



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.12.2005
COM(2005) 661 final

2005/0254 (ACC)

Proposal for a

COUNCIL REGULATION

on the indication of the country of origin of certain products imported from third countries

{SEC(2005) 1657}

(presented by the Commission)

EXPLANATORY MEMORANDUM

In December 2003 the Commission submitted to the 133 Committee of the Council a working document on a possible EU origin marking scheme, following a renewed interest shown on the subject by some Member States and some sectors. The Member States and the sectors in question were expressing a growing concern over the mounting incidence of misleading and/or fraudulent origin marks being carried by imported products. Requests were made for rules to require origin marking of imports and/or EU products.

In the first half of 2004, the Commission launched a consultation process on this question involving the main stakeholders - industry, trade unions, consumers and other institutions - the results of which were discussed in the 133 Committee in July 2004. The 133 Committee invited the Commission to consult further on the feasibility of an origin marking scheme applicable to selected import categories, as well as other options, and to submit its conclusions and a recommendation to the Council. Accordingly, from September 2004 to April 2005 further consultations were held.

Taking into account the results of the above consultation process, the attached draft Regulation proposes the introduction of a compulsory origin marking scheme covering a number of sectors which see benefit in the initiative (see annex), and applicable to imported goods only. This is the option which, on balance, takes best into account the interests of the larger share of stakeholders (industry, trade unions, and part of the consumer movement), it is an option which limits any costs and negative effects for other interested parties (EU industries that have delocalised their production, traders), and which ensures at the same time a positive impact as regards the policy objectives of the initiative.

At present, the European Community has no legislation on the use of origin marking ("made in") for industrial products. A recent directive aiming to harmonise in-market control of unfair commercial practices also addresses instances of a misleading use of origin indications. However, this directive does not define the meaning of "made in", nor does it enable controls by customs authorities. Rules on the voluntary use of origin marks which exist in some Member States also differ.

The current situation puts the EC at a disadvantage vis-à-vis its trade partners who require origin marking for imports. It deprives EC producers of origin-sensitive consumer goods to realise benefits associated with producing within the European Community, and an opportunity is missed to more effectively prevent false/or misleading origin claims. The EC is consequently missing an opportunity to enhance consumer information on the origin of some products which may also be useful to the enforcement of the aforementioned directive. The present draft regulation aims to address these short comings.

The EC's main trading partners, such as Canada, China, Japan, and the USA, already impose origin marking on imported goods. EC exporters have to comply with those requirements and they have to mark their products. The present proposal will thus put the EC on a level footing with trade partners by putting in place equivalent legislation.

The absence of a common definition of origin for marking purposes, of marking rules and of common rules on controls affects not only consumers, who may be deceived as to the origin of their purchases, or denied information on the origin of imported goods, but also the competitiveness of the EC industry.

Origin marking will also help to prevent the reputation of the Community industry being tainted by inaccurate or plainly deceptive claims of origin.

Origin marking would facilitate consumer choice, contribute to reducing fraudulent claims of origin. Improved transparency and consumer information about the origin of goods will also contribute to the objective in the Lisbon agenda of strengthening the competitiveness of European products suffering presently from unfair competition in the market.

The regulation opts for a definition of the country of origin based on the EC non-preferential rules of origin, as applied for other customs purposes. The application of the EC non-preferential rules of origin to origin marking issues is consistent with EC's commitments derived from the WTO Agreement on rules of origin.

In order to reduce the burden of the new scheme as much as possible, the Regulation limits the requirements and conditions to mark the products to the minimum needed to make sure that the origin mark is easily detected and understood by the consumer, but at the same time not easily replaced or faked. As to the language version, the Regulation gives the option of using the words "made in" or other similar expressions in any official language of the European Community, understood by the ultimate purchaser.

Recognising that the specific means of fixing a mark of origin may depend on the type of product, the Regulation entitles the Commission to further regulate this aspect. Considering also that other sectors could be interested in joining the origin marking scheme, or that origin marking may prove less relevant for others, the Regulation also entitles the Commission to include or to suppress sectors.

Proposal for a

COUNCIL REGULATION

on the indication of the country of origin of certain products imported from third countries

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to proposal from the Commission¹,

Whereas:

- (1) This Regulation should apply to imported industrial products, excluding fishery and aquaculture products as defined in Article 1 of Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products², and also excluding foodstuff as defined in Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.³
- (2) The absence of Community rules and the disparities between the systems in force in the Member States, as regards the indication on certain products of their country of origin, has given rise to a situation where in a number of sectors a major part of products imported from third countries and distributed within the Community market are found to carry no or misleading information concerning their country of origin.
- (3) The economic significance of origin marking to consumer decision and trade is recognized by the practice of other major trading partners which have enacted mandatory origin marking requirements. Exporters in the Community have to comply with those requirements and have to mark the origin on products they wish to export to these markets.
- (4) The European Communities should be put on equal terms with trade partners by putting in place equivalent legislation which will also contribute to prevent false or misleading claims of origin of certain imported goods.

