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THE SINGLE MARKET: LOOKING GOOD IN THE STRETCH RUN

With just over 100 days left before January 1, 1993, the starting date for the single market, the Commission has given an upbeat assessment of the single market's status in its seventh annual progress report. Recently presented by Internal Market Commissioner Martin Bangemann, the report notes that over 90% of the White Paper measures have been adopted by the Twelve.

The paper cites encouraging progress in important areas: the opening-up of public contracts and financial services, the free movement of capital, technical standardization and the right of residence for EC citizens. Not all measures in these fields have come into force yet, but their effects are already being felt: businesses, in preparation for the single market, have created 1.5 million jobs since 1988, and intra-Community trade has grown steadily, from 54% of the member states' foreign trade in 1985 to over 60% in 1991. For Bangemann, this signals improved competitiveness within the EC and greater cooperation among European firms, two fundamental goals of the 1992 single market program.

In contrast to the uncertainties of the Maastricht ratification process, problem areas identified in previous progress reports have shown marked improvement, particularly in the field of indirect taxation. The Council has taken decisions on the mechanisms for collecting VAT (value added tax) and excise duties since the last update (see EURECOM, January 1992), clearing the way for removing physical checks at internal EC borders. In addition, guidelines for harmonized VAT and excise duties have been agreed in principle and should be finalized soon.

Similarly, in the traditionally gridlocked transport sector, the final phase of air transport liberalization has been adopted as well as legislation providing for cabotage in sea and inland waterway transport.

The only major (and pressing) dossiers that remain unresolved are the establishment of an EC Trademark, which would eliminate the multiple product registration procedures required under the current system of national trademarks, and the European Company Statute, which would provide a framework for companies to incorporate in one legal entity all the capital and personnel situated in several EC countries, free from diverse national company law regimes.

Emphasizing the post-1992 situation, the Commission reports that the member states are "transposing" single market directives into national legislation at a faster clip. The Twelve have implemented 75% of the 148 White Paper measures that are already "in force", the highest rate since 1989. Not only is this improved performance a result of Commission pressure on the member states; it is also due to the political will of the EC governments to see the program through. Denmark, as ever, remains the most diligent member state, having implemented almost 90% of the directives that are already in effect. At 83.4%, France receives honorable mention, while Spain and Belgium bring up the rear at 67.3% and 64.3%, respectively. According to the report, member states are having particular difficulty implementing technical harmonization directives.

To help ensure that the single market performs with maximum efficiency in the interests of consumers and industry alike, Commissioners Bangemann and Van Miert have established a high-level working party, chaired by former EC Commissioner Peter Sutherland, to analyze problems that arise with the single market after it becomes fully operational.

EC LIFTS LID ON PACKAGING WASTE PLAN

Under a long-awaited Commission proposal on packaging and packaging waste, European industry would have a decade to increase the proportion of waste packaging it recovers to 90%, compared with around 18% at present.

According to Commission estimates, the EC produces 50 million tons of packaging waste each year — 25 million from households, 15 million from services and 10 million from industry. Only about 9 million tons is recycled at present, but the proportion varies widely among the member states. Until recently, environmental regulations in most member states covered only beverage containers, which accounts for only 5% of all domestic waste. Given the worldwide solid waste disposal crisis, such a sector-by-sector approach is no longer appropriate.

The directive aims to reduce the adverse environmental impact of packaging waste by recovering or recycling most packaging, and to ensure the smooth functioning of single market by allowing the free movement of packaging which satisfies certain essential requirements (i.e. composition and suitability for reuse and recovery). Ironically, a growing number of national curbs on packaging threaten to create new trade barriers in the Community as the single market nears completion.

Ten years following its entry into force, 90% of total packaging waste would have to be "recovered" by reuse, recycling, regeneration through chemical breakdown, composting or incineration with energy recovery. Within this target, 60% of each material would have to be reused or recycled. Incineration to produce energy is not included in the definition of recycling. Only 10% of total packaging waste entering the waste stream would be allowed in landfills.

In addition, the legislation calls for the establishment of collection systems in the member states; preparation of management plans by the member states; and consumer information to instruct how to dispose used packaging.

Interim EC Environmental Commissioner Karel Van Miert emphasized that the member states would be free to decide how to meet the targets. He also said that the most change would be needed in southern Europe, where environmental regulations (and sensitivities) are less developed than in the North.

While the directive's targets are formidable and, for many, controversial, numerous industry groups have reacted favorably to the legislation, believing it will ward off discriminatory national laws and establish a flexible framework for the best waste solutions in each of the EC countries.

