



BACKGROUND

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CAFTA-NAFTA and Codex—No Connection

On July 4, 2005, the Codex Alimentarius Commission (Codex) adopted a guideline for vitamin and mineral supplements that will benefit both manufacturers and consumers. Since adoption of this guideline, those who opposed the decision have looked for ways to misinterpret the implications of this decision. The latest effort involves the numerous references being made to the Central American Free Trade Agreement (CAFTA), which is currently under negotiation. Critics of the decision by Codex to adopt the long-needed guideline on vitamins and minerals cite the adoption of CAFTA as an imminent danger to consumer access to dietary supplements.

Nothing could be farther from the truth. CAFTA contains no reference to dietary supplements, and in fact contains no language at all that is different from language contained in the North American Free Trade Agreement (NAFTA), the Free Trade Agreement of the Americas (FTAA), the World Trade Organization (WTO) and General Agreement on Tariffs and Trade (GATT) or any other of the seminal international trade agreements that have been concluded over the course of the past several decades.

A close examination of the critics' allegations indicates that the language they claim to be unique to CAFTA is nothing other than the Sanitary and Phytosanitary Agreement (SPS) and Technical Barriers to Trade Agreement (TBT), which form the backbone of the WTO's arbitral mechanism for disputes between member nations in the area of food safety. These same critics have attacked the United Nations, the WTO and each and every one of the trade agreements cited above, hundreds of times, on the same fanciful grounds. The only quality unique to CAFTA is that it is presently under negotiation, and therefore in the news. Cynically, Codex critics have effectively taken old wine and placed it in new bottles in an effort to tie the completely unrelated adoption of a vitamin and mineral supplement guideline at Codex with a trade agreement that, while headline news, is nothing more than another agreement in a series of agreements negotiated over several decades.

The real target of the critics is the global trading system. This latest attack is nothing more than an attempt to restate arguments that have been heard and rebutted for years on end. The critics know well that by Act of Congress, the United States federal food laws, including the provisions of the Dietary Supplement Health and Education Act (DSHEA), maintain complete and absolute legal supremacy over any standard or guideline reached at Codex. Codex's activities are baseline measures, designed to foster harmonization of global food trade regulations to the extent possible, and to minimize disputes between countries. They are given special status by the WTO as a means of resolving such disputes if and when they arise. In laymen's terms, the Codex Guidelines are minimum requirements such that products that meet these standards cannot be denied entry into international markets—they are not ceilings on what countries may permit under their domestic laws. They are not meant to replace national laws, and indeed all countries, not just the United States, place their own legal framework in a status of supremacy to Codex.

The Codex guideline just adopted provides consumers, industry and government, for the first time ever, a real opportunity to achieve international harmonization of guidelines for trade of vitamin and mineral supplements based on sound science and empirical methods, rather than by the arbitrary upper limits currently in place. The SPS Agreement, which is the only link to CAFTA, is the means by which that objective can be brought about. Rather than threatening access to vitamin and mineral supplements, Codex has provided new life to the effort to achieve safe and fair standards for trade. There is nothing in CAFTA that was not already enshrined in previous agreements, and welcomed by industry, consumers and government for decades. Any assertion to the contrary is a cynical manipulation of law, facts and news designed to attack the idea of regulation itself.