attention to whether whatever decisions they might make are, or are not, in the public interest.

That is because the public interest is often contestable. Many policy questions put different views of the public interest against one another. For example, is the employment a factory creates more important than preserving the surrounding environment? Other policy

questions must be decided in the face of unclear or conflicting empirical evidence. Will a cut in interest rates boost investment or not? In such instances, trying to evaluate whether a policy outcome was in the public interest will not give us a clear answer as to whether the underlying judgement was encumbered by some form of undue influence.

However, since public health policy outcomes are based on scientific evidence, it can be legitimate to use them as a measure of the existence and seriousness of a conflict of interest in the policy-making or implementation process.

The aim of conflict of interest regulation is to prevent or manage conflict of interest from arising at the outset of any policy-making or implementation process.

Box 1: Definitions

- An actual conflict of interest arises when a vested interest has the potential to unduly influence official or agency judgement/action through the monetary or material benefits it confers on the official or agency.
- A perceived conflict of interest arises when a vested interest has the potential to unduly influence official or agency judgement/action through non-monetary or non-material influences it exerts on the official or agency.
- An outcome-based conflict of interest arises when a vested interest, involved in the policy-making or policy-implementation process, seeks outcomes that are inconsistent with the demonstrable public interest.

Ethical issues versus conflict of interest

It is important to note that not all ethical problems in the relationship between the private and the public sector are conflicts of interest. Corporations can manipulate public opinion through advertising. Their greater resources can give them an unfair advantage in debates with NGOs. These are important issues of democratic discourse and equality, but they are not conflicts of interest. Those are separate issues.

Monetary conflict of interest versus non-monetary conflict of interest

In all three of the conflict of interest categories – whether actual, perceived or outcome-based – the “vested interest” exerting undue influence is a for-profit, private sector company. Most conflict of interest specialists believe that conflict of interest that arise from for-profit private sector interests are more serious than those that arise purely from other non-State actors. To see why, compare two cases:

1. a food manufacturer wants to market a new fortified flour it has developed;
2. a university scientist – who has no personal financial interests at stake – wants to advocate for a new kind of fortified flour that he or she has spent 20 years developing and studying.

It is true that in each case, the judgement in question – whether the food manufacturer’s or the scientist’s – can be biased. The manufacturer’s judgement can be biased by the money it hopes to earn from its product. The scientist’s judgement can be biased by his or her hope that something they have worked on for two decades proves to be successful, and the fame or professional acclaim that results. The view of each can be distorted.

However, there is a key distinction between the two. The food manufacturer’s interest is unlikely to be functional from a public-interest perspective, while the scientist’s is far more likely to be. That is because the food manufacturer can realize its interests in making money even if the flour is less effective in delivering nutrients than promised. But the scientist can realize his/her

interests in having developed an effective fortification technique only if that technique actually is effective. The scientist's interests are more aligned with those of the public.

Consider another comparison:

1. A civil society organization advocates for the reformulation of certain food products to contain less sugar or salt;
2. A commercial manufacturer of food products advocates against reformulation.

One might argue that both entities, the civil society organization and the commercial manufacturer, are biased in their perspectives: unable to exercise fully objective judgement on the question of reformulation. However, there is still a difference between the two.

Assuming that the civil society organization has no financial interest in advocating for reformulation, then it has come to its views on the basis of a sincere consideration of where the public interest lies. A civil society organization can have its own interests in organizational survival and success at stake in its interventions but these do not generally lead it away from expressing the view of the public interest to which its members genuinely subscribe.

By contrast, a private company that advances a product that will benefit it financially has an interest in promoting that product without reformulation.

Private sector influence through NGOs and academia

There is, however, an important caveat. Academics and NGOs can, in addition to any non-financial biases or ideologies, have vested financial or monetary interests as well. Academics might receive royalties from products they develop, and their research can be funded by private companies. NGOs can engage in co-sponsorship arrangements with private companies or accept donations from corporations. In these cases, private financial interests can infiltrate and skew the judgement of academics and NGOs in ways that go beyond whatever personal or organizational biases those academics and NGOs might have.

This background document addresses all conflicts of interest posed by financial or monetary interests, whether directly by for-profit companies or indirectly through the mediating structures of academic or civil society organizations.

The key distinction, then, is not between *for-profit companies* on the one hand, and *academics/NGOs* on the other. It is between *financial/monetary interests* on the one hand and *genuinely-arrived-at views of the public interest* on the other. And, as a general statement, financial/monetary interests, whether they exert influence through

for-profit companies or academics/NGOs, are deemed more capable than non-monetary biases of unduly influencing independence or objectivity of judgement.

Indicators of risk for the different types of conflict of interest

This section offers some indicators of high risk for (a) actual conflict of interest, (b) perceived conflict of interest and (c) outcome-based conflict of interest.

Indicators of high-risk for actual conflict of interest

An actual conflict of interest arises when there is a potential for a private interest with a stake in the outcome to unduly influence the judgement of an official or agency because the official or agency receives a financial benefit from the private interest. In other words, it arises to the extent that (a) the private interest has the capacity to transfer a monetary or material benefit to – and thereby influence – the official or agency, and (b) the official or agency has the capacity to affect the private interest.

Indicators of the risk of an actual conflict of interest thus focus on these two indicators: the private interest's capacity to benefit the official/agency, and the official/agency's capacity to affect the private interest. A third indicator focuses on the private interest's motives to engage in undue influence, by taking into account the degree to which the private interest's business success or survival depends on the policy-making/implementation process in question.

High-risk Indicator (1): The private interest's capacity to benefit the official/agency is significant

Generally, it will be considered significant to the extent that:

- (a) *The benefit takes the form of a gift from a private interest to an **individual public decision-maker** or an **individual public decision-maker** receives fees from or holds shares in the private interest.*

Rationale: Generally, benefits conferred on individual officials are deemed to pose a higher risk than those conferred on government agencies as a whole.

Example:

An official is offered a vacation trip or hospitality from a manufacturer of infant formula. In deciding whether to accept, s/he will – at best – consider whether his own private interests in enjoying that trip or hospitality outweigh whatever concern s/he might have that it will unduly influence his official judgement. Now think of

an agency that is offered emergency supplies from a snack food company. Whatever judgement it makes as to whether to accept, the only considerations will be competing notions of the public interest: whether the emergency need outweighs whatever concern the agency has that accepting the supplies will unduly influence its judgement in matters affecting the company.

