Economic and Social Committee
of the European Communities

OBSERVATORY SINGLE MARKET

The single market and the protection of the environment: coherence or conflict

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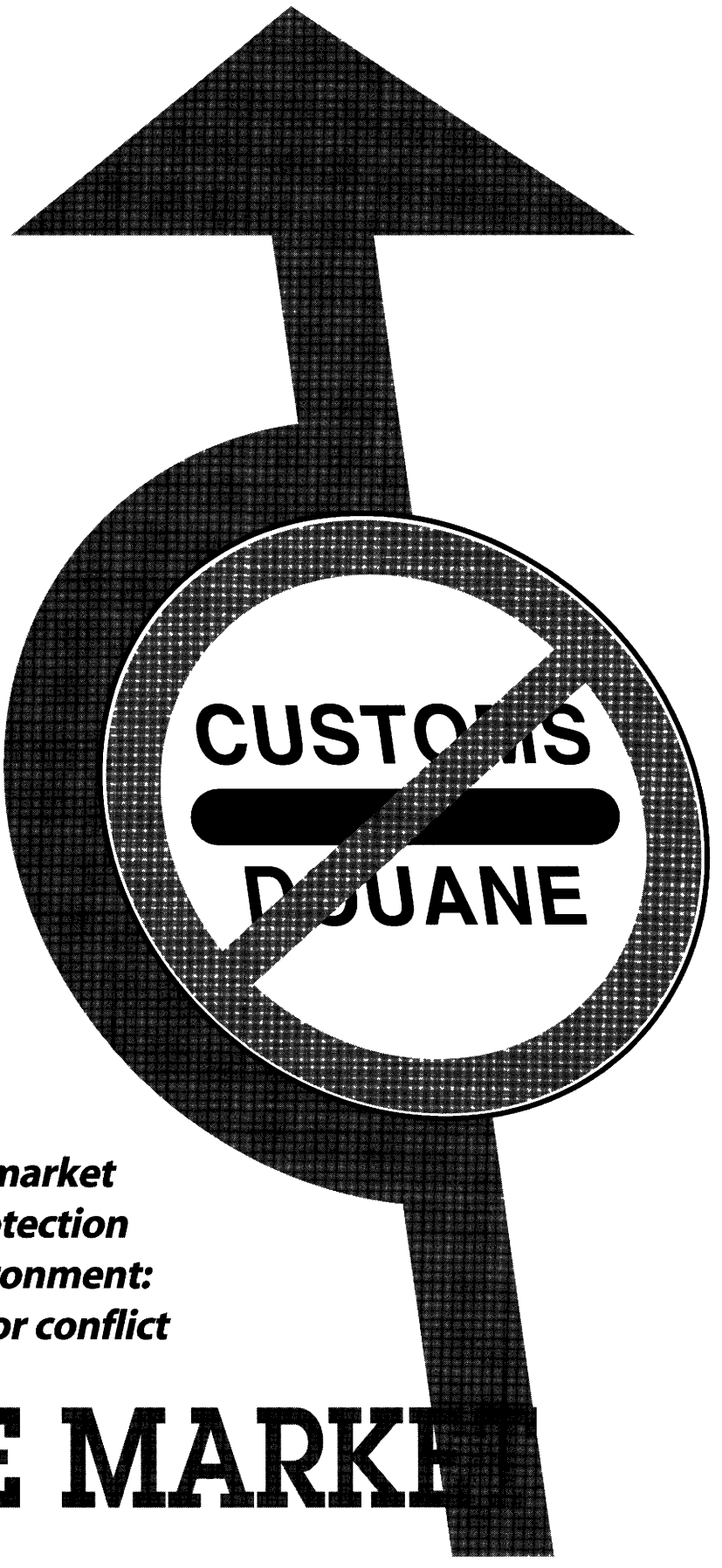

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Table of contents

FOREWORD

The relation between the Single Market and the protection of the environment is one field in which it has been apparent for some time that problems persist, so on 11th July 1996, the Economic and Social Committee called on its Single Market Observatory to prepare a report on "*The Single Market and protection of the environment: coherence or conflict*". The aim was to study this relation in two different parts of Europe, in order to highlight the different attitudes to the Single Market and the protection of the environment, especially in the light of recent modifications of the Treaty on the European Union (Maastricht and Amsterdam).

Spring 1997 some 200 questionnaires were sent out to individuals and organisations working in this field, mainly in Sweden and in Spain. The replies of then analyzed and formed the basis for two hearings: one in Malmö, on 23 May 1997 and the second in Seville, on 5 June 1997.

The result of this work has been brought together in this publication, the first part of which is the Opinion adopted with 72 votes in favour, 8 votes against and 1 abstention by the Economic and Social Committee on 30 October 1997.

