

# Codex Breaks its Own Rules!

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**The Codex Alimentarius Commission, the active arm of the United Nations Food Standards Programme, is currently in the process of completing a controversial global guideline on the manufacture and sale of nutritional supplements. However, the drafting of this text, the Draft Guidelines for Vitamin and Mineral Food Supplements, has not been carried out in accordance with the rules set out in the Codex Procedural Manual (14th edition), and the Guidelines are therefore defective.**

Drafted by the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU), the Draft Guidelines for Vitamin and Mineral Food Supplements advocate similar restrictions on the sale of nutrients to those contained in the EU Food Supplements Directive, which itself was recently rejected as invalid by Advocate General Geelhoed of the European Court of Justice in Luxembourg.

Specifically, paragraph (b) (page 57) of the Codex Procedural Manual, dealing with DRAWING UP OF CODEX STANDARDS (under GUIDELINES ON THE CONDUCT OF MEETINGS OF CODEX COMMITTEES AND AD HOC INTERGOVERNMENTAL TASK FORCES), states that:

*"... all standards and related texts should have a preface containing ... a brief description of the scope and purpose(s) of the standard or related text,"*

This requirement was established at the 19th Session of the Codex Committee on General Principles, held in Paris between 17- 21 November 2003, and then adopted at the 27th Session of the Codex Alimentarius Commission, held in Geneva between 28th June and 2nd July 2004. The CCNFSDU subsequently met in Bonn from 1-5 November 2004 (26th Session), but did not take proper account of this requirement when considering the guidelines, as evidenced by both the text of the guidelines and the CCNFSDU's report of its 26th session:

1. **Neither the Preamble nor the Scope of the Guidelines for Vitamin and Mineral Food Supplements contain any statement to indicate the purpose(s) of the text.** Given therefore that Codex texts have been used by the World Trade Organization as the benchmark in international trade disputes, and moreover that it is expected that they will be used increasingly in this regard, it is therefore of crucial legal importance that the question "What is the purpose of the guidelines?" should have a clear, easily understandable answer, and moreover that this should be provided in the text.

2. **The CCNFSDU's Report of its 26th Session gives no indication that the requirement for the preface to contain a description of the purpose of the**

**text was even considered**, despite the fact that the matter was raised at this session by the delegations of South Africa, Tanzania, and the National Health Federation.

With the above in mind, it is now clear that the 28th Session of the Codex Alimentarius Commission that will be meeting in Rome from 4-9 July 2005 has no option but to refer the Guidelines for Vitamin and Mineral Food Supplements back to the CCNFSDU, in accordance with the GUIDE TO THE CONSIDERATION OF STANDARDS AT STEP 8 OF THE PROCEDURE FOR THE ELABORATION OF CODEX STANDARDS INCLUDING CONSIDERATION OF ANY STATEMENTS RELATING TO ECONOMIC IMPACT, as described on pages 26-27 of the Codex Procedural Manual (14th edition). As such, until such time as the CCNFSDU's written comments regarding this matter have been received and considered by the Codex Alimentarius Commission, the Codex Guidelines for Vitamin and Mineral Food Supplements should not, and indeed, cannot, be advanced beyond Step 8 of the Procedure. To act otherwise would be for the Commission to violate its own rules of procedure.

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