

Legal Requirements for Determining and Indicating Origin of Goods

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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,¹ 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.²

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

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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)³ 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

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

origin of goods is also important to implement measures and instruments of commercial policy such as anti-dumping duties and safeguard measures.

Indication of Origin: Indian Concern

The reason for imposing the origin indication requirement is also to check the trade deflection. Sometimes, it may so happen that goods from a third party country enter into a member country through a partner country on a preferential basis thereby, causing trade deflection.⁴ The Rules of Origin⁵ has objective of preventing this disposition. However, the benefit of this system is not 100 per cent realised, since member countries are hesitant to grant the preferential treatment on goods which they trade in higher volume.⁶

The legal requirement for indicating origin on goods emanates either from the domestic laws of a country or through the trade agreements that a country enter with other countries like bilateral, sub-regional or regional agreements.

In the Indian context, one of the most important arrangements is the South Asian Association for Regional Corporation (SAARC) formed in 1985.⁷ Subsequent to which, in 2006, a preferential trading agreement,

The South Asian Free Trade Area Treaty was formed by the members of SAARC.⁸ Under this agreement, SAARC members are to bring their duties down to 20 per cent for the goods specified in the agreement except the goods which are listed as sensitive in each country.

The relationship between India and other SAARC member countries is historical. India's trade with Bangladesh, Bhutan, Maldives, Nepal and Sri Lanka are governed by the bilateral treaties. All these agreements, may it be regional or bilateral agreements are accompanied by Rules of Origin. To avail the benefits of these preferential treatments a specific requirement is imposed to indicate the country of origin on goods which are imported to and exported from the member countries of this agreement.

Rules in India

The customs duty in India is governed by the Customs Act, 1962 and the Customs Tariff Act, 1975. One of the objectives of customs duty is the prevention of illegal import and export. As per Section 5 of the Customs Tariff Act, 1975, the Central Government is given the power to issue notification regarding rules for determining whether any article is originated from any foreign country among whom India has

4 "Rules of Origin Under Regional Trade Agreements", Ram Upendra Das, available at http://www.ris.org.in/dp163_pap.pdf, as on 14th April, 2010

5 In the Rules of Origin, apart from that the goods should bear the place of its origin, there are some tests to determine whether or not a particular product has originated in a particular country.

6 "Impacts of the South Asia Free Trade Agreement", Elizabeth Krueger & et. al., available at <http://www.lafollette.wisc.edu/publications/workshops/2003-2004/pa869/2004-SAFTA.pdf>, as on 14th April, 2010.

7 Its object was to exploit accelerated economic growth, social progress and cultural development in the region for the welfare of people in South Asia.

8 The member nations of SAARC are India, Nepal, Bhutan, Bangladesh, Sri Lanka, Maldives and Pakistan

entered in to a trade agreement imposing a lower customs duty rate.⁹ In the Customs Tariff (Determination of Origin of Goods under the Agreement on SAARC Preferential Trading Arrangement) Rules, 1995 certain goods are specified to which the preferential concessions are accorded. In order to avail the preferential concession, the goods are to be supported by a Certificate of Origin indicating the origin of those goods to make them eligible for customs duty concessions.¹⁰

A similar requirement can also be seen in the Customs Act, 1962. As per section 11 of the Customs Act, the Central Government is empowered to issue Notifications imposing conditions on the importation of goods specified in the Notification. The purposes of imposing such conditions are also listed in the Act like the prevention of deceptive practices; the implementation of any treaty, agreement or convention with any country; the protection of patents, trade marks and copyrights; the prevention of smuggling etc.

Trade Mark

The requirement for indicating origin of goods imported/exported can also be seen in the law relating to Trade Marks and Geographical Indication in India. Section 139 of the Trade Marks Act, 1999¹¹ empowers the Central Government to issue notification requiring the certain

goods to indicate the country or place in which they were made or produced, or of the name and address of the manufacturer or the person for whom the goods were manufactured. The goods are to be specified by issuing notifications. Only those goods which are produced outside India and are imported to India are required to indicate the place of origin. In certain circumstances, even the goods manufactured within the Indian jurisdiction can be required to indicate such information on them.

