

European Communities Standardisation Policy: A New Means to Regulate Foodstuffs

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Introduction

Is chocolate chocolate without cocoa? In the United States, the answer is yes; in Europe, no.¹ This difference is an extreme example of the difference between the standardisation policy of the United States and that of the European Communities (EC). The EC is in the midst of a long, ambitious standardisation programme. This programme of setting uniform product standards is necessary to achieve one of the basic goals of the EC, that of a common market. Indeed, uniform standards are a prerequisite to a common market² since divergent standards are effective trade barriers. For example, a sausage produced in Great Britain may be barred from sale in France simply because it contains an amount of sodium slightly above that allowed in France. However, the EC philosophy of standard setting goes beyond merely defining uniform product characteristics, minimum safety standards or minimum quality standards.

EC standards include the goal of promoting competition by directing competition-to-the-merits of a product. The concept of directing competition-to-the-merits is not contained in US standardisation policy and needs further explanation: When competing on the merits, competitors compete by marketing products whose attributes have social value. These attributes include inherent quality, aesthetic quality, appropriateness for intended use, and repairability. Non-meritorious

competition means practices with little or no social value. Such practices include increasing profits by decreasing product quality or size or increasing sales by stating the product has certain qualities it does not possess.

The concept of meritorious and non-meritorious competition is developed throughout this article. Another example is, however, appropriate at this point. One manufacturer of chocolate may seek to increase market share by blowing its chocolate products up with air. The manufacturer may reason that air in the chocolate product makes the product appear larger than the competitor's product of the same weight; most consumers will pay more attention to size than stated weight and so will buy the manufacturer's products. Such a tactic is non-meritorious since no benefit accrues to society from having air added to chocolate products or from having this manufacturer possess a larger market share. The same manufacturer seeking to increase market share through the development of a more efficient production method, on the other hand, is engaging in a meritorious type of competition.

It is the thesis of this article that the goal of competition-on-the-merits is clearly discernible from EC standards. Not only is this goal discernible but also the policies behind it are defensible. This goal is a desirable, workable goal. However, to attain the goal, much time is necessary. But its attainment holds many benefits for the community. EC regulations concerning chocolate products are a good example of the nature of competition-on-the-merits standards. EC regulations governing chocolate products are some of the few which are fully developed. These chocolate regulations are used throughout this article to analyse EC standards.

Evaluation of EC Standards

Original approach

Obviously, having different standards is an effective barrier to trade. So from its early stages, the EC sought as a high priority the elimination of technical barriers through the adoption of EC-wide standards in all areas.³ These were to be composed of general standards applicable to a whole range of products, called 'horizontal standards' in EC parlance, supplemented by many detailed standards concerning a specific product, called 'vertical standards'. The EC Commission standards committees became bogged down in drafting acceptable product standards and the Member States'

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1 In the United States, a product may be labelled as a chocolate product even though containing no chocolate as long as the word 'imitation' is added. Food, Drug, and Cosmetic Act, 21 USC §343(c) (1991).

2 Commission Communication on the Development of European Standardisation, OJ 1990 C20/1(6) (hereinafter Green Paper).

3 Programme Général du 28 mai 1969 en vue de l'élimination des entraves techniques aux échanges résultant de disparités entre les dispositions législatives, réglementaires et administratives des Etats Membres, OJ 1969 C76/1.