

Pacific Centre for Environmental Law, which hosted the initial ADB/IUCN capacity-building courses in environmental law.

Several books were launched or announced in Colloquium side events. These included:

- Christina Voigt's *Research handbook on REDD+ and International Law* (Edward Elgar);
- Volker Mauerhofer's *Legal Aspects of Sustainability* (Springer);
- Koh Kheng Lian/Nicholas Robinson/Lye Lin Heng, *ASEAN Environmental Legal Integration* (Cambridge University Press);
- the first volumes of the *Encyclopedia of Environmental Law* (Edward Elgar); and
- Douglas Fisher's *Research Handbook on Fundamental Concepts of Environmental Law* (Edward Elgar).

A film on the Academy and its work, made at the 13th Colloquium (Atma Jaya University in Jakarta, Indonesia in 2013) was presented by the University of Maryland. The 15th annual Colloquium will be held in early June 2017, in Cebu, the Philippines. Its theme will focus on the role environmental law plays in providing positive incentives for enhancing the environment and the quality of life. A call for papers will soon be issued by the Academy's new Secretariat.

After 10 years of service from the University of Ottawa, Canada, the Academy's Collegium confirmed arrangements made by the Academy's governing board

to appoint the institutions that will jointly administer the Academy from now on. They are both based in the US: the Francis King Carey School of Law of the University of Maryland (whose role in the Academy will be guided by William Piermattei) and the Elisabeth Haub School of Law at Pace University (guided by Jason Czarnecki). Both are Members of IUCN, and each had previously hosted an annual Colloquium of the Academy. The Academy commended the University of Ottawa, and Professors Jamie Benidickson and Yves Le Bouthillier, for their leadership of the Academy's Secretariat during its formative first decade.

The participants left Oslo refreshed by the opportunity to meet new colleagues and friends, obtain knowledge and explore innovative concepts in environmental stewardship. Oslo University's arrangements were flawless and appreciated by all.

IUCN's flagship legal "think tank" has met now for 14 consecutive years, and its scholarship has immeasurably enhanced the growth and effectiveness of environmental law worldwide. This remarkable contribution has been fully funded by the collaborating universities, with no IUCN financial support. Its annual service to IUCN and the World Commission on Environmental Law will be noted at the IUCN World Conservation Congress, which will convene from 1–10 September 2016 in Hawaii.

Notes

- ¹ See www.iucnael2016.no.



REGIONAL AFFAIRS

Maputo Convention

Revised African Convention Nears Entry Into Force

Despite strong praises following its adoption in 2003, the African Convention on the Conservation of Nature and Natural Resources (Revised), also known as the Maputo Convention, remains one ratification short of entry into force. In the meantime, the 1968 African Convention on the Conservation of Nature and Natural Resources (Algiers Convention), which the Maputo Convention was intended to replace, remains in force, ratified by 30 of the 54 African nations. Although still awaiting the all-important 15th ratification, the Maputo Convention has been signed by 42 African nations. Six of the nations that are members of the Algiers Convention (Algeria, Cameroon, Egypt, Malawi, Seychelles and Tunisia) have still not signed or acceded to the Maputo Convention. This suggests that, with some effort, the Maputo Convention could become even more successful than the Algiers Convention.

Writ large, the objectives of the Maputo Convention remain the same as those of the Algiers Convention:

- To enhance environmental protection;
- To foster the conservation and sustainable use of natural resources;
- To harmonise and coordinate policies in these fields with a view to achieving ecologically rational, economically sound and socially acceptable development policies and programmes.

With a strong desire to avoid duplication, the Algiers Convention did not establish a new institutional structure, relying instead on the Organs of the African Union (AU). As revised, the Maputo Convention retains that desire for cost-effectiveness, but recognises that some critical organisational issues must be decided within the instrument in order to facilitate implementation. As a

consequence, it addresses key procedural rights, and enables the establishment of a Secretariat.

Typically, the Maputo Convention focuses on, *inter alia*, land and soil; water; vegetation cover; species and genetic diversity; protected species; conservation areas; processes and activities affecting the environment and natural resources; sustainable development and natural resources; military and hostile activities; procedural rights; and research. The primary objective of the revision process was to broaden the list of matters directly addressed by the Convention, and to reflect and encourage the strong commitment of African governments with regard to the protection of the environment, sustainable use and biodiversity conservation in Africa.