REPORT ON FOREIGN TREATMENT OF EC FINANCIAL FIRMS

As mandated in EC financial services legislation, the Commission has produced a report on the treatment of EC financial institutions in third countries. Covering 26 countries, the report underscores the wide variation in treatment EC financial institutions receive, ranging from relatively liberal access and operating conditions in some markets to cases of discrimination or other impediments to entering and competing in third country financial sectors.

The report stresses the need to seek redress through negotiation rather than through unilateral measures to limit or suspend access to the EC market. Consequently, the Commission considers the GATT Uruguay Round talks on financial services as the best forum to negotiate these issues. Failing a successful outcome in the Uruguay Round (or if GATT rules are flouted), however, the Commission reserves the right to reconsider this position.

Of the 26 countries analyzed, a majority of third countries with which the EC does not yet have a financial services sector agreement falls short on conditions of access and operation. In some countries, whole sectors may be closed to EC firms because of national policy or perceived lack of economic need. In other cases, strict limitations on the expansion of branch networks or other discriminatory operating conditions (e.g. additional capital requirements or taxation) apply.

The US and Japan, the EC's two largest partners in financial services, grant, broadly speaking, national treatment to Community institutions. Still, in both countries, non-discriminatory regulations exist which restrict opportunities that EC firms have in these markets compared with those which are available to non-EC and Community firms in Europe.

EC-US SIGN PACT ON CIVIL AIRCRAFT

The US and the EC have signed a bilateral agreement to limit subsidies to large civil aircraft programs, ending a five-year EC-US row over EC member state subsidies to Airbus Industrie.

For years, the US has complained that the British, German, French and Spanish governments are unfairly subsidizing Airbus, enabling it to undersell US manufacturers; the EC has countered that Washington assists US firms like Boeing and McDonnell Douglas with defense and space grants.

Covering aircraft with more than 100 seats, the agreement prohibits future production subsidies, limits direct development subsidies to 33% of total development cost and requires public acknowledgement of any government support to commercial aircraft manufacturers. The ceiling on indirect government support has been set at 3% of total turnover of the civil aircraft industry, and at 4% for any single civil aircraft producer.

In the Commission's view, this "balanced result" should lead to the disappearance of trade conflicts between the EC and the US in this important sector. Further, the EC proposed to other signatories of the GATT Civil Aircraft Agreement — and they have accepted — to renegotiate the 1979 GATT accord along the lines of the new EC-US agreement.

Yet United Airlines' recent decision to lease 50 Airbus planes instead of Boeing aircraft, its long-time supplier, has prompted a US investigation into whether subsidies were involved in the transaction, with a threat of trade action if they were. Déjà vu.

COMMISSION BACKS SWEDISH APPLICATION

The EC Commission has given a favorable opinion on Sweden's application for EC membership, finding no major problems to opening membership talks once the Maastricht treaty is ratified.

Unveiled by EC External Affairs Commissioner Frans Andriessen just before the summer recess, the Commission's report to the Council stressed that Sweden, a traditionally neutral country, would have to make "specific and binding" commitments to EC plans for a common foreign and security policy which could later include defense. Still, Commissioner Andriessen doubted such undertakings would prove insurmountable, as the Swedish concept of neutrality is changing. Sweden omitted the neutrality issue in its application, implying that it was less relevant in the post-cold war era.

As the Commission noted in its report "Europe and the Challenge of Enlargement" (see EURECOM, July/August 1992), Sweden and the other EFTA (European Free Trade Association) applicants for EC membership "should not pose insuperable problems of an economic nature and indeed would strengthen the Community in a number of ways."

While there are some problems that could arise on the economic front, the Commission believes it will be possible to solve these satisfactorily during accession negotiations. Among the potentially difficult areas, the Commission singled out Arctic agriculture, where prices remain high, assisted by heavy government subsidies. In addition, Sweden's alcoholic beverage monopoly would have to be adapted to EC rules, and competition in general would have to increase in a number of sectors.

According to Swedish Minister of European Affairs, Ulf Dinkelspiel, "Sweden's ambition is still...to become a member by 1995". Working on the assumption that Maastricht is ratified and the Delors II budget is agreed by early 1993, however, Commissioner Andriessen cautioned that Sweden's time frame is probably too optimistic.

