



## E.E.C. Harmonization Program and Its Impact and Status on E.E.C. Legislation for Vegetable Proteins

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### ABSTRACT

The paper reviews a number of difficulties facing expansion of the use of vegetable proteins in foods in the present and future political and economic environments of the European Community. Integration of vegetable proteins into a wide spectrum of food products could be affected by existing market organizations for agricultural products for which they are substitutes. On the procedural plane, there are possibilities for change in the wake of the enlargement of the Community, and the author traces the procedural steps by which Community legislation is proposed by the European Commission and adopted by the Council of Ministers. The author ends by outlining the conditions under which the European Commission would find it both necessary and desirable to consider making a proposal for the harmonization of the laws of member states concerning vegetable protein, and points to the need for broad agreement between national administrations, consumer organizations and industry if such a proposal is to have any prospect of being adopted.

Richard Hooker lived in the 16th century. He made a profound and apt observation, quoted by Dr. Johnson, that change is not made without inconvenience even from worse to better.

It is something of an affliction to me to find myself having to catalogue the inconveniences in the legislative path of vegetable protein in the European Community.

When I was considering how to approach this paper, I decided honesty to be the best policy, undaunted by an Ecclesiastical comment that he who is governed by that maxim is not an honest man.

It should come as no surprise to the advocates of the use of vegetable protein in food that however valid may be the economic and social arguments in favor of its use, because its use is novel, because the processes by which it is produced owe more to technology than to agriculture, and because its very existence can be interpreted as a threat to certain economic interests, the path to its acceptance by people will certainly be strewn with inconveniences.

It is evident on any reading of the reports on vegetable protein foodstuffs produced by the European Commission Study Group under the chairmanship of Professor Ward, and on earlier reports by the Food Standards' Committee in the U.K. on novel proteins foods also under the chairmanship of Professor Ward. To both reports I pay particular tribute that we are dealing with an extremely versatile industrial product. Its possible application to foodstuffs seems limited only by the possible permutations of unstable combinations of carbon, hydrogen oxygen, nitrogen and a little sulphur which my meagre scientific knowledge and even more meagre acquaintance with Greek lead me to suppose to be the ingredients of a primary principle of life, namely protein.

Let me spell out for you some of the inconveniences ahead which are inherent in the product itself and some

which in the next few years will arise from the economic and political environment which will be our common lot.

The most proximate change upon the political scene is the new directly elected European Parliament, only eight months away. Then, there is the question of enlargement of the community. Independent of these events, will article 43 of the treaty, which deals with the common organization of markets, and article 100, which deals with the harmonization of legislations, remain unchanged? What will be the situation with regard to unanimity in the Council, and will the directive, which requires constant policing to see that it is implemented in the member states, retain its present status, or will it give way more and more to the regulation having direct effect in each member state taking precedence over national law? It is too early to give any answer to such questions, but they are clearly on the horizon and have to be taken into account in forecasting likely community action in this area.

Vegetable protein is evidently a most remarkably versatile product. Vegetation can apparently be converted into protein for human consumption by technological methods much more efficiently than by biological methods and, an increasingly important factor, at lower energy usage. It can be used in foods as diverse as bread, sauces, milk powders and syrups. It can be used to imitate ham, meat, fruit and vegetables. The layman faced with such versatility is inclined to ask whether in the face of such a universal provider it remains necessary to produce any other food!

It is precisely its versatility which makes it difficult to forecast how, if, and when, the community is likely to legislate. The fact that it can be used to substitute at least in part for basic agricultural components of many foods may make it difficult for the machinery of the common agricultural policy to digest. The indigestion is likely to become more acute if vegetable protein has an impact on the C.A.P.'s agri monetary system and the monetary compensatory amounts which for agriculture seeks to maintain a community price equilibrium for agricultural products within the policy in spite of fluctuations in the community money markets.

