



FOREIGN TRADE ASSOCIATION

Consideration of an EU Origin Marking Scheme – Position of the FTA

In the Working Document of 12 December 2004, the Commission lists the possible merits afforded by an EU origin marking scheme. The main merits, according to the Commission, could be combating consumer deception, as well as promoting the EU single market internationally. After having consulted with its member firms, the FTA has reached the conclusion that such a scheme would *not* bring any added value; it would not improve consumer protection, nor aid the fight against counterfeiting. In any case, the costs would greatly outweigh the benefits, and the scheme would add a significant administrative burden for all parties involved. The FTA therefore strongly advises the Commission to abandon any plans to introduce an EU origin marking scheme. However, should the Commission decide that it wishes to introduce such a scheme it should be introduced on a completely voluntary basis. The reasons for the FTA's conclusions will be explained more in detail below.

A. Objectives of the scheme

As importers and retailers of mainly consumer goods, consumer protection and the fight against counterfeited goods are issues of great concern for the FTA member companies.

As the Commission also is well aware of, counterfeited goods are increasingly becoming a problem for the trade sector, as counterfeiters are moving from traditional luxury goods into ordinary consumer products. The FTA fully supports the fight against counterfeited and pirated goods.

The FTA does not believe, however, that the introduction of an EU origin marking scheme would actually fulfil these objectives. In any event, the FTA is convinced that there are far more effective ways to achieve them, without subjecting any of the fair players on the market to any excessive risk, cost or administrative burden.

One of the main reasons why the FTA does not believe that an EU origin marking scheme would contribute to consumer protection is that such a label does not say anything about the inherent nature of a product. If a “made in EU” label were introduced, it would encompass an area of 25 Member States, whose products and methods of production cannot in any way be described as heterogeneous. This would also be the case if origin marking were obligatory for third country imports. Another question is how informative an EU origin mark actually would be for the consumer. Materials may well be designed and produced outside the EU, though if the final product is created within the EU, non-preferential rules of origin would allow them to carry the label “made in EU”.

The fact that an origin label says so little about the actual product is one of the reasons why the FTA does not accept the argument that a label would help fight counterfeiting. Nowadays, many legitimate goods (also branded goods) are produced in the same countries as counterfeit goods. An EU origin mark could not often be used as a distinguishing factor between the two. In view of this, it is hard to see how an EU origin mark could combat counterfeiting.

The FTA is very sceptical as to what merits the third possible objective of an EU origin marking scheme, the international promotion of the Single Market, could bring. First of all, it is hard to see how this could be used as market tool in the EU 25. Secondly, and perhaps more importantly, if the Single Market should be promoted internationally, the FTA is in serious doubt as to whether it should be promoted via a Council Regulation and an origin mark. Such promotion could easily be interpreted as protectionist, and it could also end up being used in a discriminatory fashion.

B. The Options Proposed by the Commission

1. Regulation of a wholly voluntary system

Though legally there may be no strong objections against such a proposal, for the reasons explained above, the FTA does not believe that such a system would be beneficial. The FTA also fears that such a scheme could be abused.

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

The FTA is strongly against such a system. The unequal treatment of imported goods and EU goods that would result from such a system does not appear to be compatible with the MFN principle and could even be said to be contrary to international trade law.

3. Obligatory origin marking for both imports and domestic products

We would not consider a marking for all products a good idea, as this can practically result in discrimination against imported goods. Imported goods would be at a disadvantage without there being any objective grounds for it. This suggestion would also lead to a huge administrative burden and costs for all parties involved.

C. Costs

Under the previous heading, the FTA has explained why it does not believe that an EU origin marking scheme would bring any added value. In fact, for the trading sector, the administrative burden would only lead to extra costs and further complicate an already complex system. In the end, these costs would end up being paid by the European consumer. The added bureaucracy would also broaden the margin for mistakes on all sides. The responsibility would once again fall upon the importer, which further adding to the risk of importing.

D. WTO Aspects

The FTA is in serious doubt as to whether an EU origin marking scheme would comply with WTO rules. Under GATT Article IX, marks of origin should be kept to a minimum, and only to protect consumers from fraudulent and misleading information. MFN treatment applies to marking requirements.

The argument that an EU origin mark could be used as a marketing tool for the Single Market clearly indicates that such a mark can be used for protectionist purposes if it were introduced. Furthermore, there are no indications that an EU-wide marking scheme would serve a purpose, as national marking schemes already exist. For the reasons explained above, the FTA does not believe that the proposed origin mark would actually benefit consumer safety. The standards set by Article IX (2) would thus not be met. Because of this, none of the proposed alternatives should be introduced.

Option 2, which proposes voluntary marking for EU products and mandatory marking for imported products, is very problematical from the MFN and national principle perspectives. The EU has also regularly opposed the US rules, which are similarly constructed.

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