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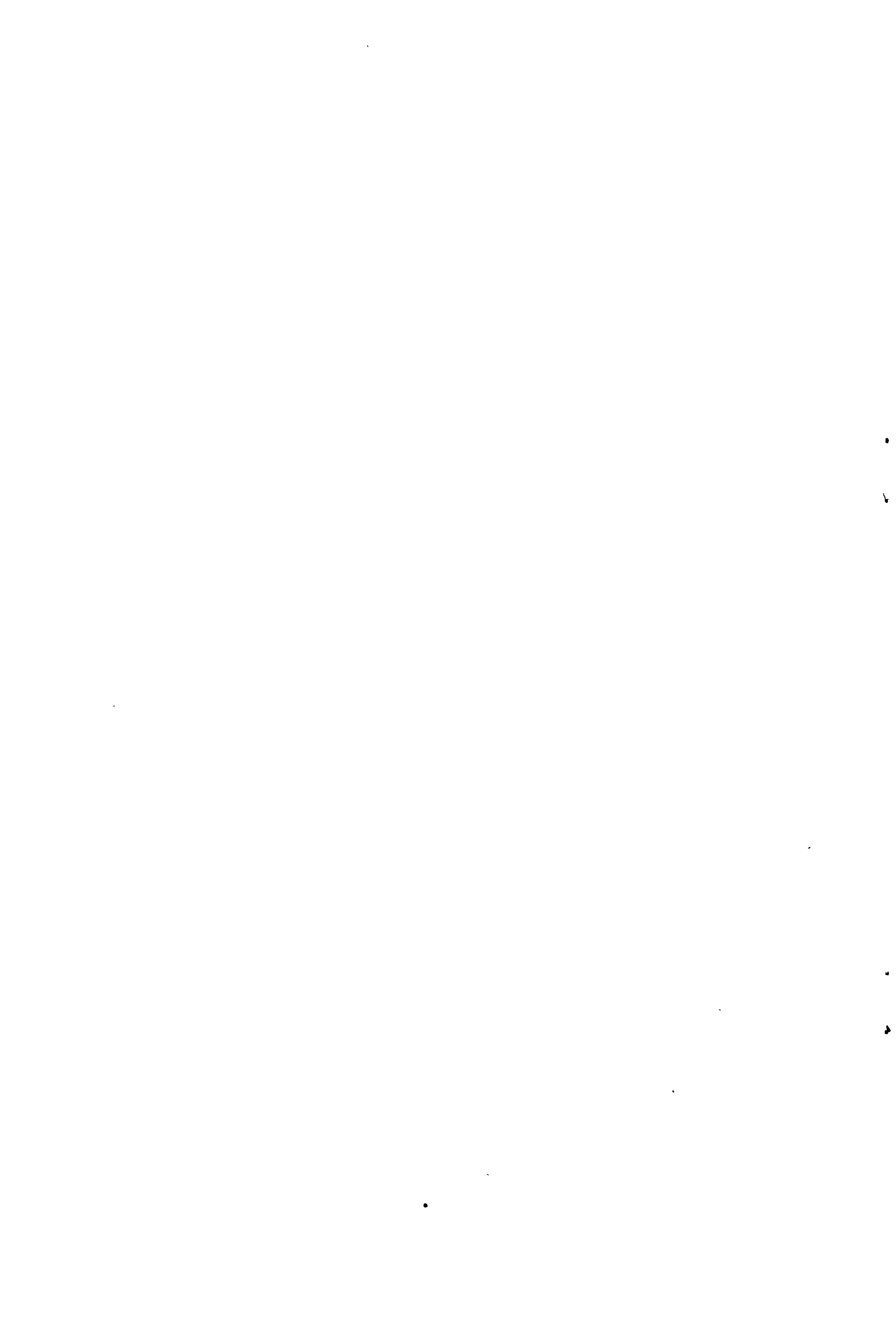
Report

drawn up on behalf of the Committee on Economic and Monetary Affairs

on the proposal from the Commission of the European Communities to the Council (Doc. 1-514/80) for a Directive on the approximation of the laws of the Member States on the indication of the origin of certain textile and clothing products

Rapporteur: Mr K. von WOGAU

1.2.1



By letter of 17 October 1980 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 100 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive on the approximation of the laws of the Member States on the indication of the origin of certain textile and clothing products (Doc. 1-514/80).

