

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED  
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## MARKS OF ORIGIN

### Submission of Laws and Regulations

The Governments of Australia, New Zealand and the United Kingdom have submitted information in response to the requests contained in L/478.

#### AUSTRALIA

The Australian Government has supplied, in Part I of its note, extracts from the relevant laws and regulations and, in Part II, comments on the International Chamber of Commerce Resolution (L/430). The contents are as follows:

#### I

"Marks of origin on goods imported into Australia are required in accordance with the Commerce (Trade Descriptions) Act 1905-1933. This Act must be incorporated and read as one with the Customs Act 1901-1954. Relevant extracts from this Act and complementary regulations are set out below."

#### COMMERCE (TRADE DESCRIPTIONS) ACT

"3. 'Trade description' in relation to any goods, means any description, statement, indication, or suggestion, direct or indirect -

- (a) as to the nature, number, etc. of the goods
- (b) as to the country or place in or at which the goods were made or produced; or
- (c) as to the manufacturer or producer of the goods, etc.
- (d) as to the mode of manufacturing, etc.
- (e) as to the material or ingredients
- (f) as to the goods being the subject of an existing patent

and includes a Customs entry relating to goods; and any mark which according to the custom of the trade or common repute is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act.

'False trade description' means a trade description which, by reason of anything contained therein or omitted therefrom, is false or likely to mislead in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, which makes the description false or likely to mislead in a material respect.

4. (1) A false trade description shall be deemed to be applied to goods if -

- (a) it is applied to the goods themselves; or
- (b) it is applied to any covering, label, reel, or thing used in connexion with the goods; or
- (c) it is used in any manner likely to lead to the belief that it describes or designates the goods.

(1A) A trade description which is required by the regulations to be applied to any goods shall be deemed to be applied to the goods if -

- (a) it is applied to the goods themselves; or
- (b) it is used in relation to the goods in the manner prescribed.

(2) 'Covering' includes any stopper, glass, bottle, vessel, box capsule, case, frame, or wrapper; and 'label' includes any band or ticket.

5. (1) An officer may inspect and examine all prescribed goods which are imported ---

(2) The officer may where practicable take samples of any goods inspected by him pursuant to this section, and the samples so taken shall be dealt with as prescribed.

(3) For the purposes of this section an officer may enter any ship, wharf or place, and may open any packages, and may do all things necessary to enable him to carry out his powers and duties under this section.

7. (1) The regulations may prohibit the importation or introduction into Australia of any goods unless there is applied to them a trade description of such character, relating to such matters, and applied in such manner, as is prescribed.

(2) All goods imported in contravention of any regulation under this section may be detained by the Collector and may by direction of the Minister be seized as forfeited to the King.

(3) Subject to the regulations, the Comptroller-General, or on appeal from him the Minister, may in any case, and if in his opinion the contravention has not occurred either knowingly or negligently shall permit any goods which are liable to be or have been seized as forfeited under this section to be delivered to the owner or importer upon security being given to the satisfaction of the Comptroller-General that the prescribed trade description will be applied to the goods or that they will be forthwith exported.

(4) No regulations under this section shall take effect until after the expiration of not less than three months from notification in the gazette.

8. All imported goods to which a trade description is by the regulations required to be applied, and which are found in Australia without the prescribed trade description, shall until the contrary is proved be deemed, subject to the regulations, to have been imported in contravention of the regulations.

9. No person shall import any goods to which a false trade description is applied.

Penalty: One hundred pounds.

It shall be a defence to a prosecution for an offence against this section if the defendant proves that he did not knowingly import the goods in contravention of this section.

9A. All imported goods found in Australia which bear a false trade description shall, until the contrary is proved, be deemed to have been imported in contravention of this Act.

10. All goods to which any false trade description is applied are hereby prohibited to be imported, and shall if imported be forfeited to the King.

Provided that the Comptroller-General, or on appeal from him the Minister, may, if he is satisfied that any goods which have been seized as forfeited under this section were not knowingly imported in contravention of this Act, permit the importer to correct the false trade description, and may, when the correction has been made to his satisfaction, order the release of the goods, subject to the payment by the importer to the Customs of the expenses of the seizure and thereupon the forfeiture shall be remitted.

