

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES  
Tenth Session

## REPORT OF THE WORKING GROUP ON SAMPLES CONVENTION

### I. Origin of the Question

1. One of the member countries of the Customs Cooperation Council initiated an enquiry as to the customs treatment given by the other members to patterns of women's dresses made up in paper or inferior cloth (usually known in the trade as "toiles de couture"). The replies received showed considerable divergence of practice between different countries but during the discussion of the replies the question was raised whether these products fell within the terms of the definition of samples given in Article III, paragraph 1 of the Samples Convention ("or examples of objects the production of which is contemplated by the sender" - "ou qui sont des modèles de marchandises dont la fabrication est envisagée").

2. A second member of the Customs Cooperation Council raised the question whether the adoption of the Convention precluded the maintenance of facilities which were more liberal than those required by the Convention.

3. The Committee of the Customs Cooperation Council concerned decided to send enquiries to the GATT secretariat asking for an opinion on the questions of maintaining more liberal facilities and on the interpretation to be given to paragraph 1 of Article III of the Convention. The text of the enquiries received from the Customs Cooperation Council appear in GATT document L/446. The CONTRACTING PARTIES decided to refer the question to a working group for examination under the following terms of reference:

"To consider the enquiries received from the Customs Cooperation Council concerning the interpretation of the International Convention to facilitate the Importation of Commercial Samples and Advertising Material and to report thereon to the CONTRACTING PARTIES."

4. The Working Group consisted of the following countries:

Germany	Pakistan
India	Sweden
Kingdom of the	United Kingdom
Netherlands	United States

At its first meeting the Working Group decided to co-opt representatives of Austria and France, in view of the particular interest of these two countries in the questions at issue.

## II. Procedural Considerations

5. At the opening of the discussion, one member of the Working Group raised the question whether the CONTRACTING PARTIES had any authority to give an opinion on the meaning of a Convention which had been ratified or acceded to by a sufficient number of countries to bring it into force, including three which are not contracting parties to the General Agreement, and therefore possessed its own body of contracting parties. In his view it would be inappropriate for the CONTRACTING PARTIES to give any formal interpretation of the Samples Convention. In the view of this delegation, two possible lines of action were for the CONTRACTING PARTIES to initiate steps to convene a meeting of the parties to the Samples Convention, or alternatively, for the CONTRACTING PARTIES to communicate with all the parties to the Samples Convention asking them to furnish their opinions by letter on the points raised. This delegate considered that the GATT secretariat could in either case transmit to the secretariat of the Customs Cooperation Council the views of the parties to the Samples Convention. Other members, while endorsing from the legal point of view the above opinions, held the view that the Working Group should consider whether the CONTRACTING PARTIES could not attempt to reach an informal interpretation of the Convention which could be recommended to the interested governments whether or not they are contracting parties to GATT.

### III. Question I. Minimum Facilities

6. Without prejudice to this general procedural question, the Working Group proceeded to consider the substance of the questions posed by the Customs Cooperation Council. On the first point, regarding the existence of facilities more favourable than those required by the Convention, the representative of Austria furnished a statement in which he explained that under Austrian constitutional legislation, the text of the Samples Convention, if it were ratified by Austria, would automatically become part of Austrian national law and would therefore abrogate any previously existing legislation even though that legislation were more liberal in character. The Austrian representative indicated, however, that a statement by the CONTRACTING PARTIES to the effect that it was not their intention that existing more liberal facilities should be abrogated would facilitate the Austrian Government's task of securing the maintenance of existing Austrian legal provisions. Those members of the Working Group representing countries which have ratified or acceded to the Samples Convention stated that it was not the intention, when the Convention was drawn up, that the adoption of the Convention should result in the restriction of any wider facilities which might be granted by any State.

### IV. Question II. Interpretation of Article III:1 of the Samples Convention

7. The Working Group then proceeded to an examination of the meaning and origin of the text of the definition of Article III of the Convention. A summary of the discussion is included in the Annex to this report. The discussion led the Working Group to the inescapable conclusion that any opinion by the CONTRACTING PARTIES could not avoid being in the nature of an interpretation of

the Convention and accordingly the procedural difficulties referred to in Section II of this report were felt to be of such a nature as to preclude the Working Group from making any positive proposals. The Working Group therefore reached the conclusion that it should report to the CONTRACTING PARTIES the nature of the procedural considerations evoked by this enquiry, and that in the meantime it should not proceed any further with an attempt to reconcile the divergent views on the substance of this question with a view to submitting further proposals. In the light of this conclusion, it was considered that no summary of the factual discussion should be included in the report of the Working Group, but that such a summary should be placed on record for the private information of delegations.

#### V. Conclusion

8. The Working Group recommends that the CONTRACTING PARTIES should proceed in this matter as follows:

(a) The Chairman of the CONTRACTING PARTIES should invite those contracting parties which have ratified or acceded to the Samples Convention to associate themselves with the view expressed in the last sentence of Section III of this report.