The European Parliament referred this proposal to the Committee on Economic and Monetary Affairs as the committee responsible and to the Committee on the Environment, Public Health and Consumer Protection and the Legal Affairs Committee for their opinions. At its meeting of 25 November 1980 the Committee on Economic and Monetary Affairs appointed Mr K. von WOGAU rapporteur.

The committee considered this proposal at its meeting of 19 March 1981 and adopted the motion for a resolution by eight votes to three with two abstentions.

Present: Mr Deleau, vice-chairman; Mr de Ferranti, vice-chairman; Mr von Wogau, rapporteur; Mr Collomb, Mr Carossino (deputizing for Mr Fernandez), Mr Delorozoy, Mr Herman, Mr Leonardi, Mr Nyborg, Mr Petronio, Mr Schinzel, Mr Turner, Mr Walter and Mr Wagner.

The opinions of the Legal Affairs Committee and the Committee on the Environment, Public Health and Consumer Protection are attached.

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The Committee on Economic and Monetary Affairs hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

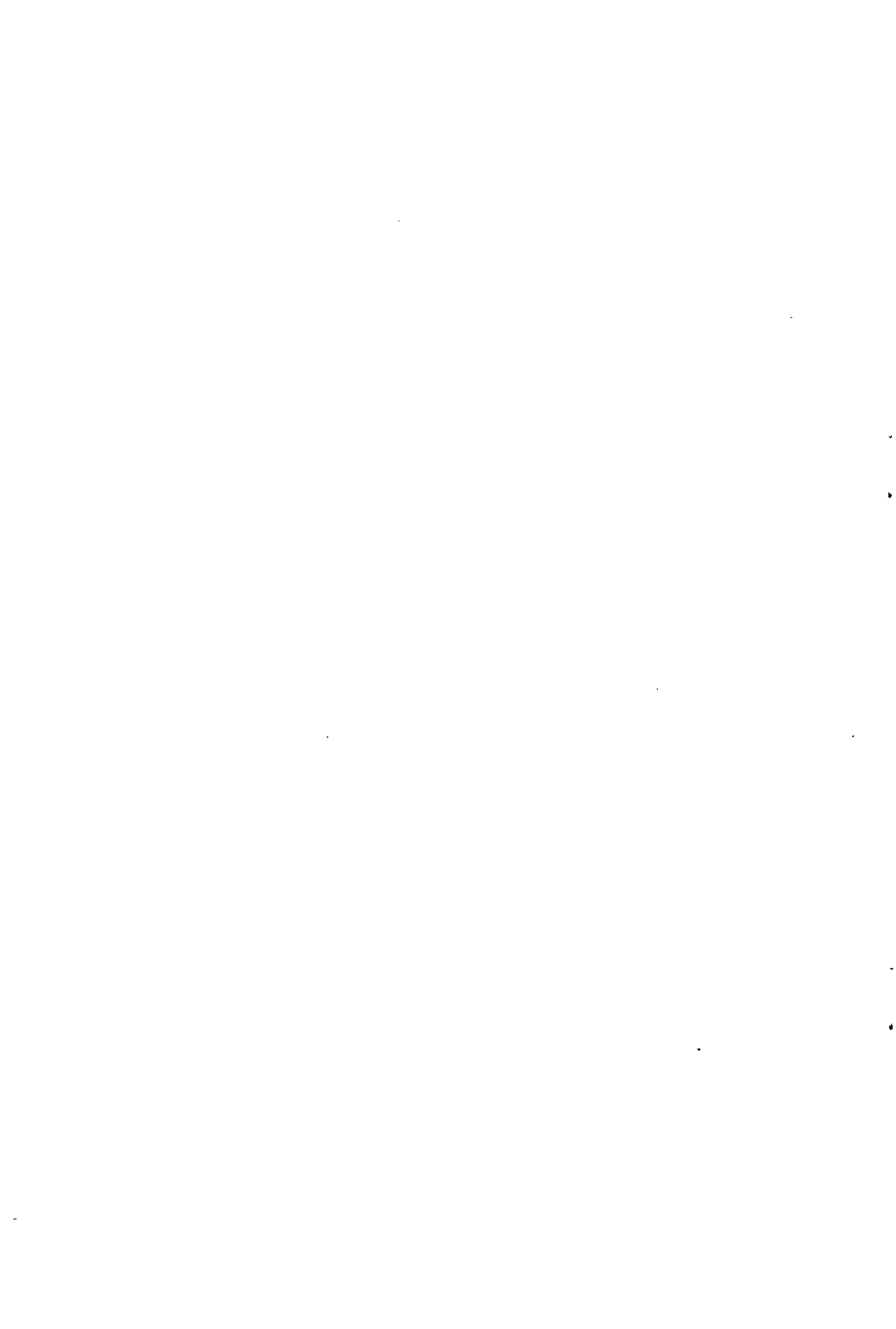
OTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive on the approximation of the laws of the Member States on the indication of the origin of certain textile and clothing products

