

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/478/Add. 9
18 September 1956

Limited Distribution

Original: English

MARKS OF ORIGIN

Submission of Laws and Regulations

The following documentation has been received from the Government of the United States of America:

- I. The United States comments on the resolution of the International Chamber of Commerce on marks of origin.
- II. Section 304, Tariff Act of 1930, as amended.¹
- III. Section 11.8 through 11.11 Customs Regulations inclusive.
- IV. A list of articles excepted for marking under the provisions of Section 304 (a) (3) (j), Tariff Act of 1930, as amended.

I

August 30, 1956

The United States Government has reviewed the resolution of the International Chamber of Commerce dealing with marks of origin and setting forth "guiding principles for an international arrangement" and feels that those guiding principles merit further consideration. Accordingly, this Government would be willing to participate in their further study with a view to ascertaining the extent to which they merit international acceptance.

Where the proposals contained in the International Chamber of Commerce resolution differ substantially from marks of origin requirements under United States laws and regulations, they are commented upon below.

Page 4 of GATT Document L/430: Nature of the Mark "...any regulations requiring the name of the manufacturer or other additional indications should be opposed." Paragraph 367, Tariff Act of 1930 requires the name of the manufacturer or purchaser; in words and in Arabic numerals the number of jewels, if any, serving a mechanical purpose as frictional bearings; and, in words and in Arabic numerals, the number and classes of adjustments, or, if unadjusted, the word "unadjusted" on any watch or other time measuring mechanism that is less

¹Regarding the reproduction of certain paragraphs referred to in these Sections of the Tariff Act, see footnote* in Annex III.

than 1.77 inches wide. Paragraph 367 also requires the name in full of the manufacturer or purchaser on all cases, containers or housings suitable for the enclosure of such time measuring mechanisms. Paragraph 368 requires the name of the manufacturer or purchaser and the number of jewels, if any, on any clock or other time measuring mechanism that is 1.77 inches or more wide. Both the Fur Products Labelling Act and the Wool Products Labelling Act require the name of the manufacturer to appear on the product. However, this requirement applies to both domestic and imported articles in those instances and is intended to assure standard quality. Accordingly, it does not appear that this requirement conflicts with the purpose or spirit of the proposal of the International Chamber of Commerce.

Page 4 of GATT Document L/430: Special Provisions Item (c) resembles Section 304 (a) (3) (G), Tariff Act of 1930, as amended, which exempts from marking an article to be processed in this country by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by Section 304 would necessarily be obliterated, destroyed, or permanently concealed. The exemption under section 304 (a) (3) (G) does not cover component parts which are not to be processed but are to be sold to ultimate purchasers for their own use. It is possible under certain circumstances that components imported for use in the manufacturing of a new or different article may be exempted from marking pursuant to applicable exceptions set forth in section 304 (a) (3) of such Act. (See Section 11.10 (e) of the Customs Regulations.)

Page 5 of GATT Document L/430; Item 3(d) concerns the marking of containers of foodstuffs and beverages with data as to the nature and quality of contents in addition to the name of the country of origin. As such data is required to be shown in the case of such domestic goods processed for domestic consumption, the aim of United States requirements is of the acceptable type suggested by the International Chamber of Commerce. No attempt is made to furnish excerpts herewith as to the many laws and regulations of this type since they are directed at all goods of a particular nature, whether domestic or imported.

Page 5 of GATT Document L/430: Exemptions: Item 4(a) is a type of exemption which as a separate marking category would create added problems in the administration of marking requirements. It is thought best to abstain from considering such type of marking as a separate method of marking. The determination of whether a trade-mark would be completely free from misinterpretation would have to be based under Section 304 on whether the English name of the country of origin is given in the prescribed manner.

Page 5 of GATT Document L/430: Item 4(b) (ba) suggests an exception from marking in the case of consignments of a value of less than a maximum to be determined or of a weight less than a maximum weight to be determined according to the product. Section 11.10 of the Customs Regulations presently

excepts from marking certain bona fide gifts having a value of not in excess of \$10 and certain commercial importations having a value of not in excess of \$1. Under United States law the weight of a shipment has no bearing on whether it must be marked to indicate the name of the country of origin.

