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**PROTECTIVE REGULATION AND PROTECTIONISM  
IN THE EUROPEAN COMMUNITY:  
THE CREATION OF A COMMON MARKET FOR FOOD  
AND BEVERAGES**

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## ABSTRACT

This paper describes the efforts of the European Community to create a single European market for food and beverages between the early 1960s.

The first section places these efforts in a broader context. Divergent national health and safety standards have become an increasingly important source and focus of trade conflict throughout the industrialized world. The challenges faced by the EC are similar to those faced by any federal system, including the United States, namely, the reconciliation of the interests of political sub-units in protecting the health and safety of their citizens with the goal of removing national regulations that function as non-tariff trade barriers.

By the early 1960s, tariffs on most goods with the EC had been eliminated. Accordingly the Community began to turn its attention to the removal of non-tariff barriers. In the case of foodstuffs, the Commission initially attempted to harmonize divergent member state safety and compositional standards. This effort to create "Euro-food," was, for the most part, unsuccessful: national culinary traditions proved too diverse to be harmonized.

In 1979, the European Court offered a solution to this impasse. Cassis de Dijon established the principle of mutual recognition. This meant that any product that could be lawfully sold in one member nation could be sold throughout the EC, unless the importing state was able to demonstrate that its national restrictions were necessary to protect the health of its citizens.

Cassis allowed the European Commission to distinguish between non-essential and essential food safety and compositional regulations. The former could be left in the hands of member states, subject only to food labeling requirements; only the latter needed be harmonized. In its 1985 White Paper on the Creation of the Single European Market, the Commission outlined a new strategy for removing intra-Community trade barriers. This new approach formed an important basis for the Single European Act, which was approved as an amendment to the Treaty of Rome the following year.

Since 1985, the Council has approved a significant number of framework directives. Its efforts, along with a number of European Court decisions that have struck down a number of long-standing national trade barriers, have allowed the EC to make substantial progress in creating a single European market for food and beverages.

Nonetheless, significant areas of conflict remain. The divergence of national inspection systems, as well as significant differences in the views of both producers and consumer groups in various member states regarding a number of highly visible food safety issues, reveal the persistence of important tensions between consumer protection and free trade within the EC.

## I. Introduction

This paper examines the politics surrounding the relationship between protective regulation and trade. It specifically focuses on the Community's efforts to create a single European market in food and beverages.

The policy areas of international trade, and national health safety and environmental regulation, have recently become more interdependent. A growing number of international trade disputes now focus on the impact of different national - and in the case of the EC - regional, regulatory standards on trade in both manufactured goods and agricultural products. Similarly, many national regulatory policies, including those of the member nations of the European Community, have been modified as a result of international pressures, negotiations and agreements. The politics of protective regulation, like so many other policy areas that have historically been almost exclusively domestic in focus, have thus acquired an increasingly important international dimension.

The expansion of international trade has meant that national differences in regulatory standards are increasingly likely to affect citizens in a number of different countries. As the level of international trade has increased in recent decades, both citizen groups and regulatory officials have become much more aware of the potential or actual health hazards of imported products. The growth of political influence of consumer and environmental organizations in a number of industrialized countries represents a new and important source of political pressure to restrict both imports and exports. In addition, many producers and government

officials who represent their interests, have sought to capitalize on the public's heightened concern with health, safety and environmental issues in order to increase public support for protectionist policies. In some cases, producers, consumer and environment groups have formed political alliances, both within countries and across national boundaries, to maintain or promote trade restrictions.

The increase in protective regulation at the national level does not by itself threaten the principles of a liberal world economic order; after all the last three decades have witnessed both a significant increase in national health, safety, and environmental regulation and a major expansion of international trade. Whether or not protective regulations are protectionist depends upon in part on whether they are imposed unilaterally or multilaterally. It is the former that have become an important source of international trade friction. By contrast, the adoption of common or similar regulatory standards by different countries represents a way for government officials to both satisfy the interests of their constituents for stronger or stricter regulation and reduce the use of regulation as a non-tariff trade barrier.

We are thus experiencing two contradictory trends. On one hand, domestic pressures from consumer and environmental organizations - at times encouraged by producers - are prompting a number of industrial nations to adopt increasingly strict and comprehensive regulatory standards - many of which either explicitly or implicitly restrict international trade. On the other

hand, in order to both reduce the use of regulation as a trade barrier and also preserve or enhance the goals of protective regulation, there has been a substantial increase in international efforts to harmonize health, safety and environmental regulations. The EC's trade disputes with the United States fall into the former category; the Community's own efforts to create a single European market fall into the latter.

The growth of protective regulation clearly poses an important challenge to the relationships among national and international political institutions. Nations, as sovereign political units, have the right - if not the responsibility - to determine for themselves the level of consumer protection and environmental quality they wish to accord their citizens. Because the citizens of different industrial nations have different values and priorities, national standards are apt to differ widely. But this in turn increases the potential role of protective regulations as a source of trade friction. How can the international community respect the right of citizens to national regulatory self-determination, while at the same time minimize the use of protective regulation as a non-tariff barrier?

This is an issue with which the European Community has been wrestling since its formation. But it is also an issue that affects any federal structure. The United States also faces the challenge of balancing the rights of the citizens of each of its fifty states to enact regulations that protect their environment and the health of their citizens, with the federal government's constitutional

responsibility to preserve interstate commerce. The American experience suggests that an integrated market is not incompatible with a wide diversity of state and local regulatory standards - some of which obviously will be stricter than others. This is also true at the international level; the nations of an integrated world economy do not require identical national regulatory policies.

But it is also true that widely divergent national and local standards - if not restrained by some extra-local or extra-national authority - can seriously undermine both interstate and international commerce. In this sense, the challenges faced by the European Community are analogous to those faced by both the American Federal Government and the GATT. All three federal or international bodies are committed to expanding trade within the political units under their jurisdiction. However, all in turn are confronted with pressures from their own political subunits to enact health, safety and environmental regulations that may well be stricter than those of other subunits and thus trade inhibiting.

## II. The Constitutional Structure of the European Community

A central purpose of the establishment of the European Community in 1957 was to permit the free movement of goods among its member states. From the outset, the EC understood that the achievement of this goal would require major changes in a wide

variety of national policies. Article 3 of the Treaty of Rome specifies two requirements for the creation of a common market: "the elimination, as between member states, of customs duties, and all of quantitative restrictions on the import and export of goods, and of all other methods having equivalent effect," and "the approximation of the laws of the member states to the extent required for the proper functioning of the common market."<sup>1</sup>

Each of these requirements are amplified in other provisions of the Rome Treaty. Article 30 states that, "Quantitative restrictions on imports and all other measures having equivalent effect shall. . . be prohibited between Member States."<sup>2</sup> while Article 100 empowers the Council of the European Community to, "issue directives for the approximation of such provisions laid down by law, regulation or administrative action in member states as directly affect the establishment or functioning of the common market."<sup>3</sup> These two articles pursue different objectives, but are essentially complimentary: the purpose of the former is to remove quantitative national restrictions on trade while the latter's goal is to "enable obstacles of whatever kind arising from disparities

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<sup>1</sup> Diana Welch, "From 'Euro Beer' to 'Newcastle Brown,'" A Review of European Community Action to Dismantle Divergent "Food" Laws," Journal of Common Market Studies, Vol. XXII, No. 1 September, 1983, p. 48

<sup>2</sup> Quoted in T.R. Stocker, "Food Law and 1992," unpublished paper prepared for Worldwide Information Conference on Food Law: Current Changes and their Implications." 1990, p. 2

<sup>3</sup> Welch, *ibid*

between (nations) to be reduced."<sup>4</sup>

However, the Rome treaty also includes a provision that explicitly limits the purview of Article 30. Article 36 permits member states to restrict or even ban imports, exports or goods in transit if such restrictions, as long as they are necessary for "public morality, public policy or public security (or) "the protection of health and life of humans, animals or plants...."<sup>5</sup> and do not "constitute a means of arbitrary discrimination or a disguised restriction on trade between member states,"<sup>6</sup> This provision is similar to that of Article XX of the General Agreement on Tariffs and Trade, which states that, "... nothing in this agreement shall be construed to prevent the adoption or enforcement ... of measures ... necessary to protect human, animal or plant life, or health."<sup>7</sup> Article 36 also contains a qualifying clause: the restrictions imposed by a member state must meet the test of "proportionality: a member state seeking to justify an import restriction under Article 36 must demonstrate that it has selected the least restrictive means for doing so.

As a response to increased public demands for additional

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<sup>4</sup> Welch, op. cit., p. 48

<sup>5</sup> Stocker p. 2

<sup>6</sup> Welch, op. cit., p. 48

<sup>7</sup> Quoted in Antoine St-Pierre, "Business and the Environment" The International Dimension," Global Business Issues, Vol. 2 No. 3 p. 3



health, safety and environmental regulation in western Europe during the 1970s, the EC has subsequently modified its interpretation of Article 100. Instead of restricting Community directives to rules and regulations that were necessary to promote intracommunity trade, the Community has issued an increasing number of directives whose primary purpose has been to improve the health, safety and welfare of its citizens. "The basis of the Commission thinking has been changing from that of improving free trade to improving the quality of life by protection of the consumer and public health." <sup>8</sup> Accordingly, "measures which do not affect trade but which are intended for health and safety reasons directly affect the common market within a broad interpretation of Article 100."<sup>9</sup> This change in emphasis was made official by the Single European Act, which came into effect on July 1, 1987. This amendment to the Treaty of Rome stressed the Community's commitment to both improve the quality of the physical environment and enhance consumer protection.

