EUROPEAN COMMISSION INTERIM REPORT ON TRANSIT

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PART I - Customs Transit in its context

Introduction

Everybody is agreed that the transit system, in its broadest sense, is facing a crisis of confidence. The system, designed in the 1960's, has not been adapted sufficiently to meet changing circumstances. Thus it no longer gives the guarantee of security in its operation that is necessary both to administrations and the operators. Both sides as a result are suffering financial losses, because fraud, which was once isolated, and in relative terms minor, has become widespread and is being organised systematically.

It is because of all this that the European Parliament has set up a Committee of Inquiry to consider allegations of offences committed or of maladministration under the Community transit system. This interim report seeks to serve as a consultation document for all involved in transit in order to define the changes that are necessary. It should therefore be seen also as an instrument to aid the Committee of Inquiry.

The reactions by administrations of the Member States and the trade, together with the report made by Parliament and the reaction of any other Community institution, will be taken into account by the services of the Commission in drawing up a final report in February 1997. The final report will set out the actions that the Commission will undertake with the actors concerned at different levels to ensure that the transit as a whole is overhauled and made into an instrument that is effective and where fraud is prevented as far as possible and (because it will always exist) is combated more efficiently.

Transit at the centre of the Customs Union

Customs transit (which covers both import duties and indirect taxation) is essential for a rapid and smooth functioning of international trade and the internal market and is the fundamental glue that holds together the various aspects of the customs system. Without it it would not be possible to allow goods to enter the customs territory of the Community and move about within this territory without insisting that all import duties and indirect taxes be paid at the external borders.

Thus, for example, it would not be possible for goods coming from abroad and destined for a third country to pass through the Community untaxed, which is an international commitment under the GATT.

Similarly inward processing (a customs regime that allows imported raw materials and components to be processed in the Community for export duty and tax free and which allows our manufacturers to compete on the world market) would become only possible in free ports at the external frontiers or under the drawback system. This is unless there was a system of paying the duties and taxes and reclaiming them when the goods have arrived at the factory. There would be a similar need to account for tax and duty before the goods leave the factory to be claimed back when the goods can be shown to have been physically exported.

Likewise warehousing (which allows traders to defer the decision about how they wish to dispose of imported goods) would be restricted in the same way. Even a method within the warehousing or inward processing regimes themselves to allow the movement duty and tax free of goods from the external frontier to the premises of the trader would be transit under another name.

Without transit all declarations for home use, which would then also have to include those for goods intended for another customs regime inland, would need to be made at the ports, airports or at the land frontier crossing points. This would lead to congestion and delays at these points and mean that administrative resources would need to be re deployed from the inland sites close to the trader's operations, which is convenient and practical both to the trade and the authorities, to the external frontiers far away from the traders real activities and possibly in a different Member State with a separate indirect tax regime. This would put an impossible burden on both parties in claiming back the VAT (and excise duties) paid in one Member State and accounting for them in the Member State of use, or on the current facilities offered to pass the goods without payment of VAT at the moment of import if they are placed into the VAT regime for intra-Community exchanges.

Another role of transit is that it allows goods to pass from one party of a transit regime to another with increased facility. Thus when goods arrive from the former USSR under TIR or from the Visegrad countries at our eastern frontiers under Common Transit they are not unduly held up with full customs clearance there.

Thus it is clear that, for both the trade and for the authorities, it is essential that there is customs transit; it cannot just be abolished. If it were abolished operations of inward processing and warehousing which are scattered throughout the length and breadth of the Community would need to be displaced to the external frontiers which would not be feasible and controls would need to be moved away from the economic situation of traders to the frontiers as well.

However to be effective in the next century transit needs to be revised and updated taking into account the changing circumstances and using the technical possibilities that are available today that were not available to the original authors in the 1960's. **Annex I** contains a fuller description of how transit works and a brief history of the three regimes, Community transit, Common transit (which is in effect the Community transit extended to the EFTA countries, Poland, Hungary, the Czech Republic, and Slovakia), and the TIR system that covers some 58 countries at present with some statistics on the scope of transit. **Annex II** gives a complete description in detail of the Community Legislation on Transit.

The changing scene

It is useful at this stage to sketch out the circumstances which have changed and which have led to the customs transit, and in particular the Community and Common transit systems, to have become so strained.

Firstly the global economy has expanded enormously since the 60s thanks to lowering of tariff and other barriers and the growth of international agreements of various kinds. The Community has benefited from this and from the extra growth generated by its own economic success. In addition the structure of industry, especially in the developed countries, has led to delocalisation of activities and much more use of parts and components from different sources. What used to be made 'in house' is now sub-contracted to outside specialist suppliers or branches of the same company. At the same time companies no longer wish to carry large stocks of materials or finished products, which often implied a few large shipments. The emphasise is now more on 'just in time deliveries' which means that there is a tendency for more and smaller shipments.

All this means that the Community, even allowing for its own expansion to 15 members, imports and exports very much more now than it did then. This means that the relative, as well as the absolute, numbers of transit transactions have gone up enormously. In particular since 1989, with the collapse of the old regimes in Eastern Europe, trade which was not possible then has resumed slowly at first and then in great quantities. As this moves mostly by road this has meant a great growth in the numbers of transit operations.

The growth of this new trade with the East has also meant that the cross-border criminality has been able to move into transit fraud in an organised fashion.

The very expansion over the years of Community transit from six Member States to fifteen and the use of Common transit by the EFTA countries and now four Visegrad countries has also added to the numbers involved and, equally important, has added a large number of new transit offices and new interrelationships between them. This phenomenon has been encouraged as well by the increasing complexity of trade flows as by the tendency over the years to open more offices in order to be geographically closer to the traders they control. So more offices are having to communicate with more offices.

The creation of the internal market with the abolition of internal frontiers and the controls related to them has also had side effects. While prior to 1990, when the first measures were taken in anticipation of the single market, that it was possible to monitor the passage of a vehicle and at least be able to establish in which Member State it disappeared by means of a paper document left behind at each crossing, this is no longer possible within the Community. Such a system still exists outside the Community for both the Common transit and the TIR, but once inside the Community no such paper trail is possible. This has led to increased difficulty in establishing where and when an irregularity occured. This not only complicates the question as to which national administration the transit operator has to pay the duty and tax on the missing load, but makes it much more difficult to trace the perpetrators. It means that the customs investigation services now have to co-operate much more with their colleagues in other Member States than they had to before. It is also the case that the perpetrators of a crime in one Member State can now move the proceeds of their operation anywhere in the Community with relative ease, which they could not do before. This in turn makes co-operation between investigative services even more important.

The introduction of the provisional VAT regime has also meant for all intents and purposes the disappearance within the Community of the internal transit procedure (T2) as opposed to the external transit procedure (T1) used for non-Community goods movements. The VAT control over internal movements, where import duties is not at stake, is now done on a totally different basis and involves totally different group of staff. This and the abolition of internal borders led to a redistribution of customs staff and in some cases to slimming down numbers. This should not have directly affected the numbers of customs staff at transit offices dealing with external transit operations, but it might have done. It certainly meant that the 'spare' staff were no longer available to deal with the increase in trade with Eastern Europe, which could hardly have been anticipated at the time (1990 with the abolition of the advice note).

More recently the Eastern European countries have become candidates for membership of the Union and as part of the pre-accession strategy they are already aligning their customs systems upon ours and help in many forms is being given to them to do this, including training and technical assistance. The first practical step has been to include Poland, the Czech Republic, Slovakia and Hungary in the Common transit system from 1 July this year after the necessary preparations had been made to ensure that they would be able to work correctly from the start.

In spite of the series of measures taken in the last few years to take account of the changing background and improve operability, the transit system and the administrative co-operation between the Member States in control and investigation there has been a gradual loss of control over the transit system and fraud has increased. Moreover, severe problems are being encountered with regard to the recovery of the customs debts as well as to obtain reliable informations as to the volume of the amount at stake. The problem with regard to the amounts to still be recovered is addressed in **annex I**. Furthermore, **Annex III** gives some estimates as to the amount of fraud and also contains a brief description of the main categories of fraud. This loss of control has led to a degradation of the whole of the customs system in the Community. The transit system

fraud. This loss of control has led to a degradation of the whole of the customs system in the Community. The transit system in particular is no longer effective and needs to be reviewed, along with other elements, taking into account the changed circumstances and rendered an efficient instrument of the customs system as a whole.

The actors involved and their responsibilities

For any complex system to function correctly each operator or actor in the system must recognise its responsibility in operating a system which is an organic whole. This is especially true in the transit field with three separate, even if linked, legal frameworks where there is no central command to give orders and instructions. The correct functioning depends on the correct actions by all the parties involved doing their bit. If problems occur appropriate action needs to be taken by the appropriate people, which means they need to know that there is a problem or they can do nothing about it. Information has to be passed on before remedial action can be considered. In the past there has been too much buck passing, blaming the lack of action by somebody else and problems have been allowed to build up to intimidating levels. There has been too much argument that somebody else should do something. If this continues any reforms put forward will not be adopted or if they are they won't be applied responsibly and adequately.

The actors in the transit field are listed below. A summary description of their responsibilities in relation to the functioning of the system taken as a whole is given in **Annex IV**. For convenience we have divided the roles into "legislative orientated" and "operational", although these two categories overlap as operational difficulties could lead sooner or later to a change in the legislation to take them into account.

Legislative orientated

The term "legislative orientated" is deliberately vague and covers the consultation stage and the prepatory work as well as actual process of law making. It also covers various explanatory or administrative instruments such as administrative arrangements, conclusions and interpretations of the existing law. As there are three main different legal contexts (Community Transit, Common Transit and TIR) the players and their roles are slightly different in each context.

Community Transit

· The Commission

· The Member States in Council

· The European Parliament

· National Parliaments

· The Economic and Social Committee

· The Member States in the Customs Code Committee

· The Customs Policy Committee

· The "Club"

· The Advisory Committee for the Coordination of Fraud Prevention (COCOLAF)

· The Mutual Assistance Committee

· The Advisory Committee on Community own resources

· The Consultative Committee on Customs and Indirect Taxation questions

· The "trade"

Taking into account the number of actors and the complex nature of the Community "legislative" procedure it becomes obvious why amendments to legislation inevitably take a long time to come to function. However the results of this long process have the merit of taking into account (even if the process may not be very clear) all the different points of view. However we are collectively often criticised for producing compromised legislation without sufficient bite and too late to be effective as a result.

Common Transit

· The Commission

· The Council

· The Customs Code Committee

· The other States concerned

· The Common Transit Working Group

· The Common Transit Joint Committee

The TIR

· The Commission

· The Member States in Council

· The Customs Legislation Committee

· The other States concerned

· The Working Party 30

· The TIR Administrative Committee

Operational

This term covers the actual steps needed to carry out, monitor and control a movement up to writing off the return copy 5, as well as the steps needed if the operation is irregular, whether or not a fraud has taken place. It also covers management of the system, the allocation of the necessary resources, guidance, training and information and the issue of instructions at a national level; the allocation of permission to use simplified procedures and the monitoring that they are used correctly. It also includes management and monitoring at an international level. In short, it covers all the non-legislative actions and individual decisions needed to run the system.

· The Member States

· The other countries involved

· The Commission

· The Trade

* Principal

* Guarantor

* Freight forwarder

* The haulier

* The owner (or person responsible for the goods)

* The recipient

· The European Court of Auditors

The essential preconditions that apply to the whole Customs System

It has to be stressed that the reform of the transit system goes beyond changing the rules or replacing outmoded methods of administration. It goes beyond collecting the data needed for satisfactory local and overall management. It goes beyond collecting the law into a coherent whole or writing a common set of operating instructions. All these are of vital importance, but they will not in their own right be enough to ensure the optimal operation of the system. There are a number of elements, additional to the assumption of responsibility, that go beyond the transit system pure and simple and that apply to the whole of the Customs Union, and even beyond, that are a prerequisite for success. The actions that could be taken specifically in relation to the transit system are developed in Part II.

Resources

As has been said before the transit system does not exist in isolation from the rest of the customs system. Many of the things that need improving are best tackled across the board and not just in relation to one aspect of customs. The system as a whole needs to have the correct amount of resources, placed at its disposal in order to be able to function adequately. Within the total allocation of resources attention has to be given to all the tasks that need to be managed and transit is just one of these. However as transit is so essential to the whole it must function or the rest will be degraded. If the human resources are just not available then emphasise must be given to finding alternatives, in the case in point wholehearted support for the transit

computerisation project.

Co-operation

Many of the customs regimes demand a high level of co-operation between the Member States, much more so now than before the creation of the single market It is however perhaps in the field of transit that the need is most evident due to the very nature of the system. But it goes beyond the modalities of co-operation and involves a new concept of realising at all levels the interdependence of the separately organised and managed customs services in carrying out their tasks in order to achieve the levels of coherence, security and efficiency of the system as a whole.

It is in this context that the Customs 2000 project has been set up as well as the Matthaeus programme for seminars and cross postings and the 'monitoring' visits of senior officials from all the Member States as a group to see how things are done in the others in order to cross fertilise ideas and identify what are called 'best practices'. The work to address these problems across the board must be stepped up, but particular attention must be given to the transit system.

However well motivated the investigative staff are, they will still be faced with the difficulties in working with the 15 (22) different countries. Each one has its own separate juridical system, which complicates matters and sometimes actually prevents proper and efficient co-operation.

