

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/446

2 November 1955

Limited Distribution

CONTRACTING PARTIES
Tenth Session

SAMPLES CONVENTION

Enquiries received from the Customs Co-operation Council

Two letters, dated 22 October 1955, from the Secretary General of the Customs Co-operation Council in Brussels are reproduced below.

I

"On the occasion of the last meeting of the Permanent Technical Committee of the Council, the delegation of one member state observed that under their national legislation the adoption of any law for the approval of an international convention relating to a specific matter would, unless otherwise specified in that convention, involve the rescinding of any more liberal provisions under previously existing legislation relating to the same matter.

"Consequently that delegation holds the view that, failing any provisions similar to those written into other international agreements, the Samples Convention concluded under the auspices of the GATT should upon its entry into force in that country, entail a withdrawal of the wider facilities provided for by its domestic legislation in that field.

"The situation would be different if the Convention contained a clause similar to that which appears in the Protocol of signature to the draft Convention on Tearing signed in Geneva in 1949, to the following effect: 'The terms of this Convention set out minimum facilities. It is not the intention of the Contracting States to restrict the wider facilities which are granted or may be granted by certain of them.'

"In conformity with the instructions received from the Permanent Technical Committee, I should be very grateful if you could let me know whether this difficulty has been raised in GATT, in particular during the preparatory work which led to the Convention of 1952 and if you were good enough to express an opinion on the matter."

II

"The Customs Co-operation Council has received a request from a member state concerning the possible temporary duty-free admission of 'collections of models, of women's dresses made of paper or of fabric (drawings)'.

"After conducting an investigation in conformity with the wishes expressed by the country in question, concerning the practices followed by other member states the permanent technical committee of the Council has examined whether it would be desirable to harmonize and standardize those varying practices.

"In the course of the discussion the question was raised whether such operations fall within the framework of the operations permitted under the samples convention concluded under the aegis of the GATT. If that was the case, the permanent technical committee holds the view that in order to avoid any conflict of jurisdiction, the Council should refer the matter to your organization which took the initiative and had been entrusted with the task of framing this convention.

"In brief, the previous question which has thus been raised involves an interpretation of the convention and more specifically of the definition of samples which is given in Article III, paragraph 1 ('examples of objects the production of which is contemplated by the sender - ou qui sont des modèles de marchandises dont la fabrication est envisagée').

"Consequently in conformity with the instructions I have received, from the permanent technical committee, I should be very grateful if you would kindly give me your opinion in this matter.

"Please find attached herewith the relevant documentation."

ANNEX I

TEMPORARY IMPORTATION OF COLLECTIONS
OF VARIED ARTICLES

Note from Greece

Certain firms have been importing into Greece collections of models of women's dresses, made of paper or of fabric (drawings), for which the importing firms requested temporary duty-free admission subject to re-exportation within a given period of time.

Under Decree No. 3/1937, Section I, paragraph 1(f), articles such as wireless sets, various apparatus, etc., imported for the purpose of being shown or demonstrated for the soliciting of orders may be allowed free circulation (i.e. without payment of import duties or taxes, provided that they are subsequently re-exported).

But it is difficult to allow the above-mentioned collections free circulation under those provisions, as copies can easily be made and sold, thus abusing the facilities granted.

We are anxious to adopt the same position as other Members with regard to such collections, and therefore request you to inform us, after due investigation :

- 1) how other Members regard this question;
2. if it is desirable to adopt measures enabling all Members to adopt a uniform position in this matter.

ANNEX II

NOTE BY GENERAL SECRETARIAT

Temporary Importation of Model Dresses and
Patterns of Dresses

1. During the 7th-8th Sessions of the Permanent Technical Committee, Greece raised the question of the "temporary importation of collections of models for women's dresses, made of paper or of fabric (drawings)".

The Committee decided to undertake the study of this question and requested the Secretariat to ask Members for their comments on the Greek document.

The Secretariat was instructed to prepare a summary of the replies and to communicate them to all Members, together with the replies, not later than 1 September.

2. The Secretariat requested Members to submit their replies by the date fixed by the Committee (15 July 1955). The following countries have sent replies, which are reproduced in the appendix to the present document : Austria, Belgium, Denmark, France, Germany, Ireland, Luxembourg, Portugal, Spain, Sweden, Switzerland, Turkey and United Kingdom.