17. The Governor-General may make regulations not inconsistent with this Act prescribing all matters and things required or permitted by this Act to be prescribed or which are necessary and convenient to be prescribed

for carrying out or giving effect to this Act, and particularly for the analysis of samples taken under this Act, and the extent to which certificates of analysis shall be prima facie evidence in proceedings under this Act of the facts therein stated."

COMMERCE (IMPORTS) REGULATIONS

Regulation 7

"The importation of the following goods is prohibited unless there is applied to those goods a trade description in accordance with these Regulations:

- (a) Articles used for food or drink by man, or from which food or drink for use by man is manufactured or prepared;
- (b) medicines or medicinal preparations for internal or external use;
- (c) manures;
- (d) agricultural seeds;
- (e) plants;
- (f) textile products and articles of apparel including boots and shoes;
- (g) leather;
- (h) jewellery;
- (i) brushware;
- (j) china, porcelain, earthenware and enamelled hollow ware of the following kinds:
  - (i) articles of a description commonly used in connexion with the serving of food or drink for man; and
  - (ii) kitchenware and kitchen utensils.
- (k) electrical appliances, apparatus and accessories, including electric incandescent lamps;
- (l) powder puffs;
- (m) toys;
- (n) cigars, cigarettes, manufactured tobacco, cigarette papers and cigarette tubes;
- (o) Portland cement;
- (p) sanitary and lavatory articles of earthenware, fireclay, vitreous china or similar substances or materials;

- (q) wall, hearth and floor tiles; and
- (r) watches and clocks and movements for watches and clocks."

Regulation 8

"The trade description to be applied in accordance with these Regulations shall comply with the following provisions:

- (a) It shall be in the form of a principal label or brand affixed in a prominent position and in as permanent a manner as practicable to the goods, or where affixture to the goods is impracticable, to the coverings, containing the goods; and
- (b) it shall contain in prominent and legible characters -
  - (i) the name of the country in which the goods were made or produced;
  - (ii) in the case of goods specified in paragraph (a), (b), (c), (d) or (e) of the last preceding regulation - a true description of the goods;
- (c) where any weight or quantity is set out, it shall specify whether the weight so set out is gross or net; and
- (d) any matter included on the label or brand, additional to that specified in these Regulations, shall not be such as will, by illustration, by wording or by size of lettering, tend to contradict or obscure the specified particulars."

CUSTOMS (PROHIBITED IMPORTS) REGULATIONS

" 5. The importation of the goods specified in the Third Schedule to these Regulations shall be prohibited unless the conditions and restrictions respectively specified in that Schedule opposite to the name or description of those goods have been complied with.

The Third Schedule

Item No.	Name or Description of Goods	Conditions and Restrictions
2	Articles to which or to any covering or container of which there is applied any marking (including, in addition to words, any contraction, abbreviation or any substitute for words) in a	There shall be applied to such articles or to any container thereof as the case may be, in conjunction with the marking referred to, wherever such marking appears and in conspicuous and legible characters, a definite qualifying statement in

language other than the language ordinarily used by the people of the country of origin of the goods.

the English language indicating the country in which the articles were made or produced: Provided that if the Minister directs that the application to any particular articles, coverings or containers is unnecessary, the application of such a statement shall not be required in the case of those goods."

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## II

### COMMENTS ON THE INTERNATIONAL CHAMBER OF COMMERCE RESOLUTION (L/430)

"It is Australian policy and practice to require the application of marks of origin to imported goods only where necessary to protect the consumer or to prevent fraudulent trade practices. Australian marks of origin requirements are not used as a disguised form of protection and in the administration of these requirements every effort is made to avoid their becoming a burden to importers.

"Consequently Australia is in general agreement with the ICC proposal for the establishment of a reasonable set of standard regulations. Not all of the proposed 'guiding principles' however would be acceptable in their present form. Comments on each of these principles are as follows:

#### 1. Time of Affixing the Mark

"It is necessary for the mark to be affixed to the goods at the time of importation but it is Australian administrative practice to allow goods imported without the required mark to be marked under Customs supervision as recommended by the ICC.