Tom JENKINS
Chairman of the Economic and Social Committee

I – Own-initiative opinion of the Economic and Social Committee

(AC 1195/97)

On 11 July 1996, the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an Own-initiative Opinion on

The single market and the protection of the environment: coherence or conflict (Single Market Observatory).

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the work on the subject, adopted its opinion on 8 October 1997. The rapporteur was Mr Gafo-Fernandez.

At its 349th plenary session (meeting of 30 October 1997) the Economic and Social Committee adopted the following opinion by 72 votes to 8 with 1 abstention.

1. Legal basis of the situation

1.1 Several articles of the EC Treaty reflect this potential conflict of interests between environmental protection and the completion of the single market. Among these are Articles 174.2, 175.5 and 176 on environmental protection, Articles 95 and 97 on the single market, Article 153 on consumer protection, Articles 87 and 88 on state aid, Article 93 on the harmonization of tax legislation, Article 28 on non-tariff barriers to trade and Article 30 on exceptions to free movement for public safety reasons.

1.2 Whilst Article 174.2 calls for "a high level of protection taking into account the diversity of situations in the various regions of the Community", Article 175.5 allows temporary derogations or the use of resources from the Cohesion Fund when the costs of implementing the Community measures are disproportionate for a particular Member State or region. Article 176 authorises Member States to maintain or introduce more stringent protective measures.

1.3 Article 95 (5 and 6) allows Member States to introduce more stringent measures for the protection of the environment, provided they are justified and approved beforehand by the Commission, which is to ensure that they are not disproportionate and do not constitute a disguised restriction on free trade in goods. A similar provision can be found in Article 153 (5) on consumer protection.

1.4 The practical implementation of these articles involves both approaches at the same time, i.e. harmonization and "non-harmonization"; by not harmonizing and opting for a higher level of protection, Member States force a constant upwards adjustment of environmental standards. This leads to a halfway house situation where there are technical barriers to trade, but these barriers may help to reach the ultimate aim - environmental protection.

1.5 Tax provisions, especially Article 93 and, indirectly, Article 97 will also have to be reviewed along the same lines. Article 93 requires a unanimous decision for the harmonization of legislation concerning taxes such as VAT, excise duties and other forms of indirect taxation. However, in the context of the completion of the single market, Article 97 provides for the implementation of special administrative measures, subject to a compatibility analysis by the Commission.

1.6 Under these provisions the Member States are authorized to establish special tax concessions or incentives designed to speed up the introduction of environmental protection measures which go much further than the Community provisions in terms of time-frames or requirements. In line with Commission criteria, the cost of implementing such measures must not exceed the total cost of adopting the Community provisions, must not be discriminatory toward goods from other Community countries and must come to an end before the Community law becomes binding.

1.7 Very similar criteria are applied for the authorization of state aid. In a recent communication, the Commission accepts that Member States may provide assistance to companies adopting environmental protection measures that go further than Community measures (in addition to the usual aid for regions lagging behind and suffering decline, and for specific sectors). Such aid should, of course, be proportionate to the highest costs and should not distort competition.

1.8 Finally, whilst Article 28 states that "quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States", especially artificial administrative barriers or technical protectionist measures, Article 30 stipulates that the principles of free movement shall be disregarded when justified on the grounds of public policy or public security, protection of human health, protection of plants and protection of national treasures of artistic or historical value, many of which are directly or indirectly related to the environment.

1.9 Of course, applying these principles has given rise to serious contradictions. Throughout the history of the European Union, these contradictions have had to be resolved by the Court of Justice whose rulings, based on the order of priority to be assigned to Community objectives, have helped to shed light on potentially conflicting interests and laws. Nevertheless, several points remain obscure.

1.10 The following guiding principles could be used by the European Commission and the Court of Justice to assess the compatibility of national laws and standards with the various articles of the Treaty:

1.10.1 In all cases, the measures, whether legal or regulatory, must be of a public nature, i.e. measures taken by any public authority, or a private entity, the actions of which are strongly influenced by the public authorities.

1.10.2 Each specific case must, in legal terms, be examined in the light of a single article of the Treaty, since it is not possible to combine two or more articles in assessing the compatibility of a national measure with the Community patrimony.

1.10.3 Generally, if the product in question has been covered by a harmonization directive (or regulation), Article 100a will provide the appropriate legal basis for assessing the compatibility of a national measure with Community law.

1.10.4 All tax provisions must be assessed in the light of Article 95, except where the taxable product is manufactured nationally .

1.10.5 With the exception of the latter criteria, Article 30 will apply as a criterion for assessing compatibility to all cases where there is no harmonization of the product concerned at Community level or where there is a tax provision affecting imported products only, in the absence of national production.

2. Main decisions of the Court of Justice

2.1 **The most innovative and symbolic decision was the "Cassis de Dijon" ruling (C-120/78)**. Here, the Court ruled that Member States are responsible for regulating all aspects of the production, marketing and labelling of goods in their respective countries, provided the measures taken apply equally to their own and imported goods and are not, in practice, disguised barriers to intra-Community trade.

