

17 November 1955

Working Group on Samples Convention

Tentative Draft

SCOPE OF THE DEFINITION OF SAMPLES IN ARTICLE III(1)  
OF THE SAMPLES CONVENTION

1. Text of the Definition

(a) English text

"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."

(b) French text

"Pour l'application du présent article, le terme "échantillons" désigne les articles qui sont représentatifs d'une catégorie déterminée de marchandises déjà produits ou qui sont des modèles de marchandises dont la fabrication est envisagée....."

2. Scope of the Definition

Certain delegations put forward the view that while the question raised was based on the treatment of paper or cloth dress patterns, the question extended generally to miniature models and to articles made in materials other than the material which would be used in the articles for which orders were to be sought and which would eventually be imported. These delegations considered that the French word "modèles" unquestionably had this significance. They claimed that not only did the letter of the text require that "modèles" in these senses should be given the benefit of the Convention but also that the spirit of the Convention pointed to the same conclusion. The term "échantillons" ("samples") was used in a very wide sense and included objects of considerable size and value. It was, therefore, unrealistic not to include objects of a reduced scale and lesser value which were used for the purpose of obtaining orders for goods. The interpretation of the text should also take into account the needs of commerce, which in the view of these delegations required that "modèles" in reduced scales and cheaper materials should be given the benefits of the Convention.

On the other hand, other delegates pointed out that in the English text of the Convention the word "examples" did not possess the extended meanings which the French word "modèles" was capable of possessing. The English word could only mean objects which were identical with the articles for which orders were to be taken. There was thus a definite difference between the interpretations which could be placed upon the two texts, but when the two texts were read together the meaning was clear and it would be proper to accept the narrower English text which corresponded to the primary meanings of the French text. To stretch the English text to cover all the possible meanings of the French text would be impracticable and undesirable. As far as the spirit of the Convention was concerned, it should be realized that all international conventions were prepared in a spirit of liberality but nevertheless it was not possible to interpret them in any way inconsistent with their texts. It was not logical to draw from the fact that very expensive samples were admissible as well as inexpensive samples the conclusion that the definition should be regarded as covering articles which were made of inferior material or made on an inferior scale. Also it was somewhat unrealistic to argue that a convention should be interpreted in such a way as to meet the needs of commerce or of a particular branch of commerce; if this principle were accepted it would be possible for commerce to claim many facilities which were not in fact envisaged in international agreements.

Finally, the following extract was quoted from Advisory Opinion No. 12 of the Permanent Court of International Justice in the "Frontier between Turkey and Iraq" question (Ser.B, No.12):

"..... if the wording of a treaty provision is not clear, in choosing between several admissible interpretations, the one which involves the minimum of obligations for the parties should be adopted. This principle may be admitted to be sound."

Among other points made in the course of discussion was the fact that women's dress patterns ("toiles de couture") had a considerable design value and that they could be used for copying the design as distinct from using the patterns to take orders for the dresses which the patterns represented. It was argued, however, that this was true of most kinds of samples which were clearly admissible under the Convention, that the Convention ruled out the use of imported samples for copying and that the prevention of such abuses was a matter of administration. Nevertheless, some delegates considered that countries should be free not to admit such articles as "toiles de couture" which by their nature were exceptionally susceptible to copying.

### 3. Conclusions

The Working Party reached agreement that the English and French texts are capable of different interpretations. It attempted to resolve the differences by examining the spirit of the Convention, the evolution of the texts during the drafting of the Convention and the logical inter-relation of the factors involved, but it was unable to reach agreement on the meaning of the definition in question.