

Protectionism and Product Harmonisation in the EEC

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Précis: This work examines resistance to the harmonisation of performance, safety, and labelling criteria within the EEC. A theoretical treatment of possible protective and non-protective reasons for the delays encountered in implementing the provisions of the General Programme of 28 May, 1969 and the Council Resolution of 17 December, 1973 is put forward. The methodology is designed to permit an examination of specific issues to determine the influence of protectionism in explaining delays in product harmonisation, subject to various assumptions. A series of examples shows that non-protective sources of resistance may be of more importance.

I INTRODUCTION

In accordance with the Treaty establishing the European Economic Community, 1957 (hereafter referred to as the Treaty of Rome), tariffs on imports among the member states were largely eliminated in three stages by 31 December, 1961. These provisions are contained in Articles 12 through 15, but do not apply to tariffs of a fiscal nature which could be extended for an extra two years with the permission of the Commission (Article 17). Similarly, customs duties on exports were generally eliminated before 31 December, 1958.

Now that these tariff barriers to trade have been effectively eliminated

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within the EEC, their absence has highlighted the existence of many non-tariff barriers to trade which member states have appeared comparatively reluctant to strike down. There are many plausible reasons why a government might want to maintain some form of protection as a policy tool – to maintain full employment, to bring about a desirable distribution of income, or to adjust resource allocation and consumption patterns in the light of external economies and diseconomies (Corden, 1974, p. 4).

The purpose of this paper is to examine the implications of the European Economic Community's efforts to eliminate technical non-tariff barriers (NTBs) to trade among its member states. The important point to consider when discussing barriers to trade is the degree of protection which results. Standard theories of the various forms of economic union all quite clearly indicate that, given certain preconditions and assumptions, there exists significant potential for an increase in welfare and efficiency among the participating countries of the union. (For a good summary of these preconditions and assumptions see Balassa (1968).) These theories all hinge upon the advantages offered by the freeing of trade. It is quite clear that theories of this type provided some of the incentive for the inclusion of the provisions in the Treaty of Rome dealing with the relaxation of barriers to trade.

The following forms of non-tariff barriers were dealt with by the Treaty of Rome directly or indirectly: import quotas, export quotas (both "quantitative restrictions" in the Treaty), intentionally cumbersome customs procedures and anti-dumping legislation, patent laws, health and safety regulations, labelling requirements, discriminatory government purchasing procedures in public tenders, subsidies for consumption and export, differing bases for consumption tax valuations, and restrictive business practices. It should be stressed that the inclusion of articles dealing with such NTBs did not automatically mean that such devices would disappear. On the one hand, the Treaty of Rome often makes exceptions which temper outright prohibition; on the other, the processes defined in the articles often require further action by the EEC's institutions.

In spite of the number of articles in the Treaty designed to liberalise trade, work on eliminating technical NTBs has been fairly slow. There are a great number of problems involved, for it cannot be said in fairness that such barriers have been employed exclusively as economic policy tools. There are genuine reasons why product standards are necessary. Though it is certainly true that the quantity and scope of national standards have expanded rapidly since 1958 (Jenssen, 1967, p. 8), protectionism is not the sole cause of this proliferation. There has been a great increase in consumer awareness of possible dangers in products, for instance; there has also been an increased concern for the environment. Thus nations have been led to

protect their citizens and country from unsafe products or manufacturing processes.

The literature on non-tariff barriers to trade tends to examine such barriers either in terms of welfare effects or tariff-equivalent effects. (See Baldwin (1971) for an in-depth discussion.) These approaches have both advantages and disadvantages. First, it does enable policy-makers to examine their decisions from an analytical viewpoint. Second, it can enable them to judge the relative importance of harmonisation in specific areas, thus allowing the fixing of priorities. But these approaches tend to over-stress the protective nature of product standards. This is strengthened by the large quantity of anecdotal examples available which are often used to buttress their calls for rapid product harmonisation. As such, their work tends to lack generality when applied to the product standards issue as a whole.

In short, existing arguments in favour of product harmonisation could be summarised in this way: technical NTBs tend to act as restraints to trade, the effects of which are readily described, and failure to eliminate these barriers is, therefore, a covert form of protectionism. But is this necessarily a valid conclusion? In fact, this is a classic case of *post hoc, ergo propter hoc* reasoning; just because protection is the result, it does not follow that protectionism is the cause. Without denying the existence of specific cases where protectionism was unequivocally the incentive for the erection or maintenance of a technical NTB, we feel that a broader look at the issue will enable us to determine just how important protectionism has really been in causing the EEC's various delays and failures to establish EEC-wide product standards.

It should be stressed that any conclusions we reach must only be considered valid in the aggregate. Attempting to apply them to specific cases in analysing the motivations of governments runs two great risks: (1) that public pronouncements are not necessarily candid and (2) that hard lines may be taken on trivial issues as bargaining tactics to win concessions in unrelated areas. Thus one must be willing to recognise and accept the limitations of our approach and also to recognise that our theory is based on trends revealed by a fairly large and comprehensive body of data.

II RESISTANCE TO PRODUCT HARMONISATION: THEORY

Before actually discussing the theoretical aspects of resistance to product harmonisation, it is necessary to look at the harmonisation process itself. There are a variety of reasons for delays which depend upon the particular type of harmonisation involved.¹

1. Given the nature of the EEC's product harmonisation programmes, all delays are necessarily the result of official action (or lack thereof) by the member states or by the EEC's institutions. In the latter case, we cannot rule out the possibility of low priorities in explaining a delay. But as will be seen later, this will seldom be a sufficient explanation.

