

# GENERAL AGREEMENT ON TARIFFS AND TRADE

## WORKING PARTY 1 ON INTERNATIONAL CHAMBER OF COMMERCE RESOLUTIONS

### REPORT ON THE DRAFT CONVENTION TO FACILITATE THE IMPORTATION OF COMMERCIAL SAMPLES AND ADVERTISING MATERIAL

1. The draft International Convention for the purpose of facilitating the importation of commercial samples and advertising material, prepared at the Sixth Session of the CONTRACTING PARTIES, was circulated to governments for their comments with a view to preparing a final text at the present Session. The number and tenor of the comments received were evidence of the interest of governments in the subject and of the thorough scrutiny to which the draft was submitted. The large number of comments made and amendments proposed required many meetings of the Working Party in order to examine the suggestions and to arrive at an agreed text.

2. This report does not attempt to describe in detail all the discussions which took place in the course of re-drafting the text. Numerous drafting changes have been made, most of which constitute improvements of the text without any change of substance. Mention will be made in this report only of those points which appear to the Working Party to be of special interest.

3. The text agreed by the Working Party appears as the Annex to this Report. The Working Party recommends that the CONTRACTING PARTIES should adopt the text of the draft Convention, and make arrangements for it to be opened for signature at the Headquarters of the United Nations after a suitable interval. In order to allow governments adequate time to examine the text of the draft Convention, the Working Party suggests that the Convention should be opened for signature on 1 February 1953 and should remain open for signature until 30 June 1953. After that date any eligible country wishing to adhere to the Convention may do so by depositing an Instrument of Accession.

4. The following paragraphs comment on some of the changes made or points examined by the Working Party.

#### 5. Preamble

The preamble of the Convention has been amended slightly to emphasise that the Convention relates to samples of goods of all kinds, including natural products as well as manufactured articles.

6. Article I

A definition of "person" has been introduced. This follows a drafting change adopted in one or two places in the body of the Convention, when the word "person" has been used instead of "manufacturer or trader". This change also had as its object the application of the Convention to all kinds of goods.

7. Article II

After considering various alternative forms of wording, the Working Party reached the conclusion that the definition "samples of negligible value" for samples which are to be exempted definitively could not be improved upon.

8. In pursuance of the question raised at the Sixth Session, the Working Party decided to add to Article II wording to indicate clearly that in determining whether samples are of negligible value the customs authorities of the territory of importation may consider either the values of individual samples or the aggregate value of all the samples in one consignment; the value of consignments sent by the same consignor to different consignees are not, however, to be aggregated.

9. Paragraph 3 of the Sixth Session draft was considered to be unnecessarily restrictive, since it would preclude a trader from asking a foreign supplier to send him samples. The paragraph has accordingly been dropped. A similar change has been made in Article III and IV.

10. Annex to Article II

The governmental comments on this subject reflected the discussion of the first draft at the Sixth Session, when opinions were divided between those who favoured the inclusion in the Convention of a non-limitative list enumerating samples which would be covered by the provisions of Article II, considering that such a list would ensure a more uniform application of the Convention and would guarantee a sufficient balance of advantage for the Signatory States, and those who considered that such an enumeration was unnecessary and contrary to the logic of the Convention. Review of these governmental comments showed that, on balance, the majority of the countries which had commented were against the inclusion of a list of examples, and this was also the majority view in the Working Party. Accordingly the Working Party recommends that no such list should be included in the Convention, nor does it favour any alternative proposal for compilation of such a list. Some members of the Working Party, however, considered that it might be useful for signatories to the Convention, after it had been in force for some time, to furnish information with a view to determining whether it was possible to establish a common list of samples considered as being of negligible value.

11. Article III

The principal effect of the amendments made to this Article is to remove some unintended limitations of the previous text. For example, as in Article II the text has been modified so as not to preclude a foreign supplier sending samples made up to meet the requirements of a potential customer in the territory of importation. A saving provision as to quantity has been retained, to assist customs authorities in limiting the concession to bona fide samples, but the Article now contains no reference to a value limit. The Working Party also considered it desirable to amend paragraph 3 to provide for post-importation control of certain machinery and vehicles.

