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Origin Marking in the European Union: Mandatory or Voluntary?

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This article analyses the idiosyncrasies of the EU origin marking regime for non-food products and the latest attempt to reform it. In doing so, it begins with an overview of the international trade rules overseeing the entire matter, as well as some insights about origin marking schemes in other countries, with particular regard to the United States. The author then points out that, aside from certain exceptions, there is no single harmonized legal provision regarding origin marking on non-food products imported into or produced within EU borders, with the consequence that EU manufacturers and importers may decide whether to mark their products with origin information or not. In this latter case, the product label must not contain false or deceptive origin references. The author concludes analysing the latest reform attempt carried out by the EU Commission in 2013 which is still deadlocked within the EU Council.

1 Introduction

Although there is no legal definition of it, a mark of origin can be defined as a designation placed on a good (or its wrapping, packaging, container, etc.) indicating the country where such good was obtained or where it was manufactured.

The mark of origin may be placed on imported and domestic goods and its main scope is, inter alia, to guarantee to consumers transparency as to the geographical origin of the goods and therefore avoiding deceptive practices perpetrated by the manufacturer and/or the importer.

In this respect, according to Article IX(2) of GATT, WTO Members may adopt and enforce laws and regulations relating to marks of origin on imported goods, having the scope of protecting consumers against fraudulent or misleading indications. Moreover, according to Article 1(1) of the Madrid Agreement of 1891 on the repression of false or deceptive indications of origin of goods, the goods bearing a false or deceptive indication of origin must be seized at the importation.

However, bringing forth origin marking schemes is far from being an easy task: in order to pass the WTO exam, they should be carefully shaped in order to avoid unnecessary burdens to trade as set forth in Article 2(1) and 2(2) of the WTO Agreement on Technical Barriers to Trade.[1]

Having said the above, international trade rules allow lawmakers to put in place origin marking schemes on domestic and imported goods and such rules may be based on a mandatory or voluntary base and, according to Article 1(2) of the WTO Agreement on Rules of Origin, the criteria applied to determine origin, are those set forth for non-preferential commercial policy instruments[2] which are based on the 'wholly produced' and the 'substantial transformation' rules, depending whether one or two (or even more) countries have come into play in giving origin to the good at stake.[3]

Notes

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1 *See* the WTO dispute between the US, Canada and Mexico (DS384, DS386 – Certain Country of Origin Labeling (COOL) requirements).

2 Which include the most-favoured-nation treatment, anti-dumping and countervailing duties, safeguard measures, quantitative restrictions or tariff quotas, trade statistics.

3 *See* Annex K of the Revised Kyoto Convention.