Officially, harmonisation of product standards can take any of three forms: agreement among the relevant national authorities without recourse to formal harmonisation by the EEC,² "optional" harmonisation, and "total" harmonisation. The first case is not important to our discussion for, as will be seen later, there exist harmonisation programmes which require EEC action in a wide variety of product areas. As regards the second and third cases, the Commission has stated that

The most common method of harmonisation is the one known as "optional". Products that comply with Community standards may be sold anywhere in the Community, but national standards are still maintained and a manufacturer wishing to keep his position in a traditional market . . . can continue to follow existing national standards. In some cases, however, it is necessary to go all the way to total harmonisation . . . [which means that] national standards are replaced by Community standards (*The Elimination of Non-Tariff Barriers to Intra-Community Trade* (1976), pp. 6-8).

Unfortunately, the three approaches just described do not provide an adequate analytical framework for interpreting the nature of specific directives proposed and adopted. This is because they do not define rigorously enough the various forms that the action the Council of Ministers might take. A more informative way of examining the process is to look at the forms of barriers that might exist. First, there are national regulations defining minimum product standards that goods sold or used must meet. A typical barrier of this type would be the differing national limits for the maximum axleweight of lorries.

The French originally wanted an EEC maximum axleweight . . . of 13 tons so their main lorry manufacturer, Berliet, could sell more juggernauts outside France. But the British refused to increase their 10-ton limit and the Danes wanted to keep their limit at 8 tons (*Economist*, (Vol. 257, No. 6903, 13 December, 1975), p. 43).³

Secondly, there are national regulations defining permitted production techniques for goods sold or used within a state's borders. Thus, while final products might be indistinguishable, imported goods might be banned

2. These forms are described in official EEC literature. The first form is apparently included merely to satisfy the wording of Article 101 of the Treaty of Rome.

3. The issue behind the British and Danish stands was the inability of their infrastructure to handle the increased wear that would result from the adoption of the French 13-ton limit as the EEC standard. Protectionism was not necessarily involved.

solely on the basis of differing production techniques, or even because of differing standards for quality control inspections. An example of such a barrier would be the French law prohibiting the use of arsenic in chicken feed (the standard UK method) or the sale of eggs from arsenic-fed chickens, even though the arsenic would not become part of the edible egg (*Economist*, (Vol. 255, No. 6869, 19 April, 1975), p. 39).

The third type of barrier is one in which goods sold on a domestic market must have specific labels attached. This could also involve definitions of the standards governing goods sold by quality or size. Examples of such a barrier would be differing national requirements on the minimum percentage of lead oxide present for different advertised qualities of crystal glass (*Official Journal of the European Communities (OJ hereafter)* (Special Edition, Vol. 1969 (II)), pp. 599-600) and the designations of quality for sizes of cauliflower (*OJ* (Special Edition, Vol. 1959-1962), p. 97).

As a guide to interpreting the forms of action proposed by the Commission, and keeping in mind the three types of barriers described above, one can formulate four categories under which the action of the Council may be grouped. The names assigned to each category are not intended to be fully explanatory, but they merely serve as convenient labels to assist recognition.

(i) GOODS HARMONISATION

Standards of this type are minimum common standards for intra-Community trade. This is the "optional" type of harmonisation described above. It is used to counteract distortions caused by the first type of barrier (i.e., varying design and performance criteria). Manufacturers need not meet these standards to continue selling on their domestic market. An example of the key article of a typical directive of this category is Article 8 of the Directive covering rear registration plate lamps for motor vehicles and their trailers:

Article 8 No Member State may refuse or prohibit the sale or registration, entry into service or use of a vehicle on grounds relating to its rear registration plate lamps if these bear the EEC component type-approval mark and are fitted in accordance with the requirements laid down in Directive 76/756/EEC (*OJ*(L262/76), p. 86).

(ii) PROCESS HARMONISATION

Directives of this type can specify Community-wide standard inspections, administrative requirements, approved raw material inputs, and production techniques with the exception of labels. Mutual acceptance of other member states' inspections is generally included as well. Action under process

harmonisation is designed to counteract distortions caused by the second type of barrier (i.e., differing regulations defining the productive process). Process harmonisation is stricter than "optional" or goods harmonisation, for producers are required to adopt approved techniques, but it is not "total" harmonisation. This is because provision for locally differentiated products is made. An example of these points would be the provisions in the Directive governing the use of anti-oxidants in foodstuffs:

Article 1 Member States shall not authorise the use for the protection of foodstuffs for human consumption . . . against deterioration caused by oxidation, such as fat deterioration and colour changes in foodstuffs caused by autoxidation, of any substances other than those listed in Parts I to III of the Annex to this Directive which may, if necessary, be dissolved or diluted with the substances listed in Part IV of the Annex.

Article 9 This Directive shall not affect national laws specifying the foodstuffs to which the substances listed in Parts I to III of the Annex to this Directive may be added and the conditions governing the addition of such substances. However, such laws must not have the effect of totally excluding the use in foodstuffs of any substances listed in the Annex to this Directive (*OJ* (Special Edition, Vol. 1970 (II)), pp. 429-431).

(iii) LABELLING HARMONISATION

Directives of this type define EEC-wide labelling requirements and are designed to counteract distortions of the third kind. This category also lies between "optional" and "total" harmonisation, for while producers would be forced to adopt the EEC standards, no actual change in their productive process or in the nature of their goods would be necessary. Furthermore, provision is often made to allow member states to require vernacular labelling. An example of such a Directive would be the one concerning crystal glass, which reads in part,

Article 2 Member States shall take all necessary steps to ensure that the composition, characteristics of manufacture and labelling of the products referred to in Annex I, and all forms of publicity for such products, conform to the definitions and rules laid down in this Directive and in the Annexes thereto (*OJ* (Special Edition, Vol. 1969 (II)), p. 599).