2.2 **Another recent but important decision concerns pentachlorophenol (C-41/93)**: although the request was prompted by Germany's unilateral ban on the use of this product, citing Article 100a(5 and 6), the decision stressed the Commission's failure to properly justify, before and during the case, the incompatibility of the German measure with this article. The court stressed the need to justify the de facto and de jure reasons why the Commission considered a national measure to be incompatible with Article 100a.

2.3 **Decisions on Sandoz, Van Beenekom, beer purity in Germany (C-178/84) and Centrafarm (C-104/75)**: these decisions seek to reconcile public and consumer health with the free movement of goods. Whilst Member States are responsible for determining the standard of health they want for their citizens, they cannot - except in exceptional cases where special caution is required - call for stricter laws for goods legally marketed in another Member State, for example, for the use of additives and preservatives, and, in any event, the means employed should be proportionate to the end sought, i.e. to safeguard public health.

2.4 **Decision on packaging in Denmark (C-302/86)**: this established that environmental protection was in itself a sufficient reason for restricting the absolute freedom of movement for goods provided by the Treaties. The payment of a deposit to ensure the return of the packaging was authorized for environmental reasons, but the Court noted that some of the proposed measures failed to take the proportionality criterion into account and were, therefore, contrary to the free movement of goods. Importers were required to only use packaging approved by the Danish authorities or to restrict to a certain quantity the marketing of products not packaged in authorized containers.

2.5 **Decisions on titanium dioxide (C-300/89) and on waste - the Commission versus the Council (C-155/91)**: both cases focused on the fact that a Community act had given precedence to Article 100a of the EC Treaty over Article 130r. The decisions are to some extent ambivalent: the first stated that when both harmonization (internal market) and environmental protection were at issue, Article 100a should be used, given that paragraph 3 establishes a high level of environmental protection as an alternative legal basis for the directive. In the second case, the Court ruled that the appropriate legal basis was Article 130r, since protection of the environment was the directive's main aim and free trade in wastes only a secondary objective.

2.6 **Decision on waste in Germany (C-422/92)**: the court ruled that the concept of waste cannot exclude waste which might be suitable for economic re-use, and that the obligation to obtain prior authorization before transporting waste overrides the requirements of the control system established in Community legislation.

2.7 **Decision on waste in Wallonia (C-2/90)**: this decision, referring to preventing regional authorities from importing and storing waste that was not produced in their region, examines the relationship between Articles 30 and 36 of the EC Treaty. The Court accepted the ban on the grounds that the problem had to be tackled at source and waste production reduced to a minimum - both these principles being laid down in Community environmental policy and in the Basle Convention regulating cross-border movement of such waste.

2.8 **Decisions on Inter-Oils (C-172/82) and Lesage (C-37/92)**: these decisions on the granting of an administrative authorization for the collection of used oils point to the conflict of interests involved in applying this type of administrative concession to a company belonging to the Member State granting the concession and in preventing these used oils from being exported to other Member States for processing.

2.9 **Decisions on diesel cars in Italy (C-200/85), bananas in Italy (C-184/85) and wines in France (C-196/85)** these decisions relate to the establishment of discriminatory domestic taxation vis-à-vis imports. The

decisions require tax neutrality for "similar" products, "similar" here meaning that the products have the same characteristics and fulfil the same purpose. However, the first decision ruled that a tax measure based on objective terms (higher tax on vehicles of over a certain engine size) was acceptable, even if in practice the tax affected imported cars more, or indeed almost exclusively.

2.10 **Decision Lornoy en Zonen (C-17/91)**: the court ruled that a parafiscal charge which makes no distinction between a national and an imported product, but the revenue from which is used only for national products, is a customs duty which contravenes Article 12 if the charge on national products is fully compensated, or a state aid which contravenes Article 95 if the charges borne by national products are only partly compensated.

2.11 **Decision on VAG Sverige (C-3289-95)**: this decision refers to the certificate of vehicle exhaust gases (issued by a national body) which the Swedish authorities required all car importers to provide in addition to any other conformity certificate issued in another Member State. This dual requirement for a national certificate of conformity as well as one from another Member State has been declared incompatible by the Court, which has decided that a certificate of conformity issued in one Member State is sufficient.

