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European Communities
COURT OF AUDITORS

Special report No 2/93

on

THE CUSTOMS TERRITORY OF THE COMMUNITY AND RELATED TRADING ARRANGEMENTS

(Observations pursuant to Article 206a(4) of the EEC Treaty)

accompanied by the replies of the Commission

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Luxembourg, 9 June 1993

Brief note on Special Report No 2/93 of the Court of Auditors of the EC

"Customs territory of the Community and related trading arrangements"

In a special report, the Court of Auditors presents the results of an enquiry concerning the Community customs territory and related trading arrangements. The Court draws attention to special circumstances concerning certain areas of the Community e.g. Pays de Gex, Alto Adige etc. Places are often described as "duty free zones" when they are not; or places are thought to be part of the Customs Territory when in fact this is not the case. This report attempts to clarify the actual situation.

The historical reasons for these special areas often date far back and might have been justified when established. However, in today's single market should the status quo be maintained?

The report also examines the situation relating to certain independent States e.g. the Isle of Man, San Marino, Monaco and Andorra. A system of reimbursement often exists between a Member State and these States because the Member State collects duties on their behalf. The Court enquiry shows that the level of reimbursement can vary considerably according to which method is used.

An examination has also been made of certain special trading arrangements applicable to a particular Member State, e.g. German imports of bananas and Denmark/Faroe Islands.

This note is only intended to provide a brief summary of the subject matter. Readers who wish to have further details are requested to refer to the report adopted by the Court of Auditors, which is accompanied by the Commission's replies.

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Texte français au verso ▸▸▸

Luxembourg, le 09 juin 1993

Note d'information sur le rapport spécial N°2/93 de la Cour des comptes des C.E.

"Le territoire douanier de la Communauté et les régimes d'échanges correspondants"

Dans un rapport spécial, la Cour des comptes présente les résultats d'une enquête relative au territoire douanier de la Communauté et aux régimes d'échanges correspondants. La Cour attire l'attention sur les conditions spéciales appliquées à certaines parties de la Communauté, par exemple le pays de Gex, le Haut Adige, etc. Certains territoires sont souvent qualifiés à tort de "zones franches", d'autres sont inclus dans le territoire douanier alors qu'ils n'en font pas partie. Ce rapport vise à clarifier la situation réelle.

Les raisons historiques qui ont prévalu à la création de ces territoires bénéficiant de conditions spéciales remontent souvent fort loin et étaient peut-être justifiées à l'époque où ces conditions ont été mises en place. Convient-il, cependant, de maintenir le statu quo à cet égard dans le cadre du marché unique d'aujourd'hui?

Le rapport porte également sur la situation relative à certains États indépendants: l'île de Man, Saint-Marin, Monaco et Andorre, par exemple. Des systèmes de remboursement ont souvent été mis en place entre un État membre et ces États, parce que l'État membre en question collecte des droits pour le compte de ces derniers. L'enquête de la Cour montre que le niveau de remboursement peut varier considérablement selon la méthode utilisée.

Certains régimes d'échanges spéciaux applicables à un État membre ont également été examinés, par exemple ceux des importations allemandes de bananes et des échanges Danemark/îles Féroe.

Cette note n'est destinée qu'à fournir une information rapide. Pour tout approfondissement, le lecteur voudra bien se référer au document adopté par la Cour des comptes qui est accompagné des réponses de la Commission.

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THE CUSTOMS TERRITORY OF THE COMMUNITY AND RELATED TRADING ARRANGEMENTS

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1. INTRODUCTION

1.1. Article 8a of the Treaty establishing the European Economic Community defines the internal market as an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty.

1.2. The single internal market that came into effect in 1993 requires a consistent customs union with a high degree of uniformity. This report examines the special territorial situations in the light of this requirement for uniformity.

1.3. The European Community is a customs union and countries in full membership have no customs barriers between them. The Community's external tariff, common to all Member States, ensures that goods entering the Community from non-Community countries are subject to the same customs duties regardless of where the importation takes place. Goods are free to circulate between the Member States without any liability to pay further customs charges either because they originate in a Member State, or because any customs duty due has already been paid at the place of importation.

1.4. All the customs duties and levies that are established on chargeable goods imported from non-European Community countries form part of the own resources of the Community itself. The customs duties and levies so established provided 14 500 Mio ECU, 26% of the total own resources of the Communities in 1991.

1.5. For this customs union to operate with certainty and consistency, it is necessary to have a properly defined territory within which there is a uniform application of all the customs rules. The territorial scope of the Community has been defined in the Treaty establishing the European

Economic Community, the individual acts of accession and the various protocols(1).

Description of the customs territory

1.6. The geographical area within which the customs rules of the Community should apply was first defined by Council Regulation (EEC) No 1496/68 and subsequently in Council Regulation (EEC) No 2151/84. This regulation provides an effective "snapshot" of the customs territory of the Community at that time. Article 1 of the regulation was modified by Council Regulation (EEC) No 319/85 and again by the Act of Accession of Spain and Portugal.

1.7. Although the customs territory embraces almost all of the European territories of the twelve Member States, this is by no means the whole story. Several Member States have unique historical links and treaties, some of which affect customs matters, including the concepts of the free circulation of goods and the establishment of own resources.

1.8. The Treaty of Rome and the subsequent acts of accession had to take such situations into account. For example, at the time, account had to be taken of the German internal trade between the FRG and the former GDR, and of the fact that other territories such as the Isle of Man and the Channel Islands became part of the customs territory but not part of the Community itself. In addition there are a number of other territories, areas, enclaves, even independent states where special arrangements apply because of a relationship in respect of one or more Member States.

1.9. Included in the customs territory are :

a) the Channel Islands and the Isle of Man,
b) the French overseas departments (DOM) of Guadeloupe, French Guiana, Martinique and Reunion,
c) the Austrian territories of Jungholz and Mittelberg,

d) the Principality of Monaco,
e) the Republic of San Marino,
f) the Spanish Canary Islands (since 1 July 1991),
g) and the territorial seas of the Member States, their inland waters, and their airspace.

1.10. There are also some other territories in which, although they are included in the customs territory, the application of full Community customs rules is limited because of specific treaty arrangements. These include:
a) the "free zones" of Pays de Gex and Haute Savoie in France,
b) the Alto Adige, the Valle d'Aosta and the territory of Gorizia in Italy,
c) Mount Athos in Greece.

1.11. Although the following are not included in the customs territory special arrangements exist between them and the Community:
a) Andorra,
b) the Faroe Islands and Greenland,
c) Heligoland and the German territory of Büsingen,
d) the Italian communes of Livigno and Campione d'Italia and the national waters of Lake Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio,
e) the Spanish North African enclaves of Ceuta and Melilla,
f) Gibraltar,
g) the Vatican State,
h) the Member States' overseas countries and territories (listed in Annex I to this report).

The Court's enquiry

1.12. A prime objective of the Court's enquiry was to identify the territories or situations where a special

status has a significant financial impact on the traditional own resources of the Community. It became apparent to the Court that there is no "standard" Community arrangement for handling particular situations, even within a single Member State. Some very similar situations have been dealt with in totally different ways.

1.13. This report draws together situations which are broadly similar so that a comparative appraisal can be made. It also covers certain trading arrangements that individual Member States have with third countries, in so far as they are exceptions to the normal concept of the free movement of goods in a unified customs territory (Articles 9 and 10 of the Treaty). The customs territory also includes the territorial seas, internal waters and airspace. This aspect is also discussed.

1.14. Because they present unique situations in relation to the customs territory of the Community, descriptions of the customs treatment of certain other overseas territories and independent states have been included.

1.15. In addition to written enquiries of all Member States, discussions were held and visits made to particular locations/offices in Germany, Spain, France, Italy and the United Kingdom. The enquiry involved considerable research, sometimes historical. The Court acknowledges the assistance that has been given by the Commission and the authorities in all Member States and would like to record its appreciation for the excellent cooperation received.

1.16. Attention is drawn to the fact that the Customs Territory is not necessarily the same as the VAT and Excise Fiscal Territory. VAT is only dealt with peripherally. The report does not deal with the Community free zones and free warehouses set up in accordance with Council Regulation (EEC) No 2504/88, which are mainly concerned with the

promotion of external trade and the implementation of the Community's commercial policy.

2. THE "REIMBURSEMENT TERRITORIES"

2.1. Certain Member States had customs unions with other countries prior to becoming members of the EC. The Community also has customs union arrangements with certain third countries. This section deals with the arrangements that involve the sharing of indirect taxation where the customs duties and levies attributed to the territory concerned are reimbursed by the Member States or the Community.

2.2. The arrangements concerned are:

a) the United Kingdom and the Isle of Man,
b) the Community and Andorra,
c) France and Monaco,
d) Italy and San Marino,
e) Germany and the Austrian territories of Jungholz and Mittelberg.

The arrangements concerning the Isle of Man are dealt with first as they represent a base for comparison. A description of the situation concerning the Channel Islands has also been included because even though there is no sharing of indirect taxation, the status of the Islands is very similar to the other territories.

The Isle of Man (IOM)

2.3. The Isle of Man (572 sq km) with a residential population of 64 569, has a special relationship with the United Kingdom. It is an ancient kingdom with its own legislature, government and legal system. The IOM can be described as an independent territory of the Crown and is not part of the UK. Since 1966 the IOM has raised its own revenue and has been responsible for its own expenditure.

From 1765 to 1980 the British Government ran the Customs and Excise service of the IOM. The Customs and Excise Agreement and the Isle of Man Act of 1979 transferred the running of the Customs and Excise service to the IOM Government.

2.4. By reason of the agreement, the IOM and the UK maintain the same rates of duties and indirect taxes, apart from a few small exceptions. This enables the two countries to operate as a single territory for Customs and Excise purposes. The IOM operates exactly similar customs procedures to the UK, uses the Community Tariff, and observes all Community Customs rules and regulations. Thus the Isle of Man is capable of complying with its position of being part of the Customs Territory of the Community [Article 1 of Council Regulation (EEC) No 2151/84] but not being part of the Community itself.

2.5. Following from the long standing agreements between the IOM and the UK, a financial regime in the field of indirect taxation receipts has existed since the latter part of the nineteenth century. Known as the "Common Purse", broadly, this agreement ensures that, if the revenue from indirect taxation actually collected in the IOM does not reflect its proper share, based on population and consumption, of the combined revenues of the IOM and the United Kingdom, then the balance of revenues due to the IOM from the total revenues collected in the UK are paid over to the IOM government. Included in these combined revenues are the customs duties and agricultural levies established as the own resources of the Communities.