Any further replies which may be received will be distributed separately, but will not have been taken into consideration in preparing this Note.¹

3. This Note summarizes the information contained in the replies, which however, appear to cover a wider field than that referred to by the delegation of Greece and include the following classes of importation:

- (1) Model dresses (i.e. finished articles intended to be worn as clothing) temporarily imported :
 - (a) for the purpose of soliciting orders for reproductions to be sent from abroad;
 - (b) for the purpose of making copies in the country of importation.
- (2) Patterns of dresses : models obviously not intended to be worn (e.g. toiles, paper patterns and the like) temporarily imported:

¹ Replies by Netherlands and Italy are reproduced in Annexes 3 and 4.

- (a) for the purpose of soliciting orders for finished articles to be made up from the patterns and sent from abroad;
- (b) for the purpose of soliciting orders for supplies of similar patterns;
- (c) for the purpose of making copies in the country of importation.

It should be noted that these patterns may reproduce exclusive haute couture models, or may simply be imported for the wholesale trade in patterns for sale to the public (McCall's, Jardin des Modes etc.). The articles referred to in paras. (a) and (c) belong to the former group and those in (b) in the latter.]

The following layout has been adopted :

- I. Procedure applied by Members.
- II. Conditions to be fulfilled for the grant of temporary importation facilities.
- III. Time allowed for re-exportation.
- IV. Adoption of uniform measures.
- V. Conclusions.

I. PROCEDURE APPLIED BY MEMBERS

4. The replies received have given the following indications regarding the procedure applied to each of the above-mentioned classes of articles.

5. It should first be noted that Portuguese legislation makes no provision for the temporary importation of articles in the classes in question. In Denmark, on the other hand, duty must be paid, but is refunded, on re-exportation, subject to conditions established by the law. Finally, in Belgium¹ and Sweden, collections in all of these classes are uniformly granted temporary importation facilities. The procedure in the other countries is set out in paragraphs 6 to 11 below.

Class 1 : Model dresses (i.e. finished articles intended to be worn as clothing) temporarily imported.

6. The United Kingdom reply does not mention the procedure employed for this class of article. In Austria and Germany, such articles qualify for temporary importation facilities regardless of the use for which they are intended during their stay in the country. In Turkey, models of dresses may be imported duty-free provided that they are of a non-commercial character

¹Any reference to Belgium in this Note holds good for Luxemburg also (see Luxemburg reply in Annex).

and that there is not more than one model of each dress: the procedure applied if these conditions are not fulfilled is described in para. 7 below.

7. A distinction is made in some countries between models imported:
 - (a) for the purpose of soliciting orders for reproductions to be sent from abroad, and
 - (b) for the purpose of making copies in the country of importation.

Ireland, Spain, Switzerland and Turkey (but see para. 6 above) and apparently also France, grant temporary importation facilities to goods in this class imported for the purpose of soliciting orders for finished articles ((a) above) but not for the purpose of copying ((b) above). It should be noted that in Switzerland, the granting of facilities must have been requested by a foreign firm and the goods must remain the property of the foreign consignor and be identifiable.

Class 2: Patterns of dresses (e.g. toiles, paper patterns and the like), temporarily imported

8. Austria and Germany did not mention this particular category. In Ireland, paper patterns, whether printed or unprinted, and toiles (fabric models lightly stitched together and obviously not intended to be worn), pay no import duty. The other countries (France, Spain, Switzerland, Turkey and the United Kingdom) gave the following information :

9. (a) Patterns of dresses temporarily imported for the purpose of soliciting orders for finished articles to be made up from the patterns and sent abroad.

Spain, Switzerland (subject to the conditions mentioned in para. 7 above) and Turkey grant temporary importation facilities to dress patterns temporarily imported for this purpose. In the United Kingdom dress patterns to be used for the soliciting of orders for garments are never allowed duty-free temporary importation since they are not considered to be "representative of garments already produced or examples of garments the production of which is contemplated" for the purpose of Article III of the International Convention to facilitate the Importation of Commercial Samples and Advertising Material. France does not appear to share this view although, in the case of "toiles" temporary importation facilities are granted only as an exceptional measure and in the case of a special order approved by the responsible Ministry.

10. (b) Patterns of dresses temporarily imported for the purpose of soliciting orders for the supply of such patterns.

Apart from France, all the countries mentioned in the preceding paragraph grant temporary importation facilities to dress patterns imported with a view to securing orders for supplies of the patterns themselves. In one of these countries (Switzerland), this concession is subject to the conditions mentioned in paragraph 7 above. The reply of France, which does not, however, mention the category, implies that import duties and taxes must normally be paid when such patterns are imported.

