



Council for Responsible Nutrition

1828 L Street, NW, Suite 900 • Washington, DC 20036-5114
(202) 776-7929 • fax (202) 204-7980 • www.crnusa.org

MEMO

Date: April 5, 2005

From: John Hathcock, Ph.D., Vice President Scientific & International Affairs
Mark LeDoux, chairman of CRN's International Trade and Market Development Committee
Mark Mansour, counsel to CRN's International Trade and Market Development Committee

To: CRN Member Companies

Re: **CRN Comment on European Court of Justice Ruling**

The European Court of Justice (ECJ) Advocate General (AG) issued an opinion on Tuesday, April 5, stating that European Union laws limiting access to food supplements are “seriously deficient,” create a procedure with the transparency “of a black box,” and should be annulled. In what news reports termed “a stinging indictment of EU rules on food supplements and vitamins,” AG Leendert Geelhoed said that they are a violation of basic EU legal principles. The ruling came in response to a lawsuit filed on behalf of UK consumers, but an affirmation by the ECJ this summer would affect consumers throughout the European Union.

The EU’s 2002 directive would limit vitamin and mineral supplements to an approved list as of August 2005. CRN and others have argued that the law could, based on virtually no scientific evidence, ban more than 5,000 products including natural forms of Vitamin E and several forms of Vitamin C.

“I must conclude the (European Parliament) has seriously failed in its duty to design such a far-reaching measure with all due care,” Advocate General Geelhoed wrote.

He went on to add that “the Directive infringes the principle of proportionality, because basic principles of European Union law, such as the requirements of legal protection, of legal certainty and of sound administration have not been taken into account.”

Mr. Geelhoed concluded by recommending that the Court rule the law invalid. Although the Court is not obliged to follow AG opinions, in practice it does so in most cases, usually several months later. In this matter, a full Court opinion is expected in July.

He said the directive was “seriously deficient” because it did not give a norm for decisions to add supplements to the approved list; did not make it clear if firms could submit substances for approval; and gave no clear procedure for any such submission. In addition, it fails to “explain how interested parties could be heard, set any deadlines for decision making or even guarantee decisions on proposed substances would be taken.”

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MEMO

Re: CRN Comment on European Court of Justice Ruling, continued

Geelhoed did support approved lists in principle, and added that the law rested on the “right legal pillar”: harmonizing the EU’s internal market, rather than on health concerns.

He said if EU lawmakers corrected the deficiencies that he had pointed out, the law could become valid.

In reaction Mark LeDoux, chairman of CRN’s International Trade and Market Development Committee and a board member of CRN, commented that the AG’s ruling “means that the Draft Standard for Vitamin and Mineral Supplements achieved by consumers, industry and government at the 2003 Codex Committee on Nutrition and Special Dietary Uses (CCNFSDU) meeting in Bonn is substantively vindicated, and any effort to amend this draft standard at the upcoming Codex Alimentarius Commission meeting in July would not only violate Codex’s fundamental tenets, it would run counter to what the European Union’s own jurists today opined.”

John Hathcock, Ph.D., Vice President Scientific & International Affairs, urged CRN members to strongly support the Draft Standard as “consistent with sound scientific principles, public policy and now, developing EU law.”

Counsel to CRN’s International Trade and Market Development Committee Mark Mansour, of Morgan Lewis, added that “this decision is a striking and dramatic refutation of the contention often repeated in many quarters in Brussels that regulation lacking proportion, fairness and appropriate empirical underpinnings not only can be fed on a silver platter to EU consumers, but exported to every other corner of the world. As it turns out, precautionary principle-based regulation has, yet again, given European courts indigestion at first bite.”

The Codex Alimentarius Commission (CAC) meets in Rome in early July, and the Draft Standard will be among those under consideration for final adoption. The ECJ is expected to take up the AG’s decision that same month.