The Maputo Convention was the first regional instrument to specifically treat such a wide spectrum of sustainable development issues, in a manner designed to recognise the countries' existing commitments under global environmental conventions and to coordinate with those commitments. It is notable as one of the most comprehensive and modern regional treaties on the environment, and it reflects a truly African perspective and a break from the historic tradition in which major African environmental conventions were negotiated in Europe. Instead, the Maputo Convention was drafted by

some of the best known and respected professionals in environmental and sustainable development law and policy in Africa, under the auspices of major African institutions, with some technical support, primarily from the International Union for Conservation of Nature (through its African regional offices) and UNEP. It has been described as follows:

*a convention updated and improved by Africans for Africa and through African institutions. Its relationship to the African Union is both direct and necessary for its recognition and support. Its support through the African Ministerial Conference on Environment gives it national support and a continuing relationship to the inter-governmental process in Africa.*¹

The Maputo Convention retains the Algiers Convention's extensive focus on cooperation, calling not only for special attention to transboundary impacts, but also for cooperation through the AU and UN.

[TRY]

Notes

1 IUCN. 2004. *An Introduction to the African Convention on the Conservation of Nature and Natural Resources*. Gland and Cambridge: IUCN. Online at <https://portals.iucn.org/library/sites/library/files/documents/EPLP-056.pdf>. This book provides a detailed analysis of the Maputo Convention, its historical antecedents and its innovative approach, and is highly recommended.



EU

Environmental Protection v. Free Trade – “Buy Local” as a Barrier to EU Internal Market –

by Janja Hojnik*

Some authors suggest that ethnicity and nationalism are two of the strongest motives behind the behaviour of the modern market.¹ In researching consumer attitudes towards foreign products, a concept of consumer ethnocentrism was established representing “beliefs accepted from the consumer about the appropriateness, that is, morality of the purchase of foreign products”.² Shimp defines “consumer ethnocentrism” as a state of mind where, for example,

consumers believe in the superiority of their own countries' products. This perception is postulated to transcend mere economic and functional considerations, and, instead, to have a more noble foundation rooted in morality. That is, consumer ethnocentrism is intended to capture the notion that some consumers believe it is somehow wrong to purchase foreign-made products, because it will hurt the domestic economy, cause the loss of jobs, and, in short, because, from their view, it is plainly unpatriotic.

Ethnocentric consumers object to imported goods because they are harmful to the national economy and cause unemployment, and therefore consider the purchase of imported goods to be an unpatriotic act.³

Various stakeholders at the global and European Union (EU) levels (trade unions, associations of entrepreneurs and State authorities) tend to turn the consumers' indecision and hesitation between ethnocentric and polycentric orientation towards the former, thereby protecting their respective workplaces, profit and budget incomes. To this end, they promote various “buy domestic” and “buy local” campaigns, national quality labels on the products *etc.*, thus trying to protect the national economy to the detriment of foreign goods and services. Campaigns of this type, that encourage the purchase of national products in preference to imported products, have a long history around the globe. In recent years, faced with three coincident crises (economic, food and environmental), these campaigns have been widespread, particularly in the central EU.

This article explores environmental protection as an increasingly important factor for determining the ambit of

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the “free movement of goods” principle in the EU,⁴ considering the extent to which it could become a legitimate justification for national campaigns in EU Member States to increase consumer ethnocentrism. It is argued that the derogation to free movement of goods for reasons of environmental protection is expanding. Nevertheless, when confronted with “buy local” campaigns, this justification lacks practical solutions. The European Commission, however, has adopted a new approach towards local and regional food markets, expressly recognising the importance of short distribution channels for protecting national and local traditions, improving food security and preventing climate change. This “new approach” could have considerable consequences for the legitimacy of national initiatives to promote domestic purchase and thereby increasing the food self-sufficiency of the Member States.