3. Possible infringements of the free movement of goods, on the grounds of health or environmental protection, brought to the attention of the European Commission and currently under examination

3.1 The Commission departments have received a series of complaints relating to possible distortions of the internal market resulting, directly or indirectly, from health or environmental protection standards. Many of these complaints are currently being considered by the departments. Most of them have not, however, led to formal proceedings against the Member State or Member States concerned. The cases under examination can, however, be analyzed in order to identify the areas where potential conflict is greatest or most frequent. These areas are as follows:

3.2 **Parallel imports of plant health products**: these complaints regarding various plant health products and pesticides concern several Member States. The general focus of complaints is that, despite the existence of a simplified authorization procedure, before each individual transaction operators must send a sample of the product (with the conformity analysis costs and the delays this entails), thus jeopardizing the confidentiality of the transaction. The initial assessment of the Commission is that these requirements are disproportionate given that in accordance with the Primacrown decision (Case 201/94), no Member State may require an imported product - coming from another Member State where it has received a certificate of conformity - to be identical to the product of national reference. The Commission also considers that systematic identification checks are only justified for the initial consignment, but not for subsequent consignments where random checks could be used at a lower cost. It should be noted that one of these cases has given rise to a consultation under the preliminary ruling procedure before the Court of Justice in Luxembourg. Cases where, on the grounds of health or environmental protection, there are mutual recognition problems for products legally marketed in another Member State, also occur in relation to solvents and filters for water destined for human consumption.

3.3 **Banning the marketing of disposable barbecues:** this case provides an interesting example of proportionality, since a Member State placed a total ban on the import of these products claiming that disposable barbecues, or inappropriate use thereof, could cause forest fires. The solution appears to have been found through improving the stability of the barbecues (with approval by the standardization body of the importing country) and considering limiting or banning marketing only in those regions of the country where the risk of fire is most acute.

3.4 **Eco-taxes on disposable razors**: this case, which affected only one Member State, originated in a law taxing all disposable products. For disposable razors, the tax was so high that the product was practically eliminated from the market. In response to Commission action, the government of the Member State is now in the process of amending the law in question. For the same country, information proceedings have been opened to check whether or not labelling requirements for disposable products, used for environmental and tax monitoring purposes, may be considered proportionate to the objective of protecting the environment.

3.5 **Environmental standards for public tenders**: these barriers relate to the establishment of disproportionate or unjustified environmental requirements which, intentionally or in practice, restrict the participation of companies from other Member States. Such obstacles occur in a large number of Member States, as has been pointed out in previous Committee opinions .

3.6 In summary, the following conclusions may be drawn:

3.6.1 The usual procedure, that is, notification of the Commission, prior examination by the Commission, meetings with the national authorities from the Member State concerned, possibly a "warning letter", followed by a "reasoned opinion" in accordance with Article 169 of the EC Treaty, and, lastly, intervention by and a decision from the European Court of Justice in Luxembourg, may take between two to three years from the complaint to the issue of the "reasoned opinion" and an additional two years before the Court's decision. Clearly a lengthy procedure.

3.6.2 The number of such cases brought before the European Commission is surprisingly low, even though various publications on the operation of the single market published in the Member States and the Single Market Observatory's own assessments indicate that this is a major obstacle. This suggests a certain lack of familiarity with the procedures for bringing complaints before the European

Commission or a certain scepticism with regard to the Commission's ability to resolve the complaints.

3.6.3 The significant number of cases resolved by the European Commission without having recourse to proceedings demonstrates its negotiating skills and also, generally speaking, the willingness of Member States to seek solutions based on the proportionality criterion.

4. Comments made at the hearings held by the Economic and Social Committee

4.1 As part of its work, the Economic and Social Committee's study group held two hearings, one in May 1997 in Malmö (Sweden), and another in June 1997 in Seville (Spain). Representative socio-occupational organizations from the north and south of the European Union were invited to these hearings. Prior to the hearings, the organizations received a survey, the response rate to which was good. The questionnaire served both to inform the organizations with a view to the hearings, and to prepare for the discussions. The results of the surveys and the hearings were vital to the preparation of this opinion, and are to be found in the Appendix.

4.2 During the hearings, the participants, who represented a large number of employers' organizations, trade unions, SMEs and consumer and environmental protection organizations, made a number of points, both orally and via the questionnaires as follows:

- There should in principle be no conflict between environmental protection and the smooth running of the single market.
- The main conflicts arise from delayed or inadequate implementation of Community legislation in national law, coupled, in some cases, with difficulty in interpreting the law at both Community and national level.
- Compatibility between both objectives – the internal market and protection of the environment – should be achieved through greater harmonization of product characteristics at EU level (even at international level, if possible) and by stricter checks on the implementation of the rules.
- As regards production conditions, there was no agreement as to whether these should be standardized throughout the European Union or whether they should reflect the specific features (air, water, soil) of each individual region. However, there was agreement that there were grounds for higher levels of protection in certain regions, as long as circumstances so required and as long as proper reasons were given.
- Environmental policy should be an additional component of the European Union's external trade policy.
- The implementation of single market and environmental legislation is easier for large companies; it is more difficult for SMEs to be familiar with and interpret the law.
- Different recycling systems in the Member States, coupled with varying interpretations of the concept of waste, are a significant obstacle to the single market.
- Environmental rules, including those applicable to public contracts need to be more exactly defined in order to prevent abuse and possible discrimination.
- Implementation and monitoring of public subsidies for environmental protection vary between Member States and may lead to distortions of competition.
- The use of eco–taxes may be appropriate where there are sound reasons for them and providing they do not lead to trade distortions inside and outside the European Union.
- Use of the Product Life Cycle Analysis system (PLCA or eco–balance) should be encouraged in both the public and private sector, in parallel with more extensive and harmonized use of the ISO 14000 standards, in particular through participation in the eco–audit.

