

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

COM.IND/W/114

11 October 1973

Special Distribution

Committee on Trade in Industrial Products
Working Group 3

PACKAGING, LABELLING AND MARKING

Documentary Note by the Secretariat

1. At the twenty-seventh session of the CONTRACTING PARTIES, the Chairman noted that there was a consensus that certain additional non-tariff barriers should be referred for examination to the Working Groups established within the framework of the Committee on Trade in Industrial Products (BISD, 18th Supplement, page 39). It was thus agreed that Working Group 3 should consider the problems of packaging and labelling. Accordingly, at the meeting of the Committee in Industrial Products on 10-11 May 1973, the secretariat was asked to prepare a paper describing the international work done so far in this field (COM.IND/W/106).
2. The present Note brings together some of the relevant information to be found in various documents of GATT and other international organizations in regard to labelling, packaging and marking.
3. The study is divided into four chapters:
 - I. Provisions of the General Agreement and work done in GATT.
 - II. Inventory of non-tariff barriers.
 - III. Solutions proposed.
 - IV. Conclusions of the Committee on Consumer Policy of the OECD.

I. Provisions of the General Agreement and work done in GATT

4. The General Agreement does not explicitly refer to questions of labelling and packaging, but Article III has some relevance to the problem since it states that "laws, regulations and requirements affecting the internal sale, offering for sale... of products...should not be applied to imported or domestic products so as to afford protection to domestic production".

On the other hand, Article IX of the General Agreement (see Annex I) takes up the problem of marks of origin from the aspect of principles as well as modalities. Regarding the former, it reaffirms the principle of the most-favoured-nation clause

in respect of marking and states that laws and regulations relating to marks of origin should be reduced to a minimum so as not to hamper international trade, the only permissible justification permitted for such measures being the necessity of protecting consumers.

Where the modalities are concerned, each contracting party should, so far as possible, permit required marks of origin to be affixed at the time of importation, should settle amicably, except in cases of fraudulent intent, any disputes that might arise and should "accord full and sympathetic consideration to such requests or representations as may be made by any other contracting party".

5. At their thirteenth session the CONTRACTING PARTIES adopted a Recommendation designed to simplify the rules on marks of origin (see Annex II); to that end it proposed that the number of cases in which marks of origin are required should be reduced to a minimum, defined certain cases of exemption, suggested a standard wording, and lastly recommended that penalties should not be imposed for failure to comply with marking requirements prior to importation, except in cases of fraudulent intent.

II. Inventory of non-tariff barriers

6. In September 1970, the notifications included in part 3 of the inventory (see Annex III) were reproduced in the illustrative list under numbers 195 to 208, with the exception of numbers 198 and 206 which were withdrawn.

Although these notifications concern various requirements, the problems raised can be grouped in three categories:

- (i) Marks of origin
- (ii) Protection of consumers
- (iii) Other

(i) Marks of origin

Most of the notifications concern detailed requirements imposed on imports into certain contracting parties, whether in regard to wording (no adjectives), marking technique (engraving or labelling), placing and legibility.

(ii) Protection of consumers

Some notifications concern requirements designed to protect the consumer, for example, by including detailed information on the label, or observing certain standard sizes for bottles and other containers. These requirements, which differ from those in force at the domestic level, can also have an inhibiting effect on international trade.

(iii) Other

The other notifications concern rather unusual import requirements in regard to packaging or labelling, such as the numbering of bags, the latter to be unloaded in the same order, or the prohibition of measurement indications other than those consistent with the metric system.

7. Analysis of the notifications received by the secretariat concerning labelling, packaging and marks of origin thus reveals three categories of problems:

- (i) Differences in regulations
- (ii) Ambiguity of motivations
- (iii) Hindrance of international trade

(i) Differences in regulations

Some regulations are very detailed (the United States Fair Packing and Labelling Act of 1966), others are particularly stringent (United Kingdom requirement of a hallmark for jewellery), all are different whether in respect of the products concerned, the information required, or the modalities of presentation, in particular the language.

(ii) Ambiguity of motivations

It is difficult to separate the regulations based on the desire to protect the consumer from those having other motivations.

(iii) Hindrance of international trade

Apart from the regulations designed to protect the consumer against "fraudulent or misleading indications" (Article IX of the General Agreement) and to ensure his health and security, the regulations in force in the field of marking and labelling frequently constitute obstacles to the development of international trade by imposing requirements that are difficult to respect or that involve additional expenses for exporters as compared with domestic producers. This situation was underlined in 1971 by the Committee on Trade in Industrial Products (L/3496).

III. Solutions proposed

In its second report to the Council, the Committee on Trade in Industrial Products formulated the following conclusions (L/3496, pages 60 and 61):

8. "It was recognized that packaging, labelling and marking requirements, many of which were designed to protect consumers, could also have adverse trade effects. Efforts to tackle these problems are presently under way in the OECD.

9. It was pointed out that the question of difference of government responsibility in the field of packaging, labelling and marking requirements may in some cases present the same intrinsic difficulties in this field as it does in the field of standards. Consequently, governments' possibilities for action may also differ in some cases and this should be borne in mind in considering possible solutions.