2.6. Protocol 3 of the UK Treaty of Accession does not explicitly cover the treatment of customs duties and agricultural levies collected directly by the IOM nor is there anything concerning duties and levies collected in the UK but paid over to the IOM as being its proper share of external duties. In 1974 the UK government obtained the

agreement of the Commission as to the method used to calculate and deduct the amounts of customs duties and agricultural levies paid over to the IOM from the total amount declared as own resources. In 1991 these arrangements involved the transfer of 2 402 672 UKL (3 355 139 ECU) customs duties and levies to the IOM. Thus the Isle of Man does not contribute to Community funds (nor is it eligible to benefit from them).

Andorra

2.7. The fief of Andorra (495 sq km) with its residential population of approximately 50 000 inhabitants dates back to 1278. Situated as it is in the Pyrenees with its boundaries with France and Spain, the landlocked, independent principality of "Les Vallées d'Andorre" is not part of the Community nor part of the customs territory of the Community.

2.8. An agreement for a Customs union between the EC and Andorra was agreed by the Council Decision of 26 November 1990([2]) and has been in operation since 1 July 1991. Concerning trade, the main points of the agreement are as follows:

a) Only products under Chapters 25 to 97 of the Harmonised System are covered by the agreement.
b) Products under these headings which are produced in, or in free circulation in, the Community are considered to be in free circulation in Andorra, and vice versa.
c) Andorra has adopted all current EC customs provisions applicable to import of goods from third countries, including the tariff, and all Community prohibitions and restrictions.
d) For processed agricultural products falling within these chapters, no duties are charged on the fixed component, but the variable component continues to apply.

e) Quantitative restrictions on imports and exports and all measures having equivalent effect between the Community and the Principality of Andorra have been abolished.

f) Products under Chapters 1 to 24 of the Harmonised System which originate in Andorra are exempt from import duties on import into the Community. Movements are controlled by the use of preference certificates (forms EUR 1) or, for low value consignments of originating products only, by the use of invoice declarations.

g) Special agreements apply to travellers. A derogation from the usual third country allowances has been agreed for goods under Chapters 25 to 97 which are purchased duty paid within the Community or Andorra. The total value of goods which may be imported free of import duties, turnover tax and excise duties is three times the value granted by the Community to travellers from third countries. Quantitative limits for tobacco, alcohol and perfume have been set at the same level as for goods obtained duty and tax paid within the EC.

2.9. Article 8 of the EEC/Andorra agreement provides for the authorization of the Community, acting on behalf of and for the Principality of Andorra, to enter goods sent from third countries to the Principality of Andorra for free circulation.

2.10. A Joint Committee has been set up with responsibility for administering the agreement and ensuring that it is properly implemented. One of the most important responsibilities of the committee is to determine the arrangements for assigning the import duties collected to the Andorra Exchequer and the percentage deducted by the Community to cover administrative costs. The Court has noted that a 10% level of deduction for administration costs was agreed by the Joint Committee on 12 July 1991 (see also paragraphs 2.36 to 2.40 concerning the Court's comments on the "duty collected" basis of assignment).

2.11. Tourist traffic involves some 10 million travellers per annum, approximately 7 million via Spain and 3 million via France. The vast majority of goods imported into Andorra are not for consumption in the Principality but are for sale to these tourists, a high proportion of whom come from the Community. The Spanish authorities estimate that as much as 90% of third country goods end up being reimported into Spain.

2.12. The new agreement will ease some of the problems of the local customs control of these tourists, in that the higher allowances for travellers means that some of what used to be smuggled, or attempted to be smuggled, can now be legally imported. During the on-the-spot visits the Court noted that in 1989, prior to the customs agreement, approximately 3 Mio FF (431 445 ECU) was collected from travellers at the Andorra/France frontier and 112 Mio PTA (863 744 ECU) at the Andorra/Spain frontier in respect of own resources duties and levies.

2.13. The Community-wide exemption from duty granted to Andorra-originating goods has resolved a difficulty for the French and Spanish customs services. Under their previous agreements Andorra goods had preferential entry into France and Spain but not the rest of the Community. Thus, there was always the problem concerning Andorra goods re-shipped to a destination in another Member State. The EEC/Andorra agreement has allowed for this difficulty to be resolved.

The Austrian territory of Jungholz

2.14. Situated between Füssen and Sonthofen the commune of Jungholz with its 282 inhabitants is part of Austrian national territory. It is not part of the Community but is part of the customs territory of the Community [Council Regulation (EEC) No 2151/84 Article 2]. The Customs Union Treaty of 3 May 1868 between Austria-Hungary and Bavaria,

acknowledging the geographical situation that the commune is virtually surrounded by German territory, placed Jungholz within the German Customs Territory.

2.15. Under Article 14 of the 1868 Treaty, Austria is entitled to a proportional share of the net proceeds of the customs revenue of the German territory as a whole. The Austrian Government, however, waived payment of this share in a special declaration at the time the Treaty was concluded.

The Austrian Territory of Mittelberg

2.16. The commune of Mittelberg (Kleines Walsertal) is located South-West of Oberstdorf in a valley that cannot be reached by road from Austria. It is accessible only from the Bavarian side. The special geographical situation led to the affiliation of the Austrian commune of Mittelberg to the customs union of the German Reich by the German-Austrian Treaty of 2 December 1890. Mittelberg has a population of 4 968.

2.17. It is not part of the Community but is part of the customs territory of the Community [Council Regulation (EEC) No 2151/84 Article 2]. Under Article 12 of the 1890 Treaty, Austria is entitled to a share of the indirect taxation receipts that the German customs authorities collect. This share is based on the calculated amounts per head of population for the whole of the FRG customs territory. The share that should be paid to Austria is that which corresponds to the population of Mittelberg. For example, in 1991 the deduction claimed from the Communities was 526 375,08 DM (258 593,62 ECU).

The Principality of Monaco

2.18. Monaco (1,46 sq km) is a third country, with a resident population of 25 000. It is not part of the Community but part of the customs territory of the Community. The legal basis for this status is the customs convention signed between the French Republic and the Principality of Monaco on 18 May 1963. In effect this convention established that the French administration is responsible for the customs control of the national territory of Monaco and in particular is responsible for the collection of customs duties/levies and certain excise taxes. Such duties and levies are entered in the French national accounts. Subsequently, the French authorities calculate annually the Monegasque share. This share is paid over to Monaco during the following year, and at the same time the French authorities make a deduction from the amount of own resources payable to the Commission.

2.19. The method for calculating the customs duties/levies paid into the Monegasque budget is contained in Title II of the Protocol annexed to the Franco-Monegasque Customs Convention of 1963. Under these provisions, "the government of the French Republic shall each year pay the Principality's treasury a sum which is to be determined by multiplying the annual proceeds from duties, taxes and other levies discussed in Article 7 of the Convention, after applying a coefficient set by mutual agreement, by the ratio of the population of the Principality, on the one hand, to the total populations of mainland France and of the Principality, on the other". This coefficient, which reflects the difference in wealth between France and Monaco, was set at 170% following an exchange of letters on 18 May 1963 between the Ministry of Foreign Affairs of France and the Ministry of State of the Principality of Monaco. Data from the census are used for calculating the population but are not taken into account to determine the

coefficient. In 1988, the amount paid over to Monaco using this system was 8 267 262 FF (1 188 955,87 ECU) in respect of duties collected in 1987.

2.20. The Court notes that, unlike the other similar arrangements (IOM, Mittelberg), there is no provision in the Franco-Monegasque convention for collection charges to be deducted.

2.21. The 1963 agreement provides for a three-yearly review of the coefficient but hitherto such a review has never been requested by the French or the Monegasque authorities, as a result of which the coefficient is still based on the difference in wealth as it was in 1963. In the light of the changed circumstances since then, it would appear to be appropriate to review the situation when the next review is due in 1993.

The Republic of San Marino

2.22. San Marino in the Apennines with a population of approximately 22 000 living within its 61 sq km, is one of the oldest republics in the world, dating back to the twelfth century. The Republic is an independent state which is part of the Customs territory of the Community [Council Regulation (EEC) No 2151/84 Article 2]. This derives from the fact that San Marino is part of the Italian customs territory. Relationships concerning the customs union between San Marino and Italy were established by the Convention of 31 March 1939. Article 44 of the Convention established the principle of the Customs Union between San Marino and Italy.

2.23. Article 52 of the Convention established a financial arrangement between the two republics whereby in return for San Marino giving up certain rights (e.g. the manufacture of matches or growing of tobacco) the Republic of Italy agreed

to make a lump sum annual payment to the Republic of San Marino. The rights forgone included the right to levy customs duties and similar import levies. The annual sum established in 1939 was 3,6 Mio LIT (2 334 ECU). It had risen to 27 000 Mio LIT (17,5 Mio ECU) in 1987. This amount is charged to two chapters of the Italian Treasury budget.

2.24. Under the Customs Union between Italy and San Marino all third country goods destined for San Marino are first customs cleared by Italian or other Member States customs offices. There are no transit facilities or arrangements whereby goods can cross the Community without first being put into free circulation. No duties or levies are collected by the San Marino authorities themselves. Products of San Marino origin are regarded as being in free circulation.

2.25. As a result of the goods already being in free circulation the Italian customs authorities have not considered that it is necessary or even feasible to undertake any "border" control over the four access roads to San Marino even though there is a high risk of VAT and excise duty evasion. There are however non-border controls concerning VAT and the requirement of Italian traders to pay the VAT difference.

2.26. Tourism plays an important part in the economy of San Marino. San Marino is not part of the Community territory for VAT purposes, consequently there is an Italian customs control system concerning imported goods destined for San Marino. Import VAT is deposited with the Italian customs authorities on clearance of the goods and only refunded on the production of a certificate from the Republic of San Marino authorities that their equivalent tax has been paid.

2.27. The present legal arrangement between the Republic of Italy and the European Community concerning the establishment and paying over of own resources to the

Community involves no formula whereby the Italian authorities can make a deduction for any amounts of duty or levies attributable or paid over to San Marino. However, although no formal agreement has been made, the right of the Italian authorities to make a deduction has been accepted and approved by the Commission. The deduction allowed for in the period 1979 to 1987 was 19 753 306 183 LIT (12 806 863 ECU) which after a Commission on-the-spot verification in 1990 was reduced by 9 321 620 LIT (6 043,6 ECU).

2.28. On 16th December 1991 a cooperation and customs agreement was signed between the European Economic Community and the Republic of San Marino. As the agreement deals with matters additional to trade and customs union it needs to be submitted for ratification by the national parliaments of the Member States. On 27th November 1992 the Council of the European Communities and the Republic of San Marino signed an interim agreement on trade and customs union([3]). This interim agreement came into force on 1 December 1992 and establishes a full customs union between the Community and San Marino. The agreement regularises the situation concerning the abatement of the amount of own resources paid over to the Communities by the Italian authorities.

2.29. The following is included in these arrangements:

San Marino will adopt and apply

a) all Community customs legislation concerning the Customs Union;
b) the Community's commercial policy (with a few exceptions);
c) the Community rules concerning trade in agricultural products, with the exception of refunds and compensatory amounts accorded for exports.