“Buy Local” Promotions, Climate Change Action and the Free Movement of Goods

As distinguished climate analysts Thomas Karl and Kevin Trenberth say, “(w)e are venturing into the unknown with climate, and its associated impacts could be quite disruptive”.⁵ Nobel prize winner Al Gore has stressed, “Each passing day brings yet more evidence that we are now facing a planetary emergency – a climate crisis that demands immediate action to sharply reduce carbon dioxide emissions worldwide in order to turn down the earth’s thermostat and avert catastrophe”.⁶

One of the main sources of carbon emissions is transport – not only of people, but particularly of large quantities of goods – across and between the continents. The need to reduce emissions from transport might justify reduction of long-distance transport of goods when local substitutes are available. This could considerably affect international trade in goods.

In this sense, increased consumer ethnocentrism is a frontline instrument to limit long-distance transport of goods from other parts of the world. For these reasons, States are using broadly focused campaigns to enhance consumer ethnocentrism. Companies, too, are using “buy local” slogans to attract consumers and divert competition. Not all such campaigns are legitimate, however, especially not in the EU where the “free movement of goods” rule is in force.

The most famous local purchasing campaign within the EU was run 30 years ago by the Irish Government, which established the Irish Goods Council to encourage all classes of purchasers within Ireland to buy Irish goods in preference to imported products. Almost 30 years later, when the economic crisis spread into Ireland, the campaign was regenerated. A limited company “Guaranteed Irish” is conducting a campaign that aims “to increase awareness of, and demand for, Irish products and services”. The explicit goal of the campaign is to maximise employment and prosperity in Ireland. This time, the campaign is not run by the Irish State or a State-funded company but by “like-minded business people as a non-profit organisation to educate, network, innovate and support our members and consumers”.

In 1985, soon after the Irish campaign, the Greek socialist government launched a “Buy Greek” campaign, to cut down the flow of luxury imports, thereby reducing unemployment and the country’s huge trade deficit. It is unsurprising, in the country’s current severe economic and public debt crises, that Greeks are once again promoting the purchase of domestic products.

By 1969, Germany had already adopted a law on the creation of a central fund for the promotion of local production,⁷ a law which has since been amended on several occasions. According to the 1993 consolidated version, the Fund’s aim was to promote the distribution and exploitation of products from the German agricultural and food sector. The promotional activities were performed through a central body (*Centrale Marketing-Gesellschaft*, CMA), which adopted a number of measures, including a special quality label (*Markenqualität aus deutschen Landen*), the use of which was reserved for products produced in Germany.

In March 2011, the Slovenian Parliament, too, adopted a special statute on promotion of agricultural and food products.⁸ The Slovenian minister for agriculture and food declared that the Act was extremely important for Slovenian food producers as well as for enhancing loyalty between the Slovenian producers and buyers. According to the minister, a person who buys Slovenian food gives work to the farmer; contributes to the State budget; ensures good levels of food safety; and takes an important step towards climate change prevention since transport is the greatest source of climate-affecting pollution.

As the European Court has emphasised on many occasions, “by establishing a common market and progressively approximating the economic policies of the Member States, [the EU] seeks to unite national markets in a single market having the characteristics of a domestic market”.⁹ Consumer ethnocentrism as such does not contravene this idea; neither does patriotic upbringing devoted to the respect for national history, culture and tradition.¹⁰ On the other hand, certain campaigns to boost ethnocentrism may contravene the EU internal market principles. A State’s promotion of consumer ethnocentrism is essentially opposing and harming the EU internal market, conflicting with the decades-long efforts of various EU institutions to integrate the EU market and remove ancient barriers between the States.

Dating back to 1974, the Court famously stated that “all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions”¹¹ and, as such, are prohibited. The above-mentioned Irish campaign was assessed on the basis of this “Dassonville formula” when the Commission brought an action against Ireland before the Court.¹² Advocate General Capotorti was of the opinion that, despite the fact that the campaigns sought to give domestic producers a competitive advantage over foreign producers, the non-binding nature of the ethnocentric campaigns saved them from application of Article 34 TFEU: “[In both Articles 34 and 35 TFEU] there is an

implied reference to ... ‘prohibitions or restrictions’: a phrase which may not be extended so as to include recommendations”.¹³ Despite this, however, the Court held that the implementation of a programme defined by the government of a Member State which affects the national economy as a whole and which is intended to check the flow of trade between Member States by encouraging the purchase of domestic products is to be regarded as a measure having an effect equivalent to quantitative restrictions.¹⁴ The Court thus condemned the campaign, because it reflected the Irish government’s desire to achieve “the substitution of domestic products for imported products and was liable to affect the volume of trade between Member States”.¹⁵

These principles were toughened by the EU Court in 2002 in relation to the German quality label for domestic agricultural produce.¹⁶ The Court found that the contested scheme had, at least potentially, restrictive effects on the free movement of goods between Member States:

Such a scheme, set up in order to promote the distribution of agricultural and food products made in Germany and for which the advertising message underlines the German origin of the relevant products, may encourage consumers to buy the products with the CMA label to the exclusion of imported products.

The Court added that “(t)he fact that the use of that quality label is optional does not mean that it ceases to be an unjustified obstacle to trade”.¹⁷

One important distinguishing feature of the before-mentioned campaigns is, however, their sponsor. From the point of view of EU law (Article 34 TFEU), this is a critical question. There are different outcomes based on whether the “buy local” programme arose:

- from an Act adopted by the Slovenian Parliament;
- from a limited company that was established
 - by the Austrian Ministry of Agriculture or
 - by an association of Irish businessmen and workers; or
- from an individual, such as a British reality TV star wearing a T-shirt with a large “Buy domestic” sign.

In legal terms, Article 34 TFEU includes both a vertical and a horizontal direct effect. The polemics here arose through the “buy domestic” and quality label cases. On its face, Article 34 TFEU only prohibits State measures that limit free movement of goods between Member States.¹⁸ Hence, only State campaigns (including central authorities (e.g., ministries) as well as regional authorities) designed to enhance consumer ethnocentrism are covered.¹⁹ When the “Buy Irish” case came before the Court it was therefore not very surprising that Advocate General Capotorti found:

*[I]t would be going too far if, through the inclusion in the concept “measures” of initiatives taken at a level not involving the exercise of public authority, an indirect link with the State were recognized in addition to the potential and indirect nature of the obstacle to imports resulting from advertising in favour of domestic products.*²⁰

Beyond this, nowadays, the activities of private entities are also recognised as potentially prohibited by the Article 34 TFEU if they are ascribed to (established by) the State; mostly financed by the government or through obligatory contribution of companies in a certain sector; and/or have members that are appointed or controlled by public authorities.²¹ For this reason, the more recent campaign of the Irish Goods Council, a private company promoting Irish goods, was found to have breached Article 34 TFEU, because it was financed by the Irish government.

A fortiori, the German Fund for quality marking was bound by Article 34 TFEU. The Court namely held that: *Such a body, which is set up by a national law of a Member State and which is financed by a contribution imposed on producers, cannot, under Community law, enjoy the same freedom as regards the promotion of national production as that enjoyed by producers themselves or producers’ associations of a voluntary character Thus it is obliged to respect the basic rules of the Treaty on the free movement of goods when it sets up a scheme, open to all undertakings of the sectors concerned, which can have effects on intra-Community trade similar to those arising under the scheme adopted by the public authorities.*²²

In the more recent case law, the Court even admitted that States are responsible for public statements of their officials that give the impression that they reflect the official viewpoints of the State, even if they have no binding effect.²³ For example, the above-mentioned protectionist statements of the Slovenian minister in relation to the Promotion Act were prohibited by Article 34 TFEU, even though the Act he was discussing does not so expressly protect domestic goods.

In contrast, completely private entities are not bound by the Article 34 TFEU. Their actions are normally judged by the competition rules (e.g., Articles 101 and 102 TFEU). In many cases, however, campaigns by private entities achieve the same result (barring free movement of goods), but cannot be captured by the competition rules – e.g., when a private company advertises the quality of domestic goods in general or when a supermarket chain promotes a basket of domestic products.

Environmental Protection as a Justification for Buying Domestic Goods

A widespread justification for “buy domestic” campaigns is environmental protection. Sponsors of such campaigns often emphasise the need to increase domestic production and reduce long-distance transport, in light of the fact that transport is a major contributor to pollution. Environmental protection, as a legitimate objective, is increasingly relied on by Member States when justifying actions that impose barriers to the free movement of goods.