QUOTES

*"We are convinced of the need for greater European cooperation. The old policy of fluctuating exchange rates is dangerous for everyone. You can always discuss how large such a monetary union should be. But for the heart of Western Europe, to which Sweden belongs, there must be a unified currency. We must endure the tough battles to establish a stable monetary union." Swedish Prime Minister **Carl Bildt**.*

*"Whatever happens over Maastricht, what is not in doubt is that the Community is, and will be, a strong economic power and an influential political force. Nobody, whatever their feelings about the Community may be, can deny that that is, and will remain, the reality in the future." British Prime Minister **John Major**.*

*"The internal market is just one component part of the building of Europe. Maastricht has added two other elements, EMU (economic and monetary union) and a foreign policy and security union. When you are building a house, you just can't have one or two doors, you have to have windows and a living room." EC Commissioner **Martin Bangemann**.*

*"Those who expect a second Danish referendum (on Maastricht) before the end of the year can forget it." Danish Foreign Minister **Uffe Ellemann-Jensen**.*

*"Europe must be seen to enhance the scope and capacity of the member states, not as a threat to them. The best way to achieve this is to ensure that the Community constitution — the Treaty of Rome as amended at Maastricht — places the burden of proof on those who want powers exercised from the center." **Christopher Tugendhat**, Chairman of the Royal Institute of International Affairs and former EC Commissioner.*

FINLAND BREAKS ECU LINK

Succumbing to market pressures, Finland has broken the markka's link to the ecu (European Currency Unit), effectively devaluing the markka for the second time since its value was pegged to the ecu in June 1991 (see EURECOM, June 1991). The Bank of Finland had been holding the markka in a range of plus or minus 3% against the ecu (a basket of the EC currencies) except for a brief period last November when it devalued 12.3%.

Faced with a recession, caused primarily by a decline in trade with the former Soviet Union, the Finnish government opted for a de facto devaluation by floating the markka (it fell 13% against the Deutsche Mark when the decision was announced) rather than continue intervening heavily in foreign exchange markets or raise interest rates to keep the markka within the 3% fluctuation band with the ecu.

In response, the Commission said it "regretted" Finland's decision to abandon the ecu link and to let the markka float freely, noting that any candidate country for the EC's planned economic and monetary union (EMU) must hold its currency in a narrow fluctuation band in the EMS exchange rate mechanism for at least two years before joining the EMU. Finland had been shadowing the ERM; non-EC countries cannot belong to the EMS.

Both the Swedish and Norwegian currencies, which are also pegged to the ecu, came under acute pressure after the Finnish action, but both have chosen to defend their ecu links.

LIRA DEVALUED IN ERM REALIGNMENT

Just as EURECOM was going to press, the EC member states agreed to a realignment of the European Monetary System's (EMS) exchange rate mechanism (ERM), in which the Italian lira was devalued by 7% against all other ERM currencies. To support the realignment, the German Bundesbank announced a 0.25 percentage point cut in its important Lombard rate and a 0.5 percentage point drop in its discount rate. On Italy's part, it has pledged to bring its public sector finances, the major source of lira weakness, under control.

Welcomed not just in Europe but also throughout world markets, the realignment, coupled with the German interest rate cuts aims to stabilize the EMS (and the lira), which had been under severe strain from high German interest rates, weakness in the US dollar and uncertainty over the French referendum on Maastricht (and its effect on the EC's plans for a European Central Bank and a single currency).

...IN BRIEF

...Cenelec, Europe's electrical standards body which includes all 12 EC member states and the seven EFTA nations, has decided to start developing a common European household plug system. The decision by Cenelec was surprising, because many industry officials believe the cost of conversion would be prohibitive. Cenelec estimates $1.25 billion in costs to rewire households and businesses for a common plug. Seasoned business travelers know that most European countries have their own plug systems at present, making adapters for appliances used across Europe standard issue.

...The Commission has approved a merger venture between Pepsico and General Mills that will create one of Europe's largest snack food producers (see EURECOM, May 1992). The resulting joint venture will employ 4,650 employees in eight manufacturing plants, with sales over $600 million. The Commission cleared the merger because it would not cause a dominant position in the EC snack food market; although it will be a market leader, it will face competition from many other companies with substantial sales.

...International antitrust law and policy is the subject for the 19th annual Fordham Corporate Law Institute Conference, which will be held at Fordham Law School in New York City on October 22 and 23, 1992. It will feature a notable EC component, including presentations by H. Colin Overbury, Director of the Commission's Merger Task Force, and other top EC competition officials. For more information, please contact Ms. Helen Herman at (212) 636-6885.

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