



Brussels, 3 July 2006

ORIGIN MARKING

STATE OF PLAY AND ORIENTATIONS FOR THE WAY FORWARD.

Introduction

In January 2006, the 133 Committee Full Members debated the Commission proposal for a Council Regulation on the indication of the country of origin of certain products imported from third countries¹ and passed the subject matter to the Commercial Questions Group for further technical discussions. Following a number of meetings of that group, and after the Council Legal Service has issued its opinion on the legal questions raised in the 133 Committee, significant progress has been made in resolving a number of technical and other issues even though a small number of outstanding questions remain that may benefit from further work, the Commission considers it timely to take stock of progress on this dossier so that the 133 Committee can give clear political orientations on the proposal with a view to reaching conclusions after the summer. We note that both the European Economic and Social Committee and the European Parliament have taken an interest in this matter in recent months.

Below is a short summary of the main issues that have been clarified thanks to the legal and technical work carried out in the last few months.

1. The Commission notes that a clear legal assessment has emerged in the technical discussions, namely that Article 133 is the correct and sufficient legal base for the proposal, and that the proposed Regulation is compatible with WTO law. This answers key legal concerns raised in the 133 Committee regarding the WTO compatibility of third country origin marking.
2. The legal assessment, in addition, holds up the enforcement approach proposed by the Commission, according to which customs authorities will be supported by in-market authorities in the Member States to ensure that marks of origin on imported goods are not manipulated once the goods have been cleared through customs. This would help not

¹ COM(2005) 661 final (doc. 5091/06 COMER 8 WTO 1 UD + COR 1 and ADD 1 + COR 1)

only to reduce whatever burden on customs, and to keep physical controls to an absolute minimum, but it is fully in step with trade facilitation efforts that aim to move enforcement away from the border. Information provided by the in-market authorities to customs would help the latter to keep controls at the border to a minimum of well targeted, efficient and effective checks. The Commission proposal offers the legal base for this approach and for the exchange of data that Member States may wish to organise between the different authorities according to their needs.

3. On customs questions, discussions have covered the role of origin information in customs procedures today, having in mind the principles underlying customs clearance and the verification of the origin of goods. The Commission has clarified in the technical working group of the Council that it is fully aware of competing enforcement priorities and that it is for Member States to find the right balance. Origin marking would, for example, seem an unlikely candidate for any future Community-wide risk profiling. Discussions have also been held on how controls would be organised under the terms of the customs union with Turkey.

4. Concerning the organisation of in-market controls, the choice of the appropriate authorities and procedures is a Member State prerogative with which the Commission cannot and does not wish to interfere. Whether and to what extent Member States require common guidance for enforcement depends on their choice of national authorities and procedures, and their common desire for such guidance. It is therefore best addressed at the implementation stage. The proposed Regulation provides a legal base for such guidance if Member States wish to have it.

5. On the technical details of marking itself, the Commission has affirmed its aim to keep the linguistic regime and any other elements as simple as possible, notably to avoid any novel or unique requirements. More broadly speaking, the fact that voluntary origin marking is already controlled in a number of Member States, and that it is mandatory in a number of trading partners suggests that answers to practical questions exist already, and that the required solutions only need to be identified when implementing or applying origin marking. We note that the technical details of the marking itself will be developed separately and subsequent to adoption of the current proposal.

6. The technical discussions in the Council have also explored in detail the legal reasoning requiring the exclusion of EEA members and Turkey, the relationship between the origin marking proposal and the ongoing WTO DDA negotiations, notably, on trade facilitation and NAMA NTBs, the substantive and enforcement differences between origin marking and other conformity or labelling requirements, the difference between the origin marking proposal on the one hand and the unfair commercial practices directive, or IPR enforcement, on the other hand, and what would be considered examples of cases in which origin marking was impossible for technical or economic reasons. The discussions have also touched further on the product and geographical scope of the Commission proposal.

7. Discussions in the technical group have also addressed the cost of marking and the effects – if any - which marking may have on prices. The Commission continues to draw the conclusion, based on those discussions, that marking costs are negligible. However, to avoid any extra costs, the proposed Regulation foresees continued reliance on existing procedures and does not envisage the introduction of new documents or certificates. In addition, a risk based enforcement approach would permit well targeted, efficient and effective documentary or physical controls only where necessary. Based on these

elements, and on experience worldwide with origin marking requirements, it is unlikely that any cost would translate into price increases. Price effects in any specific circumstance depend on how consumers will factor the additional choice offered by origin information into their own assessment of the price/quality ratio.

On the basis of the foregoing, the Commission has identified the following outstanding technical/legal questions:

- There may be a need to identify areas where greater precision may be legally required in the drafting of the proposed Council Regulation in order to frame the delegation of implementing powers to the Commission.
- We need to identify the degree to which suggestions by the Council Legal Service would require drafting changes in the proposal.
- Identify any other clarifications with regard to the text of the proposed Regulation, that Member States may require.

The Commission also sees benefit in seeking guidance from the customs experts, as has been suggested by a number of Member States. Focus should be on the following specific questions raised during the technical discussions of trade experts:

- Is there sufficient guarantee that the EC non-preferential rules of origin, notably the interpretation given to the term 'last substantial transformation', are being applied in a uniform manner across the Community, and that economic operators can obtain legal certainty through the use of binding origin information?
- What does control of origin marking 'at importation' imply in customs terms, notably with regard to existing customs approved treatment and customs procedures?
- What if any would be the implications for the proposed origin marking scheme of adoption of the modernized Community Customs Code and its future implementing provisions?

Conclusion:

The Commission considers that it should be possible to address these few outstanding technical issues rapidly – within the next month or so. Answers to these remaining issues would then be ready in time for a further, final discussion of the proposal in the 133 Committee in the early autumn, when it is expected that Member States would take a clear political position on the proposal and draw conclusions. The Commission therefore invites Member States to take note of the technical clarifications set out in this note, to ensure that their colleagues in the expert groups rapidly address and resolve and outstanding technical questions listed above and prepare to take a final view on the Commission proposal at a 133 Titulaires meeting after the summer.