

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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MARKS OF ORIGIN

Submission of Laws and Regulations

The following extracts from the relevant laws and regulations have been received from the Government of Ceylon:

- I. Extract from the Legislative Enactments of Ceylon, Volume III, Chapter 122.
- II. Extract from the Subsidiary Legislation of Ceylon, Volume II, Chapter 122.

I.

MERCHANDISE MARKS

An Ordinance to amend the Law relating to Fraudulent Marks on Merchandise

Prohibition on importation

14. Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold, would be liable to forfeiture under this Ordinance; be it therefore enacted as follows:

(1) All such goods, and also all goods made or produced beyond the limits of the United Kingdom of Great Britain and Northern Ireland and this Island, and having applied thereto any name or trade mark being, or purporting to be, or being a colourable imitation of, the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom of Great Britain and Northern Ireland or this Island, unless such name or trade mark is accompanied by a definite indication, indicated in letters as large and conspicuous as any letter in the name or trade mark, of the place and country in which the goods were made or produced, and also all piece-goods such as are ordinarily sold by the length or by the piece, which have not conspicuously stamped in English numerals on each piece the length thereof in standard yards or in standard yards and a fraction of such a yard, according to the real length of the piece, are hereby prohibited to be imported into this Island, and, subject to the

provisions of this section, shall be included among goods prohibited to be imported as if they were referred to in section 45 of the Customs Ordinance, and included in Schedule B to that Ordinance.

(2) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Collector of Customs, or other officer specially appointed in this behalf by the Governor, may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited by this section to be imported.

(3) The Principal Collector of Customs may from time to time, with the sanction of the Governor, make, revoke, and vary regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom of Great Britain and Northern Ireland or this Island, that name, unless accompanied in equally large and conspicuous letters by the name of the country in which such place is situate, shall be treated, for the purposes of this section, as if it were the name of a place in the United Kingdom of Great Britain and Northern Ireland or this Island.

(5) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(6) The regulations may provide for the informant reimbursing the Collector of Customs all expenses and damages incurred in respect of any detention made on his information and of any proceedings consequent of such detention.

(7) All regulations under this section shall be published in the Government Gazette.

II

MERCHANDISE MARKS

The Merchandise Marks Ordinance - Section 14

Regulations made by the Principal Collector of Customs, with the sanction of the Governor in Executive Council, under section 14 of the Merchandise Marks Ordinance: (4916/29.3.1889)

Whereas by the Merchandise Marks Ordinance (hereinafter called the Ordinance), after various provisions against the sale or exposure for sale, or possession for sale trade or manufacture, of goods with forged trade marks, or false trade descriptions, or trade marks falsely applied to them;

And after defining (amongst other things) the expression "trade mark" in manner therein set forth, with reference to the Trade Marks Ordinance, to the Patents, Designs, and Trade Marks Act, 1883 (46 and 47 Victoria, Chapter 57), and to the law of indicated British Possessions and Foreign States;

And after defining the expression "trade description" as any description, statement, or other indication, direct or indirect, as to number, quantity, measure, gauge, or weight of goods, as to place or country in which any goods were made or produced, as to the mode of manufacturing or producing any goods, or as to the material of which any goods are composed, or as to any goods, being the subject of any existing patent, privilege, or copyright.

And after defining the expressions "false trade description" and "goods" "apply" and "falsely apply";

It is provided by section 14 that:

(1) All such goods as above-mentioned, and

(2) All goods made or produced beyond the limits of the United Kingdom and this Island, having applied thereto any name or trade mark being or purporting to be, or being a colourable imitation of, the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom or this Island, unless such name or mark be accompanied by definite indication, in letters as large and conspicuous as any letter in the name or trade mark of the place and country in which the goods were made or produced;

shall be prohibited to be imported and, subject to the provisions of the said section, shall be included among goods prohibited to be imported as if they were referred to in section 47 of the Customs Ordinance, and included in Schedule B of that Ordinance;

And whereas by section 16 of the Ordinance, after authorizing the continual use of trade descriptions lawfully and generally applied to goods of the particular class, or manufactured by a particular method, to indicate such class or method, it is provided that, where such trade description includes the name of a place or country calculated to mislead as to where the goods were actually made or produced, such goods not having been actually made or produced there, the said reciting section should not apply (and consequently goods so marked would be prohibited), unless there be added to the trade description immediately before or after the name of the place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with the statement that they were made or produced there;

And whereas it is also provided by the said section 14 that the Principal Collector of Customs, with the sanction of the Governor in Executive Council, may, from time to time, make, revoke, and vary regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited as herein before mentioned, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of the said section, and the mode of verification of such evidence.