Starting with the common customs tariff as applied to beef luncheon meat containing, say, 80% beef and 20% vegetable protein, there is little doubt that because it is wholly or mainly prepared or preserved beef it would be classified under heading 16.02 B III b) 1 bb), where the duty is 26% bound in gatt. In the case of vegetable protein in bulk, if you can refer to it that way, it would fall into 21.07 g I a) 1 where gattbound duty is 20%. In neither case is there a variable component (which in the case of imported processed products equates proportionately to the levy on basic products), nor are any MCAs applied.

There are, however, many food items to which MCAs do apply, and particularly in internal trade within the community it would be possible, by the judicious substitution of vegetable protein at lower cost, for a higher cost basic agricultural product to obtain an advantage in raw material cost. At the same time, a manufacturer in a member state whose currency is appreciated could, in

the event of inadequate control on exporting his production to a member state whose currency is depreciated, obtain an MCA for the vegetable protein element of his product as if it were the agricultural product for which it is substituting.

I know that people will say that good reputations in any industry are not made on the basis of such deliberate fraud. Industry is not, they will say, in the fraud business. With regret I have to tell you that we at the Commission are; and so long as the possibility for fraud can be seen to exist, it is our duty to guard against it.

It is in this monetary area and in the area of the harmonization of legislations that the need for effective enforcement of legislation exists. In any Utopia it would not be necessary to have enforcement because all citizens would obey the law. Even so, as a general rule I subscribe to the view that most citizens observe the law most of the time and that the need for enforcement arises because of the percentage who do not observe the law at all. Such a view is a doubtful basis for writing legislative standards for food products. It will certainly not do where money is involved. In this case effective enforcement is essential, and the methods necessary to control the content of vegetable protein in such products must be effective, simple and inexpensive.

Here the report of the study group indicates that the community might have problems. I won't attempt an evaluation of the methods suggested, but past experience indicates an aversion on the part of some member states to the addition of easily discernible markers in foodstuffs.

Since this is a world conference, I must assume that many of you are not all that familiar with the community legislative process, and it is important to an understanding of an otherwise inexplicable time scale that I should briefly describe the path of legislation as it moves hesitantly towards adoption by the council.

As I indicated earlier, the principal legislative instruments are regulations and directives. Regulations are direct community law applicable in every member state without the intervention of national legislative procedures. Directives (though this may be unavoidable) on the other hand, are for all practical purposes "notices" to the member states to give effect to the intention expressed in the directive. This means that they do not have to legislate in the words used in the directive; but they must amend their law in such a way as to give effect to its intention.

Particularly in the area of food legislation the rule of unanimity applies, and this means that each member state has, in theory at any rate, an indefinite right to veto any proposal. It is for this reason that at the beginning of this paper I adverted to the future enlargement of the community and results that might flow from it concerning the continuance of the unanimity rule.

The council can only act on a proposal from the Commission. It is this right of initiative in legislating which distinguishes the Commission from an international secretariat. As well as being the guardian of the Treaty of Rome, and seeking to see that its provisions are observed, it is the motor which seeks to promote the progressive development of the community.

Commission proposals are drafted by the services of the commission with advice from all available and interested sources. There will be consultation with industry, consumers, commerce and distribution, agriculture and trade unions. Drafts of the proposal are discussed at meetings between commission officials and their opposite numbers from the member states. At this stage a draft of the proposal will be circulated within the commission for the agreement of other services of the commission who have responsibilities which overlap with or are contiguous to those of the service which is "chef de file" and whose proposal it is. On the basis of this further advice, the

proposal may be amended and will in some cases, particularly in the case of food products, be referred to the Food Advisory Committee composed of representatives of European organizations concerned with the proposal.

This completes the consultation stage of the proposal. It is then put into written procedure, normally in six languages, and, if the proposal is not then blocked at the request of the cabinet of one of the commissioners, it is sent by the secretariat general after eight working days to the Council of Ministers. If the proposal is blocked and the disagreement cannot be resolved at service level, there is a discussion in the Commission, and if necessary, the matter will be resolved by a vote of the members of the Commission.

