COUNCIL DECISION

of 7 April 1995

on the signature, by the Community, without reservation of ratification, on the Convention on Customs Treatment of Pool Containers used in International Transport (Geneva, 21 January 1994)

(95/137/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof, in conjunction with the first sentence of Article 228 (2),

Having regard to the proposal from the Commission,

Whereas the Convention on Customs Treatment of Pool Containers used in International Transport, hereinafter called the 'Convention', negotiated under the auspices of the United Nations and signed at Geneva on 21 January 1994, seeks to promote efficient use of containers in international transport by facilitating administrative procedures, with a view in particular to reducing transport of empty units;

Whereas Article 14 (3) of the Convention provides for its signature by regional economic integration organizations;

Whereas, in the light of its major practical advantages for economic operators, the Convention should be approved and signed by the Community without reservation of ratification;

Whereas the Convention should nonetheless be accepted with a reservation reflecting certain constraints pertaining to the customs union and to the current level of harmonization with regard to the import and export of spare parts for repairs and of container accessories and equipment;

Whereas, therefore, the Community should become a Contracting Party to the Convention, with the abovementioned reservation,

HAS DECIDED AS FOLLOWS:

Article 1

The Convention on Customs Treatment of Pool Containers used in International Transport is hereby approved, with a reservation, on behalf of the Community as regards the matters which fall within its exclusive competence.

The text of the Convention and the Community reservation entered thereto appear respectively in Annexes I and II.

The text of the notification provided for in Article 14 (3) of the Convention appears in Annex III.

Article 2

The President of the Council is hereby authorized to designate the person empowered to:

— sign, without reservation of ratification, the Convention in order to bind the Community,

— proceed with the notification provided for in Article 14 (3) of the Convention.

Done at Luxembourg, 7 April 1995.

For the Council

The President

J. ROSSI

ANNEX I

CONVENTION ON CUSTOMS TREATMENT OF POOL CONTAINERS USED IN INTERNATIONAL TRANSPORT

(Container Pool Convention)

PREAMBLE

THE CONTRACTING PARTIES,

CONSCIOUS of the increasing importance of international transport of goods in containers,

DESIRING to enhance the efficient use of containers in international transport,

CONSIDERING the necessity to facilitate administrative procedures, in order to provide for a reduced transport of empty units,

HAVE AGREED as follows :

CHAPTER I

GENERAL

Article 1

Definitions

For the purposes of this Convention :

(a) the term 'import duties and taxes' shall mean Customs duties and all other duties, taxes, fees and other charges which are collected on, or in connection with, the importation of goods, but not including fees and charges limited in amount to the approximate costs of services rendered ;

(b) the term 'container' shall mean an article of transport equipment (lift-van, movable tank or other similar structure) :

(i) fully or partially enclosed to constitute a compartment intended for containing goods ;

(ii) of a permanent character and accordingly strong enough to be suitable for repeated use ;

(iii) specially designed to facilitate the transport of goods by one or more modes of transport without intermediate reloading ;

(iv) designed for ready handling, particularly when being transferred from one mode of transport to another ;

(v) designed to be easy to fill and to empty ;

(vi) having an interval volume of one cubic metre or more except for air freight containers ;

'demountable bodies' and 'platform flats' are to be treated as containers ;

the term 'container' shall include standard air freight containers having an internal volume of less than one cubic metre provided they fulfil the requirements of subparagraphs (i) to (v) ;

the term 'container' shall include the accessories and equipment of the container, appropriate for the type concerned, provided that such accessories and equipment are carried with the container. The term 'container' shall not include vehicles, accessories or spare parts of vehicles, or packaging ;

(c) the term 'partially enclosed', as applied to containers in Article 1, subparagraph (b) (i), shall relate to containers generally consisting of a floor and a superstructure marking off a loading space equivalent to that of a closed container. The superstructure is generally made up of metal members forming the frame of a container. Containers of this type may also comprise one or more lateral or frontal walls. In some cases there is only a roof attached to the floor by uprights. This type of container is used in particular for the transport of bulky goods (motor cars, for example) ;

(d) the term 'demountable body' shall mean a load compartment which has no means of locomotion and which is designed in particular to be transported upon a road vehicle, the chassis of which, together with the

underframing of the body is especially adapted for this purpose. It covers also a swap-body which is a load compartment designed especially for combined rail/road transport;

