Where the problem arises, it is important that country-of-origin marking be narrowly confined to the genuine public policy that is served.

NOTES

The basic country-of-origin marking law is Section 304 of the Tariff Act of 1930 as amended, 19 U.S.C.A. § 1304 (1960):

> ". . . every article of foreign origin . . . 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 ultimate purchaser in the United States the English name of the country of origin of the article. . . ."

The Secretary of the Treasury is given wide powers to determine the precise marking and to grant exceptions. There are specific statutory requirements for timekeeping mechanisms. The regulations and exceptions are summarized in a pamphlet published by the Bureau of Customs, *Exporting to the United States,* at pages 33–37. Marking requirements and decisions of the Customs Bureau are collected in another Customs publication, CIE 1600/59 Digest of Decisions for the Marking of imports.

Acting under Section 5, the Federal Trade Commission Act, 15 U.S. Code, Section 45, the Federal Trade Commission has required country-of-origin marking in cases where Customs did not so require and has even required that it be shown on display cards as well as the merchandise itself. *In the Matter of Baldwin Bracelet Corp.,* Docket 8316 (1962), appeal pending.

By virtue of a 1938 trade agreement with Canada, TD 49690, lumber is unmarked. On December 31, 1963, President Johnson announced that he was vetoing H.R. 2513, a bill urged by the U.S. lumber industry, which among other things would have required that lumber be stamped with the country of origin.

ANTIDUMPING LEGISLATION

United States law, in common with that of many other trading countries and in common with the General Agreement on Tariffs and Trade, forbids the sale of imported goods in the American market at prices lower, after appropriate adjustments, than the prices in the domestic markets of the supplying country, where the effect is to injure an American industry. There exists a wide consensus that such practices are undesirable; but beneath this apparent simplicity, there lurk many difficult questions, both conceptually and administratively. There arises, in fact, a serious conflict between a justifiable objective and the accomplishment of that objective without undue interference with normal commerce.

The law actually refers to sales at less than fair value, which is interpreted to mean at prices lower than prices in the domestic market or, if such sales are insubstantial, than prices for third country sales or, failing such data, than cost of production. This determination was once characterized as purely a matter of arithmetic; but elaborate regulations have been developed for the determination of what adjustments are to be allowed and what are not to be allowed. The determinated of whether sales are below fair value has, therefor, become a complex exercise involving many questions of judgment.

It has always been recognized that different prices for one market as against another are not necessarily to be condemned and that there may well be good economic and business reasons for them. Hence, the United States, along with GATT and most trading nations, applies some further test of injury; and this requires an examination of what actually happens in the market place and the reasons for it. This determination of injury was formerly made by the Treasury Department along with the determination of fair value; but since 1954, the question of injury has been passed upon by the Tariff Commission if the Treasury Department has found sales below fair value.

The cases decided by the Tariff Commission have been without elaborate discussion and have defied any rationalization. They may all be consistent with one another, but it is difficult to tell from the facts and reasons given. Recently, in the case of Titanium Dioxide from France, a step has been taken toward a consistent exposition of a doctrine of injury. This decision held that the injury contemplated by the Act must be material. It also indicated that the intent must be predatory: "unfair competition" in the sense of the Federal Trade Commission Act. What this means in concrete situations remains to be developed as the cases arise. It would appear, however, that a defense would be allowed that a lower price was necessary to meet competition—a defense which is permissible in domestic price-determination cases under the United States Robinson-Patman Act. It is hoped that the Tariff Commission will reexamine, if it should become necessary, its decisions in some earlier cases finding injury to an entire United States industry because of a purely regional impact on a few producers.