



## Why a Prohibition on Seal Products Would Improve the Functioning of the Internal Market for a Category of Other Products Wider than those Concerned by the Ban

On 18 February 2009, the Legal Service of the Council of the European Union produced a legal opinion on the proposal for a Regulation of the European Parliament and of the Council concerning trade in seal products. In its opinion, Council Legal Services claims that,

“The Court of Justice has accepted that measures adopted on the basis of Article 95 EC may consist of requiring all the Member States to provisionally or definitively prohibit the marketing of a product or products.<sup>1</sup> However, according to the case law, the circulation of a certain product may only be banned on the basis of Article 95 EC insofar as it is apparent that such a ban would improve the functioning of the internal market for a category of other products wider than those concerned by the ban...Neither the current proposal nor its accompanying documents provide evidence on the existence of a market of which the market of seal products forms part and the functioning of which would be improved by the imposition of a ban on seal products as envisaged in the proposal.”

There is in fact ample evidence that seal products cannot be distinguished from like products.

The main products from seals include seal fur, seal leather and seal oil. Because they are often not distinguishable from like products, these and other seal products can be confused with non-seal products.

**Seal fur** is used for a variety of purposes, including garments and trim. Seal fur is manipulated through a host of processes including dyeing and shaving, which often renders the final products indistinguishable to other fur products. The following images are of seal fur, manipulated by shaving, cutting, and dyeing. It would be difficult to tell the difference between any of these and other processed fur products.



Sealskin dress



Sealskin shawl



Sealskin trimmed dress



Sealskin coat

<sup>1</sup> In its judgment in Case C-210/03, also known as 'Swedish Match', the Court allowed a provision prohibiting the marketing of tobacco for oral use to be based on Article 95 by recognising that "(a)s the market in tobacco products is one in which trade between Member States represents a relatively large part (...), those prohibitions of marketing contributed to a heterogeneous development of that market and were therefore such as to constitute obstacles to the free movement of goods". See Case C-210/03, paragraph 38.

**Seal leather** is used for a variety of purposes including fashion garments, shoes, accessories and even furniture coverings. Seal leather cannot be distinguished from other leathers by consumers.



*Seal leather briefcase*



*Seal leather boots*



*Seal leather wallets*

**Seal oil** is sold in the European Union for a variety of purposes, including industrial lubricants, animal feed additives, pet food additives and supplements for human consumption.

The products most available on the retail market in the EU are seal oil capsules for human consumption, and seal oil as a supplement for pets.

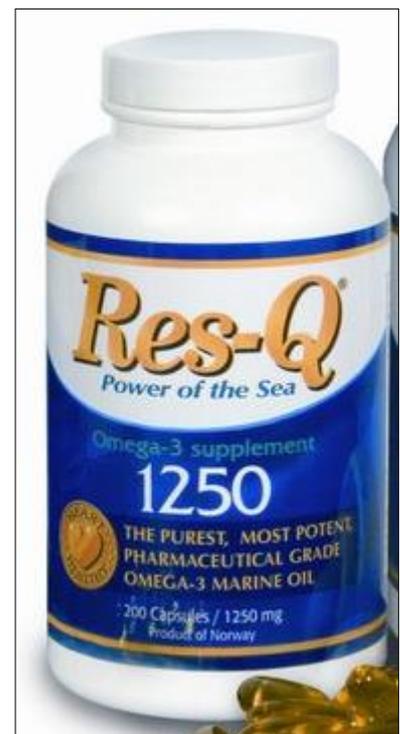
When sold in capsule form for human consumption, seal oil, along with fish oil, is often labeled as “marine oil” or simply as “omega 3”. This could lead to general confusion in the marketplace, and the likelihood that some consumers may avoid all “marine oil” or “omega 3” supplements to ensure they are not consuming seal oil.



*Seal oil labeled as “Omega 3”*



*Seal oil marketed as “marine oil”*



*Fish oil labeled as “marine oil”*

## **Evidence of deliberate mislabelling of seal products by processing companies**

There is evidence that seal processing companies mislabel seal products to circumvent market obstacles. In 2006, John Kearley, General Manager of Carino Company Limited (the largest seal product processor in Canada and a subsidiary of Norway's GC Rieber) testified before the Canadian House of Commons. He said:

*"In the United States we've had the Marine Mammal Protection Act now for a number of years, which put a ban on the importation of seal products into the United States... When we ship samples of our product to our parent, we have to disguise the description of what it is, because it may be seized by U.S. Customs. We have to disguise what we are shipping. **Just recently I shipped samples of our seal oil for analysis and I termed it marine oil so that people looking at the document would not know whether it was lube oil or whatever.** You have to do these things."*

<http://cmte.parl.gc.ca/Content/HOC/committee/391/fopo/evidence/ev2505286/fopoev20-e.htm>

Notably, consumers have discussed in online forums their confusion regarding the origins of "marine oil":

*"I was able to contact Arctic Vigor and asked them about the contents of their marine oil. I was told it is seal oil from Northern Canada and there is no fish oil in it...The reason why they call it "marine oil" is for marketing purposes...I will admit when she said it was seal, I was not very excited."*

<https://leerburg.com/forums/ubbthreads.php?ubb=showflat&Number=218651>

## **Conclusions**

There is ample evidence that seal products can be confused with other products wider than those proposed by the ban. Given this, Article 95 EC can and should be used as a legal basis for a total prohibition on trade in seal products within the EU.

Notably, a public consultation was conducted in the period 20<sup>th</sup> of December 2007 to the 13<sup>th</sup> of February 2008 via the Commission's Interactive-Policy Making (IPM) tool—while 80 percent of respondents supported a prohibition on seal product trade in the EU as their preferred policy measure, only 5 percent supported a labeling scheme.

Public opposition to seal product trade in the EU, and the difficulty for consumers to distinguish seal products, makes it likely that consumers are choosing to avoid like products to ensure that they are not consuming seal products.

## **Additional Background Notes**

As a result of concerns expressed by citizens, nine EU Member States have either prohibited seal product trade or announced their intentions to do so. A similar situation occurred with cat and dog fur. The prohibitions range from bans on trade in all products from harp and hooded seals (Belgium) to all products from harp, hooded and cape fur seals (Netherlands) to all seal product trade (Germany). In Italy, a licensing scheme has been established as a temporary restriction to trade in seal products. Similar to the situation with cat and dog fur, the coexistence of these seal product trade prohibitions, in their various forms, implies that traders are faced with a set of different legal requirements in the different Member States they wish to trade in, import or export to. As a consequence, the internal market for fur, marine oil, and leather may be fragmented.

***10 March 2009***