GENERAL AGREEMENT ON TARIFFS AND TRADE RESTRICTED

Seventeenth Session 12 November 1960

GROUP OF EXPERTS ON DUTY-FREE TEMPORARY ADMISSION

Draft Report on the Draft Convention on Temporary Importation of Professional Equipment

1. In accordance with its terms of reference laid down by a Decision of the CONTRACTING PARTIES at their seventeenth session (SR.17/2) the Group of Experts examined during that session the draft Customs Convention on Temporary Importation of Professional Equipment with a view to submitting recommendations to the CONTRACTING PARTIES.

2. The Group examined the draft Customs Convention transmitted by the Customs Co-operation Council to the CONTRACTING PARTIES and published in document L/1330 which takes into account the observation previously made by the Group of GATT Experts in May 1960 (document L/1209).

3. The draft Convention consists of a single Convention covering the three main items: (A) press, television and radio equipment, (B) cinematographic equipment, and (C) other professional equipment. Each of these items is dealt with in one of the three annexes attached to the draft Convention. Provision has been made for each contracting party at the time of signing, ratifying or acceding to the Convention to declare in respect of which annex or annexes it will be bound.

4. The comments resulting from a detailed study of the text of the draft Convention, as submitted to the Group, are contained in the present report as Appendix I.

5. As at previous meetings of this Group, it was made clear that the views expressed by the Experts did not necessarily reflect their Governments' views. They were therefore not in a position to indicate whether or not their countries would eventually sign or adhere to such a Convention when it is completed and opened for signature.

6. The Indian expert made a general statement which is reproduced in Appendix II.

7. After having examined the draft of the Convention on Temporary Importation of Professional Equipment the Group of Experts felt that it is sufficiently advanced to permit its finalization. It is therefore suggested that the CONTRACTING PARTIES transmit the following communication to the Brussels Customs Co-operation Council:

"The CONTRACTING PARTIES expressed themselves in favour of the draft Convention on Temporary Importation of Professional Equipment prepared by the Customs Co-operation Council, which they consider to be a step towards freeing international trade from barriers. It was felt that certain of its provisions would be of particular interest to industrially developing countries.

"Consequently the CONTRACTING PARTIES recommend that the CCC finalize the text of the Convention taking into account the 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, nor whether individual governments wish to accept some or all of the annexes.

"The CONTRACTING PARTIES however expressed the hope that this Convention will be widely accepted."

APPENDIX I

DRAFT CONVENTION ON TEMPORARY IMPORTATION OF PROFESSIONAL EQUIPMENT

Comments Made by the GATT Group of Experts on Temporary Importation

PREAMBLE

No changes suggested by the Group.

Article 1

No changes suggested by the Group.

In reply to a question raised by the Australian expert relating to paragraph (a), it was stated that the term "all internal taxes and excise duties chargeable on imported goods" includes sales taxes levied at importation.

The Australian expert indicated that his Government will have difficulty in accepting paragraph (b), which he considered to be too limitative (see also the comments on Article 10). In this connexion it was generally recognized (as in the case of the Packings Convention) that the provisions of paragraph b should be deemed to be met if, under an import licensing system, import licences were always issued to permit the temporary importation of the goods concerned subject to their re-exportation.

Article 2

No changes suggested by the Group.

Article 3

In Article 3 of the draft Convention two versions are reproduced, both in square brackets. The majority of the Group was in favour of the first version for the following reasons:

(1) It clearly defines the relationship with the Carnet Convention.

(2) It makes it clear that the Convention on Professional Equipment limits itself to an invitation to its contracting parties to apply the Carnet Convention leaving them entirely free in their decision whether they wish to join the Carnet Convention or not.

(3) It brings out that the contracting parties to the Professional Equipment Convention - who are also contracting parties to the Carnet Convention - will be obliged to accept carnets for professional equipment.

(4) By the simultaneous drafting of the Conventions the same effect should be achieved as if the Carnet provisions which originally were intended to become part of the draft Convention on Professional Equipment had not been separated from that Convention.

The majority rejected the second version particularly because it could be construed to mean an obligation or at least a strong recommendation to the contracting parties to the Professional Equipment Convention to adhere to the Carnet Convention.

The view was generally expressed that the preparation and finalization of the Carnet Convention should not delay the finalization of the Convention on Professional Equipment.

Article 4

No changes suggested by the Group.

This Article limits the security to 110 per cent of the duty chargeable. It is similar to the provisions of Article III, paragraph 2 of the GATT Samples Convention.

