

Brussels, 19 April 2011

## How to ensure fair competition in a globalised market and on whether origin marking of imports would enhance the competitiveness of the European engineering industry – (COM(2005)0661)

### Executive summary:

Orgalime would like to reiterate its position that new legislation on obligatory marking of origin (made in) of imports would not have any positive effects on the competitiveness of the European engineering industries.

Orgalime is of the opinion that maintaining a competitive and strong industrial base in Europe requires other essential elements, such as favourable framework conditions, open markets, a focus on innovation and the respect of IPRs. Orgalime believes that the EU has enough legislation which obliges all market operators, including importers, to respect technical, environmental, social and safety laws. We however feel that the enforcement of this legislation and efficient market surveillance need to be further improved.

### 1. Introduction

In recent years, industry and public institutions have increasingly cooperated in a search to improve the framework conditions under which businesses work and thus enhance the competitiveness of Europe as the manufacturing base for our industry. The joint work concentrates on ensuring that for industrial companies, including engineering companies both big and small, Europe remains an attractive place to produce and invest.

### 2. Orgalime's views on establishing an industry-friendly environment in the EU and how to ensure fair competition in a globalised market

The European institutions recognise the key role that manufacturing industries, including the engineering industries, play as a driver of Europe's economy, both directly through the jobs that companies provide and indirectly throughout their supply chains, including not least the services industry. Maintaining a competitive and strong industrial base in Europe requires favourable, stable and predictable framework conditions that promote excellence, innovation, sustainability and an environment in which businesses can operate and invest.

*Orgalime, the European Engineering Industries Association, speaks for 32 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 10.6 million people in the EU and in 2009 accounted for some €1,427 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.*

[www.orgalime.org](http://www.orgalime.org)

Orgalime's work in recent years has therefore concentrated on helping to create an entrepreneur- and innovation-friendly regulatory framework. The engineering industries have worked with the institutions on several sectoral initiatives, for example EngineEurope, Electra, the Metalworking Study, the Factories of the Future PPP, the Key Enabling Technologies initiative, etc.

At technical legislation and horizontal cross-sectoral levels in the areas of Trade Policy, Environmental Policy, R&D Policy and legal aspects, Orgalime has provided the institutions with concrete feedback about the industries' vision for a competitive EU economy<sup>1</sup>.

We have identified the following actions, just to name a few, as capable of increasing the competitiveness of EU industry:

- First, we need to overcome the highly complex and continuously changing regulatory framework. With the development of the internal market - a major EU success story - came a considerable body of European technical legislation on products. However, on top of this the EU introduced a substantial body of legislation in areas such as the environment, employment and social affairs, occupational health and safety, consumer legislation, etc. This legislation is becoming unwieldy for manufacturers to handle. Therefore, the EU needs to slow down its process of creating new legislation and of constantly updating existing legislation.
- Second, the EU needs to pursue opening up markets, by concluding the WTO Doha round and by complementing it with more Free Trade Agreements with emerging countries. Furthermore, access to raw materials at competitive market conditions is essential for engineering companies.
- Third, innovation needs to be at the centre of the EU's policies in order to allow companies to maintain the worldwide technological leadership that our industry has acquired in many areas. Moreover, skilled staff play a determining role in maintaining the competitiveness of European companies, both big and small.
- Fourth, the protection of innovation and related IPRs needs to be improved and simplified in our traditional export markets - through trade negotiations - or at internal market level with the creation of a unitary patent protection.
- Lastly, we have to ensure **fair trade** and provide a level-playing field for European and foreign manufacturers. The EU needs to be as strict with foreign manufacturers as it is with European manufacturers when it comes to respecting technical, environmental, competition and IPR legislation.

The last point on fair trade is directly linked to topics concerning the "made in.." debate, namely social, environmental and safety issues. It should be noted that Orgalime has been campaigning for years for the establishment of a proper **market surveillance system** in the EU. Where legislation affects products, both manufacturers in the EU and their foreign competitors should be on an equal footing, which means that a product on the EU market – whether imported or manufactured in the EU - must respect all EU regulations.

The engineering industry is of the opinion that market surveillance in the EU needs to function better. While there is good legislation on paper - for example Regulation 765/2008/EC which imposes obligations on all market operators, including on importers - the **enforcement** of this legislation at member states level is insufficient due to little political will, lack of available human and financial resources and the lack of an adequate sanctions mechanism for lawbreakers.

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<sup>1</sup> Please see our position papers on the Orgalime website, as well as the publication "Manufacturing Matters".

Orgalime has therefore proposed concrete measures for reinforcing surveillance in a number of areas<sup>2</sup>.

It should be noted here that in our analysis of the competitiveness of the engineering industry and the need for proper market surveillance, origin marking of imports did not play a role and was not identified as a means of providing a solution to our challenges.

We comment hereafter in more detail on this particular issue.

### 3. Regarding marking of origin, the European institutions should take note of the views expressed by the majority of EU industries<sup>3</sup>

The discussion on the introduction of obligatory marking of origin for certain imported goods accelerated in 2003 and provoked much controversy among industry sectors. In 2003, the Commission submitted to the Council a working document on a possible obligatory origin marking scheme, in response to the interest of some industry sectors and a few Member States. In 2004, the Commission launched an extensive public consultation.