(b) The benefit is of direct usefulness to an official or an agency, as opposed to third parties.

Rationale: If a breast-milk substitute manufacturer pays for a food distribution official's travel to a conference that creates a greater risk than when the manufacturer gives breast-milk substitutes to an official to distribute in a food aid centre. While the latter might give rise to a perceived conflict of interest (see below), it has a much lower risk of causing an actual conflict of interest. The breast-milk substitutes (assuming they cannot be converted to cash) are of no use to the official, and hence do not constitute the kind of personal benefit that could unduly influence his judgement.

Likewise, suppose that in an emergency an agency accepts a manufacturer's gift of unfortified flour to distribute in stricken areas. The manufacturer has contributed to the agency's capacity to fulfil its mandate and so benefits the agency, giving rise to an institutional conflict of interest.

If, however, the manufacturer gives packages of unfortified flour free to families in a non-emergency situation, then it has rendered no benefit to the agency (and might even have acted in a way that conflict with the agency's mission). In this latter case no actual conflict of interest occurs.

High-risk Indicator (2): The official/agency's capacity to affect the private interest is significant.

Generally, it will be considered significant to the extent that:

(a) The official or agency can affect the private interest individually, as opposed to as a member of a class.

Rationale: If an official/ (or analogously a public agency) is in charge of determining the subsidies to be given to individual food manufacturers, the official will have the capacity to benefit a company in which the official holds an interest – or from which the official receives a benefit – more than its competitors. If, by contrast, the official (or agency) is in charge of regulatory standards that apply

to all manufacturers equally, then the official capacity to affect her/his own interest in particular by changing regulations will be diluted by the comparable advantages that competitors will enjoy. Again, both situations would qualify as conflict of interest to be avoided. But the case in which the official can directly and uniquely benefit the private interest with which the official is linked poses a higher risk of conflict of interest than the case where the official can benefit only an entire industry or group of industries.

(b) The official or agency has exclusive authority over the company's interests.

Rationale: If an agriculture department official is in charge of his/her department's approval of an agribusiness' application for a regulatory exemption, but that exemption also has to be approved by the health department, then the official's capacity to affect the agribusiness's interests is limited. Even if he/she holds an interest in or receives a benefit from that business, there is a check and balance that prevents him/her from affecting it in a way that would not exist were the agriculture department the sole decision-maker. That does not mean that it is proper for the official to have such an interest, only that it poses a less serious risk of conflict of interest than it would if there were no checks and balances in the system.

High-risk Indicator (3): a private interest's stake in the outcome is critical to its survival or success

Rationale: To the extent that a private company's survival or success is at stake in a policy-making or implementation process, its motivation to use undue influence will be perceived to be higher. Officials should be on guard for such a risk.

Example:

In setting salt fortification standards, a company might have a financial interest in making iodine fortification requirements as high as possible. Yet while doing so might contribute to profits, it will not necessarily be crucial to the company's survival or success. By contrast, in setting reformulation standards for the sugar and salt content of various foods, which in turn will affect their addictiveness or market demand, a company's survival or success might be more substantially at stake in the policy process. The company's motivation for exercising undue influence will be higher, thus creating a risk factor for conflict of interest.

Box 2: The risk that an actual conflict of interest is more serious increases to the extent that:

- The private interest's capacity to benefit the public decision-maker is significant.
- The public decision-maker's capacity to affect the private interest is significant.
- The private interest's stake in the outcome is critical to its success or survival.

Indicators of high risk for a perceived conflict of interest

A perceived conflict of interest arises when, even though there is no actual conflict of interest, a reasonable person might nevertheless perceive that a private interest has the potential to unduly influence official judgement. In other words, it arises when a private interest has given no financial or monetary benefit to an official or agency, but when it nevertheless can be perceived to have the potential to exercise "undue" influence on official judgement or action for other reasons.

It is a challenging task to determine when a perceived conflict of interest exists in the dealings between private interests and officials or agencies. Many such dealings are proper and even beneficial to both sides if done transparently. Private interests should be able to express their views to government on policy matters that affect them. And governments should be able to advance and support private businesses when it is in the public interest to do so.

Perceived conflict of interest can arise, however, when the expression by a private interest of its views to government becomes coercive or takes the form of an unacceptable use of market power or pressure. Problems arise, too, when support by officials or agencies directed to private businesses involves a government's endorsement of a business's products in a way that puts government's credibility at stake, or gives certain businesses undue preferences over others.

The following indicators help to determine when the legitimate expression of views by businesses to governments risk becoming coercive or unduly controlling, and when the legitimate support by governments of private businesses risks putting its credibility at stake or becomes unduly preferential.

It is important to appreciate, however, that these indicators are by definition qualitative, not quantitative. They are a matter of "reasonable" judgement – what a reasonable person might perceive.

A high risk of a perceived conflict of interest exists when:

High-risk Indicator (1): a private interest is sufficiently powerful within the country's economy that officials or agencies might accede to its wishes even if they do not believe that doing so is in the public interest

Rationale: A large multinational might be able to coerce officials through expressed or implied threats to shut down factories or distributorships if the government does not follow its policy directives. If this is a reasonable perception, then it is reasonable to believe that government might do the multinational's bidding not because it genuinely believes it to be in the public interest to do so, but because the power of that private interest has placed an improper weight – an *undue* influence – on the scale. That would rise to the level of a perceived conflict of interest, i.e., a conflict of interest even though there are no financial ties between the multinational and the officials concerned.

High-risk Indicator (2): a private interest is sufficiently powerful within the country's public-decision-making apparatus that it begins to occupy not simply a private but a quasi-public role

Rationale: Private companies can legitimately express their views to governments through hearings, meetings or multi-stakeholder platforms. As long as there is a strong and transparent State apparatus, then private companies merely remain one private party expressing their views to government among others. But if government begins to rely on those private companies for scientific research or voluntary self-monitoring activities because it does not have the capacity to undertake such research or monitoring activities itself, then the private company can reasonably be perceived to have taken on a quasi-public role, thereby exercising an undue influence on policy decisions or implementation. And because it has its own private interests at stake in exercising that perceived public role, a perceived conflict of interest would arise.