(e) the term 'platform flat' shall mean a loadable platform having no or an incomplete superstructure but having the same length and width as the base of a container and equipped with top and bottom corner fittings, so that some of the same securing and lifting devices can be used;

(f) the term 'repair' shall concern solely minor restoration and routine maintenance;

(g) the term 'accessories and equipment of the container' shall cover in particular the following devices even if they are removable:

(i) equipment for controlling, modifying or maintaining the temperature inside the container;

(ii) small appliances, such as temperature or impact recorders, designed to indicate or record variations in environmental conditions and impact;

(iii) internal partitions, pallets, shelves, supports, hooks, sheets, bags and similar devices especially designed for use in containers;

(h) the term 'Pool' shall mean the use in common of containers established by an agreement;

(i) the 'Pool member' shall mean the operator of containers who is a party to the agreement setting up the Pool;

(j) the term 'operator' of a container shall mean the person, who, whether or not its owner, has effective control of its use;

(k) the term 'person' shall mean both natural and legal persons;

(l) the term 'equivalent compensation' shall mean the system which allows the re-exportation or re-importation of a container of the same type as that of another container previously imported or exported;

(m) the term 'internal traffic' shall mean the carriage of goods loaded in the territory of a Contracting Party for unloading at a place within the territory of the same Contracting Party;

(n) the term 'Contracting Party' shall mean a State or regional economic integration organization, party to this Convention;

(o) the term 'regional economic integration organization' shall mean an organization constituted by and composed of States referred to in Article 14 (1) and (2) of this Convention which has competence to adopt its own legislation that is binding on its Member States, in respect of matters governed by this Convention, and has competence to decide, in accordance with its internal procedures, to sign, ratify or accede to this Convention;

(p) the term 'ratification' shall mean ratification, acceptance or approval.

Article 2

Objective

This Convention aims at facilitating the use in common of containers by members of a Pool, on the basis of equivalent compensation.

Article 3

Scope

This Convention shall apply to an exchange between Contracting Parties of containers for use as part of a Pool whose members are established in the territory of those Contracting Parties.

Article 4

Facilities

Each Contracting Party shall grant admission to containers as referred to in Article 3 of this Convention, without payment of import duties and taxes, free of import prohibitions or restrictions of an economic character, without limitations as to use in internal traffic and without requiring, on their importation and exportation, Customs documents and security, provided that the conditions laid down in Article 5 of this Convention are complied with.

Article 5

Conditions

1. Each Contracting Party shall apply the facilities of Article 4 of this Convention to containers used in a Pool on the conditions that:

(a) they have been previously exported or will be subsequently re-exported, or that an equal number of containers of the same type have been previously exported or will subsequent be re-exported;

(b) under the agreement setting up the Pool, the Pool members:

(i) exchange among themselves containers in the course of international transport of goods;

(ii) keep records, for each type of container, showing the movement of containers so exchanged;

(iii) undertake to deliver to one another the number of containers of each type necessary to offset, over periods of 12 months, the outstanding balances of the accounts so kept, so as to ensure a balance for each Pool member between the number of containers of each type which he has placed at the disposal of the Pool and the number of Pool containers of these same types at his disposal in the territory of the Contracting Party in which he is established. The period of 12 months may be extended by the competent Customs authorities of that Contracting Party.

2. Each Contracting Party may decide whether containers placed at the disposal of the Pool by any Pool member established in its territory shall meet the conditions contained in its legislation concerning admission and unrestricted use in internal traffic on its territory.

3. The provisions of paragraph 1 of this Article shall be applicable only if:

(a) containers bear durable and unique marks agreed upon in the Pool agreement, which shall allow identification of the container;

(b) the Pool agreement has been communicated to the Customs authorities of the Contracting Parties concerned, and these authorities have approved it as being in conformity with the provisions of this Convention. Competent authorities shall inform the Executive Secretary of the United Nations Economic Commission for Europe of their approval and will also inform him of the names of the Contracting Parties concerned. The Executive Secretary transmits this information to the Contracting Parties concerned.

Article 6

Component parts for repair

1. When the Pool agreement foresees the setting up of a Pool for identifiable component parts used for the repair of the Pool containers, Articles 4, 5 (paragraphs 1, 2 and 3 (b)) and 9 of this Convention shall apply *mutatis mutandis* to those component parts.

