

ARTICLE IX
MARKS OF ORIGIN

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I. TEXT OF ARTICLE IX

Article IX

Marks of Origin

1. Each contracting party shall accord to the products of the territories of other contracting parties treatment with regard to marking requirements no less favourable than the treatment accorded to like products of any third country.

2. 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, due regard being had to the necessity of protecting consumers against fraudulent or misleading indications.

3. Whenever it is administratively practicable to do so, contracting parties should permit required marks of origin to be affixed at the time of importation.

4. The laws and regulations of contracting parties relating to the marking of imported products shall be such as to permit compliance without seriously damaging the products, or materially reducing their value, or unreasonably increasing their cost.

5. As a general rule, no special duty or penalty should be imposed by any contracting party for failure to comply with marking requirements prior to importation unless corrective marking is unreasonably delayed or deceptive marks have been affixed or the required marking has been intentionally omitted.

6. The contracting parties shall co-operate with each other with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation. Each contracting party shall accord full and sympathetic consideration to such requests or representations as may be made by any other contracting party regarding the application of the undertaking set forth in the preceding sentence to names of products which have been communicated to it by the other contracting party.

II. INTERPRETATION AND APPLICATION OF ARTICLE IX

A. SCOPE AND APPLICATION OF ARTICLE IX

Article IX deals with marking of origin. Concerning the work undertaken in the GATT on rules for determining the origin of goods, and on customs formalities such as certificates of origin or other documentary requirements for the importation of goods, see Article VIII. Concerning marking of products for other characteristics than origin, see Article III:4 (national treatment) and Article I:1 (most-favoured-nation treatment for all matters referred to in Article III:4).

1. Paragraph 1

The 1991 Panel Report on “United States - Restrictions on Imports of Tuna,” which has not been adopted, considered a claim by Mexico that the provisions of the Dolphin Protection Consumer Information Act (DPCIA) of the United States, restricting the use on tuna products of the label “Dolphin Safe,” was inconsistent with Article IX:1.

“The Panel noted that the title of Article IX is ‘Marks of Origin’ and its text refers to marking of origin of imported products. The Panel further noted that Article IX does not contain a national-treatment but only a most-favoured-nation requirement, which indicates that this provision was intended to regulate marking of origin of imported products but not marking of products generally. The Panel therefore found that the labelling provisions of the DPCIA did not fall under Article IX:1.”¹

2. Paragraph 2

The addition of Article IX:2 was agreed during the Review Session of 1954-55. The Report of the Review Working Party on “Schedules and Customs Administration” notes that “A new paragraph is proposed for insertion in Article IX whereby the contracting parties will recognize that measures relating to marks of origin should not cause difficulties and inconveniences for other governments.”²

In 1956 and 1958, two working parties examined proposals of the International Chamber of Commerce regarding, *inter alia*, principles for consideration as a basis for a Recommendation on marks of origin. The Report of the 1956 Working Party on “Certificates of Origin, Marks of Origin and Consular Formalities” notes that “any such recommendation would have to be considered as an elaboration of the principles laid down in Article IX and in other Articles of GATT, and would have to be worded in such a way as to make clear that it does not prevent the application of more liberal regulations”.³ The 1958 Working Party reached agreement on the text of a Recommendation, adopted on 21 November 1958 by the CONTRACTING PARTIES, which sets out “certain rules which would further reduce the difficulties and inconveniences which marking regulations may cause to the commerce and industry of the exporting country”.⁴ The Recommendation also invites contracting parties to report, before 1 September each year, changes in their legislation, rules and regulations concerning marks of origin. A number of contracting parties complied with this invitation, but since 1961 no further submissions have been received.⁵

¹DS21/R, 3 September 1991, 39S/155, 203, para. 5.41.

²L/329, adopted 26 February 1955, 3S/205, 215, para. 21.

³L/595, adopted 17 November 1956, 5S/102, 104 para. 4

⁴Recommendation on Marks of Origin, 7S/30; Working Party Report on “Marks of Origin”, L/912/Rev.1, adopted 21 November 1958, 7S/117.

⁵C/W/420/Rev.1, p. 15; for notifications regarding origin marking see L/478 of 27 March 1956 and addenda 1-20 dated from 17 May 1956 to 26 October 1960.

(1) *Marks of origin and other marks*

The Report of the 1956 Working Party on “Certificates of Origin, Marks of Origin and Consular Formalities” notes as follows.