At page 5, the subject of penalties is discussed. Section 304 of the Tariff Act, as amended, does not establish a penalty but provides only for an additional duty of ten percent of the value of the goods for failure to mark imported merchandise. Such additional duty is determined at the time of liquidation of the entry. It is dependent upon whether the imported merchandise has been exported, destroyed, or marked, as required by law and regulation, before liquidation. If not, the additional duty is assessed. It is not considered to be a penalty under United States law and can be avoided in any of the ways mentioned in the law.

The final comment of the International Chamber of Commerce on marks of origin considers changes in marking requirements and suggests a reasonable period of notice. Notice is given when changes are under consideration and proposed changes are made known in order that views of the interested public may be obtained. In cases where a marking requirement is changed which does not involve changes in the methods of manufacture to effectively comply with the change, no postponement of the effective date of a new requirement is necessarily made.

II

EXTRACT FROM TARIFF ACT OF 1930, AS AMENDED

SECTION 304. MARKING OF IMPORTED ARTICLES AND CONTAINERS --

(a) Marking of articles

Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations --

- (1) Determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stencilling, stamping, branding, labelling, or by any other reasonable method, and a conspicuous place on the article (or container) where the marking shall appear;
- (2) Require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser; and
- (3) Authorize the exception of any article from the requirements of marking if --
 - (A) Such article is incapable of being marked;
 - (B) Such article cannot be marked prior to shipment to the United States without injury;
 - (C) Such article cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation;
 - (D) The marking of a container of such article will reasonably indicate the origin of such article;
 - (E) Such article is a crude substance;
 - (F) Such article is imported for use by the importer and not intended for sale in its imported or any other form;
 - (G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;

- (H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;
- (I) Such article was produced more than twenty years prior to its importation into the United States;
- (J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after 1 July, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding 1 January 1937, and were not required during such period to be marked to indicate their origin; Provided, That this sub-division shall not apply after 1 September 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of sections 1351-1354 of this title, as extended; or
- (K) Such article cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section.

(b) Marking of containers

Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container, if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a) of this section. If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

(c) Additional duties for failure to mark

If at the time of importation any article (or its container, as provided in subsection (b) of this section) is not marked in accordance with the requirements of this section, and if such article is not exported or

destroyed or the article (or its container, as provided in subsection (b) of this section) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and to be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer.

(d) Delivery withheld until marked

No imported article held in customs custody for inspection, examination, or appraisement shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (c) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

(e) Penalties

If any person shall, with intent to conceal the information given thereby or contained therein, deface, destroy, remove, alter, cover, obscure, or obliterate any mark required under the provisions of this chapter, he shall, upon conviction, be fined not more than \$5,000 or imprisoned not more than one year, or both.

III

BUREAU OF CUSTOMS, WASHINGTON
EXCERPT FROM CUSTOM REGULATIONS

MARKING

11.8 Marking of articles and containers to indicate name of country of origin.

(a) The term "country" as used in section 304, Tariff Act of 1930, as amended⁴, requiring the marking of articles to indicate the country of origin, shall be considered to mean the political entity known as a nation. Colonies, possessions, or protectorates outside the boundaries of the mother country shall be considered separate countries. The name of any such colony, possession, or protectorate shall be considered acceptable marking, except when the Bureau finds that the name is not sufficiently well known to insure that the ultimate purchasers will be fully informed of the country of origin,⁵ or where the name appearing alone may cause confusion, deception, or mistake.

(b) The marking required by such section 304 shall include the English name of the country of origin, unless other marking to indicate the English name of the country of origin is specifically authorized by the Bureau.⁶ The adjectival form of the name of a country shall be accepted as a proper indication of the name of the country of origin of imported merchandise, provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. For example, such terms as "English walnuts" or "Brazil nuts" are unacceptable. Variant spellings which clearly indicate the English name of the country of origin, such as Brasil or

⁴ "Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations—

"(1) Determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stencilling, stamping, branding, labelling, or by any other reasonable method, and a conspicuous place on the article (or container) where the marking shall appear; ***." (Tariff Act of 1930, sec. 304(a), as amended; 19 U. S. C. 1304(a).)

⁵ In such cases, the Bureau will specify in decisions which will be published in the weekly Treasury Decisions the additional marking to be used in conjunction with the name of the colony, possession, or protectorate.

⁶ Notices of acceptable markings other than the English name of the country of origin will be published from time to time in the Treasury Decisions.

Brazil and Italie for Italy, are acceptable. Abbreviations which unmistakably indicate the name of a country, such as "Gt. Britain" for "Great Britain" and "Br. N. Borneo" for "British North Borneo," are acceptable.

