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COMMISSION COMMUNICATION TO THE COUNCIL
CONCERNING TEXTILE PROBLEMS ASSOCIATED
WITH THE QUESTION OF ORIGIN MARKINGS

(Communication by the Commission to the Council)

Commission Communication to the Council concerning textile problems associated with the question of origin markings

INTRODUCTION

The question of establishing rules relating to origin marking (1) for clothing and other textile articles, has arisen, in particular, since certain Member States have considered introducing obligatory origin marking (which up to now was optional) for certain garments and other textile articles imported or sold in their territory. The Commission has already pointed out that, taking account of their impact on intra-Community trade, these measures do not seem to it to be in conformity with Articles 30 et seq. of the Treaty. It can only fall to the Community to possibly take measures in this area.

The Commission feels however that to make it possible to express an opinion on such an opportunity, it is necessary to enquire whether the problems which are behind these measures, the importance of which the Commission recognizes, cannot be resolved by other means which are placed in a more global context.

In this light the present document contains a certain number of concrete proposals in two essential areas: prevention of fraud and economic outward processing traffic.

On the one hand the alarming extent of frauds established since 1978 in textile trade justifies that one enquires into the effectiveness of the arrangements in use up to the present in this area and remedies its deficiencies.

On the other hand the disparate character of policies carried out for several years in regard to economic outward processing had created distortions in the structure of foreign trade of certain Member States, distortions which are assuredly one of the basic reasons for measures such as origin marking. It is therefore necessary to examine the possibilities of eliminating these distortions by following up efforts already undertaken in this area for the legal framing and harmonization of the economic outward processing regime and for the transparency of this type of trade.

On the basis of an examination of these two problems the final part of the present communication attempts to draw certain conclusions as regards the origin marking.

I. Prevention of fraud

The system set up in 1977 hinges upon the control of certificates of declarations of origin carried out by Customs authorities of different Member States. It was concluded from the first months of application that the requirement of certificates or declarations of origin was not sufficient in itself to effectively prevent fraud unless it was accompanied by complimentary measures which allowed detection, curbing and or course, prevention of abuses or irregularities and in particular falsification of certificates of origin.

(1) 'Origin marking' refers to the affixing in a permanent manner of a label of fabric or other material by the producer or importer, on the garment or textile article and/or on the packing thereof indicating the country of origin of the product. This indication of origin should not be confused with other indications of a technical or commercial nature such as trade marks, trade names, labels of quality, cleaning instructions labels or other labels provided for in regulations in force (e.g. labels of composition).

In this context, the Commission has already undertaken certain appropriate action such as the reinforcement of administrative cooperation which has been proposed for certain third countries. The Commission however feels that it is necessary to complete the action already undertaken in this area by the following measures :

1) Improvement of exchanges of information on fraud between Member States and between them and the Commission

The procedure for exchange of information used up to now has worked well. However, its informal character and the absence of a legal basis for the exchange of information has meant that this system has not been used to its full advantage. Certain Member States are still hesitant about communicating information requested usually for legal reasons possibly relating to commercial or customs secrets. Even if the informal nature of the exchanges has meant that obstacles in certain cases have been overcome, problems of principle remain and situations vary from one Member State to another.

Experience has demonstrated that effective exchanges of information is the condition sine qua non for the successful prevention of fraud. On the one hand the risk of ramification of fraudulent trade throughout the Community necessitates that Member States inform each other in coordination with the Commission, of the details of cases discovered at a national level and in particular details regarding the names of the operators in third countries and the fraudulent methods used. On the other hand, in order to allow the Commission to assure its responsibilities vis-à-vis third countries, it is indispensable that the Commission has in each case at its disposal all the details of proof gathered by Member States which will allow it to fulfil this role.

This is why the Commission proposes to create a legal basis for these exchanges of information which will make it obligatory and systematic for the more important cases and will specify their extent and nature. It will provide in particular that all the documentary information establishing proof as regards details and persons concerned, should be communicated to the Commission which will in turn present them in the appropriate context to the supplying third country.