The Council of Ministers may adopt the legislation proposed on the initiative of the Commission. The Council has its own secretariat and services corresponding in function to those of the commission. Proposals received by the Council are generally sent to the European Parliament and the Economic and Social Committee for their opinion.

The Commission service responsible for the proposal then makes themselves available to "defend" the proposal before the relevant committees of the parliament and the Economic and Social Committee who eventually draw up their reports and adopt them on the basis of a vote in plenary session.

These reports are sent to the secretariat of the Council of Ministers and the negotiation of the proposal between the nine member states, and the Commission begins in the appropriate ad hoc working group of the council. Representatives of the member states concerned are normally the same experts who advised the Commission in the formulation of its proposal, and are those directly concerned with the subject matter of the proposal in their national administrations.

The negotiations take the form of meetings at which the experts meet to examine the proposal clause by clause with a view to agreeing upon it. This group deals with technical differences between the member states, and when these have been resolved, any remaining political differences are referred to the ad hoc group of agricultural attaches from the permanent representation. The agricultural attaches resolve as much as they can, and if there is a reasonable possibility that the remaining differences can be resolved by higher authority, they will refer the dossier to the Coreper or Committee of Permanent Representatives. Provided that this committee can reach unanimous agreement, they will mark the dossier an "A" point for the next available meeting of the Council of Ministers themselves who will adopt it without discussion.

Matters of the degree of technicality implicit in food standards nearly never get to be discussed by ministers themselves.

The whole process involves a degree of political give and take between the member states, the effects of which I need not describe for you; suffice it to say that the will to achieve agreement does exist and can result in agreement even if it is sometimes hard won.

The adopted directive is published in the official journal of the communities after suitable linguistic cosmetic treatment by the Jurist Linguist Group, who assure the harmonization of community legal texts.

I have dealt so far with the problems facing vegetable protein for human consumption in relation to market organizations and have described the community legislative process. In this final section, I want to deal with the harmonization of member states' legislation on this subject and the likelihood of any community action in this sphere.

The harmonization of legislations concerning foodstuffs is a very long term enterprise as the community, I think, is now beginning to understand. Nineteen hundred and seventy-seven saw the reorganization of the Commission services which brought within one service the major activi-

ties of the Commission in this area. The Commission has, of course, to allocate its staff to the best of its ability to discharge obligations which are placed upon it. Its major activities will not have escaped you. It has always found it impossible to assign to the harmonization field sufficient staff to maintain more than moderate progress consonant also with the capacity of the council in terms of its meeting rooms and interpreter resources to deal with proposals made to it. The services concerned face a growing burden of work in the administration of directives already adopted. Food, and the laws relating to it, are no more static than any other aspect of our society, and the need to update and adopt yesterday's law to today's situation is an increasing obligation which is proportionate to the rate at which responsibility for this function is transferred by the adoption of directives from the member states to the Commission. In the face of competition from other and more important community activities, the services concerned need to be reasonably assured that there can be a successful outcome to the proposal they will be making. No one can give a guarantee, of course, but one can at least discern whether there is no chance at any particular point in the

development of the community that a proposal will be adopted.

For instance, we would look to see not necessarily whether industry was agreed about the content of a directive, but certainly at whether there was a substantial disagreement in industry. We would look at the likely reaction of consumer organizations and to what extent there had been effective dialogue between industry and consumers, and we would also want to know whether such industry consumer consensus as exists found any echo in the appropriate departments of national administrations.

Assuming this study of the entrails of this particular chicken were favorable and that there is an established need for a directive to avoid differences in legislation impeding the establishment or functioning of the Common Market, then the Commission would be under an obligation to make a proposal, and we would begin our work.

At this time our hands are full. Our resources are fully committed, at least for the next two years, and a directive on vegetable protein for human consumption does not figure in our program. That does not mean that work could not start as soon as the necessary preconditions are met.