Nominal quantities for prepacked products

2004/0248(COD) - 25/10/2004 - Document attached to the procedure

COMMISSION'S IMPACT ASSESSMENT

Legislation to improve consumer information in the labelling of pre-packaged products.

For further information about this issue, please refer to the summary relating to the Commission's proposal COM(2004)0708.

1- POLICY OPTIONS AND IMPACTS

The Commission identified five policy options available to reach the objectives.

1.1- Option 1: **Sizes fixed at the national level were the situation as it existed before the Cassis de Dijon case law clarified the situation.** As a general rule, Member States must accept sizes that are legally marketed in any Member State.

1.2-Option 2: **Sizes fixed at the Community level currently exist for some products (wine, spirits)**. The range does not contain too many sizes but nevertheless contain sufficient sizes so as not to hamper demand. Existing ranges contain about 15 sizes.

1.3-Option 3: **Limited range of sizes fixed at the Community level contains only the most sold sizes and excludes any other sizes within this range.** Outside the range sizes would be free.

1.4-Option 4: **Free sizes to allow producers to pack in any size in function of demand without interference from any authority.** This option would allow current practices based on national sizes to continue.

1.5- Option 5: **Voluntary standardisation in the context of free sizes allows stakeholders to standardise package sizes where it is deemed useful.**

Economic impact: Intra-EU trade is not hampered in any of the alternatives established atthe Community level. However, fixed sizes established at the national level would hinder trade on the EU market. Extra EU trade is hindered if sizes are established at the national level, notably disadvantaging importers who would need to adapt their sizes to different markets.

Innovation on sizes can be achieved under all alternatives with the exception of fixed sizes.

Economies of scale for SMEs are best assured under (limited) fixed sizes, especially if, as is currently the case, only a few sizes account for most sales and the public is happy with this. Voluntary standardisation could also be a means available to stakeholders for accommodating the needs of retailers optimising shelf space, consumers demanding choice and SME's achieving scale economies.

New entrants are probably best served where sizes are free as this gives an easy way of distinguishing a new product. Therefore, new entrants may have more difficulty where sizes are fixed.

Collusion in its tacit form, such as feeling pressure to follow the market leader, may be more probable where markets are more transparent for large players so that 'loyal competition' can be forced. Fixed sizes make markets more transparent.

Social impact: Better choice for consumers occurs where sizes are free, because producers can immediately respond to changes in consumer tastes and demand. Fixed sizes reduce choice to the minimum, because a change of law is required before a size can be adapted. In the case of national sizes, there already exists much variety – sizes from elsewhere in the EU increase the choice.

New instruments ensure that liberalisation does not dismantle consumer protection, e.g. the relevance of unit pricing increases where there is more choice. If competing products are on offer only in one size, as often happens in the case of fixed sizes, the unit price will not offer any information.

It is contended by some that consumers with reduced eyesight may be better catered for when there is less choice of sizes. Voluntary standardisation could address the needs of these consumers in a more comprehensive way.

Portions adapted to the needs of people with diabetes would require free sizes. Diabetes is on the rise and affects over 5% of the population, who must inject a fixed dose of insulin for each quantity of carbohydrates consumed. Free sizes would allow packing in sizes that are easy to use by people with diabetes.

Environmental impact: The aims of the Packaging / Packaging Waste directive (PPW) must be achieved, regardless of whether sizes are regulated or not. In order to reuse packaging material such as glass, size is only one prerequisite next to the construction, material and dimension of the package and the organisation of the reuse chain. Light glass is said by industry to reduce transport costs and can only be efficiently produced if economies of scale can be achieved. The case for lightweight glass coincides with economies of scale, even if sizes would be free.Voluntary standardisation could possibly have a positive effect, if light glass could be the agreed packaging material.

CONCLUSIONS: The impact assessment has shown free sizes to be the most favourable option as it allows full competition for industry and freedom of choice for consumers without compromising the environmental aims of the Community. Furthermore, it has become clear from the Cidrerie-Ruwet ruling that national legislation increases confusion on the internal market, while fixed sizes limit the flexibility to adapt products to new consumer needs, which is the established market practice in most sectors. Deregulation is justified in the light of the increased transparency offered by Community consumer legislation requiring the indication of unit pricing and prohibiting misleading practices and advertising.

Nevertheless, it also appeared that there might be sectors for which regulation on the basis of total harmonisation should be maintained. Fixed sizes may allow to offset disproportional buyer pressure from large distributors, like supermarkets, on small and medium sized enterprises and a sudden change to free sizes would cause industry to incur excessive costs, notably in sectors with structural low demand growth that are accustomed to fixed sizes. Mandatory ranges thus could be justified on this basis for the sectors where the Community regulator had already fixed harmonised mandatory sizes: i.e. wine, spirits, soluble coffee and white sugar. In these sectors it would suffice to fix by law a limited number of sizes which are most sold to consumers.

2- FOLLOW-UP

To the extent that monitoring of the results is required, this would apply only to the sectors with fixed sizes. For these sectors the Commission services would monitor developments and assess data, concerning the costs and benefits at sector level in order to see whether the exception of fixed EC sizes is still needed. It would seem that stakeholders, notably industry and consumers, are best placed to provide input required for the evaluation and ex post monitoring criteria.