

## The value of 'made in...'

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P O R T O L A N O  
C A V A L L O  
s t u d i o l e g a l e

### *Introduction*

On September 29 2010 the EU International Trade Committee approved a proposal for an EU-wide system of origin labelling for goods imported from third countries. The proposed EU regulation would affect specific categories of goods, such as clothing, textiles, footwear, ceramics and jewellery, and would apply to products destined for end users. It aims to ensure that consumers are correctly informed of a product's origin and adequately protected against possible health risks, counterfeiting and unfair competition. The committee has also advocated the introduction of harmonized penalties for breaches of the rules.

At present, the European Union has no harmonized origin-marking rules; nor is there a general obligation to indicate a product's origin in the interests of consumer protection, although some sector-specific requirements apply (eg, for foodstuffs).

The immediate impact in Italy has been the government's decision to freeze the so-called Reguzzoni–Versace<sup>1</sup> law concerning the new 'made in Italy' labelling system, which was supposed to enter in force on October 1 2010.

The law would have required negotiations between EU institutions and the Italian government in any case. In July 2010 it was severely criticized by EU bodies which considered it to be in conflict with the general prohibition against measures by member states that distort competition and trade within the European Union.<sup>2</sup>

### *Key provisions*

The law seeks to regulate 'made in Italy' labelling by establishing a mandatory system for textiles, footwear and leather goods. Its system identifies where each step of the production process takes place and aims to ensure the traceability of each product. It provides that products can be labelled 'made in Italy' if their production process took place mainly in Italy. This includes products for which at least two stages of the manufacturing process took place in Italy.

However, problems arise when the provisions are examined in detail. Rules on specific phases of production for each type of product identify:

- ▶ spinning, weaving, finishing and tailoring, in the case of textiles;
- ▶ tanning, cutting, preparing, assembling and finishing, in the case of leather goods; and



Author page »



Author page »

- ▶ tanning, the assembly of the upper and finishing (including products using imported raw hides), in the case of footwear.

Provided that at least two of these stages have taken place in Italy, a product can be labelled as being made in Italy, regardless of whether it incorporates imported natural or synthetic raw materials.

### *Problems*

The aim of the law is to halt the trend towards outsourcing production processes to countries with lower labour costs and taxes. However, such countries can still manufacture products that benefit from the evocative power of the 'made in Italy' label, at considerable detriment to the Italian economy and the image of Italian products.

Despite the creditable intention of strengthening protection for products that are particularly representative of Italian style, such as textiles, leather goods and footwear, the law appears to undermine legal certainty.

Although the reform is meant to support small and medium-sized Italian companies against competition from so-called 'low-cost nations', and should indeed provide advantages for craft production, it may have the unintended effect of penalizing some of the larger companies that have contributed to the value of the 'made in Italy' brand. Such companies, particularly those in the textiles and leather goods sector, could be prohibited from using the term 'made in Italy' because they have chosen to delocalize their production in an attempt to remain competitive.

The law also aims to preserve good faith between consumers and manufacturers by giving consumers a right to be informed of the origins of products. However, it allows the coveted 'made in Italy' tag to be legitimately attached to products that have undergone only two stages of manufacturing in Italy, even where the processes in question - such as finishing and packaging in the case of textiles - contribute comparatively little to the character of the product. Such products may also be made from imported raw materials.

### *Incompatibility with EU law*

The law clearly contradicts the provisions of the World Trade Organization Agreement, Articles 35 and 36 of the Customs Code<sup>3</sup> and Article 28(30) of the Treaty on the Functioning of the European Union. Its provisions breach the basic prohibition against restrictions on imports and all measures with equivalent effect between EU member states.<sup>4</sup> A comparable breach of EU competition law has previously been recognized by the European Court of Justice in a similar case in which a national rule obliged certain companies to place their products on the market using a different label, incurring extra costs as a result.<sup>5</sup>

Therefore, the future of 'made in Italy' labelling is likely to be influenced, if not wholly determined, by the proposed EU regulation. The next step will be a vote in the European Parliament before Christmas, perhaps in the November session. The regulation will then come before the EU Council.

