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GENERAL AGREEMENT ON TARIFFS AND TRADE

CONTRACTING PARTIES
Thirteenth Session

WORKING PARTY ON MARKS OF ORIGIN

Draft Report

1. In accordance with its terms of reference, the Working Party examined the draft Recommendation on Marks of Origin prepared by the GATT secretariat.

2. As a result of its examination it submits a revised draft which was considered to be generally acceptable to the members of the Working Party.

3. In the course of the discussion the following remarks have been made concerning certain provisions of the draft Recommendation:

Note to paragraph 1 of the Recommendation

The representatives of the United Kingdom and India pointed out that their countries' legislation required that a limited number of products, enumerated in a list, bear marks of origin. In some cases, this system would lead to a conflict with certain parts of the Recommendation. Supporting the Recommendation as a whole, these representatives stated that, as long as this legislation remained in force in their countries, their governments would be obliged to interpret the Recommendation in accordance with their national legislation. In practice, however, this reservation would not affect the value of the Recommendation in that conflicting cases would very seldom arise. It was pointed out that certain other countries were in a similar position.

The representative of Ceylon stated that the same considerations applied in the case of his country in respect, however, of a provision in existing legislation requiring that goods should bear a mark of origin if they bear a trade description. In that respect his country would be obliged to interpret the Recommendation in accordance with their national legislation as long as that legislation remained in force.

Note to paragraph 4

The recommendation that national provisions concerning marks of origin should not contain any other obligation than the obligation to indicate the origin of the imported product has to be interpreted so as to invite countries to keep such requirements separate from requirements introduced for other purposes, e.g. to protect the health of the population, etc.

In connexion with the requirement of such additional information attention was drawn to Article III of GATT which requires countries to give to imported and domestic products the same treatment and that this obligation, being in Part II of GATT, is governed by the terms of the Protocol of Provisional Application.

The representative of the United States indicated that the United States legislation in some instances requires additional information and that the United States are not in a position to accept the recommendation included in this paragraph.

Note to paragraph 5

The Austrian representative stated that the Austrian system is more liberal on the whole than the provisions included in this paragraph but drew attention to the fact that some of the national provisions in force are not fully in conformity with these paragraphs of the Recommendation.

The representative of Sweden, similarly, also mentioned the existence of a limited number of provisions (five or six) which are not in conformity with the recommendations included in these paragraphs. Although he fully supported the adoption of these recommendations he stated that he had to reserve his position concerning the time which the Government of Sweden would need to make the necessary legal changes in order to bring the Swedish legislation into conformity with the Recommendation.

Note to paragraph 8

/To be drafted/

Note to paragraph 11

The representative of Ceylon indicated that products must be marked when entering a Ceylonese harbour and that therefore this paragraph could lead to a conflict with the existing national provisions.

Note to paragraph 13

In the interest of countries not members to GATT which may wish to conform with this Recommendation the essence of Article IX of GATT has been made an integral part of this paragraph.

DRAFT
RECOMMENDATION
ON
MARKS OF ORIGIN

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,

CONSIDERING finally that nothing in this Recommendation should be understood to prevent a country

(a) from applying more liberal provisions, or

(b) from accepting, but not requiring, other types of marking than contained in the Recommendation,

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 ultimate purchaser.

2. The requirement of marks of origin should not be applied in a way which leads to a general application to all imported goods, but should be limited to cases where such a marking is considered necessary.

3. If marks of origin are required, any method of legible and conspicuous marking should be accepted which will remain on the article until it reaches the ultimate purchaser.

4. The national provisions concerning marks of origin should not contain any other obligation than the obligation to indicate the origin of the imported product.

5. Countries should accept as a satisfactory marking the indication of the name of the country of origin in the English language introduced by the words "made in". Commonly-used initials, which unmistakably indicate the country of origin, such as UK and USA, should be considered a satisfactory replacement for the full name of the country concerned.

6. Marking should not be required on containers of articles properly marked if they are not designed to be sold with the product, or are used for transport purposes only.

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

(a) If this type of marking is customarily considered satisfactory.

(b) If the type of packing makes it impossible for the ultimate purchaser 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.

8. The following commercial imports should wherever possible be freed from the marking requirement:

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

(b) Samples of negligible value such as cuttings of textile fabrics.

(c) Other samples than those of negligible value, which remain after their importation under customs control.

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

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

10. Goods in transit and goods while in bond or otherwise under customs control should be free from the marking requirement.

11. 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.

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

13. 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.

14. When a government introduces a system of marking, or makes it compulsory for a new product, 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.

15. 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 may request consultation with the importing country in the sense of the provisions of Article XXII of GATT with a view to the possible removal of the difficulties encountered and importing countries should accept any such request.

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 and

INVITE all countries to report to the GATT secretariat all changes in their legislation, rules and regulations concerning marks of origin in order to be permanently available for consultation. These reports, including the original texts, should be transmitted as early as possible and at any rate each year before 1 September.