11. (c) Patterns of dresses temporarily imported for the purpose of making copies in the country of importation.

Duties and taxes must normally be paid in all the countries listed in paragraph 9 above on the temporary importation of dress patterns for copying in those countries.

II. CONDITIONS TO BE FULFILLED FOR THE GRANT OF TEMPORARY IMPORTATION FACILITIES

12. In the above cases, where temporary importation facilities are granted, the import duties and taxes must be deposited or secured by bond. The special conditions made by some countries are mentioned in the preceding paragraphs.

III. TIME ALLOWED FOR RE-EXPORTATION

13. Few of the countries which replied gave information regarding the time allowed for re-exportation in cases where they apply the temporary importation procedure to model dresses and patterns of dresses. Belgium and Turkey allow six months, whereas Sweden allows one year.

IV. ADOPTION OF UNIFORM MEASURES

14. France, Germany, Ireland, Portugal and Sweden are in favour of attempting to establish a uniform procedure for the temporary importation of these collections. Spain also favours the idea, but does not consider the question of prime importance. Turkey does not consider the matter of general interest, and suggests that it should be left to the discretion of Members' Administrations. The other countries expressed no opinion.

V. CONCLUSIONS

15. The procedure applied in respect of temporary importations of these collections varies considerably from one country to another and practice depends upon national Customs legislation.

16. On the other hand, nearly all countries seem to grant facilities to a greater or lesser extent and a recommendation for the granting of minimum facilities might be practicable.

17. However, before this could be done, agreement would appear to be necessary on the interpretation in this connection of the international conventions on the temporary importation of commercial samples (Geneva Convention of 1923 and GATT Convention).

APPENDIX

AUSTRIA:

With reference to the relevant Austrian Customs provisions the temporary importation of collections of models of women's dresses is granted upon request of the importer. Due regard is paid to the purpose of the imported models. There are various possibilities in the Austrian Customs Law concerning the temporary importation procedure. Therefore models may be admitted either as samples, or for the purpose of being shown or demonstrated or for reproduction. On importation the identity is established by the Customs by fixing appropriate identification marks. A time-limit for re-exportation is fixed according to the requirements of each case and to the kind of the temporary procedure requested. The beneficiary is to give security for the import duties and taxes. All temporary procedures are placed under special Customs supervision. In cases of abuse the benefit is revoked.

There are no factual or legal difficulties in respect of the articles in question imported temporarily.

BELGIUM:

1. Model dresses and patterns made of fabrics

Original models, and patterns made of canvas, created by dress designers, which have a high extrinsic value because of their originality, are admitted temporarily free of import duty.

- (a) as representing articles it is proposed to manufacture (commercial samples procedure), when imported by the foreign designer or by his representative (whether or not established abroad) for soliciting orders for goods (garments or patterns) to be supplied from abroad;
- (b) as models, when imported by dressmakers established in the Customs territory and to be used in making-up articles to be supplied by them.

The bond required in respect of the duties and taxes chargeable is calculated on the value of the models and patterns as articles in themselves, increased by their extrinsic value.

Temporary admission is limited to a period of six months.

Original models made of fabric and patterns made of canvas, if not re-exported, must be entered for final importation by withdrawal from temporary duty-free importation procedure. Approval of such importation is subject to production of the collection. Canvas patterns may also be destroyed under Customs supervision.

2. Patterns made of paper

Patterns made of paper are admitted temporarily duty-free when imported

- (a) for soliciting orders for patterns of that kind to be supplied from abroad (commercial samples procedure);
- (b) to be used in the making-up of articles to be supplied by dress-makers established in the Customs territory (models procedure).

The provisions shown under 1 above are also applicable; such patterns must be either re-exported or destroyed under customs supervision.

DENMARK:

According to the Danish Customs legislation (Sect.3 (h) of the Customs Act of 29 March 1924) samples of goods may be entered free of duty under the necessary customs control. This provision is administered in the way that the duty paid, on further specified conditions, will be repaid on the re-exportation of the goods.

On the part of Denmark no objections will be made to copies being taken of the samples while in this country.

FRANCE:

The delegation of Greece has raised the question of the temporary importation of collections, more precisely of models of women's dresses, made of paper or of fabric, which, in that country, are legally allowed free circulation, i.e. exemption from duty until re-exportation, when imported for the soliciting of orders for the account of the foreign manufacturer.