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PART TWO - PROBLEMS, SUGGESTIONS AND STRATEGY

A. The symptoms of breakdown

Transit procedures and the associated administrative practice have failed to keep pace with economic and geopolitical events, leaving them unable to meet the demands of commerce for flexibility, efficiency and security. The resultant strains affect those involved with transit (and, in the case of fraud, consumers) in a variety of ways.

Commercial operators

The degree of risk in transit operations involving goods which represent prime targets for fraud has become economically unacceptable. Businesses are rendering themselves liable to a burden of customs and tax debt in respect of operations whose outcome they cannot guarantee. The proportion of undischarged and untraceable transit operations shows how insecure the procedures are. While flexibility and ease of access are important assets of the transit system for honest traders, they also offer openings for organized crime. For some firms there may be no viable alternative to the transit procedure, however, and if it is no longer secure they may be forced simply to abandon the transit-related part of their activities.

Fraud in general, and transit fraud in particular, means that goods are coming onto the market without having borne the import and consumption taxes required by law, thus causing unfair competition which honest businesses are unable to meet if they are to remain viable.

Consumers

Smuggled goods which have evaded customs controls, whether as a result of transit fraud or other types of fraud, have evaded other controls as well, including health and safety measures, and can undoubtedly place consumers at risk.

Member States and national authorities

The inadequacy of existing administrative methods and controls to stem the proliferation of undischarged transit declarations is not only bleeding the Community of own resources; Member States too are losing money (mainly VAT and excise duties) and that loss of government revenue is weakening their ability to function across the whole spectrum of publicly-funded activity.

The customs authorities of the Member States and the other common transit countries are no longer able to process the current volume of customs transit documents properly and the resultant delays in discharge and investigations are further weakening the system itself and any attempts to counter fraud.

The ineffectiveness of measures to tackle fraud is due to the backlog of paperwork, the low rate of proceedings initiated and the lack of coordination between departments in different Member States.

In the transit system as conceived at present, overall administrative responsibility for what should be the Community customs procedure par excellence is split up between the different customs authorities. In practice this translates into a lack of awareness on the part of national customs departments of a responsibility, which they share with their opposite numbers in other Member States, for the common administration of the Customs Union and customs procedures.

The Community

Where it results in non-recovery, the malfunctioning of the transit system leads to a shortfall in the Community's traditional own resources which has to be offset by an increase in the fourth resource (GNP), placing an extra burden on taxpayers.

The problems with transit show clearly that cooperation among customs administrations, and between them and the Commission, is too inadequate by today's standards to allow sound administration of the Customs Union in general and transit procedures in particular.

Administration and supervision of transit procedures at Community level is well-nigh impossible in the absence of a reliable flow of hard information on the way those procedures are being used. It was because of this communications gap that the unexpected surge in the number of transit operations after 1993 was not detected right away.

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To sum up, the transit procedures are supposed to be economically advantageous. Today, however, they are costing businesses and governments alike huge amounts of money, exposing honest traders to levels of risk they are unwilling to accept and generating distrust between commercial operators and customs authorities. The paper-based system is obsolete; and it has become unmanageable by national authorities working in splendid isolation.

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B. Diagnosis and possible treatment

Assuming the above preconditions for reform are met, and setting aside action to be taken for the recovery of claims by various interested parties, we will now look at the problems and weaknesses of the transit system, their causes, proposed solutions and who should be responsible for implementing them.

1. The transit computerization project

We cannot overemphasize the strategic significance of the transit computerization project as a means of coping with the current crisis, because it both offers the definitive practical solution to some of the problems arising from the processing of declarations and the insecurity of procedures, and allows better monitoring of operations and preventive measures and controls.

The aim of the project is to link all customs offices competent for transit operations via a network allowing the exchange of standard messages, as a means of:

· **to increase the efficiency and effectiveness of operation** in the Community/common transit procedure;

· **to improve performance in preventing and detecting fraud** in the Community/common transit procedure;

· **to bring about faster and more secure operation** of the Community/common transit procedure, and at the same time to offer enhanced facilities to the Economic Operators where appropriate and feasible.

The proposal for the New Computerised Transit System is aimed at creating a more effective and efficient system utilising the advantages that a computerised system can provide particularly with regard to automatisation of certain check procedures, and with regard to direct access to and fast communication of information.

In the long term, the perspective will almost certainly be to dispense with the paper Customs documents travelling with the goods, and use data held by Customs for all controls. This would require, not only instant access to all relevant data by all personnel performing controls; but also changes to legislation. The proposed system is consistent with this long-term aim.

The proposed system will display to the office of destination the transit declaration data captured by the office of departure. This data, displayed or printed out, will be used as the basis for all controls. The routine return of the SAD Copy 5 will no longer be necessary - all relevant arrival controls will now be performed at the office of destination, i.e. the New Computerised Transit System will be based on **a different control concept**: Control will be performed **in real time**, while in the current system control is performed a posteriori. Moreover the data required for the control will be exchanged directly between the customs administrations and not via the traders.

A full description of the transit computerization project can be found in **Annex V**, which sets out the prospective advantages to be gained in terms of administration, security and control of Community/common transit operations.

At the moment the project does not cover the TIR system, but once the network is in place it should be possible to arrange for the data in a TIR carnet to be entered as well, so that the other major transit system would enjoy the same efficiency and security as the Community/common transit procedures within the common area.

2. Inventory of problems and proposed solutions

Following the comprehensive review of transit procedures summarized in **Annex II** and scrutiny of the contributions submitted by commercial operators and Member States (**Annex VI),** the Commission identified the weak points in terms of inefficiency, insecurity and vulnerability to fraud. The inventory comprises all the difficulties implicated in the malfunctioning of the transit procedures, classified under four main headings:

I. Processing and discharge of declarations

II. Supervision and controls

III. The responsibilities of users

IV. Guarantees

plus various items outside the field of transit proper, requiring action in the form of:

V. Back-up measures.

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Several solutions are proposed for each problem identified.

Some are from the Commission, others were advanced by Member States, trade federations in the transit field and

Some are from the Commission, others were advanced by Member States, trade federations in the transit field and independent bodies or individuals, particularly in the context of Parliament's Committee of Inquiry into transit, and others again emerged from Commission-Member State seminars.(1)

While the Commission is not in favour of all the proposals listed in the inventory, it prefers to include them in the report in full to give readers an overview of the different points of view which have been expressed and provide them with food for thought on this complex and sensitive topic.

The numbering in Annex VI matches that assigned to the problems and proposals in the Table.

summary tables

Weaknesses, malfunctions and suggestions for transit reform

Explanatory notes

- The tables are divided into **four main sectors** where problems arise, plus **areas requiring attention and back up measures of a more general character** (numbered **I to V**).

- Each of these sectors includes **the difficulties/malfunctioning encountered** (identified as **A, B, C,** ...), with a short description of the difficulties.

- For each difficulty **the various proposals put forward** (numbered **1, 2, 3,** ...) are given.

- For each proposal there are **ten columns**:

· column 1: serial number of the proposal

· column 2: title of the proposal

· column 3: nature/level of the proposal:

R = Regulatory (autonomous or contractual provisions)

I = Implementing instruments: instructions, information, training

O = Customs organization: **On** = national

Oc = Community

A = Actual implementation

· column 4: transit system/procedure concerned:

· **TCE** = Community transit

· **TCO** = common transit

· **TIR**

· column 5: arguments in favour of the proposal

· column 6: arguments against the proposal

· column 7: term or deadline, according to the TTF:

· **C** = short term

· **M** = medium term

· **L** = long term

· column 8: agents supposed to take action (cf. list in Annex IV)

· column 9: would computerization help?

· • : yes

· - : no

· • : to some extent

· column 10: means to be deployed/*additional remarks (in italic*)

I. Processing and discharge of transit declarations

A. Forged stamps

- □ paper documentary system
- □ vast number and variety of imprints
- □ poor quality of imprints

I A1	information and control of forged/stolen stamps by comparison between the model and the forgery and data bases	On/Oc/A	TCE TCO TIR	already implemented by some Member States	problems with quality/reliability in the transmission of samples and data storage	C	Member States + coordination Commission EFTA/V4/TIR countries	·	Investment in equipment to scan and compare images
I A2	a. one standard, good quality stamp b. fixed stamping apparatus	R/On/Oc/A	TCE TCO (TIR)	-stamp is easy to identify and compare (possibility for Member State and office to customize the stamp by addition of numbering) -more difficult to steal	easier to forge one single stamp, unless additional security measures are adopted (digital coding) problems in using a common stamp in all countries and for all procedures ?)	M	Member States + study/proposal EFTA/V4/(TIR) countries	·	Investment to replace all stamps and purchase stamping apparatus
I A3	bar codes instead of stamps to authenticate the declarations, either stick-on or printed	R/On/Oc/A	TCE TCO TIR	better quality and more reliable reading than with a stamp digital storage possible better if consistency and compatibility for reading purposes between TCE/TCO and TIR bar code	need for coding/decoding apparatus in all offices network needed to transmit confidential identification codes limited scope when compared to computerization for comparable costs in terms of resources and time can still be forged/copied, especially the stick-on version	M	Commission Member States EFTA/V4/TIR countries	·	studies for setting up the network and purchase of coding/reading apparatus

I **A4**	smart cards instead of declarations, also for authentication purposes	R/On/Oc/A	TCE TCO (TIR)	authentication incorporated in the memory digital storage	simply replaces paper with card leaving existing procedure (involving documents to be returned) unchanged and providing no preliminary information/control on the operation except when coupled with an information exchange network still complex and competes with computerization in terms of cost and time without all the advantages in terms of administration/surveillance of the system in real time and of fraud prevention by anticipating traffic	M	Commission Member States EFTA/V4/(TIR) countries		financing of studies, cards and coding/decoding apparatus for all offices and possibly network

B. Slowness of discharge procedure involving return of documents

- paper documentary system
- time-limits non-existent or vague or non binding or ignored
- transmission by mail
- mandatory channelling through centralizing offices
- shortage of material and human resources
- lack of staff motivation; lack of importance attached to work
- high number of operations and documents to handle

I B1	reduce/adjust the time-limit for presentation at destination to reality and sensitivity of operation	R/I/A	TCE TCO	rule to be moved from Comp. of Admin. Arrangements (CAA) to the CCC implementing provisions to be more effective To be combined with prescribed itineraries/prohibition to change office of destination	impossible to set precise time-limits in a regulation: flexibility and good administrative practice properly supervised are called for	C	Member States EFTA/V4 countries Joint Committee	·	**need for customs officers and operators to gain awareness**
I B2	reduce time-limit for returning copy 5 of T document and/or holding the customs service responsible when limit is exceeded	R/On/Oc/A	TCE TCO	speeds up discharge or information about failure to discharge	it is pointless to set a shorter time-limit if it can't be objectively observed holding the customs service responsible (= discharging responsibility from operator) presupposes definition/ evidence of inadequacy/ negligence	C	Member States EFTA/V4 countries	·	*depends on staffing levels, methods (centralizing office) and number of documents*
I B3	admit alternative proof of presentation (ex "5a", fax ex 5, TC11, trade document, ...)	R/A	TCE TCO	speeds up discharge (already envisaged by CAA for sensitive goods) or information on failure to discharge for investigation	it is pointless and juridically dangerous to add another document to the ex 5. Possible confusion: choose between public and private proof	C	Commission Member States EFTA/V4 countries Joint Committee	·	widespread acceptance of fax as alternative proof and/or means of verifying other types of proof
I B4	reduce number of offices authorized to deal with transit	On/ Oc	TCE TCO TIR	flow of information and documents limited to fewer and more specialised offices	risk of contradiction with policy to bring customs clearance closer to the user	M	Member States	_	**reducing number would simplify computerization**

I B5	eliminate centralizing offices	R/On	TCE TCO TIR	eliminates one or two transmission stages and the corresponding delays	risk of distribution errors and loss of a means of control (for certain Member States)	C	Commission Member States EFTA/V4 countries Joint Committee	·	
I B6	increase number and/or redeploy transit staff	On	TCE TCO TIR	addresses the problems posed by the number and complexity of operations	budgetary constraints other priorities no training/lack of versatility	C	Member States EFTA/V4 countries	·	**organizational issues which go beyond transit**
I B7	set up/ promote alternatives to current transit procedure to reduce the number of operations:: -non-transit transfers (REC) -simplified procedures for release for free circulation (and home use) at frontier and/or distinction between type of frontier (sea/air vs. land) -"super simplified" handling of traffic (eg "self-checks" of air traffic on the basis of trade records and computerized data exchange)	R/On/A	TCE	-reduces pressure on transit -transfers are already possible under suspension arrangements -future VAT arrangements could reduce fiscal obligations on imports -clearance procedure at frontier could include inland carriage	-transfers are just another form of transit with the addition of another customs procedure, but requiring a certain degree of interconnection between offices and Member States -VAT arrangements are yet to come and it is not certain that they will make transit redundant -simplified procedures require a communication and traffic surveillance network more developed than existing one: computerization of transit would provide the same benefits faster -self-handling of traffic requires external audit and controls	M/L	Council Commission	·	

C. Complexity and length of inquiry procedure

- same as B

I C1	reduce the period after which the office of departure must request information from the principal (ten weeks) and/or release from liabilities where the time-limit is exceeded	R/A	TCE TCO TIR	it would be obvious sooner whether operations have been discharged or not, thus enabling the principal and the guarantor to be released from their liabilities or steps to be taken to recover the amounts due from the perpetrators of frauds	confusion between failure to discharge and absence of information on the discharge which is the responsibility of the office of destination and presupposes adequate means to meet the deadline for returning the documents	C	Commission Member States EFTA/V4 countries Working Party	·	