4.3 The hearing highlighted the need to progress, at the same time and with a view to the future, towards higher levels of environmental protection whilst safeguarding the single market.

4.4 Furthermore, during the hearings, a number of specific cases of potential conflict between protection of the environment and completion of the single market were brought to the attention of the ESC study group responsible for preparing the opinion. Three of the most interesting cases are quoted below.

4.4.1 **Export of drinks in returnable packaging from Denmark to Germany**: in Germany packaging has to be recycled; sorting and returning packaging to Denmark creates a practically insurmountable economic barrier for Danish exporters. It is worth noting that it was in fact the Kingdom of Denmark's packaging legislation which prompted a decision from the Court of Justice stating that the recycling requirement for packaging was compatible with the objective of environmental protection, subject to the proportionality criteria.

4.4.2 **Export of Portuguese–manufactured furniture to the United Kingdom**: in this case, some British authorities are requiring that Portuguese furniture manufacturers provide a conformity guarantee to the effect that the wood derives from sustainably managed forests. In the absence of Community harmonization, this case could come under the scope of Article 30 of the EC Treaty.

4.4.3 **Ban on the use of sewage sludge as an agricultural fertilizer in Denmark**: the Danish Environmental Protection Agency has set very strict limits for the use of sewage sludge, with some concentration limits for LAS (linear alkylbenzene sulphonates) being much lower than those required in the other Member States. LAS is commonly used in the manufacture of domestic detergents and the low maximum permitted concentration constitutes an effective barrier to trade, since it prevents the sale of a significant proportion of detergents, and the controlled treatment of non–biodegradable residues, including these in the process of purifying and treating urban and industrial

waste water. According to various scientific studies made available to the Committee, LAS is not considered to be a toxic or dangerous substance, nor is it included on lists of such substances maintained at European Union and international level. Moreover, the concentration of LAS in sewage sludge – between 0.1 and 0.5 g/kg – does not justify a measure such as that adopted by the Danish Environmental Agency. As a result of this hearing and the presentation of the case, the European Commission has begun to examine the situation, in order to check compliance with Community legislation.

5. Conclusions

5.1 Protection of the environment and completion of the single market have equal importance at Community level, and both principles should work in the interests of the harmonious and balanced development and sustainable growth referred to in Article 2 of the EC Treaty.

5.2 There are numerous examples of the internal market and protection of the environment working in positive synergy. However, where cooperation could potentially give way to conflict, Community action should be guided by the following principles:

- clear, unchallengeable precedence of health and public safety criteria, as defined in Article 36, over all others;
- criterion of prudence in taking action;
- proportionality criterion.
- objective justification of measures to be adopted in accordance with the precautionary principle.

In its capacity as guardian of the Treaties, the European Commission should guarantee that these principles are implemented. The same could be said of the work of the Court of Justice in Luxembourg, whose decisions should gradually build a clear and specific "legal corpus" to facilitate interpretation of similar cases in the future.

5.3 The growing implementation of subsidiarity criteria, with the decrease in harmonization measures at Community level, may be the source of the greater number of conflicts emerging between the Community–scale single market and environmental protection standards with a growing national or even local dimension.

5.4 National and local authorities in the Member States do not seem to have accurate information on how to develop environmental legislation in order to safeguard the progress achieved towards the single market, especially since 1985.

5.5 Companies, especially SMEs, but also workers, consumers and socio–occupational associations, do not seem to be well enough informed as to the European Commission's information mechanisms for these areas and the possibility of lodging complaints with the Commission.

5.6 The ability of the Commission departments to respond both in terms of resources and, in particular, of procedures and time frames, appears insufficient, especially in the event of an increase in conflicts between the two objectives.

6. Recommendations

6.1 The European Commission urgently needs to begin preparing a green paper, white paper, communication series on the situation and the possibilities for cooperation or conflict between the single market and protection of the environment. This sequence of actions would enable the participation of all the organizations and sectors concerned and the preparation of a Communication to the Council and European Parliament, which could lead to a formal Resolution on the matter by the Single Market and Environment Councils. The Commission communication and the Council decision should be linked with the continuation of the Fifth Action Programme on the environment.