The public consultation revealed the following facts:

- The vast majority of EU industry sectors did not request any new European legislation on this issue, and therefore the Commission acknowledged that there was insufficient support for the introduction of new community rules *across the board*.
- Different manufacturing sectors had very diverging opinions. Only in some sectors – ceramics, textiles, leather goods, furniture and footwear– did a considerable number of stakeholders request new legislation. It should be noted that even in many of these sectors there was not a unanimous opinion or an overwhelming majority in favour of marking of origin.
- The European engineering industry<sup>4</sup> came to the conclusion that obligatory origin marking of imported goods, be they capital or consumer goods, would have no positive effect on the engineering industry, but would rather create complications and additional bureaucracy.<sup>5</sup>

The Commission then planned to develop a compromise which involved refraining from new horizontal legislation, by choosing a sector-specific approach to satisfy those very few sectors which unanimously or by considerable majority saw benefits in introducing obligatory marking of origin for imports in their product range. This work concluded in 2005 with the Commission proposal for a "Regulation on the indication of the country of origin of certain products imported from third countries" ([COM\(2005\)0661](#)).

While the Council has not yet developed its position on the Commission proposal, the European Parliament has welcomed the Commission text and suggested a number of changes, including extending the scope of the Regulation to other products.

<sup>2</sup> See for example the following Orgalime position papers:

- The role of customs and market surveillance authorities in the fight against counterfeiting & piracy - Revision of Regulation Com – 1383/2003, at <http://www.orgalime.org/positions/positions.asp?id=356>.

- Call for an effective pan-European market surveillance system, at <http://www.orgalime.org/positions/positions.asp?id=320>.

<sup>3</sup> The Italian association ANIMA does not share the views expressed in this position concerning origin marking legislation.

<sup>4</sup> With the exception of the Italian mechanical engineering industry association ANIMA.

<sup>5</sup> Please see the Orgalime letter to the then European Commissioner for External Trade: <http://www.orgalime.org/positions/positions.asp?id=162>

The engineering industry is closely following these developments and is becoming increasingly alarmed by the texts discussed between the institutions. The industry feels that the proposals do not respect the wishes of the largest part of EU industry and that there is a risk that the scope of the Regulation will be gradually extended to many other product categories.

These fears are based on the following observations. The draft Commission text stipulates in Article 1 that: "This regulation shall apply to **industrial products excluding** fisheries and aquaculture products (..) and foodstuff...". In Article 2 it says that "Goods that require marking are listed in the Annex to this Regulation..." and that this Annex can be changed through the comitology procedure<sup>6</sup>. It is now being discussed that the Commission could be empowered to adopt **delegated acts**<sup>7</sup> in order to update the Annex and thus decide whether origin marking is necessary for a specific sector.

In reality, the combination of these suggestions come very close to a "horizontal approach" for the Regulation, since the text as it stands now in principle addresses all **industrial products**. Amendments to the Annex and thus the extension of the applicability to other industry sectors could happen relatively quickly, within only two months<sup>8</sup>: Unless a prior impact assessment is carried out, the Commission could, if it so wishes in theory, decide to amend the Annex without organising either a consultation with stakeholders or a vote among Member States (*experts from Member States only need to be consulted*) and only "ex post" would the Parliament and the Council have the right to oppose the changed Annex by simple or qualified majority respectively.

These proposals alarm companies in the engineering industry. Any industry sector in Europe would constantly fear that it might be hit by new legislation. It is rather shocking for industry, at a time when the institutions repeatedly insist that they are keen on smart regulation, to introduce new proposals in this way. This only adds to the feeling of uncertainty, to which the manufacturing industry is already exposed.

#### 4. **Orgalime suggestions on how the scope of Regulation COM(2005)0661 shall be amended in future**

Orgalime suggests that Regulation COM(2005)0661 clearly stipulates in its text that only certain EU industry sectors are addressed. Such a clear specification in the text of the Regulation would also do justice to the title of the Regulation, which reads "Regulation on the indication of the country of origin of **certain products** imported from third countries".

If the Regulation were adopted by the institutions, then any considerations of extending the scope to new sectors should be undertaken without haste and should be accompanied by a proper consultation and impact assessment for the industry sectors concerned. Adding new industry sectors to the scope of the Regulation should be decided under the **ordinary legislative procedure under Article 294 (old "co-decision" procedure)**, thus truly involving both the European Parliament and the Council, and should be considered at the same time as a revision of the Regulation takes place.

Orgalime objects to the idea of choosing the comitology procedure for adding new sectors to the scope of the Regulation. Delegated acts were meant to be used in the EU decision making procedure *for specifying certain technical details*; in our view however adding or removing whole sectors to the scope of the Regulation is not a minor technical matter.

<sup>6</sup> Previously, Articles 5 and 7 the "old Comitology Decision" 1999/468/EC. Meanwhile, this has been updated.

<sup>7</sup> Under Art 290 of the Treaty of the Functioning of the European Union.

<sup>8</sup> Upon specific request of either the European Parliament or the Council, the time could be extended to one additional month.

We understand that the legislator needs some flexibility for fine-tuning the exact product scope of those sectors that (after a consultation, impact assessment and approval of both European Parliament and Council) have been chosen to fall under the scope of Regulation COM(2005)0661. We therefore believe that it would be reasonable to apply delegated acts under Art. 290 for fine-tuning and changing the annex for those sectors already concerned.

## 5. Conclusion

Orgalime is of the opinion that maintaining a competitive and strong industrial base in Europe requires favourable framework conditions, open markets, a focus on innovation and the respect of IPRs. Orgalime believes that the EU has competent legislation which obliges all market operators, including importers, to respect technical, environmental, social and safety laws: all products put on the EU market have to respect these laws, whether these products are manufactured in the EU or imported from outside the EU. We however feel that the **enforcement** of this legislation and **efficient market surveillance** need to be further improved.

On the question of obligatory marking of imports, Orgalime believes that the legislator should respect the views of EU industry sectors and that there should be no “spill-over effect” onto those sectors which came to the conclusion that they do not wish to fall under the scope of the proposed Regulation COM(2005)0661.

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