GENERAL AGREEMENT ON TARIFFS AND TRADE

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MARKS OF ORIGIN

Note by the Executive Secretary

In accordance with the instructions received from the CONTRACTING PARTIES a draft Recommendation on Marks of Origin has been prepared by the secretariat for the consideration of the CONTRACTING PARTIES. This draft is based on the Working Party's Report adopted in 1956 (BISD, Fifth Supplement, page 103), but also takes account of the additional suggestions which contracting parties were invited to make.

Notes to the individual paragraphs of the attached draft Recommendation indicate the source on which the relevant suggestion is based and the summarized views expressed by contracting parties. In this connexion it should be pointed out that unless the suggestions contained in paragraphs 6-8 are included in the Recommendation the exporters will not have the assurance that the products marked in accordance with the Recommendation will be accepted generally. If that were the case the value of a Recommendation for the trader would be seriously impaired.

DRAFT RECOMMENDATION

CONSIDERING that in Article IX of GATT the CONTRACTING PARTIES recognize that, in adopting and enforcing laws and regulations relating to Marks of Origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum and that they have agreed on certain basic principles for the carrying out of this idea,

CONSIDERING further that it would facilitate the obtainment of the objectives of the General Agreement if the CONTRACTING PARTIES were to agree on certain rules which would further reduce the difficulties and inconveniences which marking regulations may cause to the commerce and industry of the exporting country,

THE CONTRACTING PARTIES

RECOMMEND to adopt the following rules on Marks of Origin:

1. The contracting parties should scrutinize carefully their existing laws and regulations with a view to reducing as far as they possibly can the number of cases in which marks of origin are required, and to limit the requirements of marks of origin to cases where such marks are indispensable for the information of the final buyer [ultimate purchaser].

Basis: Paragraph 1 of the suggestions of the International Chamber of Commerce reproduced in document L/788, (referred to in the following as "ICC Recommendation").

Remarks: The Recommendation is based on the idea to invite the countries to limit their marking requirements and to provide for certain facilities wherever a country considers such a requirement necessary.

Japan, however, suggests a different type of recommendation, namely, (a) to invite the countries to abolish completely marking requirements, and (b) to provide for recommendation for the transitional period in which countries have not yet complied with this Recommendation.

The United Kingdom subscribes fully to the principle laid down in this Recommendation, but draws attention to the difficulties of definition to be solved before this and other parts of the Recommendation could be accepted. To take account of the suggestion made by the United Kingdom in that connexion, namely to consider other methods for achieving the desired effect - a procedure for consultations has been laid down in paragraph 18 of the Recommendation.

The United States draws attention to the fact that the basic provisions included in the Tariff Act of 1930 provide that ... marking must be made in a way that it reaches the "ultimate purchaser" who is not necessarily the final buyer.

2. The requirement of marks of origin should never be a general one applicable indiscriminately to all imported goods, but should be limited, in collaboration with the industry and trade concerned, to cases where such a marking is considered necessary.

Basis: First sentence of paragraph 3 of the ICC Recommendation.

Remarks: The United Kingdom is, in principle, in favour of such Recommendation under the same conditions as expressed in their remark to paragraph 1.

The United States, however, states such a Recommendation could not be accepted due to the fact that the marking provisions of the Tariff Act of 1930[1] require generally that the name of the country of origin be disclosed to the ultimate purchaser.

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[1] Available in the secretariat.

3. If marks of origin are to be required, any type of mark affixed in a way which ensures its visibility at the time of purchase by the consumer, should be considered a satisfactory marking.

Basis: Paragraph 12 of the Working Party Report of 1956, reproduced in the BISD Fifth Supplement, page 103, (referred to in the following as W.P. Report).

Remarks: The Federal Republic of Germany expresses itself in favour of such Recommendation.

4. If countries prescribe the type of marking required for each category of goods, the requirement should be made the subject of a technical study in collaboration with the industry and the trade concerned, with a view to determining what form the mark should take.

Basis: Second sentence of paragraph 3 of the ICC Recommendation.

Remarks: The United Kingdom is, in principle, in favour of such Recommendation under the same conditions, however, as expressed in their remark to paragraph 1.

5. The national provisions concerning marks of origin should not contain any other obligation than the obligation to indicate the origin of the imported product. Any other requirement, such as the requirement to indicate the chemical composition of a pharmaceutical product, should be governed by specific regulations applying equally to domestic and imported products.

Basis: Paragraph 13 of the W.P. Report.

Remarks: Germany agrees with this recommendation.