High-risk Indicator (3): an official's or agency's endorsement of a private company or its products is sufficiently significant that public trust and credibility is at stake.

Rationale: Consider situations in which a public agency validates a private company by promoting/displaying its commercial products at organizational events or in publications, co-sponsoring meetings with it, distributing its products in the case of health officials or physicians (i.e., samples of infant formula) or engaging in some other form of “whitewashing”.

In all of these cases, the public agency has given something of private market value – namely the public agency’s own credibility – to the company. And in doing so, the public agency has arguably crossed the line from being a State entity to being an investor – it has a *vested* interest, namely, its credibility – at stake in the company. For that reason, one might reasonably perceive that the government is no longer able to judge or act on matters relating to the company in a matter free from its own vested interest in the company’s reputation. In other words, the government’s own vested interest in the company’s products might act as an undue influence on its capacity to make judgements or undertake actions that affect the company.

High-risk Indicator (4): an official’s or agency’s support for a private company amounts to undue preference or favouritism, an undue advantage in the private marketplace

Rationale: Consider situations in which a public agency repeatedly gives procurement contracts, licensing arrangements, subsidies or similar to a particular private company (even if there is no actual conflict of interest; i.e., even if the private company has given no financial benefits to individual officials or the agency itself, and the contracts are all negotiated and approved according to proper procedures). Or, analogously, think of situations where officials have developed personal relationships with executives of a private company. To the extent that such a company has competitors or potential competitors, such behaviour can, if excessive, amount to a perceived conflict of interest. It will reasonably be perceived that the State is being unduly influenced by that company, when the State has an obligation to treat all citizens, and their enterprises, fairly and equally.

Box 3: Summary of perceived conflict indicators

- A private interest is perceived to exercise coercion with officials.
- Officials are perceived to show favouritism towards a private interest.
- A private interest exercises a quasi-official function.
- Government acquires its own vested interest in the private interest’s success.

If any of these situations exists, then the risk of a perception of undue influence arises: even if there is not any actual financial link between the private interest and any official or agency. It is important to note, though, that while these indicators capture many such perceived conflict of interest, they are not exhaustive. It might well be reasonable to perceive that a private interest has the potential to unduly influence official judgements in other types of situations as well.

Outcome-based indicators of a conflict of interest

The question to be asked here is whether the private interest is pursuing outcomes inconsistent with those that are widely held to be in the public health interest.

Example:

It is recommended for infants to exclusively consume breast milk in the first six months. Any involvement of a breast-milk substitute manufacturer in this area of policy-making or implementation might, therefore, be deemed a conflict of interest simply for that reason, whether or not there is (additionally) an actual or perceived conflict of interest. In other words, even if officials or agencies receive no financial benefits from breast-milk substitute manufacturers (no actual conflict of interest), and even if substitute manufacturers exercise no coercive or preferential influence over officials or agencies (no perceived conflict of interest), the manufacturers’ involvement can constitute an outcome-based conflict of interest. The outcomes sought by the manufacturer, and those sought by the agency, conflict. And so if the manufacturer were involved in certain aspects of the agency’s work, the potential would exist for it to unduly influence the outcome.

Or, to take another example, there are well-established protocols for scientific research in the area of nutrition. If a private entity supplies research to a public agency that does not meet those standards, then it would be a conflict of interest – inconsistent with the public interest – for the public agency to take that research into account in its policy-making, even if no actual or perceived conflict of interest is involved. Merely taking substandard research into account would be giving it the potential for undue influence, influence it should not have. It would be to allow the potential for an outcome inconsistent with the public interest.

The risk of an outcome-based conflict of interest is highest, then, when a private sector entity's involvement, whether or not an actual or perceived conflict of interest exists, would be inconsistent with the public interest as indicated by:

High-risk Indicator (1): the normative importance of maternal and child nutrition policy goal in question in terms of its universally agreed upon impact and urgency.

High-risk Indicator (2): the existence of empirical standards such as research protocols, evidence-based policy-making and best practices in implementation.

Box 4: Summary of high-risk indicators for conflict of interest

Actual conflict of interest

High-risk Indicator (1): The private interest's capacity to benefit the official/agency is significant.

High-risk Indicator (2): The official/agency's capacity to affect the private interest is significant.

High-risk Indicator (3): The private interest's stake in the outcome is critical to its survival or success.

Perceived conflict of Interest

High-risk Indicator (1): a private interest is sufficiently powerful within the country's economy that the official/agency might accede to its wishes even if they do not believe that doing so is in the public interest.

High-risk Indicator (2): a private interest is sufficiently powerful within the country's public-decision-making apparatus that it begins to occupy not simply a private but a quasi-public role.

High-risk Indicator (3): an official/agency's endorsement of a private company or its products is sufficiently significant that public trust and credibility is at stake.

High-risk Indicator (4): an official/agency's support for a private company amounts to undue preference or favouritism, an undue advantage in the private marketplace.

Outcome indicators of conflict of interest

A high-risk of an outcome-based conflict of interest exists when a private sector entity's involvement, whether or not an actual or perceived conflict of interest exists, would be inconsistent with the public interest as indicated by:

High-risk Indicator (1): the normative importance of the child nutrition policy goal in question in terms of its universally agreed upon impact and urgency.

High-risk Indicator (2): the existence of empirical standards such as research protocols, evidence-based policy-making and best practices in implementation.

Methodologies and tools

A basic set of methodologies exists for *preventing* and *managing* conflicts of interest, whether actual, perceived or outcome-based. Specific tools, in turn, exist for implementing each of those methodologies, and examples are noted in the Chart, Examples of Tools, at the end of this section. The methodology and tools can both be used singly or in combination as appropriate.

Preventing conflict of interest

A number of methodologies and tools exist for preventing conflict of interest. They include the following.

Disclosure and transparency

At the very minimum, officials, agencies, or private sector participants in any policy-making or policy-implementing process must publicly disclose any secondary interests (either their own or those of close family members) that have the potential to influence their judgement in determining or executing the policy concerned in the public interest. In other words, they have the obligation to disclose any interests (shareholdings, gifts, fees, travel subsidies) that could be affected by the policy-making or implementation in question.

