8 January, 1955

PASSAGES TO BE INCORPORATED IN THE DRAFT REPORT
OF THE TECHNICAL GROUP

Article IX
Marks of Origin

1. Proposed addition

"The contracting parties recognize that, in adopting and implementing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum" (Germany).

"It might be desirable to add a sentence to the effect that laws and regulations relating to marking should be implemented in such a manner as to reduce to a minimum the difficulties and inconveniences caused to the commerce and industry of exporting countries" (Secretariat proposal).

Some delegates considered that the German proposal needed qualification, since while the interests of the exporting country are recognised, it is equally important to maintain measures designed to restrict the fraudulent or misleading use of marks. The United Kingdom delegate suggested the addition at the end of the German proposal of the words:

"... due regard being had to the necessity of protecting consumers against fraudulent or misleading indications."

The Technical Group accepted the German proposal as amended.

2. "The Members agree to co-operate through the Organization towards the early elimination of unnecessary marking requirements. The Organization may study and recommend to Members measures directed to this end including the adoption of schedules of general categories of products, in respect of which marking requirements operate to restrict trade to an extent disproportionate to any proper purpose to be served" (Denmark, Norway, Sweden).

"The contracting parties shall take steps to eliminate unnecessary marking requirements. They shall, in particular, study the possibility of establishing and adopting common schedules of those categories of products in respect of which marking requirements operate to restrict trade to an extent disproportionate to any purpose to be served, and which shall not in any case be required to be marked to indicate their origin" (Germany).
These two proposals found no support in the Technical Group. The main reason given for not supporting this provision was that the principle of minimizing marking requirements is already covered by the new paragraph 1 and by paragraph 3 and that, secondly, the attempts to draw up common schedules could not lead to practical results.

3. Proposed addition

"The contracting parties shall come to an understanding on the steps to be taken to standardize the provisions governing the form, wording and placing of marks of origin" (Germany).

The Technical Group was unable to recommend the insertion of the provision into the Agreement, although it was agreed, on a suggestion by the Netherlands delegate, that the subject was one which might suitably be made the subject of a study by the Organization at some future date.

4. Proposed amendment of paragraph 5

"The contracting parties shall take measures with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation.

"Each contracting party shall, in particular, undertake to introduce the necessary measures to prohibit in its territory the improper use of distinctive geographical names of products of any other party, provided that such distinctive names are duly protected by such party and have been duly notified by the latter. Such notification shall list the documents issued by the competent authority of the country of origin as proof of the right to such names.

"The import and export, warehousing, manufacture, circulation, sale or offer for sale of the aforesaid products shall be prohibited and forbidden if commercial marks, names, notices or other indications involving false or improper distinctive names appear either on the product itself or on casks, bottles, packing cases or crates containing them, or in invoices, way-bills, bills of lading or other commercial documents pertaining thereto, or in the advertisement thereof.

"The prohibition to use a distinctive name to describe a product other than those really entitled to such name shall apply even when the real origin of the product is mentioned or when a false or improper name is qualified by such words as 'kind', 'type', 'make', 'rival', or by any other specific or regional descriptive term" (France).
The Italian delegate, who strongly supported the French proposal, requested the extension of this proposal not only to the protection of geographical names of products, but also to "other type names". He underlined the importance of the French proposal, which he considered to be in the same direction as the Madrid Convention and the Industrial Property Convention.

The other members of Technical Group were, however, unable to agree to these proposals. The main reasons were that the existing text providing for bilateral agreement had worked satisfactorily, that such bilateral agreement could much more easily take care of the individual needs of the countries involved than any multilateral obligation could do, and finally that the adoption of the French proposal would impose unacceptably great administrative burdens.

The Italian delegate expressed the hope that although the Technical Group did not consider it advisable to modify the Agreement, the Organization might arrange at some future date for studies to be made on this question. Other members of the Technical Group did not agree, however, that the Group shall actually recommend studies on these questions.

Additional Article
Information on Customs Matters

"Binding Information on Customs Matters. Each contracting party shall designate authorities whose function it shall be to give, upon request, binding information on customs tariff rates and on the classification in customs tariff of specified goods, as well as on the rates of other taxes, duties and charges levied on or in connection with the importation of goods" (Germany).

The German proposal of obliging countries to give binding information on customs rates was considered by the other members of the Technical Group impossible to realize, due to practical and legal difficulties.

The Technical Group recognized the importance of exporters and importers being able to obtain, on request, official information from the government of the country concerned regarding the classification and duty liability of the goods in which they are interested. In most countries, it is in fact possible to obtain such official information.

The German proposal to introduce an intended obligation to this effect was, however, considered to be impractical, since all countries were obliged to protect themselves against the possibility that the goods may be incompletely or inaccurately described in such requests for information.