MARKS OF ORIGIN

Note by the Secretariat concerning the
ICC Proposal

HISTORY

1. The problem of marks of origin was treated for the first time in the Madrid Agreement (1891) for the Prevention of False Indications of the Origin of Goods, as revised at Washington in 1911 and at the Hague in 1925. An earlier convention, dealing with the problems of marks—the Paris Convention (1883)—had been concluded mainly to protect industrial property. Originally this Convention related only to the protection of national trade marks and provided for measures against "products illegally bearing a factory or trade mark" and "products falsely bearing, as an indication of their place of production, the name of a definite locality." The Problem of protecting marks of origin by this Convention was introduced when it, also, was revised at the Hague on 6 November 1925; its Article 10 was then extended to protect products "falsely bearing ... and indication of ... a country." 

2. These Conventions have something in common in that they both aim to protect the interests of producers and consumers against products bearing a false mark by providing for seizure or, if this is impossible under the national law, exclusion from importation or, if this also is impossible, for treatment under the national laws protecting citizens generally against falsification.

3. The requirement of marks of origin to protect the domestic producer by branding the foreign product as foreign became a problem after the First World War. In May 1927 the International Economic Conference took up this question and tried to discredit marking requirements which had a protective effect through being difficult or impossible of compliance. In preparation for the Conference the League of Nations published a pamphlet "Marks of Origin" (C.E.I.20) which described the legislation in force at that time in various countries. In the introduction to this pamphlet, it was mentioned that the International Chamber of Commerce had first drawn attention to the inconveniences caused by certain marking requirements and had suggested that some standardization of laws on marks of origin should be attempted.

4. In the League pamphlet two main inconveniences of marking requirements were brought out clearly and these still seem to be the main cause for concern. The first is that very often the marking is required in a way that is technically...
difficult, costly or inconvenient. The second is that, if different countries have different marking requirements, traders have to hold separate stocks and producers have to have different lines of practically all production. Most of the legislation described in the pamphlet has since been amended.

5. The League of Nations did not succeed in arriving at a definite recommendation. And its Economic Committee, reporting in 1931, had to be content with "hearing the exports" and presenting "an account of their discussions, together with the conclusions to be drawn from them".¹ This report, however, contained an almost complete enumeration of the problems involved.

6. The United States draft charter of 1946 for an international trade organization included an article on "marks of origin" based on the main principles brought out by the League's experts in 1931. This article was taken over in GATT with slight changes, to be shown later, and thus became Article IX which contains the existing obligations of the contracting parties.

ARTICLE IX OF GATT COMPARED WITH THE CONCLUSIONS OF THE LEAGUE COMMITTEE

7. Article IX contains most of the principles suggested by the League Committee in 1931, namely:


Paragraph 2. The recommendation that marks could be affixed at the time of importation. (The League Committee mentioned another possible solution: to permit a later affixing of the mark, requiring only that it should be affixed before the product is placed on the market).

Paragraph 3. The recommendation providing for a marking requirement which avoids "seriously damaging the product or materially reducing its value or unreasonably increasing its cost".

Paragraph 4. No special duty or penalty should be imposed for failure to comply with the marking requirement prior to importation. (The Committee only said that "fines ... should only be imposed in cases where marks have been wrongfully employed ... or in cases of second or subsequent offences").

Paragraph 5. The provisions contained in this paragraph go beyond the suggestions of the League Committee in dealing with the use of trade names to the detriment of distinction regional and geographical names of products.

8. On the other hand, the League Committee put forward certain suggestions which are not covered by Article IX. The Committee considered the possibility of recommending, for example, commonly acknowledged terminology or abbreviations

¹ Report by Economic Committee, 24 June 1931, C.427 M.177
to indicate the countries of production, an agreed list of goods that would be exempt from marking requirements, and adequate publicity to be given to all marking regulations. With reference to the question of publicity, however, it should be noted that Article X of GATT requires the publication of all laws and regulations.

9. Comparing Article IX of GATT with Article 37 of the Havana Charter it will be seen that the Charter Article had two additional paragraphs. The first of these stated that difficulties and inconveniences caused for exporters should be reduced to a minimum—a principle which had been enunciated by the Economic Committee of the League of Nations. The CONTRACTING PARTIES decided in the review of the GATT to add a new paragraph to Article IX containing this provision in a slightly amended form. The second additional paragraph in Article 37 of the Havana Charter provided for "co-operation among the members of the Organization in this field including the adoption of schedules of exemptions", a provision which had already been included in the 1946 United States draft for an international trade organization.