I C2	reduce the number and duration of the various stages in the inquiry procedure	R/A	TCE TCO	simplifies and speeds up information exchange between customs departments	presupposes adequate means to process applications speedily	C	Commission Member States EFTA countries Working Party	·
I C3	specify the procedures to be initiated depending on the degree of risk	R/I/A	TCE TCO	-reduces the number of procedures and the need to reply for the offices of destination/transit -selection criteria to be defined	false declarations /concealment of risk are still possible: sample inquiries? no recovery for undischarged operations involving non-sensitive goods, or blanket collection by the Member State of departure except where alternative proof is furnished ? To some extent choice already made for certain sensitive goods through EWS	C	Commission Member States EFTA/V4 countries	·
I C4	reduce 11-month time-limit for notification	R	TCE	security for the principal and possibility for him to approach the other parties faster in case of failure to discharge	presupposes shorter inquiry procedure and further limits chances of effecting post-clearance recovery	C	Commission	·
I C5	align the time-limit for notifying the principal (11 months) and/or the guarantor (12 months) of failure to discharge with the three-year prescription period	R	TCE TCO (guarantor)	-ensures the necessary consistency between the Code and its implementing provisions in terms of time-limits and increased scope for post-clearance recovery -spurs the principal to check whether goods have arrived at destination -increases chances of recovering the amounts due and improves protection of financial interests	-possible confusion between notification and prescription -carelessness on the part of the authorities in effecting post-clearance recovery -greater costs for traders -differences between TCE/TCO and TIR	C	Commission Joint Committee	_

I C6	abolish the period of grace for producing evidence of compliance or of the place of irregularity (three months) where offence/ irregularity is detected	R/A	TCE	this period would be truly irrelevant only if the principal were directly involved or should reasonably have been aware of the failure to present	-debtors (including fraudsters) should have the opportunity of producing evidence of the place of irregularity (since tax provisions and repressive measures are not harmonized) -difficult to gauge the extent of the principal's involvement in the fraud	C	Commission Member States	_	*item to include in a review of the place where the customs debt is incurred and of the Member State responsible for effecting the recovery under Code and implementing provisions rules*
I C7	improve cooperation between customs departments:(2) "inquiry" correspondents from other Member States in the main transit offices	On/Oc	TCE TCO TIR	effective if combined with reduction in the number of centralizing offices or if their role is redefined, and inquiry procedure is simplified	-should be part of a policy of long-term exchange of officials beyond transit (cf. V.B.4) -language and logistic problems in accommodating 15 Member States and EFTA/V4 ?	M	Member States EFTA/V4 countries	_	
I C8	responsibility for recovery given to the Member State where the principal is established in any case	R	TCE TCO TIR	no longer necessary to determine where the offence or irregularity took place	-incompatible with fiscal requirements -inquiry procedure still needed to establish whether or not goods were presented	C	Council? Commission	·	
I C9	same as I.B.4, 5 and 6								

II. Surveillance and Controls to Ensure the Security of the System

A. Open and flexible system with numerous facilities without an adequate level of control

-procedures accessible to all without controls other than for certain facilities (comprehensive guarantee, guarantee waiver, authorized consignor, super simplified procedures)

-procedure applicable to all goods, except where specific measures for sensitive goods apply, but definitions of "sensitive goods" vary

-except for TIR, procedure accessible to all means for transport, generally uncertified, unsealed and not identified as being in transit

-procedure admits any itinerary, apart from limited constraints

II A1	prescribed itineraries, destinations and time-limits for transport	R/A	TCE TCO (TIR)	already applicable to certain sensitive goods but, unless comprehensive guarantee is prohibited, customs have wide discretion	-doesn't suit the needs of today's trade and transport systems -needs to be adjusted to traffic flows and risks	C	Commission Member States EFTA/V4 countries Joint Committee	·	*computerization would be simpler if transport operations could be streamlined*
II A2	limit the number of offices of departure authorized to handle transit of sensitive goods	On/Oc	TCE TCO	concentrates control points	-false declarations and transit via an "easy" office are still possible -part of the wider issue concerning the number of authorized offices and the training of customs officers (see V.B.3)	C	Member States EFTA/V4 countries	·	**computerization makes targeted controls easier**
II A3	-clear and consistent definition of sensitive goods to be subjected to measures restricting access or to specific controls -establishment of a uniform and speedy updating procedure	R	TCE TCO (TIR)	aim at a "single list" provided it corresponds, for the various measures envisaged (higher flat-rate security, no guarantee waiver, no comprehensive guarantee, prior information), to similar risks	-degree of sensitivity may differ depending on the restrictive measures envisaged -a "non-regulatory" procedure for updating the list could be difficult to establish and pose legal certainty problems to traders	C	Commission Joint Committee	_	**need for transit and fraud statistics (cf. V.C.1)**
II A4	identify vehicles by means of "transit" plates	R	TCE TCO	-better distinction between transports under customs surveillance and "free" ones for the purpose of customs controls -spells out transit obligations for drivers	-presupposes great discipline among traders -absence of plate is no sure indication of customs status of goods carried and might divert controls	C	Commission Member States EFTA/V4 countries Traders	_	
II A5	more binding obligation to affix seals	R/A/ On	TCE TCO	more apparent security	-presupposes re-establishment of a fleet of approved vehicles for sealing purposes -barrier for traders -presence of seals might divert controls and hinder inspection	C	Commission Member States EFTA/V4 countries	_	-staff to affix seals and carry out controls -appropriate vehicle fleet

II A6	a. improve quality and security of seals b. change models regularly to avoid forgery	R/A	TCE TCO	see I.A2	as above	C	Commission Member States EFTA countries	_	as above
II A7	prior authorization to use transit: controlled use of a form of suspension procedure with economic impact involving financial and trade interests	R/A	TCE TCO (TIR)	-prior assessment of applicants' trustworthiness and risks in connection with their operations, partners and goods carried -adjusts obligations/ concessions to the specific situation -makes the authorization holder responsible for the choice of operation -more precise knowledge of number and standing of users (item for TIR reform)	-new formality for traders -need to present an activity report and a forecast of transit operations -demands improved communication/cooperation between customs departments for the issue of Community-wide authorizations	M	Council Commission Member States EFTA/V4 countries Joint Commission	_	*computerization might simplify the processing of applications and the issuing and administration of authorizations*
II A8	restrict use of simplified procedures for sensitive goods	R/A	TCE TCO	-sensitivity increases the risk where concessions in the use of the procedures are granted -to be seen as part of controlled use of the procedure	-most facilities (authorized consignor, guarantee waiver) are already excluded if comprehensive guarantee prohibited -conditions for granting exist for other goods				

II A9	establishment of a "blacklist" of traders guilty of fraud or irregularities	R/Oc/ On/A	TCE TCO TIR	-tougher controls on use of procedure or some facilities -effectively enables exclusion of dishonest traders from system regardless of place of irregularity -(match Article 38 TIR Convention or Article 86 of Code for procedures with economic impact)	-not limited to transit -need to ensure compatibility between list and criteria for access with Community/ national rules on data protection -need to differentiate according to seriousness of irregularity from the standpoint of the smooth operation of the procedure	M		·	data base and collection of data according to criteria and formats to be defined studies & network **computerization could include list**
II A10	indicate items of charge (CN code, value, etc.) on transit declaration			meets a number of requirements (controls, guarantees, statistics): cf. II.B.1, IV.A.2., IV.B.1, V.C.1	new obligation for traders (who are nevertheless supposed to know what they carry and the sums involved)	C	Commission	·	*such items seem indispensable to take full advantage of computerization*

B. Inadequacy of physical checks

- mass effect: the volume of trade makes it impossible to check everything

-lack of resources to carry out controls

II B1	-increase/improve physical checks at all stages of operation based on improved identification of goods -systematic checks on high risk goods	R/A	TCE TCO (TIR)	-prevents fraud by misdeclaration, concealment or substitution -verifies adequacy of guarantees to actual risks involved, particularly in case of high risk goods -match departure/arrival checks	-priority to quality of checks rather than quantity: targeting and risk analysis to save resources and limit barriers -legislation does not provide for checks and inspections *en route*, or only in exceptional circumstances	C	Member States EFTA countries	·	**-checks must be targeted thanks to** *computerization and documentary means (manuals, cards, ...) for customs officers* *-identification particulars must appear on the declaration (II.A.10)*
II B2	increase/improve checks on transit traffic *en route:* a.checks based on intelligence and sample checks b.check points c.electronic tracking system by satellite for trucks in transit	Oc/On/A	TCE TCO TIR	a.physical checks *en route* no longer reserved for exceptional circumstances b.to be coupled with binding itineraries and destinations c.knowing truck position at all times enables possible transport irregularities to be detected and action taken	a./b.additional constraints for traders c. targets the means of transport but not the goods being carried (which can be transshipped) -a private system could be interesting for honest operators, but a generalized system would be expensive for either a private or a public service provider	M/L	Member States EFTA/V4 countries Commission	_	c.sizeable investments on-board equipment for traders
II B3	allocation of resources for controls: as I.B.6								
II B4	reduction in the number of operations: as I.B.7								

C. Communication problems between offices

- documentary procedure too heavy, long and only applies "post-clearance"

- non-existent information network

II C1	improve/develop prior information system base on improved definition of sensitive goods	R/On/Oc/A	TCE TCO TIR	strengthens and speeds up prior information to office of destination and transit countries and detection of undischarged operations: cf. II.A.3	-already exists for some sensitive goods via SCENT/fax -impossible to extend use to all operations -avoid wasting resources to the detriment of computerization which offers same/greater benefits	C	Commission Member States EFTA countries	•	risk of saturating SCENT, which was not designed for this purpose and is not available in offices

D. Complexity and inadequate security of customs treatment of sea transport

-increased risk of disembarkation/transshipment of goods

-external transit procedure is inadequate for sea transport

-proliferation of and difficulties in administering the exceptions to the presumption of Community status [for the goods]

-difficulties in relation with the provisions of evidence of Community status

II D1	reverse current presumption of customs status: limit presumption of Community status to goods carried by established shipping companies and demand proof of status for others	R	TCE	simplification and security for customs and traders by comparison with current exceptions	limits the effects of the single market for sea traffic owing to its specific character and the risks it entails	C*	Commission Member States	_	***(*) draft Community regulation amending the implementing provisions is pending before the Committee***
II D2	if no presumption or no proof of Community status, limit mandatory use of transit to transport operations carried out by established shipping companies (optional in other cases) [guarantee : cf. IV.C.2]	R	TCE TCO	Outside established shipping companies, the sea carriage of goods whose Community status is not established falls under the rules governing the introduction of goods: simpler to grasp and control	intra-Community movements may again occur outside any customs procedure	C*	Commission	_	**(*) as II.D.1**

E. Vulnerability to fraud of air or railway transit traffic

-extremely streamlined/simplified procedures based on trust in the air and railway companies' capacity for self-checks

-guarantee waivers

-frauds traditionally carried out by road migrates to other modes of transport

II E.1	assess the effectiveness and security of transit procedures specific to air and rail transport, in particular for sensitive goods (guarantee: cf IV.C.2)	Oc/On	TCE TCO	ensure that the concessions granted and "delegation" of tasks to the companies are under control and do not affect financial interests	C*	Commission Member States EFTA/V4 countries	_	exploitation of information from EWS **(*) evaluation initiative to cover also this item**

III. Identification and definition of responsibilities with regard to risk

A. Multiplicity of players/parties responsible

- legal uncertainty as to the responsibilities of the parties and the debtor hierarchy

- "unfair" consequences of the principal's liability in certain situations

III A1	hierarchy/sharing of the financial liability between parties involved	R	TCE TCO (TIR)	helps case against the perpetrator of fraud or at least against the party at fault/negligent party fairer distribution of the financial burden thus avoiding bankrupting honest traders controlled use of the procedure and/or declaration could include co-responsibility	in return for the advantages offered by the system, customs must be able to refer to one or more responsible parties principal enters into certain obligations and must ensure that he is in a position to meet them jointly or severally	M	Council Commission	_
III A2	refund of tax and duties where a third party is responsible likewise if trader has informed customs of suspected fraud	R/A	TCE TCO	avoids instituting recovery proceedings against the principal where he acted in good faith and a third party is at fault	assumes that the third party can be identified and is solvent CCC already includes possibility of refunding duty in specific situations to be judged on a case-by-case basis (could include releasing "informers" from their responsibilities under certain conditions)	M	Council Commission	_

B. Incorrect application of the legislation or failure of the customs departments to act

- delays in procedures (return, inquiry) depriving the principal of the opportunity to react quickly in case of failure to present

- priority given to automatic recovery from the principal or from his guarantor rather than to taking action against the perpetrators of fraud

III B1	non recovery/refund of duties and taxes in the event of an error/negligence attributable to customs	R/A	TCE	administration made accountable for the management and supervision of the procedure	difficulty of establishing the administration's error and share of responsibility CCC already provides for non-recovery of duty in the event of error by the customs authority that could not have been detected	M	Council Commission Member States	_	*hard to distinguish from the related definition of the financial liability of Member States which fail to implement the legislation*

