

SECRET

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/1178

28 April 1960

Limited Distribution

Original: English/
French

DRAFT CUSTOMS CONVENTION ON THE TEMPORARY DUTY-FREE IMPORTATION OF PACKINGS

Progress Report received from the Customs Co-operation Council

The Customs Co-operation Council transmitted by letter dated 13 April 1960, the amended and completed text of the Draft Customs Convention on the Temporary Duty-Free Importation of Packings, attached as Appendix I to this document. This text was accompanied by extracts from the Reports of the twenty-seventh and twenty-eighth sessions of the Permanent Technical Committee in which the discussions on this subject are summarized. These extracts are attached as Appendix II.

The Customs Co-operation Council stated in particular that on examination of the draft, the Committee took into account the observations made on this subject by the GATT Group of Experts on Duty-Free Importation of Packings, etc. (document L/1139 of 20 January 1960).

It stated also that since the Council will examine the draft Convention at its sixteenth session which will open on 13 June 1960, it would be very grateful for communication of any comments or observations the CONTRACTING PARTIES may wish to make on the subject before this date.

APPENDIX I

PRELIMINARY DRAFT CUSTOMS CONVENTION ON THE
TEMPORARY IMPORTATION OF PACKINGS

PREAMBLE

The Governments signatory to the present Convention,
Meeting under the auspices of the Customs Co-operation Council
and of the Contracting Parties to the General Agreement on Tariffs and Trade
HAVING REGARD to proposals made by representatives of international trade
for the extension of temporary duty-free importation procedures,
DESIRING to facilitate international trade,
CONVINCED that the adoption of general rules on the temporary duty-free
importation of packings would afford considerable advantages to
international trade,
HAVE AGREED as follows :

CHAPTER I

Definitions

ARTICLE 1

For the purposes of this Convention:

- (a) The term "packings" includes all articles used, or to be used, as
packing in the state in which they are imported. It includes, in
particular :
- (i) holders used, or to be used, as external or internal
coverings for goods;
 - (ii) holders on which goods are, or are to be, rolled, wound,
or attached;

It excludes packing materials such as straw, paper, glass-wool
and shavings, when imported in bulk.

It also excludes transport equipment, in particular "containers" as
defined in Article 1 (b) of the Customs Convention on Containers
done at Geneva on 18 May 1956;

- (b) The term "import duties" means customs duties and all other duties and taxes payable on or in connection with importation, and shall include all internal taxes and excise duties chargeable on imported goods, but shall not include fees and charges which are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic products or a taxation of imports for fiscal purposes;
- (c) The term "temporary admission" means temporary importation free of import duties and free of import prohibitions and restrictions, subject to re-exportation;
- (d) The term "filled", as applied to packings, means used in conjunction with other goods;
- (e) The term "contained goods" means goods with which packings are filled;
- (f) The term "person" shall mean both natural and legal persons.

CHAPTER II

Scope

ARTICLE 2

Temporary admission shall be granted to packings provided that they are identifiable at re-exportation, and that :

- (a) if imported filled, they are declared as being for re-exportation empty or filled;
- (b) if imported empty, they are declared as being for re-exportation filled;

such re-exportation to be effected by the person to whom the temporary admission facilities are granted.

ARTICLE 3

The present Convention does not modify the legislation of Contracting Parties regarding the assessment of import duties on contained goods.

ARTICLE 4

Each Contracting Party shall be free to limit temporary admission to packings :

- (a) other than those imported on purchase, hire-purchase or under any similar contract, by a person established or resident in its territory;
- (b) of a kind having a substantial individual value and being suitable for repeated use.⁷

CHAPTER III

Special provisions

ARTICLE 5

Each Contracting Party undertakes wherever it deems it possible to dispense with the requirement of security in favour of an undertaking to re-export the packings in question.

ARTICLE 6

Packings granted temporary admission shall be re-exported within six months from the date of importation in the case of packings imported filled and within three months from that date in the case of packings imported empty. These periods may be extended for valid reasons by the Customs authorities of the country of importation within the limits laid down by the legislation of that country.

