



UNITED NATIONS CONCILIATION COMMISSION FOR PALESTINE
COMMITTEE ON JERUSALEM
Memorandum on the "Free Zones" of
Upper Savoy and the Gex district.

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By virtue of international treaties and agreements, the Gex district, although situated in territory under French sovereignty, is for customs purposes a free zone. When the Congress of Vienna in 1815 rectified the frontiers of France and Switzerland, it allowed the Gex district to continue to enjoy the exemption from Customs duties which had been granted it under the Old Régime by an edict of 22 December 1775. The free zone of Upper Savoy was created by an imperial decree of the French Government on 12 June 1860, under which, in accordance with the referendum held to decide whether Savoy should return to France, the French customs were withdrawn to the boundary of the area covered by the plebiscite. A clear distinction should be drawn between these "free zones of Upper Savoy and the Gex district" and the "free zones" found in a number of sea-ports. To avoid any confusion, it will be well to define the main features of the latter zones.

Towards the end of the nineteenth century, a system was introduced in a number of German ports which was to become very important, viz. The "free Zones".¹ The establishment of these zones was a reaction against a recrudescence of customs protectionism, and they proved far "more effective than the other palliatives invented — "bonded warehouses", "licensed transit", "temporary admission", "drawback".

The terms "free zone" and "free port" are usually interchangeable, although some authors regard the expression "free port" as incorrect, since the modern free zone includes only a specific part of the port area. Without dwelling on this distinction, it may be mentioned that this institution rapidly developed and was extended, sometimes in a different guise, to a number of ports — Copenhagen in 1894, Trieste and Fiume, Genoa ("free warehouse"), Salonika since 1925, Stockholm, Barcelona, Budapest etc.

Free zones may be defined as: portions of territory, usually situated in or near ports, which although under the sovereignty of a particular country, have been completely exempted from customs restrictions in order to encourage industry or exports or both. Goods coming in or out are not liable for payment of duties, and are not required to comply with the ordinary customs formalities applicable to the territory as a whole.

Regulations for *transit* (i.e., of foreign goods in transit to or from the free zone via the territory of the country under whose sovereignty the zone lies), must of course be perfectly clear and must be respected by the parties concerned.

The maritime free zones, or free ports, must be clearly distinguished from the "free zones of the Gex district and Upper Savoy" to which they bear no resemblance. It is the latter we are concerned with here.

The Free Zones of the Gex district and Upper Savoy.

The system now in force has been gradually crystallized by means of successive instruments² covering a long period of time. It is hardly surprising that the law governing the zones is extremely complex, sometimes ill-balanced, and that it no longer fully meets the aims in view when the free zones were set up. But although the legal structure of the "free zones" of the Gex district and Upper Savoy cannot be regarded as a model of lucidity, it does at any rate afford a precedent for study, since apart from its structure, the difficulties arising out of its practical application can teach us a great deal.

Origin.

The feudal system made Geneva a purely urban area without territory and hemmed in by the States of foreign princes. Geneva in feudal times was largely dependent on the fields of Savoy and Gex for her supplies of foodstuffs, especially wheat; and a free trading system with the neighbouring agricultural districts was essential. We need not concern ourselves with the vicissitudes the free zones have experienced since they were created — their *de facto* suspension during the first world war, the attempt made by France to abolish them on the basis of the Treaty of Versailles, and the case brought before the Permanent Court of International Justice. Their chequered history demonstrates the fact that the maintenance of free zones, even between two countries whose relations have always been friendly, bristles with difficulties which would appear to be inherent in the system.

A. Present situation

Geographical area

The existing free zones comprise the Gex district, part of Upper Savoy and the St. Gingolph zone.³ They cover an area of 540 square kilometres (350 in the Gex zone) with a population in 1934 of about 34,000.

Organization

For customs and taxation purposes, the administrative arrangements⁴ up to 1939 were as follows:

- at the political frontier between France and Switzerland, a fiscal cordon (34 posts),
- at the inner border of the zones a customs cordon (20 offices),
- inside the zones, 9 zonal offices whose chief task was to ensure the smooth running of the system, both as regards relations between the zone and Switzerland and other countries, and between the zone and French territory outside, the free zone.

Regulations

Since the regulations governing the export of Swiss products to the free zones and of products from the free zones to Switzerland were laid down in agreements concluded at different times their clauses differ and need to be analysed separately.

(a) Regulations governing the export of Swiss products to the free zones.

The basic principle is that the free zones are not subject to French customs regulations, while fiscal charges and any provisions other than those relating to customs in force in French territory as a whole, are applicable there also. In other words, exports from Switzerland to the free zones within French territory are exempt from any customs measures or formalities, but are subject to all provisions other than customs regulations in force in France.