C. Absence of dialogue or lack of cooperation between customs and traders

III C1	memoranda of understanding between customs and traders	A	TCE TCO	more leeway in the implementation of the legislation, better suited to everyday situations and both parties informed in advance of the conditions and obligations	risk of divergent application of the rules from one office to another. MOU unable to depart from basic principles of transit or from the obligations relating to debt and its recovery MOU should be given legal framework, maybe included in the prior authorization for use of the procedure within a predefined legal framework	M	Commission Member States EFTA/V4 countries	_	**MOU presupposes information and training** **computerization could help define the content**
III C2	notification of traders by customs in case of high-risk consignments	A	TCE	allows the principal to take precautions	in theory customs office knows less about the consignment than the trader: how could it tell him what he should know already as someone in the trade? confidentiality of certain information, e.g. concerning those already investigated	C	Member States	_	
III C.3	delegate certain tasks to reliable traders (based on model of super-simplified procedures for air traffic) in order to release customs staff for inspection duties	R/I/A	TCE	could be subject of a memorandum of understanding (see III.C.1) and/or come under controlled use of the procedure (see II.B.7)	problem of choice of tasks that could be delegated and to whom assumes capability/means of controlling use of the power delegated	M	Commission Member States	_	*Yes, but computerization provides the means for controlling the use of delegated powers*

IV. Guarantees

A. Lodging and calculating the amount of the guarantee

- legal uncertainty/ambiguity in the calculation of the amount

- inadequacy of the comprehensive guarantee compared to actual financial risk

IV A1	ensure consistency between the guarantee of customs debt under the code and the transit guarantee: (a) specify what all the duties and taxes concerned consist of (in case of individual guarantee and sensitive goods) (b) specify the proportion of import duties and taxes in the amount of the guarantee to be provided	R	TCE	ensures clear and effective protection of Community and Member State financial interests		M	Council Commission	–	
IV A2	improve valuation of the amounts on which the calculation of the guarantee is based through better information on the nature/ value/quantity of the goods concerned and on the rates of the relevant duties and taxes charged regularly revise that valuation	R/A	TCE TCO	acquire the best possible understanding of the everyday reality of operations and the risks involved to give optimum financial protection assumes traders and customs capable of providing/asking for/ using the information required for this calculation	effective prior analysis of the past and future activities of the applicant requires the collection of data (based on new particulars from the T document and statistics) and extra workload	C	Commission Member States Joint Committee EFTA/V4 countries	·	**the calculation can only really be made easier by means of a computerized log of operations**
IV A3	revise the weekly basis of the valuation and the rate for calculating the comprehensive guarantee so as to cover the real risk and take account of the actual conduct of operations and procedures	R/A	TCE TCO	the current method of calculation involving a minimum of 30% on a weekly basis does not correspond to the actual stake	additional financial burden on traders but tolerable if combined with an increase in effectiveness of procedures	C*	Commission Member States Joint Committee EFTA/V4 countries	·	*computerization may help set and monitor the level of the guarantee in relation to* **operations actually carried out** ***(*) draft regulation on a 100% weekly guarantee currently before the Council***

B. Use of the guarantee

- legal uncertainty/ambiguity as to the effective coverage of operations by the guarantee lodged

- improper use of the guarantee certificate under the comprehensive guarantee procedure or forged certificates

IV B1	verify whether the coverage provided by the guarantee for a specific operation is sufficient	A	TCE TCO	as above	additional constraints - for the individual or flat-rate guarantees this requires improving checks on financial stake of the operation before acceptance of the declaration - for the comprehensive guarantee see IV.A.2 and linkage of each operation to the pre-determined guarantee coverage			·	*computerization (subject to the items of charge applicable to the product being identified) will allow a link to be established between consignments and the total amount guaranteed*
IV B2	issue only partial certificates for up to the total amount of the comprehensive guarantee	R/A	TCE TCO	limits the risk of the value of the guarantee diminishing over time/across the territory (together with IV.B.3 or B.4)	does not solve the problem as even a part of the guarantee can be used improperly by presenting the same certificate several times at different places	C	Commission Joint Committee	·	*computerization should enable the use of the comprehensive guarantee to be monitored in real time*
IV B3	record amount used and the balance on the back of certificates	R/A	TCE TCO	prevents the amount shown being exceeded or simple indicator of possible improper use (together with IV.B.2)	- does not allow the amount to be replenished after discharge of the operation, i.e. changes the nature of the certificate into a non-renewable guarantee credit to be used up gradually as required - need to replenish the comprehensive guarantee at the guarantee office in line with each discharge	C	Commission Joint Committee	·	**as above**
IV B4	replace certificate with a smart card	R/On/A	TCE TCO	as above with added advantages that entry is stored in memory and the risk of forgery is reduced	same disadvantages or limitations, more expensive too	M	as above Member States EFTA/V4 countries	·	**as above**

C. Potential risks involved in the guarantee waiver

- physical processing of individual waiver applications

- risk of inadequate protection of financial interests under transit by air or rail as a result of fraud moving over to these modes of transport and lack of effectiveness and security in the related procedures (see II.E)

IV C.1	assess granting of individual guarantee waivers	Oc/On	TCE	check whether waiver is sufficient to cover risks taking account in particular of recovery proceedings instituted against those granted waivers granting of the waiver could be part of controlling use of the procedure	C*	Commission Member States	·	(*) evaluation procedure in progress on this *computerization could make Community-wide monitoring of waivers easier*
IV C.2	assess risk involved in guarantee waivers for transit by sea, air and rail	Oc/On	TCE TCO	as above in II.E.1	C*	as above	_	(*) as above **+ proposal for a Commission regulation on the reconstitution of the guarantee in the case of external transit by sea**

V. Areas and support measures outside the transit framework

Requirements	Proposals	Action
A. Clarity and coherence of legal and associated provisions (instructions)	1. clarity: consolidation of the various legal and associated provisions 2. removal of ambiguities in legislation and drafting (CCC/Imp. prov./Comp.A.A./agreements) 3. remove duplication and strive for greater consistency 4. standardization of administrative practices	allocate resources for consolidation define a structure and a strategy for administering the three systems
B. Improving intelligibility at operational level and staff motivation	1. preparation of manuals of operational instructions for common use (in particular for Transit) 2. preparation of standard reference frameworks for "Memoranda of Understanding" between customs/traders + delegation of certain practical tasks to traders on a "self-policing" basis 3. preparation of seminars, standard and "brainstorming" courses for customs officials and traders 4. preparation of exchanges of customs officials between Member States (including long-term exchanges and setting up international teams in certain offices) and with certain other countries 5. preparation of operations to evaluate and monitor implementation of the legislation	allocate resources for drafting instructions and manuals some measures already included under the Matthaeus programme and/or under Customs 2000
C. Clarification of priorities and improving organization at operational level	1. structured and regular statistical data and exchanges of information to measure economic and administrative impact and ensure effective monitoring of regular and irregular operations 2. definition and establishment of a hierarchy of the resources of all customs administrations 3. permanent evaluation of the transit situation and definition of requirements according to developments in it so as to anticipate problems and defuse crises	
D. Improving administrative and jurisdictional cooperation	1. stepping-up of cooperation between Member States and with the EFTA and Visegrad countries in the common transit framework in particular as regards measures to combat fraud 2. setting up a joint investigation service 3. harmonization of approach to legal action 4. harmonization of national rules on data protection and confidentiality	- comes under the "Third pillar" - problem of MS sovereignty
E. Penalties	- harmonization of customs penalties	draft harmonization of customs administrative penalties currently being studied

(1)Including the Bordeaux seminar on transit fraud held in June.[Back to text]

(2)see also the more general proposals concerning cooperation.[Back to text]

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C. Strategy

It goes without saying that the main aim of the forthcoming reforms to the transit arrangements is to restore them to a condition in which they again fulfil the expectations of honest traders but, at the same time, protect the public finances of individual countries and the Community.

However, this ambitious aim cannot be achieved unless the agreed solutions can be put in place, which means that the parties concerned must first undertake to give priority to the reforms and provide the resources needed to carry them out.

If the main aim is to be achieved, a number of objectives has to be defined. These must take into account the inherent weaknesses of the transit system itself, the preconditions that must be fulfilled before any reforms can be carried out and what has to be done to achieve them.

The Commission departments have defined the following as being essential objectives which meet the case:

1.to have in place an effective system for managing secure procedures;

2.to ensure that there is close cooperation between the customs administrations, and between them and the Commission departments;

3.to establish continuous, consistent and constructive dialogue between customs authorities and operators;

4.to ensure that there is a set of clear, consistent and accessible rules and instructions;

5.to ensure that customs officers are well trained, properly supervised and aware of making a necessary contribution towards the proper functioning of the transit procedures as a whole.

-:-:-:-

In framing a strategy for reforming the transit arrangements, the Commission departments have sifted out of the survey of problems and suggestions (see point II.B and the attached summary table) those measures they regard as most likely to ensure achievement of the above essential objectives. This preliminary selection in no way anticipates what priorities will actually be adopted upon completion of the forthcoming consultations, for which this interim report is to provide the basis. The final decisions will be given in the final report.

In what follows, this report sets out suggestions on how to achieve each of the five essential objectives, indicating for each suggestion a period within which it might be achieved, what status may already have been made and who is mainly responsible for implementing the suggestions.

1.Effective management of secure procedures

a.Effective management

Computerization

Timescale Medium

Status so far Principles have been defined; installation and pilot application in 1997/98; operational stage and extension to follow in 1998/99

Parties responsible For legislation and application: Commission, Member States and CTC (Convention on a common transit procedure) partners

Reduction in the time allowed for completion of a transit operation,discharge of declarations and the enquiry procedure

Timescale Short

Status so far To be examined

Parties responsible For legislation: Commission, Member States and common transit partners. For application: Member States and CTC partners

Simplification of the enquiry procedure

Timescale Short

Status so far To be examined

Parties responsible For legislation: Commission, Member States and common transit partners. For application: Member States and CTC partners

Reduction in the number of offices authorized to handle transit procedures

Timescale Short

Status so far To be examined

Parties responsible For legislation: Commission, Member States and common transit partners. For application: Member States and CTC partners

Regular, complete and reliable statistics

Timescale Short

Status so far To be examined

Parties responsible For legislation and application: Commission, Member States and CTC partners

b. Secure arrangements

Controlled access to arrangements

Timescale Short

Status so far To be examined

Parties responsible For legislation: Commission, Member States and CTC partners. For application: Member States and common transit partners

More - and more effective - checks and inspections

Timescale Short

Status so far To be examined

Parties responsible For coordination: Commission. For application: Member States and CTC partners

Improvements to the prior information system

Timescale Short

Status so far To be examined

Parties responsible For coordination: Commission. For application: Member States and CTC partners

Clear definition of the responsibilities of transit users and customs authorities with regard to customs and tax debt

Timescale Medium

Status so far To be examined

Parties responsible Commission in conjunction with Parliament and the Council, Member States, common transit and TIR partners and operators

Transit and Guarantees

Timescale Short to medium

Status so far Status being made on the 100%, comprehensive, one-week guarantee. Others aspects yet to be examined.

Parties responsible Commission in conjunction with Parliament and the Council, Member States, common transit and TIR partners and operators

Restricted routingProhibition on changing the office of destination

Timescale Short

Status so far Legislation exists

Parties responsible For application: Member States and CTC partners. For coordination: Commission

Fixing the time limit for the production of goods at customs according to the route taken

Timescale Short

Status so far Administrative Arrangement exists. Inclusion in the legislation to be examined

Parties responsible Commission, Member States and CTC partners

Revision of the rules governing maritime transport

Timescale Short

Status so far Under way

Parties responsible Commission in conjunction with Parliament and the Council, Member States and common transit partners

2. Close cooperation between customs administrations and between them and the Commission departments

Exchanges, seminars, training and joint measures

Timescale Short

Status so far To be continued (Customs 2000 and Matthaeus) specifically for transit

Parties responsible For coordination: Commission. For participation: Member States, CTC and TIR Convention partners

Coordination within the Customs Union

Timescale Short

Status so far To be continued

Parties responsible For coordination: Commission plus, at committee level, particularly that of the Customs Policy Committee: Member States

Closer cooperation with the EFTA and Visegrad countries on combating fraud

Timescale Short

Status so far Under way (persons to contact in anti-fraud matters have been appointed)

Parties responsible For coordination: Commission. For application: Member States and CTC partners

3. Continuous, consistent and constructive dialogue between customs authorities and operators

Make full use of existing communication structures

Timescale Short

Status so far To be examined

Parties responsible At DG XXI level: operators jointly with the Commission. At national level: Operators jointly with Member States

Associate operators with the reform process

Timescale Short

Status so far Under way

Parties responsible Commission and operators

Memorandum of understanding

Timescale Short

Status so far To be examined

Parties responsible Commission, Member States and operators

Mutual exchange of information between customs and operators

Timescale Short

Status so far To be examined

Parties responsible Member States and operators

4. Clear, consistent and accessible rules and instructions

Provisions on transit to be revised, supplemented and better integrated into the Code and Implementing Provisions, and contractual andautonomous provisions to be simplified and clarified

Timescale Short

Status so far To be examined

Parties responsible Commission, Parliament and Council, Member States and CTC and TIR Convention partners

Draw up a consolidated compendium of the rules and regulationsand a Community manual

Timescale Short

Status so far To be examined

Parties responsible Commission in conjunction with Member States, and CTC and TIR Convention partners

5. Training, supervision and Community spirit

a. Training

Provide training targeted on transit

Timescale Short

Status so far To be examined

Parties responsible Member States with help from the Commission

b. Supervision

Provide sufficient supervisory staff for transit

Timescale Short

Status so far To be examined

Parties responsible Member States

c. Community spirit

Provide information and training on the Customs Union and the European dimension of transit

Timescale Short

Status so far To be examined

Parties responsible Member States with help from the Commission

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ANNEX I

General description of transit regimes in the Community

SUMMARY

GENERAL DESCRIPTION OF TRANSIT REGIMES IN THE COMMUNITY

THE ROLE AND FUNCTIONS OF TRANSIT TODAY

Fundamentally, transit means crossing or physically traversing a territory from end to end. It is in this sense that the term is still used in laws on transport.