ARTICLE 7

Packings granted temporary admission may be re-exported in one or several consignments, to any country, through any Customs office open to such operations, and such re-exportation shall not be confined to the Customs office of importation.

ARTICLE 8

Packings granted temporary admission shall not, even occasionally, be used within the country of importation except for the purpose of exportation of goods. In the case of packings imported filled, this restriction shall apply only as from the time when the packings have been emptied.

ARTICLE 9

1. Notwithstanding the requirement of re-exportation laid down by the present Convention, the re-exportation of badly damaged packings shall not be required in the case of duly authenticated accidents, provided that the packings :

- (a) are subjected to the import duties to which they are liable; or
- (b) are abandoned free of all expense to the Exchequer of the country into which they were temporarily imported; or
- (c) are destroyed, under official supervision, without expense to the Exchequer of the country into which they were temporarily imported;

as the Customs authorities may require.

2. When packings temporarily imported cannot be re-exported as a result of a seizure, other than a seizure made at the suit of private persons, the requirement of re-exportation shall be suspended for the duration of the seizure.

CHAPTER IV

Miscellaneous Provisions

ARTICLE 10

Any breach of the provisions of the present Convention, any substitution, false declaration or act having the effect of causing a person or an article improperly to benefit from the facilities provided for in the present Convention, may render the offender liable in the country where the offence was committed to the penalties prescribed by the laws of that country, and to payment of any import duties chargeable.

ARTICLE 11

The provisions of the present Convention shall not preclude the application of restrictions and controls imposed under national regulations on grounds of public morality, public security, hygiene or public health, or for veterinary or phytopathological considerations.

ARTICLE 12

For the purposes of the present Convention the territories of Contracting Parties which form a customs or economic union may be taken to be a single territory.

ARTICLE 13

The provisions of the present Convention set out the minimum facilities to be accorded. They do not prevent the application of greater facilities which certain Contracting Parties grant or may grant in future by unilateral provisions or in virtue of bilateral and multilateral agreements.

CHAPTER V

Final provisions

ARTICLE 14

1. The Contracting Parties shall meet together when necessary in order to consider the operation of the present Convention and, in particular, in order to consider measures to secure uniformity in the interpretation and application of the present Convention.

2. Such meetings shall be convened by the Secretary General of the Customs Co-operation Council at the request of any Contracting Party and, unless the Contracting Parties otherwise decide, shall be held at the Headquarters of the Customs Co-operation Council. The Contracting Parties shall lay down the rules of procedure for such meetings.

3. Decisions of the Contracting Parties shall be taken by a majority of not less than two-thirds of the Contracting Parties present at the meeting and voting.

4. The Contracting Parties shall not take a decision on any matter unless more than half of them are present.

ARTICLE 15

1. Any dispute between Contracting Parties concerning the interpretation or application of the present Convention shall so far as possible be settled by negotiation between them.

2. Any dispute which is not settled by negotiation shall be referred by the Contracting Parties in dispute to the Contracting Parties, who shall thereupon consider the dispute and make recommendations for its settlement.

3. The Contracting Parties in dispute may agree in advance to accept the recommendations of the Contracting Parties as binding.

4. If the Contracting Parties in dispute do not accept these recommendations, any of those Parties may request the Secretary General of the United Nations to nominate a single arbitrator to whom the dispute shall be referred for decision. The decision of the arbitrator so appointed shall be binding on the Contracting Parties in dispute.

ARTICLE 16

1. The Government of any Member of the Customs Co-operation Council and of any Member of the United Nations may become a Contracting Party to the present Convention :

- (a) by signing it without reservation of ratification;
- (b) by ratifying it after signing it subject to ratification; or
- (c) by acceding to it.

2. The present Convention shall be open until for signature in Brussels at the Headquarters of the Customs Co-operation Council by the Governments of the States referred to in paragraph 1 of this Article. Thereafter, it shall be open for their accession.