2) Improvement of methods of enquiry

Enquiries carried out up to now by the Community in third countries have produced satisfying results as regards establishing facts and proof. This demonstrates that on-the-spot enquiries are the best method of achieving results. However, experience has also shown that the means and attitudes of Member States are not identical in this regard. To date, only certain Member States have carried out this type of enquiry. It is necessary therefore that the Community as such acquires the means necessary for such a policy by placing each Member State in the same situation and giving them the same chance of achieving optimum results. As the establishing of material proof of fraudulent operations is the essential condition for Community action vis-à-vis third countries, it is natural that in future this type of enquiry should be harmonized.

To meet these objectives, the Commission advocates the creation of a Community research and investigation group which would operate under the guidance of the competent Commission service in the following manner: each Member State would, with the agreement of the Commission, designate an official from its own national investigation service as a permanent member of this group (without changing his national posting or tasks); every time an enquiry in a third country seems necessary the Commission would be able to call upon members of this group (not necessarily of the same nationality of the Member State involved in the fraud case) who would be entrusted along with a representative of the competent service of the Commission with the mission of enquiry in the third country in the name of the Community during the time necessary and would have his expenses paid for by the Community.

The people in charge of Community Missions would of course have made the necessary contacts with the Member States concerned and would have access to information necessary for the accomplishment of their task.

It will furthermore be necessary (more than in the past) to call upon the Commission's and Member States' representatives in the third country concerned for information to be gathered on-the-spot both during and after the enquiry.

3. Follow up necessary to frauds

The Commission considers that one of the most effective measures against frauds consists of the retrospective deduction of the quantities fraudulently imported from the quantitative limits applicable in the true country of origin. In this regard, it is necessary that the Commission in future takes every measure necessary through the requisite legal means to ensure the retrospective deduction of the entire quantity of the goods in respect of which fraudulent character has been established as a result of the enquiries.

4. Reinforcement of administrative cooperation to prevent fraud in intra-Community trade

In this context, Commission decision of 20 December 1979 has brought an improvement and clarification in the situation regarding control of origin. Nevertheless, further efforts are necessary to prevent cases of fraud (while respecting the Treaty) which can only harm the preservation of intra-Community free circulation in the end by undermining the confidence which Customs administrations of Member States have in each other. As good administrative cooperation is the first condition for confidence, the Commission feels that it is necessary as soon as a serious suspicion of fraud appears for Member States to have recourse in the future (more than in the past) to an administrative cooperation to check the origin of certain textile products in intra-Community trade.

II. Economic outward processing traffic

Economic outward processing traffic may be defined as a form of industrial cooperation with certain third countries which gives Community industries the opportunity to export Community raw materials (mostly fabric) as well as, possibly, the "know-how", with a view to having finished products made up in a specified third country (with much lower salary costs) and reimported after processing. The operation allows those industries which have part of their production carried out abroad to benefit from the lower production costs existing in certain third countries and therefore to balance their total cost price (the principle of equal distribution of costs) so making their overall production more competitive on internal and external markets.

A first proposal for harmonizing the criteria for applying this regime was presented by the Commission to the Council in 1979 and is still under discussion.

However, to completely realize the overall objectives of a legal framework, harmonization and above all transparency which will provide for the elimination of the present distortions in the economic outward processing regime, it is necessary to envisage the extension of the provisions of the regulation which will be adopted for Mediterranean countries and in particular its basic principles (1) to all outward processing operations, carried out with all third countries and that one thereby fixes definitely the criteria which were not entirely harmonized for the Mediterranean countries, in particular the single percentage of outward processing operations in relation to the production of the applicants.

Of course, this extension should as a matter of priority be completed for operations carried out in third countries for which specific quantitative objectives already exist (at a national level at least) i.e. eastern block countries and Yugoslavia.