12. An amendment has been made limiting to 10 per cent the amount of any deposit required over and above the amount of the import duties payable. Some countries do not, in fact, require deposits greater than the actual amount of duties payable. The Working Party trusts that these countries will not be induced by the provisions of this paragraph to increase the amount required as deposit.

13. The Working Party is also of the opinion that the method of giving security for import duties and other amounts payable, rather than the deposit of such duties, should be encouraged.

14. Paragraph 6 requires the prompt return of deposits, allowing for any special circumstances which may affect repayment. The wording is such as to cover the case of deposits in the form of government securities, the return of which may have to be effected at the customs office at which they were deposited.

15. The Working Party considered the question of samples which are accidentally destroyed during the period of temporary importation or which the importer wishes to abandon to the customs authorities in lieu of re-exportation. The Working Party considered that discharge of obligation to re-export articles temporarily imported was normally given by customs authorities in such circumstances and that it was unnecessary to include a specific provision to this effect in the Convention.

16. The Sixth Session text of Article III of the draft Convention included in square brackets certain provisions relating to the question of identity cards for commercial travellers, and governmental comments were specially invited on this subject. Almost all the replies received expressed the view that it was unnecessary to include these provisions in the draft Convention and this view was accepted by the Working Party. Accordingly the text does not now contain any reference to commercial travellers' identity cards. This does not of course preclude any government from maintaining such requirements if it wishes.

17. Article IV

This Article was considerably redrafted but without any great change in substance, except to increase the specified weight limit from 200 grammes to 1 kilogram, and to extend the Article to cover advertising material relating to transport and commercial insurance services, and also advertising material relating to goods offered for hire.

18. It should be noted that no special provision has been made for advertising literature enclosed with imported goods; the Working Party considers that such literature should be regarded as being subject to the terms of the Convention. As regards printed matter which is no more than instructions for use, it should be understood that it should be treated as part of the goods and should not be separately subject to duty.

19. As regards the application of paragraph 2 (a) of Article IV, the Working Party considered that in some cases a trade mark of world-wide fame would be equivalent to the name of the foreign concern manufacturing or selling the goods.

20. The Working Party decided against limiting the Article to advertising material sent free of charge, since such literature was in fact usually circulated without charge.

21. Article V

The Working Party thinks it desirable to explain that the wording of this Article is regarded as covering films relating to products of all kinds, whether natural produce or manufactured articles, and that the term "equipment" has a wide significance including machinery, apparatus, plant, etc. The Working Party could not agree to extend the Article to film advertising services.

22. Article VI

A proposal to limit the security given to guarantee re-exportation, over and above any security deposited against payment of import duties, to 20 per cent of the value of the products temporarily imported, was not accepted by the Working Party. It was considered that owing to the wide variety of products which could be imported under this Article it was not possible to fix an overall limit but that the CONTRACTING PARTIES should ask governments to show in this matter the greatest liberality compatible with asserted safeguards.

23. A proposal for exempting imported samples from hallmarking requirements was discussed but difficulty was felt in adopting the proposal and the Working Party considered it advisable not to insert any provision on this subject.

24. Article VIII

The Working Party draws attention to the fact that under the terms of this Article it would be possible, and indeed appropriate, for two Contracting Parties to refer a dispute between them to the CONTRACTING PARTIES for settlement.

25. Article XI

Various proposals were made as to the number of ratifications or accessions which should be required to bring the Convention into force. The numbers suggested ranged from ten to twenty, while certain governments suggested that the figure be linked with the number of the contracting parties to GATT. The Working Party considered that it is undesirable to link the number directly to the membership of GATT. Eventually the Working Party decided to set the minimum at 15.

26. Article XIV

This is a new Article, inserted on the suggestion of the United Nations Legal Department, setting out the conditions upon which a State may adhere to the Convention with reservations upon some of its provisions. Any reservation attached to a State's signature, ratification, acceptance or accession must be accepted by all the States which, at the date the Convention comes into force (on the date of the reservation, if that is later) have become Contracting Parties to the Convention.