But it is now widely recognized that public disclosure is insufficient in itself for handling most conflicts of interest. In the absence of a vigilant press or civil society community to monitor public disclosure forms and raise concerns, disclosure has little utility. Academic studies show that officials have a tendency to think that, once they have disclosed an interest, it is legitimate to continue holding it if no one objects. And often, the press or civil society institutions do not have the personnel required to read, do further relevant research, or effectively challenge officials on their disclosure reports. Even where such a press, NGO community or political opposition does exist, disclosure in itself will simply provoke a debate between critics and the official concerned as to whether his interests actually would or did affect his judgement. And that, as noted earlier, is a question that generally cannot be satisfactorily resolved.

So, on the basis of the interests that an official or other entity participating in policy-making/implementing discloses, the government agency concerned can determine the risk of a conflict of interest. It can do so based on the indicators mentioned above, and other considerations such as whether the interest falls below a certain insignificant threshold in amount. And it can then recommend some of the further steps (e.g., divestiture, recusal) for preventing/managing conflict of interest that are discussed below. But for disclosure itself, the following tools are necessary.

Examples of tools:

1. Form for Disclosure of Interests for Individuals (e.g., WHO disclosure form, *Examples of Tools Chart, Item 7*)
2. Register of Institutional Interests for companies (e.g., the EU Transparency Register, *Examples of Tools Chart, Item 8*)

Beyond this, transparency and disclosure are tools that can be used to declare not only private interests but the public interest. For example, in potential “whitewashing” cases, in which a public agency participates in an event or project along with a multinational, the agency can publicly state that its participation in no way implies an endorsement of the company’s products. The agency can ensure that any information that the State might wish to provide about those products – from research findings to labelling warnings – are prominently made transparent or disclosed to the public at jointly-sponsored events or during the conduct of joint projects. Such disclosure can also take place through information distributed in health clinics or food distribution centres, or by cell phone. Doing so will help avert the State lending its credibility to private companies, or their products.

The agency can also bar private sector organizations from making claims about the nature of any public-private collaboration that implies a broader endorsement or relationship that does not exist. An analogy here can be found in the way that officials are often obliged to indicate that their published views are not necessarily endorsed by their agency. Making or requiring these kinds of public statements will help avoid the State lending its credibility to private companies, or their products, in a way that leads to a perceived conflict of interest because the State’s identification with that company or product can reasonably be perceived to hamper its capacity to impartially regulate it.

A final transparency issue concerns the standards of conflict of interest themselves which should be guided by the organization’s policy and code of ethics/code of conduct. The code of conduct should be made available to officials and the public. Presentation and understanding of the code should be part of the training procedure for officials.

Divestment

Divestment means requiring officials to sell shares in any companies whose interests they can affect in their official role. If a disclosure statement indicates that an official possesses interests that she or he can affect in their official capacity, s/he can be required to divest them. Upon proof of his having done so, a certificate of divestiture can be issued.

Sometimes officials cannot sell their interests immediately, if for example there are no ready buyers. In some such cases, it is appropriate for the official to place those interests in a blind trust whose activities are then screened from the official, who is therefore “blind” to them. Over time the trustee will sell the interests contained in the trust, but the official will not know what has replaced them or when. Officials will thus be screened (initially only partially but ultimately completely) from their interests in that way.

Analogously, the logic of divestment requires officials not to receive or retain fees or gifts from entities with a vested interest in their official work. And where such receipt is unavoidable, gifts should be disclosed to the agency and then given to charity. The idea behind all such modes of divestment is to prevent conflict of interest by removing from the official any secondary interest that has the potential to unduly affect his or her judgement as the official makes decisions or acts in the public interest.

Examples of tools:

1. Certificate of Divestiture (see US Office of Government Ethics Request for Certificate of Divestiture, *Examples of Tools Chart, Item 9*)
2. Blind Trust Documentation (see US Office of Government Ethics Model Qualified Blind Trust Provisions, *Examples of Tools Chart, Item 10*)
3. Registry of Gifts (see Office of the Conflict of Interest and Ethics Commissioner, Canada, Example of Entry in the Gift Registry, *Examples of Tools Chart, Item 11*)

Screening

Screening means, where possible, requiring agencies to organizationally partition officials whose interests can be favourably affected by a company’s contribution to the agency from those officials who can affect the company in their official roles.

Example:

A food company partners with a government agriculture department’s research facility, providing funds for a joint project. At a minimum, any researcher whose departmental work benefits from that funding should not be permitted to interact or communicate with any departmental officials who regulate the company – say, on safety matters – on any issue having to do with the company.

In turn, officials who do regulate the company should not be on career paths that would cycle them back to the research division in a way that would allow them to benefit professionally from the company’s contribution. Even better would be a situation in which the researchers themselves were blind to the identity of the donor, i.e., if the company gave its funds to the agency in a way that allowed its identity to remain anonymous.

Examples of tools:

1. Screening Arrangements (see US Office of Government Ethics Model Screening Arrangement, *Examples of Tools Chart, Item 12: this item is for individual officials but can be adapted for agency units*)

Recusal and prohibition

Recusal and prohibition are the converse of divestment and screening. Divestment and screening, described above, prevent conflict of interest by removing or segregating potentially encumbering interests from officials while allowing them to remain engaged in their official policy-making or implementation role. Recusal and prohibition, by contrast, remove officials or other entities from their policy-making or implementation roles when their interests cannot be separated from them.

Example:

An official has received a job offer from a private company, one whose interests he/she has the capacity to affect in his role. S/he should disclose such an offer. And, as long as s/he has not yet declined it, should recuse himself/herself from their role whenever it requires decisions that might affect the company. In cases affecting the company, another person should be assigned to fulfil his functions and any departmental documentation or other material concerning the company should be routed away from him/her. Any such substitute official should not be anyone who reports to the recused official.

Analogously, a company – say a breast-milk substitute manufacturer – obviously cannot divest its interests in selling breast-milk substitute and so might have to be prohibited from certain kinds of involvement with government altogether. For example, a breast-milk substitute manufacturer’s interests might be deemed so inconsistent with the public interest that its participation in a multimember stakeholder group advising government on early infant nutrition policy should be prohibited.

