Origin Marking in the EU – a summary

A mark of origin ("made-in" marking) is a permanent sign on a product which identifies its geographical origin. Origin marking can be compulsory requirement for imported and/or domestic goods, it may cover certain sectors only or all goods, or legislation may just set a framework for non-mandatory use of it. One of the main stated purposes of origin marking is to allow consumers to make informed purchase decisions as regards the origin of the product. The European Commission has on two occasions sought to put forward origin marking rules at the Community level.

In 1980 the Commission put forward a Proposal for a Council Directive on the approximation of laws of the Member States relating to the indication of the origin of certain textile and clothing products. The proposed Directive left to individual Member States (MS) to decide whether to make the indication of origin obligatory. The preamble to the proposal laid down the rationale behind the Commission's proposal: the varying rules on origin marking in MS' laws give rise to obstacles to the functioning of the common market which could be avoided if origin marking is subject to harmonized Community rules. The proposal stipulated that for products originating in a MS of the EEC, the indication of origin should be worded as "Made in the EEC". Commercial operators have the option to replace or complete the "Made in the EEC" mark by the name of the originating MS; commercial operators can also choose one of the official languages of the EC for expressing the indication of origin. Notably, the proposal is related only to origin marking of certain textile and clothing products.

The Council consulted the Economic and Social Committee (ESC) and the European Parliament (EP) on the merits of the Commission's proposal on origin marking. Both the ESC and the EP gave a negative opinion on the adoption of the proposed Directive. In its Opinion, the ESC stated that indicating the country of origin of a product does not fill a genuine consumers' need. The ESC opined that origin marking could be unhelpful and misleading to consumers as it solely refers to the country where the last processing operation of the good has been carried out. Adoption of the proposal for textile and clothing products could be used as a precedent for measures on a variety of other products which would create barriers to trade and negate the fundamental principles of the Treaty of Rome. In this line of

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1 OJ No C 294, 13.10.1980, p.3
2 For timeline of the proposal see: http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=123606
3 This provision will be criticized by the ESC as a rule which is not to the benefit of informing consumers in a common market of seven languages and two alphabets.
arguments, the ESC noted that origin marking already in place in MS was a barrier to the free circulation of goods within the Community and inquired why the Commission had not taken appropriate action to remove these barriers.

Subsequently, the EP also rejected the proposal.\textsuperscript{5} Moreover, the EP called upon the Commission to institute proceedings before the \textbf{European Court of Justice} (ECJ) against those Member States implementing rules on indication of origin which might be construed as erecting barriers to trade within the Community.

As a result of these negative reactions against its initiative, the Commission withdrew its proposal in September 1981. It also immediately answered the EP's call, by communicating to the United Kingdom in December 1981 that a UK law requiring compulsory origin marking constituted a measure having an effect equivalent to a quantitative restriction contrary to Article 30 of the EEC Treaty. The UK did not comply with the opinion of the Commission and the latter brought an action on the matter before the ECJ.

The subject of the dispute\textsuperscript{6} was a UK law which prohibited the retail sale of certain products which are not marked with an indication of origin. In other words, the law imposed mandatory origin marking as a requirement for the sale of certain goods in the United Kingdom. According to the Commission, the requirements of the UK law was in breach of Article 30 of the EEC Treaty, and not justified on any of the grounds recognized by Community law. The UK put forward two arguments in defense of the contested measure.

Firstly, the UK asserted that the law applied equally to both domestic and imported products and its effect on trade between MS was uncertain. The ECJ noted that the purpose of origin marking is to enable consumers to distinguish between domestic and imported products and this enables them to assert any prejudices that they may have against foreign products.

The ECJ analyzed the UK law based on the aim of the EEC treaty – the unification of national markets in a single market having the characteristics of a domestic market. It concluded that the origin marking requirement makes the marketing of imported goods more difficult and has "the effect of slowing down economic interpenetration in the Community by handicapping the sale of goods produced as a result of division of labour between MS".

Therefore, the UK law had the effect of increasing the production costs of imported goods and making it more difficult to sell them on the UK market.

\textsuperscript{4} OJ No C 185, pp. 32-34, 27.07.1981
\textsuperscript{5} OJ No C 101, p.49, 04.05.1981
\textsuperscript{6} Commission vs United Kingdom, Case 207/83, 25.04.1985
The second UK defensive argument was that the law was justified by consumer protection considerations. The UK argued that a survey showed that UK consumers associate the quality of certain products with their origin. The ECJ stated that by its very nature the origin marking requirement –although applicable to both domestic and foreign producers products– is intended to enable the consumer to distinguish between these two categories of products, which may thus prompt him to give his preference to national products. The Court further observed that if the national origin of goods brings certain qualities to the minds of consumers, it was in manufacturers’ interests to indicate it themselves on the goods or on their packaging, and it was not necessary to compel them to do so. The protection of consumers was sufficiently guaranteed by rules which enable the use of false indications of origin to be prohibited.

Consequently, the Court found that the UK measure fell within the prohibition laid down in Article 30 of the EEC Treaty and that it could not be justified under Community law provisions.

After the ECJ judgment which declared Member States' laws imposing mandatory origin marking as inconsistent with the Treaty, the status quo that developed in the late 80's and throughout the 90's was the following:

- Some Member states maintained a non-mandatory origin marking system;
- Lack of Community legislation on origin marking for industrial products (legislation was in force for some agriculture products).
- Lack of Community law on how to establish the country of origin for marking purposes.