Advocates of free trade and environmental activists are usually seen as opponents defending opposite goals. The former emphasise the economic benefits of increased competition on the global market, whereas the latter

stress that increased economic growth jeopardises the natural environment.²⁴ Nevertheless, trade and environmental interests are not necessarily irreconcilable: the open market enables the wider sale of environmentally friendly products thereby increasing protection of the environment.²⁵

Most of the time, an appropriate balance must be established between enhancing liberalised trade and environmental protection, where proportionate barriers to trade are tolerated and disguised restrictions to trade are prohibited. Thus, the preamble to the World Trade Organization (WTO) Agreement highlights the goal of “the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so”. In several cases, WTO panels have tried to determine an appropriate balance between free trade and national measures for protection of the environment.²⁶ These same questions are also posed within the EU, which is committed to assuring free movement of goods, but at the same time is setting increasingly clear environmental objectives.

The task of balancing free trade and environmental aspects in the EU is assigned to the Court. In the leading judgment, *Commission v. Denmark*,²⁷ the Court accepted that environmental protection justifies barriers to free movement of goods, provided they are proportionate and that the particular environmental issue is not regulated at the EU level.²⁸ This interpretation allowed broader use of the environmental protection justification than reliance on Article 36 TFEU. Nevertheless, it was not yet clear whether environmental protection may serve as a justification for campaigns promoting consumer ethnocentrism.

“Food Miles”

In the context of the environmental impact of food, the term “food miles” (or kilometres) was developed to refer to the distance food travels from its production until it reaches the consumer. This type of metric is sometimes used as a carbon-emission label on packaging.²⁹ On average, food travels 4,000 km every time that it is delivered to the consumer and this statistic is constantly increasing.³⁰ This modern long-distance food system offers unparalleled choice, but recent intensified concerns over global warming, compounded by food poisoning scandals, have many people thinking about where our food comes from – thus counting their food miles. A range of studies compare emissions over the entire food cycle, including production, consumption and transport. The goal of environmental protection agencies is to make people aware of the environmental impacts of food miles and to show the pollution percentage and the energy used to transport food over long distances.

The current popularity of debates over environmental protection and climate change are grist to the mill for private and public campaigns that encourage consumption of domestic products. Considering the large size of some States, “buy domestic” campaigns are often replaced by “buy local” or even “Think Global, Act

Local” rhetoric, which may be more convincing in terms of environmental protection. Such campaigns appear, for example, in the US internal market, where rules similar to the EU’s free trade principles market apply: from Michelle Obama’s White House garden to grants from the US Department of Agriculture’s “Know Your Farmer, Know Your Food” initiative, an agenda has emerged to give local foods more prominence on the dinner plates of American citizens. In this respect, there are farm-to-school programmes in 48 states; and all 50 states in the US feature agricultural branding programmes, such as “Jersey Fresh” or “Simply Kansas”. US Representative Chellie Pingree wanted to help the farmers by recently introducing the Eat Local Foods Act (HR 5806) to assist schools in providing local foods in school lunches. The Act requires school food authorities to use their credits to purchase locally or regionally produced agricultural food products to serve in the school lunch programme.

How Local is “Local”?

People who value local origin as their primary food criterion are sometimes referred to as locavores. Nevertheless, the question “how local is ‘local’?” remains. Practically speaking, local food production can be thought of in concentric circles that start with growing food at home. The next circle might be food grown in our immediate community – then region and State. This is also dependent on a concrete product: for some parts of the year or for some products that thrive in the local climate, it may be possible to buy closer to home, at other times, or for less common products, an expanded reach may be required. In light of its focus on Article 34 TFEU, this article, has only considered State campaigns promoting domestic goods.

Within this frame, we can conclude that, in the EU internal market, “buy local” means the same as “buy domestic”, although geographically speaking “local” is usually a narrower concept than “domestic”. In *Commission v. Italy*,³¹ addressing the Italian reservation of public works to companies having their registered office in the region where the works were to be carried out, the Italian Government contended that that provision also excluded undertakings established in Italy which had their registered offices outside the region – thus excluding it from Article 34. On this point, however, the Court concluded that all the sub-contractors favoured by rule were Italian undertakings. As such, the measure discriminated against foreign providers of the relevant works, and was found to breach Italy’s obligations under the freedom to provide services. The conclusion that “buy local” is not much different from “buy domestic” can also be seen by considering the following promotion:

