

***Beware of the Flying Dutchman When Traveling to Brussels* ©**

By Lawrence Kogan, Esq.*

It is common during the summer reading season to survey travel magazines for fun activities to undertake and exotic vacation spots to visit. Travel magazines usually lavish readers with beautiful illustrations that inspire positive cultural images and promise idyllic experiences. In addition, to retain reader curiosity, they often provide ‘light’, but intriguing reading fare consisting of interesting information tidbits about selected destinations.

As a rule of thumb, therefore, leisure-minded travel magazines do not embed subtle political messages or admonitions, disguised as promotional fluff, that indirectly antagonize foreign government and industry officials. That is typically reserved for more serious political, economic or legal journals or newspaper editorials.

The recent issue of one travel magazine, *The Conde Nast Traveler*, however, has done just that, in a recent article about Brussels, Belgium.¹ The question, is why?

Discerning readers will notice immediately, at the outset of such article, that Brussels has branded itself as the new economic and political capital of the world – “the capital of the world’s largest political and economic trading bloc”. Such labeling evidently holds strategic as well as commercial importance to Brussels officials and European industries.

The article then continues with a brief but rather serious expose about the “changing power dynamic between the European Union (EU) and the United States”:

“As the EU evolves from what was primarily a free trade zone of fifteen member countries to a political organism of twenty-five countries *with the teeth to back up its actions*, the lure of the market – the most affluent in the world – has made Europe an economic and political *superpower*. The United States seems slowly to be waking up to the fact that big money is at stake (emphasis added).”

Now, this is particularly heady prose for a casual, vacation-oriented magazine article. In addition to what most readers would expect, i.e., an image of a relaxed and affluent Brussels at the culturally rich crossroads of an evolving EU, the article also conveys a more serious, and even ominous, second image: that, Brussels is a center of political and economic power, influence and wealth, much like Washington, and must be taken seriously.

The article proceeds by introducing readers to the cold and hard reality of the EU’s new ‘tough-love’ demeanor. In fact, it describes how EU regulators have unilaterally determined, *without*

¹ See Mark Schapiro, “Brussels, Big Time”, *Conde Nast Traveler – Truth in Travel* (Aug. 2006), at pp. 106-113.



scientific proof, that many ordinary American products and processes are no longer safe enough for European consumer tastes, and, *without* economic proof, that many ordinary American business practices are not quite equitable enough for European competitors:

“Already some American companies have run afoul of the EU’s anti-trust laws. General Electric’s proposed merger and expansion was blocked and Microsoft was fined \$500 million. US manufacturers are also facing the EU’s tough environmental health standards. For instance, America’s chemical industry is discovering that products cannot be exported to the Europe and the cosmetics industry is finding that many of its most popular ingredients are not considered safe by the EU” (emphasis added).

Interestingly, the very same American products and business practices now barred from European markets have long satisfied US and international technical quality and performance standards and secured US and international regulatory approvals.

Although casual readers may be inclined to interpret this article as reflecting nothing more than regional political and economic cheerleading, ethnocentrism and commercial image fluff, a closer inspection of it will reveal that it likely has greater ambitions. One may argue, for example, that it aims to impose political pressure on the US administration by raising American *public* awareness about a number of unresolved transatlantic trade disputes that may affect their future individual livelihoods. If so, it could backfire, and actually have the opposite effect.

For one thing, Americans do not welcome governmental interference, especially from foreign sovereigns, in their largely personal decisions: what products they may purchase and how they may act, especially when the products they desire and the conduct they display fall well within the reasonable confines of the law. Nor are Americans likely to accept, without substantiation, that their more competitive product and technology exports are no longer good enough for finicky, luddite Europeans.

