



DANISH BOTTLES (A)

Commission of European Communities v. Kingdom of Denmark

(Abstract)

For more than a decade, WRI's Sustainable Enterprise Program (SEP) has harnessed the power of business to create profitable solutions to environment and development challenges. BELL, a project of SEP, is focused on working with managers and academics to make companies more competitive by approaching social and environmental challenges as unmet market needs that provide business growth opportunities through entrepreneurship, innovation, and organizational change.

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In September 1988 the Court of the European Communities had to decide whether, by declaring that all containers of beer and soft drinks must be returnable, Denmark had failed to fulfill its free trade duties under the Single European Act (SEA), or whether Denmark's decision was justified on the grounds of environmental protection.

Background

It had long been the practice in Denmark to charge a deposit on the sale of beer and soft drink bottles. This stimulated many consumers to return their bottles voluntarily, helping to keep the environment free of discarded bottles. This system worked well when there were a few different bottle types, and when foreign imports were often made under license or at least bottled in Denmark. However, in the mid 1970s, Danish beer manufacturers began to use cans and different shaped bottles. To ensure that the deposit system continued to be effective legislation was introduced "*limiting or prohibiting the use of certain materials and types of container ...or requiring the use of certain materials and types of container*" (Law No 297, 8th June 1978).

In 1981, as part of the Danish legislation on the reutilization of paper and beverage containers, the Danish Government set new orders for containers of beer and soft drinks (Order 397, 2nd July 1981). The Order said that beers and soft drinks could be marketed only in "*returnable containers.*" According to the definition given in the Order, this meant that there had to be a system of collection and refilling under which a large proportion of used containers were subsequently refilled. With existing technology, this effectively banned plastic and metal containers. Also, the Order required formal approval for returned containers by the Danish National Agency for the Protection of the Environment (Miljøstyrelsen). The Agency could refuse approval if the planned collection system did not ensure that enough containers were reused, or if a container of equal capacity, already approved and suitable for the same use, was available.

Danish brewers had initially been against the recycling regulations introduced in the 1970s. However, they were forced to make significant investments in recycling processes and infrastructure. By the mid 1980s, the Danish industry was in a good position to cope with the strict recycling standards imposed by government. These moves were supported by the Danish firm United Breweries. A significant exporter, United Breweries also dominated the Danish beer market with its leading brands Carlsberg and Tuborg (together accounting for 70% of the Danish market). It was also a major player in the Danish soft drinks market. In both markets it held minority share holdings in most of its local competitors. Finally, United Breweries also owned the only glass bottling facility in Denmark. **Exhibit 1** contains extracts from a relevant United Breweries annual report.

Outside Denmark the regulations were viewed less kindly. Producers of drinks and containers, and European associations representing the retail trade from other EC Member States, would have been more concerned, but for the small size of the Danish market. However, some industries did complain to the European Commission about the Danish regulations. The metal packaging industry was especially vociferous. Its concern had less to do with the tiny Danish market per se, than with a precedent being set for Germany's much larger market. They argued that the legislation had the effect of preventing imports of foreign beer and soft drinks into Denmark, both because of administrative difficulties, and the costs involved for importers in establishing the required collection system.

The Commission supported this claim and objected to the Danish Order. The Order was amended by the Danes in 1984 (Order 95) to allow the use of non-approved containers (except metal) if volume was less than 300,000 liters per producer per annum, or if the market was being tested, provided that a deposit and return system was established.

Despite this amendment the Commission considered the measures to be equivalent to a quantitative restriction contrary to Article 30 of the EEC Treaty. The Commission tried to persuade the Danish authorities to modify their position. However, negotiations failed and in December 1986 the Commission brought an action against Denmark before the European Court of Justice.