*Remember, by buying local your food will be fresher and more nutritious, your goods made by your neighbors and you will be contributing to a healthier economy and less fossil fuel being used to transport items long distances. You pay for freshness and taste, not packaging, refrigeration, and freight. You are supporting local jobs for local people!*³²

Applying Environmental Protection as a Justification

The foregoing indicates that “buy local” campaigns are directly discriminatory, and cannot rely on the environmental protection justification.³³ But even if we adopted a flexible approach towards this question, “buy domestic” and “buy local” campaigns are hard to justify by reference to environmental protection, because the contribution of increased local consumption to the reduction of global warming and energy consumption is not clear-cut. Many scholars state that the majority of food-related greenhouse gas emissions (83 percent of overall emissions of CO₂) are generated in the agricultural/production phases.³⁴ Small (local) farms require substantially more land, water, and other inputs than do larger (non-local) farms. (Beyond this, the community as a whole does not actually save money because local products are more expensive). Hence, they argue, the “buy local” trend is just a watered-down version of protectionism, and would not benefit communities in the ways that its proponents imagine. Marketing is no less environmentally costly for local products than for imported ones: even locally grown and organic food may need to be kept chilled for months, and refrigeration requires energy. Some also claim that those growing fruit and vegetables outside their natural season are trying to cheat our climate and thus, are also contributing to climate change. Finally, economic theorists argue that transportation costs actually account for a small fraction of overall production prices and that choosing less efficient local products over more efficient non-local products is pure economic loss.

Consequently, the European Court would hardly interpret environmental protection as a justification for promotional campaigns that try to enhance consumer ethnocentrism and hinder imports, while still relying on increased exports. Furthermore, these issues vary over the range and variety of products on the market. Although we can accept that long-distance transportation harms the quality of *e.g.*, fresh strawberries and tomatoes, it does not lower the quality of, for example, salami. If States really intend to limit transportation of goods in order to reduce global warming, they should also stand up for limitations on exports or even on the tourists that fill national roads in the holiday seasons – a rather unlikely option.

In this respect, the European Court has consistently stated that environmental protection will not always

justify national barriers to free movement, especially when there is not sufficient evidence of the purported risk and when the measures are not proportionate to the importance of free movement of goods.³⁵ Despite the commitment to a high level of environmental protection—the most important substantive principle of European environmental policy³⁶ – the Court clarified that such a level of protection does not necessarily have to be the highest that is technically possible.³⁷ It can therefore be concluded that the principle reflects a moving target, the idea of continuous improvement of the environmental protection standards across the Member States, but not a clear-cut rule that would justify all kinds of national measures. If the environmental dimension is to be decisive when regulating trade in the food area, why not require that shops only market foods that originate within *e.g.*, 50 km of the shop, regardless of whether they come from within or outside the national borders?

In this respect, “buy local” campaigns are widely manipulated and subject to varying interpretations. Critics describe them as “local washing” (a variation on corporate greenwashing),³⁸ noting for example that this rhetoric is also being used by HSBC, one of the biggest banks on the planet, which is calling itself “the world’s local bank”, and that food giant Unilever is advertising the globally marketed Hellmann’s mayonnaise with an “Eat Real, Eat Local” initiative. One wonders, therefore, how much good ethnocentric campaigns can really do for the environment.

In contrast, the European Commission is giving the impression that some “buy domestic” and “buy local” initiatives of the Member States might be legitimate – predominantly for the before-discussed reasons of tradition, food security and their environmental impact. In its 2011 Green Paper, the Commission states that regional and local markets are an essential meeting place for producers and consumers – as they enable the former to receive the rewards for their labours more efficiently and the latter to contribute to the development of their local areas, reduce the environmental impact of their consumption habits, and access a wide variety of products rooted in their traditions and ways of life.³⁹ Considering the Court’s reasoning with regard to the Buy Irish campaign and the German Quality Label, this is certainly a “new approach” towards the national production and purchasing. It is apparently triggered by the three contemporaneous crises mentioned above. In this respect, the Commission is citing arguments that sponsors of “buy domestic” and “buy local” campaigns normally use:

Short distribution channels increase the income of producers and ensure the survival of a large number of farms, particularly thanks to higher margins, a reduction in transport costs and greater autonomy with respect to the agro-industrial sector. They can help improve environmental performance in terms, for example, of limiting CO₂ emissions or packaging. From a cultural and social point of view, they encourage collaborative decision-making and local governance that is more sensitive to the specific needs of the areas concerned and preserve and support local traditions, while at the



Courtesy: Friends of the Earth

same time linking the product to a geographical area shared by producers and consumers.