“The Working Party considered that the question of additional marking requirements, such as an obligation to add the name of the producer or the place of origin or the formula of the product, should not be brought within the scope of any recommendation dealing with the problem of marks of origin. The point was stressed that requirements going beyond the obligation to indicate origin would not be consistent with the requirements of Article III, if the same requirements did not apply to domestic producers of like products.”⁶

Paragraph 4 of the 1958 Recommendation states that “The national provisions concerning marks of origin should not contain any other obligation than the obligation to indicate the origin of the imported product”. The 1958 Report of the Working Party on “Marks of Origin” states that “In particular it was remarked that [paragraph 4] 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 this connection, attention was drawn to Article III of the General Agreement which requires contracting parties to give to imported and domestic products the same treatment and that this obligation, being in Part II of the General Agreement, is governed by the terms of the Protocol of Provisional Application”.⁷

(2) *Truth in marking*

The New York Draft of the ITO Charter noted, with regard to the Charter provision corresponding to Article IX, that “... the right of each country to prohibit the import, export and transit of foreign goods falsely marked as being produced in the country in question was considered to be covered primarily by the words ‘deceptive practices’” [in Article XX:(d)].⁸ The 1958 Recommendation provides that “The CONTRACTING PARTIES ... *Understand* that no country shall be obliged to alter: (a) any provision protecting the ‘truth’ of marks, including trade marks and trade descriptions, aiming to ensure that the content of such marks is in conformity with the real situation”.⁹

3. Paragraph 4

In Council discussions of the United States Trade and Tariff Act of 1984, the EEC noted that it had requested consultations under Article XXII:1 concerning section 207 of that Act on country of origin marking for certain metal pipes and tubes. A number of delegations expressed the view that in some cases it was impossible to mark the products as this law required without damaging them, and stated that such marking requirements were inconsistent with Article IX:4.¹⁰

4. Paragraph 6

When the Charter article corresponding to Article IX was discussed at the Havana Conference,

“... it was agreed that the text of paragraph 7 [GATT Article IX:6] should not have the effect of prejudicing the present situation as regards certain distinctive names of products, provided always that the names affixed to the products cannot misrepresent their true origin. This is particularly the case when the name of the producing country is clearly indicated. It will rest with the governments concerned to proceed to a joint examination of particular cases which might arise if disputes occur as a result of the use of distinctive names of products which may have lost their original significance through constant use permitted by law in the country where they are used”.¹¹

⁶L/595, adopted on 17 November 1956, 5S/102, 105-106, para. 13.

⁷L/912/Rev.1, adopted on 21 November 1958, 7S/117, para. 2.

⁸Drafting Committee Report, p.16, para.6(b).

⁹7S/33.

¹⁰C/M/183, p. 89-90.

¹¹Havana Reports, p. 79, para. 48.

The Panel Report on “Japan - Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages” examined, *inter alia*, the claim by the European Communities that wines and alcoholic beverages imported into Japan did not enjoy adequate protection as regards origin marking and that Japan had failed to carry out its obligation under GATT Article IX:6 to “cooperate ... with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation,” and to “accord full and sympathetic consideration to such requests or representations as may be made by any other contracting party regarding the application of the undertaking set forth in the preceding sentence to names of products which have been communicated to it by the other contracting party”.

“The Panel noted from the drafting history relating to Article IX:6 that it had been agreed that the text of Article IX:6

‘should not have the effect of prejudicing the present situation as regards certain distinctive names of products, provided always that the names affixed to the products cannot misrepresent their true origin. This is particularly the case when the name of the producing country is clearly indicated. It will rest with the governments concerned to proceed to a joint examination of particular cases which might arise if disputes occur as a result of the use of distinctive names of products which may have lost their original significance through constant use permitted by law in the country where they are used’. [Havana Reports, p. 79].

“The Panel noted that the Japanese Law and Cabinet Order concerning Liquor Business Association and Measures for Securing Revenue of Liquor Tax stipulated that ‘Any manufacturer of liquors must indicate, at a legible location of the container of liquors ... which are shipped out from the manufacturing premise ..., the name of the manufacturer, the place of the manufacturing premise ..., the capacity of the container ..., the category of liquors ..., the grade of liquors and the following matters according to the category of liquors, in a conspicuous manner’, including the alcohol content in the case of wine, whisky, brandy, spirits and liqueurs. The Panel examined a large number of labels, photos, wine bottles and packages submitted by the EEC as evidence. The Panel found that this evidence seemed to confirm the Japanese submission to the Panel that the labels on liquor bottles manufactured in Japan indicated their Japanese origin.