2. When the Pool agreement does not foresee the setting up of a Pool for the component parts used for the repair of the Pool containers, temporary admission without payment of import duties and taxes, and without application of import prohibitions or restrictions of economic character shall be granted to these component parts without the production of Customs documents being required on their importation and re-exportation and without the furnishing of a form of security.

When the provisions of the preceding paragraph cannot be applied, in lieu of a Customs document and security for spare parts, the person to whom the temporary admission facilities are granted may be required to undertake in writing:

(a) to supply to the Customs authorities a list of component parts with an undertaking to re-export; and

(b) to pay such import duties and taxes as may be required in the case where the conditions of temporary admission have not been fulfilled.

Component parts granted temporary admission not used for repair shall be re-exported within six months from the date of importation. However, this period may be extended by the competent Customs authorities.

3. Replaced parts not re-exported shall, in conformity with the regulations of the country concerned and as the Customs authorities of that country may authorize, be:

(a) subjected to the import duties and taxes to which they are liable at the time when, and in the condition in which, they are presented;

(b) abandoned, free of all expense, to the competent authorities of that country; or

(c) destroyed, under official supervision at the expense of the parties concerned.

Article 7

Accessories and equipment of containers

1. When the Pool agreement foresees the setting up of a Pool for identifiable accessories and equipment of containers, which are either imported with a container of the Pool to be re-exported separately or with another container of the Pool, or imported separately to be re-exported with a container of the Pool, Articles 4, 5 (paragraphs 1, 2 and 3 (b)) and 9 of this Convention shall apply *mutatis mutandis* to those accessories and equipment.

2. When the Pool agreement does not foresee the setting up of a Pool for the accessories and equipment of containers, which are either imported with a container of the Pool to be re-exported separately or with another container of the Pool, or imported separately to be re-exported with a container of the Pool:

(a) the provisions of Article 6 (2) shall apply to these accessories and equipment;

(b) each Contracting Party reserves the right not to grant temporary admission to accessories and equipment which have been the subject of purchase, hire-purchase, lease or a contract of a similar nature concluded by a person resident or established in its territory;

(c) notwithstanding the requirement of the period for the re-exportation laid down in Article 6 (2), which shall apply to accessories and equipment by virtue of point (a) of this Article, seriously damaged accessories and equipment shall not be required to be re-exported provided that, in conformity with the regulations of the country concerned and as the Customs authorities of that country may authorize, they are :

(i) subjected to the import duties and taxes to which they are liable at the time when, and in the condition in which, they are presented ;

(ii) abandoned, free of all expense, to the competent authorities of that country ; or

(iii) destroyed, under official supervision, at the expense of the parties concerned, any parts or materials salvaged being subjected to the import duties and taxes to which they are liable at the time when, and in the condition in which, they are presented.

Article 8

Regional economic integration organization

1. For the purpose of this Convention, the territories of Contracting Parties which form a regional economic integration organization may be taken to be a single territory.

2. Nothing in this Convention shall prevent a regional economic integration organization Contracting Party to this Convention, from enacting special provisions applicable to the use of Pool containers in the territory of that organization, provided those provisions do not reduce the facilities provided for by this Convention.

Article 9

Controls

1. Each Contracting Party shall have the right to carry out controls regarding the correct application of this Convention.

2. Pool members established in the territory of a Contracting Party shall provide the Customs authorities of that Contracting Party, on their request, with the list of the numbers of containers placed at the disposal of the Pool, and the number of Pool containers of each type in its territory.

Article 10

Infringements

1. Any infringement of the provisions of this Convention shall render the perpetrator liable, on the territory of the Contracting Party in which the infringement was committed, to any measures provided for by the laws of that Contracting Party.

2. When it is not possible to determine the territory on which an irregularity has been committed, it shall be deemed to have been committed on the territory of the contracting Party where it was detected.

Article 11

Exchange of information

The Contracting Parties shall communicate to each other, on demand and in so far as their laws permit, the information required to implement the provisions of this Convention.

Article 12

Greater facilities

This Convention shall not prevent the application of greater facilities which Contracting Parties grant or may wish to grant either by unilateral provisions or by virtue of bilateral or multilateral agreements provided that such facilities do not impede the application of the provisions of this Convention.

Article 13

Safeguard clause

This Convention shall not affect the provisions regarding competition applicable in one or several Contracting Parties.