In a territorial approach, the involvement of producers in quality systems and the promotion of these products plays a key role in meeting growing expectations in relation to local produce, tradition and authenticity, reaffirming the social link between consumers and producers and capitalising on the freshness, innovation and nutritional qualities of produce and product awareness.⁴⁰

Conclusion

Although the agricultural ministers in the EU Council must have approved the “new approach” of the Commission, it is difficult to see how distribution channels within the EU internal market will be shortened without compromising free movement of goods as we know it. This view is borne out, at least in the Court’s case law if not in practice. It is also difficult to see how Article 1(2) of the Regulation 3/2008, prohibiting encouragement of consumption of goods based on their specific origin will be restored in the future.

In contrast to the developments at the global level, the EU internal market was established through the EU Court’s case law on agricultural and food products, and prohibition of national “buy domestic” and “buy local” campaigns within the internal market present the very core principle guaranteeing free movement of goods. As is evident from the Court’s decision in the Buy Irish case, promoting domestic goods solely because of their origin equals promoting opposition to buying imported goods. The purchasing power and consumption needs of consumers are self-limiting and (successful) promotion of domestic milk is leading to less sales of imported milk. This is (explicitly or implicitly) the key aim of the promotion. In the light of the European Court’s jurisprudence and EU legislation, such prohibitions cannot be legitimated for their protectionist nature, since they directly hinder the single EU market; the only campaigns that are in line with EU law are therefore those that promote specific characteristics of products, which must enable verification. Origin itself, however, may not be the specific feature of the promoted goods. It is doubtful that the Commission will actually change this thirty-year-old law, but if it does, it should give enormous consideration to the consequences, not just for promotion of food, but also for promotion of other types of goods and free movement in general.

This does not mean that consumers should buy only from big supermarket chains, but that they should have a choice – a choice to buy from a local supplier, when the positive attributes of local supply (e.g., freshness of the product) are more important to them; where other consumers might find price and variety more important. It is understandable that trade is not just about economics; it also affects national tradition, food security and the environment. These interests should be appropriately protected; however, ethnocentric campaigns do not seem to consistently follow these aims, but predominantly

protect domestic economies thus encroaching upon the benefits of free trade. Environmental, health, food security and other considerations should be resolved by the competent authorities before the goods come onto the shelves.