But it also has a specifically customs meaning, that of the facility available to operators or goods to cross a given territory without paying the charges due in principle when the goods enter (or leave) that territory.

In its basic sense, customs transit therefore simply means facilitating the passage of goods through a customs territory in which they are not to be released onto the market. It is this "freedom of transit" which is enshrined in Article V of the GATT. It has the advantage of ensuring that the country giving the facility becomes part of the give and take of international economic relations.

Without this first kind of transit, which could be termed "through" transit or "direct" transit, and leaving aside international constraints which in fact require it, charges would have to be paid and commercial policy measures applied in respect of goods not intended for the domestic market. This would be unfair and unnecessarily protectionist in the first case and entirely incompatible with the actual objective of the measures in the second. And even a system of depositing duties and charges on entry and having them refunded upon exit involves formalities and checks which add up to a kind of "duty paid" transit.

More recently, in the course of seeking to disperse customs clearance facilities more widely within their territory, as close as possible to the recipient or dispatching businesses (which are incidentally often authorized to use simplified procedures and/or carry out customs clearance on their own premises), some countries have widened the concept of customs transit to mean not just crossing a territory, but also monitoring imported goods up to the point of their release to the market for consumption and, in some cases, monitoring exported goods until they leave the country.

In the Community's case, there is the additional factor that a single *customs* territory is combined with a multiplicity of *fiscal* territories and a concomitant diversity of national charges applicable at destination. The transit arrangements therefore have the advantage for both Member States and operators that imported goods need not be released for consumption until the time and place of their intended use.

Without this second "inland" or "proximity" transit mode, all customs clearance procedures (for release to free circulation or export) would again have to be concentrated at a customs territory's offices of entry or exit, with all the resulting bottlenecks at border crossing points entailed by the lodging of detailed declarations, paying of duties and charges and completion of commercial policy formalities.

These are the two main functions of customs transit but the procedure is also used to transfer non-Community goods from one part of the customs territory to another where they are to be entered for, or have just been removed from, suspensive customs

procedures, particularly the "customs procedures with economic impact" (customs warehousing, inward processing, processing under customs control and temporary importation) or free zones. Note, however, that Community customs legislation does offer special transfer procedures for goods under an economic customs procedure, so that the transit procedure does not have to be used.

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THE HISTORY OF TRANSIT PROCEDURES

The question of how to allow passage through countries of goods destined for other destinations was first approached at international level with the TIR Convention of 1948 run by the IRU. This system essentially provides guarantees by way of the TIR carnets for duty and tax involved on losses en route. It in no way provides or transmits evidence on the duty or tax status of the goods involved.

Consequently when the Common Customs tariff was created in 1968 it was necessary to supplement in this system by one in which a distinction was made between goods on which the customs duties had been paid, goods in free circulation, and goods on which both customs duties and indirect taxes were due. Consequently for use in the Community of six Member States a Community transit regime was set up based on a paper control system, which was the only one available at the time, and which involved transit advice notes dropped off at each internal frontier so that if the goods went missing it was clear in which Member State the duty and tax was due. A distinction was made between the T1 document which applied to goods which were not in free circulation and the T2 document which applied to goods which were and where only indirect taxes needed to paid in the Member State of destination.

This system remained largely unchanged until 1990 when the requirement for transit advice notes was discontinued in the light of the approaching introduction of the single internal market. With the introduction of the single internal market the need for the T2 system disappeared except for minor exceptions set out in the part of this report relating to fiscal aspects and effectively only the T1 system remains today. At the same time the use of the transit system for exports was no longer needed and now the copy 3 of the SAD is used where needed to demonstrate for fiscal purposes that goods have been exported. Re-exports and exports where a payment is made on condition of export are not goods in free circulation and are still using the T1 system. At the same time the last checks at internal frontiers were discontinued.

In 1972 it became clear that a method was needed to pass goods from one part of the Community to another with passage through Switzerland and Austria, two countries then part of EFTA. Thus the Community transit system was extended by virtue of two agreements to cover those two countries. This allowed for transit through these countries and for the stopover of goods in warehouse etc. there as well as the despatch of goods to and from them. In 1987 this extension of the Community transit system

was replaced by the Common Transit Convention that included the rest of the EFTA countries, Iceland, Sweden, Finland and Norway. This, instead of referring directly to the Community transit system as had been the case before, set up a mirror image Common transit system next to it to cover movement of goods to and from the Community and the EFTA countries. The community as a whole is one member of the Convention. On 1 January 1995 Austria, Finland and Sweden became Member States and applied the Community transit system to their trade with the rest of the Union and ceased to be individual members of the Convention. On 1 July 1996 the coverage was extended by the adhesion of Poland, the Czech republic, Slovakia and Hungary. In the Common transit system transit advice notes are still used, except within the Community.

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THE VALUE OF TRANSIT

Transit operations in the Community therefore take place under three separate legal frameworks occupying three partly overlapping geographical ranges:

- Community transit, legally and geographically confined to the customs territory of the Community plus Andorra and San Marino, with which it is in customs union;
- common transit, under the Convention linking the Community with the three remaining EFTA members (Switzerland - plus Liechtenstein - Norway and Iceland) and the four Visegrad countries (Poland, the Czech Republic, Slovakia and Hungary);
- TIR, which has 58 Contracting Parties, including the Community.

The economic cost of doing without transit would therefore be considerable. Abolishing the system would mean huge commercial upheavals, with firms forced to reorganize their operations, and a full-scale reform of the arrangements governing the customs territory and our relations with our main trading partners, all this at high financial, social and human cost for very modest gains in the fight against fraud. The impact of a blanket elimination of the transit facilities needs to be seen in the perspective of the fairly small proportion of operations that are fraudulent.

It is vain to hope that by abolishing transit and the risk inherent in moving goods duty and tax unpaid, those duties would just then be collected in full at the external frontier. The fact is that the build-ups presently caused at borders by goods being entered for transit would increase exponentially if the entry formality were replaced by the full panoply of a comprehensive declaration with detailed particulars, presentation of documents required for release to free circulation and calculation and settlement of the customs debt. Inevitably, the avalanche of formalities would make it impossible to carry out all the important checks and verifications which today are carried out inland, as close as possible to the premises of the actual

consignees. The upshot would be that transit fraud was replaced by fraudulent entry for free circulation and smuggling pure and simple.

On the tax side the intention of the measures accompanying the introduction of the internal market was to have release of imports for consumption aligned as closely as possible on release to free circulation. If transit were abolished, the consignees of goods currently carried under the procedure would have to arrange for the goods to be entered to free circulation and for consumption as well at the external frontier, which would involve

separate tax formalities and extra costs. Even with new VAT arrangements which allow traders to group their declarations, the loss of transit would deprive businesses of a useful

tool for the management of their import flows. It is up to businesses to think about the pros and cons of the two systems - clearance at the point of entry and tax procedure or external transit - and decide which suits them best.

It accordingly seems somewhat unrealistic to imagine that the Community could reasonably do without a customs procedure for the movement of goods internally or in trade with other countries, or that customs transit, which offers such ease and flexibility for customs clearance and trade, could simply be abolished.

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BASIC PRINCIPLES OF CUSTOMS TRANSIT AND HOW IT WORKS

Any transit regime, system or procedure includes the following features:

- the movement of goods between two points within a customs territory or between two separate customs (or fiscal) territories

This is the essential feature of transit and the one which sets it apart from the other customs-approved treatments or uses which are more "static" in terms of the location and the supervision and checking of goods. It also presupposes the involvement of several countries and customs administrations in a single operation (even where this is effected entirely within the Community framework) and at least a minimum of cooperation between administrations.

- tariff and/or non-tariff measures are suspended, or their use made subject to conditions

The purpose of transit arrangements is to place goods subject to or benefiting from certain measures under customs supervision when they are imported or exported. Typical measures are import or export duties, other taxes, commercial policy measures, agricultural policy refunds, repayment of duty related to export, and retention of customs status even when the goods are carried via a third country.

- making one or more persons answerable for the proper conduct of the procedure

In view of the measures involved in any transit system, the customs authorities must know exactly who exactly will be responsible in the event of non-compliance with the conditions to which a transit operation is subject, on the strength of undertakings given generally in the form of a signed declaration. The main undertaking given by this person or persons is to present the goods intact at destination within the prescribed time-limit.

- a financial guarantee for the charges involved

The suspensive nature of transit procedures, the measures involved and the fact that the goods are moved from place to place mean that most transit systems include a mechanism for providing a financial guarantee in respect of the charges at stake. Most frequently this takes the form of a deposit lodged by a third party, the guarantor, who may in turn insure himself for the full amount of the risk he is taking upon himself. Obviously, such a guarantee cannot cover risks linked to a failure to apply non-tariff measures, particularly commercial policy measures.

- a documentary procedure covering entry of goods for the transit procedure, movement of the goods, and completion and discharge of the procedure

Goods are entered for transit by means of a declaration (which may be in the form of a carnet, as for the TIR or ATA arrangements) which engages the responsibility of the person liable, describes the operation (goods, place of departure, movement, route and transit points, time-limit, identification measures and place of arrival) and includes the vouchers or copies for use in documentary monitoring of the operation.

The movement is generally subject to fairly strict rules designed to verify the proper use of the procedure and prevent fraud.

The transit operation comes to an end when the goods and documents are presented at their destination; then, once the office of destination has returned the relevant copy or section of the transit document to the office of departure, the transit document is discharged, or written off, and the guarantee released. In the case of the TIR procedure, the Convention further provides that discharge may not take place until the goods have been entered to another customs-approved treatment or use.

- specific customs supervision and checking procedures

The suspensive nature of the transit procedure and the restrictions or concessions to which the goods may be subject call for constant customs supervision and controls which, in view of the number and diversity of operations, cannot be applied to all movements.

Movement-based supervision and control procedures specific to transit include approval of the means of transport, identification plates and signs, sealing of the means of transport, time limits, mandatory routing, and a ban on changing the office of destination, though not all of these are used in every transit regime. Given the limited number of particulars in a declaration and the risk of goods being switched en route, primary documentary checks and physical inspections on departure and arrival are extremely import in the transit system.

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TRANSIT IN PRACTICE: FACTS, FIGURES AND QUESTION MARKS

Statistics

Prior to 1 January 1993 the transit legislation made provision for the compilation of statistics(1) based on extra copies of the transit document, which were to be returned by the offices of departure and destination to the Member States' statistics offices.

These rules were supposed to apply pending future harmonization, but in practice the Member States did not really put them into effect, since most saw little point in keeping transit statistics. Later, when Community statistics legislation was revised as part of the move to the internal market, the Community's Statistical Office did not regard these rules as forming part of the body of customs legislation.

While statistics legislation does cover visible trade both between the Community and its Member States and non-Community countries(2) and between Member States themselves,(3) returns are optional for Member States in both cases. Furthermore, transit is not included in either the external or the intra-Community trade statistics;

- in the first case, national rules continue to apply in the absence of harmonized Community provisions,
- while in the second the statistical definition of transit is not the same as the customs definition, and only if they decide to apply the optional provisions do Member States have to comply with the common rules.

Transit statistics are therefore optional - they are produced only to the extent that the Member States see the need, and primarily for their own purposes, the Council not having considered them sufficiently important for Community purposes to make them mandatory.

Clearly, therefore, it is very difficult to compile statistics on customs transit operations and the Commission cannot simply get the information direct from EUROSTAT, while the variety of different transit regimes, procedures and documents further complicates attempts to gather standardized data for operations as a whole.

In any case, as the whole point of transit is to defer customs clearance, transit documents do not contain all the particulars necessary for clearance purposes; in particular, with only a few exceptions, they do not state the tariff classification, origin or customs value of the goods, which makes it hard to gauge the real economic impact of transit in terms of the flow of goods and amount of duty and tax at stake.

Number of transit operations

Community/common transit

To make a preliminary assessment of the scale on which business uses the transit system and therefore what level of customs resources should be allocated to it in the light of its proportional ranking among customs procedures, we need at the very least to know the number of operations taking place.

While there is no obligation to make statistical returns, all Community and common transit declarations are registered by the office of departure, and Member States are also able to log arrivals at destination (using copy 7 of the T document, returns of copy 5 or a special registration procedure). This information should enable them to assess and allocate the staff and equipment resources needed to administer transport procedures on their territory according to the number of declarations and the geographical spread of the corresponding offices of departure and destination.

However, there is no obligation under Community customs law for Member States to record this information, collate it or transmit it to the Commission, which consequently has no up-to-date figures and can only gain some idea of the scale of transit operations by asking Member States every time it needs certain information for specific purposes, whether in connection with the transit computerization project, to comply with requests from Parliament's Committee of Inquiry or for

this report. The Member States themselves, moreover, sometimes lack the computerized systems or other facilities to collate the information at the national level. Nor is any distinction made, for the purposes of registration, between Community and common transit operations.

This explains the often vague and patchy nature of the available information, based as it is on data requested from the Member States for the transit computerization feasibility study and the Commission's contribution to the Committee of Inquiry on transit.