The Community has thus moved from "negative" harmonization, whose purpose is to remove national obstacles to the operation of a common market to "positive" harmonization," whose objective is, "to attune the legal systems of the Member States to the common policies developed by the EC"<sup>10</sup> In a sense, the EC has come to

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<sup>8</sup> Quoted in Welch, op cit p. 49

<sup>9</sup> Ibid.

<sup>10</sup> Quoted in Welch, op. cit., p. 50

employ Article 100 in much the same manner that the United States has interpreted the interstate commerce clause of the Constitution. Originally intended to provide Congress with the authority to prevent the states from restricting commerce among them - as they had done under the Articles of Confederation - the interstate commerce clause has subsequently been employed to legitimate a wide variety of "positive" regulatory controls imposed on the states by the federal government, ranging from non-discrimination to air and water quality standards.

A somewhat analogous process has taken place at the international level. The GATT Standards Code constitutes an agreement on "Technical Barriers to Trade." Its purpose is essentially a negative one: it is "to assure that products introduced into international trade could not be discriminated against or treated unfairly because of arbitrary standards-related activities on the parts of governments." <sup>11</sup> Disputes that cannot be satisfactorily resolved bilaterally are referred to a Committee on Technical Barriers to Trade, which has the power to make judgments and impose penalties.

Yet there have also been a number of international agreements affecting international commerce whose purpose has been to promote consumer protection and environmental quality. In 1962, the Food and Agriculture Committee and the World Health Organization jointly established a food standards program that is administered by the

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<sup>11</sup> Eddie Kimbrell, "International Standards and Non-Tariff Trade Barriers," Food Technology, July 1985, p. 70

Codex Alimentarius Commission. Its objective is to develop common food safety standards that will both facilitate international trade and protect consumers. Moreover, during the last two decades, two important international treaties have been enacted that have sought to improve or protect the quality of the global environment by restricting trade in various environmental "bads," namely various parts of endangered species and chemicals that threaten the ozone layer. These can be seen as examples of "positive" harmonization at the global level.

### III. Harmonization

A useful way to begin to explore the complex dynamics of the relationship between protective regulation and intra-community trade is to examine the way the Community has addressed the issue of food safety. "The food sector has always been the trailblazer of policy making in creating the internal market." <sup>12</sup> The EC's very first Directive, issued in 1962, specified the colorings permitted in foodstuffs. Subsequently, a key decision of the European Court which interpreted the scope of Article 36, namely Cassis de Dijon (1979), struck down a national regulation that defined the alcoholic content of liquor. In addition, in its 1985 White Paper outlining an alternative strategy for completing the internal market, the Commission stated that foodstuffs represented a

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<sup>12</sup> Paul Gray, "Food Law and the Internal Market," Food Policy, April 1990, p. 111

particularly appropriate - and critical - sector in which to implement its new approach. Finally, European food safety standards have emerged as an important source of trade friction with the United States.

By the middle of the 1960s, tariffs among the member states of the Community had been virtually eliminated. Accordingly, the EC began to turn its attention to the removal of non-tariff or "technical" barriers to trade. In May, 1969 the Council adopted a general program for the elimination of technical barriers to trade. The EC's strategy for achieving this objective was to rely primarily upon its powers under Article 100 to harmonize national regulations. As a Community document put it: "a national legal act in principle calls for a Community legal act."<sup>13</sup> The Council established a detailed schedule for the adoption of forty-two directives designed to ensure free trade in foodstuffs. Each of these directives was to be "total," i.e., they were to supercede all national regulations for each of the products, processes or substances that they included.

In 1973, the Community, faced with a lack of progress in meeting the deadlines it had established four years earlier, and confronted with three additional member states, adopted a revised harmonization program. The EC now decided to emphasize the use of "optional" directives. An "optional" directive requires the free movement of all products that conform to EC standards, but allows

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<sup>13</sup> Quoted in Gray, *op. cit.*, p. 112

distinctive national standards for products sold in the country in which they are produced.

The Commission's efforts to harmonize food regulations did meet with some success. For example, the EC's first directive reduced the number of food colors permitted in the (then six) member states by 60%. "It was widely regarded as a triumph not only for diplomacy but also for consumer protection."<sup>14</sup> However subsequent progress was extremely slow. Between 1962 and 1979, the Commission only managed to adopt directives for coloring matters (1962) preservatives (1964), antioxidants (1970), emulsifiers, stabilizers, thickeners and gelling agents (1974), saccharin (1978), dietary foodstuffs (1977), fruit juices (1975), cocoa and chocolate products (1973), preserved milk (1976) and jams and jellies (1979). Not only was it only able to harmonize national regulations in only a small proportion of the areas specified in both its 1969 and 1973 plans, but even these plans did not include all relevant European food law regulations.

The Commission found it somewhat easier to secure agreement on "horizontal" directives, which regulated the use of a particular additive or preservative in all foods, than "vertical" ones, which specified the composition of an individual food product. Indeed it was not until 1973 that the Commission was able to adopt its first vertical directive - for cocoa and chocolate. It took fourteen years of negotiations before a directive specifying the composition

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<sup>14</sup> Gray, op cit p. 111

of fruit jams, jellies, marmalades and chestnut puree directive, was adopted. Equally importantly, a number of food directives were far from "total;" in order to facilitate agreement, the Council was frequently forced to compromise by leaving various standards up to the discretion of national authorities.

For example, the EC's directive on food additives established positive lists for various kinds of additives. Member states only permitted to authorized the use of additives included on these lists.<sup>15</sup> However, a nation was permitted to prohibit or restrict the use of any approved additives in any specific food item, subject to the sole provision that they may not completely ban an additive on the Communitive's positive list. Thus France, for example, decided to permit the use of the food coloring amaranth only in a single product -- caviar. Likewise, the EC's cocoa and chocolate directive excluded from its scope a number of substances commonly used in these products.

An important reason why it proved difficult to harmonize food standards was that national customs, traditions and regulations were widely divergent - the product, in many cases, of centuries of distinctive patterns of food production and consumption. For example, in the case of bread, some nations permitted the long-lasting "Anglo-Saxon" loaf designed for use in the English sandwich while others assumed that this commodity was purchased on a daily

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<sup>15</sup> Ludwig Kramer, "EEC Action in Regard to Consumer Safety, Particularly in the Food Sector," Journal of Consumer Policy, December 1984, p. 475.

basis. Developing a standard that could be applied to both proved to be extremely difficult. As one observer put it, the concept of "Eurobread" was like, "trying to cross a baguette with a loaf of pumpernickel." <sup>16</sup> Similarly, Reinheitsgebot, the German beer law, was originally developed in 1516 in order to make sure that only a restricted range of ingredients were used in this important product; its standards embodied the "state of the art" for beer production at the time of their enactment and they had been modified only slightly since. Other nations brewed beer very differently; most included various additives that were prohibited by German law. Not surprisingly, it proved impossible for German and British brewers to agree on the appropriate composition of "Eurobeer."

The European Commission's effort to standardize such products as bread, beer and biscuits throughout Europe rapidly became an object of derision. The EC was accused of trying to force everyone to eat "Euro-Bland" food, made by "Euro-recipes." "Harmonizing all existing law was leading to a conflict between culinary cultures and traditions with an attempt to unify products which had culinary diversity into unique product descriptions." <sup>17</sup> In addition, the rigidity of those compositional standards on which the Commission was able to agree threatened to undermine technical progress in

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<sup>16</sup> Shawn Tully, "Europe Gets Ready for 1992," Fortune, February 1, 1988. p. 83.

<sup>17</sup> Paul Gray, "Food law and the internal market," Food Policy April 1990, p. 112

what was a highly dynamic and innovative industry. One industry observer wrote in 1979 that, "the result of EEC food law harmonization programme seems merely to burden us with regulations of unnecessary complexity, without benefiting consumers or manufacturers or helping trade."<sup>18</sup> Eurofood added:

At its worst harmonization can damage companies, forcing them to give up long standing and harmless production systems and ingredients. At best harmonization . . . can be restrictive to new developments in the food industry.<sup>19</sup>

The attempt to formulate horizontal directives ran up against an additional obstacle: the wide divergence of national food safety standards. For example, in the case of food additives, some nations employed a positive list, i.e. only additives that were specifically approved were permitted, while others employed a negative list, i.e. any additive could be used unless its use was specifically prohibited.<sup>20</sup> There was also a lack of scientific consensus about what additives were and were not safe - differences compounded by the divergence of national eating habits and recipes. For example, while British poultry producers traditionally used arsenic in chicken-feed, French law prohibited the sale of eggs from arsenic-fed chickens, even though eggs produced in Britain contained no arsenic residues. Likewise, the British permitted the use of thousands of food additives; French food law was more

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<sup>18</sup> Quoted in Welch, p. 55

<sup>19</sup> Ibid.

<sup>20</sup> John Abraham and Erik Millstone, "Food Additive Controls; Some International Comparisons," Food Policy, February, p. 43 - 57.



restrictive.<sup>21</sup>

To help address these issues, a Standing Committee on Foodstuffs was established by the Council in 1969.<sup>22</sup> It was composed of representatives from each member state and intended to serve as an advisory body to the European Commission. In 1974 a Scientific Committee for Food was formally established as an advisory body to the Commission and two years later a Consultative Committee for Food was organized. The former consisted of fifteen scientific and technical experts, chosen from member state nationals, but not as representatives of their respective countries. However, given the unusual sensitivity of the foodstuffs sector to public concerns about safety, these bodies had only a modest impact.