2.30. The Italian authorities will carry out the customs formalities relating to goods from third countries being

exported to San Marino (subject to a five years review). The import duties so collected will be assigned to San Marino's budget, with an overall amount corresponding to the Community administration costs being deducted from the sum collected.

The Channel Islands (CI)

2.31. The Channel Islands (194 sq km) with a population of 130 000 are not part of the United Kingdom but are dependent territories of the British Crown with their own legislatures. They have never been a British colony, but the UK is responsible for their external relations. The islands were part of Normandy when William the Conqueror acquired the English Crown in 1066. The Channel Islands are financially independent from the UK.

2.32. As with the IOM, the position of the Channel Islands is governed by Articles 25 to 27 of the Act concerning the conditions of accession and Protocol 3 of the UK Treaty of Accession. Thus the treaty only has limited application, in line with the islands' position of being part of the Customs Territory of the Community [Article 1 of Council Regulation (EEC) No 2151/84] but not part of the Community itself.

2.33. The Channel Islands operate the Community common tariff and comply with all Community customs legislation. The Channel Islands make no contribution to nor do they benefit financially from the Community. As far as traded goods between the Channel Islands and the Community are concerned, all goods in free circulation in one territory are treated as being in free circulation in the other.

2.34. Customs duties collected in the Channel Islands are not part of the own resources of the Community. However, because of the free circulation arrangements, customs duties and levies that are collected by Community Member States on

dutiable goods exported by the Member State to and consumed in the Channel Islands are retained as own resources.

2.35. The greater part of Channel Islands' imports are received from or via the UK. In the majority of cases this will be from the duty-paid stocks of UK traders. No financial adjustment arrangement concerning any duties or levies exists between the UK and the Channel Islands. The balance of trade, in duty-paid goods between the Islands and the Community, is in the Community's favour. Unlike the IOM arrangements, the UK and the Channel Islands do not operate as a single area for indirect taxation. The Channel Islands do not have a VAT and do not apply similar excise duties to those in the UK. Thus normal customs import procedures and controls apply to goods traded between the Channel Islands and the UK. Travellers from the Channel Islands are only entitled to third country allowances.

A comparison of the reimbursement systems

2.36. The Isle of Man, Monaco and Mittelberg all have reimbursement systems that are based on population and consumption ratios. The Council in its July 1991 decision concerning Andorra, and the Commission in its recent proposals for San Marino, have departed from these principles and decided that reimbursements should be on the basis of the duties and levies collected on goods actually delivered to the territories.

2.37. The economies of both Andorra and San Marino depend to a great extent on the tourist trade and clearly the majority of imports are made to satisfy this trade rather than that of the inhabitants. Thus these arrangements are very advantageous to the Andorra and San Marino authorities, who are in effect able to retain import duties and levies on goods which, in the main, are re-exported from their territories to the Member States of the Community. Refunds

are not made by these authorities and there are few if any arrangements for duties or levies to be collected on these goods when they are reimported into the Community.

2.38. The Court has made a comparative analysis of the amounts retained or reimbursed per head of population. The details are shown in Annex II. This clearly shows the advantages of the duty collected system to Andorra and San Marino, giving them reimbursement levels considerably more than that which might be due under a population and consumption based system.

2.39. It is clear that the "duty collected" systems are not comparable with the long standing population based systems operating for the IOM, Monaco, and Mittelberg. The differences become even more pronounced when viewed from the situation of the single market and customs unions with enclave independent states. It might be more appropriate to base the systems in Andorra and San Marino on the duties and levies attributable to the actual consumption of goods; that means, based on a formula of population ratios taking tourists into account.

2.40. The elimination of fiscal barriers and of "tax free" shopping between Member States will clearly enhance the attraction of "tax free enclaves". There appears to be a need for a review of such arrangements in the light of the single market.

3. THE "TERRITORIAL FREE ZONES"

3.1. There is a Community Regulation concerning free zones and free warehouses [Council Regulation (EEC) No 2504/88] which are mainly concerned with the promotion of external trade and the implementation of the Community's commercial policy. This regulation provides the Community definition of such free zones as:

"parts of the customs territory of the Community, separate from the rest of that territory, in which non-Community goods placed in them are considered, for purposes of the application of import duties and commercial policy import measures, as not being within the customs territory of the Community provided they are not released for free circulation or entered under another customs procedure under the conditions laid down by the Regulation".

3.2. The Regulation also states that Member States may:

a) designate part of the customs territory of the Community as free zones;
b) determine the area covered by each free zone;
c) determine the entry and exit points and only allow the construction of any building under prior authorization of the customs authority.

3.3. It is important to appreciate that none of the territories described in paragraphs 3.5 to 3.31 as free zones comes within the above definition and are therefore not free zones in the sense of any Community legislation. As far as the Court is aware there are no plans to modify any of them to bring them into line with the Community regulated system.

3.4. The territories concerned are:

a) Gex and Haute Savoie in France,
b) the territory of Gorizia in N.E. Italy on the Slovenian Border,
c) the Municipality of Livigno in Italy,
d) and the territory of the Valle d'Aosta in Northern Italy.

Gex and Haute Savoie

3.5. These "free zones" have their historical origin in the treaties of Vienna of 20 November 1815 and Turin of 16 March 1816. The essential purpose was to create stability in this frontier region with Switzerland, in particular stability of food supplies for Geneva. The status of the zones was confirmed by the Permanent Court of International Justice in its ruling of 1 June 1932 and the arbitration ruling of 14 December 1933, and the current administrative arrangements in France are established by a Decree of 29 December 1933.

3.6. Today, the most important characteristic of the zones is that they involve a second customs frontier between the zones and the rest of France. This in effect creates a territorial area of some 640 sq km, within which the normal customs rules of the Community do not apply, even though the area is part of the Community and of the customs territory of the Community. VAT is levied within the zone under normal French national rules.

3.7. The principal objective was to create a situation where a system of free circulation of goods could exist between the zones and the Swiss canton of Geneva. The zones are not highly industrialised and the trade between the zones and Switzerland is mostly in agricultural products. Agricultural produce from third countries is not subject to customs duties or agricultural levies when imported into the zones.

3.8. Exports to Switzerland of the products of the "free zones" are subject to a system of quotas set by the Swiss Government. For dairy products and live animals a fixed quota is set each year, for other agricultural products unlimited quantities may be exported. Quotas are also set for certain manufactured goods.

3.9. Products within the quotas system, with the exception of cereal products, are exported without Community refunds. Approximately 15 000 tonnes of cereals are exported each year to Switzerland. CAP products imported into the zones cannot benefit from the zone arrangements (levy exemption) and refunds cannot be claimed if these products are subsequently re-exported to non-Member countries. The customs services carry out checks on wholesalers and traders. Following the Court's visit the French authorities have instructed the local departments to step up controls at trading companies and importers and exporters of CAP produce. Furthermore, in order to make the importers of such produce more accountable, the authorities now ask them to include on their declarations a statement recalling that no rights to any refund are acquired if CAP produce imported under the zone arrangements is re-exported to non-Member Countries.

3.10. A major task of the customs control authorities is the customs surveillance of the fiscal barriers. In order to avoid persons from outside the zones making massive purchases of foodstuffs, quantity limits are set for purchases of this kind in the zone, and a duty free personal allowance system operates. A traveller is allowed 500 grams of butter, 2 kilos of sugar and 500 grams of meat. This duty free allowance is worth in total some 22 FF (3,16 ECU) per traveller.

3.11. The French authorities recognize that these personal allowances have no Community legal basis. Articles 7 and 8 of the 1933 Decree state that goods shipped from the zones into French customs territory are liable to customs duties and taxes, with the exception of agricultural and natural produce originating in these zones or products manufactures using raw materials of French origin, or on which the duties have been paid. The French authorities have stated in their reply to the Court's audit observations that they would be

prepared to make such changes to the duty free allowance system as the Community authorities consider necessary.

3.12. At the time of the Court's inspection at the frontier post between Gex and France, in November 1989, no duties had been collected on products exiting from the zone in the previous 12 months. In three years only some 3 000 FF (431 ECU) in duties had been collected, and this mostly concerned Swiss goods.

3.13. The inhabitants and the operators of any business in the "free zones" have the right to import any kind of goods without paying import duties or levies. This facility is much more than that which would be available under almost any E.C. customs procedure, whether it be free zone, warehouse, inward processing relief, etc. For example road vehicles, including private cars of third country origin registered to persons living in the zones are free of duty, and a company situated in the zone has the right to purchase all its requirements free of duty. The local customs offices control these purchases, which mainly concern duty free motor vehicles and motor cycles.

3.14. The Court considers that the residents of the "free zones" are today getting a much greater advantage from the scheme than was the original intention. What, in the first instance, was intended as a local agriculture-based trading arrangement with Switzerland, has become a means by which local inhabitants, uniquely in the Community, can purchase duty free cars and motor cycles.

Gorizia

3.15. The "free zone" of Gorizia is part of the Community and part of the customs territory of the Community to which Article 3 of the Council Regulation (EEC) No 2151/84 applies. The "free zone" was set up after the Second World

War, and has its origin in the need to tackle the situation created as a result of the loss to Yugoslavia of the territorial hinterland of the Isonzo river valley. The idea was to protect the local market from the upheavals produced by the new situation, stimulate industrial activity, and give direct relief to the local population of about 45 000.

3.16. The aims manifest themselves in the quotas set in the Italian Law 1438 of 1 December 1948 which founded the "Free Zone". There are two lists of goods A and B, the former for the benefit of the population and the latter for trade and industry. The scheme provides exemptions, on both lists, from Community duties and levies and national taxes on manufactured goods. An element of the scheme provides exemption from duty for plant and machinery intended for the industries located in the "Free Zone".

3.17. In 1975 a local levy was introduced by which some of the resulting benefits could be directed towards financing job creation and other measures to promote the economy of the province of Gorizia (the Gorizia Fund levy). The levy is charged on goods purchased by "free zone" traders. The Italian authorities consider that this levy cannot be regarded as a customs duty on import or a charge having equivalent effect (EEC Treaty, part two, Title I Article 12) as there is no discrimination between foreign and national goods. In the light of a recent judgement of the Court of Justice concerning the "Octroi de Mer" in the French overseas departments, the Court considers that the Commission should examine the Gorizia fund levy and its compatibility with the Treaty (see also paragraph 6.5).

3.18. The authority with the main control functions is the Camera di Commercio Industria Artigianato e Agricoltura (C.C.I.A.A.) of Gorizia, through a special administrative Council (Giunta Camerale) made up of representatives from the major interested sections of the local community. This

council has full responsibility for the control and administration of the scheme, including accounting for all goods imported, overall control of the quota levels and control over the list A vouchers issued to the residents of the area of benefit.

