

GENERAL AGREEMENT ON
TARIFFS AND TRADERESTRICTEDL/1208
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CONTRACTING PARTIES
Sixteenth SessionGROUP OF EXPERTS ON
DUTY-FREE TEMPORARY ADMISSIONReport on the Draft Convention on Temporary
Importation of Packings

1. In accordance with its terms of reference, decided upon by the CONTRACTING PARTIES at their sixteenth session (SR.16/2), the Group of Experts examined during that session the draft Customs Convention on the Temporary Importation of Packings with a view to submitting recommendations to the CONTRACTING PARTIES.
2. Dr. Otto Benes (Czechoslovakia) was appointed Chairman. The membership of the Group is shown in the appendix together with the list of observers who attended the meeting.
3. The Group examined the draft Customs Convention on Temporary Importation of Packings as it had been transmitted by the Customs Co-operation Council to the CONTRACTING PARTIES to the GATT on 13 April 1960 (document L/1178).
4. In view of the fact that, in this amended draft, the general observations made by the GATT Group of Experts at its meeting in January 1960 (document L/1139) had already been taken into account, the task of the Group was limited, at this juncture, to an examination of the details of the articles. The comments resulting from this detailed study of the text as submitted to the Group are contained in the present report.
5. It was again made clear, on this occasion, that the views expressed by the experts within the Group did not necessarily reflect their Governments' views and could, therefore, not indicate whether or not their countries would agree to sign or adhere to the Convention as it is finally drawn up.

Preamble: No comment.

Article 1: Attention has been drawn to the last sentence of paragraph (a). Some experts expressed the fear that the sentence "It also excludes transport equipment, in particular 'containers' as defined in ... the Customs Convention on Containers" might lead to misunderstandings. It was therefore decided that it should be recorded that the exclusion applies only to containers of the 1956 Geneva Customs Convention and to pallets. In fact it is most likely that the words "transport equipment in particular containers and pallets" would have been chosen if the Convention on pallets under study in the ECE would have already been accepted.

Article 2: Two experts (of Canada and the United States) drew attention to the fact that a change in their national legislation would be required if their countries were to adhere to the Convention containing this Article as it stands.

Article 3: No comment.

Article 4 (old): It was decided to omit Article 4(a) of the draft Convention and to provide for a reservation procedure under Article 20 permitting countries to exclude purchased (and similar) packings from duty-free temporary importation.

The experts felt that eliminating this provision entirely might make adherence impossible for important trading nations. On the other hand, they thought that an Article giving a general permission to apply such a system might encourage some governments to introduce a more restrictive system during their adherence to the Convention. The "reservation" solution was therefore agreed to be a satisfactory compromise.

Insofar as the limitation of the Convention is concerned which was provided for under Article 4(b), all experts except one were of the opinion that this provision should be omitted entirely. The reasons which were brought forward in favour of omitting the provision were, in particular, that:

- (a) packings of little value normally are not susceptible of being "identifiable at re-export" and therefore are in most instances excluded from the benefits of the Convention already under the provisions of Article 2;
- (b) the term "substantial individual value" is so imprecise that it would be left to the interpretation of the governments of the members to the Convention which could be such as to exclude a considerable part of the packings' field.

The expert of the United Kingdom, however, drew attention to the fact that due to the difference of the provisions in force in his country and the policy underlying them the omission of this provision might well make it difficult for his Government to join the Convention.

(The numbering of the following Articles results from the deletion of old Article 4).

Article 4: No comment.

Article 5: The expert of the United States drew attention to the fact that a change in his country's legislation would be required if the United States were to adhere to the Convention containing this Article as it stands.

Article 6: No comment.

Article 7: No comment.

Article 8: The Australian expert said that he would prefer to see paragraphs (b) and (c) omitted, but he declared himself at the same time prepared to accept the majority view, which was in favour of maintaining them.

Article 9: No comment.

Article 10: Some experts expressed doubt whether the term "public security" also covers such measures as are encompassed in Article XXI:b(iii) of GATT, namely measures taken by a government in time of war or other emergency in international relations. It was generally recognized that the term "public security" was not meant to be limited to the internal security (to which other agreements refer under the term "public order"), but was also to extend to external security envisaged in the GATT Article XXI:b(iii). However, certain experts continued to express concern regarding the present wording of Article 10 and requested that the Customs Co-operation Council give consideration to the views which they expressed.

Article 11: No comment.

Article 12: No comment.

Final Provisions: Two experts suggested that the administration of the Convention on Packing Materials might be done by GATT. While recognizing that GATT has its interest in the future of the Convention, not only in consequence of its co-operation in the drafting, but also in its statutory interest in trade policy questions and any action aimed at freeing international trade barriers, the majority of experts felt that the Convention, for practical reasons, should be administered by the Contracting Parties to the Convention, using the services of the Brussels Customs Co-operation Council.

Article 13: No comment.

Article 14: It was generally felt that the arbitration procedure provided for in paragraph 4 was too elaborate for a Convention of this nature. It was therefore suggested that this paragraph should be omitted, thus bringing this Convention into line with the E.C.S. Carnet Convention.

Article 15: For bringing the Convention on Packings into line with other international Conventions, it was suggested that the words "or its specialized agencies" should be added after the words "United Nations" in paragraph 1.

It was suggested that in paragraph 4 the words "at the request of the Contracting Parties" be added to the sentence "to whom an invitation to that effect has been addressed by the Secretary General of the Customs Co-operation Council". This suggestion - which was made to bring out clearly that the Secretary General does not act in his own capacity but as a representative of the members to the Convention - found the approval of the Group.