Moreover, the Community's requirement that all directives receive the unanimous agreement of the Council of Ministers proved extremely cumbersome - particularly after the number of EC member states was increased from six to nine. Nations which were committed to preserving the status quo of their own domestic regulations for foodstuffs but who had been unsuccessful before the Commission, frequently attempted to renegotiate the details of various directives when they came before the Council. The latter came to function less as a vehicle for advancing Community interests than as a forum for diplomatic bargaining in which each

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<sup>21</sup> John McCarthy, "Protectionism and Product Harmonization in the EEC" Economic and Social Review, April, 1979 p. 191

<sup>22</sup>R. Haigh, "Harmonization of Legislation on Foodstuffs' Food Additives and Contaminants in the European Economic Community," Journal of Food Technology Volume 13, (1978), p. 255 - 264

state pursued its own interests. Consequently, "many proposals for a directive from the commission were blocked at the council and many were even sent back to the commission for renegotiation and reworking."<sup>23</sup> Between 1969 and 1970, a total of twelve draft directives were withdraw by the Commission; they sought to harmonize products ranging from mayonnaise to butter, beer, ice-cream and margarine.

While the Community was making relatively little progress in harmonizing existing national regulations for food safety, processing and composition, the number of national regulations governing foodstuffs was increasing. Some of these new national regulations were inspired by producers seeking to insulate themselves from competition from foodstuffs and agricultural products produced in other member states of the Community. For example, the French banned drinks with sugar substitutes.<sup>24</sup> Others were a response to the public's demands for heightened consumer and environmental protection - a development that was also occurring in the United States at about the same time. As one observer noted, "...there has been a great increase in consumer awareness of possible dangers in products...; there has also been increased concern for the environment. Thus nations have been led to protect their citizens and country from unsafe products or manufacturing

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<sup>23</sup> J. H. Byrne, "Food Law Harmonization in the European Economic Community," Food Technology, July, 1985, p. 78

<sup>24</sup> Tully, op cit, p. 83

processes."<sup>25</sup>

In 1980, the Commission conceded that the goals established in its 1969 General Programme of eliminating technical barriers to trade had been unrealistic. It noted that, "in the foodstuffs sector progress has been less spectacular (than in industrial products) largely because of the structure of the food industry."<sup>26</sup> The Commission's food directives still covered only a relatively small portion of the food and food substances consumed within the Community. The result was that "new products had to be adapted to pass a complex maze of different safety and technical standards for each European country."<sup>27</sup> This outcome of course was precisely the opposite of that intended by the Community's proponents: the European food market had become even more fragmented, the profit margins of European food processors had decreased and consumers were confronted with higher costs.<sup>28</sup> In sum, the Community was faced with a serious problem: notwithstanding all of the Commission's efforts, "foodstuffs constitute(d) the area most

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<sup>25</sup> John McCarthy, "Protectionism and Product Harmonization in the EEC," Economic and Social Review, April 1979 p. 188-9

<sup>26</sup> Quoted in Alan Swinbank, "EEC Food Law and Trade in Food Products," Journal of Agricultural Economics, September, 1982 p. 345

<sup>27</sup> Mitzi Elkes, "Europe 1992: Its Impact on Nontariff Barriers and Trade Relations with the United States," Food, Drug and Cosmetic Law Journal, September, 1989, p.471

<sup>28</sup> Mitzi Elkes, "Europe 1992: Its Impact on Nontariff Trade Barriers and Trade Relations with the United States," Food, Drug and Cosmetic Law Journal, September, 1989, p. 571

hampered by non-tariff barriers to trade."<sup>29</sup>

#### IV. Mutual Recognition

An important step in breaking this logjam was provided by the European Court in its decision in Cassis de Dijon, handed down in 1979. Cassis de Dijon is a low alcohol (15 to 20%) liqueur manufactured in France. A German firm wanted to import this liqueur into Germany, but was refused a license to do so on the grounds that German law requires that any product sold as a liqueur have a minimum alcohol content of 32%. The German government justified its decision on the grounds of both public health and consumer protection. It argued that the importation of Cassis de Dijon was harmful to public health because alcoholic drinks with low alcoholic content induced more tolerance for alcohol than did beverages with higher alcoholic content. The European Court was unpersuaded: it held that the German regulation had no legitimate public health justification and that therefore Community trade principles took precedence over German law.

This decision made explicit the concept of "mutual recognition:" nations were free to maintain and enforce their own regulatory standards for products produced within their jurisdiction, but they could not legally prevent their citizens

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<sup>29</sup> G. Chambers Food Hygiene Policy and 1992 Scientific and Technological Options Assessment, European Parliament, May 17, 1990 p. 36

from consuming products that met the legal standards of another member state of the community. This concept was not new. It was both implicit in Article 30 and underlay a Community directive on food labeling that was also put into effect in 1979. In addition, Article 57 of the 1957 Treaty of Rome had explicitly used the term in connection with education and professional qualifications as a means of promoting the free movement of persons with the EC. Nonetheless, the court's decision in Cassis de Dijon, by explicitly defining the scope of Article 30 and limiting the purview of Article 36, made "legal history."

The court acknowledged that "obstacles to movement within the Community resulting from disparities between national laws . . . must be accepted insofar as ...[they are] necessary in order to satisfy mandatory requirements relating in particular to...the protection of public health... and the defense of the consumer."<sup>30</sup> The question before the court was whether the German regulation was in fact necessary to satisfy one of these "mandatory requirements?" In other words, did the restriction it imposed on imports qualify as one of the exceptions to free trade permitted under Article 36? The court concluded that the German 32% alcoholic content requirement served no legitimate public or national interest. Not only was this beverage being lawfully produced in France, but, equally importantly, the German regulation, "was not considered by

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<sup>30</sup> Quoted in Welch, op. cit., p. 60

the court as a necessary means to protect the consumer."<sup>31</sup> Accordingly, since it had the "equivalent effect" of a "quantitative restriction on imports,"<sup>32</sup> it constituted a violation of Article 30. Thus the European Court effectively challenged one of its members' national laws, and in effect, overturned German legislation within the European Community.

It is noteworthy that the court struck down the German regulation even though it applied equally to imported and domestically produced goods. The court concluded that the standard of "equivalent effect," applies to "any national measure capable of hindering, directly or indirectly, actually or potentially, intra-community trade."<sup>33</sup> In other words, the test of "equivalent effect," is not whether a measure discriminates against imports, but whether it restricts them."<sup>34</sup> This represented an important change in EC law, since five years earlier, the Commission had stated that non-discriminatory measures were not to be considered violations of Article 30.

The court did recognize that in the absence of "common rules" i.e. harmonization, each member state had the right "to regulate all matters relating to ... production and marketing ... in their

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<sup>31</sup> Quoted in Welch, op. cit., p. 65

<sup>32</sup> Welch, op cit, p. 61

<sup>33</sup> Quoted in Welch, op cit p. 60

<sup>34</sup> Quoted in Welch, op. cit., p. 62

own territory."<sup>35</sup> Thus Germany was free to require that liquor produced in Germany have a minimum alcohol content of 32%. But what it could not do was impose that requirement on products lawfully produced in another member nation. In other words, Cassis did not require that any nation change its domestic laws; it only restricted their scope. As the Commission noted in its interpretation of the Cassis decision:

....any ... product must be admitted if it has been lawfully produced elsewhere in the Community and conforms to rules and processes of manufacture that are customarily and traditionally accepted in the exporting country, and is lawfully marketed in the territory of the latter.<sup>36</sup>

The principle of mutual recognition articulated in Cassis exposed a wide variety of national regulatory standards to judicial scrutiny. (Cases to the European Court can either be brought by a member nation or by the Commission itself). Following Cassis, "a member state using (a health and safety defense) must present an argument that will bear harsh scrutiny by the Court if it expects to maintain the regulatory measure."<sup>37</sup> The following year the court ruled that an Italian regulation prohibiting the sale of all products labeled "vinegar" other than wine vinegar violated Article 30. It held that the purpose of Italy's regulation was to favor a

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<sup>35</sup> Quoted in "Environmental Protection and the Free Movement of Goods: the Danish Bottles Case," Journal of Environmental Law, Vol. 2, No. 1 (1990), p. 93.

<sup>36</sup> Quoted in Alan Swinbank, "EEC Food Law and Trade in Food Products," Journal of Agricultural Economics September, 1982, p. 344-5

<sup>37</sup> Welch, op. cit., p. 65

national product, namely wine vinegar, and that by not allowing vinegars made from apple cider or malt to be sold in Italy under the same product designation, products produced in other member states were placed at a disadvantage.

In Fietje (1980) the court overruled a Dutch law on the labeling of alcoholic drinks that prohibited the sale of various beverages unless they were labeled in accordance with Dutch government requirements. The court concluded that this statute was not justified on consumer protection grounds because its objective could be equally well met by adequate product labeling. That same year in Kelderman, the court struck down a Dutch statute that specified the dry matter content required in bread. The Netherlands had imposed a ban on imports of French "brioches" on the grounds that they did not conform to its Broodbesluit or "Bread Order;," the Court countered that consumers could easily be informed by other means, "such as requiring labelling showing, for example, the weight and specific composition of an imported product."<sup>38</sup>

The following year in Rau v De Smedt, the court declared that a Belgian rule that required margarine to be sold in cubic form in order to avoid confusion with butter was illegal. It noted that although a packaging requirement was not an absolute barrier, it made imports more expensive and difficult. Again the court concluded that a labeling requirement could equally well protect

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<sup>38</sup> Quoted in T. Venables, "The Impact on Consumer Protection On International Trade," Presented at an OECD Symposium on Consumer Policy and International Trade, Paris, November, 1984, p. 15



consumers, without interfering with free trade.