Examples of tools:

1. Recusal forms (see Recusal Form, State of Rhode Island, *Examples of Tools Chart, Item 13*), including provision to control document flow on the interest/company so that it does not come to the recused official’s attention
2. Procedures for determining a company’s interests, in whole or in part, to be fundamentally inconsistent with the public interest, as normatively and empirically established. (See “Issue-Contingent Model” for determining compatibility of a firm/product with the public interest, *Examples of Tools Chart, Item 14*)

Managing conflict of interest

Not all conflicts of interest can be prevented via divestment, screening, recusal or prohibition. When they cannot be prevented, other methodologies and tools exist for managing conflict of interest.

Pluralism and diversity

Conflict of interest can often be managed by pluralizing either the private interests or the public officials/agencies involved in a policy matter.

Example:

An agriculture department is going to take research funding from industry to do basic research, then ideally it should set up a fund to which many companies contribute. Or, to take another example, if a food aid agency wishes to take donations from food companies in an emergency, then it should endeavour to do so from not just one but a number of such businesses, so that any feeling of beholdenness to any one of them will be diluted.

Note that the agency's doing so only mitigates; it does not eliminate a conflict of interest. The extent to which taking aid from a plurality of donors will be effective in managing conflict of interest depends on the agency's mandate.

If its mandate is simply to buy food from food companies for distribution, then such pluralism of donations from all possible vendors will help mitigate any conflicts of interest that might arise in its purchasing decisions. But if its mandate is additionally to regulate food safety, then donations from a wide variety of industry players might well constitute a potential for undue influence on the agency's regulatory decisions, tipping it away from the public interest and towards the interests of industry as a whole. As with the other tools, pluralism does not necessarily suffice on its own and might work better in some cases than in others.

Where pluralizing *private interests* in this way is not possible, pluralizing *public interest groups or agencies* can be a way of mitigating conflict of interest.

Example:

All interventions between private sector companies and officials should be public: registered and minutes taken. If, for example, a multinational rice or flour company is dominant in a country, any of its communications to government can be countered by civil society organizations representing the public interest from a variety of angles. This can be accomplished through a lobbying registry, such as exists in Canada, in which anyone contacting government on behalf of a private interest has to publicly register all contacts and their subject matter.

Likewise, multimember stakeholder platforms in which a private interest or company might be dominant should be as pluralized as possible with competing public-interest organizations, and their deliberations should be public so as to encourage more actors to voice their views.

Or, to take another example, it can be useful to establish independent review panels of academic experts, whose only concern is the public interest, to review the terms of any joint private-public partnered projects, especially those involving research. Similarly, if a private entity funds scholarships for agency personnel, decisions on who should receive them should be made by an arm's length committee of experts. Here again, pluralizing – creating new – entities acting purely in the public interest can help manage a conflict of interest.

Where State capacity in an area is weak, and there is a risk of relying too heavily on the private sector for research or technical advice in policy-making, a pluralization – or multilateralism – of State agencies acting in the public interest can help. Public agencies in different states or countries, for example, can pool resources to create a regional public research agency that any one might not have been able to support alone.

Similarly, joint policy-making by a plurality of states in a region can counter a multinational corporation's dominance in any one State. If a serious perceived conflict of interest exists in the dealings between a multinational and a regulatory agency in a given State, the agency can ask regulatory officials in another State or international agency to make the needed policy determinations – just as in Canada, for example, when a provincial police force needs to undertake a serious internal investigation, it will ask a police force in another province to do so. Creatively using a plurality of public agencies and stakeholders is thus another means of managing conflict of interest.

Examples of tools:

1. Registration of all private sector lobbying contacts with the public sector, including disclosure of the substance of communications (see Office of the Commissioner of Lobbying of Canada, Consultant Lobbyist Registration Worksheet and Monthly Communication Report Worksheet, *Examples of Tools Chart*, Item 15).
2. Protocols for ensuring that officials document have sought and involved as wide a number of public-interest partners in a given private-public partnership or multimember stakeholder platform as possible (see *Examples of Tools Chart*, Items 16, 17).
3. Creation of independent arm's-length quasi-public entities to receive funds from private sector organizations and determine their distribution.
4. Cross-jurisdictional public entities to conduct research and monitoring activities in areas where State capacity is low.

Sanctions

Sanctions are a final means of managing conflict of interest. When officials know that they will be penalized if they fail to disclose, prevent or otherwise properly manage conflict of interest, they will be deterred from any temptation to do so. And where they have not been deterred, sanctions are appropriate to discourage repeat offenses. The nature of any sanctions, as well as the rules to which they apply, must be clearly set out and communicated to all those covered by them.

Examples of tools:

1. Warnings and reprimands: If it is deemed that an official inadvertently or unintentionally breached the disclosure rules, or failed to divest or recuse as directed, s/he can be officially warned that if any similar event occurs in the future, they will be subject to a more severe sanction. In addition, the official can be verbally reprimanded, a penalty that stops short of a financial or career-focused sanction.
2. Fines or salary reductions: If an official has breached the disclosure rules -- or failed to divest or recuse himself/herself as directed -- even after a warning or a reprimand, then the unit in the agency empowered with executing the conflict of interest policy can impose a fine, impounded from salary, or a salary reduction for a defined period of time.
3. Delay in promotion or demotion: If an official has breached the disclosure rules -- or failed to divest or recuse himself/herself as directed -- and such actions, and the potential for undue influence they allow, call into question the impartiality of the agency itself, then a delay in promotion or demotion might be indicated.
4. Dismissal: If an official has conducted himself/herself in such a way as to allow the potential for undue influence to occur, and the impartiality of the

agency is consequently called into question as long as s/he occupies an official position, then dismissal might be indicated.

Conflict of interest unit

Finally, within government or (possibly) any particular agency there is the need to ensure that a structure is in place that would impartially and objectively review and recommend decisions related to ethics including conflict of interest

Such a body would put in place a code of conduct and tools for the prevention and management of conflict of interest, including:

1. Public disclosure of officials' interests.
2. Public registry of gifts to officials.
3. Public registry of institutional interests.
4. Public compendium of officials' recusal agreements and certificates of divestiture.