Notes

- 1 Keillor, B.D. and Hult, T.G.M. 1999. “A five country study of national identity, implications for international marketing research and practice”. *International Marketing Review* 16(1): 65–82.
- 2 Shimp, T.A. 1984. “Consumer ethnocentrism: the concept and a preliminary empirical test”. *Advances in Consumer Research* 11(2): 285–290.
- 3 Shimp, T.A. and Sharma, S. 1987. “Consumer ethnocentrism: construction and validation of the CETSCALE”. *Journal of Marketing Research* 24(3): 280–289.
- 4 See e.g., Steinbach, A. and Brückmann, R. 2015. “Renewable Energy and the Free Movement of Goods”. *Journal of Environmental Law* 27(1): 1–16.
- 5 [Karl and Trenberth are the authors of “Modern Global Change”. *Science* 302(5651): 1719–23. Ed.]6 Gore, A. 2006. “Finding Solutions to the Climate Crisis”. Transcript of the lecture at the New York University Law School, at <http://www.astrosurf.com/luxorion/climate-crisis-al-gore.htm>.
- 7 *Absatzfondsgesetz* – AFG.
- 8 Promotion of Agricultural and Food Product Act, Official Gazette, No. 26/2011, in force since 23 April 2011.
- 9 See e.g., case 207/83, *Commission v. United Kingdom*, [1985] ECR 1202, para. 17.
- 10 See also the Preamble to the Treaty on European Union, OJ 2010, C83/15, stating that the EU leaders desire to “deepen the solidarity between their peoples while respecting their history, their culture and their traditions”.
- 11 Case 8/74, *Procureur de Roi v. Dassonville*, [1974] ECR I-837, para. 5.
- 12 Case 249/81, *Commission v. Ireland*, [1982] ECR I-4005.
- 13 *Ibid.*, opinion of the AG, at 4031.
- 14 *Ibid.*, para. 29.
- 15 *Ibid.*, para. 25.
- 16 Case C-325/00, *Commission v. Germany*, [2002] ECR I-9977.
- 17 *Ibid.*, paras 23–24. Thereby referring to the case 13/78, Eggers, [1978] ECR 1935, para. 26.
- 18 See also WTO case *Argentina – Hides and Leather* (WT/DS155/R, 2001, para. 11.17) (“It is well-established in GATT/WTO jurisprudence that only governmental measures fall within the ambit of Article XI:1”); see also *Japan – Film* (WT/DS44/R, 1998, para. 10.56) (“Past GATT cases demonstrate that the fact that an action is taken by private parties does not rule out the possibility that it may be deemed governmental if there is sufficient governmental involvement with it. It is difficult to establish bright-line rules in this regard, however. Thus, that possibility will need to be examined on a case-by-case basis”).
- 19 Case 45/87, *Commission v. Ireland (Dundalk Water Supply)*, ECR 1988, p. 4929; case C-1/90, *Aragonesa de Publicidad v. Departamento de Sanidad*, ECR 1991, p. I-4151.
- 20 Case 249/81, *Commission v. Ireland*, p. 4030.
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- 28 More recently Case C-573/12, *Ålands vindkraft AB v. Energimyndigheten*, judgment of 1 July 2014, paras 77–82. See Maduro, M.P. 1997. “Reforming the Market or the State? Article 30 and the European Constitution: Economic Freedom and Political Rights”. *European Law Journal* 3: 60.
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NATIONAL AFFAIRS

IN MEMORIAM

James W. MacNeill

On 5 March 2016, in Ottawa, the world lost yet another of its strong and insightful environmental leaders, James W. MacNeill. Perhaps best remembered as the Secretary General of the Brundtland Commission, whose landmark report, *Our Common Future*, is still a primary resource, MacNeill's contribution to the world's environment was much longer and more varied.

In the context of his work on the Brundtland Commission, he is credited with having elaborated the definition of "sustainable development", as that term is applied to the environment. A tireless and diligent worker for environmental protection and sustainability, he was also one of the earliest and most respected voices urging climate change action, in a 1991 book, *Beyond Interdependence: The Meshing of the World's Economy and the Earth's Ecology*. MacNeill, and co-authors Pieter Winsemius and Taizo Yakushiji, provided a brilliant synthesis of the economic and ecological challenges not only of the ensuing decades, but still accurate for those of us looking at the future from now. Reading it today, one easily forgets that it was among the first small stones in the avalanche of modern literature on climate change.

As a founding member of the International Institute for Sustainable Development (IISD) and Chair of its Board of Directors from 1994 to 1999, he was clearly aware of the on-going need for collaborative action and awareness. In the words of IISD's current President and CEO, Scott Vaughan:

If Maurice Strong embodied the bold political vision to bring nations together, Jim brought a consistently tough, detailed and sophisticated policy lens that established pathways to sustainability. Together, both men represented Canada's remarkable international leadership in the first generation of the global sustainable development agenda. Without them, neither the Paris Climate Change Conference nor the adoption of the Sustainable Development Goals would likely have happened in 2015.



James William MacNeill, OC

Courtesy: Legacy.com

MacNeill's early career prepared him well for his life as an advocate of the joint consideration of the environment and economics. He served as a young economist in Canadian Premier Tommy Douglas's government, Deputy Minister to the Canadian federal government, and Canada's Ambassador and Commissioner General for the 1976 UN Conference on Human Settlement. He was also head of the OECD Environment Directorate in the late 1970s and early 1980s – a position from which he emphasised economic policies – such as pollution pricing, carbon taxes and cap-and-trade instruments – as the foundations of a lasting solution to environmental sustainability.

Among many other accolades, MacNeill was awarded the 2005 Elizabeth Haub Award for Environmental Diplomacy, reflecting the world's awareness and appreciation of his lifetime of service. He continued to write and work for the environment throughout his life, including in *EPL*.¹ We who remain are grateful for his legacy of writings, actions and results.