

14 January 1960

REPORT OF THE GROUP OF EXPERTS ON TEMPORARY DUTY-FREE
IMPORTATION OF PACKING MATERIALS AND CERTAIN
PROFESSIONAL EQUIPMENT

The terms of reference of the Group decided upon by the CONTRACTING PARTIES at their fifteenth session, were:

"to examine the draft Convention on the Temporary Admission of Packing Materials and to consider the problems involved in the temporary importation of professional equipment and of cinema and television equipment and to make recommendations to the CONTRACTING PARTIES."

Dr. Otto Benes (Czechoslovakia) was appointed Chairman. The membership of the Group is shown in Appendix A, together with the list of observers who attended the meeting.

At the opening of the meeting, it was made quite clear that the views expressed by the various individual experts did not necessarily indicate their countries' acceptance or non-acceptance of the principles involved. It was felt, however, that the composition of the Group was such as to give a representative picture of the view which could be expected from the CONTRACTING PARTIES.

A. TEMPORARY IMPORTATION OF PACKING MATERIALS

The Group considered the draft Customs Convention on the Temporary Importation of Packings which had been prepared by the Brussels Customs Co-operation Council (CCC) and which is reproduced as Annex I. A draft Convention, incorporating the changes which were suggested by the majority of the Group of Experts is reproduced as Annex II.

The following report summarizes the considerations which led to the changes suggested by the Group.

Article 1

Article 1 (a) as drafted by the CCC differed from the text suggested by the Group of Experts insofar as point (iii) was transferred to the introductory part of sub-section (a).

The reason for this change was to make it quite clear that the qualification included in point (iii) - that the articles affected by the convention must be "packings in the state in which they are imported" - also related to the packings under points (i) and (ii).

The second paragraph of Article 1 (a) may be redrafted so as to take account of the wishes of the United Nations Economic Commission for Europe (ECE) Transport Division.

Article 1 (b): Unchanged.

Article 1 (c): Although the text remains unchanged, a number of remarks were made concerning the reference to import prohibitions and restrictions. Some experts considered that such a reference would be unnecessary since the convention dealt solely with customs problems. This view, however, was not shared by the majority of experts who considered that a considerable advantage would be lost if it was not made clear that temporary importation of packings would be allowed without the requirement of an import licence.

Some experts felt that this paragraph could be improved by clarifying the relationship which existed between the term "import prohibitions and restrictions" used in this Article, and the restrictions referred to in Article 11. The general opinion was that the existing text brought out quite clearly that while restrictions such as enumerated in Article 11 (e.g. for security reasons) could be maintained, packing should be freed from all other prohibitions and restrictions (e.g. import licensing restrictions).

One expert, however, expressed himself against the inclusion of any reference to "import prohibitions and restrictions" in this Article which could interfere with the right of governments to impose import restrictions. He felt that governments must be permitted to prohibit by customs regulation the importation of certain packings as well as to retain freedom to impose import licensing regulations.

Article 1 (d)(e) and (f): No suggestions were made concerning the definitions contained in these paragraphs.

Article 2

Article 2, as suggested by the Group of Experts, differed from the CCC draft only in the deletion of the words "chargeable with import duties" contained in the beginning of the Article.

In deleting these words, the majority of the Group wished to avoid the impression that there was any inconsistency with the definition given in Article 1 (c). It was also considered that the convention should extend to duty-free packings in instances where such packings were subject to import restrictions. These experts feared that any reference to import duties in this context could give the impression that the convention affected dutiable packings only.

Article 3

No changes were proposed to the wording of this Article.

The Group of Experts, however, considered that some explanations would improve the understanding of this Article. Nothing in the convention should be understood to affect ^{the duty treatment of} packings which, under existing customs systems, were

finally imported as a part of imported goods as in the case of specific duties based on gross weight and of ad valorem duties based on gross value ^{of packed goods}. The representative of the CCC in this connexion drew attention to the relevant remarks included in the report of the CCC of 28 September 1959 (document No.7086, points 36-38).

Article 4

(a) The Group decided in favour of maintaining this Article in square brackets indicating that this Article required further consideration.

The majority of the continental-European countries was in favour of suppressing Article 4 while the majority of the experts from other countries was in favour of maintaining it.

Insofar as Article 4(a) was concerned, an expert pointed out that the elimination of this provision would oblige members of the convention to remove the existing tariff protection for national packing manufacturers in cases where foreign packings were purchased by their nationals in preference to home-produced packings. He could not accept the view expressed by some other experts that this provision was exclusively one of customs procedure: it was, in fact, of some tariff and economic significance. He doubted whether his - or any country in a similar situation - would be in a position to sign a convention without the provisions included in Article 4.

Other experts stressed that a convention of the type under study should not be approached from the point of view of retaining existing legislation but from the point of view of liberalizing international trade. In particular, they felt that limiting temporary duty-free admission to packings other than those purchased from abroad would seriously limit the scope of the convention.

(b) Article 4 (b). Some experts felt that it could be administratively difficult and disproportionately expensive to extend the convention to all packings including those of negligible value. The experts in favour of maintaining this provision pointed out that there would be little probability that the temporary importation procedure would be used for packings of negligible value, since the cost involved for the importer would be greater than any advantage to be gained by their return. Other experts referred to the difficulty of interpreting the term "substantial individual value". They expressed the fear that this term would permit too much diversity of interpretation even leading to arbitrary exclusion of some packings.

Certain experts stressed that the retention of Article 4 might lead to a situation in which some countries would withhold advantages other countries already granted, or might be prepared to grant, under the convention.