3. In the case envisaged in paragraph 1 (b) of this Article, the present Convention shall be subject to ratification by the signatory States in accordance with their constitutional procedures.

4. The Government of any State, not being a Member of the Organisations referred to in paragraph 1 of this Article, to whom an invitation to that effect has been addressed by the Secretary General of the Customs Co-operation Council, may become a Contracting Party to the present Convention by acceding thereto after its entry into force.

5. The instruments of ratification or accession shall be deposited with the Secretary General of the Customs Co-operation Council.

ARTICLE 17

1. The present Convention shall enter into force three months after five of the States referred to in paragraph 1 of Article 16 thereof, have signed it without reservation of ratification or have deposited their instruments of ratification or accession.

2. For any State ratifying or acceding to it after five States have signed it without reservation of ratification or have deposited their instruments of ratification or accession, the present Convention shall enter into force three months after the said State has deposited its instrument of ratification or accession.

ARTICLE 18

1. The present Convention is of unlimited duration but any Contracting Party may denounce it at any time after the date of its entry into force under Article 17 thereof.

2. The denunciation shall be notified by an instrument in writing, deposited with the Secretary General of the Customs Co-operation Council.

3. The denunciation shall take effect six months after the receipt of the instrument of denunciation by the Secretary General of the Customs Co-operation Council.

ARTICLE 19

1. The Contracting Parties may recommend amendments to the present Convention.
2. The text of any amendment so recommended shall be communicated by the Secretary General of the Customs Co-operation Council to all Contracting Parties, to the Governments of all other signatory or acceding States, and to the Secretary General of the United Nations.
3. Any recommended amendment communicated in accordance with the provisions of the preceding paragraph shall be deemed to be accepted if no Contracting Party has notified its objection to such amendment within six months of the date on which the Secretary General of the Customs Co-operation Council has communicated the amendment.
4. The Secretary General of the Customs Co-operation Council shall inform all Contracting Parties if an objection has been notified against a proposed amendment and should there have been no objection the amendment shall enter into force for all Contracting Parties three months after the expiry of the six months referred to in the preceding paragraph.
5. The Secretary General of the Customs Co-operation Council shall notify all Contracting Parties, the other signatory or acceding States and the Secretary General of the United Nations of accepted amendments or amendments deemed to have been accepted.
6. Any Government ratifying or acceding to the present Convention shall be deemed to have accepted any amendments thereto which have entered into force at the date of deposit of its instrument of ratification or accession.

ARTICLE 20

1. Any Government may, at the time of signing the present Convention without reservation of ratification, or of depositing its instrument of ratification or accession or at any time thereafter, declare by notification given to the Secretary General of the Customs Co-operation Council that the present Convention shall extend to all or any of the territories for whose international relations it is responsible and the Convention shall extend to the territories named in the notification three months after the date of the receipt thereof by the Secretary General but not before the Convention has entered into force for the Government concerned.
2. Any Government which has made a declaration under paragraph 1 of this Article extending the present Convention to any territory for whose international relations it is responsible may notify the Secretary General of the Customs Co-operation Council, in accordance with the provisions of Article 18 of the present Convention, that the territory in question will no longer apply the Convention.

ARTICLE 21

1. Any Contracting Party may, at the time of signing, ratifying or acceding to the present Convention, declare that it does not consider itself bound by paragraph 4 of Article 15 of the Convention. The other Contracting Parties shall not be bound by paragraph 4 of Article 15 in respect of any Contracting Party which has entered such a reservation.

2. Any Contracting Party having entered a reservation as provided for in paragraph 1 of this Article may at any time withdraw such reservation by notifying the Secretary General of the Customs Co-operation Council.

3. No other reservation to the present Convention shall be permitted.

ARTICLE 22

The Secretary General of the Customs Co-operation Council shall notify all signatory and acceding States and the Secretary General of the United Nations, of :

- (a) signatures, ratifications and accessions under Article 16;
- (b) the date of entry into force of the present Convention in accordance with Article 17;
- (c) denunciations under Article 18;
- (d) the entry into force of any amendment in accordance with Article 19;
- (e) notifications received in accordance with Article 20;
- (f) declarations and notifications received in accordance with paragraphs 1 and 2 of Article 21.

