



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

**FOLLOWING US OPPOSITION TO  
COMMUNITY ACCESSION TO THE 1972 CUSTOMS CONVENTION  
ON CONTAINERS**

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1. Wishing to develop and facilitate the use of containers in international haulage, the Community Member States are all parties to the Customs Convention on Containers, signed in Geneva on 18 May 1956 and effective from 4 August 1959. The vast majority of them were signatories before the Treaty establishing the EEC came into being in 1958 or before they joined the Community themselves. However, the original six members joined the Convention after 1 January 1958.
2. Subsequently, the International Maritime Organization (IMO) drew up another convention in 1972 repealing and replacing the 1956 accord for all signatories (Article 20 of the 1972 Customs Convention on Containers). However, the Community and its Member States (except for Spain, Austria and Finland, which were signatories before joining the Community) are not contracting parties (CPs) to this Convention since no provision is made for the Community as such to sign up.
3. The Community has always wanted to put this right. With the establishment of its commercial policy of 1969 and the creation of a common customs territory, the Community could hardly fall into line with rules on the temporary admission of containers which were based solely on the customs territory of each separate Member State and so contrary to Court of Justice<sup>1</sup> jurisprudence on trade policy. The contradiction became even more patent from 1987 on, when a Community Regulation on the temporary admission of containers was adopted.
4. Community accession required amendment of the 1972 Convention to the effect that customs or economic unions could also become CPs in their own right. The first attempt to secure such an amendment failed in 1987 when the US and Korea objected but success finally came in November 1991 when the Convention steering committee agreed unanimously on an amended text, negotiated mostly with the US, enabling the Community to become a CP.
5. After long negotiations on issues such as the length of time American containers could stay in the Community, the US finally gave its agreement in 1991. The proviso was, however, that EC membership should not dilute the benefits granted by individual Member States under the 1956 Convention, which stipulated that each CP had to allow the containers from another CP to stay for three months under temporary admission rules. The US took this figure and then simply multiplied it by the number of Member States - twelve - to give a total admissible stay of 36 months.

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<sup>1</sup> COJEC, 2.2.1989, Case 275/87, Compendium p. 259.

The Community was prepared to accept an initial length of 18 months instead of the standard 12 provided for in its legislation, agreeing to extend this limit further on request to a maximum of 24 months. The US delegation accepted this. The Community undertook to make the relevant changes *erga omnes* to its legislation when it acceded to the 1972 Convention.

6. However, Article 21(4) of the Convention stipulated that the notification procedure could only begin once the secretariat of the World Customs Organization (WCO) had drafted the relevant text in all five official languages (Chinese, English, French, Russian and Spanish). Unfortunately, work was not completed until early 1994 and the UN Secretary-General did not notify the amendments until 10 March that year. It was from this date that the twelve-month period provided for under the Convention for tabling objections started. In the meantime, the US government changed and the consequences of this became apparent over the twelve months following notification.
7. The US government, no doubt lobbied by domestic container operators, told the Commission twenty days before the deadline for tabling objections (10 March 1995) that it would press for a formal agreement between the US and the Community, committing the latter to the compromise outlined in point 5. Failing this, the US would not agree to Community accession to the Convention. The Commission proposal to limit itself to an informal commitment (given that there was not enough time to complete negotiation of such an agreement) was deemed insufficient by the US. Finally, despite all the efforts of DG XXI (customs and indirect taxation) and the US customs vis-à-vis the State Department, the US sent a diplomatic memo to the depositary, stating its intention to use its right to table an objection to all the amendments approved in 1991 for economic and customs unions.
8. This constitutes a change in the US position from that negotiated in 1991. The country's refusal to accept what seemed like highly favourable conditions for temporary admission of their containers into the Community gives reason to think that, despite their flexibility, they are still less favourable than the current *de facto* arrangements. And it is true that the international undertakings of Member States under the 1956 Convention mean that US containers can remain on Community territory indefinitely as long as they move from one Member State to another every three months. However, strict adherence to these commitments runs counter to current Community laws, which provide for a total maximum stay of twelve months.
9. The economic and budgetary aspects of this matter need to be looked at more closely. UNCTAD figures for mid-1994 put the total number of containers worldwide at about 8 340 000 TEU<sup>2</sup> (8.1 million TEU of this being maritime containers). This represents an increase of 14% on 1992. Figures for 1968 and 1969 show that 200 800 and 369 800 containers respectively were used for trade between the US and the Community. This compares with a 1994 figure of 420 437 for the port of Antwerp alone. Community figures for the years 1989-93 show that between 8% and 10% of goods coming into the EC and between 14% and