27. Reciprocity

A proposal to insert in the Convention a reciprocity clause was considered by the majority of the members of the Working Party to be inconsistent with Article I of the General Agreement.

28. Marks of Origin

The German Delegation proposed the addition of a new article to provide that samples falling within the terms of the Convention should be exempted from national requirements as to marks of origin. This proposal met with some support in the Working Party but, on the other hand, some members considered that the exemption should be limited to samples of negligible value admitted under Article II, whilst other members took a contrary view and considered that it should be limited to samples imported temporarily under Article III. It proved impossible to reconcile these divergent points of view and bearing in mind that the proposal had been submitted at a late stage and had not been considered by governments prior to the Session, the Working Party eventually decided not to include a provision on this subject. At the same time it was agreed to recommend the CONTRACTING PARTIES to consider at a later Session the possibility of initiating a general study of the subject of marks of origin for imported goods. The treatment of samples could be examined as a part of such a study.

29. Commercial Travellers' Carnets

In their comments on this proposal, the International Chamber of Commerce welcomed in principle the introduction of a system of triptyques or carnets for samples of value and stated that it would warmly support any workable system designed to alleviate the financial burdens and administrative formalities imposed upon firms sending representatives abroad with samples of value, but emphasized the practical difficulties involved and stated that neither the ICC itself nor its national committees were in a position to take on these responsibilities, but that the International League of Commercial Travellers and Agents was examining the possibility of acting as guarantors to such a scheme.

30. During the visit of the ICC representatives, M. Bideau, of the International League of Commercial Travellers and Agents, explained that a scheme for duty-free admission of commercial travellers' samples under cover of a customs triptyque had been worked out in consultation with the Swiss Customs authorities for operation on a bilateral basis between Switzerland and Austria. The scheme had not, however, yet been put into force. M. Bideau was invited to keep the secretariat informed of any developments in this matter, for the information of contracting parties.

31. The Working Party considered that this scheme was of the greatest interest in the development of trade and that the initiative taken by the International League of Commercial Travellers and Agents, together with any steps in the same direction which might be taken by the Governments of Austria, Switzerland or any other countries in bilateral discussions deserved to be encouraged.

DRAFT

INTERNATIONAL  
CONVENTION TO FACILITATE THE IMPORTATION OF  
COMMERCIAL SAMPLES AND ADVERTISING MATERIAL

The Governments signatories to the present Convention

BELIEVING that the adoption of uniform regulations regarding the importation of samples of goods of all kinds (whether natural products or manufactured articles) and of advertising matter will promote the expansion of international trade,

HAVE AGREED as follows:

ARTICLE I

DEFINITIONS

For the purposes of the present Convention:

- (a) 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; and
- (b) the term "persons" means both natural and legal persons; and
- (c) references to the territory of a Contracting Party include its metropolitan territory and any territory for whose international relations it is responsible and to which the Convention extends in accordance with Article XIII.

ARTICLE II

EXEMPTION FROM IMPORT DUTIES FOR SAMPLES OF NEGLIGIBLE VALUE

1. Each Contracting Party shall exempt from import duties samples of goods of all kinds imported into its territory, provided such samples are of negligible value and are only to be used for soliciting orders for goods of the kind represented by the samples with a view to their importation. In determining whether samples are of negligible value, the customs authorities of the territory of importation may consider the values of individual samples or the aggregate value of all the samples in one consignment. The values of consignments sent by a consignor to different consignees shall not be aggregated for the purpose of this paragraph even though the consignments are imported at the same time.

2. The customs authorities of the territory of importation may require that, as a condition of their being exempted from import duties in accordance with paragraph 1 of this Article, samples shall be made useless as merchandise by marking, tearing, perforation or other treatment, but not, however, so as to destroy their usefulness as samples.

### ARTICLE III

#### TEMPORARY DUTY-FREE ADMISSION OF OTHER SAMPLES

1. 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, on condition that they:

- (a) are owned abroad and are imported solely for the purpose of being shown or demonstrated in the territory of importation for the soliciting of orders for goods to be supplied from abroad; and
- (b) are not sold or put to normal use except for purposes of demonstration or used in any way for hire or reward while in the territory of importation; and
- (c) are intended to be re-exported in due course; and
- (d) are capable of identification on re-exportation;

but does not include identical articles brought in by the same individual, or sent to a single consignee, in such quantity that, taken as a whole, they no longer constitute samples under ordinary commercial usage.