This could be slightly misleading. It should be pointed out that the composition and characteristics of manufacture mentioned in Article 2 refer only to the bands of tolerances comprising the various quality designations.

(iv) TOTAL HARMONISATION

Directives of this type are Community-wide requirements covering any or all of the types of barriers mentioned above. The key point is that, loosely speaking, instead of defining what member states cannot prohibit, total harmonisation defines what they must allow and must prohibit. There are no significant provisions made for local differentiation of products. An example of a typical total harmonisation directive would be the one covering sugars intended for human consumption, which reads in part,

Article 2 Member States shall take all measures necessary to ensure that the products referred to in Article 1 may be offered for sale only if they conform to the definitions and rules laid down in this Directive and in the Annex thereto (*OJ* (L356/73), p. 75).

For convenience, the key points of our four categorisations are highlighted in Table 1. This table lists the ranges of applicability, the nature of the required compliance with the new standards, the marketing conditions each covers, and the possibility of local differentiation of products.

Table 1: *Tabulation of the salient points of the four categorisations of possible action under an EEC product harmonisation directive*

| <i>Category</i> | <i>Conditions</i> |
|-------------------------------|---|
| (i) GOODS HARMONISATION | Applies only to the nature of the final product. Compliance optional in local markets. Standards apply only to cross-border trade. Local differentiation preserved. |
| (ii) PROCESS HARMONISATION | Applies to inputs, processes and inspections. Compliance mandatory. Applies to all marketing conditions. Local differentiation preserved within limits. |
| (iii) LABELLING HARMONISATION | Applies to packaging and quality designations. Compliance mandatory. Applies to all marketing conditions. Local differentiation preserved with respect to vernacular requirements. |
| (iv) TOTAL HARMONISATION | Counteracts any of the three types of NTBs. Compliance mandatory. Applies to all marketing conditions. Options for local differentiation prohibited. |

III PROTECTIONISM AS AN EXPLANATION FOR DELAYS IN THE ADOPTION OF DIRECTIVES

We are now in a position to analyse possible reasons of a protective and non-protective nature for which delays in the drafting or the adoption of a

directive might occur. As it happens, the expected reactions of interest groups which might be in a position to influence governments or the EEC's institutions themselves vary from category to category of the type of harmonisation being considered. Furthermore, reactions of producers vary according to the nature of the market which they face.

Nevertheless, some simplifying assumptions are in order. With regard to protectionism, we are assuming that the interests of producers and their workers are congruent. Furthermore, we are also assuming that consumers and environmentalists hold no strong feelings on the protection issue. This is equivalent to saying that only manufacturers and governments sympathetic to producer interests would be interested in protection. Bearing these assumptions in mind, we have constructed a table of predicted producer reactions to unspecified proposals of each category, listing under each how producers in differing marketing conditions might prefer the new standards to operate. Further detailed assumptions are contained in Table 2.

Table 2: *Predicted producer reaction to proposals for product harmonisation – the nature of preferred standards under a variety of marketing conditions*

| <i>Marketing condition</i> | <i>Goods harmonisation</i> | <i>Process harmonisation</i> | <i>Labelling harmonisation</i> | <i>Total harmonisation</i> |
|----------------------------|----------------------------|------------------------------|--------------------------------|----------------------------|
| Domestic marketing | High | No change | No change | Low |
| Exporting within the EEC | Low | High | High | High |
| Assembly or processing | Either high or low* | No preference | No preference | No preference |
| Consumption only – imports | Low | Low | No preference | Low |
| EEC vs. external producers | High, flexible | High, flexible | High, flexible | High, flexible |

*See text.

Assumptions used in Table 2:

1. Producer reaction is based solely upon how a proposal would affect his price-competitive position unless otherwise specified in the text.
2. Producers would want harmonisation to help, or at least not hurt, their price-competitive position.
3. Low standards will be sufficiently high to ensure safe consumption.
4. High standards are more expensive to implement without considering economies of scale and of standardisation.
5. Sufficient time would be allowed before implementation to permit the running down of inventories.
6. Cartelisation in marketing has been eliminated.

7. In the case of total harmonisation, no producers have already met the new proposed standards.
8. Distributors in the "consumption only" case are independent of their foreign producers and suppliers.
9. The relative terms "high" and "low" are to be considered in relation to previous national standards.
10. Any given firm will occupy the same "marketing condition" before and after harmonisation.

There are five types of marketing conditions considered: firms selling solely on their domestic market, firms exporting within the EEC, firms engaged in assembly or processing operations, firms operating exclusively on their domestic markets as distributors of imports, and firms of all kinds faced with extra-EEC competition. In discussing Table 2, we will consider the first two marketing conditions in juxtaposition and then deal with the remaining cases separately. The important points to consider when judging the reactions of producers are the incidences of advantage caused by the provisions of new directives upon cost changes in the long and short run, upon economies of scale and of standardisation, upon differences in the ratio of fixed to total cost, and upon the potential widening of markets. These all depend upon the changes in the productive process which the provisions of the new directives might or might not require.