3.19. The Italian authorities operate close documentary controls over the operation of the scheme, in particular the control of the quotas on the basis of import certificates issued by the Free Zone Council, the various systems of post import control over traders, the numerous rules concerning conditions to avoid diversion of products, and the marking of meat at import, labelling of butter, sugar and beer products etc. The main post import controls have been delegated to the Free Zone Council, but there are also audit verifications by the Customs and the Excise Police (Polizia Tributaria). The issue of "ration books" for the purchase of list A goods is under the control of the Free Zone Council.

3.20. Products produced by industries operating in the territory are considered by the Italian authorities for all fiscal purposes as being national products. It follows from this that any sales of these products abroad by the operators, or by subsequent national purchasers have the same consequences as exports of national products. This could therefore give rise to export refunds on processed agricultural goods. This is a loophole in the system especially since all goods concerned under this "free zone" arrangement have the legal status of being in free circulation. For example there could be a risk concerning goods manufactured from sugar where the Court noted that the quota was always used (e.g. 1988 - 3 000 000 kg, 1989 - 4 500 000 kg).

3.21. As indicated above one of the intentions of this system is to give direct relief to the local population. The local Chamber of Commerce estimated that the benefit to an

average family is between 50 000 to 60 000 LIT (32,4 to 38,9 ECU) per month.

The Municipality of Livigno

3.22. Situated in Italy at the northern-most part of the province of Sondrio, the alpine valley of Livigno has a long border with Switzerland and direct links to Switzerland through the Forcola di Livigno and the Passo del Gallo. Its only direct link with the rest of Italy is via the Passo del Foscagno. Livigno is part of the Italian State and therefore part of the Community. However, historical reasons and its geographical situation gave rise to a privileged position concerning Italian customs laws (Article 1 of Italian Customs Law No 1424 of 25 September 1940 and Presidential Decree No 43 of 23 January 1973). As a result Livigno is not part of the Customs Territory of the Community [Council Regulation (EEC) No 2151/84 Article 1].

3.23. The municipality with a population of 4 152 inhabitants, has the Italian status of "Zona Extra Doganale" which means that for all practical purposes concerning goods destined for Livigno, the municipality is treated as if it is a third country. Italian customs control is based on set quotas applying to both Community and third country goods, and transit control of the latter. The quotas are set annually at a level which is supposed to satisfy local consumption needs. All deliveries of goods and services to Livigno are exempt from VAT.

3.24. Today the prosperity of Livigno is linked to tourism and clearly the "tax free" status is an added attraction. The Italian authorities have a customs control post at the Passo del Foscagno and normal Community third country allowances are applied. There is an additional national franchise for certain foodstuffs (notably sugar).

3.25. The Commission has recently stated that there are at present no plans or justification for changing the territorial status of Livigno and considers that the present status of Livigno has only minimal consequences for the Community own resources(4).

3.26. However, in 1989 regarding the operation of the quota system, the local customs district concerned suggested to the Italian Customs General Directorate that the quota arrangement be abolished or, at the very least, limited to goods attracting high taxes or subject to special arrangements. In any event goods can enter Livigno directly from Switzerland on a non-quota basis.

3.27. Excluding goods that enter Livigno directly from Switzerland, the local Italian customs district estimate that the special status is worth at least 82 058 Mio LIT (53,2 Mio ECU) per annum of which VAT is the most important component.

The Valle d'Aosta

3.28. The alpine province of Valle d'Aosta in Italy bordering France and Switzerland is part of the Community and part of the customs territory of the Community to which Article 3 of Council Regulation (EEC) No 2151/84 applies. The territory of Valle d'Aosta is under Italian law a "free zone" and is "beyond customs bounds" ("posto fuori della linea doganale").

3.29. Like the "free zone" of Gorizia, the special arrangement was set up with similar aims after the 1947 Treaty of Paris. As with Gorizia and Livigno the "free zone" is primarily for the benefit of the (approximately 120 000) local inhabitants of the area and non-resident workers. To a degree, the aim is to stimulate local education facilities, industries and tourism. The basis of the "free

zone" is a list of certain goods which can be admitted into the territory free of Community import duties and national taxes on manufactured goods. Only the listed goods, within the set quotas, may benefit. The goods concerned must be intended exclusively for consumption or use in the territory of the Valle d'Aosta. The administration and management of the quotas are the specific responsibilities of the Assessorato Regionale dell'Industria e Commercio. Drawing on quotas is supervised by the customs. There is no relief from VAT.

3.30. The Italian authorities consider that there is little or no risk of major misuse due to the strict calculation of the quota limits, coupled with the peripheral geographical location of the area. There is no "fiscal customs border" between Aosta and the rest of Italy linked as it is by only two roads. Goods cleared under the arrangement are not in free circulation. If they were re-exported commercially from the Valle d'Aosta to the rest of Italy, duties would be charged.

Conclusions

3.31. Even though at present the amount of own resources concerned is relatively small, these territories present anomalous situations when viewed from the concept of the creation of a single market, and the widening of free or preferential trading arrangements with the adjacent third countries. Each territory in its own way creates a distortion. This becomes even more marked now that the Single Market is in place and will be further aggravated if the adjacent EFTA countries join the Community and these zones remain as they are.

4. THE SPECIAL TRADING ARRANGEMENTS

4.1. The Court included an examination of special trading arrangements in the context of the customs territory of the Community and the customs union upon which it is based. These trading arrangements concern the relationships between certain individual Member States and third countries. All of them show exceptions to the concept of the free movement of goods in a unified customs territory.

4.2. In all cases goods are admitted into the Member State or territory concerned free of duty or at reduced duty terms. Subsequently they are either not deemed to be in free circulation within the meaning of Article 10 of the EEC Treaty when reconsigned to other Member States, or if deemed to be in free circulation are with a destination condition (i.e. consumption or use within a certain Member State or area). In either case, on reconsignment to another Member State the Customs debt would have to be paid. These special arrangements have been provided for in Article 234 of the EEC Treaty or in Protocols or Acts of Accession. They all provide considerable benefits to the trading partners concerned.

4.3. The arrangements discussed are:

a) the Alto Adige/Austrian trade,
b) Denmark/Faroe Islands and Greenland,
c) France/Maghreb,
d) the former German internal trade,
e) German banana protocol,
f) Germany/Comecon countries,
g) Spain/Canary Islands,
h) Spain/Ceuta and Melilla,
i) United Kingdom/New Zealand butter trade.

The Alto Adige/Tyrol Trade

4.4. The Alto Adige (13 598 sq km) became part of Italy after the First World War. It is part of the Community and part of the customs territory of the Community. Specific provisions resulting from the 1947 Paris Treaty and the 1949 North/South Tyrol Preference Agreement between Italy and Austria aimed at simplifying trade between the Italian region of Trentino-Alto Adige and the Austrian provinces of Tyrol and Vorarlberg. In effect a free trade area was set up concerning essentially local trade in regional products. The Trentino-Alto Adige has a total population of 886 898 inhabitants.

4.5. Today the scope of the agreement has been reduced in as much as industrial products are covered by the EEC/EFTA agreements. However, it still has importance concerning the goods not covered by the EFTA agreement. In fact this special trading arrangement between Trentino-Alto Adige and the Tyrol and Vorarlberg represents around 12% of the total volume of trade between Italy and Austria.

4.6. The goods subject to this simplified trade procedure are controlled by means of annually set quotas. Each year schedules for import and export quotas are set by the Italian-Austrian Permanent Joint Commission. These schedules set the particular quotas in either value or quantity for each classification of goods concerned. The appropriate Chambers of Commerce have the responsibility for setting these quotas, in Innsbruck or Feldkirch for goods from Tyrol or Vorarlberg, and in Bolzano or Trento in the case of goods from Trentino Alto Adige.

4.7. The goods cleared by customs under the preferential agreement are, in fact, goods which are placed in free circulation on the specific condition that they are intended for consumption in the privileged area. On the Community

side the goods are not in free circulation outside Trentino-Alto Adige. It therefore follows that, if they are transferred without any further processing to another part of the Community, they must be shipped as third country goods not in free circulation.

4.8. The Italian customs authorities control this preferential trade by first ensuring that the companies applying for quotas have their residence or main office in the privileged area. Post importation verifications are made by the Guardia di Finanza who carry out verifications concerning sensitive goods (e.g. beef) and special enquiries where there are grounds to suspect that exempt goods have been sold to firms based in other regions.

The Denmark/Faroe Islands and Greenland Trade

4.9. The Faroe Islands and Greenland are autonomous regions within the Kingdom of Denmark. They have the Community status of third countries enjoying a preferential status with the Community. The Faroe Islands current status is set out in the Agreement between the European Economic Community, the Government of Denmark and the Regional Government of the Faroe Islands which came into effect on 1 January 1992([5]). The Faroe preference rules are broadly similar to those applied to EFTA countries. Greenland's status is under the General System of Preferences (GSP) and overseas countries and territories preference (OCT). The two countries do not form part of the customs territory of either the Community or of Denmark. However, according to Article 20 of the Danish Customs Law all goods whose origin is in the Faroes or in Greenland are exempt from duty on importation into Denmark. 99% of the Faroe Islands and 90% of Greenland's exports to Denmark are fish and fish products.

4.10. As far as the Faroe Islands' goods covered by the new agreement are concerned, the Danish authorities have concluded that Article 20 of the Danish Customs law is not compatible and has to be amended. The consequence is that with administrative effect from May 1992 any Faroe Islands' goods in excess of the Community duty free quotas have to be duty-paid. It is understood that the Danish authorities propose to change the customs law accordingly.

Trading arrangements between the French Republic and the Maghreb countries (Morocco, Tunisia and Algeria)

4.11. Morocco, Tunisia and Algeria have the Community status of third countries enjoying a preferential status with Community as a whole under the Generalised System of Preferences (GSP) and Maghreb agreements. All three countries also have a special trading relationship with France which in effect extends the Community Preferential Agreements giving extra preference concerning certain goods (fruit, vegetable and vegetable products). These special arrangements stem from the EEC Treaty Article 234 (1) and the "Protocol on goods originating in and coming from certain countries and enjoying special treatment when imported into a Member State". The arrangements were formalised by exchanges of letters in April 1976 between the Commission and the countries concerned.

4.12. Under Article 2 of the above mentioned protocol, goods imported into France, and benefiting from this extra preferential treatment, are not considered as being in free circulation in France within the meaning of Article 10 of the Treaty when re-exported to another Member State. The normal EC control systems for the importation of goods claiming preferential treatment operate (certificates of origin, direct transport rules etc.). Any post importation control that is deemed to be necessary is carried out by the responsible branch of the customs service.