In this connexion the experts from Australia and the United States drew attention to the fact that there might be instances where greater security would have to be required. The Group however felt that a proper remedy for abuses of the facilities provided by the Convention was to have recourse to the penalty provisions contained in Article 9.

Article 5

No changes suggested by the Group.

Article 6

A slight discrepancy between the otherwise identical Articles in the Packings Convention and in the Convention on Professional Equipment was noted. The Experts felt that there is no reason for omitting the notion "to any country" in the Convention on Professional Equipment and expressed itself in favour of this addition.

No other changes were suggested by the Group.

Article 7

No changes suggested by the Group.

The Australian expert drew attention to the fact that the provisions contained in sub-paragraphs (b) and (c) are not in conformity with Australian legislation and could cause difficulties for Australia in accepting the Convention.

Article 8

No changes suggested by the Group.

Article 9

No changes suggested by the Group.

Article 10

No changes suggested by the Group.

The expert of Australia suggested that the national provisions concerning restrictions and controls should not be limited by this Convention. This should be carried out by introducing the list of permissible restrictions included in these paragraphs by the words "such as". This suggestion found no support in the Group.

Australia furthermore suggested that the term "public security" should be replaced by the term "public interest", a suggestion which equally was not supported.

It was agreed, however, that the term "public security" also covers such measures as are encompassed in Article XXIb(iii) of GATT, namely measures taken by a government in time of war or other emergency in international relations. In this connexion 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 above-quoted article of GATT.

Another suggestion was to add a sentence permitting restrictions maintained by reason of regulations relating to the importation of precious metals, or those relating to patents, trade marks and copyrights. It was felt that these points could be reconsidered in the Brussels Co-operation Council in the light of similar Conventions which contain such a provision.

Articles 11 to 15

No changes suggested by the Group.

Article 16

With regard to paragraph 5 of this Article, it was felt that the governments envisaged should make a declaration similar to that provided for in paragraph 2. The Customs Co-operation Council is invited to amend this paragraph accordingly.

No other changes suggested by the Group.

Article 17

No changes suggested by the Group.

Article 18

It was generally felt that contracting parties to the Convention which denounce all Annexes should also be deemed to have denounced the Convention. A sentence to bring out this concept should be added to paragraph 4.

No other changes suggested by the Group.

Article 19

No changes suggested by the Group.

With regard to paragraph 3, the Australian expert drew attention to the fact that his Government instructed him to indicate that a Convention containing such a provision could not be accepted. He was, however, not in a position to explain why his Government wished to adopt such a position and he promised to consult with his Government and to explain its views to the Customs Co-operation Council.

Article 20

The legal problem was raised whether countries could sign a Convention which contains illustrative lists. In this connexion it was felt that although the lists are illustrative, the obligations the countries undertake are fully described in the Convention:

(a) by the definition introducing each Annex which circumscribes the products envisaged, and

(b) by the fact that once a country adheres to an Annex the illustrative list included in that Annex can only be altered with its approval since any alteration of these lists requires the consent of all contracting parties applying the Annex in question.

The Experts felt that in order to avoid any misunderstanding the word "unanimous" should be added in the second sentence of paragraph 1 of the Article so as to read: "any such list may be modified by unanimous agreement between the Customs administration of all contracting parties having declared themselves bound to the relevant Annex".

No other changes suggested by the Group.

Article 21

No changes suggested by the Group.

Article 22

No changes suggested by the Group.

The expert of India, drawing attention to his general statement reproduced in Appendix II, indicated that his Government would probably not be in a position to adhere to the Convention which did not provide for reservations. The expert of Australia also expressed the view that a Convention of this kind should not exclude reservations.

Articles 23 and 24

No changes suggested by the Group.

ANNEXES

It was the general understanding that consumable goods (with the exception of the "Blank image or sound recording media" specified in illustrative lists) are not included in the Convention. In this connexion the question was asked whether such media would have to be identified at the importation or whether - due to the difficulty in identifying such media at the re-exportation - substitution should not be allowed. It was the general feeling that no such provisions should be inserted in the Convention. Attention was drawn, however, to the fact that many countries for practical reasons do not insist upon the strict identity.

Attention was drawn to the fact that Annex C (and maybe perhaps Annexes A and B) refers to certain vehicles. This raises the problem of the relation of the Convention on Professional Equipment with other already existing Conventions relating to motor cars or aircraft, etc. To avoid duplication with already existing Conventions, the Group of Experts felt that the Customs Council should consider whether it would not be advisable to include a provision indicating that the Convention on Professional Equipment does not alter existing obligations under other agreements dealing with the temporary importation of motor cars, aircraft, etc. Such a formula would have the further advantage that countries which do not adhere to one of the Conventions relating to the temporary importation of vehicles, aircraft, etc. could apply the Convention on Professional Equipment to such vehicles.