CHAPTER II

FINAL PROVISIONS

Article 14

Signature, ratification and accession

1. Member States of the United Nations or its specialized agencies may become Contracting Parties to this Convention by :

(a) signature without reservation of ratification ;

(b) depositing an instrument of ratification, after signature subject to ratification ;

(c) depositing an instrument of accession.

2. Any State other than those referred to in paragraph 1 of this Article, to which an invitation to that effect has been addressed by the depositary at the request of the Administrative Committee, may become a Contracting Party to this Convention by acceding thereto after its entry into force.

3. Any regional economic integration organization may become, in accordance with the provisions of paragraph 1 of this Article, a Contracting Party to this Convention. Such organization, Contracting Party to this Convention, shall inform the depositary of its competence and any subsequent changes thereto, with respect to the matters governed by this Convention. The organization concerned shall, for the matters its competence, exercise the rights and fulfil the responsibilities which this Convention confers on States which are Contracting Parties to this Convention. In matters within the competence of the organization, of which the depositary has been informed, the Member States of the organization, which are Contracting Parties to this Convention, shall not be entitled to exercise individually these rights, including *inter alia* the right to vote.

4. This Convention shall be open for signature from 15 April 1994 to 14 april 1995 inclusive, at the Office of the United Nations in Geneva. Thereafter, it shall be open for accession.

Article 15

Reservation

Any Contracting Party may enter reservations to paragraph 2 of Articles 6 and 7, concerning the requirement of Customs document and security. Any Contracting Party which has entered reservations may withdraw them, in whole or in part, at any time, by notification to the depositary specifying the date on which such withdrawal takes effect.

Article 16

Entry into force

1. This Convention shall enter into force six months after the date on which five States or regional economic integration organizations referred to in Article 14 (1) and (3), have signed this Convention without reservation of ratification or have deposited their instruments of ratification or accession. For the purpose of this paragraph, any signature without reservation of ratification of, or any instrument deposited by, such a regional economic integration organization shall not be counted as additional to those of its Member States.

2. This Convention shall enter into force for all additional States or regional economic integration organizations referred to in Article 14 (1), (2) and (3), six months after the date of signature without reservation of ratification, or of deposit of instruments of ratification or accession.

3. Any instrument of ratification or accession deposited after the entry into force of an amendment to this Convention in accordance with Article 21 shall be deemed to apply to this Convention as amended.

4. Any such instrument deposited after an amendment has been accepted but before it has entered into force shall be deemed to apply to this Convention as amended on the date when the amendment enters into force.

5. This Convention shall apply to a specific Pool only when all the States or regional economic integration organizations concerned by that Pool have become Contracting Parties to this Convention.

Article 17

Denunciation

1. Any Contracting Party may denounce this Convention by so notifying the depositary.

2. Denunciation shall take effect fifteen months after the date of receipt by the depositary of the notification of denunciation.

Article 18

Termination

If, after the entry into force of this Convention, the number of Contracting Parties is for any period of 12 consecutive months reduced to less than five, the Convention shall cease to have effect from the end of the 12-month period. For the purpose of the present Article, the presence of a regional economic integration organization shall not be counted as additional to its Member States.

Article 19

Administrative Committee

1. There shall be established an Administrative Committee (hereinafter called 'the Committee') to consider the operation of the present Convention, to consider any amendments proposed thereto and to consider measures to secure uniformity in the interpretation and application thereof.

2. The Contracting Parties shall be members of the Committee. The Committee may decide that the competent administration of any State or regional economic integration organization which is not a Contracting Party, or representatives of international organizations may, for questions which interest them, attend the sessions of the Committee as observers.

3. The Executive Secretary of the United Nations Economic Commission for Europe, (hereinafter called the 'Executive Secretary') shall provide the Committee with secretariat services.

4. The Committee shall, on the occasion of every session, elect a Chairman and a Vice-Chairman.

5. The competent administrations of the Contracting Parties shall communicate to the Executive Secretary proposals for amendments to the present Convention and the reasons therefor, together with any requests for the inclusion of items on the agenda of the sessions of the Committee. The Executive Secretary shall bring these communications to the attention of the competent administrations of the Contracting Parties and to the depositary.

6. The Executive Secretary shall convene the Committee :

(a) two years after the Convention has entered into force ;

(b) thereafter, at a date fixed by the Committee, but not less frequently than every five years ;

(c) at the request of the competent administrations of at least two Contracting Parties.