#### 2. Nature of the Mark

"There are a number of proposals under this heading which are generally in accord with Australian practice. However, goods must be marked with the name of the country in which they were produced. The name of the locality or region is not acceptable. It is also preferred for the name of the country of origin to be preceded by the words 'Made in ---' but no objection would be taken to the origin being stated alone provided the description was not misleading.

"The trade description on the goods may be in the language of the country of origin. Concerning the type of marking, generally speaking any manner of application which will reasonably ensure the trade description ultimately reaching the consumer is acceptable.

### 3. Special Provisions

"(a) Australia requires the marking to be permanently and prominently affixed to the goods, or, where that is impracticable, to the coverings containing the goods.

"(b) Articles which cannot normally be marked are admitted if marking particulars appear on all the principal coverings in which the goods are contained and in which such goods are usually sold wholesale or retail.

"(c) The Regulations do not require component parts to be marked except where such parts are specified in the Regulations as goods required to be marked.

"(d) The requirements of the Commerce (Imports) Regulations in regard to the importation and marking of foodstuffs and medicines do not impose any hardship on the manufacturer or producer. The trade description is required to include a true description of the goods and to reveal any deleterious or preservative substances contained in such goods.

### 4. Exemptions

"(a) If an acknowledged trade description accurately describes the goods to which applied such will be accepted as a true description under the Australian laws and regulations.

"(b) Australian legislation does not provide specific exemptions for goods of small value or weight.

"(c) Goods imported for subsequent exportation, i.e. without re-processing, are exempted from marking requirements, provided that immediately on landing and prior to any examination they are entered for warehouse 'For exportation only.' In specific instances, where the Collector is satisfied that the imported goods are intended to be used in a manufacturing process for re-export exemption from marking provisions may be permitted.

"(d) Goods required to be marked are considered prohibited imports if not correctly marked at the time of importation. In special circumstances, Collectors of Customs do allow goods, not correctly marked in accordance with the Regulations, to be bonded on the understanding that such goods will be marked before being cleared for home consumption.

"(e) 'objets d'art', unless qualifying as jewellery, are not required to be marked in terms of the Commerce (Imports) Regulations.

### 5. Penalties

"The Commerce (Trade Descriptions) Act provides for a penalty of £100 in respect of goods imported bearing a false trade description. In addition, all such goods are subject to forfeiture.

However, provision exists for such goods to be released provided it is proved to the satisfaction of the Comptroller-General, or on appeal from him the Minister, that the goods seized as forfeited, under the Commerce (Trade Descriptions) Act were not knowingly imported in contravention of the Act.

6. Entry into Force and Notification

"Regulations made under the Commerce (Trade Descriptions) Act in respect of importations do not take effect until three months from notification in the Commonwealth Gazette."

NEW ZEALAND

The Merchandise Marks Act 1954<sup>1</sup>, which includes inter alia the New Zealand legislation covering marks of origin, together with the Footwear Marking Order 1955, have been received from the New Zealand Government. This Order in Council, the main contents of which are reproduced herewith, is the only existing order under the Merchandise Marks Act providing for marks of origin.

FOOTWEAR MARKING ORDER

... (Preamble)

"1. (1) This order may be cited as the Footwear Marking Order 1955.

(2) This order shall come into force on the 30th day of June 1956.

2. In this order the term 'footwear' means boots, shoes, sandals, and slippers of all kinds and all similar articles of footwear.

3. Every article of footwear shall bear an indication of the country in which the footwear was manufactured or produced, which indication shall appear on the footwear, in the case of imported footwear, at the time of its importation, and in the case of footwear made in New Zealand at the time of its manufacture.

4. The said indication of origin shall be applied to each boot or shoe or sandal or slipper or similar article of footwear in the following manner:

- (a) By letters die-stamped, impressed, or embossed on the outer surface of the inner or outer sole, sock lining, or quarter lining; or
- (b) By letters printed with indelible ink on the outer surface of the inner or outer sole, or the quarter lining; or
- (c) Where neither of those methods is practicable then by way of letters -
  - (i) Printed with indelible ink on a label which must be securely affixed to the outer surface of the inner or outer sole; or

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<sup>1</sup> This Act has not been reproduced in this document, but can be consulted in the office of the secretariat.