The doctrine of mutual recognition also had a major impact on the EC's effort to harmonize national regulatory standards. Cassis made harmonization both easier and more essential. It made it easier because the Community could now dispense with the need to reconcile an almost infinite number of different national standards and regulations: their maintenance no longer represented a barrier to intra-community trade. Indeed, it is not an exaggeration to suggest that Cassis laid the groundwork for the amendments to the Treaty of Rome contained in the Single European Act of 1986.

On the other hand, it now became even more urgent for the EC to establish and enforce uniform health and safety requirements, lest all EC consumers find themselves exposed to products produced according to the standards of the least stringent national authority. As one observer noted, "if (Cassis) applied . . . without any restrictions, we should be steering straight towards . . . a common market where there would not be any legal standards and where . . . the bad products would drive out the good ones."<sup>39</sup> Not surprisingly, BEUC, a European consumer lobby, expressed concern that the Commission would use Cassis as a way of solving its inability to harmonize health and safety standards, which would in turn lead to a lowering of food safety and quality standards.<sup>40</sup>

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<sup>39</sup> Quoted in Welch, op cit, p. 65

<sup>40</sup> Welch, op cit, p. 64

In principle, this downward spiral could have been avoided by permitting nations to invoke the "escape clause" of Article 36. After all, Cassis only restricted the use of this article; it did not prohibit it. And in fact, following Cassis, the court did uphold some national consumer protection restrictions on this basis. For example, in Eyssen (1980), the court upheld a Dutch ban on the use of nisin in processed cheese. It argued that since clear health risks had not yet been established for the maximum permissible daily intake of this preservative, the Dutch were entitled to restrict its use. Two years later, in Sandoz, the court relied on similar reasoning to uphold a Dutch prohibition on the addition of vitamins to foodstuffs. It concluded that,

in view of the uncertainties inherent in scientific assessment, national rules prohibiting, without prior authorization, the marketing of foodstuffs to which vitamins have been added are justified on principles within the meaning of article 36 of the Treaty on grounds of the protection of human health.<sup>41</sup>

But this was not a viable solution for two reasons, one political and one economic. Politically, the Commission considered it important to re-assure consumers that progress toward the creation of a single European market would not result in any relaxation of consumer protection standards for Community residents; it wanted the creation of a common market to be associated with an expansion of health and safety standards for all Europeans. Reliance on Article 36 would not achieve this goal. From an economic point of view, allowing divergent national health

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<sup>41</sup> Quoted in Venable, op cit, p. 18-19

and safety regulations would undermine many of the efficiency gains that the Commission hoped to achieve from the creation of a single European market.

A Commission official noted in 1981, "we cannot agree with those who have concluded from this new case law that the new principles set out by the court bring practically all harmonization activity within the scope of Article 30." He stated that it is the Commission's view that, "there remains a need for harmonization programmes but that harmonization will now apply over a narrower but better defined field."<sup>42</sup> In short, harmonization would still be required.

Initially, the Commission continued the program of harmonization that it had begun in 1969 and revised in 1973, though it now proposed fewer vertical and more horizontal directives. But progress remained slow. By the mid 1980s, directives had been adopted for only 14 of the 50 sectors falling within the general category of food legislation; six more were pending. In 1985, the Commission calculated that it had succeeded in implementing only two fifths of the 1969-73 program.<sup>43</sup> Even this statistic exaggerated the Commission's progress in creating a common market for foodstuffs, since a number of new products and processes had emerged since 1973 that were not even on the Commission's initial

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<sup>42</sup> Quoted in *ibid.*

<sup>43</sup> "Completion of the Internal Market: Community Legislation on Foodstuffs," Commission of the European Communities, November, 1985

agenda.

Nonetheless, some progress had in fact been made. At a conference held in 1984, a manager from a major European food producer stated that "during the last decade, EEC food law harmonization has made substantial progress toward the creation of an integrated common market."<sup>44</sup> The vice-president of European affairs for Coca Cola concurred with this assessment as did the European food law coordinator for CPC Europe. Still, industry participants noted that substantial trade barriers remained. Patrick Jordan of the Food Drink and Tobacco Federation of Ireland stated that, "we would be less than honest if we did not acknowledge areas of food laws where so-called hygiene or sanitary requirements exist primarily to act as a barrier to imports." He specifically cited French and Germany regulations that prevented the entry of cuts of meat weighing less than 3 kgs. Another observer noted that mayonnaise in the UK only had to contain 25% vegetable oil, while in other EEC countries, the standard was between 75 and 80%. Diane Welch concluded that, "as far as alcoholic beverages are concerned, the EEC internal market does not exist" adding that "citing further technical obstacles to trade poses no problem."<sup>45</sup>

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<sup>44</sup>J. H. Byrne, "Food Law Harmonization In the European Economic Community," Food Technology, July, 1985, p. 79

<sup>45</sup> Diane Welch "Alcoholic Beverage Legislation," Food Policy February, 1985, p. 41, 42

## VI. Completing the Internal Market

In 1985, frustrated by the slow rate at which non-tariff trade barriers were being removed in a variety of sectors - of which food was one - the Commission officially decided on a major shift in policy. In a White Paper on Completing the Internal Market, released in November, 1985 the Commission acknowledged that a genuine common market could not be achieved by 1992 if the Community continued to emphasize the harmonization of national laws. It therefore proposed a new strategy - one which combined the principles of mutual recognition articulated by Cassis with a more efficient mechanism for harmonization based on Article 100.

"Completion of the Internal Market: Community Legislation on Foodstuffs," was released in the form of a "communication from the Commission to the Council and to the European Parliament" in 1985. Its main thrust was to distinguish between those areas of regulation that required Community legislation and those that could be left to its member states. This distinction was to be based on the "principle of proportionality: legal measures must not go further than is necessary to achieve the desired objective." <sup>46</sup> The principles developed by the European Court in Cassis and the cases that followed it had freed the EC from the need to harmonize all national laws, regardless of their importance. Now the Commission could concentrate on those legal measures that were "essential" or

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<sup>46</sup> Ibid, p. 5

"genuinely necessary" to protect the health and life of humans within the context of the free movement of goods within the EC. As a senior EC official subsequently put it, "it is not a case of applying the minimum rule but of applying the necessary rules, and applying them more strictly than in the past." <sup>47</sup>

In practice this meant that the Commission would formally abandon its clearly fruitless effort to specify the composition of foodstuffs; there would be no more vertical directives, no more attempts to create "Euro-bread or "Euro-beer". (Significantly, Cassis overturned a compositional standard.) Future community legislation of foodstuffs would be confined to those rules and regulations that were necessary to protect public health, provide consumers with adequate information, ensure fair trading and provide for necessary public controls.<sup>48</sup> Based on these criteria, the White Paper specified six areas that required Community legislation: food additives, materials and articles in contact with foodstuffs, foodstuffs for particular nutrition uses, labeling, some manufacturing processes and official inspection.

The Commission specifically indicated that its approval would be required for all additives used in food sold within the EC. It also required the mandatory inspection of all foods entering a member state - regardless of whether or not the food was intended for consumption in that state. In addition, the Commission

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<sup>47</sup> Gray, op cit, p. 8

<sup>48</sup> Completion of the Internal Market, 1985, p. 6

emphasized the need for EC labeling requirements that would protect both consumers and producers against misleading or deceptive labels - an issue that had assumed particular importance since Cassis. The Commission stated:

The rejection of recipe law implies a well-developed and clear system of labeling, presentation and advertising that should take the form of a binding legal act so that producers may be protected against unfair competition and consumers against misleading practice.<sup>49</sup>

Equally importantly, the Commission outlined a new approach that it hoped would expedite the approval of directives in these "essential" areas. In reviewing its lack of progress on harmonizing food legislation, the Commission observed that while "member states are able to agree on the general principles of food law... insurmountable differences of opinion ...exist on points of detail, preventing any decisions from being taken."<sup>50</sup> For example, for ten years the Community had been unable to secure agreement from the Council of Ministers to approve a single new food additive. Even when there was agreement, the Community's procedures proved extremely cumbersome. For example, the EC's food coloring directive was amended six times between 1962 and 1978, while the Community's preservative directive was amended 14 times between 1964 and 1979. Each change required formal approval by the Council of Ministers. The Commission concluded:

The problems outlined above are extremely serious as they demonstrate that the Community is frequently unable to equip itself with uniform legislation, nor to manage its

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<sup>49</sup> Ibid, p. 9

<sup>50</sup> Ibid, p. 15

existing legislation properly. The directives tend to freeze a scientific or technical situation existing at a given time without allowing for future adaptations.<sup>51</sup>

Accordingly, the Commission proposed a new division of labor between it and the Council. The latter would establish the basic rules for food law, while the former would implement them in specific cases. For example, in the case of food additives, the Council would establish the general principles governing the approval of food additives while the Commission would then draw up the list of approved food additives as well as specify the conditions for their use. A roughly similar procedure would govern the making and implementation of EC policy in each of the other "essential" areas of food regulation.

In short, instead of issuing detailed directives, the Council would promulgate laws that established a "framework." The specific task of implementing this framework would then be left to the Commission. This procedural change not only promised to expedite the making of EC regulatory policies, but it also brought the Community's regulatory structure more closely in line with those of its member states, each of whose legislatures delegated substantial authority to administrators.