10. It was proposed that packaging and labelling be covered by the provisions relevant to standards and that the question of marks of origin required by customs authorities be referred to Working Group 2. However, it was generally recognized that some aspects of marking requirements remained relevant to the question of standardization.

11. It was noted that the CONTRACTING PARTIES' Recommendation of 21 November 1958 on Marks of Origin (Seventh Supplement, page 30) was relevant to the problems encountered under this heading. It was felt that close observance of this Recommendation would be desirable. For this purpose it was considered useful to ask the secretariat to examine, as a first step, to what extent the Recommendation on Marks of Origin was effectively implemented by the CONTRACTING PARTIES. It was pointed out, however, that the Recommendation would need elaboration and further precision on certain points, such as its paragraph 2, which provides that 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 marking is considered necessary". The concept of "necessary marking" needed closer definition. There was also need to define the clauses concerning penalties.

12. There was general support for the idea that Article IX and further elaboration of the Recommendation of 1958 would provide the basis for solving the problems arising from marks of origin. One delegation suggested that this Recommendation be put on a contractual basis."

13. The Committee on Trade in Industrial Products had noted in the same report that the problem of packaging, labelling and marking was linked in some respects to the problem of standards; a first approach to the problem might therefore be to examine whether the GATT draft code of practices with a view to preventing the introduction of technical barriers to trade could be applicable, in respect of some of its provisions, to the problem under consideration here.

IV. Conclusions of the Committee on Consumer Policy of the OECD

14. In 1972, the Committee on Consumer Policy of the OECD published a report on labelling as applied by the member countries of that organization. The document examines practices in regard to compulsory and voluntary labelling, with particular reference to textiles.

15. Compulsory labelling is designed either to protect the health or safety of consumers (dangerous goods, where outright prohibition is not considered feasible) or to provide information on the characteristics of the product (weight, volume, number in the package, composition of the article, origin in the case of imported consumer articles). While most member countries have recognized the need for compulsory labelling, there are variations between them in the range of commodities covered by compulsory labelling requirements.

16. Four principal types of voluntary labelling can be distinguished:

(i) information labelling schemes applied by specialized organizations, mostly financed by the public authorities and mainly designed to give appropriate information concerning the composition and performance of products.

(ii) labelling schemes applied by various private organizations such as standardization organizations, under which quality or safety labels are affixed to the product.

(iii) recommendations by standardization organizations or by governments; since application of these standards is not compulsory, their usefulness for the consumer is questionable.

(iv) application of complementary schemes by professional associations or other industrial groups. Labels of this kind do not afford any guarantee of quality because the manufacturer concerned is responsible for the information furnished.

17. The Working Party examined in greater detail the various aspects of textile labelling, whether for protecting the health and security of consumers (flammability, use of polluted materials) or for their information (fibre content, care instructions, size).

ANNEX I

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.

ANNEX II

Marks of Origin

Recommendation of 21 November 1958¹

Considering that in Article IX of the General Agreement 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 that it would facilitate the attainment 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, and

Considering 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 that contained in the recommendation,

The CONTRACTING PARTIES

Recommend the adoption of the following rules on marks of origin:

1. Countries 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 requirement 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.

¹See BISD, Seventh Supplement, page 117 for the report adopted by the CONTRACTING PARTIES.

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".
6. Commonly-used abbreviations, 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.
7. 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.
8. 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.
9. Imports for non-commercial personal use 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 in consequence of inheritances, trousseaux, etc. and which are freed from duties in many countries.
10. Original objets d'art should be free from the marking requirement.
11. Goods in transit and goods while in bond or otherwise under customs control, for the purposes of temporary duty-free admission, should be free from the marking requirement.
12. 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.
13. The re-exportation of products which cannot be marked under customs supervision should be permitted without penalty.

14. Penalties should not be imposed in contradiction to paragraph 5 of Article IX of the General Agreement, 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.

15. 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 the General Agreement.

16. 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 the General Agreement 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 marks, including trade marks and trade descriptions, aiming to ensure that the content of such marks 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 before 1 September each year.

ANNEX III

Reproduced below are the most significant notifications in the Illustrative List in regard to packaging, labelling and marking requirements.

<u>Country maintaining measure</u>	<u>Description of measure</u>	<u>Notifying country</u>
Canada	Imports permitted only in can sizes established by the Canadian Government	United States

Method

Five can sizes standard in the United States are not permitted in Canada, including the popular size 303. The Canadian representative pointed out that the trend both in North America and elsewhere was towards a reduction in the number of permissible consumer container and package sizes. He explained that the Canadian Agricultural Standards Act had limited the number of sizes in which certain foods could be retailed as a means of helping the consumer to compare prices easily and without having to take account of differences in the content of a wide range of cans of different shapes. The Canadian representative pointed out that all standard container sizes in use in Canada are today or have been at some time in common use in the United States.

Effects

The representative of the United States felt that Canada should not forbid entry of certain sized containers commonly used in commercial trade in the United States shipped throughout the world. He felt this could easily be permitted in Canada and that this would remove a barrier to trade, especially as no auxiliary problems of health appeared to be involved. The representative of Canada did not accept that adoption of United States sizes was necessarily the best way of obtaining standardization of sizes.