PRESENT NATIONAL LEGISLATION

10. The International Chamber of Commerce, at its Congress in 1955, returned to the problem of marks of origin and adopted the recommendation which the Chamber subsequently submitted to the CONTRACTING PARTIES (L/430). This recommendation proposes an international arrangement to avoid the danger of protectionism through marking requirements, and to remove the existing difficulties experienced by trade as a result of the existing regulations. As instructed by the CONTRACTING PARTIES at the Tenth Session, the secretariat has assembled information on national legislation, and the relevant extracts from laws and regulations relating to marks of origin have been distributed in the addenda to document L/478. The following contracting parties submitted information:

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1 No replies to the secretariat's enquiry were received from Burma, Chile, Cuba, Denmark, Dominican Republic, Haiti, Luxembourg, Nicaragua, Pakistan, Peru and Uruguay. Brazil has submitted regulations relating to marking requirements for exports.
Of the twenty-three countries which replied to the enquiry the following six stated that they do not impose any obligations to mark imported products:

- Czechoslovakia
- Greece (there is, however, an obligation for Greek producers to indicate that their products are Greek)
- Indonesia
- Japan
- Netherlands
- Rhodesia and Nyasaland (the existing legislation is under review and is not applied at present)

The following four countries have special legislation limited to certain products:

- Austria (special regulations limited to some products)
- Belgium\(^1\) (protects national trade marks only)
- Germany (special regulations limited to some agricultural products)
- South Africa\(^1\) (protects national trade marks only)

Nine countries have a general provision for marking requirements but apply it on a number of listed items only:

- Australia - 18 groups of items
- Canada\(^1\) - 25 products
- Finland - 5 products (legislation under review)
- France - 5 groups of food products
- India - 17 products
- New Zealand\(^1\) - footwear only
- Norway - 18 products
- Sweden - 5 products
- United Kingdom\(^1\) - some 130 products

Only one government, namely that of the United States, reports a general requirement to mark all imported products, although general and specific exemptions are provided.

THE INTERNATIONAL CHAMBER OF COMMERCE PROPOSAL

In the following paragraphs the suggestions by the International Chamber of Commerce are compared with the provisions of Article IX and with the legislation in force in the various countries.

Time of Affixing the Mark

The Chamber takes up the idea that the mark could be affixed at the time of sale without, however, recommending such permission; it suggests that the application of the mark should be allowed under customs supervision at the time.

\(^1\) These countries provide for the obligation to add the country of origin to the trade mark if a trade mark of the importing country is used.
expense of the interested party if a product is presented at the frontier without the required mark. Under Article IX, provides that whenever it is administratively practicable, contracting parties should permit required marks of origin to be affixed at the time of importation.

17. If it is considered desirable to give additional facilities where it is impracticable or seriously inconvenient to affix the mark at the frontier, the CONTRACTING PARTIES might recommend that, in cases where there is an obligation to have the product marked before it is cleared from the customs, the importer should be allowed to affix the mark under customs supervision at his own expense before it is offered for sale on the domestic market. The customs procedures in a number of countries (regarding temporary admission, etc.) are sufficiently flexible to allow this facility without risk.

Form of the Mark

18. The Chamber returns to the suggestion of the League of Nations experts concerning the simplification of the marks required. The Chamber proposes that simplification could be achieved by countries accepting the marking in their national language or in an internationally used language, or by the adoption of abbreviations or symbols for the names of countries to be used with the words "Made in ...".1

19. Relevant provisions reported by various governments are:

- **Australia**: country of origin, in English or in the language of the country of origin
- **Canada**: country of origin, in English or French
- **Finland**: country of origin, in Finnish, Swedish or in an internationally used language
- **India**: country of origin in English or "foreign made"
- **New Zealand**: country of origin
- **Norway**: marks indicating "whether the products are of Norwegian or foreign origin or giving information regarding the place of origin or production"
- **Sweden**: country of origin, in any international language
- **United Kingdom**: country of origin, or "foreign"
- **United States**: country of origin, in English

20. In the Chamber's recommendation it is further suggested that governments should not require any information which goes beyond the indication of the origin, such as the requirement to add the name of the manufacturer or indications relating to the composition of the product. This consideration

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1 A further possible relaxation indicated by the Chamber is the acceptance of trade marks or regional indications as sufficient proof of origin. Such a solution would go beyond the GATT provisions. While in Sweden, for example, trade marks may be acknowledged as sufficient proof, the Australian legislation expressly states that the indication of the region where the product comes from is not acceptable, and the United States Government considers that the acceptance of trade marks would create added problems.
may be linked with another suggestion by the Chamber that marking requirements related to health, should not lead to an exclusion of otherwise "perfectly sound foreign products from the home market". This problem, however, is not a problem of marks of origin.

21. The CONTRACTING PARTIES might consider whether requirements going beyond the obligation to indicate the origin are consistent with the provisions of Article III, if the same requirements do not apply to domestic producers of like products.