- (ii) In relief impressed on a rubber label and cemented before vulcanization to the outer sole or near the top of the boot on the outside.

5. No article of footwear to which this order applies shall be sold or exposed for sale in New Zealand unless it bears an indication of origin as prescribed in this order:

Provided that this clause shall not apply to any article of footwear shown to have been imported into New Zealand before the 30th day of June 1956 or to footwear shown to have been manufactured in New Zealand before that date. "

... (Signature and Explanatory Note)

UNITED KINGDOMDescription of existing Legislation

"The following is intended to be no more than a general explanation of those parts of the Merchandise Marks Acts which relate to marks of origin on imported goods. It is not intended to be, nor must it be taken to be, an authoritative interpretation of the Acts or of any part of them."/

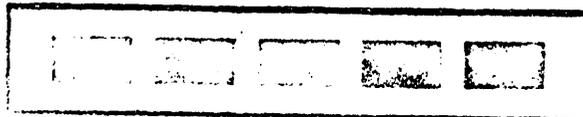
"The law of the United Kingdom as it affects marks of origin to be applied to imported goods is contained in the Merchandise Marks Acts 1887-1953 and in subordinate legislation issued under the authority of these Acts.

"For convenience of reference the imported goods which are concerned can be divided into two groups, viz:

- (1) Named goods, being goods described in an Order-in-Council made under the authority of the Act of 1926; and
- (2) All other goods which 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.

"A list of the goods in Group (1) is contained in 'Notices 33B and 33C'. It should be observed that only certain of the goods contained therein (that is to say those described in 'Part 1' of each Notice) need be marked with an indication of their origin at the time of their importation; the remainder, although they need not be marked at the time of importation, must be marked before subsequent sale, whether wholesale or by retail, in the United Kingdom. Each Order-in-Council lays down the manner in which the indication of origin is to be applied to the goods.

"Goods in Group (2) comprise any foreign goods which bear a marking which is, or purports to be, the name or trade mark of any manufacturer, dealer or trader in the United Kingdom; by virtue of Section 16(1) of the Act of 1887, such goods may not be imported unless they also bear an indication of origin. Furthermore, by Section (1) of the Act of 1926, imported goods so marked, or marked with the name of any place or district in the United Kingdom, may not be sold, exposed for sale etc. in the United Kingdom unless also marked with an indication of origin.



"By virtue of Section 10 of the Act of 1926, the indication of origin to be applied to goods in either group (1) or group (2) above may be, at the option of the importer or buyer, either, a definite indication of the country of origin, or the word 'foreign' (in the case of goods manufactured or produced in foreign countries) or 'Empire' (in the case of goods manufactured or produced in a part of H.M. Dominions outside the United Kingdom). Except for goods in Group (1) above, there is no requirement that imported goods which do not bear a name or trade mark which suggests a United Kingdom origin must be marked with an indication of their origin.

"Whenever imported goods bear an indication of their origin, whether or not they are required, as indicated above to be so marked, such indication of origin is, by virtue of Section 3(1) of the Act of 1887, deemed to be a 'trade description' and as such, must not be false or misleading.

"Proceedings in the Courts of the United Kingdom in respect of alleged contravention of any of the provisions of the Merchandise Marks Acts 1887-1953 may be instituted by any person, that is to say, the right to bring such proceedings is not restricted to certain specified authorities. The Act also lay down the maximum penalties which may be awarded on conviction.

"Copies of the Merchandise Marks Acts 1887-1953 and of Notices 33B and 33C are attached. The relevant sections of the Acts are:

- (i) Merchandise Marks Act, 1887 - Sections 2, 3, 5, 7, 8, 15, 16, 18.
- (ii) Merchandise Marks Acts, 1926 - Sections 1 - 10.
- (iii) Patents etc. (International Conventions) Act, 1938 - Section 10.
- (iv) Merchandise Marks Act, 1953 - Sections 1, 3, 4, 5."

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<sup>1</sup> These Acts and Notices have not been reproduced in this document, but can be consulted in the office of the secretariat.