Subject to these reservations, however, the Commission estimates the number of Community/common transit declarations (T1 and T2) lodged in 1993, the first year of the internal market, at approximately **18 million**, broken down as follows between Member States and EFTA countries:

Community/Common Transit operations 1993 by '000 000 declarations

NB. Neither departure nor destination figures are available for Iceland, and destination figures are also lacking for Luxembourg and Netherlands, which may explain the discrepancy between the departure and destination totals.

The graph shows clearly the preponderance of Germany as a point of departure and destination for transit operations; the Netherlands, Italy and Switzerland also feature prominently, each over the two million mark for declarations at departure. Equally, it shows which countries are less involved in transit, either because their trade volume is comparatively modest or because of their situation on the geographical margins. Among countries of comparable economic weight France stands out, not as one of the foremost points of departure or destination but as a "country of transit" in the non-customs sense, by virtue of its central geographical position.

By way of comparison, the number of T documents issued on departure totalled:

- approx. **14 million in 1979** (the Nine plus Austria and Switzerland)
- approx. **27 million in 1992** (the Twelve before the completion of the internal market and the virtual abandonment of Community internal transit).

At present we are unable to give the comparable figures for 1994 and 1995, as the Member States have not yet provided a complete set of data. The 1996 and 1997 figures are expected to be higher, particularly the latter, given the extension of the common transit system to the four Visegrad countries from 1 July 1996.

TIR

In **1994** a total of **2.1 million** TIR carnets was issued by the then 56 Contracting Parties.

The fifteen current EC Member States accounted for **390 700 (18.6%)** of those, and the current EFTA members (excluding Iceland, which is not a Contracting Party) for **6 350**, or **0.3%**.

Looking at the figures for those Visegrad countries now parties to the Common Transit Convention, Poland accounted for 215 950 carnets, Hungary for 307 600, the Czech Republic for 138 900 and Slovakia for 20 900, a total of 683 350 carnets (32.5%), a proportion of which will be replaced by common transit declarations. Similarly, many of the carnets issued in the Community for movements to the Visegrad countries will likewise be replaced by common transit declarations. The breakdown of carnets among the EC Fifteen in 1994 was as follows:

TIR Carnets issued in EC 15 in 1994
Statistics: Economic Commission for Europe (UN)

Number of customs offices authorized for transit operations

According to the information supplied prior to the Visegrad countries joining the Common Transit Convention (the list is currently being updated), **approximately 2 150** customs offices in the Community are authorized transit offices, **approximately 190** in the EFTA countries and **approximately 780** in the Visegrad countries, giving a total of **3 120 offices authorized** to handle all Community/common transit operations.

Eleven Member States, one EFTA country (Iceland) and Andorra have central sorting offices to which offices of destination must return copy 5s; a number of them have more than one (see annex II, point II.3.).

Transit operators

The transit legislation has no particular provisions concerning the person entitled to use the procedure.

Under the Community/common transit system the principal can be any person who undertakes a dispatch operation and undertakes to present the goods intact at their destination. With one or two exceptions (e.g. authorized consignors or comprehensive guarantees) the principal in a Community transit operation need not even be established in the Community, so a principal can be the third-country consignor of the goods, who would then normally have the declaration made by a representative. There is also nothing to prevent the operation being undertaken by a consignee. Many manufacturing

concerns handle their own transit needs, usually using local clearance procedures, as authorized consignors and/or consignees.

Generally, however, customs transit involves operators on the transport side, either the hauliers themselves or freight forwarders or customs agents, who process the customs formalities without actually physically moving the goods, or who organize both haulage and transit by arranging the contacts between the consignor, haulier and consignee.

The European Liaison Committee of Forwarders, (CLECAT), a body representing 22 national federations of forwarding and customs agents from the EU Member States, claims its members account for 90% of declarations for Community transit.(4)

Amounts at stake

Because of the lack of Community statistics and the absence of details on transit declarations, the amount of duty and tax at stake in transit operations is hard to assess. To do so it would be necessary if not to have the Combined Nomenclature codes of goods in transit then at least to have an idea of the quantity and value of the goods to which the prevailing average rate of duty could be applied.

Trade federations, however, have advanced alarming estimates of at least ECU 8 billion for outstanding claims. This contrasts strongly with the Commission's estimate, based on information supplied by Member States under the mutual assistance arrangements andpassed on to the Committee of Inquiry in February. That put total transit fraud-related debt at somewhere around the order of ECU 1 billion.(5)

In the face of such wildly diverging estimates the Committee of Inquiry asked the Commission for detailed figures but despite twice asking the Member States, in March and July 1996, the Commission has so far been unable to get a complete and usable set of data; however, it hopes to do so soon.

For the time being the variation in the figures given for outstanding claims is so wide that no valid policy conclusions can be drawn.

(1) See Articles 50 to 54 of Council Regulation (EEC) No 222/77 on Community transit (OJ No L 38, 9 February 1977).

(2) This covers goods entering the Community, held there for a period, stopping over and leaving under a transit procedure: see Council Regulation (EC) No 1172/95 (OJ No L 118, 25 May 1995).

(3) But only for goods transiting through a Member State: see Council Regulation (EEC) No 3330/91 setting up the INSTRASTAT system (OJ No L 316, 16 November 1991) and Council Regulation (EEC) No 854/93 on transit statistics and storage statistics relating to the trading of goods between member States (OJ No L 90, 14 April 1993).

(4) See memo from CLECAT to DG XXI and contribution to the Committee of Inquiry.

(5) Actually ECU 975 million: ECU 407 million of traditional own resources and ECU 568 million of national tax.

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EUROPEAN COMMISSION

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INTERIM REPORT ON TRANSIT

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ANNEX II

ANALYSIS OF COMMUNITY LEGISLATION ON CUSTOMS TRANSIT

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ANNEX II

Analyse de la réglementation communautaire en matière de transit douanier

SUMMARY

- □ Incurring liability and person(s) liable
- □ Level of the guarantee
- □ Procedures for recovering tax liabilities
- □ glossary of customs terms used in transit

Full text of the ANNEX II is available in the Word format (> 145 K)

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I Customs transit systems in Community legislation

1. Multiplicity of legal and institutional frameworks for transit

Customs transit is not the same thing as the customs supervision of goods which have been brought into, or are due to leave, the customs territory, although entering goods for the transit procedure may follow or precede their presentation to customs.

By contrast with other customs procedures used in the Community, the transit arrangements are a jigsaw puzzle of many different autonomous and contractual procedures.

In the main body of the report we have already said that GATT required its contracting parties to allow freedom of transit across their territory. Annex E.1 to the Kyoto Convention on the simplification and harmonization of customs procedures on the other hand sets out the minimal conditions which the transit regimes of its contracting parties have to meet, allowing them the option of introducing arrangements more favorable to traders. In any event, that Convention has little binding effect especially as the Community has entered a general reservation with regard to Annex E.1. The WCO is due to undertake a revision of the Annex on the basis of a proposal which Switzerland and Norway are in charge of drafting. Whatever the outcome, however, the aim is not to define a generalized international transit system.

Such international systems do exist on a sectoral or regional basis. The autonomous Community transit arrangements have to dovetail with these, because "Community transit" - in the strict sense of that term - is only one of the regimes under which goods may transit Community customs territory. A transit operation starting or ending in the Community may in fact be effected under the TIR Convention, the ATA Convention or procedures resulting from specific agreements (NATO Form 302, the Rhine Manifest, agreement on postal consignments).[1] Also, under the 1987 Convention on a common transit procedure, that portion of a common transit operation effected in the Community is deemed to come under the Community transit arrangements.

Since the transit conventions to which the Community has acceded form an integral part of Community law, transit is from a legal viewpoint like a system of "Russian dolls" with an attendant "domino effect" - tinker with one set of rules and the effect on the implementation and effectiveness of others could be immediate since different countries are involved and the institutional systems, decision-making mechanisms and, frequently, procedures all differ.

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1 In fact there are no formalities governing transit by post other than those allowing consignments to be exported and released for free circulation.

Community transit

This is the basic transit procedure for movements of goods starting and ending inside Community customs territory.
Like the rest of the Community's independent customs rules, those governing Community transit come under the Community Customs Code (itself based on Articles 28, 100a and 113 of the EC Treaty, and now subject to the co-decision procedure for Parliament and the Council under which decisions are taken by qualified majority) and its implementing provision (a Commission Regulation subject to a regulatory committee procedure). The final element of this legal framework is provided by administrative arrangements and interpretations,[2] adopted by consensus in committee in conjunction, where appropriate, with national legislation and instructions.

Since 1 July 1996, the Community transit arrangements have been extended to trade with Andorra under the Community-Andorra Customs Union. A similar extension already exists *de facto* under the Customs Union with San Marino with the movement of goods between authorized customs offices in Italy and San Marino or *vice versa* taking place under cover either of a transit document or other evidence of the status of the goods. On the other hand no provision has been made for the extension of Community transit or for a specific transit system under the Customs Union with Turkey which has been in place since 1 January 1996, although Turkey has applied to join the common transit system.

The main features of Community transit are explained in point II.

Common transit

This arrangement is based on the Convention concluded on 20 May 1987 between the Community and the EFTA countries (of which only three, Switzerland, Norway and Iceland, now remain). The Convention also applies to the Principality of Liechtenstein, as a consequence of its having entered into customs union with Switzerland,[3] and was extended on 1 July 1996 to four of the Visegrad countries (Poland, Hungary, the Czech Republic and Slovakia). For the purposes of the Convention, this group of seven countries is designated under the generic term of the "EFTA countries".

The Convention is administered by a Joint Committee comprising representatives of the Contracting Parties (Directors-General of the customs administrations), who take decisions by consensus. The Joint Committee is assisted by a Working Party chaired by a representative of the European Commission. The Joint Committee makes recommendations to the Contracting Parties notably for amendments to the Convention or for the adoption of implementing measures.[4] But it was also given direct decision-making powers for the adoption of certain measures which do not immediately affect the body of the Convention (in particular amendments to the Annexes or adjustments to the Convention necessitated by such amendments, the adoption of transitional measures in the event of the accession of new Member States to the Community or invitations to third

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2 These have been compiled in a compendium for the use of customs authorities (CAA).

3 Article 20(2) of the Convention.

4 Article 15(2) of the Convention.

countries to accede to the Convention).[5] The Working Party may adopt administrative arrangements and interpretations on the same general lines as those laid down for Community transit to be included in the same compendium.

Broadly speaking, the common transit arrangements are the same as the Community transit arrangements, with the T1 and T2 procedures depending on whether the goods concerned are Community or non-Community goods.

The T2 procedure applies to Community goods only and, from the Community's viewpoint, is used solely to prove the Community status of goods when they re-enter the Community after having transited, or spent time in, EFTA countries, subject to certain conditions (see point III).

Whilst operators are obliged to use the Community transit arrangements in Community customs territory, there is no such obligation regarding the common transit arrangements.[6]

TIR

This regime is based on the TIR (Transports Internationaux Routiers) Convention of 14 November 1975 which now has 58 Contracting Parties

Under the Convention goods may be moved, in sealed vehicles or containers, in the respective territories of the Contracting Parties, with all duty and taxes suspended, under cover of a TIR carnet which is valid for a single journey. These carnets are issued by the International Road Transport Union (IRU) which distributes them to its members, the national guaranteeing associations of the Contracting Parties.

Each carnet is covered by a flat-rate guarantee of US$ 50 000 which secures the payment of any duty and tax falling due under the corresponding TIR operation. Guarantees are put up by guaranteeing associations which are backed by the IRU and a central pool of insurance companies.

The Convention is administered by an Administrative Committee. Technical matters are subject to examination by the UN's ECE Working Party on customs problems relating to transport operations, also known as WP30, which reports to the ECE Inland Transport Committee. The Administrative Committee takes decisions by a qualified majority whereas the WP30 decides, in practice, by agreement (though voting is not excluded). An informal contact group has also been set up between the customs authorities of the Contracting Parties, the guaranteeing associations and the IRU.

Under Community legislation, the TIR arrangements may be used only in trade between the Community and third countries.

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5 Article 15(3) of the Convention.

6 Articles 1, 2(2) and 4 of the Convention.

2. The part played by transit in the independent customs rules

A multi-faceted customs procedure

In the Community Customs Code, transit arrangements in general, external and internal transit, and Community transit (both external and internal) all come under the heading of customs procedures. In spite of the internal market, a distinction is still drawn within the customs transit procedure between external and internal transit, as follows:[7]

- the "external" part of the procedure is for the movement of non-Community goods, suspending the measures normally applicable to them on import into the Community, or for the movement of Community goods leaving the territory when they are subject to the Community export rules;[8]

- the "internal" part of the procedure[9] is for the movement of Community goods, in principle to allow them to maintain their customs status in spite of passing through the territory of a third party, but also to allow for the existence of different fiscal territories.[10]

Each of the above forms of transit may take place under cover of: Community transit (internal or external), a TIR carnet, an ATA carnet, a Rhine manifest, a NATO form 302 or by post under the conditions specific to the various regimes or procedures concerned.

Most of the provisions governing external Community transit apply *mutatis mutandis* to internal Community transit.[11]

As regards use of the transit rules to monitor exports of Community goods, the Code[12] applies to external transit arrangements as a whole, under whatever form they take, whereas its implementing provisions[13] apply to external Community transit only and describe how the Community transit documents are to be used to apply the export measures relating to certain goods.[14]

On the other hand, the term "suspensive procedure"[15] applies to external transit only since the internal transit rules cover only the maintaining of the Community status of goods and the application of tax measures, but there are no Community measures to be suspended. It

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7 Article 4(16)(b) CCC .