Goods of any origin may enter the zones free of all customs duties (this applies both to the main duty and to any additional duty). Apart from customs duties proper, the exemption covers the following charges and dues:

warehousing surcharges and surcharges in respect of certificates of origin, statistical fees, taxes for the development of foreign trade, permit charges, stamp duties for

customs clearance, storage dues, supervision charges, surcharges to cover currency disparities, anti-dumping surcharge duties on articles subject to quota, etc. It should be noted that the exemption covers not only Swiss products, but all consignments from Switzerland, i.e., *all foreign products in transit direct, or indirect through Switzerland*.

In principle the prohibitions, restrictions and special measures relating to imports and exports are not applicable in the free zones. This applies especially to the “quotas” and import restrictions imposed under Article 17 of the codified Customs regulations.

(b) Regulations covering the export of products from the free zone to Switzerland.

As a result of the “territory Arbitral Award” 1 December 1933, the following system was adopted by the Swiss and French Governments for the importation into Switzerland of products from the free zone:

- i) As regards *agricultural* products the principle is that all agricultural and similar products, originating in and coming from the free zones may be imported duty-free. Exemption from duty is granted without any limitation as to quantity, but is modified by an article in the regulations providing for “quotas” and other restrictions in unforeseen and exceptional circumstances⁵. The same restriction applies should imports increase abnormally as a result of forced production or production on an industrial scale in the zones.
- ii. As regards *industrial* products, these are not admitted duty free in unlimited quantities, but only within the limits of specific quotas covering products manufactured in the zone.

Joint Commission

A “Permanent Franco-Swiss Commission” has been set up to collaborate with the customs authorities of the two countries in seeing that the control measures are carried out, to suggest any changes which may be required in the agricultural and industrial quotas, and to smooth out difficulties arising from the day to day working of the system. This Joint Commission has made it possible to smooth out rapidly a number of difficulties which would have taken far longer to settle through the ordinary diplomatic channels. The fact that the Joint Commission comprises officials resident in the zones and hence in touch with local problems helps to make agreement easier.

B. An evaluation of the free zone system⁶

The functioning of the free zone system is by no means as perfect in practice as might appear at first sight. The aim in view, namely to create around Geneva a really “free” zone has only been achieved in part. While the withdrawal of the customs cordon in the 19th century has allowed the zones to be opened up to trade with Switzerland for the past century, this measure has proved inadequate owing to the discriminatory measures not connected with customs subsequently adopted by the two countries. In fact these other measures at present constitute the main economic barrier between France and Switzerland.

It may be useful to glance briefly at the circumstances and the various measures which in practice have greatly reduced free trade — which was the purpose of the free zone system — between Switzerland and the zones.

(1) Taxation

Goods coming from Switzerland can be imported duty free, but they are liable to the fiscal taxes levied on the importation and movement of goods in France. There are a large number of these taxes and sometimes they affect the inhabitants of the zones in the same way as customs duties, i.e. they increase the selling price of products imported free of customs duties. Here are some examples:

production tax, levied on importers who are not the producers of the goods;
taxes on pharmaceutical specialties, perfumes, spirits, chocolates, confectionery, sugar etc.;
stamp duties, car licences and number plates, equalization charges on petrol and refined mineral oils etc.

During the hearing at the Hague, Switzerland raised the question whether certain taxes imposed by France in the free zone were “customs duties” or not. In the absence of an international definition, it is difficult in practice to distinguish between customs duties and taxes payable on imports or exports. The Permanent International Court of Justice declined to decide the question, and confined itself to the statement that:

“in principle, a tax levied solely by reason of importation or exportation across the frontier must be regarded as a tax in the nature of a customs duty and consequently as subject to the regulations relating thereto”⁷

(2) Secondly, there are in operation in the free zones general measures to safeguard public health; general police regulations; measures for the observance of fair trading practices (International agreement) Madrid, 14 April 1891; Washington, 2 June 1911; the prohibition to import products bearing a name or sign calculated to give the impression that the goods were manufactured in France; and the obligation to affix a mark of origin to certain articles imported from abroad.

(3) *Currency control* has enabled the French Government in practice to restrict imports of Swiss or foreign products into the free zones, by “means of hard currency allocations.”

(4) *The disparity* between Swiss and French prices has put a strong brake on the “export of Swiss products into the free zones. During the period 1931 to 1938, the zones imported only 4% from Switzerland as against 78% from France and 18% from other countries.

(5) The formalities for crossing the fiscal cordon have hampered trade not only by reason of the heavy taxes themselves⁸ but also on account of the complicated and irritating procedure.