4.13. As a result of the Court's enquiries and expressed concerns regarding the levels of post-importation verification of the re-export trade, the French authorities decided to augment their controls. This will require the traders involved to sign a commitment entailing the use of a Community transit document indicating that the goods are not in free circulation within the meaning of Article 10 of the Treaty in the event of reshipment to another Member State. It will however be very difficult to ensure that this is done now that the single market is in place.

The former German internal trade

4.14. Events overtook the Courts' enquiries. The reunification of Germany means that arrangements concerning German internal trade are now only of historical interest. The former arrangements had however considerable impact, and serve as probably the most important example of a special trading arrangement that the Community has so far had to accommodate.

4.15. The German Democratic Republic was part of the German customs territory, thus when goods of GDR origin passed to the Federal Republic of Germany no customs barrier was crossed. Goods originating in the GDR were therefore not subject to customs duty or VAT on transfer to the FRG. Provided that all proper formalities had been completed all such goods were regarded as being in free circulation in the European Communities. This German internal trade was taken into account by a special protocol in the Treaty establishing the European Economic Community, and acknowledged in Article 4(a) of Council Regulation (EEC) No 2151/84 concerning the customs territory of the Community.

4.16. In terms of volume of trade and the status of the goods this is probably one of the most difficult special

trading relationships that the Community has had to deal with.

4.17. On the one hand goods originating in the GDR and directly entering the Federal Republic were not subject to any of the Community's customs duties, levies or quotas and on the other hand direct imports from the GDR into other Member States were subject to all these duties plus the Community's common arrangements for imports into the Community of products from State-trading countries.

4.18. Thus there was the problem that any substantial re-export trade of GDR goods via the FRG could distort trade, and circumvent import quotas and the payment of import duties and levies. In addition, there were the problems involving third country goods imported into the FRG via the GDR under the guise of German internal trade.

4.19. The FRG customs authorities adopted various administrative procedures both to prevent distortions in the Community market and to protect Community own resources and national taxes. These included

a) an import licensing procedure,
b) an obligation to present the goods transferred to the customs,
c) monitoring of the firms involved by the fiscal audit department (Betriebsprüfung) and the Customs Investigation Department (Zollfahndung).

4.20. Under the protocol Member States were permitted to take measures to prevent any difficulties arising from the German Internal trade. Only France and the Benelux countries ever availed themselves of this right.

4.21. In 1988 the value of GDR goods received by the FRG was 6 788,7 Mio DM (3 335,1 Mio ECU) which using a weighted average rate of 4,6% means that approximately 160 Mio DM

(78,6 Mio ECU) of duty was waived as a result of the Protocol. In 1986 the Commission calculated that re-export of GDR goods to other Member States was 45 Mio DM (19,1 Mio ECU), equivalent to a potential loss of 2,07 Mio DM (1,02 Mio ECU) in duty. On the other hand no export refunds were paid on CAP goods involved in the German internal trade.

The Protocol on the tariff quotas for imports of bananas to the Federal Republic of Germany

4.22. The Protocol, which was signed on 25 March 1957, provides for an annual duty free import quota of bananas of Brussels nomenclature ex 08.01. The historical basis for this protocol was that the FRG wanted, as far as was possible, to safeguard its supplies of bananas which had previously had a zero rate of import duty under the FRG import tariff. At the present time the full rate of duty is 20%. Imports from ACP/OCT countries and Turkey are free of duty.

4.23. Calculation of the quota has its base figure as being equal to 75% of the imports for 1956. An annual increase is allowed according to a formula of comparison of the difference between total quantities imported during the preceding year and the quantities imported in 1956. The calculated base figure for 1956 was 290 000 metric tonnes of bananas. From this base figure the quota has steadily increased within the limits allowed to a level of 892 000 metric tonnes in 1990. In 1990 the net imports of bananas into the FRG from all sources (consumption) was 1 117 114 metric tonnes, and in 1991 it was 1 295 683 metric tonnes.

4.24. The 1990 import value of 1 tonne of bananas was between 1 000 and 1 200 DM (491 and 589,5 ECU). This means that the total value of the 1990 quotas to the German banana

importers/consumers in terms of import duty saved was at least 178 400 000 DM (87 643 020 ECU)
(i.e. 892 000 x 1 000 x 20% DM).

4.25. The 1992 quota of 1 350 000 tonnes represented a loss of 270 Mio DM (132,6 Mio ECU) own resources to the Community, a sum equivalent to approximately 0,9% of the total customs duties revenue of the Community and 3,8% of the total duty collected in Germany.

4.26. The legal customs status of "quota bananas" is that they are in free circulation in the Community with an end use condition that the bananas are consumed in the FRG. The protocol itself establishes no condition concerning re-export or status, but in fact the German authorities however have administrative rules designed to prevent these goods being re-exported under a free circulation status. Quota bananas should only be re-exported if it can be proved at the time of exportation that the duty applicable to third countries has been paid.

4.27. Any re-export trade involving bananas that have been imported duty free under the quota would be in effect an abuse of the protocol regardless of status. It would mean that annual quotas are being set at a higher level than is necessary to satisfy the German bananas market.

4.28. The full rate of duty for bananas is 20%, one of the highest duty rates in the CCT. This in itself indicates that a high degree of market protection is required.

4.29. Thus the situation today is that whereas on the one hand the Member State with the highest consumption of bananas per head of population (13,4 kg p.a.) obtains most of its banana supply duty free from countries to which the full rate of duty applies, on the other hand the Community has to take specific measures to support banana production

in the territory of the Community and ACP/OCT countries. At the same time the Commission is authorising certain Member States to apply intra-Community surveillance and other measures in respect of bananas in order to protect their traditional ACP suppliers of bananas (e.g. UK, France and Italy)(6).

4.30. It is doubtful if the current situation is what was intended when the Heads of Government signed the German banana protocol in 1957. What has subsequently developed is a clear example of what can happen when an open-ended special trading arrangement is written into Community law. This has happened even though Article 4 of the protocol foresees the possibility of abolition or amendment of the quota.

4.31. However, on 7 August 1992 the Commission proposed a regulation on the common organisation of the market in bananas. Amongst other matters this will substitute certain national arrangements which hamper the achievement of a single market in bananas. On 13 February the Council approved Council Regulation (EEC) No 404/93 on the common organisation of the market in bananas. The new arrangements which come into force on 1 July 1993 will end the duty free import quota arrangements for the FRG.

German Comecon Trade

4.32. The incorporation of the former GDR into the Community and the Customs territory of the Community as a result of German unification meant that certain trading agreements that the former GDR had with the Comecon countries had to be taken into account by the Community.

4.33. Thus Council Regulation (EEC) No 3568/90 of 4 December 1990 provides for the suspension of import duties in the former GDR on goods originating in Bulgaria,

Czechoslovakia, Hungary, Poland, Rumania, USSR and Yugoslavia (Comecon countries) where the import of the goods were covered by the former agreements.

4.34. This special provision was introduced for the limited period from 3 October 1990 to 31 December 1992 and has the restrictive provision that the goods are released for free circulation and consumed in the area of the former GDR or are processed there sufficiently to acquire Community origin. Customs control of the arrangement involves a system of import licences coupled with verification of the end use of the goods concerned.

4.35. The Court carried out an on-the-spot audit of the control arrangement in February and December 1991. The main conclusions were that:

a) the system of issuing licences was in the beginning very slow. In February 1991 the Ministry had a back log of about two months. Consequently all importations had to be made on a provisional basis without the potential duties being secured. As from October 1991 guarantees had to be lodged;
b) trade had dramatically reduced with only approximately 7% of the quota values being taken up in the last three months of 1990;
c) the customs authorities began end-use verification work only in the latter half of 1991.

4.36. The Court notes that, despite the difficulties involved in absorbing the GDR and adjusting to the new situation, it was recognised that the arrangements should be for a strictly limited time. The initial time limit was set at 31 December 1992 which ensured no distortion of trade in the single market. However, the Commission on 18 January 1993 proposed a Council Regulation which extends this date

until 31 December 1993 pending full formulation of the Community's commercial policy towards these countries.

The Canary Islands' trade with mainland Spain

4.37. On 1 July 1991 the Canary Islands, part of the Kingdom of Spain, also became part of the customs territory of the European Community. The Council, by Regulation (EEC) No 1911/91 decided that this should be introduced progressively. Consequently the Canary Islands are now treated in the same way as mainland Spain and CT documentation is used to prove the status of goods. The common agricultural and fisheries policies of the Communities now apply to the islands, taking into account the special features of Canary Island production. Since 1 July 1992 the Common Agricultural Policy applies to the Canary Islands with certain derogations. For example bananas are excluded from these arrangements.

4.38. Prior to 1 July 1991 the Canary Islands had certain preferential arrangements with the Community as a whole. Additional preference arrangements existed whereby fish products and bananas of Canary Islands origin qualified for exemption from customs duty when imported into mainland Spain, but these goods were not deemed to be in free circulation within the meaning of Article 10 of the EEC Treaty when reconsigned to another Member State.

4.39. The only risk to own resources prior to 1 July 1991 was that concerning fishery products due to the fact that there were different quotas for Spain and the rest of the Community. If the rest of the Community quotas was exhausted before that of Spain, there was a danger of diversion through Spain to the Member States, albeit at accession rates. Integration into the customs union of the Community eliminates this risk.

4.40. Although possible, the re-export of fish has not been considered to be likely as a major economic activity as the fish imported into Spain is required to satisfy a profitable local market. For bananas there was little risk as there is no mainland Spanish production.

4.41. In addition the new regulation provides for the "arbitrio insular tarifa especial" Island Customs Duty to be abolished by 31 December 1992. On a case-by-case basis the application of this charge to certain sensitive products may continue until 31 December 2000. In fact in December 1992 the Commission made a proposal to extend application of the charge when certain sensitive products are introduced into the Canary Islands from other parts of the Community.

4.42. Introduction of the CCT will be made over the same transitional period. If during this period tariff differences lead to a distortion of trade, the Commission has reserved the right to levy the difference in import duties when goods in free circulation in the Canary Islands are introduced into other parts of the Community's customs territory. In fact, under Council Regulation (EEC) No 1605/92 the Common Customs Tariff duties applicable to imports of a wide range of industrial products have been suspended in full from 1 July 1991 to 31 December 1995.

4.43. However, the Court has noted that according to Article 6 paragraph 3 of the new regulation, application of the CCT to the Canary Islands shall be without prejudice to any specific tariff measures or derogations from the common commercial policy, should the need arise, in respect of certain sensitive products. It could create a situation where in a part of the Community full application of the CCT does not apply. The Court considers that these provisions should be kept under review.

Ceuta and Melilla trade with mainland Spain

4.44. Situated on the Mediterranean coast of North Africa, the territories of Ceuta and Melilla are part of the Kingdom of Spain, thus part of the European Community but not part of the customs territory of the Community.