Article 16: No comment.

Article 17: No comment.

Article 18: Some experts expressed doubts about the acceptability of a "negative vote procedure" as laid down in this Article.

The representative of the Brussels Customs Co-operation Council explained that this procedure (which is in conformity with that provided for in the

E.C.S. Carnet Convention) aimed only at ensuring speedy enforcement of amendments which have been approved by the Contracting Parties according to Article 13, paragraphs 3 and 4. The final acceptance by the governments of an amendment de facto requires unanimity since a single objection prevents the amendment from becoming effective...

Without insisting on an alteration of this provision, some experts felt however that the attention of the Brussels Customs Co-operation Council should be drawn to this problem which might create difficulties for certain countries in accepting this Convention.

It was decided that the communications and notifications provided for in paragraphs 2 and 5 should be also transmitted to the CONTRACTING PARTIES to GATT, in the sense of the remarks made in connexion with the discussion of the final provisions.

Article 19: No comment.

Article 20: A new paragraph 1 reflects the reservation drafted in consequence of the decision to suppress the old paragraph 4(a).

It was understood that the terms used in this paragraph "other than those imported on ... hire purchase or under any similar contract" is not meant to exclude from the application of the Convention packages which remain foreign property but for which a simple charge for use is paid.

The old paragraph 1 has been suppressed consequent to the decision taken to omit paragraph 4 of Article 14.

Article 21: As in Article 18 it was decided that a reference to the CONTRACTING PARTIES to GATT should appear in the first sentence.

Article 22: No comment.

6. It was also suggested that a number of interpretations accepted by the group of experts in GATT or the Permanent Technical Committee in Brussels, not important enough to be incorporated in the Convention text, would nevertheless help to ensure uniform interpretation. It was therefore proposed that such interpretations, unanimously accepted during the preparation of the text, should be assembled in the Council's documentation related to the future Convention.

7. The group of experts felt that the drafting of the Packings Convention had now advanced to the point of permitting finalization of the text. It was therefore suggested that the CONTRACTING PARTIES transmit the following communication to the Brussels Customs Co-operation Council:

"The CONTRACTING PARTIES submit a revised draft of the Customs Convention on Temporary Importation of Packings, together with the report of the Group of Experts of GATT. These are based on the previous studies of the Council and of the group and incorporate the changes and comments suggested by the latter group in its last meeting held during the sixteenth session.

"The CONTRACTING PARTIES expressed themselves in favour of this draft which they consider not only constitutes a step in the direction of freeing trade from international barriers but also permits a wide accession.

"Consequently, the CONTRACTING PARTIES recommend that the Customs Co-operation Council finalize the text of the Convention on the basis of this draft, together with its accompanying comments. In making this recommendation the CONTRACTING PARTIES are not prejudging the issue of whether individual governments may decide to sign or to adhere to the resulting Convention but hope that this Convention will have wide acceptance."

ANNEX

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.

CHAPTER III

Special provisions

ARTICLE 4

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 5

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 6

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 7

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 8

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 9

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 10

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 11

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 12

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 13

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 14

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.

ARTICLE 15

1. The Government of any Member of the Customs Co-operation Council and of any Member of the United Nations or its specialized agencies 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 Organizations 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 at the request of the Contracting Parties, 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 16

1. The present Convention shall enter into force three months after five of the States referred to in paragraph 1 of Article 15 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 17

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 16 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 18

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 and the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade.

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, the Secretary General of the United Nations and the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade 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 19

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 17 of the present Convention, that the territory in question will no longer apply the Convention.

ARTICLE 20

1. Any Contracting Party may, at the time of signing, ratifying or acceding to the present Convention, declare that it considers itself bound by Article 2 of the Convention only in relation to packings other than those imported on purchase, hire purchase or under any similar contract, by a person established or resident in its territory.

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 21

The Secretary General of the Customs Co-operation Council shall notify all signatory and acceding States, the Secretary General of the United Nations and the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade, of:

- (a) signatures, ratifications and accessions under Article 15;
- (b) the date of entry into force of the present Convention in accordance with Article 16;
- (c) denunciations under Article 17;
- (d) the entry into force of any amendment in accordance with Article 18;
- (e) notifications received in accordance with Article 19;
- (f) declarations and notifications received in accordance with paragraph 1 of Article 20.

ARTICLE 22

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

GROUP OF EXPERTS ON TEMPORARY DUTY-FREE ADMISSION

Chairman: Dr. Otto Benes (Czechoslovakia)

Experts

Mr. A.W. Blank (Brazil)
Mr. C. Conron (Australia)
Mr. A.L. van Exel (Netherlands)
Mr. M.J. Fields (United States)
Mr. W.H. Foulkes (United Kingdom)
Mr. J. Gimon (France)
Mr. D. MacDermid (Canada)
Mr. M. Malbrecq (Belgium)
Mr. F. Manhart (Austria)
Dr. Metzen (Federal Republic of Germany)
Mr. M. Yokoi (Japan)
Dr. Zuber (Switzerland)

Observers from Organizations

Brussels Custom Co-operation Council: Dr. S. Nestler
International Chamber of Commerce: Mr. C. Aubert

Observers from Countries

Denmark Mr. J. Isaksen
Finland Mr. E. Kunnas
Israel Mr. E. Angel
Sweden Mr. H. Fältheim
Turkey Mr. I. Kizikli