Made in the EU Origin Marking – Working Document of the Commission Services

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I. The Issue

This working document proposes to develop further the concept of an EU origin marking. The introduction of an origin marking scheme for EU - and third countries’ - products has in recent months been proposed or raised afresh by some industry sectors in the EU as well as by Members of the European Parliament and the Economic and Social Committee.

The potential benefits of such a scheme would, in the views of its proponents, be numerous. It would, in their view, strengthen the concept of European origin as a mark of distinction, and improve the visibility of the EU as a single market; it would provide consumers with more information on what they are buying; and it could play a role in combating consumer deception as to the true origin of goods, which is growing to unprecedented levels and threatening the interest of many European manufacturers. On the other hand, a marking scheme may also present drawbacks, including in terms of requiring additional labelling provisions for products, additional costs for manufacturers and importers, administrative and other implications for public authorities, and uncertainty as to whether all the objectives sought would necessarily be achieved. A more detailed presentation of the perceived benefits, along with some of the perceived disadvantages of an EU origin marking scheme, can be found in Section III of this document.

Marks of origin are meant to indicate the origin of a product on the product itself for the information of consumers, and aim at preventing deceptive practices by the producer and/or the importer. On the basis of the principle of the territoriality of legislation, producers must comply with the origin marking rules of the country where their products are going to be marketed. This implies that origin marking regulation may cover two types of goods: a) imported goods and b) domestic production for the internal market. Origin marking can be regulated in either a voluntary or a compulsory manner, i.e. the rules can require an origin mark to be applied on every product as a condition of it being put on the market, or alternatively the rules can simply create a framework of reference to be respected in case an origin marking claim is voluntary applied by a producer. Origin marking rules are widespread outside the EU, eg. Japan and the US both apply them; and in the case of the US rules for example the objective of such marking is to provide consumer information, reduce deception, and promote the image of their manufactures.

If any regulations on origin marking were introduced into the EU they must comply with Community law and also with Art. IX of the GATT and the Agreement on Rules of Origin (AROO). It should be noted that Art. IX of GATT does not contain a national treatment requirement but only an MFN requirement, leaving a WTO Member free, in cases where marking of all foreign imports is required, to decide whether or not to impose a domestic marking requirement. According to AROO, non-preferential rules of origin must be used for the definition of country of origin provided for by an by origin marking regulation.
II. Background.

a) Current Legal Arrangements

Current Community legislation requires in all cases a declaration of origin (based on preferential or non-preferential rules, as the case may be) to accompany imported goods, but does not provide for any origin marking, except for some specific cases in agricultural legislation. There is no requirement or reference regulation on non-EU origin products to carry any origin marking, nor currently any legal basis for a “made in the EU” origin marking. As a result there is no uniform practice in the EU regarding the use of an EU origin mark and no means at EU level to ensure that such marks when used are used accurately.

At national level within the EU, compulsory origin marking for imported goods is currently prohibited, the Court of Justice in a case in 1985 having ruled against the prohibition of the retail sale of certain goods imported from other Member States unless they were marked with or accompanied by an indication of origin. There is however nothing to prevent voluntary origin marking either on domestic production or on foreign goods (e.g., “Made in Italy” or “Made in India”) where traders wish to indicate this for consumer information purposes or as a private mark of distinction. Where such marks are applied to goods to be marketed, they fall inside the scope of the consumer protection legislation of some Member States which require that every mark or label applied to goods to be accurate. There is however considerable variation in practice between Member States regarding the definition and use of origin marking. And, as noted earlier, there is no legal basis for any kind of European-wide origin mark.

The situation is different outside the EU. US legislation for example requires all goods put on the US market of non-US origin to be marked with their country of origin, whereas there is no requirement for goods made wholly or partially in the US to be labelled with a “made in the USA” or the like. In practice many domestic producers do mark their goods as being of US origin for the purposes of consumer information, to help in preventing consumer deception as to the true origin of the goods and in promoting the attractiveness of American products in the eyes of the consumer.

b) Recent initiatives on an EU origin marking regulation

Although proposals to introduce an EU origin marking regulation are not new, there has been a visible revival of interest in the idea in the past few years, as evidenced by several European parliamentary questions relative to the introduction of such a scheme, an ECOSOC opinion dating back to 1998 calling for the same in the textiles and clothing industry, demarches from certain industry sectors, proposals from national consumer associations for a compulsory EU origin mark, as well as a proposal in the recent Communication of the Commission to the Council to pursue an origin marking scheme for the textiles and clothing sector which reflects interest from that sector in a possible scheme and for which the ideas set out in this working document could provide a general framework. There do therefore appear to be a
number of reasons for reassessing the desirability and feasibility of an EU origin marking scheme.