The Commission also expressed its intention of working closely with the Standing Committee on Foodstuffs and the Scientific Committee for Food, as well as the Advisory Committee on Foodstuffs -the former two are scientific bodies while the later consists of

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<sup>51</sup> Completion, p. 16



representatives of agriculture, industry, labor and consumers - before proposing new legislation or implementing existing Council directives. These quasi-corporatist arrangements also parallel those of many member states.

For the most part, the Council accepted the procedural changes outlined in the White Paper. However, because of the lack of scientific consensus about the appropriate procedures for assessing the technical need for food additives as well as the wide range of national approaches for approving food additives, the Council was unwilling to delegate this critical area of food regulation to the Commission. In addition, the Council required the Commission to consult with the Scientific Committee on Food, which was comprised of scientists nominated by each member state and which operated on the basis of unanimity, before making any decisions that affected the public's health. (Previously, the Committee's role had been only advisory.)

One important purpose of the consultation requirement was to help implement a critical provision of the Single European Act, adopted the following year, namely that the Commission, in developing proposals in the area of consumer and environmental protection, should "take as a base a high level of protection."<sup>52</sup> The mandatory system of consultation was designed to assure consumers that, "stringent scientific criteria [sic] was being

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<sup>52</sup> Chambers, op cit, p. 39

applied by an independent body to ensure safety,"<sup>53</sup> and that harmonization would not lead to a reduction in food quality. This requirement further brought EC regulatory policy-making in line with those of its member states, most of whose regulatory authorities relied on the advice of similar independent or quasi-governmental committees. The Commission subsequently developed a set of cooperative arrangements with several national scientific institutes in order to exchange relevant scientific information and avoid duplication.

The Single European Act, adopted in 1986, further simplified the Community's regulatory decision-making processes by abandoning the unanimity rule. Now, only a "qualified majority, " defined as a majority of the Council's fifty-four voting members and the approval of at least seven member states, was required to approve Council directives. Equally importantly, by defining the Community's legal objective as the creation of "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured,"<sup>54</sup> the Single European Act created a "Blueprint for 1992," the symbolic date for the creation of a single European market. Significantly, the Single Act explicitly stated that following the review of national laws, regulations and administrative practices that the Commission hoped to conclude by

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<sup>53</sup> Gray, op cit, p. 13

<sup>54</sup> Quoted in Mitzi Elkes, "Europe 1992; Its Impact on nontariff Barriers and Trade Relations with the United States," Food, Drug and Cosmetic Law Journal, September, 1989, p. 568

1992, national rules that have not been harmonized, "must be recognized as equivalent."<sup>55</sup>

## VII. Progress toward Harmonization

The result was a dramatic increase in the number of directives approved by the EC. Between 1985 and 1989, more than forty-five directives were approved in the area of foodstuffs, though a number of these directives still required additional implementing rules to be issued by the Commission. One of the most important framework Directives regulated the use of food additives within the EC. (89/107). This Directive called upon the Commission to propose a "comprehensive directive" that would specify a list of approved additives as well as the conditions for their use. Approved additives would be granted an "E" label. Once the Commission completed this list, only additives included on it were to be permitted in the EC. Firms seeking approval of additional additives could then either apply to a member state or directly to the Commission. In addition, the Council enacted framework Directives regulating the use of extraction solvents, flavoring agents, materials and articles in contact with foodstuffs, quick-frozen foodstuffs, dietetic foods and labeling.<sup>56</sup>

Meanwhile the European Court continued its effort to reduce

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<sup>55</sup> Quoted in Kalyпсо Nicolaidis, "Mutual Recognition: The New Frontier of Multilateralism?" Promethee, June, 1989, p. 29

<sup>56</sup> Gray op cit, p. 114

trade barriers in foods and beverages by clarifying the doctrine of mutual recognition. In both Motte (1985) and Muller (1986) the court examined the validity of national regulations that prohibited the sale of imported products on the grounds that they contained an additive whose use was authorized in the country of the manufacturer, but was either not approved or directly prohibited in the state to which they were being exported. The court ruled that the latter nation must allow the foodstuff to be sold, provided the additive does not present a risk to public health according to international scientific research and meets a genuine need. In addition, Muller required member states to formulate procedures to permit importers to request authorization for the use of specific additives not permitted in the nation in which they were seeking to sell their product.

The most controversial and important case on national regulation of foodstuffs decided during the second half of the 1980s concerned the Reinheitsgebot, a German statute that prohibited the sale of any product labeled "bier" in the Federal Republic that was made with any ingredient other than malted barley, hops, yeast and water. The oldest hygienic law in the world, the Reinheitsgebot or beer purity law, had been originally enacted by the Bavarian Parliament in 1516; it was re-issued in slightly modified form by the FRG in 1952. Regardless of its original purposes, it now served to protect an extremely important German industry - in 1986 German per capita beer consumption was 148 liters (38.3 gallons), the highest in the world. However, from foreign firms produced less

than one percent of the beer consumed in Germany, even though a number of other member states were large beer producers.

In 1981, a French brewer complained to the European Commission that Germany was unfairly blocking the export of his product because it contained various additives whose use was permitted in France, but which violated Germany's beer purity law. The Commission agreed and the following year it declared that the Germany regulation violated Article 30. The German reaction was furious: there were large public protests; former Bavarian Minister-President Franz Josef Strauss equated the Commission's "unacceptable attack on one of the world's oldest food legislation," with, "a menace leading to the second loss of paradise."<sup>57</sup> The president of the German Brewers Association presented a petition signed by 2.55 million citizens in favor of maintaining the purity decree. The Commission was unmoved and, after Germany ignored a two-month deadline to comply, filed suit with the European Court.

In its decision, issued on March 12, 1987, the Court acknowledged that since the Council had not yet completed its task of harmonizing EC additive regulations, member states maintained total responsibility for determining which additives they wished to permit: they could chose to ban an additive entirely or limit

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<sup>57</sup> Quoted in John Weinkopf, "Pure Beer Law and Free Movement of Beer in the Common Market after Commission v. Germany: A casenote on the Reinheitsgebot Decision for the Beer Lover," Prepared for European Community Law Seminar, Boalt Hall, 1989, p.33

its use for specific products. However, if their restrictions limited the import of a product containing an additive approved for use in a member state, they had to meet two tests: they had to prove that the additive was dangerous and and the legislative response to the danger was not disproportional.

The court concluded that the Reinheitsgebot fell short on both counts. German authorities had failed to present persuasive scientific evidence that the additives contained in imported beer were harmful. (All other EC countries other than Greece permit brewers to use as many as twenty additives). Indeed some of the same additives authorized for beer in other member states were permitted in other Germany beverages -including German beer produced for export. The German rule also failed the proportionality test, since German law provided no mechanism by which importers could petition to allow specific additives to be permitted in beer sold in Germany. The court observed that, "while it is legitimate to seek to enable consumers who attribute specific qualities to beer manufactured from particular raw materials to make their choice in light of that consideration," this objective did not require restricting the designation "beer" to products made in a specific way; it could be achieved equally well by mandatory labeling requirements.<sup>58</sup>

While German consumer groups applauded the court's decision,

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<sup>58</sup> "Communication on the free movement of foodstuffs within the Community," Official Journal of the European Communities, October 24, 1989, C. 271 4

Germany beer producers were less enthusiastic. In order to restrict the market share of imports, the German Brewer's Association decided to adopt the quality trademark "Pure Beer." It launched a vigorous add campaign to promote the Reinheitsgebot and discourage the consumption of "alien chemical beers." Two major Germany supermarkets announced they would not sell imported beer. The German Government cannot legally restrict the use of the "pure beer" label to beer that conforms to the Reinheitsgebot; that would be considered a form of "negative labeling," which had been banned by the European Court in the Italian vinegar case. However it remains unclear whether Article 30 also applies to private individuals or associations.

In any event, the actual extent of German compliance with both the letter and spirit of the Court's ruling represents a critical test of the Community's ability to dismantle trade barriers. Cassis may have made legal history, but Reinheitsgebot dramatically illuminates the tension between national customs and traditions and the creation of a single European market. "How quickly and responsively Germany implements the ruling and how actively private entities resist the judgement through campaigns and boycotts reveal the real commitments on the part of member states to make sacrifices for achieving the 1992 goal." <sup>59</sup>

Reinheitsgebot illustrates the close relationship between harmonization and mutual recognition. Had the EC continued its

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<sup>59</sup> Weinkopf, op cit, p. 97

original effort to define the composition of "Euro-beer" under the terms of Article 100, there would still not be a single European market in beer. Clearly the interpretation of Article 30 by the European Court has played an indispensable role in removing non-tariff barriers to intra-Community trade in food and beverages. In fact, the principle of mutual recognition remains important even in those areas that the EC has determined are "essential" to harmonization. Food additives are a case in point. Currently, between 400 and 500 additives other than flavorings are being used in food produced and sold within the EC. Yet as of January, 1989, the Commission had managed to issue regulations or "E-numbers" for only half of them. This means that the remainder remain under the control of national authorities - subject only to the constraints imposed by the European court on non-tariff barriers.