(6) The “quota” system adopted by the Swiss Government to restrict the export of agricultural and industrial products from the free zones into Switzerland. These measures were in fact provided for under the “Territory Arbitral Award”; their effect has been to reduce sales of agricultural and industrial products from the free zones to Switzerland. (It must be remembered that the sale of Swiss products in the free zones is governed by other agreements and in principle the quota system does not apply).

The free zones of the Gex district and Upper Savoy are a heritage from the past. The system lacks unity and clarity. They are the result of a long history of compromise. France has attempted to abolish this obsolete system on the ground that it is incompatible with the Treaty of Versailles. It seems difficult nowadays to maintain privileges for a minority within a nation which as a whole does not enjoy them.

(a) The French deputies representing the free zones have found it difficult in parliament to defend the maintenance of the privileges granted to the inhabitants of the zones. The majority put forward the principle of equality before the law, and refuse to admit the right of one particular region in France to special privileges although these are based upon natural interests, arising from the geographical situation of regions facing Switzerland and separated from France by the chain of the Juras.

(b), The Genevese, in order to continue to receive agricultural products from the free zones, have had to fight the Swiss farmers who would like to see the quotas lowered — i.e. would like less French competition on the Geneva market.

Before 1914, the zone system worked normally: (a) the French customs cordon was situated at the inner boundary of the zones, whose “territory” was open to imports from any source whatever; (b) the Swiss frontier was wide open to products from the zones; and trade was facilitated by the stability of currencies and the exchange rates fixed by the Latin Union. In addition, there was the tradition by which the French bronze coinage was freely accepted in Geneva.

Since then, France’s economic difficulties (causing her to tighten up her fiscal legislation and to adopt currency control measures) along with the demands of Swiss farmers, have completely altered the mode of operation of the zones. Many of the facilities enjoyed by the zones have in fact disappeared. It is essential to bear in mind the way in which these zones have evolved if a free zone system is to be envisaged for other countries and if such zones are really to achieve the purpose for which they would be created.

A free zone system, offering the zone the advantages of a lower cost of living, of encouraging tourist trade, facilitating the supply of foodstuffs and industrial products, and directly increasing the value of real property, is a privileged system. A free zone is a source of prosperity to the zone itself, and may indirectly be a source of revenue from taxation etc. — for the State within whose territory it is situated.

Admittedly the proper functioning of a free Zone depends mainly on the goodwill of the States exercising sovereignty over the zone.

Nevertheless, irrespective of the conditions in which it will have to function, any free zone must possess:

- a statute so clearly defined as to safeguard it from possible tendentious interpretations;
- regulations for the transit of goods through the neighbouring States to (and possibly from) the zone;
- a joint Commission whose duty it is to smooth out all difficulties arising from the application of this statute.

Endnotes

¹The modern free zone must not be confused with the “*free cities*”, which are of historical rather than practical interest, since cities of this kind no longer exist. The free cities which preceded the free zones were usually sea-ports which subsisted almost entirely on the trade passing through them. The earliest free cities were those created in Italy in 1547 (Leghorn, Civita Vecchia and Ancona); in France (Marseilles in 1669, Bayonne, Dunkirk); and Germany (Hamburg). In these free cities, exemption from customs duties applied not only to the harbour installations, but to the whole town and municipal area. There was complete freedom of entry and exit for all home and foreign goods, and he right to consume or dispose of them without payment of customs duties. These free sea-ports disappeared in France with

the Revolution, and in Italy a little later.

²The chief international instruments at present governing the status of the free zones of Upper Savoy and the Gex district are as follows:

- the Treaty of Paris, 20 November 1815 (Gex zone)
- the Treaty of Turin, 16 March 1816 (Sardinian zone)
- the Manifesto of the Sardinian Court of Accounts, 9 September 1829 (St. Gingolph zone)
- Article 435, paragraph 2 of the Treaty of Versailles
- the Judgment of the Permanent Court of International Justice of 7 June 1932
- the Arbitral Award of 1 December 1933.

³Exemptions from customs duties covering the whole of Upper Savoy, established by unilateral action on the part of France was also abolished by France.

⁴Note the size of the staff required.

⁵This measure was put into force immediately: milk, dairy produce, wines and cattle may only be exported from the free zones into Switzerland within the limits of the "quotas" fixing specific quantities and values. These quotas are renewable.

⁶As a result of, the low cost of living in the zones one of the main indirect consequences of the establishment of the free zones has been to attract population from the neighbouring districts. This has been the case in the Gex district.

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⁸In 1937 taxes on transactions between Switzerland and the free zones amounted to approximately 15% of the value of the goods exported.