The European Parliament,

- having regard to the proposal from the Commission of the European Communities¹
 - having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 1-514/80),
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Legal Affairs Committee and the Committee on the Environment, Public Health and Consumer Protection (Doc. 1-73/81)
1. Rejects the Commission's proposal;
 2. Calls upon the Commission to institute proceedings before the Court of Justice against Member States laying down rules on the indication of origin which might be construed as erecting barriers to trade within the Community.

¹ OJ No. C 294, 13.11.1980, p. 3



EXPLANATORY STATEMENT

1. The reason given by the Commission for its proposal is that one Member State has laid down measures applying from 1 October 1980, and that several others are preparing legislation on the indication of the origin of certain textile products and items of clothing.

By taking action at an early stage, the Commission aims to prevent such provisions from developing into new technical barriers to trade.

2. The proposed directive leaves it to the Member States to decide whether indications of origin are to be compulsory; but if they do so decide, they must observe the following principles laid down in the directive:

- no obligation on a manufacturer to attach an origin mark himself in a permanent manner;
- no obligation for an indication of origin at the time of importation;
- obligation to indicate origin solely at the point of retail sale;
- sufficient flexibility in the form and manner of indicating origin to enable retailers to meet this obligation easily themselves;
- selection of products for which the indication of origin, in the sense defined above, constitutes a necessary means to obtain the result sought.

3. The purpose of Article 2 (1) of the proposed directive (with certain exceptions as laid down in Article 2 (2)) which states that Member States 'can only make the indicative of origin obligatory at the stage of the offer for sale of the product to the final consumer' is to prevent the Member States from using the requirement for indication of origin as an administrative barrier to imports.

4. However, the Committee on the Environment, Public Health and Consumer Protection, in its opinion, wishes to see manufacturers obliged to indicate the origin of textile products, as costs would be less at that stage than for individual marking by the importer or retailer.

5. It should, however, be pointed out here that national provisions on marking no longer constitute a legal barrier to trade, (see the Commission's Communication to the Member States concerning the consequences of the judgment handed down by the Court of Justice in the 'Cassis de Dijon' case)¹.

¹ O J No. C256, 3.10.1980

As the proposal for a directive leaves it to the Member States to decide whether to impose compulsory indication of origin, it would be particularly pointless to require manufacturers to do so, and could in certain circumstances cause difficulties at frontier crossing points, as the Member States could have different ideas about how such marking ought to be carried out.