Since Reinheitsgebot, the European Court has struck down a number of other long-standing national food regulations. In 1988, the Court threw out a longstanding Italian ban on pasta that was not made from a certain hard wheat grown mainly in southern Italy, thus permitting German pasta made with soft wheat to enter Italy.<sup>60</sup> That same year the Court ruled that France could not restrict imports of Italian salami. In 1989, the Court decided that Germany could not protect the integrity of its wursts by banning the sale of foreign sausages made from products other than meat such as

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<sup>60</sup> Philip Revzin, "Italians Must Change Their Business Style in Integrated Europe," Wall Street Journal, November 21, 1988, p. 1



milk, eggs or soybeans; instead it could only require that the ingredients of all wurst sold in Germany be clearly labeled.<sup>61</sup> The Court also ruled that France could not forbid the sale of non-dairy coffee whiteness imitation cream for desserts.<sup>62</sup>

As these decisions suggest, the issues of food composition and labeling remain critical ones. A common national strategy for restricting imports is to only allow products meeting national compositional standards to use a particular product label. The European court has severely restricted the ability of national governments to specify the composition of the foods and beverages sold in their country, arguing instead that in virtually all cases the interests of consumers can be equally well protected by comprehensive product labeling. In the absence of harmonized Community rules, countries remain free to establish rules governing the manufacture, composition, packaging and presentation of foodstuffs produced within their borders. But unless they can demonstrate a compelling public health rationale, they cannot impose these requirements on products lawfully produced in another Member State. Moreover, to prevent nations from enacting new barriers to trade, in 1989 the EC issued a Directive requiring Member States to submit to it drafts of new technical regulations; the Commission was given the authority to delay their enforcement

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<sup>61</sup> "Court of Justice Bans Some National Food Laws," Europe, #285, p. 42

<sup>62</sup> "Community-Food," Reuter Library Service, February 23, 1989.

up to six months, pending an assessment of their compatibility with Community law.

In March, 1989, the EC issued a communication on "The Free Movement of Foodstuffs Within the Community," that summarized the progress that had been made in "eliminating obstacles to trade between Member States . . . (of) . . . foodstuffs." At a conference on "Food Law and 1992," convened shortly afterward, the Director for EEC and International Policy of the Food and Drink Federation, while noting that the "concept of the Internal Market [was] a gradually evolving phenomenon," concluded that "the main message [of the EC report] is that the Internal Market is already open for business." He added: "Do not wait for 1992."<sup>63</sup>

As a result of the decisions of the European Court since Cassis (1979) and the Directives issued by the EC since the White Paper (1985), substantial progress has been made in reducing national restrictions on trade in food and beverages; in these sectors, as in many other areas, the objectives of the Single European Act have in substantial measure been achieved. In 1985 an official of The Institute of Grocery Distribution wrote that, "as far as alcoholic beverages are concerned, the EEC internal market does not yet exist."<sup>64</sup> Five years later, this appraisal must be substantially revised. Innumerable obstacles to a free market in food and

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<sup>63</sup> T. R. Stocker, "Food Law and 1992," A paper presented at a Worldwide Information Conference on Food Law: Current Changes and Their Implications" p. 1, 5.

<sup>64</sup> Diana Welch, "Alcoholic Beverage Legislation; Harmonizing EEC Laws," Food Policy, February, 1985, p. 41

beverages remain, but they are steadily being reduced in both number and importance. Moreover, as the Commission makes progress in harmonizing health and safety standards, the importance of distinctive national health and safety regulations will progressively diminish.

#### VIII. Control and Inspection

Nonetheless, tensions between consumer protection and a single European market persist. Indeed in recent years, a new focus of contention has emerged - one significant enough to be described by the head of the Commission's Foodstuffs Division as a "fourth level of protectionism."<sup>65</sup> It is rooted in the divergence of national control and inspection standards. Even if national standards are harmonized - and other non-tariff barriers rendered moot by the principle of mutual recognition - both national and local governments will still vary in both their ability and willingness to enforce safety standards for foods and beverages. If inspection is not uniform throughout the Community, consumers are likely to be increasingly exposed to hazards from food produced in nations with less effective public controls.

Indeed, it is precisely the success of the EC in creating a single European market that has brought this issue to the fore: a growing proportion of the products consumed by Europeans are

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<sup>65</sup> Gray, op cit p. 118

produced outside their own country, thus making the health of all consumers increasingly dependent on the competence of the inspectors of other nations. (This applies equally well to food imported by a member state from a non-EC member and then distributed within the Community.) At the same time, the growing consumption of processed food, combined with new technologies of food production, have increased the vulnerability of all European consumers to food borne diseases.

According to a recent study, each year 16.5 million people, or roughly 5 per cent of the Community's population, become ill as a result of food poisoning.<sup>66</sup> In 1989, large-scale outbreaks of foodborne disease occurred in the United Kingdom, France and the Netherlands. European consumers have recently been exposed to botulism in nut-flavored yoghurt, the contamination of wine by methanol, Salmonella in chickens, eggs and powdered milk, lead-contaminated milk powder, harmful bacteria in soft cheeses from France and the United Kingdom, benzene in bottled water, the illegal use of growth hormones in beef cattle, and high-levels of radiation in a variety of foods as a result of the nuclear accident at Chernobyl. In 1990, they became highly alarmed by the outbreak of B.S.E or "mad-cow" disease in Britain.

Consequently, food hygiene and food inspection have emerged as important and highly contentious issues in Europe. Public

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<sup>66</sup> J.A. Papadakis, "The Control of Foodstuffs in the Context of the Completion of the E.C. Internal Market," Scientific and Technological Options Assessment, European Parliament, Strausbourg, May 17, 1990, forward.

concerns about the adequacy of national control and inspection system not only pose an important challenge to intra-Community trade; in many cases represent an important economic threat to both European farmers and food processors. Not only does the lack of common principles of food controls undermine public trust in the quality of imports, but importing countries are frequently required to duplicate the inspections carried out in the country of production, thus creating an additional obstacle to the creation of a single European market.

In November 1989 the EC's Farm Commissioner stated that he was, "very much aware of the growing consumer interest in the safety of the food" and promised to propose health rules on eggs, and to establish a system to insure a common approach controlling dangerous micro-organisms in food. He also urged community-wide rules on fish and dairy products and suggested that regulations that applied to trade in red meat products and poultry should be extended to domestic markets.<sup>67</sup> The second symposium on foodstuffs control in the EC, held in Rome the following month, attracted more than 650 participants - a clear indication of "the increased interest in control as the programme of food law and Article 30 case law have increased the free circulation of foodstuffs in the Community."<sup>68</sup>

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<sup>67</sup> "EC Plans Battle Against Food Poisoning," Reuter Library Report, November 28, 1989.

<sup>68</sup> "The Second symposium on foodstuffs control," unpublished paper, p. 1

For more than a decade, the Commission has operated a rapid alert system for dangerous foodstuffs. Upon becoming aware of a problem, they notify appropriate national authorities and coordinate appropriate national or Community wide restrictions. This system has worked reasonably well on a number of occasions. For example, following Chernobyl, "the rapid alert system was used on an almost continuous basis to relay the state or contamination of foods in .. and outside.. the EC... to control authorities." <sup>69</sup> The Commission also worked closely with the FDA in the United States to develop a coordinated response to the health issues raised by Chilean grapes that were contaminated with cyanide. In the case of two wine contamination scandals, the Commission was able to coordinate the efforts of national governments to track down the wine and prevent its sale.

Yet this system has a number of shortcomings. Most obviously, its purpose is to respond to food safety problems after they have occurred rather to prevent such problems from arising in the first place. Even more importantly, the Commission's effectiveness is limited by the fact that the legal responsibility for inspecting foods, both at the point of production and sale, remains the sole responsibility of national authorities; the Commission has no police powers. Nations vary widely in both their scale and method of reporting outbreaks of illness. In some nations, reporting threats to public health from food contamination is centralized

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<sup>69</sup> Gray, op. cit., p. 119

while in others it is the responsibility of more than one agency. National reporting patterns are also affected by cultural factors: all Community residents are not equally likely to resort to a doctor in cases of gastro-intestinal illness of short durations, thus preventing a coordinated EC response to various unsafe foods.

Historically, the European Commission paid relatively little attention to questions of food hygiene, instead focusing its efforts on food composition and labeling. In 1987, the Commission polled officials of member states about the adequacy of their systems for food inspection. Not surprisingly, all member states reported that their inspection systems were good. However this "rosy picture contrasts rather sharply with the picture that a number of Members of the European Parliament recognize for their own countries." In fact, "the organization of inspection services, the training of inspectors and the fundamental inspection philosophy differ enormously. " As a result, "in many cases what looks splendid on paper turns out to have little basis in reality."<sup>70</sup>

In June, 1989, the EC issued a Directive on the official control of foodstuffs. While emphasizing the need for "harmonization and approximation of different national food control systems," it allowed Member States to continue to maintain their own inspections systems. Moreover, the food inspection Directive made no attempt to harmonize either the frequency of inspections

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<sup>70</sup> G. Chambers, "Food Hygiene Policy and 1992," p. 30

or the fines to be imposed when a violation is found. At a result, national practices and policies continue to diverge widely; some nations have perfunctory inspection systems, while others have quite comprehensive ones. Their administration also varies significantly. For example, in Britain, food inspection is the responsibility of local authorities and individual inspectors enjoy substantial autonomy. By contrast, Germany has a system of centrally employed inspectors who follow a strict inspection program. The inspection systems of these two nations have no more in common than they had prior to the creation of the EC.