(c) The country of manufacture or production shall be considered the country of origin. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of this section.

(d) Subject to the exceptions specified in section 304 (a)(3), Tariff Act of 1930, as amended, each article classifiable under paragraph 354, 355, 358, 359, 360, 361, or 1553* of that Act shall be marked legibly and conspicuously to indicate its origin by die stamping, cast-in-the-mold lettering, etching (acid or electrolytic), engraving, or by means of metal plates which bear the prescribed marking and which are securely attached to the article in a conspicuous place by welding, screws, or rivets. In the case of other classes of articles, the exact method of marking to meet the requirements of section 304, Tariff Act of 1930, as amended, is not specified in these regulations or elsewhere. When an article not classifiable under a paragraph specified above is required to be marked under section 304 to indicate its origin, any method of legible and conspicuous marking is acceptable which will remain on the article (or its container, when the container and not the article is required to be marked) until it reaches the ultimate purchaser. The marking must in all cases be legible and conspicuous and of a degree of permanency which will assure that in any reasonably foreseeable circumstance the marking, unless it is deliberately removed, will remain on the article (or its container) until it reaches the ultimate purchaser. For example, if chinaware is marked by means of paper sticker labels, the labels, legibly indicating the English name of the country of origin, must be affixed to the chinaware in a conspicuous place and so securely that unless deliberately removed they will remain on the chinaware while it is in storage or on display and until it is delivered to the purchaser at retail or other ultimate purchaser. Similarly, when tags are used, the tags, legibly indicating origin, must be attached in a conspicuous place and in a manner which assures that unless deliberately removed they will remain on the article until it reaches the ultimate purchaser.

(e) If an imported article is to be used in the United States in the manufacture of an article having a name, character, or use differing from that of the imported article, the principle of the decision in the case of United States v. Gibson-Thomsen Co., Inc. (C. A. D. 98) will apply to such

* These paragraphs are not reproduced in this document but can be consulted in the secretariat; they relate to: 354/55 certain knives, 356 certain clippers and shears, 358 safety razors, etc., 359 surgical and dental instruments, 360 certain scientific instruments, 361 certain pliers, 368 watch movements, etc., 369 clock movements, etc. (Footnote added by the secretariat)

imported article. Under this principle, the manufacturer or processor in the United States who will convert or combine the imported article into the different article will be considered the "ultimate purchaser"^{6a} of the imported article within the contemplation of section 304(a), Tariff Act of 1930, as amended.

(f) Articles of foreign manufacture or production imported into any possession of the United States outside its customs territory (section 401(k), Tariff Act of 1930, as amended) and reshipped to the United States are subject to all marking requirements applicable to like articles of foreign origin imported directly from a foreign country to the United States.

(g) When an imported article is of a kind which is usually combined with another article subsequent to importation but before delivery to an ultimate purchaser, and the name indicating the country of origin of the article appears in a place on the article so that the name will be visible after such combining, the marking shall include, in addition to the name of the country of origin, words or symbols which shall clearly show that the origin indicated is that of the imported article only and not that of any other article with which the imported article may be combined subsequent to importation. For example, bottles, drums, or other containers imported empty, to be filled in the United States, shall be marked with such words as "Bottle (or drum or container) made in (name of country)." Labels and similar articles so marked that the name of the country of origin of the article is visible after it is affixed to another article in this country shall be marked with additional descriptive words such as "Label made (or printed) in (name of country)" or words of similar import.⁷ This paragraph shall not apply to articles of a kind which are ordinarily so substantially changed in this country that the articles in their changed condition become products of the United States. An article excepted from marking under section 11.10 is not within the scope of section 304(a)(2), Tariff Act of 1930, as amended, and is not subject to the requirements of this paragraph.

It is not feasible to state who will be the "ultimate purchaser" in every circumstance. Broadly stated, an "ultimate purchaser" may be defined as the last person in the United States who will receive the article in the form in which it was imported. If an imported article will be used in manufacture, the manufacturer is the "ultimate purchaser". If an article is to be sold at retail in its imported form, the purchaser at retail is the "ultimate purchaser". A person who subjects an imported article to a process which results in a substantial transformation of the article, even though the process may not result in a new or different article, may be an "ultimate purchaser" in certain circumstances; but if the process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article, who purchases it after the processing, will be regarded as the "ultimate purchaser".