The system proposed by the Commission is far more flexible and should not substantially increase costs; nor does it prevent merchants from reaching individual agreements with manufacturers for the latter to mark the goods.

6. In its opinion, the Legal Affairs Committee expressed the view that, in the light of the judgment of the Court of Justice in the 'Cassis de Dijon' case, the Member States are justified in requiring origin markings on the grounds of 'defence of the consumer', and that an EEC Directive laying down common rules for possible national provisions is required.

The Committee on Economic and Monetary Affairs does not agree on this either. Origin marking undeniably constitutes information to the consumer, but does nothing to help the consumer to arrive at an objective assessment of a product's value for money, or other characteristics in respect of which the consumer needs protection; origin marking tends rather to evoke an emotional response.

7. The Committee on Economic and Monetary Affairs therefore does not agree with the Legal Affairs Committee that, pursuant to Article 36 of the EEC Treaty, Member States should be allowed to introduce legislation on the origin marking of certain textile and clothing products in such a way as to erect barriers to trade between the Member States of the Community. However, the Committee on Economic and Monetary Affairs believes that this is a matter which only the Court of Justice can decide.

8. Although the Commission has proposed a most flexible system which would not lead to discrimination between domestic and foreign products as long as they were manufactured within the EEC, a majority of the members of the Committee on Economic and Monetary Affairs believe that the Commission should withdraw its proposal, and, where appropriate, institute proceedings before the Court of Justice. Should the Court agree with one or more Member States that origin marking is such an essential element of consumer protection as to take precedence over the general principle of free movement of goods embodied in the EEC Treaty, an EEC directive would then of course be required.

A minority of members of the committee took the view that an EEC directive had become necessary, and that the Member States should still be obliged to require the marking of origin in conformity with the provisions of a future directive.

9. It must be pointed out that the position of the Committee on Economic and Monetary Affairs in no way prevents one or more Member States from laying down national provisions on consumer information - including the origin of goods - provided that those provisions are formulated in such a way as not to constitute barriers to trade within the Community.

OPINION OF THE COMMITTEE ON THE ENVIRONMENT,
PUBLIC HEALTH AND CONSUMER PROTECTION

Letter from the chairman of the Committee to Mr DELORS, chairman of the Committee on Economic and Monetary Affairs

18 December 1980

At its meeting of 4 and 5 December, 1980, the Committee on the Environment, Public Health and Consumer Protection considered the Commission's proposal for a directive on the approximation of the laws of the Member States on the indication of the origin of certain textile and clothing products (Doc.1-514/80).

The Committee on the Environment, Public Health and Consumer Protection is not satisfied that the Commission's proposal will always enable consumers to be informed correctly as to the origin of the clothes, bed linen and furnishing fabrics which they purchase. The Committee finds it highly unsatisfactory that the obligation to ensure correct origin marking on textile goods is not placed upon the manufacturer or importer but, in effect, upon the retailer. This will place an unreasonable burden on retailers who may find it difficult to ensure with absolute certainty that the goods are correctly marked, and who may not be able to ensure universal marking of goods. Moreover, it could add unnecessarily to costs.

The Committee underlines the importance of this point and requests the Economic and Monetary Affairs Committee to take it into account in its final report.

Please regard this letter as the opinion of the Committee on the Environment, Public Health and Consumer Protection.

Kenneth D. COLLINS,
Chairman

Committee on the Environment,
Public Health and Consumer
Protection

Present : Mr Collins, Mr Forth, Mr Ghergo, Mr Johnson, Mrs Krouwel-Vlam,
Mrs Maij-Weggen, Mr Verroken.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman: Mr I.M. DALZIEL

On 26 January 1981 the proposal was sent to the Legal Affairs Committee for its opinion.

On 17 February 1981 the committee appointed Mr Dalziel draftsman.