Notwithstanding the renewal of interest in a scheme, the attractiveness to EU industry of some form of EU origin marking may of course vary, depending on the industrial sector considered. Discussions with industry groups on this issue in the past showed that there was no consensus. Some sectors - for example those operating with just in time manufacturing or inventory control, or who source parts globally - may find it less attractive to mark the origin of their goods than those who have traditionally supported origin schemes. This means that obviously the viability of any origin marking scheme will need to be further tested with the full range of industry groups, as well as consumers organisations and other interested parties in the EU.

III. The objectives And Feasibility of An Origin Marking Scheme

In order to get a better sense of the potential added value of an EU origin marking scheme, and evaluate the proposals made, it seems necessary first to determine what could be the main objectives of such a scheme, such as:

- To introduce greater homogeneity and clarity across the EU internal market through an EU-wide instrument, taking in account also the fact that different Member States’ legislations exist.

- To provide comprehensive and accurate information to consumers on the country of origin of products, and in a way that would promote in parallel the image and attractiveness of EU products, eg as possessing a certain quality, reliability or style. This could in turn contribute to enhance European companies’ competitiveness in the global arena against foreign competitors producing at lower costs and investing less in consumer protection.

- To reinforce the concept of “made in the EU” as a means to consolidate the image and recognition of the EU’s single customs union and single market, both for its own sake and as an element in our broader efforts to gain greater recognition of the customs union in the international framework.

- To provide an additional tool to combat consumer deception and use of fraudulent origin marking considering the current systematic practices of false labelling and fraud (involving even in some cases EU industry itself) and which is of growing concern to several industry sectors for whom an indication of origin confers value.

It will obviously be necessary to examine to what extent the above objectives can be achieved through an EU origin marking scheme. It will also be essential however, in further analysis and consultation with interested parties, to evaluate any possible or proposed scheme in the light of possible drawbacks or disadvantages, which may include:

- The practical need for greater homogeneity and clarity across the EU internal market provided by an EU origin marking scheme.
• The extent to which consumers actually seek or need comprehensive information on the country of origin of the products they buy, taking in account existing EU legislation protecting the consumer interest as regards the quality and safety of products.\textsuperscript{ix}

• The extent to which an obligatory marking scheme, as opposed to say a self regulatory or voluntary system, could imply an additional burden for business.

• The costs incurred by the public administrations responsible for checking the correct application of the rules.

• The commercial value of an origin mark relative to that of for example a geographical or other form of quality indication that reflects investment in a production process.

The Commission notes finally that some industry sectors have suggested that origin marking would also help to combat counterfeiting of IPR per se. On this point the Commission would note that protection of right holders against counterfeit goods is already a Community priority, and that recently several important steps have been taken, including measures to strengthen the enforcement capacities of customs, the Council Regulation 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, and most recently a proposal for a Directive on measures and procedures to ensure the enforcement of intellectual property rights\textsuperscript{x}. Against this background an EU origin mark would not in itself constitute a major element in combating counterfeiting of goods, and an EU origin mark is of course capable itself of being produced and applied fraudulently.

IV. Possible Options

A number of different approaches could potentially be followed in order to establish an EU origin marking system. The choice would seem to be from amongst the following three options:

1. An EU-wide regulation governing the use on a voluntary basis of origin marking for both imported goods and EU domestic production.
2. An EU-wide regulation requiring compulsory origin marking for imported goods, and voluntary EU origin marking on domestic production (i.e. regulations governing voluntary use of “made in the EU” origin marking). This would be akin to the current US system.
3. An EU-wide regulation providing for compulsory origin marking for both imported goods and for domestic production.

Irrespective of which option may be the most attractive, the Commission considers that, in the case of domestic production, in addition to the application of any possible EU origin mark, the use on a purely voluntary basis of national marks, e.g. “made in the Member State X”), will need to be further analysed. It goes without saying that any such national marks where they are used today should continue to be used in a manner that is consistent with the functioning of the internal market.
It is also important to note that already a range of product labelling and marking practices, indicating either origin, quality or conformity to regulatory requirements, already exist at national and EU level. Any EU origin scheme should not detract from or otherwise affect the continued use of these marks, but instead should be designed to provide complementary information to consumers. Origin marks permit consumers to exercise their preferences based on the place of production, thus enlarging their freedom of choice.

In addition to the indication of potential benefits and disadvantages given in Section III above, a brief assessment of the potential advantages and disadvantages of each of the three above options, both in comparison with one another and with the current status quo, is set out below.

**Option 1- Regulation of a wholly voluntary system**

**Implications:**

As at present, on the EU market it would be possible to find some products with origin marking and other ones without any such marking claims.