⁷ See sec. 304(a)(2), Tariff Act of 1930, as amended; 19 U. S. C. 1304(a)(2).

(h) In the case of containers required to be marked in accordance with section 304(b), Tariff Act of 1930, as amended, the container to be marked shall be the outermost container in which the article ordinarily reaches the ultimate purchaser.

(i) If an article is excepted under section 11.10 from the marking requirements, its container shall be marked to indicate the country of origin of the contained article, unless the container is exempt from marking by reason of the second sentence of section 304(b), Tariff Act of 1930, as amended, or because the container itself is within an exception covered by section 11.10. This requirement applies even though the excepted article is itself actually marked to indicate the country of its origin.

(j) Unusual containers within the purview of section 504, Tariff Act of 1930, shall be marked to indicate clearly the country of their own origin in addition to any marking which may be required to show the country of origin of their contents.

(k) The duty of 10 percent provided⁹ for in subsection (c) of section 304, Tariff Act of 1930, as amended, accrues upon merchandise not legally marked, exported, or destroyed prior to the liquidation of the entry

⁸ "Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container, if any, of such article, or such other container or containers of such articles as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a). If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin." (Tariff Act of 1930, sec. 304(b), as amended; 19 U. S. C. 1304(b).)

⁹ "If at the time of importation any article (or its container, as provided in subsection (b) hereof) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) hereof) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article and to be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. ***"

(Tariff Act of 1930, sec. 304(c), as amended; 19 U. S. C. 1304 (c).)

covering it and shall be assessed upon the dutiable value as defined in section 503, Tariff Act of 1930, as amended. The 10 per cent additional duty is assessable for failure either to mark the article (or container) to indicate the English name of the country of origin of the article or to include words or symbols required to prevent deception or mistake. When an article is to be exported or destroyed, or the article (or its container) is to be marked under customs supervision, under subsection (c) of such section 304, the identity of the imported article shall be established to the satisfaction of the collector.

(l) No article which has been repacked under section 19.8 of these regulations, manipulated under section 562, Tariff Act of 1930, as amended, or manipulated (but not manufactured) in a foreign trade zone as provided for in section 30.12 of these regulations shall be withdrawn for consumption unless such article (or its container) is marked in accordance with the provisions of section 304, Tariff Act of 1930, as amended, at the time of withdrawal or transfer to customs territory,¹⁰ except when the article and its container were exempt at the time of importation from marking by reason of section 11.10 of these regulations.

(m) The compensation of customs officers and employees assigned to supervise the exportation, destruction, or marking of articles so as to exempt them from the application of marking duties shall be computed in accordance with section 19.5(b) of these regulations, except to the extent that such supervision is performed by a customs officer or employee in an overtime status, in which case the compensation with respect to the overtime shall be computed in accordance with section 24.16 of these regulations.¹¹ The time for which compensation is charged shall include all periods devoted to supervision and all periods during which such officers or employees are away from their regular posts of duty by reason of such

¹⁰ "No imported article held in customs custody for inspection, examination, or appraisement shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (c) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law."

(Tariff Act of 1930, sec. 304(d), as amended; 19 U. S. C. 1304(d).)

¹¹ "*** The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer."

(Tariff Act of 1930, sec. 304(c), as amended; 19 U. S. C. 1304(c).)

assignment and for which compensation to such officers and employees is provided for by law. In formulating charges for expenses pertaining to such supervision, there shall be included all expenses of transportation, per diem allowance in lieu of subsistence, and all other expenses incurred by such officers and employees by reason of such supervision. If the importations of more than one importer are concurrently supervised, the service rendered for each importer shall be regarded as a separate assignment, but the total amount of the compensation, and any expenses properly applicable to more than one importer, shall be equitably apportioned among the importers concerned. (Sec. 304, 46 Stat. 687, as amended; 19 U. S. C. 1304.)

11.9 Special marking on certain articles.--

(a) No article classifiable under paragraph 367 or 368, Tariff Act of 1930, shall be released for consumption until marked in exact conformity with the requirements thereof. If any article required to be marked under paragraph 367 or 368 is found not to be marked to indicate the country of origin, the 10 percent marking duty shall be assessed, unless such marking is accomplished or the merchandise is exported or destroyed under customs supervision prior to the liquidation of the entry, in accordance with the provisions of section 304(c), Tariff Act of 1930, as amended.