He shall circulate the draft agenda to the competent administrations of the Contracting Parties and to the observers referred to in paragraph 2 of this Article, at least six weeks before the Committee meets.

7. On the decision of the Committee taken by virtue of the provisions of paragraph 2 of this Article, the Executive Secretary shall invite the competent administrations of the States and the organizations referred to in the said paragraph 2 to be represented by observers at the sessions of the Committee.

8. A quorum consisting of not less than one-third of the Contracting Parties is required for the purposes of taking decisions. For the purpose of this paragraph, the presence of a regional economic integration organization shall not be counted as additional to its Member States.

9. Proposals shall be put to the vote. Except as provided in paragraph 10 of this Article, each Contracting Party represented at the meeting shall have one vote. Proposals other than proposals for amendments shall be adopted by the Committee by a majority of the members present and voting. Proposals for amendments shall be adopted by a two-thirds majority of the members present and voting.

10. Where Article 14 (3) applies, the regional economic integration organizations, Contracting Parties to this Convention, shall have, in case of voting, only a number of votes equal to the total votes allotted to their Member States which are Contracting Parties to this Convention.

11. Before the closure of its session, the Committee shall adopt a report.

12. In the absence of relevant provisions in this Article, the Rules of Procedure of the United Nations Economic Commission for Europe shall be applicable unless the Committee decides otherwise.

Article 20

Settlement of disputes

1. Any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention shall, in so far as possible, be settled by direct negotiation between them.

2. Any dispute which is not settled by direct negotiation shall be referred by the Contracting Parties in dispute to the Committee which shall consider the dispute and make recommendations for its settlement.

3. The Contracting Parties in dispute may agree in advance to accept the recommendations of the Committee as binding.

Article 21

Amendment procedure

1. In accordance with Article 19 of this Convention, the Committee may recommend amendments to this Convention.

2. The text of any amendment so recommended shall be communicated by the depositary to all Contracting Parties to this Convention and to the other signatories.

3. Any recommended amendment communicated in accordance with paragraph 2 of this Article shall enter into force with respect to all Contracting Parties three months after the expiry of a period of 18 months following the date of communication of the recommended amendment if no objection to the recommended amendment has been notified during that period to the depositary by a Contracting Party.

4. If an objection to the recommended amendment has been notified to the depositary by a Contracting Party before the expiry of the period of 18 months specified in paragraph 3 of this Article, the amendment shall be deemed not to have been accepted and shall have no effect whatsoever.

Article 22

Depositary

1. The Secretary-General of the United Nations is designated as the depositary of this Convention.

2. The functions of the Secretary-General of the United Nations as depositary shall be as set out in Part VII of the Vienna Convention on the Law of Treaties, concluded at Vienna on 23 May 1969.

3. In the event of any difference appearing between a Contracting Party and the depositary as to the performance of the latter's functions, the depositary or that Contracting Party shall bring the question to the attention of the other Contracting Parties and the signatories or, where appropriate, to the Committee.

Article 23

Registration and authentic texts

In accordance with Article 102 of the Charter of the United Nations, this Convention shall be registered with the secretariat of the United Nations.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Geneva, this twenty-first day of January 1994 in a signle copy in the Arabic, Chinese, English, French, Russian and Spanish languages, the six texts being equally authentic.

ANNEX II

Community reservation referred to in Article 1 of the Decision

Pursuant to Articles 6 and 7 of the Convention, Community legislation requires, in certain circumstances, production of customs documents and the furnishing of a form of security for component parts for repair and for accessories and equipment of containers. These circumstances are :

— cases of serious risk of failure to comply with the obligation to re-export, and

— cases where payment of the customs debt likely to arise is not entirely certain.

ANNEX III

Notification referred to in the third subparagraph of Article 1 of the Decision

In accordance with Article 14 (3) of the Convention, the Community hereby notifies the Secretary-General of the United Nations Organization, as depositary of the said Convention, that the Community, as a regional economic integration organization, is competent for all the matters governed by the Convention, with the exception of :

— the determination of the duties, taxes, fees or other charges referred to in Article 1 (a) of the Convention other than Community customs duties, charges having equivalent effect to Community customs duties, agricultural levies or other import charges provided for under the Community's agricultural policy,

— the sanctions provided for in cases of infringement of the provisions of the Convention.