As has been mentioned, there are important implications in the different categories of harmonisation for protectionism. Goods harmonisation is specifically designed to allow short-run protection for firms selling only to their domestic markets. When a goods harmonisation directive is adopted, producers of this kind are not required to meet the new standards. If local laws permit, local manufacturers can continue to sell inferior products and to maintain any cost advantage that might exist as a result of less rigorous standards. At the same time, imports of similarly low quality goods could be banned for lack of compliance with EEC standards. In the long run, however, the dynamic effects make the price advantage less likely. It is possible that exploitation of economies of scale and of standardisation by foreign competitors could erode the price advantage permitted in the short run. Thus local firms could eventually find themselves selling inferior goods at higher prices than those of imports. This possibility of economies of scale and of standardisation is of vital importance for, to a certain extent, their emergence hinges upon the harmonisation process. The adoption of EEC-wide standards would eliminate the need for short, differing production runs which had been necessary beforehand to accommodate the different national standards. Harmonised performance standards could permit a more widespread use of standardised input components. Economies of scale available to sub-contracting component manufacturers could then provide economies of standardisation. It should be noted that these economies would be

available to all competing foreign firms, but local producers who do not adopt the new processes would not necessarily be able to take advantage of them. (See Földesi, 1975, for an interesting survey of these effects.)

With regard to protective resistance to goods harmonisation, therefore, we would expect firms selling domestically to desire the highest possible standards to be adopted as the EEC norm. This would ensure the longest possible maintenance of their price advantage. Conversely, exporting firms would want the new standards to be as low as possible to avoid having to compete against inferior and cheaper products. If protectionism were behind resistance to a goods harmonisation proposal, therefore, we would expect local firms to oppose low standards; similarly, exporting firms would tend to resist high standards.

With regard to process harmonisation, we would expect firms engaged in local marketing to prefer that the new standards require no change in their production process. On the other hand, their importing competitors would want fairly rigorous standards to be imposed, since they would tend to be firms with larger potential markets and probably larger than firms engaged solely in domestic marketing. Given stricter standards, importing firms would not have to face local firms who already met the new standards. Generated changes in fixed cost would be more easily spread over a larger volume than such local firms could sell. In other words, if one assumes identical average variable cost curves for both sets of producers, the new fixed costs forced by more rigorous standards would be smaller per unit output for firms with larger production runs. This would give importing firms an absolute price advantage, even before considering further economies of scale and of standardisation.⁴ Similar arguments would apply in the case of labelling harmonisation, but it is expected that the changes in fixed costs resulting from new labelling requirements would be fairly low. Thus if protectionism were the motive for resistance to harmonisation in both cases, we would expect firms engaged in local marketing to oppose any change, while their foreign competitors would oppose standards which would not require some plant or process change. It should be remembered that both process and labelling harmonisation provide for local differentiation. This is a key point, since it allows for the possibility of "no change" for local producers.

Given the nature of total harmonisation, it is necessary that some change in the production process occur. (See assumption 7 of Table 2.) The arguments with regard to total harmonisation are similar to those of process and labelling harmonisation, with the exception that local firms would not be

4. Note that since local firms would be forced to adopt the new techniques, economies of scale accruing to component suppliers could provide economies of standardisation to them as well as to exporting firms.

free to maintain their existing plant or inputs. Thus we would expect a local firm desiring protection to oppose high standards and to prefer low ones as this would minimise changes in fixed costs. Conversely, foreign competitors would desire relatively high standards and would be expected to oppose low ones.

In the case where a firm is engaged in assembly or processing for the domestic market, the attitude towards goods harmonisation would depend upon whether or not the firm were operating at near-optimal levels of output. In the instance of a foreign firm it would depend on whether it had set up its local subsidiary to take advantage of transportation economies or of a variety of pre-existing tariff or non-tariff barriers to trade. In the former case, it is expected that low standards would be preferred merely to avoid otherwise unnecessary price increases. In the latter case, the attitude should be identical to that of a local firm faced with goods harmonisation. This, of course, assumes that the local subsidiary would be free to make its views known independent from its parent organisation; there is also an implicit assumption that some of the components used would be of local manufacture. In the other three categories of harmonisation, it would probably make little difference to the assembly firm what the nature of the components it had to assemble might be. It would only be in the cases of standardised inspections or plant safety regulations that such firms would have strong feelings about process or total harmonisation, which accounts for the preference for "low" standards recorded in these blocks in Table 2. Thus the expected reactions of a local assembly or processing firm depend very much upon the specifics of each proposed directive as well. It should be mentioned that in the case of such a firm processing for re-export, we would expect the firm to hold views identical with those of an ordinary exporting firm.

In the case of a country which has no industry involved in the production of a good affected by a specific proposal, the local producer interest would be represented by the local distributors. If it is assumed that there are no marketing cartels and that distributors are independent of their foreign suppliers, then it is expected that the distributors would prefer to avoid unnecessary price increases and thus would prefer low standards. It should be pointed out that under these circumstances, protectionism of any kind is considered rather unlikely.

The final marketing condition to consider is the case where EEC producers as a whole are competing with imports from outside the EEC. These cases are somewhat different from the rest, for the EEC is often willing to sanction explicit protection against external competitors, subject to GATT and ACP agreements, *inter alia*. When a need for protection has

arisen, the Council has found that harmonisation has hurt the flexibility, and thus the potential for retaliation, of its protective reaction:

It has dawned on the French, British and Italians that any move to cut red tape [by harmonising everything] will help not only European car makers but also non-EEC ones, especially the Japanese . . . if a non-EEC country decides to hurt EEC car exports, say by imposing extra pollution rules, individual EEC countries will not be able to retaliate (*Economist*, (Vol. 263, No. 6979, 4 June, 1977), p. 66).

In these circumstances, therefore, we would expect producers to desire high, yet flexible, standards under all categories of harmonisation.