On 18 March 1981 the committee considered the draft opinion and adopted it unanimously.

Present: Mr Ferri, chairman; Mr Dalziel, rapporteur; Mr Geurtsen, Mr Goppel, Mr Peters (for Mr Megahy), Mr Plaskovitis, Mr Prout, Mr Sieglerschmidt, Mr Tyrrell, Mr Vardakas (for Mr Gondikas).

I INTRODUCTION

1. There is widespread concern in the Community at present at the lack of information available to the consumer about the origin of textile products and clothing. Certain countries have a reputation for particularly high quality in certain products (Shetland and cashmere wool from Scotland, linen from Ireland, etc.). Concern is particularly great about the quality of low cost imports from third countries. One Member State has therefore already adopted legislation on origin labelling and others are about to do so. The Commission thinks that in some cases the legislation may act as a barrier to trade within the Community, or in the terms of Article 100 EEC, "directly affect the functioning of the common market".

II CONTENTS OF THE PROPOSAL

2. The Commission consider that the best way of achieving both aims is to allow Member States to require origin labelling only at the final stage in the commercial chain: sale to the consumer (Art 2(1)). In order to ensure that retailers have the necessary information, there is to be an obligation on "commercial operators" earlier in the chain either themselves to label or to provide information on the products' origin in writing (Art 2(2)).

3. The proposal sets out in detail the information which must be provided (Article 3) and the way in which it may be provided (Article 4 and 5). Article 3 provides that for EEC products the label must read either "Made in the EEC", "made in the EEC" followed by the name of the Member State or just the name of the Member State concerned. There would be no possibility of indicating that a product originates in a particular region of the Community (such as Scotland). For third country products, the name of the country must be given, origin being determined according to existing origin rules. The information can either be given on the product, on a label or package or, where this is impracticable, displayed with the product; or, for mail order, in the catalogue. The information can be given in any of the official languages of the European Community.

III LEGAL FORM OF THE PROPOSAL

4. From a legal point of view the proposal appears to mark a change in Commission policy on the drafting of directives. Until now there have, broadly speaking, been three kinds of directive. In the field of common EEC standards designed to remove technical barriers to trade, there have been two kinds of directives. The first require Member States to apply the common standards to all goods. The second leave Member States free to allow goods which do not meet the standards to circulate within their territory but require Member States to allow onto that territory goods from other Member States which do meet them. The third kind of directive aims not merely to remove technical barriers to trade but also to harmonise national legislation in line with the general aims of the Treaty.

5. The change marked by this proposal is that, although, like the others, it is addressed to all the Member States, it does not require them to legislate in a given way. The key provision, Article 2(1), reads as follows:

"The Member States can only make the indication¹ of origin obligatory at the stage of the offer for sale of the product to the final consumer."

The word "can" means² that Member States are not obliged to make origin marking compulsory.

6. The Commission appear to consider that their new approach is justified (or even required) by the Court's judgment in the "Cassis de Dijon" case³. In a Communication dated 29 September 1980⁴ the Commission set out the consequences of the judgment for their work. The Communication first quotes from the judgment:

"Any product lawfully produced and marketed in one Member State must, in principle, be admitted to the market of any other Member State."

¹ The English text, which reads "indicative" apparently contains a mis-print

² Particularly in view of the opening words of Article 6(1)
³ Case 120/78 of 20.2.1979 - 1979 E.C.R. 649

⁴ SEC (80) 1373 - See Notice to Members 58/80 PE 72.198

"Technical and commercial rules, even those equally applicable to national and imported products, may create barriers to trade only where those rules are necessary to satisfy mandatory requirements and to serve a purpose which is in the general interest and for which they are an essential guarantee. This purpose must be such as to take precedence over the requirements of the free movement of goods, which constitutes one of the fundamental rules of the Community."

and sets out guidelines for legislation which it derives from the judgment:

"The principles deduced by the Court imply that a Member State may not in principle prohibit the sale in its territory of a product lawfully produced and marketed in another Member State even if the product is produced according to technical or quality requirements which differ from those imposed on its domestic products. Where a product "suitably and satisfactorily" fulfils the legitimate objective of a Member State's own rules (public safety, protection of the consumer or the environment, etc.) the importing country cannot justify prohibiting its sale in its territory by claiming that the way it fulfils the objective is different from that imposed on domestic products.