GATT relevance

It was suggested that a multilateral exchange of views might be fruitful in this area.

Note: At the May 1970 meeting of Group 3, the United States proposed that Canada withdraw its limitation on can sizes or at least change its regulations to include the five standard United States sizes, namely:

303/406	Standard size - used for vegetables
300/407	Used for asparagus
211/400	Used for asparagus
211/300	General purpose
211/304	General purpose

The representative of Canada said that it was an accepted principle to limit can sizes in order to help consumers compare prices and quantities. In view of his Government's plans to change over to the metric system, it was not the appropriate time to introduce new regulations. When the change would be effected, other countries' interests would be taken into account.

<u>Country maintaining measure</u>	<u>Description of measure</u>	<u>Notifying country</u>
Japan	Labelling requirements call for indications in metric measurement <u>only</u>	United States

Method

The notifying country explained that Japan was the only country to forbid dual labelling, and that the international practice of dual labelling had even received the sanction of a Committee on Food Labelling which had recently met in Ottawa to prepare its Codex Alimentarius. It was noted that Japan dual-marked her own exports. The representative of Japan explained that there was a long history of inconvenience caused by simultaneous use of three systems of measurement in Japan; this had eventually been ended by the Measurement Law of 1951, which became effective in 1959. It was feared that to permit use in labelling of any measurement other than the metric system would again create difficulty. Other measurements could, however, be used in documentation.

Effects

The Japanese representative stated that the measure had no protective intent and was not believed to have such an effect.

The United States representative noted that extra trouble and expense were certainly involved in overlaying or obliterating indications of measurement other than the metric ones. This matter had moreover been specifically raised by the National Canners Association in the United States. The difficulty, it was stressed, was not with including metric measurements but with excluding all others.

GATT relevance

Note: At the May 1970 meeting of Group 3, the United States asked that Japan lift the restriction on dual labelling, and referred to the guidelines for labelling drafted by the Committee on Food Labelling of the Codex Alimentarius Commission in Ottawa, July 1966: "Net content: a correct declaration of the net content in either the metric or avoir-du-poids, or both systems of measurement, as required by the country in which the food is sold". Japan was the only country prohibiting dual labelling - this was a considerable hindrance on the flow of trade.

The representative of Japan recalled the special problem of importing a single measurement system - the metric - in a country which had used multiple systems. In his view, the requirement for metric labelling only was not onerous.

<u>Country maintaining measure</u>	<u>Description of measure</u>	<u>Notifying country(ies)</u>
United States	Marks of origin	Austria Canada EEC Japan Nordics

Method

United States customs laws (Sec. 304, Tariff Act of 1930, Sec. 11.8 of customs regulations) require that all imported articles be conspicuously and permanently marked to show the final consumer the country of origin. Where the articles themselves are specially exempted the marking is required to be shown on containers. Failure to comply involved payment of a penalty amounting to 10 per cent of normal duty. There were, in addition, special regulations concerning marking of cutlery, scientific instruments and thermos bottles. Moreover, it had been noted that the professional standards organizations were now beginning to set marking requirements as well. For example, the American Society for Testing Materials had recently proposed that certain types of construction steel should carry a stamp in relief at specified intervals, showing the country of origin and name of the supplier firm: the Community had succeeded in obtaining a modification to eliminate need to show the country of origin, but considerable cost would still be involved in modifying machinery and equipment to produce the required relief stamp for exports to the United States market. Such regulation suggested that the objective was to eliminate competition rather than unfair competition.

Effects

The notifying countries considered the United States requirements and penalties to be excessive and burdensome and to constitute a significant barrier to imports. This problem was all the more serious as GATT had adopted a Resolution on 21 November 1958, looking toward simplification or standardization of marking requirements. This Resolution obviously needed strengthening. The representative of the United States expressed surprise that United States requirements should be found to be out of line with others. A twenty-seven country survey undertaken in the United States on this subject had shown that the United Kingdom had almost universal marking requirements under various orders which had been issued. Certain of the member States of the EEC also had similar requirements for some products.

Further, he recalled no diplomatic representations on the subject recently, except for two small cases, either in general terms or specifically with reference to Article IX of GATT. The United States would welcome information about specific cases as the Bureau of Customs stood ready to review problems in the light of legislation under which it was obliged to work. The United States might have notifications to make on this subject regarding other countries.

GATT relevance

Article IX contains rules regarding marking requirements and there was a Resolution of 1958 on the subject (BISD, Seventh Supplement, pages 30, 117).

Note: At the May 1970 meeting of Group 3 the EEC pointed out that the difficulty stemmed from the lack of effective government control on marking requirements in the steel industry. The ASTM was a producers' organization. Generally, when standards were controlled by public authorities or consumers the concern was on quality and prices; when control was in producers' hands the emphasis was not in favour of foreign competition.

There was strong support for reviewing, and possibly strengthening, the terms of the GATT Resolution of 1958 on Marks of Origin, and taking steps to ensure its observance. One delegation suggested that the Resolution could be placed on a contractual basis.