The Greek note points out that these facilities would not be justified if the importers took advantage of them to reproduce the models with a view to selling them on the home market. Since this risk seems to be very real, the Greek delegation asks how other Members deal with the problem and if it is desirable for all Members to adopt uniform measures in the matter.

*
* *
*

Two different Customs procedures are applicable in France to importations of collections of dress models.

1. If these models are effectively imported with a view to soliciting orders for garments which will subsequently be imported into the country of importation, the operation comes within the field of application of the International Conventions on the temporary

importation of commercial samples (Geneva - 1923, and GATT). In such cases, the collections are allowed to circulate free of duties and taxes in the territory prospected until re-exportation.

2. In all other cases, however, duties and taxes must be paid when collections of dress models are imported.

In principle, French customs regulations exclude cloth dress models ("toiles de couture") from the benefits of temporary admission free of duties and taxes. Nevertheless, as an exceptional measure, the Director General of Customs may authorize temporary admission, but this would be done only on the recommendation of the Ministry responsible for the product, made after examining the grounds for the request: temporary admission might, for example, be granted in the case of one special order from one foreign customer.

*
* *
.

The delegation of Greece stresses the danger of these collections, imported under a special procedure suspending the payment of duty (temporary importation or admission, samples procedure), being reproduced with a view to subsequent manufacture in the importing country.

Obviously, in view of the often considerable intangible value of these collection models, duty-free admission under the samples procedure must be subject to the strictest conditions, leaving the Customs authorities in no doubt as to the use of these imports for soliciting orders.

In the opinion of the French delegation, the very real risk of fraud inherent in these operations justifies an exchange of views with other Administrations in order to adopt a uniform procedure preventing any possible fraud.

The Permanent Technical Committee should also take account of the work done by the Valuation Committee on the intangible elements to be taken into consideration for the assessment of collection models. The documentation assembled by the Valuation Committee and that Committee's conclusions might be communicated to delegations to the PTC before the next Session.

GERMANY:

1. Collections of models of woman's dresses temporarily imported into the Federal Republic for the purpose of being shown or demonstrated (e.g. at a fashion show) qualify for temporary admission.

The possibility of copying the models in question more or less easily either by photography or by reproducing a sketch or a model from memory does not affect the Customs treatment.

The amount of the Customs duties chargeable is recorded when entry is made on importation no duty is payable if the collections are re-declared and re-exported within the prescribed period.

2. Collections of models of women's dresses temporarily imported into the Federal Republic for use as patterns in the manufacture of the same dresses also qualify for temporary admission. The fact that licence fees are paid to the creator of the model for the transfer of the right to reproduce dresses from these models does not entail refusal of temporary admission, especially as under the German concept such licence fees are not included in the dutiable value of the imported models.

3. The German delegation would be glad if a uniform procedure were applied in such cases by all Members of the Customs Co-operation Council.

IRELAND:

In addition to the usual drawback provisions in respect of goods exported unused, Irish customs law has a provision, analogous to that mentioned in the second paragraph of the Greek Note, for the temporary importation without payment of customs duty of articles imported solely for the purpose of any competition, show, exhibition or demonstration or any similar purpose and not intended to be sold or offered for sale. The admission of the articles is subject to a guarantee regarding their proper use and the duty involved must be secured by a deposit or by bond. This provision, however, is not regarded as applying to model frocks, dresses etc. imported for copying. Duty would be chargeable on such articles at importation and would not be repayable on exportation.

The question of charging duty on paper patterns, whether printed or unprinted, and toiles (fabric models lightly stitched together and obviously not intended to be worn) does not arise as these articles are not liable to customs duty.

It is considered that the question of unifying procedure in the matter could usefully be studied by the Committee.

LUXEMBURG:

"... under the terms of the Convention of Economic Union between Belgium and the Grand Duchy of Luxemburg, Belgian customs regulation are applicable in the Grand Duchy and my Administration therefore refers you to the information supplied by the Belgian Customs Administration."

PORTUGAL:

Portuguese legislation makes no provision for the temporary admission of the articles in question and it is considered inexpedient to make such provision for these articles, since the fact that copies of them may be made (which would replace the models themselves) would be in clear contradiction to the spirit of the law.

The Portuguese Administration agrees with the Greek Administration as regards the adoption of a uniform procedure by all Members of the Customs Co-operation Council.