2. Samples which are chargeable with import duties shall, when imported from the territory of another contracting party, with or without the intervention of a commercial traveller, by persons established in the territory of any Contracting Party, be temporarily admitted into the territory of any of the Contracting Parties free of import duties, subject to the amount of the import duties and any other amount that may be payable being deposited or security being given for payment if necessary. Any deposits taken (other than those required in virtue of Article VI of this Convention) shall not, however, exceed the amount of the import duties by more than 10 per cent.

3. To obtain the facilities provided for in this Article, the persons concerned must comply with the relevant laws and regulations prescribed by the authorities of the territory of importation and the customs formalities in force in that territory. As regards vehicles and industrial and agricultural machinery or equipment of a value for customs purposes exceeding 1,000 United States dollars (or the equivalent in other currencies), importers may be required to declare the place of destination of such machinery, equipment or vehicles; they may also be required by the customs authorities of the country of importation to establish, at any time, that the machinery, equipment or vehicles are at the declared places. The customs authorities of the country of importation may seal such machinery, equipment or vehicles or otherwise preclude their operation during the time in which temporary duty-free admission is allowed and limit the places where these goods may be operated for demonstration purposes.

4. The customs authorities of the territory of importation shall, as a general rule, recognize as sufficient for the future identification of samples the marks which have been affixed by the customs authorities of a Contracting Party, provided that the said samples are accompanied by a descriptive list certified by the customs authorities of the latter Contracting Party. Additional marks may be affixed to the samples by the customs authorities of the territory into which they are imported only if they are necessary, in the opinion of those authorities, to ensure the identification of the samples on re-exportation. Any mark affixed to samples shall not be such as to destroy their usefulness.

5. The period allowed for re-exportation of samples which qualify for exemption from import duties under this Article shall be not less than six months. When the period allowed for re-exportation has expired, the amount of the import duties and any other amount due may be charged on samples which have not been re-exported. These amounts may also be charged, before the expiry of the period, on samples which cease to satisfy the conditions of paragraph 1 of this Article.

6. On the re-exportation within the permitted time of samples imported under this Article, the refund of any amount deposited or the release of any security given on importation in accordance with paragraph 2 of this Article shall be effected without delay at any of the customs offices situated at the frontier or in the interior of the territory which possesses the necessary authority, subject to the deduction of the duties and any other amount payable on samples not produced for re-exportation. When special circumstances exist deposits may, however, be returned by other means, provided the return is effected promptly. Each Contracting Party shall publish a list of the customs offices on which the said authority has been conferred.

#### ARTICLE IV

##### DUTY-FREE ADMISSION OF ADVERTISING MATERIAL

1. Each Contracting Party shall exempt from import duties catalogues, price-lists and trade notices relating to :-

- (a) goods offered for sale or hire; or
- (b) transport or commercial insurance services offered by a person established in the territory of another Contracting Party, when such documents are imported from the territory of any Contracting Party, provided that each consignment imported either :-
  - (i) consists of not more than one document; or
  - (ii) if it consists of more than one document, does not include more than one copy of any one document; or

- (iii) irrespective of the number of documents or copies, does not exceed 1 kilogram in gross weight.

Simultaneous despatch of a number of consignments to different addresses in the territory of importation shall not debar such consignments from this exemption, provided that not more than one consignment is sent to any one consignee.

2. Notwithstanding paragraph 1 of this Article, a Contracting Party shall not be obliged to exempt from import duties on importation into its territory :-

- (a) catalogues, price-lists and trade notices which do not clearly indicate the name of the foreign concern producing, <sup>commercial</sup> selling or renting the goods, or offering the transport or/insurance services, to which such catalogues, price-lists or trade notices relate; or
- (b) catalogues, price-lists and trade notices which are entered to customs in the territory of importation in packets grouped together for subsequent despatch to separate addresses in that territory.