The European Commission, the EU’s executive arm, has only recently recognized that what it thought was an unnoticed nuanced rejection of America’s relatively higher rate of innovation, productivity and wealth has actually attracted negative publicity and placed it on very thin ice, both diplomatically and legally speaking. For this reason, it has dispatched to the US its first environment-health ambassador, Mr. Robert Donkers, a 20+-year veteran of the European bureaucracy, to ‘smooth’ things over. Mr. Donkers also happens to be one of the main architects of the EU’s ‘famed’ regional and global environment-health framework that is premised on the precautionary ‘better safe than sorry’ principle. It strictly regulates, among other things, assorted chemicals and carbon dioxide emissions. The US administration has soundly refused to adopt this distinctively European nostrum as American law.

According to the article, Mr. Donkers’ job is to persuade US federal, state and local government and industry officials that Europe’s regulatory framework is right and that theirs is wrong, and to use veiled threats or ultimatums, if necessary.

“[Donkers]...explains the EU’s environmental policies to American industry and government representatives. This extraordinary job puts him at the fulcrum of a changing power dynamic between Europe and the United States...*Donkers’ job is to deliver the news: Either adapt to these standards or risk losing the European market, 450 million people*” (emphasis added).

In other words, Donkers’ goal is to ensure, through *any* means, the harmonization of EU and US regulatory laws and business practices, consistent with *European* standards.

Recognizing that such direct talk in a *leisure* article about European culture is likely to antagonize American readers, the author and Mr. Donkers then shift to ‘lighter’ regional food and drink metaphors to convey this very same message.

“...Donkers cuts into his filet d’agneau, pungent with red curry... ‘You know’, he quips, pausing to sip a glass of the fine Bordeaux he selected with relish, ‘*You’re either writing the menu, or you’re on it*’. Over the past five years, Donkers has been a key figure in rewriting the environmental part of *the metaphoric ‘menu’ of Europe’s regulatory policy*” (emphasis added).

To his credit, one may admire Mr. Donkers for his willingness to undertake this long-term regulatory juggernaut. There are detailed studies describing how such policies, if adopted and implemented within the US, would detrimentally affect US small businesses and substantially threaten our national economy and global competitiveness. Other studies, furthermore, document the EU’s underlying motivation for exporting its regulatory framework to the US: to protect its relatively weaker regional industries from the competitive challenges posed by US companies. Moreover, still other studies explain why these EU policies and practices clearly violate the established international trade laws administered by the World Trade Organization. Consequently, it is arguable that the EU Commission’s insistence that the world adopt its regulatory framework is partly to blame for the WTO Doha Round’s recent failure.

One may also respect Mr. Donkers’ for his dogged determination to pursue what is likely to amount to a quixotic journey. Indeed, he will encounter many fundamental differences between the EU and US regulatory and enterprise systems, some of which he will be unable to overcome. Presumably, for this reason, the author has likened him to a well-groomed and smartly dressed Dutch sea captain, tenacious and zealous enough to tirelessly and faithfully sail the ‘high’ seas of international diplomacy with his crew of Brussels Eurocrats, in search of the ‘promised land’ of regulatory harmonization. “[He is a] Dutchman, whose full beard and gregarious personality suggest a ship captain in a suit.”

An obvious inference that may be drawn from this comparison is that US government and industry officials ought to get used to seeing and hearing Mr. Donkers and his colleagues around Washington, like it, or not. Or, it may signal something far more ominous – that, unless Captain Donkers, and by extension, the EU ship-of-state, are forced aground before they establish a strong US beachhead, their activities are likely to cast a long, dark and lingering shadow over the vast American legal and business landscape.



Sarcasm aside, the author’s sea captain metaphor invites yet another possible comparison, this time, between Mr. Donkers’ precarious plight and that of the legendary Vanderdecken and his ill-fated crew. According to folklore, Vanderdecken was a disturbed, stubborn and fearless 17th or 18th century Dutch sea captain who recklessly dragged down both his ship and his crew as he tried in vain to round the rough stormy waters off Cape Horn, South Africa. Apparently, as the result of either a self-inflicted curse or an unholy pact with the devil, made at the very moment his vessel went down, Vanderdecken and his crew were destined for eternity to haunt those same waters aboard the ghost ship known as the ‘Flying Dutchman’.

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