8 Articles 91 to 97 CCC.

9 Articles 163 to 165 CCC.

10 Article 311 IPs .

11 Article 163(3) CCC and Article 381(2) IPs.

12 Article 91(1)(b) CCC.

13 Article 310 IPs.

14 Articles 463 to 470 IPs.

15 Article 84(1) CCC .

should be remembered, however, that the external transit rules may be used for monitoring goods which benefit from certain Community measures, without this resulting in real "suspension".

A suspensive procedure without economic impact

Although suspensive, the external transit procedure, in spite of its very purpose and the fact that it is constantly evolving, is not accepted as a customs procedure with economic impact. The consequence (or the reason for this?) is that the principle of prior authorization to use a customs procedure having economic effect[16] does not apply to transit. In transit the principal is therefore a party entitled to use a procedure, with his obligations limited - on the basis of a single declaration - to a given operation, not the holder of an authorization which may cover several operations to be carried out within a given period.

Also, and as opposed to what happens under a suspensive arrangement with economic impact,[17] the customs rules do not directly define how the transit procedure is to be discharged, although the term is used regularly and appears in some provisions.[18] Article 92 CCC only defines the "end" of the procedure, i.e. when goods and the corresponding documents are produced at the customs office of destination in accordance with the provisions of the procedure in question. There is an administrative arrangement specifying that, as long as goods and documents are so produced, the obligations of the principal and the guarantor do not extend to any subsequent customs procedure. But the only legal provisions on what happens in the transit procedure after the production of goods and documents are those on bringing goods into the territory and presenting them to customs,[19] in particular those on the summary declaration, the temporary storage of goods and the obligation to assign them a customs-approved treatment or use within a given period.[20]

A procedure to supplement other customs-approved treatments or uses

Apart from its own role, customs transit also supplements other customs-approved treatments and uses. For instance, it may be used prior to such a treatment or use (e.g. before entry of imports for free circulation or a customs procedure with economic impact) as another procedure for bringing goods into the customs territory.[21] It may also be used after such treatments or uses as an intermediate procedure for use between discharge of another suspensive arrangement (with economic effect) and entry for a further customs treatment or use which will, in principle, culminate in the goods being re-exported. Finally, it may be used to transfer goods between two procedures, e.g. between two customs warehouses or two places where inward processing is carried out (under the suspension system).

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16 See Articles 85 to 87 CCC.

17 Article 89 CCC.

18 e.g. see Articles 373(2), 374, fourth indent of Article 444(11)(c) and third indent of Article 448(11)(c) IPs and in the CAA.

19 Article 55 CCC.

20 Articles 43 to 53 CCC.

21 See Articles 54 and 55 CCC.

On this point the Customs Code[22] provides that the movement of goods placed under a customs procedure with economic impact may take place under specific procedures other than external transit. "Transfer" mechanisms of this kind specific to the various economic procedures have in fact been established alongside, or as substitutes for, the external transit arrangements. But the practical outcome has been that, in some cases, the external transit procedure now acts as a discharge for the previous procedure, on the basis of the provisions of Article 89 CCC, whilst, in others, it simply acts as an instrument for transferring goods without their first having to obtain a discharge under the procedure concerned, as happens in the transfer procedures for each particular arrangement.

A procedure to supplement non-customs rules

Finally, transit also supplements non-customs rules applicable to trade with third countries, particularly under the Common Agricultural Policy. External transit rules may be applied to Community goods which are subject to a Community measure involving their export to third countries.[23] This includes goods benefiting from export refunds, subject to a levy or other export charge, or taken from intervention stocks and subject to checks regarding their use and/or final destination on export. However, the scope of the obligation to use the external transit procedures differs according to whether the obligation is in respect of customs or of agricultural rules. This also applies to the customs status of goods entered under the external transit procedure to allow verification of export. For the purposes of checks on the use of goods and/or their final destination, a T5 form (control copy) has to be produced. It has its own procedure and requires a further guarantee on top of that for the T1 form.

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22 Article 91(3) CCC.

23 Article 91(1)(b) CCC.

II. COMMUNITY TRANSIT

Most of the points covered in this section are also valid for common transit. There are a few differences of emphasis to take account of the fact that there is no single customs territory, e.g the system of transit offices and transit advice notes is retained and there are no individual waivers in respect of guarantees; and the time lag between the adoption of Community transit measures and their subsequent extension to common transit is growing.

1. External and internal Community transit

While it is Articles 91 and 163 CCC which distinguish between the respective scopes of external and internal transit (see point I.2), that same distinction is made in respect of Community transit by Articles 93 CCC and 310/311 IPs.

External Community transit

External Community transit allows (like other forms of external transit) the movement from one point to another within the Community of non-Community goods on which duties, other charges or commercial policy measures have been suspended or Community goods which have been exported and are subject to a Community measure requiring them to be exported.[24]

However, where such transit involves crossing the territory of a third country, provision must have been made to that effect under an international agreement or carriage through that territory must be effected under cover of a single transport document drawn up in the customs territory of the Community, in which case the operation of the procedure is suspended in the territory of the third country.[25]

The situations in which the external Community transit procedure is used when Community goods are exported are given in Article 310(1) IPs:

- where goods are eligible for agricultural export refunds or for repayment or remission of import duties subject to their export or in the case of compensating products re-exported following inward processing (drawback system);
- where goods are subject to export levies or other charges on export or come from intervention stocks and are subject to measures of control as to use and/or destination under the common agricultural policy.

The conditions for the use of transit in the above situations are given in Articles 463 *et seq.* IPs.

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24 Article 91 CCC.

25 Article 93 CCC and Article 312 IPs.

Internal Community transit

The situations in which internal Community transit is used, i.e. to allow Community goods passing through the territory of a third country to keep their customs status,[26] or where Community provisions make express provision for its application,[27] or because of different fiscal territories within the customs territory of the Community[28] or customs union agreements,[29] are described in point III.

2. The party authorized to use a procedure, and his responsibilities

In Community transit, the person authorised to use a procedure is the principal. Like any declarant using a customs procedure, the principal in a transit operation, either directly or through a representative, lodges a written, signed undertaking that:

- the information given in his declaration is accurate and that any documents attached to the declaration are authentic;[30]
- he will comply with all the obligations arising under the procedure, particularly the obligation to produce the goods intact, at the customs office of destination, within the prescribed time limit, whilst duly observing the provisions adopted to ensure identification[31]; thus, although the principal is responsible for ending the procedure at destination, he is not himself required to assign the goods a new customs-approved treatment or use or formally ensure that the transit procedure is discharged.

In view of these obligations and the responsibilities that they imply, the principal must weigh up precisely in advance the extent of his undertaking with regard to the proposed transit operation. He must take the utmost care when assessing the reliability of all those involved in the operation (suppliers, carriers, consignees) and whether certain goods or routes are especially susceptible to fraud. Although the customs administration plays a key role in fraud prevention and control, the fact that it is a public service function clearly does not release the principal entirely from the obligation of taking a minimum of precautions in direct relation to his undertaking by carrying out his own risk analysis before commencing an operation.

On top of the primary responsibility for presenting the goods that the Community transit procedure assigns to the principal, the Code ("notwithstanding the principal's obligations") imposes secondary liability not entailing a specific undertaking on the carrier or the consignee of goods, who accepts it simply by knowing that the goods have been entered for the procedure.[32]

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26 Article 163(2)(a) CCC and Article 311(a) IPs.
27 Article 165 CCC.
28 Article 311(c) IPs.
29 Customs union agreements with Andorra and San Marino.
30 Article 199(1) IPs.
31 Article 96(1) CCC.
32 Article 96(2) CCC.

However, apart from the apparent hierarchy of parties subject to the obligation to present goods, the obligation itself applies equally to all three, and the practical division of responsibilities between them is not defined in terms of the type, time or place of an irregularity. It should also be noted that this is a purely legal - and somewhat imprecise - definition of obligations arising under the transit procedure. It only takes real effect in terms of the pecuniary liability (in the form of customs or tax debt), and/or penalties imposed on the principal and/or those sharing responsibility in the event of the obligations not being met.

Also, by contrast with other customs procedures (apart from some cases of temporary admission) the principal does not have to be established in the Community,[33] except where he is granted certain facilities (in particular, use of the comprehensive guarantee) which are subject to this requirement.

3. Details and variety of the Community transit procedures

The Community transit arrangements (external or internal), not to mention the other external and internal transit systems, comprise a large variety of procedures. Apart from the normal procedure, there are simplified procedures which were instituted specifically for transit on the basis of Article 76(4) CCC, and are organized either:

- horizontally - in that formalities at departure and destination are made easier for specially approved operators; or
- by sector - to meet the exigencies and specific needs of certain modes of transport.

To this may be added the simplified procedures of Article 97(2) CCC, agreed bilaterally or multilaterally between Member States for the purposes of mutual trade, or decided unilaterally by a single Member State for operations restricted entirely to its own territory.

The checks that have to be carried out under these procedures are discussed in point 4.

Normal procedure

The common link between the normal Community transit procedure and standard declaration procedures is the Single Administrative Document. Generally a transit document comprises four copies taken from the SAD set of forms namely:

- copy 1, which remains at the office of departure;
- copy 4, which accompanies the goods and, upon completion of the operation, remains at the office of destination;
- copy 5, which also accompanies the goods but is returned by the office of destination to the office of departure for the purpose of discharging the operation; and
- copy 7, which is used for statistical purposes in the Member State of destination.

A transit declaration may be accompanied by a loading list stating what goods make up the consignment covered by the declaration. A given declaration may cover both T1 and T2

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33 Article 64(2)(b) CCC.

goods and one means of transport may be used to carry goods assigned to several separate transit operations covered by separate declarations. But all goods covered by a given declaration must be carried by one and the same means of transport.

The office of departure accepts and registers the transit declaration, sets a time limit within which the goods must be presented at their destination, takes whatever steps are necessary to ensure identification and carries out any checks that may be necessary (see point 4).

As the transport operation proceeds, the consignment and the copies of the transit document accompanying the goods have to be presented at each transit office en route (i.e. only at points of exit from, or entry into, Community customs territory). The transit office receives a transit advice note which it endorses and keeps. Copies of the T form are also presented whenever required by the customs authorities.[34]

Goods and documents have to be presented at the office of destination within a prescribed time limit.[35] This office carries out checks (see point 4), makes the requisite entries in the documents and returns copy 5 to the office of departure, in principle within a maximum of 10 working days from the date of presentation[36] and, at the latest, on the working day following that for goods prohibited from using a comprehensive guarantee.[37] Where these goods are concerned, or whenever the customs authorities consider it necessary, the authority of the Member State where the goods are at the time is prohibited from changing the office of destination except at the request of the principal, and then only in agreement with the office of departure and after informing the original office of destination.[38]

Centralizing offices

Member States may designate one or more centralized bodies ("centralizing offices") to receive documents (in particular copy 5) returned by the authorized offices of the countries of destination. The powers of these bodies vary according to the countries and procedures involved (return of copy 5, inquiry procedure, post-clearance verification). Some offices are mere collection, sorting and redistribution centres for customs documents. Others have additional duties, such as checking documents and stamps and/or monitoring discharge and inquiry or inspection procedures.

Even if it helps prevent misdirection of documents and can even provide value added in terms of controls, the need to send documents via the centralizing offices of one or another country necessarily involves longer transmission times.

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34 Article 350 IPs.

35 Article 356 IPs.

36 See CAA.

37 Article 362(a)(3) IPs.

38 Article 356(3)(a) IPs.

Eleven Member States have one or more centralizing offices and others can be found in Iceland and Andorra (the question does not arise in the case of San Marino).

CENTRALIZING OFFICES FOR THE RETURN OF COPY 5 OF THE T FORM	
EU MEMBER STATES/EFTA COUNTRIES	**Centralizing offices**
BELGIUM	Brussels
GERMANY	Helmstedt, Hamm
GREECE	Athens
FRANCE	Toulouse
IRELAND	Bridgend
ITALY	Ancona, Bari, Bologna, Bolzano, Cagliari, Florence, Genoa, Milan, Naples, Palermo, Rome, Turin, Trieste, Venise-Mestre
LUXEMBOURG	Luxembourg
NETHERLANDS	Arnhem, Heerlen
UNITED KINGDOM	Harwich
SPAIN	Madrid, Barcelona, Las Palmas
PORTUGAL	Lisbon
ICELAND	Reykjavik
ANDORRA	Andorra la Vella

Simplified procedures at departure and destination (easing the formalities)

This facility consists of exempting the consignor at the point of departure (the authorised consignor) or the recipient at the point of destination (authorised consignee) from having to present goods and documents at the customs office.

This authorisation is issued only to persons who frequently consign or receive goods forwarded under the transit arrangements and who fulfil all the conditions of reliability regarding use of the procedure and financial status. The authorised consignor, who is the principal in respect of the operation, also has to obtain a comprehensive guarantee, and the waiver he has been granted regarding the presentation of goods requires him to authenticate the declarations or have them authenticated in advance. The authorised consignee has to send the office of destination, without delay, copies of the declaration accompanying the consignment. The customs office has to be informed, as appropriate, of the departure or arrival of the goods, so that it can carry out any checks that may be necessary.

