

## Legal Requirements for Determining and Indicating Origin of Goods

Dhanya N. Menon\*  
Ed. Dr. Sudhir Ravindran\*\*

*The requirement for indicating origin on the goods is also known as "Rules of Origin". It is a mechanism for identifying from where the goods originate or from where it is being exported or the place of its manufacture. They are the criteria needed to determine national source of a product. It is used by governments, trade, industry and consumers to determine the country in which imported goods should be treated as having been produced. This article highlights the need for determining the national source of a product under various laws enacted in India.*

### Introduction

Globalisation, to a great extent has increased the international competitiveness of nations. The consequences of globalisation viz. trade liberalisation and market opening are now clearly admitted as major agents of national growth. International trade has been opened up by removing the trade barriers, which helped many countries, especially the developing countries, to grow far more quickly than they would otherwise have done. The transportation as well as the communication costs has declined and the local market expanded,<sup>1</sup> which further fuelled the pace of globalisation. Reduction of manmade barriers to the flow of goods, services

and the capital, lead to an increasingly rapid appearance of new product and services in the market. There is practically no major product today in India that does not have some foreign inputs. Foreign sourcing is necessitated not only with the aim of earning profit but for also to remain competitive. Thus, today it is impossible to pin point the producers of goods and providers of services or the place where it is produced.<sup>2</sup>

The traditional ways for identifying the origin of goods available in a country's market were to marking of the goods with symbols, seals, various forms of stamps, etc. During the middle ages, trade guilds began using marks to indicate who made a

\* Advocate, Intellectual Property Attorney with Altacit Global, Creative Enclave, 148-150, III Floor, Luz Church Road, Mylapore, Chennai 34, E mail: ip@altacit.com

\*\* Solicitor-England and Wales, Patent and Trade mark Agent and Attorney with Altacit Global. E-mail:ravindran@altacit.com

1 Joseph Stigilitz, Globalisation and its Discontents, Penguin Books (2002), p.21.

2 Avinash Jha, Background to Globalisation, Centre for Education and Documentation, Mumbai & Bangalore (2000), p.9.

specific product. Later the function was taken over by brand names, trademark and geographical indications. However, the main object of these kinds of marking was not only to indicate the source of origin but also was to assure the quality of the goods which bear the marks. Other than this, sometimes the specific nature of the goods, the regulations prevailing in the countries where it is made available or security reasons, necessitates that the goods which are sold in the market, imported to, or exported from a country should bear certain information on them, like the place of manufacturing. The requirement of indicating origin of goods becomes an important issue because of the globalisation of goods and services and liberalisation market policies.

#### **Justification for the Requirement for Indicating the Origin**

The requirement for indicating origin on the goods is also known as "Rules of Origin". It is a mechanism for identifying from where the goods originate or from where it is being exported, or the place of its manufacture. They are the criteria needed to determine national source of a product. It is used by governments, trade, industry and consumers to determine the country in which imported goods should be treated as having been produced. Traditionally, it is used to give preferential treatment to import and export of goods from certain countries. The Rules of Origin as a matter of practice is an extension of import and export laws.

There are various reasons necessitating the determination of

origin of goods. The foremost of these reasons is the import under preferential agreements to ensure that the lowest or preferential rates are made available to the goods originating from the countries under the preferential agreement. Other reason is the reduced Tariff provided through trade treaties between two or countries. Usually, these agreements are bilateral agreements between two countries and are meant to reduce or completely remove Tariffs to trade.

It is also necessary to ascertain the origin of goods in order to apply basic trade policy measures such as Tariffs, quantitative restrictions, anti-dumping and countervailing duties. Other reasons are import under Most Favoured Nation Tariff rates (MFN Tariff)<sup>3</sup> and for collection of trade statistics used for economic indicators for policy makers. Depending upon the purpose for which they are used, the rules differ from country to country. The requirement for indication of origin of goods arises due to the international trade because of different trade policies of different countries. Their importance is derived from the fact that duties and restrictions in several cases depend upon the source of imports.

Counterfeiting of goods for availing the reduced Tariff is becoming a problem that is faced by the trade. The shift as counterfeiters move from traditional luxury goods into ordinary consumer products aggravates the issue. To prevent this, it is required that the imported goods should be adequately marked with the country of origin to determine their eligibility for reduced Tariff. This requirement of indication

<sup>3</sup> MFN Tariff is the Tariff level that a member of the GATT/WTO charges on a good to other members.