It may seem strange that we have found a preferred form of harmonisation for every combination of marketing situations and category of harmonisation. This is a reflection of the fact that resistance to product harmonisation can have protective effects for any combination, though this point is not often considered in discussions on protectionism. Protectionism of this sort would almost invariably be in the form of disagreements over technical aspects of a proposal. More specifically, no government appears willing to oppose a proposal merely on the grounds that it opposes harmonisation. But it is clear from the above discussion that if protectionism were the motive for resistance to harmonisation, unless issues are not considered in isolation, agreement on "correct" standards should be considered unlikely when some industry would be demonstrably vulnerable to injury under the terms of a proposal, no matter what its marketing condition might be. For example, in the case of exporting firms faced with a total harmonisation directive, the desire for high standards might seem unlikely. Quite possibly this is true. But if a firm in such a position were to desire protection through resistance to product harmonisation, high standards would be the preferred form necessary to provide that protection.

IV REASONS OTHER THAN PROTECTIONISM FOR RESISTANCE TO PRODUCT HARMONISATION

As was mentioned above, there are many possible reasons why harmonisation might be resisted that do not involve protectionism and where, unlike the case of protectionism, the interests of consumers and environmentalists play a major role in addition to the interests of industry. These reasons can be divided into two basic types: the influence of non-price competition and other factors.

We are assuming that the interests of consumers and firms are congruent here. There are many forms of non-price competition, of course, such as

post-sale servicing facilities, advertising, credit arrangements, and so on. But there is one form which is vitally affected by harmonisation: style-related product differentiability.

To a certain extent, the marketability of any product, other than unprocessed raw materials, is dependent upon that product's characteristics which distinguish it from its close substitutes. There is no doubt that consumers have been known to prefer one product over a less expensive alternative on the basis of imagined prestige, aesthetic considerations, convenience of design, or habit. The opportunity to manufacture and sell a product which differs in some way from its competitors is, strictly speaking, a chance to decrease the elasticity of demand for the good. As a corollary of this thesis, the more stages in the production process, the more distinguishable the final product is likely to be from its substitutes.

The process of harmonising standards for differentiated products can at one time both increase and decrease the market for any given firm. On the one hand, goods previously excluded from some markets could then penetrate them. Thus consumers would have a wider choice of goods. But, on the other hand, one must remember that any form of harmonisation must limit the degree of differentiability that products can possess. The number of different products on any given market might increase as a result of the elimination of a technical NTB, but at the same time the number of varieties available in the EEC as a whole might be severely reduced. There is a probable net increase in the elasticity of total demand faced by each firm. Thus a firm already engaged in exporting would tend to prefer the broadest possible standards under all categories of harmonisation, which is, of course, the opposite of what was predicted for a protection-desiring firm in the last section, except in the case of goods harmonisation. Furthermore, firms attempting to enter the market would find that harmonisation could dry up many of the niches into which their intended products were designed to fit. They also, therefore, would prefer broad EEC-wide standards.

Similarly, consumers have proved unwilling to accept the limitations imposed on style by EEC directives. Legislation affecting foodstuffs, alcoholic beverages, and any other goods with distinctive national characteristics could become controversial, for the reactions of consumers to proposals are usually emotive and do not always reflect the actual details of the proposals. Nevertheless, we have formulated some guidelines for the estimation of the importance of style to resistance to harmonisation. First, in agricultural products, it is expected that the closer to the stage of final consumption the affected product might be, the more likely it would be that consumers might object to harmonisation. For example, it would be expected that a proposal defining permitted preservatives in foodstuffs would be adopted more readily than one which listed permitted varieties of

bread. Secondly, in the industrial sector, it would be expected that proposals dealing with required performance criteria would encounter less resistance than one which listed specific design requirements. For example, it would be expected that a proposal which listed the requirements for the behaviour of the steering mechanism in a motor vehicle in the event of impact would be adopted much more easily than one which listed the permitted arrangement of controls.

The categorisation of the proposed action would also affect the anticipated reactions of consumers and producers. More specifically, total harmonisation would probably encounter more resistance at the drafting stage, for governments would not wish to appear to be willing to reduce the variety of available products. When a draft is more accommodating, such as in goods harmonisation, the uncertainty of consumer reaction to any proposal could imply that governments might be surprised that a particular proposal could have become an issue. Thus delays would be more likely after a proposal had been drafted and forwarded to the Council for action. An example of such a reaction would be the controversy over standardisation of beer. (For a discussion of this, see the *Economist* (Vol. 253, No. 6845, 2 November, 1974), p. 60.)

Against the desires of consumers and producers for variety, there are often the conflicting views of environmentalists. This interest is usually represented by a desire for total harmonisation. In the extreme, standards would be drafted solely with safety or environmental protection in mind. This could often mean a large reduction of permitted product variety, coupled with cost increases as a result of expensive plant or input modifications. It is not expected that environmental interests would oppose a more liberal form of harmonisation on principle. Nevertheless, it is important to remember that their influence is present when trying to evaluate the terms of a specific proposal or directive. Yet it should not be expected that a government which had taken a hard stand on environmental issues would be eager to compromise its standards merely to conform with a relatively weak EEC-wide standard.

There are several more miscellaneous possible sources of resistance to harmonisation. Two of these relate to consumer interests. First, it is possible that harmonisation of standards could reduce the volume of goods of legal quality, particularly in basic foodstuffs. (See the *Sunday Times*, 24 July, 1977, p. 52, for a discussion of this point.) This could cause an otherwise unnecessary rise in prices which governments could be unwilling to sanction. Secondly, in labelling harmonisation in particular, the transitional stage could prove awkward in practice. While in theory the standardisation of quality designations could reduce opportunities for fraud by presenting tourist consumers with easily recognisable classifications, there is no

guarantee that they would not be just as easily confused by new Community-wide designations. This confusion could also be likely among domestic consumers; governments might easily be tempted to limit the opportunities for fraud to foreigners and thus oppose harmonisation. When labelling requirements deal with lists of additives and instructions for use, it is not inconceivable that confusion could result in an actual danger to consumers. Governments would quite likely be aware of this possibility and would tend to resist harmonisation on their consumers' behalf. It would further be expected that such resistance would increase as the goods were more likely to be consumed by non-professionals or, in other words, as the market for a product was larger and less homogeneous.