It would also review officials' disclosure forms and any proposed agency engagement with the private sector in order to identify actual or perceived conflict of interest, and impose appropriate tools, including divestiture, recusal and sanctions. An official should disclose *all* of his/her interests to the Conflict of Interest Unit. Unit officials can then determine which of these conflict with his/her official role and then require appropriate action.

All of these methodologies and tools can be used solely or in combination to address conflict of interest situations -- actual, perceived or outcome-based. Which ones to deploy will depend on a variety of factors, including the complexity of the situation, the nature of the policy-making or implementation in question, and broader institutional issues of State capacity and market dominance.

Examples of tools (Non-exhaustive list of tools)

Agency and instrument	Highlights	Link
1. United Nations Convention Against Corruption (UNCAC)	Provides legal framework to prevent and control corruption, as it is the first global instrument with a broad and comprehensive scope ranging from prevention to international cooperation and asset recovery.	http://unpan1.un.org/intradoc/groups/public/documents/un/unpano20658.pdf ADB/OECD
2. Asian Development Bank (ADB) / Organisation for Economic Cooperation and Development (OECD) Conflict of interest: frameworks, tools and instruments for preventing, detecting and managing conflict of interest	The paper presents the results, documentation, tools and examples from a workshop conducted in Jakarta in 2007, on the prevention, identification and management of conflict of interest.	http://www.oecd.org/site/adboecdanti-corruptioninitiative/40838870.pdf
3. Scaling Up Nutrition Scaling Up Nutrition Toolkit	The Toolkit provides information for the implementation of the following four elements: <ul style="list-style-type: none"> • Prevent (transparency and disclosure) • Identify (risk, due diligence, reasonable person) • Manage (procedure, remedial action) • Monitor (mechanism, assessments). 	http://scalingupnutrition.org/wp-content/uploads/2013/02/Business-Network_Private-Sector-Engagement-Toolkit.pdf
4. Independent Commission against Corruption Managing Conflict of Interest in the Public Sector, a toolkit	The Toolkit consists of four sections. The first three contain tools that organizations and individuals can adapt for use in their conflict of interest management systems. The fourth section contains resources to manage their conflicts of interest.	http://www.icac.nsw.gov.au/documents/doc_download/index.php?option=com_publicsearch&view=search&Itemid=132
5. European Union Guidelines on the prevention and management of conflict of interest in EU decentralized agencies	The EU guidelines emphasize the importance of: <ul style="list-style-type: none"> • agency transparency on how conflicts of interest are prevented, managed and eliminated • clarity of rules and awareness raising • selection/recruitment procedures • declaration of interests to identify real conflicts of interest • decision-making procedures for boards, committees and panels. 	http://europa.eu/agencies/documents/2013-12-10_guidelines_on_conflict_of_interests_en.pdf
6. WHO Framework Convention on Tobacco Control and its implementing guidelines	The Framework guidelines for the implementation of Article 13 provide principles and measures that may need to be adopted to eliminate any form of conflict of interest with tobacco companies.	http://www.who.int/fctc/guidelines/article_5_3.pdf
7. WHO Declaration of Interests Form	This form provides for the disclosure of a person's monetary interests, including employment/consulting, research support, and investment interests that could be related to their work.	http://www.who.int/occupational_health/declaration_of_interest.pdf
8. European Union Transparency Register	This form enables companies engaging with the EU to publicly disclose their mission, and the products and services concerning which they engage with the EU.	http://ec.europa.eu/transparencyregister/public/consultation/listlobbyists.do?letter=F&alphabetName=LatinAlphabet

Agency and instrument	Highlights	Link
9. US Office of Government Ethics Request for Certificate of Divestiture	This form enables officials to request a certificate that they have divested themselves of a particular interest that could be affected by their work. The certificate enables officials who are required to divest large amounts of holdings to gain an exemption from having to pay taxes.	http://www.oge.gov/Forms-Library/Certificate-of-Divestiture-Request-Format/
10. U.S. Office of Government Ethics Model Qualified Blind Trust Provisions	This legal document gives an example as to how to structure a blind trust.	http://www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/Helpful-Resources/Model-Qualified-Blind-and-Diversified-Trust-Documents/
11. Office of the Conflict of Interest and Ethics Commissioner, Canada Registry of Gifts	This registry allows officials to publicly disclose all gifts they receive other than those from close relatives.	http://ciec-ccie.parl.gc.ca/EN/PublicRegistries/Pages/Gifts.aspx
12. U.S. Office of Government Ethics Model Screening Arrangements	This document provides an example of how to structure reporting and paper-flow requirements in a unit so as to screen off an official (or group of officials) from any involvement with a particular interest.	http://www.oge.gov/DisplayTemplates/ModelSub.aspx?id=1381
13. State of Rhode Island Recusal Form	This form allows officials who have an interest in a matter before their unit to recuse themselves from all involvement with it.	www.ethics.ri.gov/education/recusalForm.pdf
14. Hofman, Meier-Pesti and Kirchner, “The decision process for ethical investment”, <i>Journal of Financial Services Marketing</i> 12 (2007) “Issue-Contingent Model” for determining the compatibility of a firm/product with the public interest	An example of a set of criteria (magnitude of consequences, social consensus, probability of ill effects etc.) to be used for determining the compatibility of a particular private sector entity’s interests and the public interest.	
15. Office of the Commissioner of Lobbying, Canada Consultant Lobbyist Registration Worksheet	This form is required of all lobbyists, and required them to publicly disclose the nature of the private interests they represent and any contacts they have made with officials or agencies.	http://www.ocl-cal.gc.ca/eic/site/012.nsf/eng/00953.html
16. AA1000 Stakeholder Engagement Standard	“a generally applicable, framework for the design, implementation, assessment and communication of quality stakeholder engagement”.	http://www.accountability.org/images/content/5/4/542/AA1000SES%202010%20PRINT.pdf
17. FRP Guide to Stakeholder Engagement	A set of criteria to apply in “selecting high priority stakeholders” for involvement in a policy process “and ensuring [their] credibility”.	http://www.ceres.org/resources/reports/facility-reporting-project-guide-to-stakeholder-engagement

Case studies

What follows are three case studies of conflict of interest, each followed by an analysis that shows how (a) the categories of actual, perceived and outcome-based conflict of interest, and (b) the methodologies and tools for preventing and managing conflict of interest can be applied.

