

EDITORIAL/OPINION

Trading With a Greener Europe

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Waste management has become both a major environmental issue and a trade policy predicament. One country's environmental protections can become trade barriers for another country's goods. Germany has adopted tough recycling measures that offer some lessons for American companies.

Last May the German parliament passed a "New Ordinance for the Prevention of Packaging Waste" intended to prevent and reduce waste by requiring the recycling of glass, metal, plastic and wood. The ordinance is based on the "polluter-pays" principle set forth in 1972 by the Organization for Economic Cooperation and Development. Effective Dec. 1, 1991, it requires the German packaging industry to set up its own independent waste management system to meet certain levels of recycling. Further, it requires that all transport-packaging — such as large boxes — be returnable, and even suggests that car manufacturers install recycling plants for car parts.

This new ordinance may involve substantial additional costs for — and affect the competitiveness of — all industries operating in or trading with Germany. Foreign producers will have to bridge a greater ecological gap than their German counterparts who already have voluntarily adopted higher environmental standards than most industrialized countries. For example, the ordinance sets the percentage of refillable beverage containers in circulation at 72% by Dec. 1, 1991, and 81% by 2000. In contrast, the comparable figure for the United States today is a paltry 8.7%.

The passage of this law — and the politics surrounding it — contain several lessons for U.S. companies:

Lesson One: Recognize that the greening of trade is upon us. Protecting the environment is seen as an important social objective, particularly in Europe where the Greens as a political party are a potent force. Consequently, more "environmentally sound" regulations will be adopted, much of which will have unanticipated trade effects — such as blocking the sale of foreign products not complying with recycling standards.

How are the trade effects of this new ordinance likely to be treated? Within the European Community, the European Court of Justice has carefully addressed the conflict between legitimate environmental protection and hidden trade barriers and has developed concepts that may be applicable to the German recycling ordinance and could provide guidance to other trade/environmental disputes outside the EC.

In 1988, the court ruled that Denmark's 1978 requirement for a deposit-and-return system for empty containers was "an indispensable and necessary" measure to achieve environmental protection. But in separate legislation, Denmark went further and required that the containers be approved by the Danish environmental agency. The court ruled that by obliging foreign producers to manufacture or purchase containers of an approved type, Denmark was in violation of Article 30 of the European Community's founding charter prohibiting all import quotas and all measures having the equivalent effect.

The court found that restricting the quantity of imports in non-approved containers placed an excessive — "disproportionate" in the court's words — burden on foreign concerns since the existing deposit-system was capable of protecting the environment. Denmark's requirement that foreign producers manufacture or purchase approved containers imposed substantial additional costs on them and therefore would have made the sale of their products in Denmark very difficult.

In other cases, the European Court of Justice has held that the protection of the environment is

"one of the community's essential objectives" and justifies certain limitations of the principle of the free movement of goods. The Single European Act of 1986 confirms this view.

Lesson Two: Don't wait for the courts to resolve the issue. Although the European Court has established some useful principles, court cases generally take years to complete. Even then, the court is likely to support some environmental protections. Although ordinances with international effect require international solution, outside the European Community, no effective international judicial structure exists.

So, what can American companies do? As economic forces begin to take control of the environmental issue, global competition will demand not only technological superiority, but environmental compatibility as well. The environment has become a competitive business weapon. Products designed as environmentally compatible may avoid costly regulatory red tape and penetrate foreign markets more easily.

The U.S. federal government is not likely to give much support to American companies' crusade against foreign environmental regulations. Resources already are stretched thin, curbing Washington's ability to counter every foreign practice with trade implications. If American companies focus only on the traps, they will miss important business opportunities. The OECD projects annual revenue in Europe from the environmental cleanup business — mainly equipment and services to manage air, water and waste — at \$78 billion in the year 2000, up from \$55 billion last year. Another study projects \$100 billion, almost double the current amount.

Lesson Three: American companies need to take a much more proactive approach toward environmental issues to assess not only the downside but the upside as well. Companies should carefully monitor European environmental developments — and lobby for changes in their interest — not just at the European Community level, but at the national and local level as well.

Although it is not yet clear what the precise impact of the new German ordinance will be, ultimately more than the beverage industry will be affected. (For example, Volkswagen has just announced a policy to "recycle" its 1992 Golf model.) What is certain is that Germany's environmental objectives will run smack into trade realities.

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