4.45. The legal basis concerning the territorial status with the European Communities is contained in Protocol No 2 concerning the accession of the Kingdom of Spain to the European Communities. This status is confirmed in Council Regulation (EEC) No 2151/84 Article 1.

4.46. Melilla and Ceuta have certain preferential arrangements with the Community as a whole. There are additional preference arrangements with peninsular Spain whereby goods of Ceuta or Melilla origin qualify for exemption from duty. These goods are not deemed to be in free circulation within the meaning of Article 10 of the EEC Treaty when reconsigned to another Member State.

4.47. Under Spanish law, the territories have been designated as exempted areas for custom purposes, making them in effect tax-free zones. There is substantial trading in tax-free goods to non-residents.

The UK/New Zealand Butter Trade

4.48. In the 1972 Treaty of UK Accession special arrangements were made for the continued UK import of New Zealand butter on special terms. These terms, which are laid down in Article 5 (2) of Protocol 18, allow for a special reduced import levy on New Zealand butter. The current arrangement expires on 31 December 1993, and before 1 October 1993 the Council must take a decision on the maintainance of the exceptional arrangements from 1 January 1994(7).

4.49. Butter imported under these terms is not in free circulation and the UK authorities have to ensure that it does not leave the territory of the United Kingdom. The Community Budget estimate of the levy foregone under the special arrangement in terms of losses in levy is 1 Mio ECU for 1991.

Conclusions

4.50. The arrangements discussed here illustrate the difficulties involved, and the subsequent sometimes complex control arrangements that the individual Member States have had to make to ensure that special preferential trading does not cause distortions or subsequent losses to the Community own resources. The Court has noted the efforts made in the Member States to ensure this.

4.51. It is inevitable in a Customs Union between sovereign Member States that it will be necessary to make some kind of arrangement to take account of previous preferential bilateral trading and to allow former trading partners to adjust. Regardless of the legal nature of the arrangements it would be a preferable and usual practice to set a time limit or transitional period to allow the trading partners to adjust to the new situation. This has not always been the case and some of these very important trading relationships have no time limits.

4.52. This could create distortions of trade from 1993 when the Customs Union of the Community and its territorial application enters the entirely new situation of the single market. Furthermore it will no longer be possible for customs authorities to control "re-export" trade through documentary procedures as these will no longer exist.

4.53. The Court considers that the post January 1993 situation should be monitored and action taken if trade distortion involving losses of own resources occurs.

5. THE TERRITORIAL SEAS, INTERNAL WATERS AND AIRSPACE

5.1. The Member States territorial seas, internal waters and airspace are part of the Customs Territory [Council Regulation (EEC) No 2151/84 Articles 1(2), 5 and 6]. That part of the Continental shelf that is outside Member States' territorial waters is not part of the Customs Territory. Article 5(1) states that the provisions made by Member States in respect of their territorial waters remain applicable until the introduction of Community provisions in these areas.

5.2. While there are national customs procedures governing stores for vessels and aircraft, at present the only Community provisions in this area are those which provide under certain conditions for suspension of customs duties in respect of goods intended for incorporation in ships, drilling and production platforms as well as for civil aircraft and goods for use in civil aircraft(8). On 8 March 1978 the Commission made a proposal for a detailed Council Regulation concerning the matter of stores (OJ C 73 of 23.3.1978) but the proposal has not been approved by the Council.

5.3. Similarly a proposal for a Council directive on the Community VAT and Excise duty procedure applicable to the victualling of vessels, aircraft and international trains, which was submitted to the Council in January 1980 (OJ C 31 of 8.2.1980), has not been acted upon.

5.4. In these circumstances the Court had to make enquiries directly of each Member State concerning their national procedures, in particular those relating to Customs Duty

reliefs for stores and fuel for aircraft, ships, and offshore platforms.

5.5. The major influence on individual arrangements is the level of excise duty and VAT, and the consequent need to protect national revenues. For example, almost all hydrocarbon oil used as fuel by Community ships and aircraft will have been refined within the Community and thus be in free circulation. The excise duty and VAT relief available on this hydrocarbon oil is however a significant factor to the operator and the Member State concerned.

5.6. All Member States are concerned to safeguard national excise duties and VAT and to ensure that their national air and sea transport companies are not disadvantaged. With no Community legislation, the one underlying factor that holds all the existing arrangements in the Member States together is that there are international agreements. This makes it all the more surprising that despite their importance there still does not seem to be any intention to unify Community customs legislation in this area.

5.7. In 1993 the customs territory of the Community is a complete internal market without frontier controls. In order to achieve this position there is a general presumption that the same rules should apply in all Member States.

5.8. The following examples show however that the Member State rules governing supplies to vessels and aircraft can be very different. In these descriptions "duty free" includes import duty, VAT and excise exemptions. The examples are not exhaustive.

Ships

5.9. Certain Member States allow no duty free stores to be used on internal or domestic traffic, including ships on coastal voyages e.g. Spain, Ireland, Portugal and UK.

5.10. Other Member States will allow vessels arriving from abroad to use their stores when there is cargo remaining on board for a further port, but not to ship further duty free stores. The UK for example allows this but will seal up high duty stores wines, spirits and tobacco to prevent use.

5.11. The Benelux countries operate similar systems, and subject to quantity restrictions the Netherlands authorities will allow the crew and passengers sufficient duty-free supplies of wines, spirits and tobacco to last them during the journey in Benelux, or even whilst a ship is in dock or laid up for repairs.

5.12. Spain operates under similar strictly calculated quantities but does not allow private pleasure or recreation vessels to ship duty free stores.

Aircraft

5.13. The differences are more pronounced for VAT reliefs on aircraft fuel and stores. In a majority of Member States no relief is given on "home" based aircraft on domestic flights. Relief is, however, given on EC and third country based aircraft. Other Member States base the VAT exemptions on the comparative levels of income between their domestic and international traffic.

5.14. France, for example, grants VAT relief for all of an airline operators stores and fuel requirements provided that 80% of the total income is from international traffic. All passenger and freight flights, including domestic are

eligible for all duty free reliefs on the fuel used in Germany, but catering supplies for in flight consumption only on an international airline service.

5.15. The Italian system extends to private aircraft, but goes even further in granting exemption from customs duties, manufacturing tax and VAT to national companies providing scheduled or charter passengers or freight services regardless of destination.

Conclusions

5.16. Any distortion of competition flowing from the anomalies in Member States schemes has varying effects on Member States indirect taxation revenues and Community own resources. The need for modifications should be considered in the context of the single market operative since 1 January 1993.

6. OTHER EUROPEAN TERRITORIES, ENCLAVES, STATES, AND MEMBER STATE OVERSEAS TERRITORIES

6.1. This section describes the situation concerning certain territories and states that, in the main, are not part of the customs territory even though in some cases they are actually part of the Community.

The German territory of Büsingen

6.2. The Büsingen enclave, geographically in Switzerland, of 1 660 inhabitants is part of the Community but not part of the customs territory of the Community [Council Regulation (EEC) No 2151/84 Article 1]. The arrangements for Büsingen were agreed in the Treaty of 23 November 1964 between the FRG and the Swiss Confederation. As far as Community own resources are concerned there is no collection of duties or

levies because in practical terms Büsingen is regarded as if it is a part of Switzerland and is part of the Swiss Customs Territory. As a consequence no own resources are made available nor is there any monetary compensation between the two states for duties or taxes collected by the Swiss authorities.

The Commune of Campione d'Italia

6.3. Situated on the shore of Lago di Lugano completely surrounded by Swiss territory, the Campione d'Italia enclave (2,6 sq km) of 3 000 inhabitants is part of the Community but not part of the customs territory of the Community [Council Regulation (EEC) No 2151/84 Article 1]. On the basis of a modus vivendi agreement between Italy and Switzerland, Campione is regarded for customs purposes as if it is part of Switzerland. As far as Community own resources are concerned there is no collection of customs duties or levies. In addition there is no monetary compensation between the two states for any duties or taxes collected by the Swiss authorities that might be attributable to Campione.

The French overseas departments (DOM)

6.4. By French Law No 46-451 of 19 March 1946, Guadeloupe, Martinique, Reunion and Guyana were given the status of departments of the French Republic. Account of this was taken in the Treaty establishing the Economic Community [EEC Treaty Article 227 (2)]. Thus the DOM are an integral part of the Community, and are part of the customs territory of the Community, and all the customs rules of the Community apply. There is however a local tax ("Octroi de Mer") on all goods imported into the DOM's regardless of origin. The revenue collected by way of the "Octroi de Mer" on goods of Community origin amounted to a total of FF 2 173 171 886 (312 534 520 ECU) in 1988.

6.5. The "Octroi de Mer" would seem to be outside the spirit of a customs union. In this context the Court notes the Council Decision of 22 December 1989 (89/688/EEC) to reform the "Octroi de Mer" by 31 December 1992, at the latest and the recent Court of Justice ruling(9). In July 1992 France passed a law reforming the "Octroi de Mer" according to the guidelines of the Council Decision.

Mayotte, St. Pierre et Miquelon and the French Overseas Territories (TOM)

6.6. None of these territories are part of the Community or part of the customs territory of the Community. For the application of the Community Common Tariff all are treated as third countries. They all have a status for which preferential trade arrangements exist. Both the Overseas Countries and Territories (OCT) and the Generalised System of Preference (GSP) arrangements, can, apply to trade between these territories and the European Community. These arrangements provide for particular goods originating in these territories to be imported and entered to free circulation in the EC at reduced rates of customs import duty and/or agricultural levies. None of these territories have any special extra status with France over and above that which exists between these territories and the Community as a whole.

6.7. The Court notes that Council Regulation (EEC) No 2151/84 does not acknowledge the concept of "territorial communities". Under Article 1 of this regulation, the customs territory of the Community includes "the customs territory of the French Republic" except for the overseas territories.

6.8. On the other hand, the decisions on the association of overseas territories and countries with the Community (Council Decisions 80/1186/EEC, 86/283/EEC, 90/146/EEC and

91/482/EEC) noted the amendments made to the legal status of Mayotte and Saint-Pierre et Miquelon by Laws No 76-1212 of 24 December 1976 and No 85-586 of 11 June 1985. Mayotte is described as a "territorial community" in Decision 80/1186/EEC and Saint Pierre et Miquelon is cited as such in the 1986 decision.

6.9. It must, however, be remembered that the distinction made in France between "territorial communities" and the overseas territories has no bearing on the status of these territories as far as Community law is concerned. The Court has noted that these ambiguities in the definition of the customs territory have been removed in the context of the new Community customs code (Council Regulation (EEC) No 2913/92).