16% of goods going out were carried by container while the latest OECD<sup>3</sup> publications reveal that in 1993, 7.3% of the global fleet capacity was made up of container carriers (i.e. 31.7 GRT<sup>4</sup> out of a total of 433.4 GRT)<sup>5</sup>

The consequences of this container revolution are not, however, reflected in Community statistics. There are figures for containers imported outright into the EC, although the trade volume these represent is negligible (see Annex II), but there are none for those only ever admitted temporarily, which make up the lion's share of trade. 1992 figures for container movements in and out of some Community ports (but not exclusively the biggest) which are based on statistics published by specialist private sector container organizations<sup>5</sup> put the total at nearly 14 million. The real total is of course much higher, including as it does the figures for large ports such as Felixstowe, Liverpool and Barcelona and all small and medium-sized ports.

As for the origin of these containers, it is currently impossible to give any clear details since there are no recent Community or other statistics. According to an OECD publication from 1971, 60% of the containers in question were of US origin.<sup>6</sup> Given the negligible number of containers imported outright and the low capacity of the container construction industry in the EC, there is no reason to suppose that things have improved in the meantime.

10. As regards the handling of Community containers in the US, information from the American authorities reveals that, as things stand, US customs law will only allow containers from other countries to spend three months in the US under temporary admission rules. However, it would appear that the authorities are flexible on this point and will, at the request of the operator, grant extensions, the length of which is determined on a case-by-case basis.
11. The legal and economic consequences of denunciation by the Member States of the 1956 Convention on containers on US-EC trade would probably not be that great in the short or medium term. Effects would be:
  - the possible bilateral imposition of customs duties, with American action against Community containers temporarily admitted to the customs territory of the US amply offset by similar EC duties on US containers. Beyond the twelve months provided for by Community law, such containers would have to leave the customs territory of the EC. However, EC operators could for a time easily use the large numbers of US containers already on Community territory in their transactions with the US and the US would not be able to levy customs duty on them;

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3 Les Transports maritimes 1993

4 Gross registered ton/tonnage (1 GRT=2 831 m<sup>3</sup>).

5 Jane's Containerisation Directory.

6 Developments and problems of seaborne container transport 1970.

- as regards legal measures, including the duty the Community would levy following any denunciation of the 1956 Convention on containers from non-member countries temporarily admitted into Community territory, other current or forthcoming international conventions (TIR and Istanbul Conventions) would cover the Community's needs. For example, the Istanbul Convention of 26 June 1990 on temporary admission, concluded by the Council on 15 March 1993 (Decision 93/329/EEC) came into force on 27 November 1993 (although the instrument of conclusion has not yet been deposited pending ratification by all Member States). Article 6 of Annex B3 of the Convention stipulates that no duty or charge may be levied for at least six months on containers admitted temporarily.

Nine Member States have already ratified the Istanbul Convention (which provides for shared powers). Even though temporary admission of containers is a matter solely for the Community, the rest should be asked to speed up their ratification procedures.

12. In view of the above and in order to find a way of securing compliance with Community law, the Commission, as the body responsible for looking into possible ways of dealing with the US objection to Community accession to the 1972 Convention, **calls on the Council to take note of the following decision taken by the Commission:**
  - a.- **examine** the possibilities of further dialogue with the US to redress the balance of interests between it and the Community  
**and, at the same time:**
    - **call** on the Member States to do what is needed to improve checks on international container movements, in accordance with Community rules on temporary admission, especially those relating to the permitted length of stay on Community customs territory (Article 725 *et seq.* of the implementing provisions of the Community Customs Code);  
ask the Commission departments in charge of controlling own resources to be particularly attentive in ensuring that the inspections carried out in 1996 include checks that containers from other countries do not stay longer than permitted, notably in the most representative Community ports. Consideration could also be given to other legal measures if necessary, by means of a Commission regulation, in accordance with Articles 141 and 247 *et seq.* of Council Regulation (EEC) No 2913/92, establishing the Community Customs Code;
  - b.- in case proceedings to the US do not yield positive results, **call** on those Member States which are signatory to either or both of the 1956 and 1972 Conventions to denounce them on the grounds that they are incompatible with Community law.

