

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## WORKING PARTY 1 ON RESOLUTIONS OF THE INTERNATIONAL CHAMBER OF COMMERCE

### Comments by Delegations to the United Kingdom Revised Draft Convention

#### Comments by the Italian Delegation

The 1935 Convention provided that the decisions of customs administrations as regards duty-free admission of samples were final (Article 9, paragraph 3).

In the course of discussions held in this Working Party it was suggested that this provision should be eliminated.

The Italian delegation wishes to stress that such a change is very likely to result in consequences the scope of which cannot be foreseen. Indeed, an excessive number of disputes might thus arise which individually speaking would be of negligible importance. Furthermore the jurisdiction of an international arbitration tribunal should not extend the factual appreciations such as those involved in decisions by customs authorities, particularly in the case of imports in minimum quantities.

The Italian delegation is of the opinion that the text of the Convention should provide for the opportunity for the traders concerned to bring the matter before competent internal tribunals with a view to securing, if the need arises, a revision of decisions of the customs administrations and it therefore proposes to insert in Article 2, paragraph 1 of the United Kingdom draft after "customs administration" the words "and according to decisions reached by other competent internal bodies".

The Italian delegation is of the opinion that such a guarantee to traders would obviate the need for a widening of the jurisdiction of international arbitration tribunals to the extent that would be necessary if the United Kingdom draft were accepted, the latter implying that such jurisdiction should extend to the decision of customs administrations relating to the negligible value of samples and to the fact that their purpose is only to solicit orders.

The Italian delegation therefore proposes to re-insert in Article 9 the following paragraph:

"This article shall not apply to the decisions of Customs Authorities and other competent bodies referred to in Article 2, paragraph 1".

As regards Article 10, the Italian delegation suggests that paragraph 1 should be worded as follows:

"The present Convention shall be open until . . . . .  
by the governments contracting parties to the General Agreement on Tariffs and Trade and by the governments of all states members of the United Nations, or of any state not a member of the United Nations, which the General Assembly of the United Nations may declare to be eligible".

Comments by the United States Delegation

The League of Nations Draft Convention of 1935 on samples and advertising material did not clearly state whether the exemption to be granted under the Convention applied to quantitative restrictions as well as to import duties. In its explanation for the deletion of Article 1, paragraph 2 of the 1935 Convention, the United Kingdom delegation expressed the view that the League Convention imposed no obligation to admit samples of goods in regard to which importation was prohibited. The United Kingdom has also stated in the Working Party discussion that the re-draft of the Convention should not cover quantitative restrictions. It is the view of the United States delegation that, if the revised draft Convention is to accomplish its purpose of facilitating the flow of samples and commercial propaganda in international trade, these goods must be exempted from both import duties and quantitative restrictions. The new draft Convention should impose an obligation on the signatory governments to admit the goods (with some exceptions similar to those found in Article 1, paragraph 2 of the 1935 Convention or in the relevant sub-paragraphs of Article XX, Part I of the GATT), in addition to requiring an exemption from import duties.

This principle of admitting commercial samples even though importation of the goods is otherwise barred or limited for balance-of-payments reasons was recognized in the General Agreement. In Article XII, paragraph 3(c)(ii), the Contracting Parties undertake, in carrying out their domestic policies with respect to balance-of-payments restrictions,

" . . . . not to apply . . . . restrictions which would prevent the importation of commercial samples, . . . ."

For Contracting Parties adhering to the proposed draft Convention, the inclusion of this principle would not, of course, impose any new obligation. However, it is expected that the proposed draft Convention will be opened for signature by non-GATT countries, and it would appear equitable to have this obligation apply to all the signatory countries.

In addition to the requirements of the General Agreement regarding the admission of samples, there are, in the view of the United States delegation, sound reasons for including an exemption from balance-of-payments restrictions in the draft Convention.

1. In the case of samples as well as the goods themselves, balance-of-payments restrictions are certainly as significant as import duties as trade barriers. It would be ignoring the facts of present day economic life to propose a convention which freed samples from import duties but had no reference to quantitative restrictions.
2. From the nature of the subject matter involved in the draft Convention, an exemption from quantitative restrictions could have no effect upon the balance of payments of any signatory government. The samples referred to in Article 2 of the United Kingdom re-draft of "negligible value" and the samples covered in Article 6 of the United Kingdom re-draft are admitted only temporarily, subject to exportation within six months. There may be some opportunities for misuse of the exemption as a device for circumventing import restrictions. But these possibilities are present in any system of quantitative restrictions, including those set up as required by the General Agreement provision cited above. Furthermore, it is not the intention of the United States delegation to provide any loopholes for the evasion of balance-of-payments restrictions and it would support the inclusion of any necessary safeguards.
3. Balance-of-payments restrictions are imposed under the General Agreement on a temporary basis during a period of external financial difficulties. Therefore, as is recognized in Article XII:3 (c)(ii) of the General Agreement, it is important to permit the traders of the country against whom the restrictions apply to keep their products and trade-names before the public during the period of import restrictions. This system results in no drain on the reserves of the country in balance-of-payments difficulties and gives the local producers the benefit of at least token competition.

For these reasons, the United States delegation proposes that the United Kingdom re-draft of the 1935 League Convention be modified, especially in Articles 2 and 6, to provide that the samples covered by the Convention be admitted freely notwithstanding any quantitative import restrictions which may be in effect. In connection with this proposal, it would be desirable to re-introduce a provision similar to that found in Article I, paragraph 2 of the 1935 League Convention.