“The Panel examined the view of the European Community that the use of French words, French names, of other European languages and European label styles or symbols by Japanese manufacturers continued to mislead Japanese consumers as to the origin of the liquors, and that the indication of a Japanese manufacturer did not clarify his precise activities because, for instance, wines bottled in Japan could contain as much as 95% imported bulk wine. The Panel inferred from the wording of Article IX:6 that it was confined to an obligation to ‘cooperate with each other with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation’. The Panel noted that there was no definition of a ‘trade name’ in the General Agreement, and that there were differences in the laws of various countries as to what might constitute a trade name. The Panel did not consider it necessary to define the term ‘trade name’ in this case for the following reasons: Article IX:6 was designed to protect ‘distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation’. The Panel did not dispose of evidence and was unable to find that the use by Japanese manufacturers of labels written partly in English (in the case of whisky and brandy) or in French (in the case of wine), the use of the names of varieties of grapes (such as ‘Riesling’ or ‘Semillon’), or the use of foreign terms to describe Japanese spirits (‘whisky’, ‘brandy’) or Japanese wines (‘chateau’, ‘reserve’, ‘vin rose’) had actually been to the detriment of ‘distinctive regional or geographical names of products’ produced and legally protected in the EEC. Nor could the Panel find that Japan - given, for example, its participation in the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods and its internal laws and regulations on labelling and on the protection of distinctive regional or geographical names (such as

'Armagnac' or 'Chianti') - had failed to meet its obligation to cooperate pursuant to GATT Article IX:6.¹²

B. RELATIONSHIP BETWEEN ARTICLE IX AND OTHER ARTICLES

See the citation from the 1991 Panel Report on "United States - Restrictions on Imports of Tuna" at page 288 above, and the discussion on marks of origin versus other marking requirements on page 289 above.

C. RELATIONSHIP BETWEEN ARTICLE IX AND OTHER AGREEMENTS

The 1994 Annual Report of the Committee on Technical Barriers to Trade to the CONTRACTING PARTIES, concerning developments in the implementation and operation of the Agreement on Technical Barriers to Trade (1979) ("TBT Agreement") notes that "Discussions at the TBT Committee's meetings in 1994 indicated that there is a general understanding among signatories of the TBT Agreement that mandatory marking requirements applied in the context of marking the origin of products are covered by the provisions of the Agreement, but one signatory could not join a consensus on this issue and continues to question the applicability of the provisions of the Agreement to marks-of-origin requirements. These discussions have suggested that there may be value in clarifying the coverage of the provisions of the TBT Agreement with respect to mandatory marking requirements applied in the context of marking the origin of products."¹³

III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS

Article IX corresponds to Article 37 in the Havana Charter. The US-UK *Proposals* deal with marks of origin in Chapter III-6 and the U.S. Draft in Article 14. Both were largely based on recommendations of the Economic Committee of the League of Nations in its Report to the Council on the Work of the 35th Session of the Economic Committee held at Geneva on 18-22 June 1931. The corresponding article in the New York Draft Charter is Article 20, and in the Geneva Draft is Article 36.

Article 37 of the Charter included the material in Article IX of the General Agreement, with the addition of paragraph 1, corresponding to the present Article IX:2, a paragraph 5 establishing a work programme on the elimination of unnecessary marking requirements, and a provision in the paragraph corresponding to Article IX:6 permitting the ITO to convene a conference on the protection of appellations of origin. These provisions were not brought into the text of the General Agreement after the Havana Conference. At the Review Session of 1954-55, it was agreed to add paragraph 1 of the Charter Article to Article IX of the General Agreement as the present paragraph 2. This amendment was effected through the Protocol Amending the Preamble and Parts II and III of the General Agreement, which entered into force on 7 October 1957.

IV. RELEVANT DOCUMENTS

See below at the end of Article X.

¹²L/6216, adopted on 10 November 1987, 34S/83, 125-126, paras. 5.14-5.15.

¹³L/7558, dated 30 November 1994; see also the discussion in TBT/M/45, TBT/M/46, and statement by Korea in TBT/W/176.