The cases, although not the analyses, are drawn from the Global Social Observatory's *Consultation Process on Conflict of Interest in the Scaling Up Nutrition (SUN) Movement Synthesis Report, January 2015*. The analyses themselves are meant to be illustrative of how the categories and methodologies/tools can be applied to the cases, but they are not definitive. Differing contextual factors across countries can reasonably lead different ethics analysts to classify and deal with them in a variety of ways.

African Region case-study

"A large multinational manufacturer of infant formula engages in soft-scale lobbying to influence legislation on the marketing of breast-milk substitutes and complementary foods for infants. It participates in legislative working groups to delay and complicate the drafting process; it finances scholarships for advanced study by public health officials; it delivers excess supplies of infant formula for HIV exposed children and other emergency relief needs; and it works with friendly NGOs to promote market-based solutions and processed ready-to-eat foods for children under five, to invite public officials to social functions, and to offer to sponsor travel abroad for public officials".

Analysis:

This case spans each of the three categories of conflict of interest: actual, perceived and outcome-based. The case involves *actual* conflict of interest because, by inviting officials to social functions and subsidizing their travel, the company gives individual officials – officials who presumably have the capacity to affect its interests -- something of monetary value. Those are clear instances of actual conflict of interest at the individual level. The appropriate tool would simply be to require officials not to accept the hospitality or travel involved.

The case involves *outcome-based* conflict of interest because it is well established that outcomes are best for infants if they are exclusively breast-fed for the first six months of life. And yet the multinational is involving itself in policy-making – lobbying and delaying legislation – in a way that is inconsistent with that demonstrable public interest. The appropriate tool would be to ensure that its lobbying interventions with government are all public and capable of being challenged by civil society actors and health professionals, and to prohibit it from being involved in actually drafting legislation, since that is a

governmental function and the multinational's interests are inconsistent with the public interest.

The case also involves *perceived* conflict of interest. It is true that the multinational's financing scholarships for public officials need not constitute an *actual* conflict of interest, if the scholarships are awarded by (say) an independent arm's-length committee (e.g., of university professors) with no relationship to the multinational, and/or the officials concerned would be in no position to affect the company's interests in their official capacity. And it is true that delivering infant formula in emergency situations need not constitute an *outcome-based* conflict of interest, if policy-makers believe that such supplies are in the public interest under dire circumstances.

But, even so, these activities could still be *perceived* as conflict of interest. Officials holding scholarships bearing the name of the company could be seen to be whitewashing it. And if the government – because of its own suboptimal State capacity – is allowing a multinational corporation to fulfil State functions by distributing products, such as infant formula, that are widely known to be inconsistent with the public interest at least in certain circumstances, that too would be a perceived conflict of interest.

Tools for management, in the case of the scholarships, might include requiring the scholarships to not bear the company's name so that no government endorsement of the multinational is implied. The government might also require officials accepting the scholarships to make clear, in any appropriate forums or outlets, that they have accepted the scholarship in their individual capacity such that no government endorsement of the company is implied, and/or to restate the government's position on the proper and improper consumption of the multinational's products.

Tools in the case of the emergency aid might include the government publicly separating its receipt of aid from any implication that it endorses of the company or its products. While it appreciates the aid in an emergency, the government can publicly state – through labelling, cell phone communication or information at distribution centres – that it discourages the consumption of infant formula in, say, normal circumstances during the first six months of infancy. Such tools would help alleviate any perceived conflict of interest.

Finally, it is important to note that the multinationals working with friendly NGOs to promote ready-to-eat foods for children under five would not involve a conflict of interest. It does not involve any officials although it might implicate the NGOs themselves in a conflict of interest. Such activity does not entail the multinational being involved with government in either a policy-making or an implementation role. It is acting only as a market player. Certainly such marketing can be criticized on corporate social responsibility grounds, but it is not a conflict of interest.

Region of the Americas case-study

“The national food and nutrition security policy provides for universal supplementary feeding for children during the first 1000 days, to be phased in county by county. A donor offers to conduct a project targeted only to children with malnutrition. Another donor offers to provide nutritious complementary foodstuff in bulk bags, whereas the government requires distribution in smaller 3-pound bags. The donor requested statistical data to support the requirement, but the government was unable to produce the studies. Finally, when there is a change in the administration [and the government then] promulgates new guidelines on food security and nutrition, donor-funded projects that are not in compliance with the new guidelines may be at risk of losing their funds”.

Analysis:

In this case, the donors do not appear to be giving funds to a government agency, thus relieving that agency of a financial burden it would otherwise have to undertake and doing it a favour that could influence government policy towards them. Instead they are giving in-kind aid to citizens. Framed in that way, there is no actual conflict, personal or institutional. It would seem, though, that the donors are giving their aid in ways that are not entirely consistent with government policy either at present (the government wants food distributed in smaller bags, a donor in larger ones) or subsequently (guidelines on food security and nutrition might change in the near future, and donor-funded projects might no longer be in compliance).

Certainly a *conflict* for government could arise if it is faced with a choice between preserving food donations and maintaining or implementing its preferred bag-size rules or nutrition guidelines. But that would not necessarily be a *conflict of interest*, in the sense that a secondary interest would be conflicting with the government’s capacity to decide matters in the public interest.

Instead, the case could simply be a conflict between two competing desirable outcomes, two conflicting versions of the public interest: preserving needed donations and maintaining the best bag-size and nutritional/security regulations. Governments face those kinds of policy conflicts all the time. Such trade-offs might be unfortunate but they do not constitute an illegitimate encumbrance on official judgement.

In some circumstances, however, such a case would rise to the level of a perceived conflict of interest. Suppose that the government felt that the public interest in maintaining the proper bag sizes and food security guidelines was significantly more important than the public interest in preserving donations. And suppose as well that the government nevertheless decided to abandon its bag-size and food security guidelines because the

donor was applying pressure wholly unrelated to the public-interest merits of the case – say, by threatening to close its operations in the country if the government did not change those guidelines. In such a case, it could certainly be perceived that a secondary interest had the potential to unduly influence the government’s capacity to make decisions in the public interest.

