

A Meeting of Two

Written by Scott C. Tips
Category: Codex
Published: November 2004

The most recent meeting of the 26th session of the Codex Committee on Nutrition and Foods for Special Dietary Uses was held during the first week of November 2004, in Bonn, Germany; and some 280 people dutifully sat in chairs, listened, and watched. A few of them even occasionally spoke up, mostly in agreement with the Gang of Two, the European Commission (EU) Representative Basil Mathioudakis and his sidekick, the Committee Chairman Dr. Ralf Grossklaus. Some few others quibbled over details. An even fewer number of us, which you could count on one hand and have fingers left over, fought and argued back. But to paraphrase Groucho Marx, "I had a perfectly wonderful week, but this wasn't it." Read on and you will see why.

Meet the Codex Alimentarius Commission.

For those of you new to the game, the Codex Alimentarius Commission is an international body establishing global trade standards for foods. Sponsored jointly by the World Health Organization and the Food and Agriculture Organization of the United Nations, it has various committees dealing with specific food issues. And each committee is hosted in turn by a particular country that provides the chairman and the meeting place in that country.

The committee concerned with food supplements is the Codex Committee on Nutrition and Foods for Special Dietary Uses, which is hosted by Germany and meets in Bonn every November. This particular committee is important to you because it is establishing "guidelines" that will govern the international trade in vitamins and minerals. And, in my opinion, these euphemistically called "guidelines" will be used not only to exclude superior American dietary supplements from the European marketplace but they will also be used, either directly or by way of example, to stifle the domestic American market in supplements as well.

Meet the National Health Federation.

That is precisely why the National Health Federation (NHF), a nonprofit consumer health-freedom organization, has been sending me to these Codex committee meetings every year for five years in a row now. Having obtained official Codex observer status, the NHF is able to attend and speak out (when the Chairman chooses to recognize it) at these meetings. It is also able to, and did, submit written arguments in favor of health-freedom positions at these meetings.

Fortunately, as the NHF delegate, I was ably assisted by Paul Anthony Taylor, an NHF Board member, and Sepp Hasslberger, an NHF Advisory Board member. Also

extremely helpful were attendees Tamara Thérèse Mosegaard of Danish-based MayDay International as well as Peter Helgason and Dr. Carolyn Dean of the Canadian-based Friends of Freedom group. Paul Taylor, in particular, had drafted some very thorough position papers promoting free access to vitamins and minerals as well as realistic Nutrient Reference Values that the NHF submitted to the Committee to promote a scientific pro-health-freedom view.

We Were Delegates Once and Young.

The meeting began innocuously enough on Monday morning in a large meeting hall on the banks of the tellingly swiftly-flowing Rhine. The Agenda was first considered and adopted with one small alteration in the order of items to be discussed. Then, the initial agenda items were covered so quickly that, by mid-afternoon, the Committee had already arrived at Agenda Item No. 4, the controversial *Draft Guidelines for Vitamin and Mineral Food Supplements*.

The Chairman, Dr. Grossklaus, began the discussion of this Agenda item by peremptorily announcing that the Committee would only consider the few, remaining sentences and words in the draft Guidelines that were enclosed in brackets. Nothing else was to be considered or discussed. Period.

Dr. Grossklaus then immediately broke his own edict by permitting the EU Representative, who (as William Faulkner once remarked of Ernest Hemingway) “has never been known to use a word that might send a reader to the dictionary,” to liberally insert the word “food” in front of “supplements” throughout the Guidelines, even though no brackets were involved there. This move was initially astounding but became typical of the rest of the meeting as it became increasingly clear that this was really a Meeting of Two, the EU Representative and the Chairman. The rest of us were nothing more than road bumps on their screeching drag race to regulatory heaven.

Several delegations, including those of the United States and the NHF, objected to this first move. In particular, I told the Committee that if the EU were to be permitted to open up unbracketed text, then we and others deserved the same right. But the Chairman brushed these objections aside and quickly approved the EU Representative’s insertions. We then sped on. Yet, this initial action set the tone as well as the rhythm for the rest of the meeting.

So, feeling a bit like Mel Gibson’s soldiers in the film “We Were Soldiers Once and Young,” dropped into enemy territory and surrounded on all sides, we began to take our share of hostile fire. But, then, we gave it back too.

The United States Is Outclassed and Outmaneuvered.

Treated as an almost-important delegation by the Gang of Two, the United States suffers from the fatal indignity of being North American and not European. In the wildly pro-European Codex Committee meetings, the United States does not stand a chance. Despite its large population, territory, economic and military might, and not

even to mention the fact that it pays a larger per-capita share of the United Nations' budget (which includes the WHO and the FAO) than does the European Union, the Gang of Two has decided that in the language of "consensus," the European Unions' 17 member states at Codex count for more than the United States. And, by the interesting way, the EU at these meetings also counts for more than populous India or China. From what I can see, Third-World countries are either bought out or shut out; and they do not speak up enough in defense of their true interests.