In the absence of harmonization, the Commission has encouraged representatives of national food inspection systems to meet together on a regular basis. But these meetings have accomplished relatively little - in part because of language barriers. "A number of representatives of national inspection services at the Second Symposium on the Control of Foodstuffs held in Rome in December, 1989 were dismayed at what they described as the total lack of progress" during the previous decade.<sup>71</sup> The Commission has appropriated 80,000 ECUs (approximately L60,000) for a five-year program whereby 200 food law enforcement officers will be able to visit their opposite numbers in other EC countries, but its long-term impact remains unclear.<sup>72</sup>

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<sup>71</sup> Ibid

<sup>72</sup> Paul Allen, "Food Law and EEC Deregulation Policy," British Food Journal, Jan/Feb, 1989 Vol, 91 No. 1, p. 11



## IX. Health and Safety

The issue of food hygiene does not constitute the only remaining obstacle to the creation of a single European market in food; national differences with respect to food safety standards persist. On occasion these have become highly divisive. In the winter of 1989 - 1990, there were widespread outbreaks of "mad-cow" disease among cattle in Great Britain. Within months, more than 9,500 British cows were "spongy-brained, mad and dead."<sup>73</sup> Britain's Ministry of Agriculture stated that the disease posed no danger to humans, although they did ban the feeding of diseased cows to other animals in order to prevent the spread of the disease among their livestock. British consumers were unpersuaded. Coming shortly after widely publicized outbreaks of Salmonella, listeria and botulism, the government's assurances - especially coming from a Ministry widely regarded as "the farmer's mouthpiece,"<sup>74</sup> - had little impact: sales of domestic beef in the United Kingdom fell between 20 and 30 per cent.<sup>75</sup>

The outbreak of mad-cow disease in Britain also created tensions between Britain and some of its trading partners in the

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<sup>73</sup> "Mad, Bad and Dangerous to Eat," Economist, February 3, 1990, p. 89

<sup>74</sup> Ibid

<sup>75</sup> Nigel Dudley, Robert Melcher and Tony Paterson, "Shoppers Snub the Experts in Mad Cow Crisis," The European June 8 - 10, 1990, p. 1. See also Marianne McGowan, "In Britain, Concern Grows About Cattle Disease," New York Times, June 21, 1990, B7

EC. In January, 1990, Germany officially banned British beef; subsequently, a number of other countries, including France and Italy, prohibited imports of this product from Britain as well. Although a veterinary community of the European Commission ruled that the risk of this disease being transmitted to humans was "remote", the panel did not declare the infected beef to be completely safe. Nevertheless, the EC Commissioner responsible for the operation of the Common Agricultural Policy formally criticized the ban.<sup>76</sup>

The French initially refused to rescind their ban until a team of French veterinary experts had the opportunity to meet with their British counter-parts. The French Minister of Agriculture stated that, "We have taken these severe measures against the UK so that French people can eat meat in safety."<sup>77</sup> The British were furious. The Times labeled France's rejection of the EC's request that it lift its ban, "an act of naked protectionism", adding that the "French Agricultural Minister . . . has sided with his farming lobby (which) fear(s) competition from cheap British imports." The editorial concluded: "protecting home markets under the guise of protecting public health defies the spirit as well as the letter of Community law."<sup>78</sup>

The British threatened to retaliate. The fracas threatened to

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<sup>76</sup> "Protecting Beef-Eaters," The Times, June 1, 1990, p. 13

<sup>77</sup> Michael Hornsby and Susan MacDonald, "France Defies EC on Beef Ban," The Times, June 1, 1990, p. 1

<sup>78</sup> "Protecting," op cit

provoke a trade war similar to the one that had been narrowly avoided a year earlier when the British had threatened to ban sales of French soft cheeses and the grounds that they contained bacteria that caused the disease listeria. The French in turn had threatened a retaliatory ban on British eggs on the grounds that they contained Salmonella. "The press in both countries indulged in campaigns that owed more to petty patriotism than common sense."<sup>79</sup> Now the British once again threatened to ban sales of French soft cheeses. The dispute was eventually settled, although not without leaving a residue of mutual suspicion and distrust, as well as considerable economic losses.

The mad-cow trade dispute raised a more profound issue: to what extent does the creation and smooth functioning of a Single European market threaten to interfere with the ability of Member States to establish and maintain their own consumer protection standards? In principle, this problem has been resolved: the health and safety of European consumers will be assured by the promulgation of EC Directives which will take as their standard the maintenance of a "high level of protection."<sup>80</sup> "Non-essential" regulations will remain under the control of national authorities, who however are not allowed to apply them to goods produced elsewhere in the EC, unless they can justify their restrictions on consumer protection grounds.

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<sup>79</sup> Dudley, op cit

<sup>80</sup> Chamber op cit, p. 39

The combination of harmonization and mutual recognition have been relatively effective in reducing trade barriers. But it remains unclear how well they have addressed the issue of consumer protection.

The approach of the EC has been to treat the issue of consumer health and safety primarily as a technical or scientific matter. Thus both the Commission and the Court rely heavily on the advice of the Scientific Committee for Food - the former to determine appropriate standards for harmonization and the latter to assess the claims of Member States to restrict trade under the provisions of Article 36. In many cases, there is a clear scientific consensus, particularly when a nation has imposed restrictions that clearly are designed to protect producers rather than consumers: it would be hard to make a scientific argument that the Court's decisions in Cassis or Reinheitsgebot have undermined the health of the German people.

But in the case of many other regulatory issues and policies, the issue of consumer safety is less straightforward: reasonable people can and do disagree about the degree and scope of regulation that is needed to assure an adequate margin of safety. Not surprisingly, the food safety issues with which the EC has recently been wrestling, such as the spraying of particular pesticides on crops, the use of antibiotics in animal feed, the implementation of growth-promoting hormones in cattle, the inclusion of both natural and synthetic additives in processed food, and food irradiation, have also also been the focus of considerable

controversy in the United States.

The difference, however, is that in the United States, the resolution of these issues does not, for the most part, raise any jurisdiction questions. In most cases, the federal role is pre-eminent and in those areas where it is not, state regulation is not viewed as a threat to interstate commerce or federal authority. Precisely because Americans can take the existence of a single internal market for granted, they are less threatened by state regulation. As a result, in America these regulatory issues are primarily about consumer protection, not protectionism: for the most part, they pit consumers against producers, not the citizens of one political jurisdiction against consumers or producers in another. In Europe, the situation is very different: the debate over consumer protection frequently raises issues of protectionism as well. The legitimacy of the EC's authority as a source of health and safety regulation is still problematic, while national governments have a long tradition of regulation in the area of food safety. The Commission's technocratic approach to the regulation of food safety may make sense from the perspective of creating a single European market, but it is less persuasive when measured against the standards of consumer protection. The latter has less to do with scientific decision-making than with social values - values on which the governments elected by the citizens of democratic societies can and do disagree.

Not surprisingly, the Member States have very different regulations in a number of very sensitive areas. For example, the

weedkiller 2,4,5-T has been cleared for safety in Great Britain, but has been banned in other EC countries because of evidence that an impurity, dioxin, can cause cancer. Both Britain and Denmark have permitted the use of growth-promoting hormones; all other EC members have not. Most Member States have prohibited the use of Saccharin for common consumption; however Britain and Denmark permit its use in food processing. Virtually all EC member states have approved the technique of irradiation and allow its use for some foods; Germany, however, forbids the sale of any irradiated food.

In some cases, the EC has succeeded in harmonizing regulatory standards. For example, the EC has issued a Directive which lists permitted antibiotic additives for cattle feed and in 1985 the Council of Ministers voted to ban the use of all growth-promoting hormones -- a decision that subsequently embroiled the EC in a major trade dispute with the United States. The EC has also banned the use of the hormone BST, which is designed to increase milk production in dairy cattle, although this decision had as much to do with protecting producers as consumers. But in other cases, harmonization has been more difficult to achieve. For example, the EC has been unable to reach agreement on the acceptable levels of antibiotic residues to be permitted in fresh meat. It also remains sharply divided about whether to permit food irradiation. While irradiation has been endorsed by both the World Health Organization and the EC's own scientific advisors, an internal EC report notes

that the idea is, "one which public opinion doesn't appreciate."<sup>81</sup> Faced with strong opposition from Germany and Luxembourg, the EC was recently forced to abandon its effort to legalize the sale of irradiated herbs, spices and teas in the EC. On the other hand, it has resisted the demands of the Green Party members of the European Parliament for an immediate ban on the irradiation of foodstuffs in the Community.<sup>82</sup>

Food additives also remain a recurrent source of conflict and controversy. For example, in February, 1989, the Council rejected a proposal from the Commission that three emulsifiers commonly used by the baking and confectionery industries be permitted for use throughout the Community. Although they were given a clean bill of health by the EC's Scientific Committee for Food, Italy, Greece and Germany persuaded a majority of their colleagues that the use of karaya gum, polysorbates and soybean oil should remain subject to national authorization.<sup>83</sup>

The aftermath of the nuclear accident at Chernobyl provides another illustration of the Community's difficulties in agreeing on common health and safety standards. France, Italy, Spain, and Germany unilaterally banned imports of fresh fruits and vegetables

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<sup>81</sup>"Irradiated Food Row Splits European Community," Reuter Library Report, December 13, 1990

<sup>82</sup>"Irradiated Food Row Splits European Community," Reuter Library Report, December 13, 1990. "EC Commission Rejects Call for Ban on Food Irradiation," Reuters Library Service, March 10, 1987

<sup>83</sup>"Food Additives Stuck in European Ministers Throats," Financial Times, February 2, 1989

from Eastern Europe, while Britain and Spain, which were less affected by the fallout from the Soviet Union did not.<sup>84</sup> More importantly, the EC's foreign ministers were initially unable to agree on common radioactivity levels for food produced within the EC. Germany insisted on maintaining very strict standards. However, Italy, fearful of losing its market for early-season produce, insisted on more flexible ones, claiming that the standards proposed by the EC discriminated against Italian farmers. On the other hand, Italy, which had previously been embarrassed by the methyl alcohol poisoning of some of its red wines, demanded health certificates for all imported produce. This in turn threatened the export of French fruits and vegetables. The result was a serious disruption of the free movement of agricultural products within the EC, as each nation established its own standard. In frustration, Carlo Ripa di Meana, the Italian Commissioner responsible for a "Citizens' Europe," declared that the EC, "does not exist as a political and scientific entity capable of reacting speedily to the problems created by the nuclear emergency."<sup>85</sup> It took several weeks of negotiations before the EC was finally able to agree on temporary safety levels for both imported and domestic food.<sup>86</sup>

