

17 November 1955

Working Group on Samples ConventionTENTATIVE DRAFT REPORT OF THE
WORKING GROUP ON SAMPLES CONVENTION1. Origin of the Question

One of the member countries of the Customs Co-operation Council initiated an enquiry as to the customs treatment given by the other members to patterns of women's dresses made up in paper or inferior cloth (usually known in the trade as "toiles de couture"). The replies received showed considerable divergence of practice between different countries but during the discussion of the replies the question was raised whether these products fell within the terms of the definition of samples given in Article III, paragraph 1 of the Samples Convention (or examples of objects the production of which is contemplated by the sender - ou qui sont des modèles de marchandises dont la fabrication est envisagée). The Committee of the Customs Co-operation Council concerned decided to send an enquiry to the GATT secretariat asking for an opinion on this matter. The text of the enquiry received from the Customs Co-operation Council appears in GATT document L/446. The CONTRACTING PARTIES decided to refer the question to a working group for examination under the following terms of reference:

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

The Working Group consisted of the following countries:

Germany

Pakistan

India

Sweden

Kingdom of the

United Kingdom

Netherlands

United States

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

2. Procedural Considerations

At the opening of the discussion, one member of the Working Group raised the question whether the CONTRACTING PARTIES had any authority to give an opinion on the meaning of a Convention which had come into force and therefore possessed its own body of contracting parties. In his view it would certainly be out of the question for the CONTRACTING PARTIES to give any formal

interpretation of the Samples Convention. In the view of this delegation, two possible lines of action were for the CONTRACTING PARTIES to convene a meeting of the contracting parties to the Samples Convention, or alternatively, for the CONTRACTING PARTIES to communicate with all the contracting parties to the Samples Convention asking them to furnish their opinions by letter on the points raised. The GATT secretariat could in either case transmit to the secretariat of the Customs Co-operation Council the views of the contracting parties to the Samples Convention.

3. Question I. Minimum Facilities

Without prejudice to this general procedural question, the Working Group proceeded to consider the substance of the questions posed by the Customs Co-operation Council. On the first point, regarding the existence of facilities more favourable than those required by the Convention, the representative of Austria furnished a statement in which he explained that under Austrian constitutional legislation, the text of the Samples Convention, if it were ratified by Austria, would automatically become part of Austrian national law and would therefore abrogate any previously existing legislation even though that legislation were more liberal in character. The Austrian representative indicated, however, that a statement by the CONTRACTING PARTIES to the effect that it was not their intention that existing more liberal facilities should be abrogated would facilitate the Austrian Government's task of securing the maintenance of existing Austrian legal provisions. The Working Group considered that there was no procedural objection to a statement of this kind being made by the CONTRACTING PARTIES, and the following text is recommended for inclusion in the summary record:

4. Question II. Patterns of Dresses

The Working Group then proceeded to an examination of the meaning and origin of the text of the definition of Article III of the Convention. A summary of the discussion is included in the Annex to this report. The discussion led the Working Group to the inescapable conclusion that any opinion by the CONTRACTING PARTIES could not avoid being in the nature of an interpretation of the Convention and accordingly the procedural difficulties referred to in Section I of this report were felt to be of such a nature as to preclude the Working Group from making any positive proposals. The Working Group therefore reached the conclusion that it should report to the CONTRACTING PARTIES the nature of the procedural considerations evoked by this enquiry and that in the meantime it should not proceed any further with an attempt to reconcile the divergent views on the substance of this question. In the light of this conclusion, it was considered that no summary of the factual discussion should be included in the report of the Working Group, but that such a summary should be placed on record for the private information of delegations.