

## **'HARMONISATION and the draft DIRECTIVE**

### **Briefing Paper from the British Hallmarking Council**

#### **Background**

This Paper should be read in conjunction with the BHC'S policy statement of September 10<sup>th</sup>, 2001 on Hallmarking within the European Union.

In essence, Council's policy is strongly to prefer the continuation of the current practice of compulsory assaying and marking by independent, third parties. It believes that the free and fair flow of goods in precious metals between member states can be achieved, either through an extension of the membership of the International Convention on Precious Metals to all member states [currently eight belong]; and /or by following the "mutual recognition" route charted by the Houtwipper judgement. [The UK recognises Irish, French, Portuguese, Danish, Finnish and some Spanish marks by this route]. There are therefore already two routes for free movement of goods between hallmarking states. It is the other five states which have the problem!

Further, the BHC policy is to accept a Directive containing only Annexe IV – with appropriate other amendments.

If marking by manufacturers is to be permitted under a Directive, the BHC policy is that this must be subject to strict provisos. These are that such marking is subject to proper quality assurance [QA] procedures and also to strict third party monitoring; further, that such procedures and monitoring should combine to ensure that the consumer – and the trade – receive the same level of protection and comfort as given by present UK practices.

The policy Declaration subscribed to by the BJA, the NAG, LACOTS and the UK Assay Offices, as well as the BHC, should also be read. Essentially, this Declaration as regards marking by manufacturers is virtually identical in its approach to the draft Directive as that of the BHC.

#### **The Brief**

The purpose of any form of marking articles in precious metals is to inform and protect the public, as well as to assure the trade that it is dealing in goods of guaranteed quality; indeed, to assist in the regulation of fair trading. One consequence of the practice of hallmarking in the UK has been the establishment of a market "brand", which is increasingly valued by the industry and trade.

The above principles should guide UK negotiators.

#### **Independent marking –**

The BHC urges HMG not to abandon – or give the impression of abandoning – prematurely its previous, stoutly defended position: that independent testing and

marking should continue in the UK and be the norm within the EU. The position is not lost.

There are many supporting arguments and factors:

- It is by no means clear that the “blocking minority” has ceased to exist. Internationally, there is evidence that interest in independent hallmarking is very much “alive” and increasing. It should be recalled that the UK was a major player in forming a blocking minority in 1993/4, although this never had to be deployed as such;
- All but one of the ten states due to accede to the EU in 2004 currently practise compulsory, independent hallmarking;
- Eight EU states subscribe to the International Convention, with its agreed standards, independent marking and common control mark which allows for free circulation of goods within participating member states. At the encouragement of DTI, accession to the Convention has been made easier, and many countries including China are pursuing membership;
- Within the EU, the principal states which are not members of the Convention are Germany, Italy, France and Spain, but the latter two are covered by Houtwipper. Italy has recently put forward proposals which require marking by its “assay offices” in such a way as to meet the legal requirements of other member states. These should be actively investigated and encouraged;
- In the United States, which is the biggest jewellery market in the world, manufacturers and importers currently self-mark and certify their jewellery. The US jewellery trade’s own watchdog - the Jewellers Vigilance Committee - immediately prior to Christmas issued a series of warnings to the public concerning the high level of cheating through undercarating on the US market. This was sparked by tests which showed that 64% of items purchased at random were undercarated. Alarmed by this finding, the bona fide US jewellery industry is seeking to find a solution through a third-party accredited marking system;
- Support for a Directive and for independent testing and marking are not incompatible. A Directive containing only Annexe IV, with the exclusion of Annexes II and III, would provide the desired harmonisation. This would be a logical extension of the Houtwipper judgement, and – as a negotiating card – member states could be left free to pursue their own domestic regimes. It is important to note that it is the non-hallmarking states which have difficulty with a robust Directive;
- Concerns re the quality of imports also provide arguments for retaining the status quo. The import by manufacturers of finished or part-manufactured goods into the EU is a fact and most likely to increase. Some EU manufacturers actually have factories elsewhere which apply the marks before despatching to the “mother” EU company. Importers equally have no direct control over their merchandise. In the UK at present, about half of the articles tested by the Assay Offices [or parts of them] have been imported. It is very difficult to see how quality control and monitoring of such goods could effectively match up to the sort of procedures and disciplines referred to above as necessary for achieving adequate consumer and trade protection, if

independent marking was no longer compulsory. It is understood that there is a developing problem in Italy because of this growing practice.

### **Manufacturers' marking –**

If it is clear that a sufficient, dominant majority in favour of a Directive containing provisions for marking by manufacturers really does exist, the BHC [obviously] accepts that more good can come from actively seeking to achieve improvements than from a negative stance on the sidelines. However, BHC recommends the development of a plan for the deployment of delaying tactics in conjunction with sympathetic states, if the preferred objective – the continuation of compulsory, independent marking – is achievable in that way.

Desirable improvements in any regime involving marking by manufacturers would include:

#### **General:**

- UK negotiators should seek to draw a distinction between the “Quality Assurance route” [for marking by manufacturers] and the more simple “manufactures’ marking”. The search for achieving an acceptable Annexe II should be driven by the strict demands of QA as opposed to the laxer regime of Annexe III; Annexe II should be tightened so as to give to the consumer and the trade the same degree of protection and comfort as now.

#### **Annexe II**

- Manufacturers’ approach to and methods for the control of quality must operate throughout manufacturing and handling processes as well as in marking – and assaying, if appropriate; they must conform to certain acceptable QA Standards ie. EN 29001. Manufacturers’ testing laboratories must be accredited to ISO 17025 [ as of course must an independent laboratory];
- These must be supported by monitoring by genuine independent, qualified third party bodies;
- As a strengthening of the above, one proposal could be that each batch should be sample-tested [but not marked] by such bodies;
- The Directive must make clear the frequency with which the monitoring of manufactures must be carried out. Standards for market surveillance at retail levels should also be set.

#### **Annexe III**

It is BHC policy that this Annexe should be removed from the Directive. We recognise, however, the UK negotiators may have to deal with the proposal that a less demanding regime under Annexe III should be permitted for those states who wish to apply it for domestic transactions only. At first sight, such a proposal might appear harmless. However, we believe that in a “single market” situation there is a very real -

and unacceptable – risk of such "domestic" articles leaking into general, EU circulation.

The proposal should therefore be firmly resisted, and Annexe III struck out of the Directive.

#### Traceability

Traceability is crucial to the success of any monitoring regime. Therefore, in the same way as any Certificate issued by a notified body or testing house would identify its source so should articles marked by a notified body, such as a UK Assay Office, carry its unique "hallmark" to allow traceability, and therefore accountability by that body. [Negotiators should also bear in mind the value of a UK hallmark as a brand/marketing aid].

#### Common identifying mark

A mark should be agreed for application to all goods meeting the requirements of the Directive and therefore permitted free circulation within the EU, similar in operation to the Common Control Mark of the Convention.

ACB  
08-01-03