¹ OJ C , , p. .

² OJ L 17, 21.1.2000, p. 22.

³ OJ L 31, 1.2.2002, p.1.

- (5) According to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market⁴, consumers may attach commercial value to information on the geographical origin of a good. According to that Directive, where false or misleading information about the geographical origin leads a consumer to buy a product which he would not have bought otherwise, this may constitute an unfair commercial practice. This directive does not mandate that information on the geographical origin of goods be provided, nor does it define the concept of origin.
- (6) The creation of a common definition of origin for marking purposes, of marking rules, and of common rules on controls would thus create a level playing field, facilitate consumer choice in the covered sectors, and contribute to reducing the levels misleading claims of origin.
- (7) The introduction of an origin mark can contribute to make demanding Community standards work in favour of the Community industry, especially small and medium enterprises. It will also help to prevent the reputation of the Community industry being tainted by inaccurate claims of origin. Improved transparency and consumer information about the origin of goods will thus contribute to the objectives of the Lisbon agenda.
- (8) Article IX of the General Agreement on Tariffs and Trade (GATT) 1994 provides that WTO members may adopt and enforce laws and regulations relating to marks of origin on imports, notably to protect consumers against fraudulent or misleading indications.
- (9) Under the Agreements between the European Community and Bulgaria, Romania, Turkey, and the Contracting Parties of the EEA Agreement, is necessary to exclude products originating in these countries from the scope of the present Regulation.
- (10) The European Community's non-preferential rules of origin are laid down in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁵ and its implementing provisions in Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁶. It is preferable to rely on these rules of origin to determine the origin of imported goods for the purpose of this regulation. Using a concept with which trade operators and administrations are well acquainted should ease its introduction and implementation. Non-preferential rules of origin should be applied for all non-preferential commercial policy purposes. The duplication of declarations and documentation should avoided.
- (11) In order to limit the burden on industry, trade and administration, origin marking should be made mandatory for those sectors for which the Commission, based on prior consultation found that there was value added. Provision should be made for an easy adaptation of the sectoral scope of this Regulation. Provision should also be made for the exemption of specific products for technical or economic reasons or where origin marking is otherwise unnecessary for the purpose of this Regulation. This may be the

⁴ OJ L 149, 11.6.2005, p. 22.

⁵ OJ L 302, 19.10.1992, p.1. Regulation as last amended by the Act of Accession of 2003.

⁶ OJ L 253, 11.10.1993, p.1. Regulation as last amended by Council Regulation (EC) No 837/2005 (OJ L 139, 2.6.2005, p. 1).

case, in particular, where origin marking would damage the goods concerned, or in case of certain raw materials.

- (12) Provision should be made that data on the origin of goods generated and/or verified during controls by the competent authorities can be exchanged, including with authorities and other persons and organisations, for which Member States envisage an enforcement role pursuant to Directive 2005/29/EC. Account should be taken of the protection of personal data, commercial and industrial secrecy, and professional and administrative confidentiality.
- (13) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁷.
- (14) Goods in travellers' personal luggage for personal use should be exempted from the application of the present Regulation within the limits laid down in respect of relief from customs duty, and if there are no indications to suggest that the goods are part of commercial traffic. Provision should be made that also the other cases covered by Council Regulation (EEC) No. 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty may also be excluded from the scope of this Regulation by means of the implementing provisions.

HAS ADOPTED THIS REGULATION:

Article 1

1. This regulation shall apply to industrial products excluding fisheries and aquaculture products as defined in Article 1 of Regulation (EC) No 104/2000, and foodstuff as defined in Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council.
2. Goods that require marking are those listed in the Annex to this Regulation, and imported from third countries, except for goods originating in the Territory of the European Communities, Bulgaria, Romania, Turkey, and the Contracting Parties of the EEA Agreement.

Goods may be exempted from origin marking, when for technical or commercial reasons, it appears impossible to mark them.

3. The terms 'origin' and 'originating' shall refer to non-preferential origin in accordance with the Articles 22 to 26 of the Community Customs Code.
4. 'Placing on the market' shall mean the making available on the Community market of an individual product intended for end use, with a view to distribution and/or use, whether in return of payment or free of charge.

⁷ OJ L 184, 17.7.1999, p. 23.

5. ‘Competent authorities’ shall mean any authorities involved in the control of goods either at the time of importation or at the time of placing on the market of such goods.
6. This Regulation shall not apply to goods of a non-commercial nature contained in travellers’ personal luggage within the limits laid down in respect of relief from customs duties, and if there are no material indications to suggest that the goods are part of commercial traffic.

When imported goods may be granted relief from import duties pursuant to Regulation (EEC) No 918/83⁸, and there are no material indications to suggest that the goods are part of commercial traffic, these goods may also be excluded from the scope of this Regulation.

The Commission may adopt implementing measures, in accordance with the procedure referred to in Article 6(2), to determine the specific categories of goods to which paragraph 6 shall apply.