The issue of origin marking came back to light in 1998, again in the context of textiles and clothing. The ESC raised the topic in an Opinion on a Commission Communication on a Plan for action to increase the competitiveness of the European textile and clothing industry. The ESC called upon national and Community authorities to consider the establishment of marking showing the place of manufacture, to combat evasion of rules and thus ensure transparency and proper information for the consumer. The ESC underlined also the fact that consumers are often ill-informed or uninformed about the origin and production conditions of the products available to them, which in its view would warrant carrying out a study on the introduction of origin marking.

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7 OJ No C 214, pp.95-103, 10.07.1998
Five years later, the Commission also raised the issue in a Communication on the future of the textiles and clothing sectors in the enlarged EU. The Commission opined that 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 manufacturing". The Commission noted that the introduction of origin marking for textile and clothing products in the EU (as is the case in several major trading partners) could provide more and better information to consumers. The Commission made a commitment to further examine the issue.

Soon after, in the end of 2003, the Commission submitted to the 133 Committee a working document named: "Made in EU Origin Marking" with the aim of starting a debate on a possible origin marking initiative at EU level. The document revealed the current situation of a lack of uniform practice in the EU, while at the same time major trading partners have been maintaining origin marking schemes. The Commission noted that recent calls on behalf of some industry sectors, consumer organizations, Members of the EP and ESC showed growing interest in the idea for an origin marking regulation amid concerns over misleading and/or fraudulent origin marks. Accordingly, the Commission concluded that a reassessment of the desirability and feasibility of an EU origin marking scheme was needed. It was also stated that the analysis should be comprehensive and take into account the lack of consensus among industry groups on the benefits of introduction of EU origin marking.

The Commission outlined three main approaches to establishment of an EU origin marking scheme.

1. Governing the use on a voluntary basis of origin marking for both imported goods and EU domestic production, i.e. regulation of a wholly voluntary scheme.
2. Requiring compulsory origin marking for imported goods and voluntary EU origin marking on domestic production (which would be similar to the US system).
3. Providing for compulsory origin marking for both imported goods and for domestic production.

The document laid down an incomplete list of objectives of a possible EU origin marking scheme, to be further elaborated upon in the future deliberations –inter alia, introducing greater homogeneity across the EU internal market through an EU-wide instrument; providing comprehensive and accurate information to consumers on the country of origin of products; combating consumer deception; increasing EU companies' competitiveness. According to the

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Commission, these objectives were to be assessed against the background of possible
disadvantages in the form of costs and burdens for business and administration, commercial
value, practical needs of consumers, risks for creating barriers for intra-Community trade, etc.
Seeing a number of merits in an EU origin marking scheme, the Commission proposed that
the feasibility of an EU legal instrument providing for an origin mark be further examined.
The Commission requested MS's views on a possible origin marking scheme and outlined its
plans to consult with interested parties on the issue in order to assess the costs and benefits of
the different schemes and the legal basis for such an initiative.
Between January and May 2004, the Commission conducted a consultation process\textsuperscript{10} on
possible implementation of an EU origin marking scheme with the main interested parties:
industry federations, consumer associations, trade unions and NGOs; some MS also shared
their opinions.\textsuperscript{11} Based on the received input, the Commission concluded that there was not
sufficient support for the introduction of a compulsory origin marking scheme for EU
products and decided not to further pursue this option. Furthermore, the survey revealed that
different manufacturing sectors have divergent opinions on the benefits of origin marking.
Textiles, clothing, leather goods, furniture, footwear and ceramics sectors argued in favour of
Community rules for origin marking. The Commission elaborated that a reasonable
compromise between the different positions of stakeholders would be (the second option as
set out in the 2003 Commission document) a compulsory origin marking for imports, while
leaving the status quo untouched with regard to domestic products. In this regard, there were
two possible approaches: either an origin marking requirement for all imported goods or only
for some sectors and products. The Commission opined that the latter choice could be "more
proportionate to the concerns and priorities expressed by European manufacturers".
Accordingly, the Commission decided to conduct further consultations with interested
parties on the merits and the scope of a scheme providing for compulsory origin marking
applicable only to imported goods on a sectoral basis. It also opined that Community rules on
voluntary origin marking for domestic goods could improve the functioning of the internal

\textsuperscript{10} The consultation process is reflected in the following paper: "Consideration of and EU Origin Marking
Scheme, Consultation Process, Analysis and next Steps", available at:

\textsuperscript{11} Germany, Netherlands and the UK strongly voiced their opposition against the introduction of origin marking
at EU level; Italy argued in favour of the adoption of a compulsory origin marking for imported and/or EU
manufactured goods.
market and as well prevent the inaccurate use of EU origin marks. Thus, further consultations and an on-line survey were held from September 2004 to April 2005.\textsuperscript{12}

On the grounds of the results of the consultation process, in December 2005, the Commission submitted a proposal for a Council Regulation on the Indication of the Country of Origin of Certain Products Imported from Third Countries.\textsuperscript{13}

\textsuperscript{12} The results are summarized in an Impact Assessment which has been adopted as Commission staff working document, SEC (2005) 1657, 16.12.2005. The Commission document which is an Annex to the Proposal for Directive, explains the concept of origin marking, lays down the objectives pursued by the proposal, discusses the impact of different options for origin marking schemes and aims to justify the approach taken by the Commission. Available at: http://trade.ec.europa.eu/doclib/docs/2005/december/tradoc_126710.pdf

\textsuperscript{13} COM (2005) 661 final, 16.12.2005