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<sup>84</sup>E.J. Dionne Jr. "Europeans Squabbling Over Food: Is Their Produce Free of Radiation? New York Times May 10, 1986, p. 5

<sup>85</sup>"EEC Confirms Ban On Food Imports From East Europe," Financial Times, May 13, 1986, p. 3

<sup>86</sup>Paul Cheeseright, "EEC To Set N-Safety Level in Food," Financial Times, May 5, 1986, p. 3



However, efforts to establish permanent maximum radiation levels for food have proven far more difficult. In May, 1987, the Commission proposed stricter radiation limits for food and drinking water than those recommended by its own scientists on the grounds that it was important to leave a safety margin in the event of another nuclear accident. The Commission also expressed concern that EC food exports could be badly affected if the Community's standards were below those of its major trading partners. This initiative was strongly opposed by those nations committed to nuclear power, namely France, Britain and Belgium, but was in turn supported by countries with strong anti-nuclear movements, most notably Germany and Denmark. <sup>87</sup> Stanley Clinton-Davis, the EC Environment Commission who proposed the new safety standards, described the EC's failure to reach a decision as, "totally unacceptable and disastrous for the Community." <sup>88</sup>

As a compromise, a qualified majority of member states agreed to continue the standards imposed after the accident at Chernobyl for an additional two years; Germany, Luxembourg and Denmark supported tougher standards, but were outvoted. <sup>89</sup> A special meeting of the EC's foreign ministers held in November, 1987 was unable to agree on permanent standards. The Community remained deadlocked

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<sup>87</sup>Quentin Peel, "Commission Calls for Stricter Limits on Radiation In Food," Financial Times, May 21, 1987, p. 2

<sup>88</sup>Quentin Peel, "EC in Deadlock Over Food Radiation Limits," Financial Times, October 21, 1987, p. 4

<sup>89</sup>William Dawkins, "EC Ministers Agree on Radiation Safety Levels for Food," Financial Times, December 15, 1987, p. 2

between France, Britain, Spain and Greece, which favor a relaxation of the EC's post-Chernobyl standards, and Germany, the Netherlands and Denmark, which favor stricter ones. As Clinton observed, "There are still massive differences between member states." <sup>90</sup>

Moreover, both consumer groups and national regulatory authorities have expressed considerable reservation about the EC's approach to the making of regulatory policy. The Commission has been criticized for relying too closely on a small group of experts and not permitting other interest groups to participate in its deliberations. In addition, Member States have expressed reluctance about giving "too much power to the Commission on possibly very sensitive national issues relating to public health and safety."<sup>91</sup> In a statement on food policy in the EC issued in 1987, Consumers in the European Community Group, an umbrella organization of 27 British consumer groups, argued that the "EEC has no overall consistent food policy. . . . the Commission is mainly interested in removing barriers to trade . . . consumer protection is of only secondary importance."<sup>92</sup>

Their lengthy statement identified scores of areas in which they thought EC standards did not adequately protect consumers and in which Community rules were inferior to British ones. A

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<sup>90</sup> "EC Fails in New Bid To Agree Radiation Limits for Food," Reuters Library Service, November 8, 1987

<sup>91</sup> Chamber op cit, p. 41

<sup>92</sup> A Hot Potato? A Pamphlet produced by Consumers in the European Community Group, May 1987, p. 9

subsequent document expressed particular concern about the EC's unwillingness to allow nations to maintain any compositional standards, since they believe that in some cases, these standards provide consumers with important information.<sup>93</sup> It contended that, "we must weight up the desire to have free movement of goods against the wish to prevent food from being uniform throughout the Community, and losing high quality foods through competition from lower-quality ones."<sup>94</sup> CECG specifically cited the case of mayonnaise, where national standards for oil content vary between 35 and 80%. They argued that if each of these products are allowed to be sold as "mayonnaise" throughout the EC, as the Commission has proposed, many consumers are likely to wind up purchasing products that differ substantially from the ones they purchased when mayonnaise was subject to national composition standards.

The European Consumer Law Group also has expressed concern about the EC's commitment to consumer protection. They have criticized the Commission for interpreting the principle of mutual recognition too narrowly, contending that "quality standards, regulations about labelling and consumer information, and prescriptions about denominations" should not be considered unlawful per se but should be balanced against reasonable consumer

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<sup>93</sup> Food Labelling and Standards: A New Beginning, CECG 87/17

<sup>94</sup> Ibid, p. 6

interests.<sup>95</sup> They have also suggested that harmonization should be minimal rather than total. Accordingly, EC rules should establish a floor, not a ceiling, thus allowing member states to enact stricter health or safety regulations - even if they interfere with economic integration. Another critic of EC consumer regulation has attacked the Commission for not attempting to apply the principle of mutual recognition in reverse.<sup>96</sup> Ludwig Kramer has suggested that a product determined to be unsafe by a member state therefore should be prohibited from being sold throughout the EC. Indeed, he notes that while the EC has established procedures for approving the use of a new substances or products, it has not developed either criteria or procedures for banning throughout the Community a product or substance that subsequent evidence has shown to be unsafe.

National assessments of food standards also remain strongly influenced by different national customs and traditions. This latter concern was echoed in an article that appeared in the French publication, Le Point in February, 1989. Entitled, "Our Good Food In Danger," it described in graphic detail the ways in which French food quality was being threatened by the EC:

What could happen on our plates within four years?....All that is needed is look at the astonishing menus our neighbors are preparing for us: Spanish foie gras, made with pork fat; mock

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<sup>95</sup> "European Consumer Law Group: Consumer Protection in the EEC After Ratification of the Single Act," Journal of Consumer Policy, September, 1987, p. 322

<sup>96</sup>Ludwig Kramer, "EEC Action In Regard to Consumer Safety, Particularly in the Food Sector," Journal of Consumer Policy, December, 1984, pp. 473 - 485

snails (from West Germany,) ice cream made with vegetable fat (from Holland), chocolate made with animal fats (from Britain), minced meat mixed with soya (from Belgium), sausages made with flour (from Britain), (a nation with) no culinary traditions, and chocolate made with cocoa butter (from Britain.)<sup>97</sup>

Doubtless many Germans, who have recently had the European Court strike down regulations for two of their most cherished national products, namely bier and wurst, would offer a similar appraisal of recent developments in European food law.

The emergence of more militant consumer groups, such as Parents for Safe Food, founded by the British actress and singer, Pamela Stephensen, threatens to make the creation and enforcement of European food safety standards even more complex. Like a number of American environmental groups, PSF favors a sharp reduction in the use of pesticides and chemical preservatives in order to protect the health of consumers.<sup>98</sup> Again, the contrast with the situation in the United States is instructive. In the United States, this organization, if it was not able to influence federal regulatory policy to its satisfaction, could seek to affect policy at the state level. State food safety regulations do not pose any constitutional issues, provided they subject products produced in the state to the same standards as "imported" ones: Proposition 128, which severely restricted the use of pesticides on food sold

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<sup>97</sup> "Our Good Food In Danger," Le Point February 13 - 19, 1989, in passim

<sup>98</sup> See, for example, Erik Millstone, "Food Additives: A Technology Out of Control?" New Scientist, October 18, 1984, pp. 20-24.

and grown in California. Had it been approved by California voters in the fall of 1990, it would not have violated the interstate commerce clause. (However, it might well have violated the GATT.)

But it is highly unlikely that the European Community would permit a Member State to enact an equivalent proposition. Not only would an EC Directive on pesticide use pre-empt similar regulations by a Member States, but even if the EC had not yet succeeded in harmonizing regulatory policy in this area, the doctrine of mutual recognition would have required the member state to permit the import of products made with pesticides and preservatives that were legal in other European states -- unless it could persuasively demonstrated that they were harmful. Brussels has sought to preempt national regulations to a greater extent than Washington has preempted state regulatory actions. Similiarly, the European Court has been far less hesitant to strike down national regulations on the grounds that the violate Article 30 of the Treaty of Rome than the American Supreme Court has been to overturn state regulations on the grounds that they violate the Commerce Clause of the American Constitution.<sup>99</sup>

Thus in the event that a member nation was persuaded of the desirability of enacting "Prop 128," the stage would be set for a major confrontation between free trade at the Community level and consumer protection at the national one. This particular occurance is highly unlikely, but it does illustrate the extent to which the

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<sup>99</sup> See Lawrence Tribe, American Constitutional Law, Mineola, New York: The Foundation Press, 1988, Second Edition, p. 408 - 427

emergence of a more activist consumer movement in Europe threatens to expand the range of potential conflicts between the EC and national governments in the foodstuffs sector. The Community has made substantial progress in reducing non-tariff barriers created by producers; it now faces the challenge of also effectively addressing the threats to the creation of a single European market posed by consumers.

Moreover, as new issues of food safety emerge - and this seems to be occurring at an accelerated pace due both to continual innovations in food production and processing technology and increased public concern about food safety and hygiene - they will become new potential sources of trade barriers within the EC. Some national regulatory authorities, and some national consumer groups, will invariably feel that their legitimate concerns about the public's health and safety have been given short-shrift in Brussels. And they in turn will find allies among producers, who stand to benefit from restrictive national or EC regulations.