The United States draws attention to the fact that additional markings (the name of the producer or the formula of the product) are not generally required but in certain exceptional cases the law compels special markings (e.g. on watch movements).

6. Countries should accept a single formula as a satisfactory marking which could thus be used universally by manufacturers exporting to several different countries, each importing country having of course the right to accept, in addition, any other formula if they so desire.

Basis: Paragraph 5 of the ICC Recommendation.

Remarks: The United States draws attention to the fact that the section 304 of the Tariff Act of 1930, as amended, requires marking so "as to indicate ..... the English name of the country of origin" in a manner authorized by the Secretary of the Treasury.

7. The indication of the name of the exporting country in the English language [introduced by the words "made in"] should be accepted as a satisfactory formula in the sense of paragraph 6 of this Recommendation.

Basis: Paragraphs 9 and 10 of the W.P. Report; paragraph 4 of the ICC Recommendation.

Remarks: The words "made in" are added in square brackets to the recommendation so as to indicate that a number of countries - see paragraph 9 of the W.P. Report - are in favour to recommend the acceptance of the English name of the country without addition of the words "made in". Similarly, the ICC recommends to accept the name of a country without the addition of any formula such as "made in" to be recognized as a satisfactory marking.

The United States stresses that only in some instances the addition of the words "made in" is required.

Remarks related to paragraph 20 of the W.P. Report:

Due to the negative approach of the Working Party the idea of recommending the acceptance of known trade marks has not been incorporated in the recommendation.

Both Germany and Japan mention that they would have no objections to the acceptance of known trade marks as a satisfactory indication of origin.

The United States, however, states that it could not accept any recommendation which would have such an effect.

8. Commonly used initials for a country, such as U.K., U.S.A., should be considered a satisfactory replacement for the full name of the country.

Basis: W.P. Report paragraph 11; and paragraph 4 of the ICC Recommendation.

Remarks: No negative comments.

9. Marking should not be required on containers of articles properly marked.

Basis: Paragraph 14 of the W.P. Report.

Remarks: The United States declares that it could agree to the principle that no mark of origin should be required on containers of properly marked products if they are not designed to be sold with the product, or are used for transport purposes only. It is indicated that the present provisions require the marking of containers, but there are exceptions to the general rule.

10. Marking on the container should be accepted, however, in lieu of the marking of the product in the following cases:

(a) If this type of marking is customarily considered satisfactory (such as in the case of margarine boxes).

(b) If the type of packing makes it impossible for the consumer to open it without damaging the goods.

(c) In the case of goods which, because of their nature, are normally sold in sealed containers.

(d) In cases where a marking of the goods shipped in a container is impossible, such as in the case of liquids and gas, or other products that cannot be marked (paragraphs 15 and 16 of the W.P. Report).

Basis: 10 a, paragraph 15 of W.P. Report
10 b, paragraph 16 " "
10 c, paragraph 16 " "
10 d, paragraph 17 " "

Remarks: 10 c: Germany suggests to add manicure cases, travelling cases, etc. as examples.

10 d: The United States points out that its marking requirements are consistent with this principle.

11. The following commercial imports should generally be freed from the marking requirement:

(a) Production goods or capital goods, the origin of which is usually known to the buyer.

(b) Spare parts of equipment already imported, and parts separately despatched, including component parts imported for purposes of assembly.

(c) Products of little value, in particular commercial samples of negligible value.

(d) Other samples than those of little value, covered by the GATT Convention for Facilitating the Importation of Samples and Advertising Material.

(e) Prospectuses, posters, dummy packs and similar advertising matter not destined for sale.

Basis: 11 a, paragraph 2 of the ICC Recommendation;
11 b, paragraph 19 of the W.P. Report; paragraph 7 of the ICC Recommendation;
11 c, paragraph 21 of the W.P. Report;
11 d, paragraph 6 of the ICC Recommendation;
11 e, new German proposal.

Remarks: The recommendation to except types of goods from the marking requirement as suggested by the ICC has not met with the approval of all members of the Working Party. Particularly the United Kingdom stressed in an additional statement that it would not be in a position "to accept any Recommendation which called for the exclusion of marking requirements for specified classes of goods because the United Kingdom legislation requires imported goods of any description to be marked if they bear a name or trade mark being, or purporting to be, a name or trade mark of any manufacturer, dealer or trader in the United Kingdom, or the name of any place or district in the United Kingdom". In order to meet the difficulties of the United Kingdom it is suggested to add as a final paragraph of the Recommendation that such regulations would not be inconsistent with this Recommendation.