(b) The name of the manufacturer or purchaser, which must appear on articles classifiable under such paragraph 367 or 368 and specified in subparagraph (b) or (g) of paragraph 367 or subparagraph (b) of paragraph 368, may be either the actual name of the manufacturer or purchaser or a duly registered trade name under which such manufacturer or purchaser carries on his business. A trade-mark shall not be accepted as meeting any such special marking requirement unless it includes the full name of the manufacturer or purchaser. The term "purchaser" as used in this paragraph means the purchaser in the United States by whom or for whose account the articles are imported.

11.10 Exceptions to marking requirements.--

(a) Articles within any specification in section 304(a)(3), Tariff Act of 1930, as amended,¹² are hereby excepted from the requirement of marking. The marking of the container of an article will reasonably indicate the

¹² *** The Secretary of the Treasury may by regulations--

* * * * *

"(3) Authorize the exception of any article from the requirements of marking if--

"(A) Such article is incapable of being marked;

"(B) Such article cannot be marked prior to shipment to the United States without injury;

"(C) Such article cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation;

"(D) The marking of a container of such article will reasonably indicate the origin of such article;

origin of such article within the meaning of section 304(a)(3)(D) if the article is imported (or repacked under section 562, Tariff Act of 1930, as amended) in a container which will reach the ultimate purchaser in the United States unopened.

(b) The following articles and their containers are not subject to the marking requirements of section 304, as amended, or paragraph 367 or 368, Tariff Act of 1930:

- (1) Articles entered or withdrawn for immediate exportation or for transportation and exportation;
- (2) Products of American fisheries which are free of duty;
- (3) Products of possessions of the United States;
- (4) Products of the United States exported and returned;
- (5) Articles exempt from duty under section 8.3 or 9.6 of these regulations. (Sec. 304, 46 Stat. 687, as amended; 19 U. S. C. 1304.)

11.11 Disposition of articles not properly marked.--

(a) The appraiser, acting for the collector, shall notify the importer on customs Form 4647 to arrange with the collector's office to properly mark the articles or containers found upon examination not to be legally marked,

(Footnote 12--continued)

"(E) Such article is a crude substance;

"(F) Such article is imported for use by the importer and not intended for sale in its imported or any other form;

"(G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;

"(H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

"(I) Such article was produced more than twenty years prior to its importation into the United States;

"(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding July 1, 1937, and were not required during such period to be marked to indicate their origin: Provided, that this subdivision (J) shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this provision if he finds such action required to carry out any trade agreement entered into under the authority of the Act of June 12, 1934 (U. S. C., 1934 edition, title 19, secs. 1351-1354), as extended; or

or to return the unexamined packages to customs custody for exportation or destruction. Such marking, exportation, or destruction shall be at the expense of the importer and under customs supervision.¹³

(b) Articles (or containers) in examination packages may be marked in the appraiser's stores by the importer in accordance with the provisions of section 304, Tariff Act of 1930, as amended, or paragraph 367 or 368, Tariff Act of 1930. If it is impracticable to mark such articles (or containers) in the appraiser's stores, the merchandise may be turned over to the importer for proper marking upon the deposit of adequate security to insure compliance with the marking requirements and the payment of any additional expense which will be incurred on account of customs supervision. If such merchandise is not exported, destroyed, or properly marked by the importer within a reasonable time, it shall be sent to general-order stores unless covered by a warehouse entry, and, if not exported within 1 year from the date of entry, shall be sold as abandoned merchandise upon the condition that it be marked by the purchaser under customs supervision or exported under such supervision.

(c) If in any case articles subject to marking, which have been released from customs custody, are not returned or properly marked within 30 days from the date of the requisition therefor, the collector shall demand payment of the liquidated damages incurred under the bond in an amount equal to the entered value of the articles not returned, plus any estimated duty thereon as determined at the time of entry. If payment is not made or an application for relief from such payment is not filed within the period prescribed in section 25.15(e), the collector shall proceed in accordance with the provisions of that section. Any relief from the payment of the full liquidated damages incurred will be contingent upon the showing made concerning the diligence and good faith shown by the importer in attempting to secure compliance with the marking requirements.