ARTICLE 23

In accordance with Article 102 of the Charter of the United Nations, the present Convention shall be registered with the Secretariat of the United Nations at the request of the Secretary General of the Customs Co-operation Council.

- (i) In witness whereof the undersigned plenipotentiaries have signed the present Convention.
- (ii) Done at Brussels this day of in the English and French languages, both texts being equally authentic, in a single original which shall be deposited with the Secretary General of the Customs Co-operation Council who shall transmit certified copies to all signatory and acceding States.

APPENDIX II

DRAFT CONVENTION ON THE TEMPORARY IMPORTATION
OF PACKINGS

Extracts from the Report of 27th Session
of the Customs Co-operation Council's
Permanent Technical Committee

10. The Committee reviewed the text of the draft Convention on the temporary importation of packings on the basis of the following documents:

- conclusions of the GATT Group of Experts (Doc. No. 7322)
- observations of the BIICC/ICC Working Party (Doc. No. 7326)

A certain number of amendments and additions were found necessary. The new draft Convention is reproduced as Appendix II.

11. This text calls for the following comments:

Article 1

Despite a statement by the BIICC representative, a provision excluding padding and stuffing materials imported in bulk was inserted in the Convention.

The Committee reserved the question of Containers not covered by the 1956 Geneva Convention for consideration in greater detail at its next Session.

The Indonesian and Italian delegations entered a reservation in respect of the reference to "import prohibitions and restrictions".

12. Article 3

The questions raised by the GATT Experts had already been answered in the Committee's previous report, which they had not received.

13. Article 4

The Committee noted the views expressed by the Group of Experts, and the ICC. The United Kingdom delegation wished to know if any changes of views had taken place during the intersession as regards this article. On a show of hands the following position emerged:

Article 4 (a)

- In favour : Indonesia, Portugal, Spain, Switzerland,
United Kingdom.
- Against : Austria, Belgium, France, Germany, Italy,
Luxemburg, Netherlands, Turkey.
- Abstentions : Denmark, Ireland, Norway, Sweden.

Article 4 (b)

- In favour : Indonesia, Spain, Switzerland, United Kingdom.
- Against : rest.

14. The Indonesian and the United Kingdom delegations, however, drew the Committee's attention to the fact that the subject matter of Article 4 (a) was more a matter of tariff policy than of Customs procedure. The United Kingdom Delegate said that it would be only after the results of the enquiry initiated by his Administration had been evaluated in their proper perspective that his Delegation could express their final views on the subject of Article 4.

The Indonesian Delegate reminded the Committee of the importance of even minor industries, such as the packings industries, in the economy of developing countries like his own, and stated that the right of such countries to protect these industries was recognized by the GATT also.

15. The Delegate for Switzerland informed the Committee that his Administration had not yet had the opportunity of assessing the results of an enquiry instituted in Switzerland with a view to obtaining the views of trade circles on this article. For the present, therefore, he had to support the maintenance of this article in the Convention.
16. The French delegation wished to stress again the danger which it saw in a Convention which would include the provisions proposed in Article 4. The French delegation believed that acceptance of such a Convention might result paradoxically in some countries having to introduce more restrictive regulations than those now in force.
17. The Committee decided to maintain the article in brackets.

18. Article 5

Several delegations felt that Articles 4 and 5 of the Convention had mutual repercussions and thought that if Article 5 were suitably amended, this might make it easier to find a solution to the problems relating to Article 4 (a) and might thus render the deletion of that Article more acceptable to the delegations which had so far been unable to accept this suggestion. The Committee examined various proposals made to this end and, in particular, a French proposal to make the waiver of security a compulsory measure only in cases where the packings remained foreign-owned, whilst in other cases, it would merely have the character of a Recommendation.