11 a: The United States declares that this suggestion appears to be covered by one of the exceptions in the Tariff Act and therefore appears to be acceptable as a general proposal.

11 b: Germany is in favour of the ICC proposal.

The United States declares that certain cases may possibly be eligible for exemption from the marking requirement, but the law does not provide a general exemption for spare parts.

11 c: This recommendation is to be understood in the light of paragraph 21 of the W.P. Report concerning the determination of the value by the importing country.

Germany is in favour of exempting products of little value and draws attention to the fact that already in 1931 a Group of Experts charged by the Economic Committee of the League of Nations to examine the question of marks of origin, recommended that samples of little value should be exempted from the marking requirement. Attention is also drawn to the fact that the CONTRACTING PARTIES decided in 1952 that the subject of marks of origin for imported goods should be studied, and that "the treatment of samples could be examined as a part of such a study". (BISD, First Supplement, page 98, paragraph 28).

The United States reports that all goods under the value of $10 are freed from the marking requirement.

11 d: The ICC does not recommend a special treatment of samples of little value, and introduces the idea that all samples falling under the Samples Convention should be freed from the marking requirement.

Germany is in favour of such a recommendation. The remarks brought forward by Germany and reproduced under 11 c also apply in part to the recommendation under 11 d.

The United States explains that such products have to be marked unless imported under circumstances which justify an exception.

12. Non-commercial imports should be exempted from the marking requirement including all imports which are normally freed from duties and enumerated in the national customs laws in that context, such as imports of goods for personal use in consequence of inheritances, trousseaux, etc. Original "objets d'art" should also be freed from the marking requirement.

Basis: Paragraphs 22 and ex 23 of W.P. Report.

Remarks: The United States could agree that products obviously imported for the personal use of the importer should not generally be required to contain a mark of origin.

13. Goods in transit and goods placed in bond should be freed from the marking requirement.

Basis: Paragraph 23 of the W.P. Report.

Remarks: Germany agrees with the recommendation.

The United States reports that imports of this character are exempted from the marking requirement.

14. Countries should make provisions that in exceptional cases the application of a mark of origin should be permitted under customs supervision in the importing country.

Basis: Paragraph 8 of the W.P. Report.

Remarks: Germany agrees with such a recommendation.

In the United States the regulations and practice are in conformity with this rule.

15. The re-exportation of products which cannot be marked under customs supervision should be permitted without penalty.

Basis: Paragraph 25 of the W.P. Report.

Remarks: Germany agrees with this recommendation.

The United States now permits the re-exportation of products without penalty if the addition of the mark of origin at the time of importation is not practicable.

16. Penalties should not be imposed in contradiction to paragraph 5 of Article IX i.e. for failure to comply with marking requirements prior to the importation unless corrective marking is unreasonably delayed or deceptive marks have been affixed or the required marking has been intentionally omitted.

Basis: Paragraph 24 of the W.P. Report.

Remarks: Germany agrees with the recommendation.

The United States points out that if improperly marked goods are not returned within a specified time, the United States assessment for failure to comply with marking requirements is an additional duty of 10 per cent. There may also be a penalty based on the circumstances of the failure to comply with the conditions under which goods were released.

17. When a government introduces a system of marking, or makes it compulsory for a new product [and such measures may create difficulties for the traders and manufacturers concerned] reasonable notice should be given before the new provisions enter into force, and there should be adequate publicity for the new regulations, in conformity with the provisions of Article X of GATT.

Basis: Paragraph 26 of the W.P. Report. It is suggested that the words in square brackets might usefully be omitted.

Remarks: Germany agrees with the recommendation.

The United States declares that reasonable notice and adequate publicity are now given in conformity with the above recommendation.

18. The exporting countries which encounter difficulties due to the fact that an importing country is not in a position to comply with any one of the above recommendations should enter into consultation with the importing country in accordance with the provisions of Article XXII of GATT with a view to the removal of the difficulties encountered.

Basis: United Kingdom suggestion. (See United Kingdom Recommendation reproduced above in connexion with paragraph 1.)

THE CONTRACTING PARTIES finally

UNDERSTAND that no country shall be obliged to alter:

(a) any provision protecting the "truth" of a mark aiming to ensure that the content of the mark is in conformity with the real situation;

(b) any provision which requires the addition of a mark of origin in cases where the imported products bear a trade mark being or purporting to be a name or trade mark of any manufacturer, dealer or trader of the importing country.