The provisions in the Trade Marks Act requiring for indicating origin of goods should be read along with the Customs Act, 1962. In exercise of the power conferred under the Trade and Merchandise Act, 1958 the only Notification issued by the Central Government requiring goods to show indication of origin was the Notification No. S.O. 1272 dated 25th April, 1962. The list of goods is specified in Part 1 of the Schedule annexed to the notification.¹² In case, if the goods are manufactured in a foreign country they are required to indicate the country of origin. In the notification, Section 5 exempts certain goods from the purview of the notification. A careful analysis of the reasons for the exemption will give a clear picture about the purpose of the requirement of indicating origin. It is clearly to distinguish the goods, avoid conflict between existing marks, and avoid passing off.

9 Customs Tariff (Determination of Origin of Goods under the Agreement on SAARC Preferential Trading Arrangement) Rules, 1995; Rules of Determination of Origin of goods under the Agreement on South Asian Free Trade Area (SAFTA) are examples of such notification issued by the Central Government.

10 See Rule 7 of Customs Tariff (Determination of Origin of Goods under the Agreement on SAARC Preferential Trading Arrangement) Rules, 1995.

11 Prior to 1999 Act, the Act in force was Trade & Merchandise Act, 1958. The corresponding provision was Section 117.

12 Refer: Annexure 1.

Geographical Indication of Goods

The Geographical Indications of Goods (Registration and Protection) Act 1999 also contains provisions relating to indicating origin of goods. The required information should be provided in the manner indicated in the notification.¹³ Such a notification will be issued only if substantial segment of interested dealers, producers or manufacturers make an application to the Central Government to that effect and the Central Government is convinced that it is necessary to do so in the public interest.

The objects of this compulsory marking of origin are many. If the provisions are construed from the context of respective Acts, one of the main objectives that can be identified is the prevention of falsification of marks. This will also help to prevent the passing locally manufactured goods off as imported goods. The other objective of the requirement of marking country of origin is to check the parallel importing of the goods to the domestic market.

If the provisions are construed from the context of Geographical Indication Act, the object of the provision is to check falsifying and falsely applying geographical indications. Indicating country of origin and geographical indication should not be confused with. Even if goods, which are geographical indication, are marked with countries from which they are originating, for example "Darjeeling

Tea made in America", it will amount to violation of geographical indication.

Conclusion

It becomes important for the manufacturers and traders to be in adherence to the Rules of Origin, of which major objective is to prevent counterfeiting of goods. This rule also plays a developmental role in a country or region.

The penalties for non-compliance with the rules of origin should be made more stringent.¹⁴ In India, the penalties are given under the Trade Mark Act and Geographical Indication Act for similar kind of offences is not as rigorous.¹⁵ The maximum punishment is imprisonment for a maximum period of two years or fine or both. The penalty provided under the Customs Act is also nominal amount of fine such as value of the impugned good or duty leviable on such good or five thousand rupees whichever ever is greater.

The Customs penalties and enforcement mechanism relating to violation and non-compliance of rules of origin have to be strengthened and made stringent. Rules of origin should be designed in a manner that is not trade restricting, in that they become trade barriers due to their complex methods of implementation. Situations have arisen where a single country follows different rules of origin under different agreements. Such a situation creates confusion in the minds of trading community. Therefore, a common law of origin of goods can be framed.

¹³ See: Section 71 of the Geographical indications of Goods (Registration and Protection) Act, 1999.

¹⁴ In US, the fine for non conformity with the rules of origin ranges from USD 5,000 to USD 10,000 and imprisonment for one to five years.

¹⁵ The maximum punishment is imprisonment for a maximum period of two years or fine or both.