

AIM[®] POSITION PAPER

ACTIONS NOT ACTS - PRACTICAL STEPS TO COMPLETE THE SINGLE MARKET

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Actions not Acts - practical steps to complete the single market

Background

On the 3rd March 2010 the Commission published the 37-page "*EUROPE 2020 A strategy for smart, sustainable and inclusive growth.*" http://ec.europa.eu/eu2020/index_en.htm Within it was a section on removing bottlenecks in the single market. On 10th May 2010 Professor Monti launched his 107-page report "*A New Strategy For The Single Market: At The Service Of Europe's Economy And Society*". This led in turn on the 27 October 2010 to the publication by the Commission of a communication entitled The Single Market Act listing specific future initiatives. http://ec.europa.eu/internal_market/smact/index_en.htm

The essence of all three documents is a realisation that the single market for industry is not complete as barriers remain, and the single market for consumers equally suffers from barriers and negative perceptions.

Whereas the thrust of recent initiatives has been services, AIM notes that there remain numerous barriers to the free movement of goods. This is where action is needed.

In this paper AIM - the European Brands Association - sets out priority actions that it urges the Commission to take in order to help complete the single market for the benefit of both industry and consumers. We illustrate these actions with real-world examples of barriers as they exist today.

Policy promoters and policy inhibitors to the single market

AIM reiterates:

- our support for the single market
- our recognition that it is incomplete
- our agreement with Professor Monti's conclusion on the importance of it being seen as beneficial to consumers.

In essence there are three broad actions needed:

- refined policies to complete the single market.
- a removal of barriers which act against the single market: such barriers are frequently caused by interests which retreat to a national perspective. Indeed fragmentation as a result of diverse implementation is a common theme emerging from the examples we list below. AIM believes that this is not in the interest of consumers as it leads to unnecessary complexity, consumer confusion, and higher costs.
- a fresh look at mutual recognition: paradoxically, mutual recognition under Regulation 764/2008/EC in certain areas is having the unintended consequence of single market fragmentation.

Specific actions should include:

- the inclusion of "competitiveness" as a part of "policy impact assessments"
- continued improvement on the enforcement of anti-counterfeiting measures
- a holistic approach to a sustainable "product policy through a life-cycle perspective that goes beyond the production phase"
- "better functioning of the food supply chain" by addressing imbalances in bargaining power between producers and retailers.

Examples of barriers to the single market

Manufacturing

1. Issue

Different rules apply to the use and application of raw materials and ingredients across Europe, creating uncertainties and barriers to innovation.

Example

The REACH annex V guidance allows for an exemption of hydrogenated fatty acids and their salts from REACH registration. This is, however, interpreted in a different way by national competent authorities. As a consequence, producers in some countries may need to register (notably Germany), while those in other countries do not need to register.

Solution

The review of REACH should harmonise the interpretation of implementation provisions.

2. Issue

There is a lack of compliance with EU law in food processing aids.

Example

The French regulation on food processing aids remains non-compliant with the relevant EU regulation despite criticism by the European Court of Justice in January 2010.

Solution

The Commission should redouble efforts to ensure national compliance.

3. Issue

Significant delays in the adoption of implementing measures to harmonise national provisions in food fortification adds cost and complexity.

Example

- Regulation 1925/2006 on the addition of vitamins and minerals and certain other substances to food entered into force in January 2007. A key measure to achieve harmonisation is the setting of European-wide maximum amounts through implementing measures. Until these are set Member states continue to apply existing national provisions and restrictions.
- Denmark has banned fortification on most foods. This leads in some cases to the development of specific recipes with a higher cost for the consumer. In other cases the cost of specific recipes is simply too high for the small Danish market: result - the Danes get less choice.
- Chocolate products produced in Spain and fortified with magnesium lactate cannot be exported to Germany where magnesium fortification is only allowed as the carbonate. Consequently a separate product formulation with a less appropriate taste profile for Germany is required.

Solution

Regulation 1925/2006 mandated the Commission to submit proposals by January 2009, no measures have yet been put forward: this must be corrected.

4. Issue

National taxes distort the market and are often disproportionate to their claimed objective

Example (food)

- A number of European countries have agreed or are discussing the introduction of food taxes to fight obesity. Such taxes are not an effective approach to tackling a complex diet and lifestyle-related problem. Often the criteria applied to these taxes are contradictory and discriminatory.
- Finland introduced a food tax in January 2011. The implementation based on customs codes led to increased taxes for bottled water. Dairy desserts are not taxed but low fat ice cream is.
- Denmark is considering a saturated fat tax. No differentiation is currently made between low and high fat types of meat.

