

Who Says Whatever Happens at Codex Does Not Affect US Law and Why Do They Say It?

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Category: Codex

Published: June 2005

I was struck recently by an article appearing in the *NNFA Today* magazine, Volume 18, No. 11, entitled "International Products Regulation Q&A: What Affect do They Really Have on the U.S.?" While some parts of the article were good, a number of the questions and answers struck a discordant note, including the following:

*"However, according to a U.S. Department of Agriculture official, the United States has never changed its laws or regulations to conform to any standards or guidelines adopted at Codex. He noted further that the United States does not, as a matter of practice, officially accept, accept in part, accept free distribution, or accept standards or guidelines adopted by the Codex Commission. **Therefore**, it doesn't appear that any changes to U.S. law or regulations would likely occur as a result of any adoption by the Commission of the vitamin and food supplement guidelines."* (emphasis added)

It was the "therefore" that really bothered me. If NNFA asked that unnamed bureaucrats about acceptance of guidelines, then it really asked the wrong question. The U.S. generally doesn't accept Codex guidelines nor do other countries. The Codex Secretariat hasn't received a notice of acceptance in the last 10 years. The better question is whether Codex standards and guidelines act as a template or "containment" within which countries must then write their laws and regulations or face enormous political and legal pressure? To this later question the answer is clearly yes - write within the acceptable field set forth by the applicable Codex standard or guideline or be prepared to accept the consequences including the risk of cross-sector trade sanctions if you don't.

Why are Codex guidelines and standards a containment, a template, within which nations must then operate or face a host of nasty consequences? Partly because since the creation of the World Trade Organization (WTO) and its internal operating agreements, every member nation knows that its laws and regulations can become the object of a WTO ruling and the object of political pressure to harmonize.. Back in 1997, I watched as the realization dawned on Codex delegates that they had entered into a new era of food-law harmonization. "Too late to cry now" was the essence of the message delivered to them by the counsel from WTO.

A few months later, I was dining in Washington with another group of food regulators, fresh with the kind of know-it-all arrogance that strikes people who have been around the block at Codex once or twice, and I said: "You know it's really fascinating to watch how regulations that affect us here at home start out at international meetings."

"No, they don't," intoned a voice from the other end of the table, "they start with decisions by industry. I was at a trade meeting where a new form of packaging was unveiled. Not too long thereafter, the same idea was presented at Codex. That's the way things are done now. And you would do it that way too. Why run around from country to country seeking the regulations you want when you can do it all in one shot at Codex?" The speaker, whom I have paraphrased, was a bureaucrat from the Department of Agriculture.

Was he right? Is Codex the place where the templates for new world-wide regulations are written after business interests have agreed to them?

Through all the years of meetings I have attended since, the answer has come through loud and clear. Yes, he was right, but the pathways can be complex. It works like this: big business and bureaucrats get together and agree on how to write new international regulations in private meetings. When they agree, their agreements then surface as working projects, draft guidelines, or proposals at Codex. In some cases, the pathway is very, very clear; in others, it is not. In the dietary-supplements case, a series of meetings were held by business and bureaucrats who agreed on some issues, went forward on those at Codex, and then agreed on others contained in the draft guideline on vitamin and mineral supplements now at Step 8.

The real key to how things work at Codex is contained in the phrase in Article 1 of the Statutes of the Codex Alimentarius Commission where it says: The purpose is - "(b) promoting the coordination of all food standards work undertaken by international governmental and nongovernmental organizations." What is so significant about this phrase are the words "promoting . . . coordination of international governmental and non governmental." What that means in the real world is taking the work of international industrial lobbying groups and then cloaking that work with legitimacy and now real binding legal and political force by feeding their agreements through Codex, an international governmental entity. The more jaded among you will say, well, how is that any different from the way things have worked in Washington for decades? The answer is it is different because decisions are made by *bureaucrats* and the actions are *offshore*. With a truly domestic piece of legislation you have a chance of overcoming industrial pressure with grassroots pressure on the people you elected. With an international guideline, by the time it's done, you have almost no chance to win. You can't bring pressure to bear in all the right places. The real damage was done long ago and long before you felt it.

Would some bureaucrat in Washington deliberately mislead anybody? You bet.

Again and again, in a variety of contexts, I have heard bureaucrats tell unwary consumers and reporters tall tales filled with half truths. At the end of a meeting in Washington last Fall, a Washington-based attendee slipped me his card and said "If you ever get a straight answer out of these folks, let me know."

When I started to catch on to the game myself, I began changing the way I prepare for meetings and the way I ask questions. I hunted for evidence of these

meetings and premised my questions accordingly. The results were startling. Bureaucrats knew months, sometimes years ahead, what was going to happen next, and they told me. I knew, for example, over two years ago that the German risk assessment for vitamins and minerals was being built - long before others "discovered" it in January.

But they do still try to con you even if you know the game. More recently, in Europe, an EU bureaucrat I was interviewing said, "Of course it is different for the FDA, they can't regulate food supplements the way we do because of DSHEA."

"Did someone tell you that?" I replied. "You have been misinformed. DSHEA contains a huge escape clause 'substantial or unreasonable risk of'" I didn't get to finish my sentence. He did it for me, "... of illness or injury." "You could drive a whole herd of camels through that language. Do you know any bureaucrat who wouldn't?" I asked. A huge grin covered his face like a Cheshire cat smile. I had caught him and he knew it.

Why aren't they telling the truth and the whole truth? Because it is a truth that they do not want you to hear.

No one in this game internationally or in Washington wants you to know that the upcoming Codex guideline will circumscribe what Congress does. It's a little game they all play now - decide offshore what to do, write a standard or guideline, and then tell the elected representatives: find a problem at home, launch a PR campaign, and pretend you are writing new legislation to fix the problem.

Indeed, the concept of gamesmanship is now so imbedded in the bureaucratic mind that it is hard to shake out even when half truths won't work. I saw another real-life demonstration of this mentality when a consultant told a room full of bureaucrats: "Half truths won't work here. They know what you are doing." The assembled bureaucrats reacted by suggesting that yet another study on how to disinform the public needed to be done. A meeting organizer expressed disappointment that I was there to witness this. "We thought nobody from the press would come. We had buried the notice so deep in our website," he commented.

What are they really doing? Building blocks for global regulation through "consensus."

The name of the game here is convergence and harmonization, to build regulations and laws in each country that fit together with those written in other countries and at places like Codex so that trade (with a hugely expanded definition of trade) moves seamlessly. The mantra of the hour is "approved once, accepted everywhere."

Can this be overcome? Is it too late? No, not if just the right steps are taken right now. Otherwise, we can all look forward to a harder fight with less chance of success in Washington in the future.

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