There are two more possible sources of non-protective resistance to harmonisation. One is a straightforward inability to agree on appropriate standards for purely technical reasons. More subtle, however, is the possibility that member states might be unwilling to admit that their earlier standards were not the most appropriate. Differences between member states's standards could have evolved for a variety of reasons — relative differences between environmental concerns, differing infrastructural requirements, solidly entrenched consumer habits or conventions, and so on. But the important point is that an element of pride in maintaining existing standards cannot be ruled out categorically.

In effect, when considering non-protective resistance to product harmonisation, we are faced with a combination of consumer interests and inertia. In general, we would expect that the closer to the point of final consumption and the more heterogeneous the market for the product, the more likely it is that governments would tend to resist a proposal for a product standard. While the category of the proposed action could influence the expected behaviour of governments, it is clear that the nature of the firms engaged in production is not particularly relevant. Note that the general increase in product differentiability as one approaches the final consumption stage implies that firms producing them can acquire a quasi-monopoly status. This would imply a smaller need for protection compared to that of manufacturers of more homogeneous products such as intermediate goods. Thus if resistance to product harmonisation were greater as one approaches the final consumption stage, it would imply that some non-protective factor was at work.

V RESISTANCE TO PRODUCT HARMONISATION: PRACTICE

Proposals for product harmonisation are drafted by working committees of the Commission. These committees draw freely upon various national experts and standards published by the International Organisation for

Standardization (ISO) and the Economic Commission for Europe of the United Nations (UNECE). Nevertheless, compromise has proved necessary and delays are often encountered at the drafting stage. Since the experts consulted by the Commission are often the same people who helped draft the ISO or UNECE standards, it seems that political forces are partly responsible for the delays encountered. Once a draft has been prepared, it is submitted to the Council. Drafts are usually then sent to the Economic and Social Committee and the European Parliament for their opinions. The Council then decides whether or not to adopt the proposal and issue it as a directive; it may also refer it back to the Commission or amend it itself prior to adoption. Directives are then addressed to the member states as orders to amend their national legislation as appropriate to conform with the provisions of the directive.

The first large-scale plans for the removal of technical NTBs were announced in the *Official Journal of the European Communities* in five Council resolutions. These five resolutions were grouped together under the title "General Programme of 28 May 1969 for the elimination of technical barriers to trade which result from disparities between provisions laid down by law, regulation or administrative action in the Member States" (*OJ Special Edition*) (Second Series, Vol. IX, pp. 25-33). The first two resolutions assigned priorities and deadlines to the Commission in the industrial and agricultural sectors; the other three were administrative and enabling resolutions.

The deadlines soon proved to be over-optimistic. Of the 159 areas to have been covered, only four resolutions were adopted before the relevant deadlines were reached. In addition, only 31 directives had been issued before 17 December, 1973. The general unworkability of the General Programme and the need for revised standards caused by the accession of the new member states led to the adoption of a new resolution, the "Council Resolution of 17 December, 1973 on industrial policy" (*OJ* (C117/73), pp. 1-14). The following discussion of the implementation of this latter resolution will relate to conditions prevailing up until 28 February, 1977.

Some of the areas covered under the General Programme were dropped in the new resolution, but work on many of these has continued at a lower priority. The annexes to the new resolution list a total of 157 areas to be harmonised under a variety of deadlines in both the industrial and agricultural sectors. In practice, however, some areas were sub-divided, so that there exist 167 areas. Possibly as a result of some overlapping between the two programmes, the Programme of 17 December, 1973 has been somewhat more successful than the first. Proposals regarding nine of the 167 areas were adopted as directives within the deadlines assigned, and 45 had been

adopted by 28 February, 1977; there also existed 55 proposals undergoing consideration on that date under the resolution.

This left 67 areas which had yet to be considered. There may be significant reasons why more than 40 per cent of the areas had not had proposals drafted before the respective deadlines had been reached. But it is not unreasonable to believe that the various committees responsible for the preparation of drafts had not yet considered all the areas in the later stages of the resolution, for 66 of the 67 areas had deadlines of 1 January, 1976 or later, and 59 of the 67 of 1 January, 1977 or later.

The most important question is whether or not resistance to product harmonisation in the EEC is a reflection of protectionism desired by the member states. To examine this point, we have designed a theory which would explain encountered resistance either in protective or non-protective terms. Without denying that in some well-publicised cases protection has been a major factor, general trends seem to indicate that non-protective causes are probably more relevant.

It is not our intention to examine all available evidence on this point. Rather, we will discuss briefly some of the facts and show how they relate to our predictions for non-protective causes for resistance to harmonisation.

In process harmonisation in the agricultural sector, directives successfully adopted have mostly related to intermediate goods, including anti-oxidants, colours, preservatives, preservatives in citrus fruits, and meat products. On the other hand, opposition to proposals dealing with final products was both quick and effective. Outstanding or withdrawn proposals up through 28 February, 1977 include those dealing with butter; margarine; bread; macaroni; jams, marmalades, fruit jellies and chestnut purée; and meat extracts, yeast extracts, protein extracts, flavouring for soups and other foods, broths, soups and meat based sauces. Considering that up to that date these proposals had been outstanding for an average of 95 months, this trend conforms to our prediction that goods of consumer interest would tend to attract more resistance, even though such goods would be more differentiated and thus require less protection.