The Committee is supposed to reach "consensus" on each point before setting it in stone and moving on. According to the Codex Committee on General Principles, "consensus" is generally defined as the absence of sustained opposition. But, as he announced at this very meeting, the Chairman defines "consensus" as "everyone gets to be heard." Well, that's lovely. It is also very wrong. But this made-up definition is cleverly convenient for the EU, which helps explain how the EU always gets its way.

Whenever the EU Representative encounters a roadblock in getting his way, the Chairman will "helpfully" ask the Committee if perhaps the opposing sides could discuss this during a break and reach a compromise. This happened at least twice during this Agenda item, and both times the United States was outmaneuvered by the EU.

One example is typical: The United States delegate sought to delete a short, bracketed sentence from the vitamin-and-minerals definition of the Guidelines because it added nothing to the definition and was even confusing to readers. The US was supported in this move by South Africa, New Zealand, Zimbabwe, Brazil, Venezuela, Turkey, India, Cuba, the Council for Responsible Nutrition (CRN), and the NHF. But the EU Representative said no to the deletion, and was supported in turn by a few EU-member countries (who should not be counted twice), Switzerland, Australia, Thailand, and Malaysia. Even though the bulk of the delegates were clearly in favor of deleting the sentence and opposed the EU, the Chairman suggested that a compromise be worked out during the break that was then upon us.

During the break, the US and the EU supposedly compromised. The US would agree to leaving the sentence in the definitions paragraph in a modified form if the EU Representative would agree to the deletion of another sentence in a later paragraph (about Safe Upper Limits) that was more important to the US. The two sides agreed and the sentence, as modified, stayed in.

Yet, when the later paragraph arrived for discussion, and it was time for the EU Representative to deliver on his promise to delete the sentence that "[w]hen maximum levels are set, due account should be taken to the reference intake values of vitamins and minerals for the population," the EU Representative *opposed* the deletion. When I later rhetorically asked the United States delegate, Dr. Barbara Schneeman, whether she had liked being stabbed in the back, she tried to explain away the EU Representative's changed position. This only showed me that she had not been prepared to stand up to the EU in the way necessary to prevent from being run over roughshod.

I must say, though, that upon meeting Dr. Schneeman, I was immediately struck with and impressed by her clear intelligence, frankness, and refreshing willingness to *actually* listen to and consider others' viewpoints, including mine. She is also very articulate and likeable. It is just unfortunate that Americans are such terrible political negotiators. Americans make great businessmen and women, great inventors, and even great soldiers; but put them in a political conference room and they are almost always putty to be molded by others. In this specific case, I suspect it may really be because the American delegation actually shares the regulatory mindset of the EU Representative and therefore has no philosophical grounding to oppose that view.

It would take many more pages than are available here to provide examples from this Codex meeting supportive of my view. However, the proof, as always, rests in the results of this meeting. The Codex Guidelines are following the grim course laid out some time ago by the European Union, not the more libertarian principles of health freedom found in the United States (and for which the US delegation was probably not even instructed to fight).

The Guidelines Race On To Completion Amidst Insults To Those Opposed.

As at last year's meeting, South Africa and the NHF were the only vocal health-freedom proponents at this year's meeting. But, like auditors at an Enron board meeting, we were not particularly welcome.

Near the end of the first day, the Chairman must have tired of hearing from the NHF because he refused to recognize me to speak even though my request light was illuminated for some 45 minutes. I had to go up to him at the end of the day and tell him that he was ignoring me and that I would appreciate being recognized the following day. To his credit, the NHF was recognized to speak at all times the next day.

At another time, a couple of characters from the International Alliance of Dietary/Food Supplement Associations (IADSA) came up to the NHF's table to angrily complain that the NHF was "ruining everything" by opposing the Guidelines. They seemed quite unhappy, which confirmed to us that we were doing our job. IADSA is a fan of "reasonable" restrictions on consumer access to food supplements, which restrictions are actually not reasonable at all but truly harsh and anti-consumer. It is hard for me to believe that IADSA's member associations and companies would knowingly spend money to have IADSA as their representative at these meetings promoting these anti-supplement views while it runs up after-hours bar tabs with its EU Representative buddy.

Surprisingly, I, the life of the party, was *not* invited to join in these drinkfests. Instead, during the meeting, the EU Representative was snide and insulting towards me because of my strong and repeated opposition to his views. On my part, I was astounded to see the boldness with which the EU Representative actually gave verbal instructions (not suggestions), in front of all the delegations, to the Chairman as

to what rulings he should make! And when he did not do that, on occasion, the Chairman asked him what to do!

So, by the middle of the second day, Tuesday, the Committee had completed its review of Agenda Item 4 despite the best efforts of the pro-freedom South African delegation and the NHF to make positive changes. The US seemed happy enough though, stating at one point that the United States “is supportive of the Chairman’s efforts to move the text to closure.” So much for following American law that forbids harmonization. And with that last whimper, the Guidelines are being shipped on to Rome, Italy for review and final approval by the Codex Alimentarius Commission next Summer.

The European Union’s Game Plan

The EU’s game plan is simple: Create a Fortress Europe. With the draconian EU’s Food Supplements Directive (FSD) on the brink of throttling the *internal* food-supplements market throughout the European Union by limiting both types and potencies of supplements, the EU wants to get the same restrictions in place *internationally* through the Codex process. Once the international restrictions are in place, then those nasty, high-potency American supplements with those strange-sounding names cannot ever possibly be lawfully imported into the European Union. That is why the EU Representative is so insistent upon getting the *exact* same wording adopted in the Codex Guidelines as is found in the EU FSD.

Now, with the recent committee adoption of the Codex Guidelines for Food Supplements, the EU has successfully created a framework and structure into which it will later drop in restrictive “Safe” Upper Limits and restrictive Positive Lists of vitamins and minerals, just as they are having in the European Union. With Europe locked down tight, nothing possibly competitive with the pharmaceutical industry can threaten its European market.

The so-called “science-based risk assessment” for establishing Safe Upper Limits (maximum levels) for vitamin-and-mineral potencies, to which the EU has agreed, and about which the Americans are as happy as flies on cow dung, is nothing but a trap. The Americans think that they will be able to get *real* science to establish high maximum levels for their vitamins and minerals and then sell them to European consumers by the bushels. But by the time the Europeans get through applying *their* science, those maximum limits will be so low toddlers would be lucky to get any nutritional value out of Codex-harmonized vitamins and minerals. The European Union’s Scientific Committee on Food has already started using its science-based risk assessment to establish laughably low maximum limits for European vitamins. And, lately, I have begun to see a growing concern, if not outright fear, in the faces of some science-based risk-assessment proponents that perhaps things might not go their way here after all.

Are the Guidelines Optional or Mandatory?

But the real question, for non-Europeans at least, is not whether the European Union will commit nutritional suicide; but rather whether the Europeans will take the rest of the world down with them by exporting their insane, anti-supplement paranoia to other shores. Strong arguments have been made that “it cannot happen in America,” that domestic laws are safe-guarded from international interference both by treaty and by internal legislation.

Suzan Walter, the president of the American Holistic Health Association and a press attendee who has covered several Codex meetings, has observed that the Codex Guidelines, in ¶1.2, ominously state that “These Guidelines **do apply** in those jurisdictions where products defined in 2.1 [i.e., vitamin and mineral food supplements] are regulated as foods.” (emphasis added). Moreover, the World Trade Organization (WTO), which will determine how a Codex text will be applied as to member countries, will look to the content of the text to see if it is mandatory or optional.

Given the mandatory language in ¶1.2, both the South African and Tanzanian delegations as well as the NHF asked the Chairman to specify whether these Guidelines were optional or mandatory. The Chairman deferred to the Codex Secretariat who firmly told us all that the Guidelines were optional. Yet, in an alarming move, when these delegations tried to have the clarifying language inserted into the Guidelines, both the EU and the US objected, saying it was unnecessary; and the language was rejected. South Africa then asked that its request for the language at least be noted in the final Report of the Meeting.

That, however, was not even allowed. Upon the Committee’s reading of the draft Report of the Meeting, on the last day, I noticed that there was absolutely no mention of South Africa’s request. When I asked the Chairman to insert language saying that South Africa and the NHF had asked whether the Guidelines were optional or mandatory and the Codex Secretariat had responded that they were optional, the Chairman refused! His refusal not only violated the Codex Alimentarius Commission’s own Procedural Manual, but revealed the true nature of these Guidelines. It was also typical of his other refusals, too numerous to mention here, to allow the Report to be corrected or supplemented. As a result, the Report is inaccurate, untruthful, and cannot be trusted.

Another observer, who has covered many Codex meetings, has expressed her opinion that every WTO member country has signed mutual recognition agreements that require them to engage in a constant process of harmonization. As such, the United States and other countries will eventually be forced to harmonize to the Codex “guidelines.” Thus, the question of whether the Guidelines are optional or not may be long-since answered.

Which Way Now?

The Guidelines for Vitamin and Mineral Food Supplements will be discussed and argued at the Codex Alimentarius Commission in Rome this coming Summer. At that time, the Commission can either accept or reject the just-approved draft Food

Supplement Guidelines, either in whole or in part. The Commission could then send them back to the Bonn Committee for re-review and discussion. Rome will thus be an important battleground for this matter and the NHF will be there.

Regardless, the Guidelines as they presently exist are nothing more than a very open framework. For them to have any real meaning, certain key components, such as the establishment of Safe Upper Limits, must be created and agreed upon. This will take time and political capital to accomplish. As the developing countries awaken to the realization that they, as much as the Americans, are being excluded from European markets, there is a good chance that they will organize and fight back to prevent these final components from being fitted into the framework just created. We can already see this resistance developing.

As I have always believed, the restrictive, anti-consumer Codex standards sought by the European Union, even if put in place, will never endure. The marketplace, as it always does, will reassert itself and reasonable, healthy international standards will emerge. In fact, I predict that in 30-50 years, social historians will be holding up the current anti-supplement regulators as yet another example of silly, delusional thinking on par with those who once believed the earth was flat or that man would never fly. They will be uniformly laughed at and ridiculed. Our job, though, is just to prevent them from harming people in the meantime.

© 2004 Scott C. Tips