#### ARTICLE V

##### TEMPORARY DUTY-FREE ADMISSION OF ADVERTISING FILMS

Each Contracting Party shall accord the facilities provided by Article III of the present Convention, subject to the conditions laid down in that Article, to positive cinematograph advertising films of a width not exceeding 16 mm. shown to the satisfaction of its customs authorities to consist essentially of photographs (with or without sound track) showing the nature or operation of products or equipment whose qualities cannot be adequately demonstrated by samples or catalogues, provided that the films:

- (a) relate to products or equipment offered for sale or for hire by a person established in the territory of another Contracting Party; and
- (b) are of a kind suitable for exhibition to prospective customers but not for general exhibition to the public; and
- (c) are imported in a packet which contains not more than one copy of each film and which does not form part of a larger consignment of films.

ARTICLE VI

TEMPORARY WAIVER OF IMPORT PROHIBITIONS AND RESTRICTIONS

1. No Contracting Party shall apply import prohibitions or restrictions (other than import duties), whether made effective through quotas, import licences or other measures, on the importation from the territory of another Contracting Party of goods :-

- (a) which qualify (or would qualify if they were dutiable) for exemption from import duties by virtue of the provisions of Article II or Article IV of this Convention; or
- (b) which qualify (or would qualify if they were dutiable) for temporary duty-free admission by virtue of the provisions of Article III or Article V of this Convention;

provided that the importation of such goods does not give rise to any payment other than for freight or insurance or for services provided in the territory of importation by a person established in that territory.

2. In the case of goods which qualify (or would qualify if they were dutiable) for temporary duty-free admission by virtue of the provisions of Article III or Article V, this waiver of import prohibitions or restrictions shall extend only to the period for which temporary duty-free admission is allowed (or would be allowed if the goods were dutiable). In the case of non re-exportation of such goods within the period during which the application of any import prohibitions or restrictions has been waived under paragraph 1 of this Article, the authorities of the importing country may apply such measures as would have been applicable if the import prohibitions or restrictions had not been so waived. To this end, the authorities of the territory of importation may require appropriate guarantees, such as the deposit of a special security over and above any security deposited against payment of import duties.

3. The provisions of this Convention shall not prevent a Contracting Party from applying import prohibitions or restrictions:

- (a) necessary to protect public morals or essential security interests;
- (b) necessary to protect human, animal or plant life or health;

- (c) relating to the importation of gold or silver;
- (d) necessary to secure compliance with laws or regulations relating to customs enforcement, the enforcement of State monopolies, the protection of patents, trade marks and copyrights;
- (e) necessary to prevent deceptive practices;
- (f) relating to the products of prison labour;
- (g) necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade.

#### ARTICLE VII

##### SIMPLIFICATION OF FORMALITIES

1. Each Contracting Party shall keep to a minimum the formalities required in connection with the facilities accorded by the present Convention.
2. Each Contracting Party shall publish promptly all regulations introduced in this respect in such a manner as to enable persons concerned to become acquainted with them and to avoid the prejudice which might result from the application of formalities of which they are unaware.

#### ARTICLE VIII

##### SETTLEMENT OF DISPUTES

1. Any dispute between any two or more 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 to a person or body agreed between the Contracting Parties in dispute, provided that if they are unable to reach agreement, any of these Contracting Parties may request the President of the International Court of Justice to nominate an arbitrator.
3. The decision of any person or body appointed under paragraph 2 of this Article shall be binding on the Contracting Parties concerned.

ARTICLE IX

SIGNATURE AND RATIFICATION

1. The present Convention shall be open for signature until 30 June 1953 by the Governments' contracting parties to the General Agreement on Tariffs and Trade, by the Governments of all States members of the United Nations and by the Government of any other State to which the Secretary-General of the United Nations shall have communicated a copy of the Convention for this purpose.
2. This Convention shall be subject to ratification or acceptance by the signatory Governments in accordance with their constitutional procedures, and the instruments of ratification or acceptance shall be deposited with the Secretary-General of the United Nations.