For these countries and to in particular attain the objective of transparency of external trade, the harmonization of the basic criterion should naturally be accompanied by a harmonization of the conditions under which the quantitative regimes themselves are administered and especially the harmonization of quantitative limits specifically reserved for outward processing, the apportionment of these limits by MFA categories, the transformation of limits expressed in value to limits expressed in quantities and finally the publication in their entirety of all limits fixed in this context.

The proposed extension should furthermore go beyond State trading countries and Yugoslavia to complete a true global textiles economic outward processing regime applicable to all trade of this type.

- (1) The 3 basic principles of the proposed regulation regarding Mediterranean :
- the principle of only reserving the regime for those Community operators carrying on an industrial activity in the Community and whose products are identical to those made under the regime in the third country.
 - The principle that the applicant's Community production will be kept constant in relation to the activity carried out abroad under the regime. The application of this principle is assured by fixing the maximum percentage of outward processing work which the applicant may carry out in proportion to his own production within the Community.
 - The principle that semi-products for exportation with a view to transformation ought to be of Community origin.

III. Origin marking

As a conclusion to the preceding reflections the Commission does not consider that making origin marking obligatory in the present state of affairs at the level of the Community will give rise to sufficiently noteworthy improvements in the situation having regard to the objectives described earlier. In the prevention of fraud area, the effectiveness of origin marking as an additional means of prevention does not appear to be sufficient to clearly justify the further constraints which will result from it whereas the concrete proposals presented by the Commission are the replies most liable to terminate the phenomenon in the end. Furthermore the elimination of distortions in the context of economic outward processing traffic should provide for the control of one of the basic causes of the problem as a result of the transparency of this trade.

Protection of and information for the consumer remain of course an objective of prime importance. However in this respect the Commission has difficulty in believing that the consumers have a general interest in origin markings of textile products. This interest exists only for certain products which vary according to consumer habits and public taste which differ from one social and geographical context to the other. Consumer interest cannot therefore be regarded as constituting a sufficient basis for an obligatory regulation in this regard.

After all, the origin does not appear to be the only criterion by which consumers judge the quality of the product on offer. Information such as the origin of the raw material, the use of a Community design or model, the finishing of a product under a contract for balanced industrial cooperation (TTP) may also be of interest to the consumer, which would make information relating only to the origin, incomplete. This is a further reason for leaving origin marking up to operators concerned.

However, it cannot be denied that consumer interest dictates that they should be protected against possible fraudulent manipulation of origin markings. It is therefore necessary that the effective control of an origin marking can at present be left up to the operators concerned. This control cannot be carried out at the frontiers but should continue to take the form as in the past, of an internal economic check at the distribution.

In the same context, it is equally necessary to determine precise and harmonized rules for the entire Community every time that a Community or third country enterprise feels the necessity to take the precaution of indicating origin on its products and every time he is obliged to, if the trade mark is liable to cause some confusion as to origin of the product.

The uniform rules and criteria which should be used to determine the origin of a product destined to be marked, should not differ from those existing for customs control of origin in order to avoid any risk of confusion.

Conclusion

The present communication does not at this stage contain the legal acts which will be proposed by the Commission to the Council for adoption so as to implement the intentions expressed in this document. Nevertheless the Commission can already indicate that it will shortly present proposals for texts in this regard. These essentially concern :

- a proposal for a Council Regulation completing and modifying Regulation (EEC) No 616/78 regarding proof of origin for imports of textile products. The aim of these texts will be for the setting up of a formal procedure for exchanges of information on fraud between Member States and between them and the Commission, as well as for the creation of a Community research and investigation group;
- a proposal for a Council Regulation extending the provision of the Regulation already proposed concerning textile outward processing operations carried out in Mediterranean countries, to all outward processing operations carried out in all third countries;
- a proposal for a directive fixing uniform criteria applicable to origin marking when private operators decide to avail of this possibility.