22. The Chamber further suggests that marking should not be too costly nor lead to a lowering of the value of the product. Although paragraph 3 of Article IX deals with this point, the CONTRACTING PARTIES might consider it useful to recommend:

that governments should leave the exporter or importer free to choose the manner in which the mark is to be affixed, provided that the marking meets the necessary requirements of the law; and that, in cases where a government feels it necessary to impose a specific form of marking, it should consult interested business circles in order to ensure that the form imposed does not lead to a lowering of the value of the product nor create an undue burden on the importer or exporter, nor generally constitute an indirect method of protection.

**Special Provisions and Exemptions**

23. The Chamber suggests under these two headings, various cases in which a product should be freed from marking requirements. If the CONTRACTING PARTIES are prepared to consider this proposal, the following cases mentioned by the Chamber might be considered:

(a) containers of properly marked products regardless of whether they are destined to be sold with the product or serving for transport purposes only;

(b) products which cannot be marked, such as liquids, films, etc. (in such cases the marking of the container could be required);

(c) products on which a mark could be affixed only at an unreasonable increase of the cost;

(d) spare parts, where the original part to be replaced (of a machine for example) did not have such a marking;

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1. Regarding the suggestion not to use indications required on products for health and other measures, see paragraph 20.

2. Australia and India, for example, have such rules concerning the marking of liquids and fragile objects.

3. In Australia component parts and in the United States articles to be processed are freed from the marking obligation.
(e) products, including samples, without commercial value;
(f) products in transit;
(g) products in bond;
(h) objets d'art.

Penalties

24. The recommendation¹ that "except in the case of obvious fraud or second
offences, the penalties imposed should be replaced by a small nominal fine"
is not substantially different from the provisions of paragraph 4 of Article IX.
In fact, the latter appears to be more definite and at least as liberal.

Entry into Force and Notification

25. The Chamber suggests that all changes in the field of marking regulations
should be made in such a way as to give ample time to producers, traders, etc.,
to conform with the new provisions. This recommendation is in accordance with
Article X of GATT, which provides that laws, regulations, etc., shall be
published promptly in such a manner as to enable governments and traders to
become acquainted with them.

CONCLUSIONS

26. Among the countries which responded to the secretariat's request for
information the following expressed an opinion concerning the action to be
taken on the Chamber's resolution:

Australia (in general agreement)
Czecho-Slovakia (in favour of a very liberal system)
France (marking regulations should not lead to administrative protection)
Italy (useful basis for study)
Japan (the Chamber's resolution to be fully supported)
Norway (valuable basis for discussion)
Sweden (valuable basis for discussion in the light of the Swedish
proposal made at the Review Session²)
United States (valuable guiding principles meriting further consideration)

27. The International Chamber of Commerce has proposed an "international
arrangement" to bring about a uniform application of marking requirements.
To underline the importance of its request the Chamber has recently submitted

¹ Regarding the other recommendation of the International Chamber of Commerce
to permit the affixing of the legal mark under customs control see paragraph 16

² The proposal was to insert a paragraph in Article IX on the lines of
paragraph 5 of Article 37 of the Havana Charter (see paragraph 9 of this note).
a memorandum (L/544) describing difficulties encountered by traders and producers relating to marking arrangements. Since the Chamber's proposals are, in general, an elaboration of Article IX and do not involve any new firm commitments, the CONTRACTING PARTIES (if they decide that some action is desirable) might consider whether the most appropriate action would not be the adoption of standard practices, as they have done in several other cases. Such agreed standards could be forwarded to the United Nations, with a request that non-GATT governments be encouraged to adopt them as guiding principles in the administration of marking requirements.

The attention of the secretariat has also been drawn to Article 5 of the Brussels Convention on the Marking of Eggs (1931) which reads:

"The Contracting States shall recognize the mark of origin or of preservation as sufficient, in accordance with the Convention, provided that it is inscribed on the shell clearly and legibly, in indelible colour, and in Latin characters two millimetres in height.

"Exporting countries, however, may employ larger characters; each of them shall be free as regards choice of colour if the importing country does not insist on the use of the colours provided for in Article 2."

and a change in which has been suggested by the Economic Commission for Europe (AGRI/JP.1/71 of 6 August 1956) to read as follows:

"The Contracting States shall recognize the mark of origin or of treatment as sufficient, in accordance with the Convention, provided that it is inscribed on the shell clearly and legibly with a harmless colouring substance which will not be removed by washing or boiling in water, and in Latin characters two millimetres in height.

"Exporting countries may, however, employ larger characters. Each of them shall be free as regards choice of colour, except that the mark of treatment shall be in black for all eggs except untreated or coated eggs.

"Contracting States which require any additional mark shall not require such a mark to be in characters larger than those required for the mark of origin, or to be stamped in a colour different from that of the mark of origin."