Article 7 of the WHO Code requires that the industry, that is, manufacturers and distributors, irrespective of any action taken by member states, is responsible "for monitoring their marketing practices conforming to the principles and aim of the Code and for taking steps to ensure that their conduct at every level conforms to them." The code also proscribes, among other things, infant formula manufacturers and distributors from gaining market share by offering incentive bonuses or quotas set specifically for sale of breast-milk substitutes. However, the payment of bonus is permitted if it is "based on the overall sales by a company of other products marketed by it." The industry representatives are disallowed to "perform educational functions in relation to pregnant women or mothers of young infants and young children." However, they can be "used for other functions by the health care system at the request and written approval of the appropriate authority of the government concerned."

An evaluation of the code compliance by the infant formula industry is hampered by a variety of factors that makes all claims and counter-claims as to the industry compliance, or lack thereof, highly suspect. For example:

1. There are no objective, neutral, international monitoring mechanisms to evaluate the nature and extent of industry compliance with the code. The issue remains contentious until today. As was previously stated in an earlier part of the book, WHO has steadfastly declined to assume this responsibility arguing that it lacked specific legislative authority from the World Health
Assembly, and it did not have resources to undertake such a task. And yet, it has also strongly lobbied strongly against the WHA granting it such an authority (see Chapter 19).

2. Another problem lies in the lack of a clearcut reporting system that is followed by all parties in monitoring the implementation of the code. Neither WHO nor any other country or group of countries has instituted uniform data collection and reporting systems, thereby making it impossible to verify any claims of compliance or code violations.

3. In industrialized and developed countries, notably the United States and the European Community, infant formula marketing practices vary considerably based on country codes and local regulations. In the United States, companies follow the regulations prescribed by the Food & Drug Administration (FDA), their own voluntary codes and conventions established by the medical profession. In the 12-member European Community (EC), all companies have agreed on a voluntary code of conduct, the so-called IDACE Code (Industry Code of Practice for the Marketing of Breast Milk Substitutes in the EC), prepared by the Association of Dietetic Foods Industries of the EC. This industry code endorses the aims and principles of the WHO Code and is consistent with the social and legislative requirements of EC member nations and relevant to the needs of mothers and babies. It relates to the marketing practices — that is, direct advertising and labelling, mentioned in the WHO Code over which manufacturers have control. It excludes elements of the WHO Code that relate to the responsibilities of health workers and allow companies to sell infant formula directly to the consumers. This IDACE-EC Code has been in effect since January 1, 1986, and is adhered to by all the companies operating in that region. The IDACE-EC Code will be replaced by the EC directive on infant formula and follow-up formulas which has been recently finalized by the EC Commission.

4. The situation with regard to the developing countries is even more troublesome. A number of major infant formula manufacturers — all of whom have agreed to abide by the principles and aims of the WHO Code — refuse to include countries like Hong Kong, Singapore, South Korea, and Taiwan in the list of developing countries and thus follow marketing practices more in line with applicable country codes and competitive marketing practices (Chapter 19).

5. For the most part, developing countries, including almost all the largest ones, have been singularly reticent in enacting necessary legislation to implement the WHO Code and establish mechanisms for enforcing and monitoring compliance by companies (Chapter 19). In general, where domestic producers hold a substantial market share, the lack of compliance with the WHO Code is particularly glaring — for example, India. Thus any claims made by the industry members as to the level of compliance must be taken on faith or through spotty checks by the industry’s critics. An important factor to remember in this regard, and the one that is generally ignored, is