In such a case, the appropriate tools would include the government’s being transparent about the multinational’s interventions with it so as to bring public disapproval to bear on it, and enlisting a diversity of civil society organizations and other regional governments to do so as well.

South-East Asia Region case-study

“A manufacturer of nutritional products, including infant formula, has signed a memorandum of understanding with a national women’s group chaired by the first spouse of one of the country’s ministers. The group has trained thousands of volunteers for community-based work on child development. Every year there is a competition to select the best trained volunteer with prizes that include awards and cash. The partnership also allows the company to promote its products, such as “growing up milk” targeted to children above the age of one. Buildings for local services are often painted the same colour as the brand of the milk product. Similarly, the printed materials for training in this program use the same theme and colour of their products”.

Analysis:

Unlike the country case study above, which involves government officials but – on close examination – perhaps no actual judgement-encumbering private interest, this case involves private interests but – on close examination – no actual government officials. The partnership is between a nongovernmental women’s group – which happens to be chaired by the spouse of a high government official – and a nongovernmental manufacturer of infant formula. There is no actual conflict of interest here, simply because no official judgement is involved. It is an arrangement between a civil society organization and a for-profit company. Nor does it seem as if there is an outcome-based conflict of interest, assuming that the infant formula is not scientifically-disapproved for children above the age of one.

It is possible, though, that there could be a perceived conflict of interest. The case involves the wife of a minister, if not the minister himself. And the involvement of the minister’s wife and the woman’s group helps to whitewash the company, by lending their credibility – even if not the government’s – to the manufacturer’s attempt to promote its infant formula through the use of company colours and the “growing up milk” theme. It’s possible that some could perceive this as a case in

which the government is endorsing a particular company or product.

To guard against any such perceived conflict of interest, the promotion of “growing up milk” should be accompanied by labelling, or other information, making clear the ways in which the use of infant formula is and is not inconsistent with government nutrition guidelines. The training program’s buildings and literature should

ideally not feature corporate colours, but that is a matter of good business ethics – of not taking the opportunity to subtly manipulate those who might be recommending its products – not conflict of interest. And it can be countered by making sure that the training is scientifically impeccable, perhaps by having the curriculum reviewed by the government or independent experts and that those trained have a good understanding of the proper role of the company’s products in good child nutrition practices.

Annex II: List of participants

List of participants

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Annex III : Agenda of the meeting

Thursday, 8 October		
08:30–09:00	• Registration	
Introduction		
09:00–09:30	<ul style="list-style-type: none">• Welcome, introductions and opening remarks• Objective, outcomes and goals of the consultation• Explanation of the general consultation’s processes	Francesco Branca
9:30–10:00	<ul style="list-style-type: none">• Introduction of the participants with a short presentation of their area of work and its link with conflicts of interest• Verbal declarations of interests• Selection of the Chair	Francesco Branca
10:00–10:30	Coffee/tea break	
Session 1: Presentation Background Paper		
10:30–11:00	<ul style="list-style-type: none">• Presentation of the background paper	Andrew Stark
11:00–13:00	<ul style="list-style-type: none">• Discussion	Chair
13:00–14:00	Lunch	
Session 2: Promotion of breastfeeding		
14:00–14:15	<ul style="list-style-type: none">• WHO recommended interventions for the protection, promotion and support of breastfeeding	Laurence Grummer–Strawn
14:15–14:30	<ul style="list-style-type: none">• Conflicts of interest in breastfeeding protection, promotion and support	Lida Lhotska
14:30–15:00	<ul style="list-style-type: none">• Countries case studies<ol style="list-style-type: none">1. Bahrain2. Philippines	Nadia Ghareeb Maria–Bernardita Flores
15:00–15:30	Coffee/tea break	
15:30–17:00	<ul style="list-style-type: none">• Working group session	
17:00–17:30	<ul style="list-style-type: none">• Working group reports	<ul style="list-style-type: none">• Chair
17:30–18:00	<ul style="list-style-type: none">• Plenary discussion	<ul style="list-style-type: none">• Chair

Friday, 9 October 2015		
09:00–09:15	• Welcome and summary of day 1	Chair
Session 3: Fortification/Reformulation		
09:15–09:30	• WHO recommended interventions for the implementation of fortification programmes	Juan Pablo Peña-Rosas
09:30–09:45	• Implementation of programmes on food fortification and implications of conflicts of interests	Greg Garrett
09:45–10:00	• WHO working Group on how to realize governments' commitment to engage with the private sector for the prevention and control of NCDs – Reformulation	Bente Mikkelsen
10:00–10:30	• Countries case study 1. Vietnam 2. Canada 3. France	Mai Le Bach Mary L'Abbé Michel Chauillac
10:30–11:00	Coffee/tea break	
11:00–12:30	• Working group session	
12:30–13:00	• Working group reports	Chair
13:00–13:30	• Plenary discussion	
13:30–14:30	Lunch	
Session 4: Prevention of childhood overweight		
14:30–14:45	• WHO recommended interventions for preventing childhood overweight	Chizuru Nishida
14:45–15:00	• The U.S. experience in engaging with the food industry on nutrition policy	Michele Simon
15:00–15:30	• Countries case studies 1. Brazil 2. Mexico	Fabio Gomes Lucero Rodriguez
15:30–17:00	• Working group session	
17:00–17:30	Coffee/tea break	
17:30–18:00	• Working group reports	
18:00–18:30	• Plenary discussion	Chair
Session 5: Summary outcomes and next steps		
18:30–19:00	• Conclusions and closing remarks	Francesco Branca

In response to the emerging challenge of conflicts of interest in nutrition, the Department of Nutrition for Health and Development at WHO headquarters convened a WHO technical consultation on “Addressing and managing conflicts of interest in the planning and delivery of nutrition programmes at country level” in Geneva, Switzerland, on 8–9 October 2015.

This meeting report should help Member States and their partners in their efforts to make informed decisions on the appropriate nutrition actions required to promote the Comprehensive implementation plan on maternal, infant and young child nutrition and to achieve the Sustainable Development Goals.

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