It was, however, made clear that the Convention on Professional Equipment in any case extends to specially constructed vehicles for one of the uses specifically mentioned in the Annexes.

ANNEX A

The Group suggests that stage properties should be added to the illustrative list. They also felt that specialized vehicles should be added.

The Group of Experts furthermore expressed the view that this Convention does not cover the importation of developed films, in particular advertisement films, but should of course include "film rushes". It was also recognized that this Convention does not extend to films introduced for copying.

ANNEX B

The Group suggested that specialized vehicles should be added to the illustrative list.

The Group furthermore suggests that the term "other equipments (musical instruments, scenery, costumes, etc.)" should be altered to read "stage properties". The term "other equipment" is very general and could be construed to include items to which contracting parties do not envisage granting the facilities.

The observations made on Annex A concerning the exclusion of developed films and films for commercial reproduction also applied to Annex B.

ANNEX C

The Group suggests that for clarification purposes the words "ships, trains, airplanes, etc." should be added after "... machinery, plant" in paragraph A of the illustrative list. Consequently, the last item of this paragraph should be omitted.

The Group furthermore suggests that the words "and travelling laboratories" should be added to the words "mobile inspection units and travelling workshops".

It was also recommended that blank image or sound recording media for use by business efficiency consultants, etc., should be added to paragraph B of the illustrative list.

It was agreed that the term "equipment necessary for expoerts undertaking topographical surveys, etc." includes aircraft specially designed for such purposes.

APPENDIX II

DRAFT CONVENTION ON TEMPORARY IMPORTATION OF PROFESSIONAL EQUIPMENT

...

Statement of the Expert of India

The expert of India explained that the existing position in regard to the importation of professional equipment into India is that there is an item of the Indian Customs Tariff providing for free entry of "Instruments, apparatus and appliances, imported by a passenger as part of his personal baggage and in actual use by him in the exercise of his profession or calling." The same facility is admissible even if such articles do not accompany the passenger so long as the import takes place in accordance with the conditions (regarding time-limit, etc.) governing free entry of unaccompanied baggage. The facility is, however, restricted to such articles as a professional man would ordinarily take with him when travelling in the exercise of his profession and does not cover additions to or replenishment of equipment in the form of articles which he would not ordinarily take with him. The question whether an article fulfils these criteria is one which has to be decided on merits in each case. It is fairly obvious that many items of specialized tools and equipment envisaged in the proposed Convention would not be covered by this concession.

A drawback of a part of the duty paid on articles which after importation are re-exported within a certain period and subject to certain conditions is allowed under the drawback provisions of the Indian Sea Customs Act. Drawback at reduced rates is only admissible if re-export of these articles takes place within three years.

Apart from these, certain special facilities have also been allowed by India from time to time in the past, e.g. in the case of photographic equipment imported by Press Correspondents. By and large, these provisions and facilities have not been found to be inadequate for normal purposes of international trade and development in India.

The proposal relating to the importation of professional equipment into India as it has emerged after discussion between the Customs Co-operation Council and the Group of Experts appears to be wider in scope than the proposal of the International Chamber of Commerce inasmuch as cinematographic accessories such as costumes, sceneries and properties in addition to cameras are now included within the scope of the concession.

In view of the position stated above the final draft Convention submitted by the Customs Co-operation Council is not acceptable to India in all respects.

APPENDIX III

List of Experts

Chairman: Mr. F. Manhart (Austria)

Experts:

Mr. T. Arakawa (Japan)
Mr. A.W. Blank (Brazil)
Mr. A.L. van Exel (Netherlands)
Mr. M.J. Fields (United States)
Mr. J. Gimon (France)
Mr. K. Hanswirth (Switzerland)
Mr. L. Howey (Canada)
Mr. M. Malbrecq (Belgium)
Mr. W. Metzen (Fed. Rep. of Germany)
Mr. S. Narasimhan (India)
Mr. P.L. O'Keeffe (United Kingdom)
Mr. J. Somerville (Australia)

Observers from Organizations:

Brussels Customs Co-operation Council: Dr. S. Nestler

Observers from Countries:

Spain: Mr. Ramon Jamanes
Sweden: Mr. E. Agvist
Turkey: Mr. I. Kizikli
Mr. H. Özkazanç