The German Island of Heligoland

6.10. The Island of Heligoland with its 1 900 inhabitants is part of the Community but not part of the customs territory of the Community. This "duty free" status was gained as part of the Anglo-German colonial agreement of 1 July 1890 when possession of the island was transferred from Great Britain to Germany. The special status has been maintained and acknowledged in Community Legislation and in German Customs Law No 2 Article 2 (3). Thus imports into the island of Heligoland attract no Community customs duties, FRG VAT is not chargeable, and exports from Member States are free of VAT, with export refunds granted on agricultural products. Around 465 000 tourists visit Heligoland each year.

6.11. The inhabitants of the Island of Heligoland and the undertakings there live mainly on the health cure business, tourism and the fitting-out of ships. The Island's budget is 50% financed by the local authority's import tax which is charged on imports to Heligoland of tobacco, spirits, beer,

coffee and tea. The Island's trading companies obtain their goods mostly from the customs territory of the Community, in particular from free ports and public customs warehouses. Sometimes they import goods direct from EFTA countries. There is no export trade in goods originating in Heligoland.

6.12. From the viewpoint of travellers allowances, Heligoland has the same status as any third country. Thus for example, souvenirs bought on Heligoland by tourists are cleared by the Heligoland customs office when the travellers leave the island. This customs office is a department of the Main Customs Office Hamburg-Harburg. As the "advance" customs office, it basically carries out a full range of customs tasks including checks on tourists leaving the Island, collection of duties and levies on goods in excess of the traveller's duty-free allowance, and customs clearance of registered luggage and postal packages. In 1990 the Heligoland customs office collected a total of 133 861,85 DM (65 762,7 ECU) in customs charges and VAT.

Gibraltar

6.13. Gibraltar was ceded to Britain by the peace treaty between Spain and Britain signed at Utrecht in 1713, and has had the status of a United Kingdom Crown Colony since 1830. By virtue of Article 227(4) of the Treaty establishing the European Economic Community, Gibraltar is part of the Community ("The provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible"). Article 28 of the United Kingdom Act of Accession provides in effect that Community acts relating to agricultural policy and Community acts on harmonisation of turnover taxes shall not apply to Gibraltar.

6.14. The Community's common customs tariff, does not apply to Gibraltar, and Gibraltar is not part of the Customs

territory of the Community, this appears to the Court to be a contradiction with the provisions of Article 227(4).

6.15. Its customs revenue is therefore not part of the revenue of the Community. Thus although part of the Community, Gibraltar is to all extent and purposes effectively treated as a third country as far as traded goods are concerned. Exports of goods of local origin to the Community are treated under normal preference terms (GSP).

Mount Athos

6.16. Mount Athos is an administratively autonomous part of Greece, and is therefore part of the Customs Territory of the Community and part of the Community. The development of monasticism on Athos goes back over 1000 years. Since 1926 Athos has the status of a "Theocratic Republic", ruled by a Holy Community under the supervision of a Greek governor and a small Greek police force. All monks must adopt Greek citizenship.

6.17. The special status of Mount Athos is guaranteed by Article 105 of the Hellenic Constitution and by the Joint declaration to the Greek Treaty of Accession.

6.18. As far as Community own resources are concerned provision is made for the continuation of certain customs franchise privileges and tax exemptions which are administrated by the Greek authorities.

The Vatican State

6.19. The sovereign independent state of the Vatican is a third country, not part of the Community nor part of the Customs Territory of the Community. The customs status is governed by the Italian-Vatican Customs agreement of 30 June 1930 which came into force on 1 August 1931. Still in force,

this agreement allows for the complete exemption from Community duties and levies. Export refunds are paid on eligible agricultural goods delivered to the Vatican State. The State is more than just the City State itself; it also includes all the many other corporations, institutions and offices of the Holy See situated in buildings throughout Rome.

6.20. The Vatican City State does not have a customs service. There is however close cooperation between the services of the Governor of the Vatican City and Rome No 1 Customs District. This Customs District controls transit procedures to ensure that goods destined for the Vatican are actually received. In fact the arrangements are that customs formalities are completed in the Vatican itself, one of the few occasions where Community customs transit formalities are completed outside the Customs Territory of the Community. There is a close documentary control and a high percentage of physical examination by the customs officials and officers of the Guardia di Finanza who have a permanent presence in the square opposite the Vatican Goods Office.

6.21. Under the 1930 Customs agreement the small amount of Vatican origin goods exported to Italy are free of duty under preference. The goods are liable to import VAT. These same goods would be dutiable if exported to any other Member State.

6.22. The persons eligible to benefit from the customs exemptions of the Vatican State are the permanent residents of the City State itself (some 600 people) and the persons who reside permanently or temporarily in the other buildings (on average some 20 000 in any one year are there for study purposes, religions training, official reasons etc...) In addition Italian citizens employed by, or pensioners of, the agencies of the Holy See and the governorship of the Vatican

City State, and their families have the right to use the Vatican shops. This is estimated to be about 12 000 persons.

6.23. One of the methods used by the Vatican authorities to ensure that only eligible persons use their shops is to issue these persons with passes granting access. "Ordinary" passes are issued to Italian citizens who carry on their professional activities in the employ of the Vatican offices and within the territorial confines of the Vatican City. These "ordinary" passes entitle the holder to purchase various goods three times a week, within specific limits in terms of quantity and cost. For example, the quotas laid down for meat, butter and spirits are as follows:

a) meat: LIT 50 000 maximum expenditure,
b) butter: one pack of approximately 2,5 kg,
c) spirits: two bottles of 750 ml.

These "passes" allow employees who work within the walls of the Vatican City to make the purchases cited above three times a week. On the other hand, those who work for the Vatican in premises located outside the territorial bounds of the Vatican City and Vatican pensioners are entitled to purchase the same quantities of goods only once a week ("weekly passes") or once a month ("monthly passes").

7. FINAL CONCLUSIONS AND RECOMMENDATIONS

7.1. A great deal of progress has been made in transforming the major part of the customs territory of the Community into an area within which there is a very high degree of certainty and uniformity concerning customs rules. Community customs legislation is already designed to encourage a uniform approach to the application of customs rules by national administrations in partnership with the Community institutions.

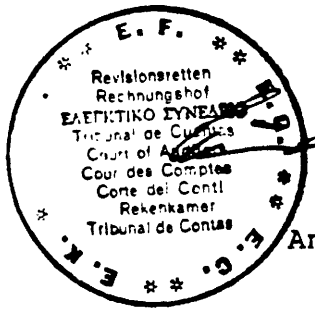
7.2. Even concerning the many special situations described in this report, there is no doubt that all the customs

authorities concerned make considerable efforts to keep each situation under control and within the prescribed limits. To the greatest extent own resources are thus protected by the control procedures applied in the Member States.

7.3. There are however anomalous situations and the Court has identified these in this report. The Court considers that all these special situations should be matched against the present day standards and systems that are being set up to accommodate the Community Single Market.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 1 April 1993.

For the Court of Auditors



André J. Middelhoek
President

(1) Treaty establishing the European Economic Community (signed in Rome on 25 March 1957).

Part Two Title I - Free movement of goods
Part Four - Association of the Overseas Countries and Territories
Part Six - General and Final Provision Article 227 (2)
- French Overseas Departments
Article 234 "... agreements concluded before entry into force of this treaty ..."

* Protocol on German internal trade and connected problems
* Protocol on special arrangements for Greenland
* Protocol on the tariff quota for imports of bananas
* Protocol No 2 on the Faroe Islands
* Protocol No 3 on the Channel Islands and the Isle of Man
* Protocol No 18 on the imports of New Zealand butter and cheese into the United Kingdom
* Joint declaration concerning Mount Athos.
* Protocol No 2 concerning the Canary Islands and Ceuta and Melilla

(2) Council Decision No 90/680/EEC of 26 November 1990 on the conclusion of the agreement in the form of an exchange of letters between the European Economic Community and the Principality of Andorra, OJ L 374 of 31.12.90.

(3) Council Decision No 92/561/EEC of 27 November 1992 concerning the conclusion of an interim agreement on trade and customs union between the European Economic Community and the Republic of San Marino, OJ L 359 of 9.12.92.

(4) Answer to Parliamentary Question No 147/91: "... The Commission does not see any justification at present for changing the status enjoyed by these territories...", OJ C 195 of 25.07.91.

(5) Council Decision No 91/668/EEC of 2 December 1991 concerning the conclusion of the agreement between the European Economic Community of the one part and the Government of Denmark and the Home Government of the Faroe Islands of the other part, OJ L 371 of 31.12.91.

(6) Commission Decision No 92/4/EEC and Commission Decision No 91/377/EEC respectively authorise the United Kingdom to extend, and the Italian Republic to apply, intra-Community surveillance in respect of bananas originating in certain third countries and put into free circulation in other Member States, OJ L 4 of 09.01.92 and OJ L 203 of 26.07.91. Also Commission Decision No 92/554/EEC authorises the French Republic to apply safeguard measures to the importation of bananas originating in the Republic of Cameroon and Côte d'Ivoire, OJ L 355 of 05.12.92.

(7) Council Regulation (EEC) No 3841/92 of 17 December 1992 relating to the continued import of New Zealand butter into the United Kingdom on special terms, OJ L 390 of 31.12.92.

(8) Commission Regulation (EEC) No 4141/87 of 9 December 1987 setting out the rules of procedure. Also section II (parts A and B) of the Preliminary Provisions to the Combined Nomenclature, OJ L 387 of 31.12.1987.

(9) Case C 163/90 of 16.07.92 Administration des Douanes et Droits Indirects vs L. Legros and others (Free movement of goods).

Annex I

LIST OF THE MEMBER STATES OVERSEAS COUNTRIES AND TERRITORIES REFERRED TO IN PARAGRAPH 1.11

1. Country having special relations with the Kingdom of Denmark:
   - Greenland

2. Overseas territories of the French Republic:
   - New Caledonia and Dependencies,
   - Wallis and Futuna Islands,
   - French Polynesia,
   - French Southern and Antarctic Territories

3. Territorial collectivities of the French Republic:
   - Mayotte,
   - St. Pierre and Miquelon

4. Overseas countries of the Kingdom of the Netherlands:
   - Aruba,
   - the Netherlands Antilles (Bonaire, Curaçao, Sint Maarten, Saba, Sint Eustatius).

5. Overseas countries and territories of the United Kingdom of Great Britain and Northern Ireland:
   - Anguilla,
   - Cayman Islands,
   - Falkland Islands,
   - South Georgia and the Sandwich Islands,
   - Turks and Caicos Islands,
   - British Virgin Islands,
   - Montserrat,
   - Pitcairn,
   - St. Helena and Dependencies,
   - British Antarctica Territory,
   - British Indian Ocean Territory.

Annex II

A comparison of customs duties and levies per head of population
Isle of Man, Monaco, Mittelberg, San Marino and Andorra
(paragraph reference 2.39)

Amounts attributed to (i.e. retained by) or reimbursed to the following territories expressed in ECU per head of population.