(b) The Executive Secretary should communicate with the contracting parties to the Convention on Commercial Samples and Advertising Materials and also those governments which have signed the Convention but have not yet ratified it. The nature of the problem should be stated, with a request for a statement of the views of the government concerned. In particular, the governments should be requested to state whether, in their interpretation of paragraph 1 of Article III, the Convention does or does not, extend to reduced-scale models of articles and to articles such as "toiles de couture" which are made up in materials inferior to the articles for which orders are to be sought, when these models or articles are imported for the purpose of soliciting orders for goods to be imported from abroad. A time-limit should be set for the receipt of the replies - say, 31 March 1956.

(c) The Executive Secretary should inform the Secretary-General of the Customs Cooperation Council of the action which is being taken.

(d) The Executive Secretary should circulate to all contracting parties to the GATT, and to such contracting parties to the Samples Convention as are not contracting parties to the GATT, and also to the Secretary-General of the Customs Cooperation Council, the text of the replies received.

(e) The CONTRACTING PARTIES could, in the light of the replies received, consider the advisability of ascertaining whether the contracting parties to the Samples Convention wish to pursue the matter.

Annex

SCOPE OF THE DEFINITION OF SAMPLES IN ARTICLE III:1  
OF THE SAMPLES CONVENTION

1. Text of the Definition

(a) English Text

"For the purpose of this Article the term 'samples' means articles which are representative of a particular category of goods already produced or are examples of goods the production of which is contemplated....."

(b) French Text

"Pour l'application du présent article, le terme 'échantillons' désigne les articles qui sont représentatifs d'une catégorie déterminée de marchandises déjà produites ou qui sont des modèles de marchandises dont la fabrication est envisagée....."

2. ~~Certain~~ delegations stated that while the question had arisen out of a discussion on the treatment of paper or cloth dress patterns, the question extended generally to miniature models and to articles made in materials other than the material which would be used in the articles for which orders were to be sought and which would eventually be imported. Those delegations considered that the French word "modèles" unquestionably had this significance. They claimed that not only did the letter of the text require that these miniature models and articles should be given the benefit of the Convention, but also that the spirit of the Convention pointed to the same conclusion. In the French language the term "modèle" means: (a) object which is reproduced by imitation, (b) representation in small scale of an object to be produced full size. The term "échantillons" ("samples") was used in the Convention in a very wide sense and included objects of considerable size and value. It was, therefore, unrealistic not to include objects of a reduced scale and lesser value which were used for the purpose of obtaining orders for goods. The interpretation of the text should also take into account commercial practice, which in the view of these delegations required that "modèles" in reduced scales and cheaper materials should be given the benefits of the Convention.

3. On the other hand, other delegates pointed out that in the English text of the Convention the word "examples" did not possess the extended meanings which the French word "modèles" was capable of possessing. The English word could only mean objects which are generally of the same size or material and are to be used for the same general purposes as the articles for which orders were to be taken. There was thus a definite difference between the interpretations which could be placed upon the two texts, but when the two texts were read together the meaning was clear, and it would be proper to accept the

narrower English text which corresponded to the primary meanings of the French text. To stretch the English text to cover all the possible meanings of the French text would be impracticable and undesirable. As far as the spirit of the Convention was concerned, it should be realized that all international conventions were prepared in a spirit of liberality, but this general concept would not justify their interpretation in any way inconsistent with their texts. In the view of these delegates it was not logical to draw from the fact that very expensive samples were admissible as well as inexpensive samples the conclusion that the definition should be regarded as covering articles which were made of inferior material or made on an inferior scale. Also it was somewhat unrealistic to argue that a convention should be interpreted in such a way as to meet the needs of commerce or of a particular branch of commerce; if this principle were accepted it would be possible for commerce to claim many facilities which were not in fact envisaged in international agreements.

4. One delegate quoted the following extract from Advisory Opinion No. 12 of the Permanent Court of International Justice in the "Frontier between Turkey and Iraq" question (Ser.B, No. 12):

"..... if the wording of a treaty provision is not clear, in choosing between several admissible interpretations, the one which involves the minimum of obligations for the parties should be adopted. This principle may be admitted to be sound."

Some of the other delegations did not consider that this extract was relevant to the present case.

5. Among other points made in the course of discussion was the fact that women's dress patterns ("toiles de couture") had a considerable design value and that they could be used for copying the design as distinct from using the patterns to take orders for the dresses which the patterns ("toiles") represented. It was argued, however, that this was true of most kinds of samples which were clearly admissible under the Convention, that the Convention ruled out the use of imported samples for copying and that the prevention of such abuses was a matter of administration. Nevertheless, some delegates considered that countries should be free not to admit under the Convention such articles as "toiles de couture" which by their nature were exceptionally susceptible to copying.

6. It was recognized by the members of the Working Group that the English and French texts are capable of different interpretations, and that they could not attempt to resolve the differences by examining the spirit of the Convention, the evolution of the texts during the drafting of the Convention or the logical inter-relation of the factors involved.