Example (alcohol)

- Some member states change the Community acquis on taxation of alcohol on a unilateral basis to meet national short-term needs. Despite non-compliance with the EU tax regime the Commission has been ineffective in finding remedies.
- In Hungary a 2010 change to zero rate small production local spirit (palinka) contravenes article 3 of Directive 92/84 which specifies a minimum excise duty for spirits no matter the production category.
- Romania in 2010 changed the rules for storage of imported spirits in tax warehouses and now requires manufacturers to pay tax up front. This change is discriminatory in that it favours local producers over importers.

Solution

A fundamental discussion on the effectiveness of consumption taxes is needed. A mandatory EU notification for consumption taxes would help. As a first step the Commission should put this issue on the agenda of Commissioner Šemeta's Tax Policy Group.

5. Issue

Manufacturing cost burdens and barriers to free movement from tax stamps on alcohol.

Example

A number of member states require alcoholic drink to carry a tax stamp (sometimes called strip stamps or banderoles) over the cap as a means of demonstrating that excise tax has been paid. Tax stamps are allowed under Directive 118/2008 as long as they are compatible with the free movement of goods. Because all these tax stamps are of a different design they impose unnecessary cost on EU manufacturers and impede free movement. Worse, the cost is disproportionate to the benefit as tax stamps are typically ineffective in preventing tax evasion. Examples include:

Portugal introduced in 2003 the largest format tax stamps in the world (160mm x 18.5mm). In some cases the practical effect on manufacturing was unnecessary investment in new bottling lines. A complaint to the Commission at the time by the drinks industry resulted in no remedy.

Solution

The Commission should work with member states who insist on tax stamps to minimise their perverse effect on cost and free movement.

6. Issue

There is a lack of compliance with EU food labelling law.

Example

The Czech Republic failed to implement an article of the Labelling Directive on compound ingredients meaning Czech labels have a confusing and unnecessarily long ingredients list. In the enforcement of allergen legislation member states apply different approaches.

Solution

The Commission should take a stronger approach to compliance and address conflicting national labelling laws. Too often EU action has in essence been the compiling of lists with common wording (in 22 languages) but not actual harmonisation with an objective for a single label for the single market.

7. Issue

EU rules on nutrition labelling do not harmonise enough.

Example

Council Directive 90/496/EEC on nutrition labelling allows the European Commission to develop tolerance rules to cope with the differences between the nutrient values declared on the label and those measured by official checks. In absence of EU action a number of member states have put in place national rules, which are hampering internal market trade.

Solution

Guidance for tolerance values for nutrients declared on the label at EU level is indeed helpful as it offers an objective reference to food industry and enforcement bodies to interpret and apply nutrition labelling in a concerted way across Member States. However, the tolerance limits should be regarded as 'warning limits' and not as 'action limits' forcing food operators to take disproportionate measures such as product recalls, destruction of packaging etc.

8. Issue

Member states and individual companies are developing different types of eco-labels including carbon footprint labels leading to additional cost and consumer confusion.

Example

Although we support consumers' right to know, AIM believes that Carbon Footprint labels are not appropriate as consumer information for the following reasons:

- carbon footprint is just one of many relevant environmental indicators such as water, waste, or biodiversity
- carbon footprint labels are not actionable or meaningful for consumers
- consumer understanding of carbon footprinting and its limitations is low
- the cost of developing product carbon footprint estimates is significant
- carbon footprint labels on products will wrongly be seen as environmental claims.

Solution

A holistic approach is needed with regards of consumer information, enabling consumers to make informed choices but also empowering consumers to contribute to reducing their environmental footprint in their daily lives. The Commission therefore needs to concentrate on developing a technically rigorous, internationally validated carbon footprint methodology as part of a broader Life Cycle Assessment approach for products. This methodology would assist industry in LCAs and enable consumers to understand how they can contribute to reducing critical environmental impacts, but would not be useful in isolation for the purpose of labelling. Life Cycle Assessment should include all relevant environmental indicators to avoid creating a policy that encourages shifting environmental impact from carbon emissions to other, less visible indicators. This will serve to help focus and inform industry efforts to improve environmental performance and enable consumers to make a difference through their consumption patterns. Any methodology for eco-labels

should be common with methodologies for eco-design, green public procurement and related policies.

9. Issue

Local origin labelling laws impose unnecessary cost.

Example

In January 2011 the Italian Parliament agreed the 'Made in Italy' law which imposes mandatory country of origin labelling on all foods on the Italian market. Different national origin labelling initiatives impose costs.

Solution

The EU Commission should freeze the implementation of Italian and other initiatives during the EU decision making process on country of origin labelling, and implement impact assessments of any new proposal.

10. Issue

Different enforcement rules for claims.

Example

Regulation 1924/2006/EC harmonises rules for Nutrition and Health Claims made on foods. A growing number of interpretation issues have arisen and more issues are expected to come once the art. 13.1 claims list is adopted in 2011.

The Dutch enforcement body intends to set-up a database with acceptable wordings of health claims. Such an initiative is against the principle of free movement of goods and can disrupt the functioning of the internal market as the regulation leaves the wording of health claims to the operator as long as it is well understood by the consumer and properly reflects the approved health effect.