6.2 The objective of such a communication would be to establish clearly, for all the Member States, the criteria governing compatibility between the single market and protection of the environment. At the same time, there should also be a summary of the case law established by the Court of Justice and the action of the European Commission itself as regards its specific powers. The didactic nature of the Communication would be reinforced by the political agreement embodied in the Council Resolution.

6.3 The European Commission should be assisted by a committee of experts on the environment and the single market from the various Member States. The committee would help the Commission to interpret conflicts. The committee should, by agreement with the Commission, adopt rules of procedure; these rules of procedure should ensure that the different points of view of committee members are taken into account.

6.4 The Member States should be required to forward any proposals for legislation which could affect the operation of the internal market to the Commission at least three months before a decision is taken. These proposals should be followed as soon as possible by a Product Life Cycle Analysis (PLCA or eco–balance) or a study demonstrating the positive environmental impact and proportionality of the measures proposed. The Commission would then be able to initiate measures under the EC Treaty.

6.5 If the Commission felt that the proposal constituted an unjustified distortion of the single market, it could consult the advisory committee. If the committee's opinion coincided with that of the Commission, the Commission would be empowered to request that the Member State voluntarily suspend the proposed legislation on a temporary basis. The Commission could initiate proceedings at the European Court of Justice in order to finally clarify matters.

6.6 In accordance with the relevant provisions of the Treaties, no Member State may prevent the sale of a product legally sold in another Member State. Community rules on the free movement of goods in the internal market

should be unaffected by the proposed procedure. The Commission would also be able to have recourse to the advisory committee provided for in point 6.3.

6.7 In the European Union's representative offices in the Member States and the EEA countries, there should be a special unit providing information on the single market, and receiving and channelling information on possible obstacles resulting from national environmental legislation or from other measures of a public or private nature. Existing possibilities in the Euro info centres should also be enhanced.

6.8 The European Commission should, in each Member State and EU candidate countries, hold information and awareness seminars geared primarily to civil servants working in these areas, but also to representative socio–occupational organizations. The European Parliament, the Committee of the Regions and of course the Economic and Social Committee should be involved in this effort.

6.9 The European Commission departments working in these areas should be provided with human, logistical and budgetary resources commensurate with the importance of the task.

Brussels, 30 October 1997.

The President
of the
Economic and Social Committee

Tom Jenkins

The Secretary–General
of the
Economic and Social Committee

Adriano Graziosi

II – Questionnaire

"The Single Market and the Environment – Cooperation or conflict?"

Background

Environmental trade barriers to the Single Market may arise from different sources :

1. Non–compliance by Member States with existing EU legislation on environment.
2. Different quality or level of environmental and health protection required from goods to be used in a certain Member State.
3. Difficulties of mutual recognition of standards/procedures for environmental reasons.
4. Limitations to the free circulation of goods or free establishment of companies based on environmental/health grounds.
5. Environmental requirements deriving from the Public Procurement directives.
6. Distortions arising from public aid justified on environmental protection grounds.
7. Distortions of competition arising from different production standards and procedures in member countries.

The purpose of this Hearing is then to identify and rank, in an orderly manner, these barriers plus any additional ones that companies and citizens encounter inside the Single Market.

What Single Market barriers do you see arising from:

1. Transposition of EU Legislation into National Law

1.1 In your country?
- a. Delays in transposition?
- b. Difficulties in correct interpretation of the legislation?
- c. Other? (if yes please specify below)

1.2 In other countries?
- a. Delays in transposition?
- b. Difficulties in correct interpretation of the legislation?
- c. Other? (if yes please specify below)

2. Different quality or level of environmental and health protection in Member States

2.1 Who raised the difficulties:
- a. the authorities
- b. the competing companies
- c. the final consumers

2.2 Could you define in detail the problems encountered?

3. Difficulties of mutual recognition of standards/procedures for environmental reasons.

3.1 Do you have concrete examples of standards and/or certification procedures which on environmental/health grounds are the cause of trade distortions?

4. Limitation to the free circulation of goods or free establishment of companies based on environmental/health grounds.

Do you have any concrete examples of the above, based on :

a. Packaging and/or labelling requirements?
b. Export/import limitations on waste?
c. Excessive bureaucratic demands, including application of the Integrated Pollution and Prevention Control Directive?
d. Any other reason?

5. Environmental requirements deriving from the Public Procurement Directives

a. Have you found any special situation where environmental protectionhas been improperly used to favour local companies?

6. Distortions arising from State/public aid justified on environmental protection grounds

a. Do you find that the "Communication on public aid for environmental protection" is evenly applied by all Member States?
b. Do you have a concrete example where a competitor has received a public aid that helped its competitive edge?

7. Different production standards and procedures in Member States?

a. Do you think environmental production standards need to be the same in all the EU or do they have to reflect the local situation regarding air/water/soil quality?
b. What do you think of a Member State/local authority imposing stricter production standards. Are they appropriate in some cases, none or all?
c. Do you think that the Ecolabel procedures are applied evenly in all Member States? Do you have difficulties in using this provision?