**Arguments:**

This option implies only to put in place a homogenous EU origin marking scheme by means of a Community regulation. Since the same regulation would apply across the whole of the single market, the accuracy of any EU origin claims voluntarily applied to goods would need to be verified and enforced in a similar manner by all the Member States' administrations, reducing the present possibilities of circumvention.

Because this option would govern only the use of origin marking applied on a voluntary basis, no additional costs would be imposed on foreign or domestic industry. The producer would decide, if convenient, to apply an EU origin mark to his goods or in the case of a foreign producer a non-EU mark.

Because of the voluntary approach, it is not possible to foresee to what extent the “made in the EU” claim would be widespread, but at least the proposed EU regulation would provide the legal basis for its use and enforcement in a consistent manner across the EU.

**Option 2: A mixed system similar to that in the US i.e. compulsory marking for imports, voluntary marking for domestic products.**

**Implications:**

In the EU market imported products would have to carry an origin marking. Some domestic production would, on a purely optional basis, have a “made in the EU” origin marking, depending on the domestic producer’s wish to assure and demonstrate that his production is originating in the EU.
Arguments

This option does not imply supplementary costs for the EU industry. It affects, basically, producers located outside the EU. Theoretically, EU partners could consider the initiative as a measure increasing the cost to non-EU producers. Having said this, however, such a system is used in many other countries outside the EU, e.g. US, Japan, China, without difficulty or objections from foreign suppliers. It would in fact remove the current disadvantage faced by EU manufacturers, who have to apply origin marks for goods to the US and several other third countries, without manufacturers in those countries having to do the same for the EU market.

Consumer information would be improved, since all products originating in third countries would by law have to carry an origin mark.

Some legal questions could arise in relation to the EEA partners and Turkey, since it could be argued that a compulsory “made in an EEA country” or “Made in Turkey” claim would create a disadvantage not foreseen in, respectively, the EEA for products of non-EU EEA Members or for products legally manufactured or marketed in Turkey. The legal compatibility of an origin mark vis a vis the relevant Articles of the EEA Agreement and the implementing provisions of the EU-Turkey Customs Union\footnote{The legal compatibility of an origin mark vis a vis the relevant Articles of the EEA Agreement and the implementing provisions of the EU-Turkey Customs Union will need further study and a solution to any difficulties arising would have to be found.} will need further study and a solution to any difficulties arising would have to be found.

The post-marketing surveillance authorities in the Community may need to apply additional enforcement measures in order to control the new requirement of an origin mark for imported goods. This may have an additional cost.

Option 3: Obligatory origin marking for both imports and domestic products.

Implications

Every product marketed in the EU would carry an origin marking, either indicating the EU or a third country origin.

Arguments

A requirement to mark all EU originating and foreign products would, as is the case with option 2, provide the Community with an additional tool to detect or prevent acts of consumer deception.

Only a legal requirement to mark all EU originating products would actually ensure that such a mark were used at all times. It would have the biggest impact in terms of creating both domestic and – over time - international consumer and business perception of the EU single market as an entity in itself. The promulgation of an EU mark of origin could encourage acceptance, over time, of the “made in the EU” origin marking by other countries – and this would constitute an important step in recognition by our trading partners of the unicity of our customs union and legislation.

Compulsory origin marking for imported goods, extended to EU domestic production, would ensure equalisation of costs between foreign and domestic producers in
applying the origin marks on goods to be marketed in the EU. The risk of third
countries objections to the scheme would thus reduce.

By making origin marking compulsory for both domestic and foreign goods, more
comprehensive consumer information on the product is guaranteed, since the origin of
every marketed product is provided. Consumers can therefore better exercise their
preferences.

It would also be necessary to consider the costs to the EU domestic industry of
applying a compulsory “made in the EU” origin marking requirement. As noted
earlier, views of EU industry groups have differed in the past on this issue, and their
views will need to be sought on a scheme. In addition, any compulsory scheme for
both domestic and imported goods would require suitable enforcement by national
administrations, which would represent an additional administrative cost to be
ascertained.

V. Next Steps

The Commission believes that an EU origin marking scheme has in principle several
merits and that the feasibility of such a scheme should be pursued further. In doing so
it will be important to take into account the views and preferences expressed by
interested parties including the European Parliament, the Economic and Social
Committee, and business, industry and consumer associations, notably on the relative
costs and benefits of any such scheme. Any costs of implementation by national
administrations will also need careful assessment.

In practical terms, it is proposed therefore that the feasibility of a legal instrument
providing for an EU-wide origin mark be further examined. Any such scheme should
as noted earlier be based on existing non-preferential origin rules in force in the EU,
should set out the conditions for application of origin marking, and may in addition
need to address the issue of use of national origin marks. Any proposed scheme
should also contribute to the effective functioning of the internal market, and should
determine the necessary instruments of control and verification by national
administrations, as well as proposing specific measures, if necessary, to resolve any
potential inconsistencies with our commitments in the EEA.