A similar pattern is revealed in the low adoption rate for total harmonisation proposals in the agricultural sector. Here we find more final products harmonised, but only after delays averaging 60+ months. Furthermore, the following products had proposals outstanding for an average of 73 months though 28 February, 1977: beer, caseins and caseinates, soft drinks, edible ices, sugar confectionary, coffee and tea extracts, and natural mineral water.

In labelling harmonisation, the most easily adopted directives were crystal glass, pre-packaging of certain liquids and solids, and textile names, compositions and tolerances. Long delays were encountered in honey, food for dietary uses, and labelling of foodstuffs. This pattern conforms to our

predictions concerning potential dangers caused by harmonisation and the scope of the probable market. The directives on pre-packaging of certain liquids and solids and textiles would probably be of interest to industrial customers, as they refer to intermediate goods; the potential dangers of misunderstandings over crystal glass lead oxide tolerances is doubtless minimal. Yet the areas encountering resistance could involve much more heterogeneous markets. Thus events in labelling harmonisation seem to support non-protective explanations for delays as well.

In total harmonisation in the industrial sector, the directives adopted in increasing order of the length of delays beyond initial deadlines related to "Restrictions on the use of certain substances and dangerous preparations", "Maximum sulphur content of domestic fuels", "Detergents", "Cosmetics", "Interference from portable tools", and "Interference from fluorescent lighting"; the delays were 7, 11, 34, 66, 70 and 70 months, respectively. This reveals a trend toward greater resistance as goods tend to the point of final consumption, which again is the opposite of what a protective explanation for delays in harmonisation would predict.

With regard to goods harmonisation, there is a great deal more evidence available, for this category of harmonisation is the one most often employed. To illustrate the extent of protection under this category, a small, yet detailed, case study of harmonisation in the motor vehicle industry is presented in Table 3.

Table 3 contains the details of the history of the two EEC product harmonisation programmes in the motor vehicle industry. Section I lists the directives adopted in order of the length of adoption over-runs. With the exception of the type approval enabling directive which is of the process harmonisation sort, all standards were issued as goods harmonisation directives.⁵ We find that the first fourteen directives were readily adopted, with over-runs of three months or less. Most of these were concerned with safety-related items or environmental protection. Only three could have any bearing on consumer tastes and those only minimally so: "Rear registration plates" which defines EEC-approved sizes for brackets, "Access" which requires running boards if the entrance to the vehicle is more than 700 mm above ground level, and "External projections" which covers a great deal of minor features. The rapid acceptance of the latter may be explained by its close adherence to the provisions of UNECE standard No. 26 which was published on 28 April, 1972 (*Agreement Concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts (E/ECE/TRANS/505) (1958 et seq.)* and (*OJ L266/74*, pp. 6-10). Rapid acceptance of this directive probably

5. It should be noted that the directives listed in Table 3 refer only to primary directives, and that later revisions of standards are not considered.

reflects earlier conformance with the UNECE standards, although the EEC standards are more liberal. Thus it is felt that among the first fourteen areas, there would be no reason to expect delays based either on producer or consumer interests.

Table 3: *Motor vehicle harmonisation under the General Programme of 28 May, 1969 and the Council Resolution of 17 December, 1973*

| I. Directives issued: | | | | | |
|---------------------------------------|------------------|------------------|-------------------|------------------|-------------------|
| Area | Date of proposal | Initial deadline | Drafting over-run | Date of adoption | Adoption over-run |
| (Type approval) | 16-7-68 | 1-1-70 | 0 | 6-2-70 | 1 |
| Atmosphere pollution (petrol) | 29-10-69 | 1-7-70 | 0 | 20-3-70 | 0 |
| Steering equipment | 25-2-69 | 1-7-70 | 0 | 8-6-70 | 0 |
| Interior fittings (steering mech.) | 25-9-72 | 1-7-74 | 0 | 4-6-74 | 0 |
| Interior fittings (strength of seats) | 29-5-73 | 1-1-75 | 0 | 22-7-74 | 0 |
| Belt anchorages | 1-8-74 | 1-1-76 | 0 | 18-12-75 | 0 |
| Reverse movement | 9-8-74 | 1-1-76 | 0 | 26-6-75 | 0 |
| Regulation marking | 9-8-74 | 1-1-76 | 0 | 18-12-75 | 0 |
| External projections | 21-12-73 | 1-1-75 | 0 | 17-9-74 | 0 |
| Noise levels, silencers | 16-7-68 | 1-1-70 | 0 | 6-2-70 | 1 |
| Access (doors, running boards, etc.) | 21-12-68 | 1-7-70 | 0 | 27-7-70 | 1 |
| Rear registration plates | Not pub. | 1-1-70 | — | 20-3-70 | 3 |
| Fuel tanks | 16-7-68 | 1-1-70 | 0 | 20-3-70 | 3 |
| Rear protective devices | 16-7-68 | 1-1-70 | 0 | 20-3-70 | 3 |
| Audible warning devices | 5-8-68 | 1-1-70 | 0 | 27-7-70 | 7 |
| Braking devices | 21-12-68 | 1-7-70 | 0 | 26-7-71 | 13 |
| Rearview mirrors | 5-8-68 | 1-1-70 | 0 | 1-3-71 | 14 |
| Reflectors | 15-1-74 | 1-1-75 | 0 | 27-7-76 | 18 |
| Fog lamps (forward) | 21-12-73 | 1-1-75 | 0 | 27-7-76 | 18 |
| Safety belts | 14-4-75 | 1-1-76 | 0 | 28-6-77 | 18 |
| Atmosphere pollution (diesel) | 30-12-71 | 1-7-70 | 18 | 2-8-72 | 25 |
| Radio interference | Not pub. | 1-1-70 | — | 20-6-72 | 29 |
| Fog lights (rear) | 31-12-76 | 1-1-75 | 24 | 28-6-77 | 30 |
| Interior fittings | 30-12-71 | 1-7-70 | 18 | 17-12-73 | 41 |
| Speedometers | 9-8-74 | 1-1-70 | 55 | 26-6-75 | 72 |
| Lighting and signalling equipment | 16-7-68 | 1-1-70 | 0 | 27-7-76 | 78 |
| Field of vision | 5-8-68* | 1-1-70 | 0 | 27-9-77 | 93 |
| Windscreen wipers and washers | 5-8-68* | 1-1-70 | 0 | 21-12-77 | 96 |