III – Comparative analysis of the responses to the questionnaire

Responses to the preparatory survey for the Malmö and Seville Hearings focused on obstacles to the single market arising from environmental legislation. The main points raised were non–compliance with European legislation, differences in the standard of environmental and health practices and protection, mutual recognition of environmental standards and procedures, environmental measures obstructing the free movement of goods or the freedom of establishment of firms, distortions in competition due to various environmental requirements in the granting of state aid and distortions in competition arising from differences in production processes and standards between Member States.

It was clear from the responses received that a majority of the environmental obstacles to the single market were thought to spring from delays and ambiguity when transposing EU measures into national law and which it was hoped a genuinely Community–wide system would remove. Imbalances in socio–economic development and differences in attitudes towards environmental protection between north and south were cited as the causes of diverse approaches and unequal levels of protection.

In spite of the regulations on environmental management and eco–labelling, which were intended to promote mutual recognition of standards and practices, a number of eco–certification systems still coexist, as do different definitions of the same concept, e.g. organic farming. The survey suggested the origin of most of these difficulties was to be found in differing interpretations of EU legislation. Encouraging uniform implementation of existing EC systems for eco–audit (EMAS), eco–labelling, eco–balance (PLCA) and ISO 14000 was also thought to be necessary.

Most restrictions on the free movement of goods or the freedom of establishment of firms for environmental or health reasons were blamed on differences in the rules or in the interpretation of the rules on packaging and labelling, eco–taxes and waste (non–standard definitions, recycling quotas and monitoring problems). The inherent clash between subsidiarity and harmonisation was stressed.

The overriding feeling to come through was that each Member State interpreted and enforced the directive on public tenders according to its own environmental criteria and in its own interests, as a result of which state aid for the protection of the environment was not granted in the same manner from one Member State to another. There were, therefore, many calls for more effective monitoring of this aid.

There ought to be a trade–off between, on the one hand, the alignment of stringent rules governing production processes and, on the other, sensitivity to conditions particular to a given Member State or region. There was general acceptance of certain Member States' insistence on higher standards, although the broadly–shared opinion was that Europe should be heading, in the long term, towards achieving the same high level of protection across the board. However, some countries, regions and firms would require time to adapt to changing circumstances. All responses bar one condemned the system of eco–labelling for being unevenly implemented, slow and excessively lax.

IV – Summary of the Malmö hearing held on 23 May 1997

The Single Market Observatory organised on 23 May 1997 a Hearing in Malmö, Sweden entitled "The Single Market and the Environment – Co–operation or Conflict?", where representatives from different industrial organisations, trade unions, consumer organisations, chambers of commerce and environmental organisations had the possibility to participate. The aim of the Hearing was to find out if there are areas in which barriers to trade or unequal competition have been created due to differences in Members States' environmental legislation and in such cases, to discuss solutions which can be suggested to the Commission, the Council and the Parliament.

The indisputable conclusion expressed by most of the participants during the day was that there is no contradiction between protecting the environment and a well functioning single market. The goals are cohesion and co–operation and their enforcement requires the effort of all involved. The means to achieve this target is mainly by introducing common rules; harmonisation at EU–level – without having any of the Member States reduce their level of environmental protection – and impose stricter control of the application of these rules.

The following points were made during the day:

- Different environmental requirements make it more difficult and more expensive for Swedish and foreign automobile manufactures to receive a certification in Sweden.
- Demand for harmonisation of the type approval for automobile exhaust systems.
- Producers liability required from Swedish manufacturers can be a trade barrier and this is an area where more work is needed at EU–level.
- Swedish laws are based on the Germanic tradition of framework law. It is therefore almost impossible to control if a Directive is correctly implemented in Sweden since the details in the transposition of laws are laid down by national, regional and even local authorities.
- The level of environmental protection needs to be increased in all of Europe. The differences in attitudes towards the environment – and environmental legislation – in northern and southern Europe are too big and the variations too many.
- Harmonisation of requirements and rules throughout all of Europe and even on the international level. Companies are able to manage almost any rules if they are clear enough and applied uniformly in all companies.
- Environmental policy should be a cornerstone in the overall trade policy. A higher level of environmental protection should be set out in the requirements for new candidates to the European Union.
- Different recycling systems such as the system of quotas on the collection of beer and carbonated drinks bottles in Germany and the ban of cans in Denmark hinder the free movement of goods.
- A European system with common and transparent rules for the collection of glass bottles should be implemented.
- Legislation on the working environment or working equipment is not considered an obstacle to trade in the Single Market.
- Stricter international agreements are requested to prevent increased emissions of harmful gases which have a significant negative environmental impact (acid rains, climate changes, the ozone layer etc.)
- Clearer rules are called for as regards environmental requirements attached to public procurement contracts.
- Environmental management both in the private and the public sector and widespread use of the EMAS – the European Management Audit Scheme – and the ISO 14000 should be encouraged. An environmental evaluation guided by EMAS or ISO 14000 could be useful at EU–level.
- Two important principles: PPP – Polluter Pays Principle – and the principle of substitution, using BAT – Best Available Technology – should be applied as widely as possible.
- A system of inverse burden of proof could be envisaged in environmental disputes.
- The problems of waste. Difficulties with definition of what waste is. The recycling industry is an emerging market but one in which local reprocessing and minimum transport is preferred.
- More financial resources are needed for research on waste management.
- Environmental taxes are good as long as they achieve the aim of making the polluter pay for the negative environmental impact of his products: however, these eco–taxes tend to be too high.
- Differences in eco–labelling create problems if the criteria vary and consumer information is not clear enough.
- There is no conflict between employers and employees as regards environmental work in Sweden. In general there is good co–operation with initiatives coming from both sides.