Article 2

The importation or placing on the market of goods shall be subject to origin marking under the conditions established in this Regulation.

Article 3

1. The country of origin of goods shall be marked on these goods. In case where goods are packaged, the marking shall be made separately on the package.

The Commission may adopt implementing measures, in accordance with the procedure referred to in Article 6(2), to determine cases in which marking on the packaging shall be accepted in lieu of marking on the goods themselves. This should, in particular, be the case where goods do normally reach the final consumer or user in their usual packaging.

2. The words “made-in” together with the name of the country of origin shall indicate the origin of goods. The marking may be made in any official language of the European Communities, which is easily understood by the final customers in the Member State in which the goods are to be marketed.
3. The origin marking shall appear in clearly legible and indelible characters, it shall be visible during normal handling, markedly distinct from other information, and be presented in a way which is not misleading nor likely to create an erroneous impression with regard to the origin of the product.
4. The goods shall bear the required marking at the importation. Without prejudice to measures taken following Article 5 paragraph 3, the marking may not be removed or tampered with until the goods have been sold to the final consumer or user.

⁸ OJ L 105, 23.4.1983, p. 1. Regulation as last amended by the Act of Accession 2003.

Article 4

The Commission may adopt implementing measures, in accordance with the procedure referred to in Article 6(2), in particular, to:

- Determine the detailed form and modalities of origin marking.
- Establish a list of terms in all Community languages which clearly express that goods originate in the country indicated in the marking.
- Determine the cases where commonly used abbreviations unmistakably indicate the country of origin and can be used for the purpose of this Regulation.
- Determine the cases in which goods cannot or need not be marked for technical or economic reasons
- Determine other rules that may be required when goods are found not in compliance with this regulation.
- To update of the Annex to this Regulation where the assessment has changed as to whether origin marking is necessary for a specific sector.

Article 5

1. Goods are not in compliance with this Regulation, if:
 - They do not bear an origin marking.
 - The origin marking does not correspond to the origin of the goods.
 - The origin marking has being changed or removed, or has otherwise been tampered with, except where correction has been required pursuant to paragraph 3 of this Article.
2. The Commission may adopt further implementing measures in accordance with the procedure referred to in Article 6(2) as to declarations and supporting documents that can be taken to demonstrate compliance with the present Regulation.
3. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission within 9 months after the entry into force of this Regulation, at the latest, and shall notify it without delay of any subsequent amendment affecting them.
4. Where goods are not in compliance with this Regulation, Member States shall furthermore adopt the measures necessary to require the owner of the goods or any other person responsible for them to mark these goods in accordance with this Regulation and at their own expense.

5. Where necessary for the effective application of this Regulation, the competent authorities may exchange data received when controlling compliance with this Regulation, including with authorities and other persons or organisations which Member States have empowered pursuant to Article 11 of Directive 2005/29/EC. .

Article 6

1. The Commission shall be assisted by an Origin Marking Committee (hereinafter referred to as ‘the Committee’).
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5 (6) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its rules of procedure.

Article 7

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. Articles 2, 3 and 5 shall apply 12 month after the entry into force of this Regulation. In accordance with the procedure referred to in Article 6 (2), the Commission may extend this period by the time needed for operators to put into practice the origin marking requirements set by the implementing provisions, and in no case by less than six months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

ANNEX

The products on which this Regulation is to apply are identified by their CN codes.

CN Code	Description
4104 41 / 4104 49 / 4105 30 / 4106 22 / 4106 32 / 4106 40 / 4106 92 / 4107 to 4114 / 4302 13 / ex4302 19 (35, 80)	Crust & Finished Leather
4008 21 / 4008 11 / 4005 99 / 4204 / 4302 30 (25, 31) 8308 10(00) / 8308 90(00) / 9401 90 / 9403 90	Heels, Soles, Bands, Parts, synthetics, others
4201 / 4202 / 4203 / 4204/ 4205 / 4206	Saddlery and harness, travel goods, handbags and similar containers, articles of animal gut (other than silkworm gut)
4303 / 4304	Articles of apparel, clothing accessories and other articles of furskin, artificial fur and articles thereof
Ch 50 – 63	Textiles and textile articles
6401 / 6402 / 6403 / 6404 / 6405 / 6406	Footwear, gaiters and the like
6907 / 6908 / 6911 / 6912 / 6913 / 691490100	Ceramic products
7013 21 11 / 7013 21 19 / 7013 21 91 / 7013 21 99 / 7013 31 10 / 7013 31 90 / 7013 91 10 / 7013 91 90	Glassware of kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than headings 7010 or 7018) of lead crystal .
7113/7114/7115/7116	Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal, Articles of goldsmiths' or silversmiths' wares and parts thereof, of precious metal or of metal clad with precious, Other articles of precious metal clad with precious metal, Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed)
Ch. 94	Furniture, bedding, mattresses, cushions, lamps and lighting fittings, illuminated signs and the like, prefabricate buildings.
9603	Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorised, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees)