

# Breathe Easier - Codex Adjourns

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Berlin in June 2000 was hot and humid, the hottest it had been there since 1947. Still, despite the weather and the demonstrators outside the German Federal Institute for Health Protection of Consumers and Veterinary Medicine building, it was cool inside as the various delegates assembled on the morning of the first day of the Twenty-Second Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses. As a member of the U.S. delegation to Codex, and thanks to the National Health Federation which paid my expenses, I was one of those many persons arriving that Monday morning to take part in the on-going process of establishing international food standards. It proved to be an interesting week.

Upon entering one of the ugliest buildings I have ever seen, the delegates were confronted with many tables piled with numerous Codex documents translated into several different languages. The noise level was remarkably low despite the many people moving amongst the tables, collecting documents, and then drifting on to the free food-and-drink table dispensing, among other things, oversized German pretzels. Looking back out through the huge windows to the street, you could see the demonstrators starting to hoist a huge anti-Codex banner into the air with the help of a mobile crane.

The United States delegation, numbering some fifteen persons, had its own pre-Codex meeting inside the building in one of the smaller rooms. Chaired by Dr. Elizabeth Yetley of the U.S. Food and Drug Administration, the meeting lasted almost an hour as members of the group became acquainted or re-acquainted with one another and the woman chosen by the Food and Drug Administration to head and speak for the delegation at the Codex meeting itself. Dr. Yetley gave each of us a chance to voice our views and concerns on certain Codex topics. Many did not speak up, I did. If you have read this column before, then you can easily guess my expressed opinions on such Codex agenda items as prohibited vitamin-and-mineral lists ("negative lists"),

"approved" vitamin-and-mineral lists ("positive lists"), and mandated minimum and maximum potencies for vitamins and minerals, all of which I oppose. I quickly became known as the "radical" of the group, although I did not learn this until later.

The actual Codex Alimentarius meeting itself took place in a grand auditorium that had narrow, fold-down chairs arranged in semicircular rows that inclined steeply downwards until the lowest row ended just before the small floor where the chairman's and secretariat's table was placed. It had the appearance of being a long way down even though it wasn't. There was a small, long and very narrow table fixed before each row of chairs so that there was some space for writing. The head of the person seated in front of you came about even with your own table. I was seated almost directly behind Dr. Yetley, which later turned out to be fortuitous.

The chairman was a German, Dr. Rolf Grossklaus, who ran the Codex meetings in an innovative (to me at least) way. After much discussion on a topic, and especially after the German government delegate did not seem to have anything more to say, the chairman would somehow psychically determine that a "consensus" had been reached or not reached by the delegates and the group would move on to the next topic of discussion. I never once saw a vote taken or even the slightest hint of a show of hands; the outcome was all calculated in Dr. Grossklaus' marvelous brain as he scanned the room and remembered how many had spoken for or against each proposal. Of course, the squeaky wheels counted the most; the silent ones not at all. We Americans, who suffer from this obsessive notion that votes must actually be counted before deciding upon an outcome, might learn much from this economical and quick means of "voting." In fact, stupid me, why even vote when the chairman could just decide for all of us?

However, despite this time-saving "consensus" means of voting, the agenda advanced slowly. If the head delegate of a country or NGO (non-governmental organization recognized by Codex) wanted to speak, then he or she would raise that country or group's white sign with its name on it and wait to be recognized by the chairman. Certain delegates, such as the woman delegate from India, really liked to drone on and on, especially when an opportunity presented itself to lambaste any suggestion that dietary supplements be freely sold. The Norwegian delegate, who shared this view, would often glare at us Americans when Dr. Yetley expressed her views. In contrast to these two women, Dr. Yetley was, I thought, polite, professional, measured, and very diplomatic in her expression of the U.S. Government's official views.

Those views, though, were not always consistent with my own or those of my clients. On the Codex dietary-supplement topics of maximum and minimum levels of vitamins and minerals as well as positive and negative lists, the official U.S. position was to push for limits and lists based upon "science-based risk assessment" methods. The thinking here is that while there will be, for example, limits on vitamin potencies, they would be higher than the current laughable levels in most countries. Some countries, such as France, caught on to this, arguing against such standards because this "toxicological-studies approach would result in the levels being fixed too high"! The French then elaborated that the potency level should not result in an intake of more than

15% RDI for each pill. Unfortunately, this general opinion was not uncommon among the Codex delegates, many of whom thought that vitamin and mineral supplements containing 100% of the RDI would be ample.

But the French were not the most vocal opponents of freedom of choice at this Codex meeting. By far, the Norwegians and Indians took that prize. The official American view that "science-based risk assessment" methods of determining potency limits should prevail presumes that these other countries will be forced into accepting higher potency limits based on scientific studies rather than their current, vague national policies. This view also presumes that we Americans will not be forced to accept such limits due to our own national dietary laws (especially, the Dietary Supplement Health and Education Act of 1994 and the 1997 FDA Modernization Act). Why the Codex standards would apply to others and not to us was never adequately explained to my satisfaction. Given the current rate at which the United States is being internationalized, my own opinion is that Codex standards would make mincemeat out of any domestic American legislation.

The other potential problem lies in the siren call of "science-based risk assessment" methods. Like brandishing a crucifix before a vampire, one need only utter the words "science based" to make most opponents recoil in fear. That is because science is supposed to be fact based and therefore objective. But science, like anything else, can be manipulated to exclude unorthodox, but still valid, viewpoints. One need only consider the sad fate of those academics who have dared challenge the HIV-virus-as-the-cause-for-AIDS hypothesis to understand that far from being bastions of free thought and the exchange of ideas, most universities and scientific bodies are engines of conformity. Grant money and academic tenure will almost always go to the conformists, not the mavericks.

The risk, then, in adopting such science-based risk assessment standards is that they will not be fair and objective, but will instead be used to create artificial barriers that restrict freedom of choice. And compliance with those standards could be equally difficult if lengthy, expensive, drug-like tests, trials, and clinical studies must first be conducted before the standards are established and implemented. On the other hand, there is merit to the claim that the Europeans would be better off with vitamin-and-mineral potencies based upon this standard rather than their current, completely bureaucratic standard.

In the end, after four days of discussion, the Codex agenda on vitamin-and-mineral guidelines had not advanced appreciably. The Codex way of leaving a topic open for future discussion is to "bracket" that text upon which no consensus has been reached so that it may be considered at the next Codex meeting. There were many brackets inserted around the text at this Session, only a few removed, and no real progress towards finalizing the Codex Guidelines on vitamins and minerals was made.

Interestingly enough, on the final day, when the wording of the draft Report of the 22nd Session of the Codex Committee was being discussed and debated, Dr. Yetley unilaterally asked the chairman to delete from the Report the U.S. position stressing the

importance of consumer choice and access to vitamin and mineral supplements. No one else on the U.S. delegation seemed to take note of this, but from my position seated behind her, I was able to quickly pass her a note strongly objecting to the deletion. After discussions with her at the break, and with the later support of another member of the delegation, Beth Clay of the Congressional Committee on Government Reform, Dr. Yetley was convinced to reinstate the deleted language, which she accomplished with finesse.

The Session adjourned that Friday afternoon, June 23rd, and the delegates went their separate ways, not to meet again for another year or so. Although Dr. Yetley and the other FDA personnel running the American delegation were truly attentive to the views of its members and permitted their expression during our private meetings, it was equally apparent that they had their own plan to push. Only the U.S. delegate, Dr. Yetley, or her alternate, was permitted to speak out at the Session for our delegation. The only exceptions were those few members who were also NGO members recognized by the Codex Committee and separately seated at the Session. Those NGO members could directly speak out on issues of concern to them, which was an advantage for them.

Someone once wise-cracked that "no man's wallet is safe so long as the House of Representatives is in session." These are words that could easily apply by analogy to one's vitamin cabinet while Codex is meeting. So, breathe easier - Codex has adjourned and is no longer in session - at least for another year.

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