SPAIN:

1. Under Spanish regulations, collections of models of women's dresses, made of paper or of fabric, cannot be granted temporary importation facilities unless they are bona fide samples imported solely for the soliciting of orders. If, however, the capacity of the owner or any other factor suggests that the articles may have been imported for copying in this country, they cannot be regarded as samples and are then subject to the general rules concerning the importation of goods for home consumption.
2. It would be desirable to adopt measures enabling all Members to take up a uniform position, but only comparison of the different national regulations could show the possibilities of successful action in this field which, in the opinion of the Spanish Administration, is not of prime importance.

SWEDEN:

In Sweden temporary duty-free admission is granted to those collections during one year subject to the amount of the import duties and taxes being deposited or security being given.

It seems desirable that corresponding facilities are introduced in other Member countries, where such facilities are not granted now.

SWITZERLAND:

A. Consignments imported by firms established in Switzerland

Whatever the purpose of importation, these consignments are finally cleared against payment of duty on importation.

B. Consignments imported by foreign firms

1. Patterns and models intended for copying or for use in the manufacture of garments are also finally cleared on importation, whether or not they are subsequently re-exported.
2. Consignments of samples imported for the purpose of soliciting orders for patterns and models are, on request, cleared on a "passavant", like commercial travellers' collections. They must nevertheless remain the property of the foreign consignor and must be identifiable.

Import duties must be paid on consignments not satisfying these conditions.

TURKEY:

Under Section 24, 4-5, of the Turkish Customs Code, samples and models of all kinds imported to solicit orders, and articles imported for trial or examination, may be granted temporary admission facilities provided the duties chargeable are deposited on importation and re-exportation takes place within six months.

This provision of Turkish legislation covers samples and models of all kinds imported to solicit orders, and articles imported for trial or examination; the Hellenic Government's Note refers to collections of models of women's dresses, made of paper or of fabric (drawings), which will be copied and then re-exported. Hence, these articles are imported neither to solicit orders nor to be tried or examined; they do not fulfill the statutory requirements in respect of temporary admission and could not be imported under that procedure.

However, under Section 19-6 of the Turkish Customs Code, such articles may be finally imported duty free, provided they are of a non-commercial character and there is no more than one model of each dress.

With regard to the suggestion in the Greek Note that measures might be adopted enabling all Members to take up a uniform position in this matter, the Turkish Customs Administration considers that such measures would be feasible provided they result from an agreement at a meeting of Members.

However, the Turkish Customs Administration points out that there would be little purpose in agreement on such a matter, which is not of a general nature, and considers that it should be left to the discretion of Members.

UNITED KINGDOM:

The United Kingdom Delegation assumes that the varied articles in question are:

1. Paper or inferior cloth garment-patterns made up primarily for copying purposes and not intended to be worn as clothing.
2. Patterns of cloth or paper, consisting of sheets bearing printed shapes of component parts of garments and usually accompanied by instructions for cutting out, or of sheets cut to those shapes.

In neither case would duty-free temporary importation as samples be allowed if the articles were to be used for the soliciting of orders for garments, as the United Kingdom administration would not consider the articles to be "representative of garments already produced or examples of garments the production of which is contemplated" for the purposes of Article III of the International Convention to facilitate the Importation of Commercial Samples and Advertising Material.

If the articles were being imported with a view to securing orders for supplies of the patterns themselves duty-free temporary importation would be allowed. There would, of course, be a danger (as there is with many other types of goods) that the articles could be copied but the importer would be fully aware that if he permitted copies to be taken he would be guilty of a breach of the duty-free temporary importation conditions, and any abuse would be penalized.

ANNEX III

TEMPORARY IMPORTATION OF MODEL DRESSES AND
PATTERNS OF DRESSES

Replies by Netherlands and Italy

NETHERLANDS:

The Customs legislation of the Benelux countries authorizes the temporary importation of models, of paper or fabric, in accordance with the following provisions:

- (a) as "drawings, plans and models, imported to be used in the execution of work or in the assembly of objects and subsequently to be re-exported";
- (b) as "samples having a commercial value, imported by persons travelling for professional purposes or imported for the use of such persons, and to be re-exported".

The term "execution of work" in (a) is very wide and hence enables models to be copied, subject only to the re-exportation of the model within the period stipulated on importation of the collection.

It will be agreed that the regulations of the Benelux countries are more liberal in this matter than the Greek provisions.

ITALY:

It is considered that the question raised by Greece is of essentially economic interest and arises from the points of view of foreign trade and exchange controls rather than from that of Customs technique.

However that may be, it should be noted that the Italian regulations provide for the duty-free temporary admission of "collections of models of women's dresses" imported for purposes of exhibition.

It is felt that this is the most appropriate Customs procedure for dealing with the case in question.