II. *Outstanding proposals in the motor vehicle sector as of 1-10-78:*

| Area | Date of proposal | Initial deadline | Drafting over-run |
|--------------|------------------|------------------|-------------------|
| Head-rests | 31-12-74 | 1-1-76 | 0 |
| Safety glass | 20-9-72 | 1-7-70 | 26 |
| Tyres | 31-12-76 | 1-7-70 | 66 |

III. Areas with proposals not available as of 11-2-77:

| <i>Area</i> | <i>Initial deadline</i> | <i>Status</i> |
|--|-------------------------|--------------------|
| Electrical circuits | 1-1-70 | Work not started |
| Connections between vehicles and trailers: | | |
| Electrical | 1-1-70 | Proposal withdrawn |
| Mechanical | 1-7-70 | No report |
| Maximum speed (method of deter.) | 1-1-70 | Work not started |
| Special provision for: | | |
| Public service vehicles | 1-7-70 | Preliminary draft |
| Goods vehicles | 1-7-70 | No report |
| Electrical points for trailers | 1-7-74 | Proposal withdrawn |

* Subsequently amended in proposal form.

In the six areas requiring 3- to 18-month over-runs before adoption, the directives seem to reflect more controversial safety and environmental concerns or would be of somewhat more interest to consumers. The Directive on "Braking devices" was one of the most complex directives issued in the sector and was not based on any previously published international standard. The 13-month over-run does not seem unreasonable under these circumstances. Audible warning devices, rear-view mirrors, forward fog lamps, and reflectors are related both to safety and styling, and national regulations no doubt earlier reflected the conventions which had been built up in each country concerning their placement and interpretation. The resistance encountered in these areas was doubtlessly caused by a desire by member states to ensure that the new EEC standards would not cause a danger of misunderstanding to consumers in their nations and to preserve visible product differentiation.

The remaining eight directives seem to reflect even more controversial safety or environmental issues, as well as consumer-oriented concerns. Again, some directives would affect both safety and design, as was the case above. These areas would be "Interior fittings", "Fog lights (rear)", "Field of Vision", "Windscreen wipers and washers", "Speedometers" (the issue here was digital read-out speedometers), and "Lighting and signalling equipment". "Atmosphere pollution (diesel)" has continued to be an issue and amendments have subsequently been issued in this area. The problem of external radio interference stemmed from a technical inability on the part of manufacturers to meet the originally proposed standards; the standards had to be liberalised significantly.

From this brief survey, it would be clear that the general trend is for resistance to increase if the interests of consumers to style differentiation would be threatened and when existing safety-related conventions might be

changed. This is, of course, similar to our conclusions regarding the product harmonisation issue as a whole.

So far there has not been proposed a whole vehicle type approval directive. All progress to date in this area has been piecemeal, relating to the performance of various components and sub-assemblies. Even considering that such a directive would be extremely complex, it is felt that neither the member states nor the EEC have been pushing for whole vehicle type approval. The United Kingdom alone has a whole motor vehicle type approval act, Road Traffic – The Motor Vehicle (Type Approval) (Great Britain) Regulations, 1976.

Neither of the EEC's harmonisation programmes calls specifically for whole vehicle type approval. It is felt that the adoption of such a directive is unlikely in the near future as it would severely limit the EEC's ability to retaliate against non-EEC competitors, as was discussed in Section III above.

VI CONCLUSIONS

In conclusion, therefore, it appears that the interests of consumers must be considered the major factor underlying the resistance to product harmonisation in the EEC. As a general rule, this would imply that attacks upon the EEC for failure to reduce or eliminate technical non-tariff barriers to trade by accusing it or the member states of maintaining protectionism would appear to be mis-directed.

Where our theory of protective resistance to product harmonisation is valuable is when a delay in harmonisation has occurred. One can examine the issues involved and, if the information is available, one can determine the source of the delay. If it can be assigned to a given member state, the local industry can be examined for its marketing condition and the proposal can be assigned a categorisation. This data can then be compared with the relevant block within Table 2 and the likelihood of protectionism causing the delay can be determined. Of course, the validity of any conclusion must be questioned in the light of the conformance of the facts with the assumptions upon which Table 2 is based. But the important point is that our theory can be used to estimate the importance of protectionism in explaining a delay in harmonisation. This in turn can allow calls for product harmonisation to be based upon what the probable cause of any given delay might be. As long as it is understood that the protective effects of harmonisation can be quite real, the problem is reduced to determining what the causes of delays might be. Being able to determine the causes must be considered a vital step in eliminating technical NTBs and thus in achieving liberalisation of trade within the EEC.

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