And it is further provided by the said last mentioned section:

That before detaining goods or taking proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Collector of Customs, or other officer specially appointed on that behalf by the Governor, may require that such regulations as aforesaid shall be complied with, and satisfy himself as to the liability of the goods to forfeiture;

That such regulations may apply to all goods the importation of which is prohibited by the said section, or different regulations may be made respecting different classes of such goods;

And also that the regulations may provide for the informant reimbursing the Collector of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention;

Now, therefore, the Principal Collector of Customs, with the sanction of the Governor in Executive Council, under and by virtue of the hereinbefore recited power in that behalf, hereby makes and requires to be complied with the following regulations, viz:

1. Goods prohibited to be imported as hereinbefore recited, having applied to them forged trade marks, false trade descriptions, or marks, names, or descriptions otherwise illegal, which, upon examination, are detached by the Officers of Customs, are to be detained by them without the requirement of previous information.

2. In giving information with a view to detention, an informant must fulfil the following conditions, viz:

(i) He must give to the Collector or other principal acting officer of Customs of any port or place of expected importation, notice in writing stating the number of packages expected, as far as he is able to state the same; the description of the goods by marks or other particulars sufficient for their identification; the name or other sufficient indication of the importing shop; the manner in which the goods infringe the Ordinance; the expected day of the arrival of the ship.

(ii) He must deposit with the Collector or other officer as aforesaid a sum sufficient in the opinion of that officer to cover any additional expenses which may be incurred in the examination required by reason of his notice.

3. If upon arrival and examination of the goods the officer of Customs is satisfied that there is no ground for their detention they will be delivered. If he is not so satisfied, he will decide either to detain the goods, as in case of detention upon ordinary examination, or to require security from the informant for reimbursing the Principal Collector of Customs, or other Officers of Customs, all expenses and damages incurred in respect of the detention made on his information, and of any proceeding consequent thereon.

4. The security thus required must be an immediate ad valorem deposit of 10 per cent on the value of the goods as fixed by the officer from the quantities or values shown by the entry; and also subsequently a bond to be completed within four days in double the value of the goods, with two approved sureties. The ad valorem deposit will be returned upon completion of the bond, and will not be required if, as an alternative when time permits, the informant prefers to give a like bond before examination, upon estimated value of the goods sworn to or affirmed to by him upon affidavit.

If the security is not duly given as above required there will be no further detention of the goods.

5. Watching for Marks (6392/22/7/1910) - When an informant is not in possession of information of any definite case of importation or contemplated importation, but has reason to believe that his marks, etc.,

are being infringed, and wishes to have Customs Officers put on the watch for possible infringements, his application may be entertained, if the Collector or Chief Customs Officer is satisfied that it is bona fide and reasonable, and orders may be issued to Customs Officers to take a note of the marks, etc., concerned with a view to taking action under paragraph 8 should occasion arise. Such orders should only have effect for three months, but may be renewed on the expiry of the period upon the Collector being satisfied that there are reasonable grounds for the renewal.

6. Registration prohibited (6392/22/7/1910) - Any formal registration of marks, names, or initials in the Customs Offices is prohibited.

7. Customs initiative (6392/22/7/1910) - The occasions on which Customs Officers should take action upon their own initiative will naturally be rare, but will occur when upon an examination of the goods it is apparent that an attempt has been made to counterfeit some established mark or other indication, such as is well known to the officer concerned. In such cases the Collector or Chief Customs Officer will cause the goods to be provisionally detained for a period not exceeding four days, and send intimation to any local representative of the person whose name or marks appear to be counterfeited with the request that he will take action if he wishes the detention continued as described in clauses (i) and (ii) of rule 2 above. The subsequent procedure will follow that detailed above.

If there is no local representative, the Collector or Chief Customs Officer will pass the goods, but should send intimation by letter with sufficient particulars of the counterfeit marks or other indications to the person whose name or marks appear to have been counterfeited, describing the procedure to be adopted under these rules should he wish to have any future consignments detained.