(d) If a written application for relief is timely filed, such application, together with a full report of the facts, shall be transmitted to the Bureau for decision, except that in cases involving only marking under section 304 of the tariff act, as amended, if the full amount of liquidated damages incurred for failure to redeliver does not exceed \$1,500, collectors of customs are hereby authorized to cancel the liability incurred without the collection of liquidated damages, provided the marking duty due under that section of the tariff act has been deposited, and the collector is

(Footnote 12--continued)

"(K) Such article cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section."

"(Tariff Act of 1930, sec. 304(a)(3), as amended;
19 U. S. C. 1304(a)(3).)

¹³ See footnotes 9 and 10.

satisfied that the importer was not guilty of negligence or bad faith in permitting the not-properly-marked articles to be distributed, has been diligent in attempting to secure compliance with the marking requirements, and has attempted by all reasonable means to effect redelivery. (Secs. 304, 623, 46 Stat. 687, as amended, 759, as amended; 19 U. S. C. 1304, 1623.)

IV

The following articles have been excepted from marking under the provisions of section 304(a)(3)(J), Tariff Act of 1930, as amended, T. Ds. 49690, 49835, and 49896.

Art, works of.
Articles described in paragraphs 1773 or 1774, Tariff Act of 1930, when not imported for sale in the United States.
Articles entered in good faith as antiques and rejected as unauthentic.
Bagging, waste.
Bags, jute.
Bands, steel.
Beads, unstrung.
Bearings, ball. 3/8-inch or less in diameter.
Blanks, metal, to be plated.
Bodies, harvest hat.
Bolts, nuts, and washers.
Brierwood in blocks.
Briquettes, coal or coke.
Buckles, 1 inch or less in greatest dimension.
Burlap.
Buttons.
Cards, playing.
Cellophane and celluloid in sheets, bands, or strips.
Chemicals, drugs, medicinal, and similar substances, when imported in capsules, pills, tablets, lozenges, or troches.
Cigars and cigarettes.
Covers, straw bottle.
Dies, diamond wire, unmounted.
Dwells, wooden.
Effects, theatrical.
Eggs.
Feathers.
Firewood.

Exceptions from Marking (cont.)

Flooring.
Flowers, artificial, except bunches.
Flowers, cut.
Glass, cut to shape and size for use in clocks, hand, pocket, and
purse mirrors, and other glass of similar shapes and sizes, not
including lenses or watch crystals.
Glides, furniture, except glides with prongs.
Hairnets.
Hides, raw.
Hooks, fish.
Hoops (wood), barrel.
Laths.
Leather, except finished.
Livestock.
Lumber, sawed.
Metal bars, except concrete reinforcement bars; billets; blocks;
blooms, ingots; pigs; plates; sheets, except galvanized sheets;
shafting; slabs; and metal in similar forms.
Mica not further manufactured than cut or stamped to dimensions,
shape, or form.
Monuments.
Nails, spikes, and staples.
Natural products, such as vegetables, fruits, nuts, berries, and
live or dead animals, fish and birds, all the foregoing which
are in their natural state or not advanced in any manner further
than is necessary for their safe transportation.
Nets, bottle, wire.
Ornaments, glass Christmas tree.
Paper, newsprint.
Paper, stencil.
Paper, stock.
Parchment and vellum.
Parts for machines imported from same country as parts.
Pickets, wooden.
Pins, tuning.
Pipes, iron or steel, and pipe fittings of cast or malleable iron.
Plants, shrubs and other nursery stock.
Plugs, tie.
Poles, bamboo.
Poles, electric-light, telegraph, telephone, and trolley (wood).
Pulpwood.
Rags (including wiping rags).
Railway materials described in paragraph 322, Tariff Act of 1930.
Ribbon.
Rivets.
Rope, including wire rope; cordage, cords; twines; threads, and
yarns.
Scrap and waste.

Exceptions from Marking (cont.)

Screws.
Shims, track.
Shingles (wood), bundles of. -- except bundles of red cedar shingles.
Skins, fur, dressed or dyed.
Skins, raw fur.
Sponges.
Springs, watch.
Stamps, Postage or revenue, and other articles described in
paragraph 1771, Tariff Act of 1930.
Staves (wood), barrel.
Steel, hoop.
Sugar, maple.
Ties (wood), railroad.
Tiles, not over 1 inch in greatest dimension.
Timbers, sawed.
Tips, penholder.
Trees, Christmas.
Weights, analytical and precision, in sets.
Wicking, candle.
Wire, except barbed.

In the case of any article described in the appended list which is imported in a container, the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked to indicate the origin of its contents.