In this connexion, it was pointed out by the Deputy Executive Secretary of GATT that if the inclusion of a reciprocity provision were contemplated, it would be contrary to the obligations of granting unconditional most-favoured-nation treatment laid down in Article I of GATT. He mentioned as a possible solution, that where countries were not prepared to accept a limiting provision in the convention, such a provision could be deleted while at the same time providing for a reservation procedure on that point. A country not wishing to undertake the full obligations could then enter a reservation which, however, would have to be approved by the members of the convention.

Article 5

The Group of Experts suggested a complete re-draft of the first sentence of this Article. Furthermore, the words "In particular cases" introducing the second sentence were deleted.

The re-drafting of the first paragraph resulted from the opinion of the majority of experts that a convention which compelled the abolition of security could receive little support. There were, however, experts who stressed the importance of having a liberal convention providing for the general deletion of the security requirement.

One expert stressed that if Article 4 (a)'s restriction were retained the foreign ownership of the packings was a better assurance of re-exportation than the giving of monetary security.

The words "In particular cases" which introduced the second sentence were deleted as a result of the general conviction that this sentence should not become a basis for permitting arbitrary decisions by customs officials, but should merely provide general guiding principles.

Article 6 : Unchanged.

Article 7

Although this Article was unchanged, the experts felt that it should be recorded that it was the understanding of the Group that governments would maintain the right to refuse unreasonable requests for re-exportation under the

conditions laid down in Article 7 which would cause a disproportionate burden of work to the customs authorities.

Article 8: ~~Un~~changed.

The experts wished to make it clear, however, that under the provision permitting more liberal facilities, it was open to countries to allow the use of packings within their country.

Article 9: Unchanged.

Two experts considered, however, that the wording of Article 9 should be altered in such a way as to permit the customs administration to insist upon re-exportation. The majority, however, thought that such a change would unduly weaken the contents of Article 9 and pointed out that the existing provision was included in the Geneva Containers Convention of 1956. It was felt that the provision included in the Containers Convention had proved to be broad enough to safeguard the interests of the customs administrations.

Article 10: Unchanged.

Article 11

The Group of Experts suggested the ~~deletion~~ of the last words of the sentence "nor the levy of dues chargeable by virtue of such regulations".

The maintenance of these words was considered unnecessary due to the fact that under the definition of Article 1 (b), the levy of fees and charges commensurate with the amount of the approximate cost of services rendered, was not affected by this convention. It was feared that the maintenance of the words could have been interpreted as permitting the levy of higher fees which would not be in conformity with the provisions of GATT.

One expert wished it to be understood that the specific exceptions enumerated in Article 11 would, in the view of his government, be intended to cover the wide range of exceptions set forth in Articles XX and XXI of the GATT.

Article 12: Unchanged.

The Last Article: Unchanged.

APPENDIX I

GROUP OF EXPERTS AND OBSERVERS ON TEMPORARY DUTY-FREE
IMPORTATION OF PACKING MATERIALS AND CERTAIN
PROFESSIONAL EQUIPMENT

Chairman: Dr. O. Benes (Czechoslovakia)

| <u>Group of Experts</u> | <u>Observers</u> |
|--|---|
| Mr. T.B. Audett (United States) | M. M. Grosso (Italy) |
| M. Besseyre (France) | M. Nissler (Customs Co-operation Council) |
| * M. G. Brigode (Belgium) | M. Psimenos (International Chamber of Commerce) |
| * M. Buyse (Belgium) | M. Touzelet (European Economic Community) |
| M. J. Etienne (Belgium) | |
| Mr. W.H. Foulkes (United Kingdom) | M. F. Vittorio (Italy) |
| * M. J. Gueloz (Switzerland) | |
| M. K. Hauswirth (Switzerland) | |
| Mr. J.F. Mangia (Brazil) | |
| Mr. D.W. McGill (Canada) | |
| Mr. K. Metzen (Fed. Rep. of Germany) | |
| * Mr. S.G. Mier (United Kingdom) | |
| Mr. H. Miyazaki (Japan) | |
| Mr. G. Sheen (Australia) | |
| * Mr. R.L.M. Small (Brazil) | |
| * Mr. F. Stone (Canada) | |
| * Mr. L.D. Thomson (Australia) | |
| Mr. A.L. van Exel (Kingdom of the Netherlands) | |

* Alternate

ANNEX II

PRELIMINARY DRAFT CUSTOMS CONVENTION ON THE
TEMPORARY IMPORTATION OF PACKINGS
AS RECOMMENDED BY THE GROUP OF EXPERTS

PREAMBLE

CHAPTER I

Definitions

ARTICLE 1

For the purpose 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 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 connexion 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.

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A different wording may be suggested by the ECE Transport Division.

CHAPTER II

Scope

ARTICLE 2

Temporary admission shall be granted to packings provided 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.

ARTICLE 4

Each contracting party shall be free to limit temporary admission to packings:

- (a) other than those imported on purchase, hire-purchase or under any similar contract, by a person established or resident in its territory;
- (b) of a kind having a substantial individual value and being suitable for repeated use.

CHAPTER III

Special provisions

ARTICLE 5

Each contracting party undertakes wherever possible to dispense with the requirement of security in favour of an undertaking to import the packings in question. The Customs authorities may, however, require security where they deem it necessary to ensure recovery of such import duties and other sums as may be chargeable in the event of non-re-exportation or failure to comply with other prescribed conditions.

ARTICLE 6

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 7

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 8

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 9

Notwithstanding the requirement of re-exportation laid down by the present Convention, the re-exportation of badly damaged packings shall not be required, 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.

When packings temporarily imported cannot be re-exported as a result of a seizure, other than a seizure made at the suit or private persons, the requirement of re-exportation shall be suspended for the duration of the seizure.

CHAPTER IV

Miscellaneous Provisions

ARTICLE 10

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 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.

ARTICLE 11

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 12

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.

CHAPTER V

Final Provisions

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ARTICLE ..

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.

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