19. In view of the clarification by the United Kingdom Delegate of his country's views, the Committee agreed that the attempt to amend Article 5 with the object of making Article 4 (a) more acceptable should be abandoned for the present. However, the Committee decided to delete the second sentence of the text proposed by the Group of Experts since it was merely a repetition of the idea contained in the first sentence.

20. The delegation of Indonesia stated that its reserve in respect of Article 4 also applied to this Article (see paragraph 13 above).

21. Article 9

The Committee decided to insert the words "in cases of authenticated accidents" to bring the text of the first paragraph in line with Article 4 of the Containers Convention. This permitted the delegates of France and Italy to withdraw their reservations.

22. After a detailed discussion the Committee decided by a majority against the inclusion of a provision for the final duty-free re-admission of national or nationalized packings, firstly because the matter was purely domestic, and secondly because such a provision was out of place in a convention on temporary duty-free importation.

It was also agreed that the question of reciprocity raised too many complex problems. The Committee decided against the inclusion of a reciprocity clause.

Extracts from the Report of 28th Session

6. The Committee adopted the revised complete text of the draft Convention including the formal clauses (see IV) which is reproduced as Appendix II to the present Report.

The only change involved in relation to the technical clauses is in respect of Article 5 where the words "it deems it" have been added after the word "wherever" to make the meaning clearer.

7. The Italian delegation reiterated their country's reservation in respect of Article 1 (c), concerning import prohibitions and restrictions.

8. On a point being raised by the Danish delegation, the Committee agreed that the requirements of Article 1 (c) would be met if under an import licensing system, licences would always be issued to permit temporary importation of packings subject to their re-exportation.

9. As regards Article 4 the United Kingdom delegate pointed out that the GATT Working Party had retained Article 4 in square brackets to give non Customs Co-operation Council countries an opportunity to consider its implications. He advocated that the Permanent Technical Committee should take no further action on this Article until the GATT views were definitely known.
10. The Swiss delegation stated that their Administration was still in favour of maintaining Article 4 for the moment. Whatever the decision taken on this point, however, Switzerland would probably sign the Convention.
11. The Portuguese and Spanish delegations considered that Article 4 should be left between brackets in the draft Convention; the matter was of fundamental importance for some countries and therefore deserved fuller study.
12. The Hellenic delegation had not taken part in the Session during which the draft Convention was adopted, but now expressed its approval of that draft. For the time being, Article 4 should be maintained within square brackets.
13. The Swedish delegation stated that regulations concerning temporary importation of packings in its country are very liberal and temporary duty-free admission is granted regardless of the ownership. However, in order to make the new Convention attractive for as many countries as possible the Swedish delegation proposed as a compromise that the Committee should consider the possibility of deleting Article 4 (a) but including in the Convention provisions enabling a country to reserve its right to limit temporary admission to packings "other than those imported on purchase, hire-purchase or under any similar contract, by a person established or resident in its territory". That solution had also been mentioned at the meeting of the Group of Experts in Geneva. Another solution might perhaps be to maintain Article 4 (a) but include in the Convention provisions saying that a country which intends to apply that clause must notify the other Contracting Parties of its intention.
14. The Benelux delegations suggested deletion of Article 4, in order to ensure that Benelux packings sent abroad would be treated not less favourably than foreign packings temporarily imported into the Benelux countries.
15. The French delegation, supported by the German delegation, stated that if Article 4 were maintained the Convention would make no appreciable contribution towards liberalisation. The facilities envisaged in the Article, which actually only consolidated the existing position in respect of most Customs Administrations, were much less liberal than those now accorded in several countries. Retention of Article 4 therefore involved the risk that pressure by national manufacturers might compel at least some of these countries to tighten their regulations.
16. The Austrian and Italian delegates maintained the views expressed by them against the retention of this Article at the last Session of the Committee (Doc. 7375, paragraph 13).

17. The I.C.C. representative said that it was always very difficult to determine the issue of ownership of packings when they cross a frontier, and considered that Article 4 (a) would create a very real obstacle to the granting of the facilities envisaged.
18. The Committee finally decided, by a majority, to maintain Article 4 in the draft Convention, but to keep the text in square brackets.