V – Summary of the Seville hearing held on 5 June 1997

The Single Market Observatory organised on 5 June 1997 a Hearing with the title "The Single Market and the Environment – Co–operation or Conflict", where representatives from different industrial organisations, trade unions, consumer organisations, chambers of commerce and environmental organisations took part. The aim was to study barriers to trade or unfair competition created by differences in Member States' environmental legislation.

Most participants supported a balanced set of environmental regulations and favoured some flexibility in EU–legislation to provide for local adjustments. However, an increase in the protection of the environment and harmonisation of standards would be desirable not only at EU–level but also at the international level since otherwise companies could find it advantageous to move production to a country with less strict environmental rules. It was also concluded that the theme in question "The Single Market and the Environment" is important and if not dealt with now it will probably be a source of considerable conflict in the future.

The following points or subjects were discussed during the Hearing:

- The free movement of goods should not always have priority. Movement of dangerous and toxic products must be limited. Toxic and dangerous waste has to be recycled or deposited in containers on the spot and not be moved around;
- There has to be a balanced environmental regulation;
- The awareness and the use of Eco–Audit schemes (EMAS, ISO 14000) should be promoted;
- Some expressed worries about eco–taxes as financial instrument but most said that the use of eco–taxes is justifiable when implemented correctly and applied in appropriate sectors;
- A company selling a sludge product containing LAS (a chemical product used in the manufacturing of detergent) complained over unjustifiable treatment of its product in Denmark, which has listed LAS as dangerous for the environment. This product has been on the market for over 30 years and never before listed as dangerous. According to different research studies the product does not have a negative impact on the environment. Thus there are conflicting arguments;
- The lack of definition of waste causes confusion and can become an obstacle to the Single Market. Clear and common definitions at EU–level must be developed;
- There must be a certain degree of flexibility in EU–legislation;
- Furniture imports to the UK require a certificate of origin for the wood, causing problems for Portuguese exporters. This requirement is or can be used to prevent import of furniture from Portuguese firms;
- Some Portuguese exporters of packaged products have had difficulties with requirements for reusable packaging;
- Some anxiety was expressed regarding companies migrating to third world countries due to high levels of environmental protection in the EU, for example strawberry farmers moving to Morocco. Special agreements or a Code of Conduct between countries involved or internationally were suggested;
- Liberalisation and restructuring of electricity production and distribution with increased competition lowers prices but may also cause cuts in research and investments in environmentally friendly production plants. Harmonisation of taxes was requested in order to avoid distortion of competition;
- Differing interpretations of Directives cause difficulties;
- Harmonisation is needed on both regional and EU–level;
- The interface between the economy and the environment must be stressed. Problems will increase in the future if the environment is not protected.

Conclusions of the two Hearings:

Even if the conclusions from the two Hearings differ, a pattern of some common points emerges:

At both Hearings the following points were raised:

- Uneven and poor application of the Directive on package and packaging;
- Problems with the definition of waste;
- Problems with different interpretation and application of Directives;
- The use of Eco taxes is appropriate if it is used correctly and does not distort trade;
- Promote the use of the Environmental Audit Schemes e.g. EMAS or ISO 14000;
- Economy and environment interface. The environment must be protected and problems relating to the Single Market and the Environment appropriately solved. Everybody wants a high level of environmental protection but priorities differ due to varying economic and social circumstances in certain geographical areas.

The different views expressed depend quite clearly on factors such as the following:

- The economic situation in the country;
- Priorities in economic and social development;
- Custom and cultural values – different evaluation criteria for health and security create different minimum requirements;
- Basic conditions – natural resources, industrial, economic and social structure, production costs etc.;
- Environmental awareness.

VI –List of participants to the Hearing

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The Association of Swedish Automobile Manufacturers and Wholesalers

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