ARTICLE X

ACCESSION

1. The present Convention shall be open for accession by the Governments of any of the States referred to in paragraph 1 of Article IX.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE XI

ENTRY INTO FORCE

1. When fifteen of the Governments referred to in Article IX have deposited their instruments of ratification, acceptance or accession, the present Convention shall come into force between them on the thirtieth day after the date of the deposit of the fifteenth instrument of ratification, acceptance or accession. It shall come into force for each other government on the thirtieth day after the deposit of its instrument of ratification, acceptance or accession.

## ARTICLE XII

### DENUNCIATION

1. After the present Convention has been in force for three years any Contracting Party may denounce it by notification of denunciation to the Secretary-General of the United Nations.
2. Denunciation shall take effect six months after the date of receipt by the Secretary-General of the United Nations of the notification of denunciation.

## ARTICLE XIII

### TERRITORIAL APPLICATION

1. Any Government may at the time of the deposit of its instrument of ratification, acceptance or accession or at any time thereafter by notification addressed to the Secretary-General of the United Nations declare that the present Convention shall extend to all or any of the territories for the international relations of which it is responsible, and the Convention shall extend to the territories named in the notification as from the thirtieth day after the date of receipt of the notification by the Secretary-General of the United Nations or on the date on which the Convention comes into force under Article XI whichever is the later.
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 denounce the Convention separately in respect of that territory in accordance with the provisions of Article XII.

## ARTICLE XIV

### RESERVATIONS

1. Any State may at the time of its signature or of the deposit of its instrument of ratification, acceptance, or accession declare that it shall not be bound by specified provisions of this Convention.
2. Any State may at the time of making a notification under Article XIII that the present Convention shall extend to any of the territories for the international relations of which it is responsible make a separate declaration in accordance with paragraph 1 of this Article in respect of all or any of the territories to which the notification applies.

3. If any State submits a reservation to any of the Articles of this Convention at the time of signature, ratification, acceptance or accession, or at the time of making a notification under Article XIII, the Secretary-General of the United Nations shall communicate the text of such reservation to all States which are or may become parties to this Convention. Any State which has signed, ratified, accepted or acceded before the reservation is made (or, if the Convention has not entered into force, which has signed, ratified, accepted or acceded by the date of its entry into force), shall have the right to object to any reservation. If no objection is received by the Secretary-General of the United Nations from any State entitled to object by the ninetieth day from the date of his communication (or from the date of entry into force of the Convention, whichever is the later), the reservation shall be deemed to be accepted.

4. In the event of an objection being received by the Secretary-General of the United Nations from any State entitled to object, he shall notify the State making the reservation of such objection, and request it to inform him whether it is prepared to withdraw the reservation or whether it prefers to abstain from ratification, acceptance or accession or from extending the Convention to the territory or territories to which the reservation applies, as the case may be.

5. A State which has made a reservation in regard to which an objection has been presented in accordance with paragraph 3 of this Article shall not become a party to this Convention unless the objection has been withdrawn or has ceased to have effect as provided in paragraph 6; neither shall a State have the right to claim the benefits of this Convention in respect of any territory for the international relations of which it is responsible and in respect of which it has made a reservation if any objection has been made to the reservation in accordance with paragraph 3 of this Article, unless the objection has been withdrawn or has ceased to have effect as provided in paragraph 6.

6. An objection by a State which has signed but not ratified or accepted the Convention shall cease to have effect if, within a period of twelve months from the date of making its objection, the objecting State has not ratified or accepted the Convention.

#### ARTICLE XV

#### NOTIFICATION OF SIGNATURES, RATIFICATIONS, ACCEPTANCE AND ACCESSIONS

The Secretary-General of the United Nations shall notify all signatory and acceding States, and all other States which so request,

of all signatures, ratifications, acceptances and accessions of the present Convention and of the date on which the Convention comes into force and of every notification received by him under Article XII or XIII.

IN WITNESS WHEREOF the undersigned plenipotentiaries have signed in the present Convention

Done at

this

in English and French languages, both texts being equally authentic, in a single original which shall be deposited in the archives of the United Nations. The Secretary-General of the United Nations shall transmit certified copies thereof to all signatory and acceding States.