A conflict between national and EU provisions would result in a substantial failure to apply the recently introduced Italian legislation. It is well established that in matters reserved for EU jurisdiction, national judges cannot apply national law provision that contradict directives or the

treaty.6

Although the Reguzzoni–Versace Law may be ineffective, several measures on labelling and origin are in force in Italy. The Italian legislature has repeatedly intervened in recent years in an attempt to protect the values of Italian tradition, design and creativity through the use of the 'made in Italy' labelling.

#### *Current legislation and Supreme Court interpretation*

'Made in Italy' labelling was originally intended to identify the origin of goods for customs purposes, and thus the duty payable on them. As such, the concept was established for the operation of the Customs Code, not to protect consumers against fraudulent practices or producers against unfair competition.

However, in 2003 Parliament took action to prevent such labels from being used on commercial products that originate outside Italy. It introduced a specific criminal provision in Article 4(49) of Law 350/2003, which punishes the "import and export for the purpose of sale or marketing of goods bearing false or misleading indications of origin" as an offence under Article 517 of the Criminal Code.

This provision expanded the scope of criminal protection against false or misleading indications of origin. It also identified the presentation of goods to Customs as the point at which a crime is deemed to be committed. This crime is punishable by seizure of the counterfeit goods and, after three months, their destruction at the offender's expense.

Thus, false use of the 'made in Italy' label is identified as referring to regulations on the origin of products. Such legislation includes the Customs Code, which (in Article 36) defines 'goods' for customs purposes. However, with respect to manufacturing, the relevant provision is Article 24, which states that:

*“Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last substantial, economically justified processing or working in an undertaking equipped for that purpose, and resulting in the manufacture of a new product or representing an important stage of manufacture.”*

Thus, in the case of goods whose production processes involve more than one country, Article 36 applies.

The system of penalties accompanying the rules could have proved a powerful deterrent, but the Supreme Court has undermined the system's effectiveness by its interpretation.

The court has interpreted the 'origin' of a product as relating to the particular manufacturer - not the particular place - from which the product originated.<sup>7</sup> As such, its case law seems to confuse the role of a trademark and a geographical indication or provenance.

A trademark is the distinctive sign of a product made by a particular producer. It represents a certain standard of quality because the producer - the owner of the distinctive sign - controls certain financial and legal factors, the various stages of the production process and the results of the process. However, a geographical indication of origin or provenance indicates the country or place where goods are made. In the past few years the Supreme Court appears to have begun to

share this opinion. In Decision 2648/2006 it ruled that:

*"A distinction is to be made between most cases of foreign-made products produced on behalf of an Italian manufacturer or importer (which supervised, organized and conducted the production process, assuming legal, economic and technical liability, or remained in a position to guarantee the quality of the goods), products which show only the name and possibly the location of the Italian manufacturer, but without specifying the product's place of manufacture, or showing only the name and address of the Italian manufacturer, and cases in which a producer uses the words 'produced in Italy' or 'made in Italy'."*

Where the 'made in Italy' label is used, the manufacturer provides an indication that the consumer is likely to understand as meaning that the product was entirely manufactured in Italy. If the product was manufactured abroad, this impression is evidently false.

What about cases in which a product has been manufactured abroad for an Italian manufacturer, which ensures that the quality standard of the goods manufactured by that producer is different? In most cases a consumer does not buy a product purely because it is actually produced in Italy or in another particular country because, in light of various subjective considerations, this not necessarily related to the product's quality.

A recent example of the strong link between trademarks and quality, irrespective of the place of manufacture, is the decision by the famous Italian fashion house Prada to introduce a label in the form of 'Prada - made in [place of manufacture]', such as 'Prada Milano - made in Peru', in order to retain the advantage of the trademark, with its powerful evocation of Italian style, in marketing goods that were manufactured abroad. Clothes, shoes and bags are thus produced using different traditions of craftsmanship and are sold with a Prada label that indicates their true origin and place of manufacture.

The Ronchi Decree<sup>8</sup> provides that companies can label their goods as '100% made in Italy' only if the goods are entirely obtained from or produced in Italy - this includes their design, planning, processing and packaging. Thus, goods can be labelled as being entirely made in Italy - and can benefit from the evocative power of this phrase - even if they are branded with a foreign trademark or are not made from Italian raw materials. These paradoxical results conflict with EU and national principles on consumer information.<sup>9</sup>

The approval of an EU regulation on country of origin labelling will definitely help to clarify the regulatory position in Italy. It could even lead to a unified code, which would be a beneficial and advisable way of addressing the many problems surrounding this issue.

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