## Sea container movements in and out of some Community ports

Community port of entry	Incoming						Outgoing					
	in TEU *			in 000 tonnes			in TEU *			in 000 tonnes		
	1991	1992	1993	1991	1992	1993	1991	1992	1993	1991	1992	1993
Antwerp (1) Zeebrugge (1)	859.606 117.866	902.095 199.115	919.673 186.494	2.080.00	2.450.13	2.429.12	901.816 115.245	933.500 194.955	956.623 186.718	1.746.91	2.004.10	1.935.82
Le Havre Marseille	471.478 220.000	386.794 173.000	453.785 207.000	5.672.42	4.748.42	3.920.86	447.050 227.000	359.594 178.000	440.906 224.000	6.126.58	5.144.61	4.478.00
Hamburg Bremen	593.710	1.067.191	1.164.012	6.334.20	2.759.40	3.107.69	660.587	2.033.571	1.102.930	7.311	2.851.24	3.341.69
Rotterdam (2) NL-Rotterdam		1.989.703 38.764			15.110.04 365.37			1.991.458 289.17			19.253.89	
London Tilbury Larne	148.336 165.353	167.483 162.143	188.660	2.034.89	2.011.56	2.300.70	154.412 154.168	160.904 154.190	175.416	1.702.30	1.750.90	2.006.16
Naples Trieste	77.276 68.878	90.157 68.065		455	551		79.971 74.086	90.573 65.920		620.67	738.67	
Bilbao Valencia	88.521 176.781	110.410 180.346	190.423	841.28 1.592.96	873.46 1.640.91	1.522.66	91.241 187.664	107.279 190.200	194.915	1.027.34	1.153.41 2.377.48	2.699.91
Leixoes-Douro Lisbon	152.026 144.271	174.012 147.765	167.466	1.209.59 957.72	1.343.75 957.59	1.296.25	441.571	446.152		315.48 1.270.00	360.63 1.360	347.16
Thessaloniki		49.500	91.402					40.500	74.784			
Dublin	213.386	210.179		2.370.21	2.340.20		199.876	197.703		1.899.92	1.951	
Helsinki	172.400	195.903	233.143	1.830.05	1.949.83	2.201.03	152.350	174.430	209.923	1.813.24	2.186	2.685.94
Göteborg		312.190	282.673					331.860	340.491			
TOTAL	3669888	6624815	4084731	25378.32	36736.29	16778.31	35870.37	7351078	3906706	26090.22	41132.31	17494.68
in %	100	181	111	100	145	66	100	205	109	100	158	67

Source : Jane's Containerisation Directory - Twenty-fifth and twenty-sixth editions (1993-94 and 1994-95).

(1) Figures provided by Belgian administration

(2) SOEC figures.

\* TEU = 20 feet equivalent unit.

**DEFINITIVE CONTAINER IMPORTS INTO AND EXPORTS FROM  
THE COMMUNITY (1992-94)<sup>7</sup>**

Year	IMPORTS		EXPORTS		Average /Container (ECU/container) ImportExport
	Containers	Value (ECU' 000)	Containers	Value (ECU '000)	
1992	14 617	7 225	8 089	24 468	
1993	31 325	7 406	9 905	44 719	
1994	22 927	8 517	16 731	53 909	
<b>Total (1992-1994)</b>	<b>68 869</b>	<b>23 148</b>	<b>34 725</b>	<b>123 096</b>	<b>336 - 3 545</b>

Source: SOEC

<sup>7</sup> Imported containers are subject to customs duty of 3.5% *ad valorem* and to a rate of VAT which varies from one Member State to another (F: 20.6%, B: 21%, LUX: 15%, NL: 17.5%, D: 15%, I: 19%, IRI: 21%, UK: 17.5%, DK: 25%, GR: 18%, PO: 17%, SP: 16%, AU: 20%, FIN: 22%, SWE: 25%).