"In such a case an absolute prohibition of sale could not be considered "necessary" to satisfy a "mandatory requirement" because it would not be an "essential guarantee" in the sense defined in the Court's judgment.

"The Commission will therefore have to tackle a whole body of commercial rules which lay down that products manufactured and marketed in one Member State must fulfil technical or qualitative conditions in order to be admitted to the market of another and specifically in all cases where the trade barriers occasioned by such rules are inadmissible according to the very strict criteria set out by the Court.

"The Commission is referring in particular to rules covering the composition, designation, presentation and packaging of products as well as rules requiring compliance with certain technical standards."

IV COMMENTS

7. This is the first time that the Legal Affairs Committee has had to consider a proposal made within the guidelines drawn up by the Commission following the Court's judgment in the "Cassis de Dijon" case. The Commission's new approach to the drafting of directives raises questions of major legal importance which the committee will wish to discuss in general terms in the future. In this opinion the committee will limit itself to commenting on the particular proposal under consideration.

8. In its judgment the Court held that national technical and commercial rules could be justified if their purpose were "such as to take precedence over the requirements of the free movement of goods." One purpose which the Court expressly mentioned as potentially taking precedence over those requirements was the "defence of the consumer". Further, the Court, while stating that the fixing of a minimum alcohol content for alcoholic beverages constituted a measure prohibited under Article 30 EEC, suggested that the purpose of protecting the consumer could be achieved by "requiring the display of an indication of the origin and of the alcohol content on the packaging of products". This means that the Court might consider labelling requirements to be an "essential guarantee" of a purpose of "general interest" within the meaning of the Court's judgment ~~and therefore~~ that Member States were justified in enacting legislation on textile origin marking.

9. The Legal Affairs Committee has noted that the Consumer Protection Committee considers that the purpose of the directive would be better served by placing the duty to indicate origin on the manufacturer¹. The Legal Affairs Committee can only add that it is likely that the legal obligation to pass the relevant information along the commercial chain may prove difficult to enforce by the retailer.

¹ See PE 69.810/fin.

10. There remains the question of whether the directive should be compulsory or voluntary, in other words, whether Member States should be required to place such a duty on the manufacturer or whether the directive should limit itself to laying down that, should Member States wish to legislate on origin marking, they must impose the duty on the manufacturer. As pointed out above, the Legal Affairs Committee considers origin marking to be an "essential guarantee" of the defence of the consumer. Indeed it considers that this guarantee is so essential that it not only justifies national legislation but requires legislation at Community level. The Legal Affairs Committee therefore considers that the directive should be amended to require Member States to impose on manufacturers a duty to mark the origin of clothing and textile products.

V. CONCLUSIONS

- 11.(a) The Legal Affairs Committee considered whether origin marking was an 'essential guarantee of the defence of the consumer' within the meaning of the judgment of the Court of Justice in the 'Cassis de Dijon' case, such as to take precedence over the Treaty requirements of free movement of goods and to justify national legislation (see paragraph 8).
- (b) It noted that the Consumer Protection Committee considers that the most effective means of providing that information is to impose on the manufacturer the duty to mark (see paragraph 9).
- (c) It is of the opinion that since origin marking legislation may form a barrier to trade it is necessary to harmonize national provisions by means of a directive (see paragraph 10).
- (d) It further considers that the Commission's new approach to the drafting of directives raises issues of general legal importance which will need to be discussed in more detail in due course (see paragraph 7).