Member States are accordingly invited:

a) to note the intention of the Commission to examine further the possible merits and
the feasibility of an EU origin marking scheme.

b) to note that the Commission will consult further with all interested parties in order
to assess better the possible costs and benefits of different schemes, and the most
appropriate legal basis, and will seek the further views of the Council on this in due
course;

c) to indicate their preliminary views as to the type of scheme they consider may be
the most advantageous to the EU, from amongst the options discussed in this
document, and to indicate what they consider to be the principal advantages and
disadvantages of one or another approach.
Notes

1 Commission vs United Kingdom, Case 207/83, 25 April 1985. According to the Court, the purpose of indications of origin or origin marking is to enable consumers to distinguish between domestic and imported products. This would enable the consumers to assert their prejudices which they may have against products lawfully marketed or produced in another Member State. The Court rejected the argument that the measure was necessary for reasons of consumer protection, since a local survey carried out amongst local consumers had shown that the consumers associated the quality of goods with the countries in which they are produced. The Court of Justice disagreed with this argument. According to the Court, indications of origin are intended to enable the consumer to distinguish between national products and products lawfully produced or marketed in another Member State, which may thus prompt him to give his preference to national products. Moreover the Court observed that if the national origin of goods brings certain qualities to the minds of consumers, it is manufacturers’ interests to indicate it themselves on the goods or on their packaging, and it is not necessary to compel them to do so. In that case the protection of consumers is sufficiently guaranteed by rules which enable the use of false indications of origin to be prohibited. See also the judgement of the Court of Justice of 5 November 2002 Commission vs Germany Case C-325/00; Judgement of 6 March 2003, Commission vs France Case C-6/02

2 For example, Trade Description Act 1968 (UK), Art. 39; French Customs Code (“marquage d’un correctif d’origine” for imported products), Art. L 217-1 Consumers Code (FR).

3 In order to check the accuracy of these origin markings, that is, to verify that a product marketed with a “made in X” origin marking is effectively originating in this country X, some national authorities use the concept of country of origin as defined in the non preferential rules of origin of the EC Customs Code (i.e. a product can be marketed with a “made in USA” claim because according to the rules of origin of the EC Customs Code this product is originating in USA). In other Member States it is simply left to the trader to determine when a product can be considered as originating in a foreign country or in a member State in order to be correctly marketed with a “Made in (the country concerned)” origin marking. It is ultimately for a court to decide, taking into account of an ordinary person’s perception of the circumstance surrounding the individual case (UK). In short, the current situation is marked by legal uncertainty in which different Member States of the EU adopt different practices based on different criteria.

4 QE (2001) 1817; QE (2001) 1124. The Commission replied to these questions that there was no consensus within the interested industry on this idea.

5 Opinion of the Economic and Social Committee on the ‘Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Plan of action to increase the competitiveness of the European textile and clothing industry’. JOCE 1998 C 214/95. “The Committee also calls upon the relevant national and Community authorities, in consultation with trade circles, to consider the establishment of marking showing the place of manufacture, to combat evasion of the rules and thus ensure transparency and proper information for the consumer. Various approaches can be considered, taking into account a definition based on the place where clothes are made up and retaining the image of prestigious national marks such as ‘made in Italy’ or ‘made in France’”.

6 European Confederation of the footwear Industry letter to Commissioner Pascal Lamy, Confindustria position paper on marks of origin on industrial goods and product.


8 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the regions: “The future of the textile and clothing sector in the enlarged European Union” COM (2003) 649: “A made in Europe label could help increase the confidence of consumers, that when they are purchasing a garment they are paying a price that corresponds to the highest standards of production and style expected from European manufacturers.

9 Current consumer legislation provides accurate information on the quality of a product, its manufacturer or distributor. Article 5 of the Directive 2001/95/EC on general product safety – that will have to be transposed into national law by 15 January 2005 – obliges producers to provide consumers with the relevant information to enable them to assess the risks inherent in a product throughout the
normal or reasonably foreseeable period of its use. One of the measures suggested by the Directive is “an indication, by means of the product or its packaging, of the identity and details of the producer and the product reference or, where applicable, the batch of products to which it belongs, except where not to give such information is justified”. In other words this possibility, if and when foreseen by national law, mainly aims at identifying the producer.

The identification of the producer is also very important for the implementation of the Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products. This directive specifies that the producer is liable for damage caused by a defect in his product. A product is defective when it does not provide the safety which a person is entitled to expect. Although this directive in theory applies to textile products, it nevertheless does not require a label of origin on the products.

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EEA Agreement Articles 11 and 13; Articles 5 to 7 of Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union.