Solution

The EC working group on claims should provide conclusive guidance at EU level.

11. Issue

Incorrect interpretation of the Unfair Commercial Practices (UCP) directive.

Example

- Since the implementation of the UCP in 2005, there have been a number of cases taken to the European Court of Justice (ECJ) as a result of member states continuing to restrict certain types of sales promotions. In C-261/07 and C-299/07 Belgium, C-304/08 Germany, and C-540/08 Austria, the Court ruled against the national restrictions. Despite this consistency other member states continue to apply national restrictions.
- The UCP directive forbids in annex I.28: "including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them". Under the EEA agreement Norway is a part of the internal market. In late 2010 the Norwegian Consumer Ombudsman stated its intention to extend its Marketing Control Act to misleading practices aimed at children. The Ombudsman has indicated that they will interpret annex I.28 to mean ANY promotional item that would be relevant to children below 18. This goes beyond the intent of I.28 which is about pester power "exhortation" and not about advertising to children. As it would be a national anomaly this interpretation constitutes a barrier to trade.

Solution

It is not efficient to have to tackle these national barriers by individual ECJ cases. Will we need 27 cases for every new directive? The Commission should establish better guidance for common interpretation of the UCP directive.

Getting innovation to market

12. Issue

In today's competitive world, speed to market on an innovation is essential for commercial success : EU approval processes are too slow.

Example

The Novel Foods procedure is so slow as to deter innovation. Unilever's spreadable margarine (Becel/Flora pro.activ) took the best part of three years to get approval.

Solution

The revision of the Novel Foods regulation should substantially shorten, and add greater predictability to, the authorisation process.

Recovery and disposal

13. Issue

Compliance with the European Packaging and Packaging Waste Directive.

Example

Widespread failure by member states to monitor compliance with the essential requirements has hampered the achievement of optimal results in the goal of minimizing packaging use. As the European Commission noted in its 2011 report on waste and recycling: "the lack of proper implementation continues to cause widespread failure in achieving the agreed environmental protection objectives in practice and shows significant disparities between Member States. At the end of 2009, waste represented on average 20% of all environmental infringement cases."

Solution

More efforts must be made on compliance issues. The 2012 scheduled review of the Waste Acquis is another opportunity for this.

AIM

AIM is the European Brands Association. It represents the branded goods industries in Europe on key issues which affect the ability of brand manufacturers to design, distribute and market their brands. AIM's membership groups 1800 companies of all sizes through corporate members and national associations in 22 countries. These companies are mostly active in every day consumer goods. They employ some two million workers and account for over 350 billion Euro in annual sales in Europe alone. AIM's mission is to create for brands an environment of fair and vigorous competition, fostering innovation and guaranteeing maximum value to consumers now and for generations to come.

Our corporate members include: Arla Foods ▼ Bacardi-Martini ▼ Barilla ▼ Beiersdorf ▼ Bongrain ▼ Cadbury ▼ Campbell Europe ▼ Coca-Cola ▼ Colgate-Palmolive ▼ Diageo ▼ Energizer ▼ Estée Lauder ▼ Ferrero ▼ Freudenberg/Vileda ▼ Georgia Pacific ▼ GlaxoSmithKline ▼ Groupe Danone ▼ Heineken ▼ Heinz ▼ Henkel ▼ Johnson & Johnson ▼ Kellogg ▼ Kimberly-Clark ▼ Kraft Foods ▼ Leaf ▼ LEGO ▼ Lindt & Sprüngli ▼ L'Oréal ▼ LVMH ▼ Mars ▼ McCain Foods ▼ McCormick ▼ Nestlé ▼ Oetker International ▼ Pepsi-Cola ▼ Pernod Ricard ▼ Philips Lighting ▼ Procter & Gamble ▼ Reckitt-Benckiser ▼ Royal FrieslandCampina ▼ Sara Lee / DE ▼ SCA Hygiene Products Holding ▼ SC Johnson ▼ Unilever

Our national association members include: Austria Markenartikelverband ▼ Belgilux BABM ▼ Czech Republic CSZV ▼ Denmark DLF ▼ Finland FFDIF ▼ France ILEC ▼ Germany Markenverband ▼ Greece Ελληνικός Σύνδεσμος Βιομηχανικών Επωνυμίων Προϊοντών ▼ Hungary Márkás Termékeket Gyártók Magyarországi Egyesülete ▼ Ireland Food & Drink Federation ▼ Italy Centromarca ▼ The Netherlands FNLI ▼ Norway DLF ▼ Portugal Centromarca ▼ Russia RusBrand ▼ Spain Promarca ▼ Slovakia SZZV ▼ Sweden DLF ▼ Switzerland Promarca ▼ United Kingdom British Brands Group