8. Procedure upon detention (6392/22/7/1910) - The powers of inquiry which the Collector possesses in regard to goods detained under the above rules are strictly limited, and are only intended to enable him to satisfy himself that the counterfeit is plain and manifest, and that there can be no real contest in the matter. For any purpose beyond this his duty is to detain, under protection of any indemnity bond, the goods until the question of title is settled by a competent court. He should not therefore ordinarily take proceedings under the Customs Ordinance for the confiscation of goods detained under the above rules, or for the imposition of a penalty, upon his own responsibility, except in the following cases, namely when the marks on the goods are admitted by the importer to be objectionable either as counterfeit trade marks, or as being of the description stated in section 3, sub-sections (2), (3) and (4) of the Merchandise Marks Ordinance or when the Collector or Chief Customs Officer is satisfied by the production of a duly certified copy of an order by a competent court that they have been declared by such a competent court either in this Island or in the United Kingdom to be so objectionable and provided that in this case no claim is made

on behalf of the importer of a right to use the marks upon grounds not covered by the order cited. If such a claim be made, the procedure laid down in rule 3 should be followed in respect of the importation.

9. In the above regulations the words "Officer of Customs" mean an officer acting under general or special direction of the Collector of Customs or other principal acting Officer of Customs of any port or place; and the words "value of goods" mean value irrespective of duty.

10. The "notice" and "bond" required as above shall be in the forms contained in the schedule to these regulations, or in such other forms as the Principal Collector of Customs, with the sanction of the Governor may from time to time order and direct.

11. These regulations apply to transshipment and transit goods, as well as to goods landed to be warehoused, or for island consumption.

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SCHEDULE

NOTICE

The Merchandise Marks Ordinance

To the Collector or other Principal Acting Officer of Customs at the Port of _____.

I hereby give you notice that the under-mentioned goods, that is to say _____ are about to be imported into your port on or about the _____ day of _____ next, in the _____ from _____.

That such goods are liable to detention and forfeiture, be in _____.

That Mr. _____, of _____, and Mr. _____, of _____, are prepared to become my sureties in such bond as may be required upon detention of the goods.

And I request that the said goods may be detained and dealt with accordingly.

Dated this _____ day of _____, 19 _____.

A.B.
(or Agent for.)

Note: Mr. refers to his bankers (or proctor), and Mr. to his bankers (or proctor) as to his sufficiency for the penalty of the bond.

1. Describe here the goods, number of packages, marks used, and any other particulars necessary for their identification.
2. Describe here the ship, and give name or identification.
3. State here how the goods infringe the Ordinance, and if the infringement is one as to a forged trade mark protected in Great Britain, it should be so stated; or if the infringement is one as to a forged trade mark protected in a British possession or Foreign State, state the Possession or State; or if the infringement is one as to place or country of origin, state the name of the place or country falsely used.

B O N D

The Merchandise Marks Ordinance

Know all Men by these presents that we _____ and _____ are held and firmly bound unto our Sovereign Lord George, by the Grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, in the sum of Rs. _____ to be paid to our said Lord the King, heirs or successors.

For which payment well and truly to be made we bind ourselves, jointly and severally our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals.

Dated this _____ day of _____ in the year of our Lord, One thousand Nine hundred and _____.

WHEREAS the above-named _____ having by a notice dated the _____ day of _____ informed the Collector of Customs at _____ that the under-mentioned goods, that is to say _____ were about to be imported into the port of _____ contrary to section 14 of the Merchandise Marks Ordinance, and requested that the said goods should be detained and dealt with accordingly.

AND WHEREAS the said goods duly arrived in the said port on the _____ day of _____ last, and are now detained pursuant to the said notice.

Now the condition of this obligation is such that if the said _____, his heirs executors or administrators, shall well and effectually indemnify, save harmless, and keep indemnified His Majesty, his heirs and successors,

and all his and their Officers of Customs, and their executors or administrators, from and against all loss or damage, payment or payments, and all costs and expenses which his said Majesty, his heirs or successors and his and their Officers of Customs, their executors or administrators, shall or may sustain or incur by reason or on account of any detention of the said goods following upon the information contained in such notice, and any proceedings consequent upon such detention, then this obligation shall be void, or otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered.

