

resistance of certain Member States to the competition-on-the-merits policy is undoubtedly the reason why little progress has been made in vertical regulations.

The status of this EC standardisation policy is strong since it is stated in official pronouncements. The goal of promoting competitiveness is repeated over and over again. The EC Commission stated in 1985 that the new strategy of standardisation 'must aim not simply to remove technical barriers to trade, but to do so in a manner which will contribute to increasing industrial efficiency and competitiveness, leading to greater wealth and job creation.'³⁰ A 1990 Commission Communication again states: 'Common European standards will . . . promote more intensive competition, to the benefit of consumers, in respect of the non-standard features of products.'³¹ The directives bearing on chocolate products all refer to this policy in the preambles. It is a strong policy even though 'the protection of consumer interests is not one of the stated goals of the community under the EEC Treaty or included anywhere in the Treaty as one of the tasks of the Community institutions'³²

Future of the progressive strategy

Considering the long-standing EC policy of encouraging competition-on-the-merits through standards, this policy will continue in the future. However, temporarily, this policy may be ignored for the many products not yet covered by vertical standards. The policy may be ignored in the short term because out of necessity the 'new approach' and the *Cassis de Dijon* Decision allow Member States to implement their own standardisation policy to a large extent. Although the Commission has placed administrative restrictions on the mutual recognition policy of the 'new approach',³³ this approach will certainly damage the policy in the short term.³⁴

Another possible threat to the policy is that through the pressure of lobbies the standards will become riddled with exceptions and so become ineffective in directing competition-to-the-merits. To date such loopholes have not been developing in the few EC standards established. Perhaps the procedure by which standards are developed is resistant to ill-considered exceptions. With twelve sovereign nations involved in the political

process, the ill-considered approval of an exception to quality requirements is unlikely.³⁵

On the other hand, the standardisation policy seems to be strengthening in some ways. The Commission is working on directives aimed at certifying that a food product is from a certain region³⁶ or possessing a specific character³⁷ or organically grown.³⁸ It must be kept in mind that these initiatives are being instituted largely out of concern for low-income rural areas, however.

Finally, EC standards have an enormous potential to harm those exporting to the EC through discriminatory standard setting. Such considerations are outside the scope of this paper.

Conclusion

The EC is undertaking an enormous standardisation project. But it is doing much more than setting up traditional safety and consumer protection standards. The EC has consistently shown over the years a policy of written standards with the goal of directing competition-to-the-merits. This goal is consistent with the regulation of a modern industrialised economy. However, to write such standards, the EC must regulate the market-place to an extent not traditionally done. Disclosure standards alone do not meet this goal for convenience goods such as foodstuffs; progressive standards are also needed. These progressive standards prevent the marketing of goods where little benefit accrues to society. However, the task of writing these standards is a slow one. The standards governing chocolate demonstrate how the completed standardised market will look. US exporters should keep the future of European standards in mind when planning long-term export strategy.

30 *Ibid.* at 11.

31 Green Paper, Note 2 above, at 7.

32 2 Common Market Rep. (CCH) paragraph 3325.

33 Completion of the Internal Market, Note 5 above, at 21.

34 The Commission itself is worried about the short term harm done to its standardisation policy but apparently feels that at least in the foodstuff sector enough horizontal standards are in place to keep competition-on-the-merits: Legislation on Foodstuffs, Note 5 above, at 12.

35 See, Michael Caligaert, *The 1992 Challenge from Europe: Development of the European Community's Internal Market*, National Planning Association, Washington, D.C., 1990.

36 Commission Communication on the Future of Rural Society, COM (88) 501 final, at 40 to 43; Commission Proposal for a Council Regulation (EEC) on certificates of specific character for foodstuffs, OJ 1991 C30/4.

37 *Ibid.*

38 Council Regulation 91/2092, OJ 1991 L198/1.