Isle of Man

Population 64 569 (1987)

Duties and levies attributable under the IOM Act (1991)	£ 2 402 672	
Duty per head of population*	£ 37,21*	
(1 ECU = £ 0,716117)		= 51,96 ECU

*: This amount includes a factor for consumption by tourists)

Monaco

Population 25 000 (approx.)

Total Duty + Levies attributable 1988	FF 8 267 262	
Duty per head of population	FF 330,69	
(1 ECU = 6,95338 FF)		= 47,56 ECU

Mittelberg

Population 4 968 (1988)

1988 calculated Duty per head of total population of FRG+Mittelberg	DM 98,66	
(1 ECU = 2,03553 DM)		= 48,47 ECU

San Marino

Population 22 000

(a) Amounts actually attributed to on the "duty collected" basis in force

Duties stated to have been collected 1985-87	10 342 944 168 LIT
average per annum	3 447 648 056 LIT
duty per head of population	156 711,28 LIT
(1 ECU = 1 542,4 LIT)	= 101,60 ECU

(b) Hypothetical population based calculation for San Marino

1986 Total Duty and Levy paid by Italy to the Community

Levy	ECU	356 391 744,71
Duty	ECU	770 056 809,43
	ECU	1 126 448 554,14

Total Population of Italy and San Marino (approx. figures)

Italy	56 700 000
San Marino	22 000 (1)
	56 722 000

Duty per head of combined population

$$\frac{1\ 126\ 448\ 554{,}14}{56\ 722\ 000} = 19{,}85 \text{ ECU}$$

Andorra

Population 50 000 (approx.)

(a) Estimated amount likely to be attributed on the duty collected basis

Total value of imports [1988 Andorran statistics]	= 94 009 281 Mio PTA
Using average duty rate of 6% this represents	5 640 556 Mio PTA

Duty per head of population

$$\frac{5\ 640\ 556\ 000\ 000}{50\ 000} = 112\ 811\ 150 \text{ PTA}$$

(1 ECU = 129,668 PTA) = 870,00 ECU

(b) Hypothetical population based calculation

1988 total duty and levy paid by France and Spain plus estimate for Andorra

. France	duty	1 378,3	
	levy	110,9	
. Spain	duty	415,7	
	levy	199,8	
Andorra estimate		44,1	
		2 148,8	Mio ECU

Total combined population of Spain, France and Andorra (approx. figures)

Spain	38 400 000	
France	54 300 000	
Andorra	50 000	(1)
	92 750 000	

Duty per head of combined population

$$\frac{2\ 148\ 800\ 000}{92\ 750\ 000} = 23{,}17 \text{ ECU}$$

(1) Note: Any actual population/consumption based reimbursement scheme would have to include a tourist consumption element. This would create a higher "fiscal population" for calculating the reimbursement amount.

Commission reply
to the Court's special report on the customs territory

General

1. As the Court recognizes in its report, certain arrangements entered into by the Community or by its Member States have historical and/or political origins. In their future negotiations and contacts, the Community and the Member States must gradually eliminate situations incompatible with the single market, while taking account of the obligations arising from the agreements between the Community and the third countries concerned. The Commission is therefore trying to find appropriate means of reconciling the historical and political interests in question and the financial interests of the Community's own resources. However, it should be borne in mind that the financial impact of these exceptional situations on the Community is negligible.

2. The subjects dealt with in the report go far beyond those connected with the concept of the customs territory. Indeed, the report regards the concept of the customs territory as synonymous with the customs union itself.

It should perhaps be noted for the sake of completeness that the Customs territory of the Community and the "fiscal" territory of the Community are not the same.

The following territories are in the customs territory of the Community but ae not covered by the common fiscal legislation at present.

- The Isle of Man
- The Channel Islands
- The DOM
- Jungholz and Mittelberg
- Monaco
- San Marino
- The Canary Islands
- Mount Athos.

In 1993 the Isle of Man and Monaco, which essentially have common tax regimes with the United Kingdom and France respectively, will be treated for VAT and Excise purposes as parts of those Member States. If this were not to be the case then tax-frontiers would need to be introduced between them and the rest of the Community that do not exist at present.

The situation of Jungholz and Mittelberg is rather different in that Austrian VAT applies to these territories (while German excises apply). While up to the present the arrangement between Germany and Austria has allowed trade between these territories and Germany to proceed without the need for a tax border, this cannot continue unchanged in 1993 when the current regime of import and export between Germany and the other Member States is replaced by the acquisition system.

A special arrangement has been made between Italy and San Marino to avoid problems in that all movements between the two have to go through a particular VAT office.

The remaining territories must continue to be isolated from that part of the Community to which the common taxation regimes apply and for that reason will be treated as third countries.

3. As regards the special situation of Gex, Livigno, Valle D'Aosta, Campione d'Italia and Alto Adige, these territories will lose their peripheral position with future enlargements. As for the territories bordering on Switzerland, the prospects of Swiss accession in the near future are no longer clear at present. However, only accession would provide an opportunity to normalize the situation in relation to the customs union since the existing duty-free and tax-free privileges are as a rule fiercely defended by the interest groups concerned.

2. THE "REIMBURSEMENT TERRITORIES"

The Principality of Monaco

2.21. The Commission agrees that the Monaco coefficient should be reviewed.

The Republic of San Marino

2.27. By reason of the fact that the Community cannot be entitled to more than a Member State, the Commission has accepted that the duties collected by Italy, on behalf of San Marino, on imports to San Marino, a sovereign State which is not a member of the Community, are not Community resources. Following an exchange of letters, Italy has therefore been authorized since 1979 to make a deduction from the own resources made available to the Commission.

As this repayment covers a number of fields, Italy asked that the deduction should be based on the actual amounts arising from application of secondary Community legislation to imports of goods for San Marino; the Commission accepted this subject to controls by its officials.

As a result of these controls, the Commission considered that the above conditions had not been met in full and informed the Italian authorities of its reservation concerning the deductions.

The Commission has asked Italy for further information and a general review of the amounts deducted in order to check that these do in fact relate to goods for San Marino.

Pending this information and examination, the Commission is maintaining its reservation.

The Commission and the Italian authorities are now negotiating a solution of this problem.

4. THE SPECIAL TRADING ARRANGEMENTS

The Protocol on the tariff quotas for imports of bananas to the Federal Republic of Germany

4.22-4.31. On 7 August 1992 the Commission presented to the Council a proposal on the common organization of the market in bananas to replace the national measures in force and, in particular, the German tariff quota. This aspect was confirmed in Council Regulation (EEC) No 404/93 on the common organization of the market in bananas adopted on 13 February 1993 (applicable from 1 July 1993).

Germany-Comecon Trade

4.35-4.36. A DG XIX inspection of the arrangements between Germany and Comecon in 1991 led to the conclusion that the rules adopted in Germany were appropriate but that another inspection should take place to ensure that they were applied in practice.

The Canary Islands' trade with mainland Spain

Regulation (EEC) No 1911/91 on the application of the provisions of Community law to the Canary Islands amended the status of the Canary Islands in the Community, as determined in the Act of Accession for Spain, in order to integrate these islands in the Community's customs territory, in the common agricultural and commercial policies and in the common fisheries policy. In view of the resulting integration of the Canary Islands in the Community, the title employed in the Court's draft special report - "The Canary Islands' trade with mainland Spain" - seems far too restrictive.

4.37. Like other bananas produced in the Community, bananas from the Canary Islands are covered by the common organization of the market in this sector which was adopted by the Council on 13 February 1993 (Regulation (EEC) No 404/93) and which will enter into force on 1 July 1993.

4.41. The Commission proposal referred to by the Court was adopted by the Council on 8 March 1993 (Regulation (EEC) No 564/93).

4.43. Articles 6(4) and 9 of Regulation No 1911/91, in conjunction with point 7.2 of the Poseican Decision, stipulate that the application of specific tariff measures or derogations from the commercial policy shall, in principle, be limited to the transitional period set aside for the gradual adoption of the CCT in the Canary Islands, which expires on 31 December 2000. The regulations implementing these measures (temporary suspension of customs duty and temporary derogations from the application of certain anti-dumping duties)[1] therefore stipulate that they will apply for a period shorter than the transitional period (up to 31 December 1995) or for a period equal to it (up to 31 December 2000); in the case of suspensions of tariffs, the Commission will be able to make fresh proposals to the Council after the situation is reviewed at the end of each of these periods.

Appropriate management and control measures are provided for in each of these regulations. These are:

- in the case of suspensions of tariffs, compliance with the provisions on end-use and in particular the levying of CCT duties when the products in question are dispatched to the other parts of the customs territory of the Community, in order to ensure that these products are intended exclusively for the Canary Islands' domestic market;

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1 See the following regulations and decisions:
- Temporary suspensions of CCT duties on imports of certain industrial products into the Canary Islands (Regulation (EEC) No 1605/92 and Decision No 92/319/ECSC, OJ L 173, 27.6.1992), applicable from 1 July 1991 to 31 December 1995.
- Temporary suspensions of CCT duties on imports of certain fishery products into the Canary Islands (Regulation (EEC) No 3621/92, OJ L 368, 17.12.1992), applicable from 1 July 1992 to 31 December 2000.
- Temporary derogation from implementation of the anti-dumping measures on imports of certain sensitive products into the Canary Islands (Regulation (EEC) No 1602/92, OJ L 173, 27.6.1992), granting full exemption up to 31 December 1995 with a gradual increase in these duties from 1996 so that they will be applied in full from 1 January 2000.

- in the case of derogations from application of anti-dumping measures, restrictions of the volume of imports benefiting from this derogation by the setting of annual fixed quantities for each of the products in question;

- statistical surveillance of imports every month (industrial products) or every year (fishery products) to keep the Commission regularly informed of the volume of these imports and allow it, where necessary, to adopt provisions to prevent any speculative movements or deflections of trade.

- the general provision in Article 8 of Regulation No 1911/91 stating that "the Commission shall adopt appropriate measures to prevent any speculative movement or deflection of trade resulting from the amendment of the trade arrangements applicable to the Canary Islands."

Conclusions

4.52-4.53. Operators' accounts can always be controlled ex post.

5. THE TERRITORIAL SEAS, INTERNAL WATERS AND AIRSPACE

The provision of stores is a complex problem which mainly affects the tax sector; the institutions concerned should endeavour to achieve harmonization at Community level.

6. OTHER EUROPEAN TERRITORIES, ENCLAVES, STATES, AND MEMBER STATE OVERSEAS TERRITORIES

Mayotte, St Pierre et Miquelon, and the French Overseas Territories (TOM)

6.7. The situation of the territorial communities is clarified in Council Regulation (EEC) No 2913/92 establishing the Community Customs Code. These "collectivités territoriales" are mentioned specifically in Article 3(1).