Simplified procedures for particular modes of transport

These procedures relate to mode of transport (rail, large containers, air, sea, pipeline).

Generally speaking the simplifications consist of:

- replacing the SAD by a commercial or transport document (e.g. the LVI-CIM for rail transport, the return copy of the TR transfer note for large containers, the airway bill for air freight or the waybill for maritime transport) or even, as in the case of pipelines, doing away with all documents;
- reducing the number of checks and/or delegating to the principal the authority to carry out those checks, either duly secured by special guarantees which he has to lodge (as in the case of railway undertakings, Intercontainer, airlines and shipping companies which are authorised to use the "supersimplified" procedure) or because the mode of transport itself is sufficiently secure (as with pipelines);
- waiving the requirement to return a copy of the document to the office of departure and requiring instead that it be kept by the office of destination and/or by the principal and that stock records are kept to permit post-clearance checks.

In air or sea transit, the "supersimplified" procedure involves the Member States in which the air or sea ports to be used for the operations are located issuing authorizations on a bilateral or multilateral basis[39] and requires the principal himself to monitor consignments (using EDI data exchange in the case of air transit) and keep stock records which will permit subsequent auditing.

Simplified bilateral, multilateral or national procedures

Article 97(2) CCC allows the Member States the option of introducing simplified procedures for their own national territory, or for use between their own and another Member State, subject to the correct application of the Community measures governing the goods involved. Bilateral and multilateral arrangements of this kind are applicable to certain types of traffic or to particular businesses and subject to criteria which may have to be established at Community level (e.g. the "supersimplified" procedures for air and sea transit). The purely national procedures are applicable, in certain circumstances, to goods moving within a single Member State. This raises the question of the scope of, and limits to, such national simplifications, given the requirements regarding the uniform application of the Community transit rules, the protection of Community interests and the equal treatment of operators.

4. Documentary and physical checks

As with checks on customs procedures with economic impact, the main feature of checks on goods entered for transit procedures is that they supplement, and dovetail with, each other. Clearly, there is not much point in having checks at destination or en route, whether

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39 Article 97(2)(a) CCC.

of documents or of goods, unless the operation in question commenced with a minimum of essential checks at the point of departure. And, conversely, the procedure of comparing copies 1 and 5 of the declaration at the office of departure presupposes that these copies have been completed correctly.

Checks at the point of departure

Like any other written customs declaration, a transit declaration has to contain all the particulars necessary for the implementation of the provisions governing the procedure[40] and be accompanied by all the documents required for such implementation[41] which, for the purposes of transit, means the transport document.[42] In principle, only declarations complying with these requirements may be accepted by customs authorities.[43] The office of departure for a transit operation must therefore ensure that the declaration fulfils this requirement before accepting and registering it.[44]

The office of departure also has to:

- endorse the document with a clear stamp;
- set the time limit within which the goods have to be presented at destination, the standard being eight days although it may be reduced depending on the kind of operation and/or special circumstances;[45]
- take whatever steps it considers necessary to identify the goods: this usually means sealing either the space containing the goods (where the means of transport has been approved or recognized as suitable for sealing, which is not always the case) or individual packages, in other cases;[46] Exemption from sealing may be granted by the office of departure provided that the goods have been so described as to be readily identifiable regarding both quality and quantity.[47] Essentially, exemption may not be granted in respect of goods listed in Annex 52 IPs, for which the flat-rate guarantee tends to be increased, or in respect of agricultural products subject to import duty or benefitting from export advantages. The declaration is then appropriately annotated.
- establish whether the goods are or should be made subject to a prohibition on changing the office of destination.[48]

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40 Article 62(1) CCC.

41 Article 62(2) CCC.

42 Article 219(1) IPs.

43 Article 63 CCC.

44 Article 348(1) IPs and CAA, p. 28.

45 P1, T3, C1, S1, B CAA.

46 Article 349(1) to (3) IPs.

47 Article 349(4) IPs.

48 Article 356(3)(a) IPs.

The office of departure may fix a mandatory route for goods representing an increased risk[49] and, in accordance with the normal rules,[50] examine the goods, even those of an authorised consignor,[51] if they have doubts about the operation.

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49 Article 348(1)(a) IPs.

50 Article 68(b) CCC and Articles 239 to 247 IPs.

51 Article 400(b) IPs.

Checks en route and at transit offices

Whilst a consignment is en route, provision is made only for the copies of the declaration accompanying the goods to be presented as required by the customs authorities.[52] There is nothing about examining goods. However, since the latter are under customs supervision, customs authorities may, in general, carry out checks, which include examining goods and inspecting the means of transport.[53] This is backed by the powers given to customs authorities to carry out all the controls they deem necessary to ensure that customs legislation is correctly applied.[54] It is therefore for the customs authorities to decide whether such checks should be carried out, provided they act in a reasonable manner and ensure that the measures they take are in proportion to the purpose of the exercise so that unnecessary barriers to trade do not result.

This is also the approach taken at transit offices, where they still exist (in the form of offices of entry into or exit from the EC or those on routes to and from EFTA countries). Inspection of goods at such offices is the exception and occurs where irregularities likely to give rise to abuse are suspected.[55] Inspection of declarations does not result in a transit operation being interrupted or a declaration invalidated unless substantial errors or omissions are discovered. Purely formal errors (e.g. absence of the registration number of the means of transport, failure to indicate the office of transit or destination, or absence of the stamp of the previous office of transit) are simply corrected, except where fraud is clearly involved.[56]

Checks at destination

When goods and documents are presented at destination (or following notice of arrival of the means of transport if goods are delivered direct to an authorised consignee), the office of destination checks the documents and/or physically inspects the goods, as described for the offices of departure, except that here there is more emphasis on checking that the details entered in the different documents match the goods carried. The office records on copy 5 its observations, any irregularities, and, particularly, any differences between the details entered in the document and the consignment itself.[57]

The office also checks whether the time limit for presentation of the goods has been complied with and whether any delay is due to circumstances which are explained to the satisfaction of the office and not attributable to the carrier or the principal.[58]

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52 Article 350(2) IPs.

53 Article 350(2) IPs.

54 Article 13 CCC.

55 Article 352 IPs.

56 P1, T3, C1, S2 CAA.

57 Article 356(2) IPs.

58 Articles 356(4) and (5) IPs.

Checks on returned copy 5s

In theory the office of departure should be responsible for comparing copies 5 and 1. However, in some Member States the centralizing offices also have some responsibility for checking whether or not operations have been discharged or authenticating the documents and stamps used.

The prior information system (SIP)

For certain goods at high risk of fraud which are included in a regularly updated list, it has been agreed by way of administrative arrangement[59] that the office of departure should inform the declared office of destination that a particular consignment has been placed under the external transit procedure. This allows the office of destination to inform the office of departure immediately if the goods have not arrived by the prescribed time-limit and to initiate the inquiry procedure described in point 5 below. In that event, even if the office of departure subsequently receives an apparently authentic return copy 5 endorsed by the office of destination, it can make use of the post-clearance verification procedure described under the same point.

The prior information system, which is referred to in the report (point I.4), applies to external Community transit, via the SCENT network but also under the common transit procedure.

5. Inquiry and post-clearance verification procedures

The inquiry procedure[60]

The purpose of the inquiry procedure, in the event of a copy 5 of a T document failing to return, is to establish whether an infringement or an irregularity has occurred in the course of the transit operation and/or where that infringement or irregularity took place so as to allow the document to be discharged and/or any duties or other charges applicable to be recovered.

The inquiry procedure is initiated by the office of departure if copy 5 of a T (transit) document has not returned within 10 weeks of the date on which it was validated. The procedure works as follows:

1) 10 weeks after the date of validation of the T document, the office of departure contacts the principal for information on the operation under consideration;

2) If the information obtained is not sufficient to permit discharge of the T document, then, within 4 months of the date of validation of the document, the office of departure sends an inquiry notice (the TC 20) to the office of destination. If the latter cannot provide the required information, it advises the office of departure - unless the transit

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59 CAA, p. 94.

60 P1, T3, C3, S1 to 4 CAA.

operation concerned meant moving goods through the territory of a third country. If it did, the office of destination passes on the inquiry notice to the (last) transit office concerned, which sends its reply direct to the office of departure;

3) Depending on the information received from the office of destination (or the transit office), the office of departure either discharges the T document or notifies the principal as required by the provisions of Article 379 IPs.

Should the office of destination not respond to the inquiry notice within 4 months of its despatch, the office of departure sends a reminder (the TC 22) to that office's higher authority. Where no response has been received 3 months after despatch of the TC22, the office of departure notifies the principal as required by the provisions of Article 379 IPs, i.e. after a maximum period of 11 months (4+4+3) from the date of acceptance of the transit declaration.

Post-clearance checks[61]

It has been agreed that, with a view to detecting and preventing fraud, the customs services are to carry out post-clearance checks on the information entered in a T document wherever it appears that an error has been made or there is reason to doubt that the information is correct. In addition, under an administrative arrangement, offices of departure are required to carry out random post-clearance checks on one in every thousand documents, or a minimum of two documents per month. For this type of check, a standard form (the TC 21) is used.

6. The specific nature of guarantees in the transit regime

The aim of provisions relating to guarantees, no matter what type of guarantee is concerned, in cases such as external transit where they are obligatory, is to ensure that all sums involved in each operation undertaken are covered in full. However, in the case of external transit, debt (see point 7) means both customs debt (import duties and, where appropriate, export duties) and "other charges" likely to be incurred in respect of goods, and guarantees therefore cover both. Hence, guarantees are governed by both the general customs debt provisions of the Code, including those on guarantees, and the specific IPs on customs debt and guarantees in respect of transit operations - the Code, in principle, taking precedence over the Implementing Provisions. In the case of tax debt, by contrast, only the provisions specific to transit apply (and, where appropriate, any special tax provisions adopted on the basis of laws other than the Customs Code). And, in internal transit, by definition (because there is no customs debt), only the Implementing Provisions apply. Because, where charges are concerned, the transit system is wider in scope than the general customs arrangements, the guarantee rules set out elsewhere in the Code which cover customs debt only, had to be repeated almost word for word in the section specifically on transit in order to ensure that "other charges" were also covered.

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61 P1, T3, C3, S5 CAA.

Principle of the compulsory guarantee valid throughout the Community, and of guarantee waivers

Under the provisions of Article 88 CCC, the customs authorities may themselves decide whether entering goods for a suspensive procedure should be made conditional upon the lodging of a guarantee. The only exception is where provisions in respect of a specific suspensive procedure require otherwise. Article 94 CCC represents such a provision since it requires the principal for a Community transit operation to provide a guarantee to ensure payment of any customs debt or other charges which may be incurred in respect of the goods involved.

Concerning the customs-related part of the amount covered by the guarantee, given that it is compulsory to provide a guarantee for transit operations Article 192(1) CCC requires as a rule that the amount of the guarantee must be fixed at a level either equal to or higher than the maximum customs debt likely to be incurred in respect of a given operation, depending on whether the amount of debt can or cannot be established with certainty at the outset of the operation. Where a guarantee turns out to be insufficient to ensure payment of such a customs debt, it has to be topped up or replaced.[62] By contrast, to find the rules for setting the amount of a guarantee when it comes to the non-customs-related part, the specific provisions on the different ways of providing guarantees for transit operations have to be consulted. These rules apply without distinction to all the different charges involved.

For the transit arrangements, Article 359(1) IPs restates the principle regarding customs debt already enunciated in the second subsection of Article 189(2) CCC, namely that the guarantee is valid throughout the Community (not just in the Member States concerned).

Operations carried out under the transit arrangements may nevertheless benefit from:

- the waivers regarding the requirement to provide security in respect of customs debt generally granted either to public authorities for any suspensive procedure, under the provisions of Article 189(4) and (5) CCC, or where the amount to be secured does not exceed ECU 500;

- the special waivers granted in respect of transit operations effected under specific transport procedures,[63] namely those for carriage by sea or air, on the Rhine and its associated waterways (transit operations on other inland waterways being subject to the provision of guarantees, unless otherwise decided in accordance with the committee procedure),[64] by pipeline or by the Member States' railway undertakings (including private railways, even where these use modes other than rail provided that the transit operation forms part of the formalities specific to rail transport);

- the individual waivers valid throughout the Community, which may be granted by the customs authorities of a Member State for a period of two years, renewable once for a further two years, to persons established in that Member State who are regular users of the

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62 Article 198 CCC.

63 Article 94(2) CCC.

64 Article 94(3) CCC.

procedure, have a clean record and whose finances are sound.[65] This waiver may not be granted for goods with a total value in excess of ECU 100 000, goods representing an increased risk or goods in respect of which the right to use the comprehensive guarantee system has been temporarily suspended.[66]

Guarantee Systems

Three guarantee systems are available under the Community transit arrangements. Which one is used, depends on the number of operations covered and how the amount to be guaranteed is determined. Article 359 IPs mentions only two and differentiates only between the comprehensive guarantee covering more than one operation and the individual guarantee for a single operation, since the flat-rate guarantee is simply a special form of individual guarantee. Except where cash is deposited, a guarantee is an undertaking by which a third person - established in the Community, who has been approved by the customs authorities of a Member State and is capable of paying the debt involved, without default and within the time limit set - binds himself in writing to pay the sum in question jointly and severally with the debtor.[67] Regardless of the system chosen, and in view of the compulsory character of the guarantee in transit operations, the guarantee should cover the financial risk involved in full at all times. The method for calculating the amount of the guarantee should accordingly be defined with reference to this objective.

The individual guarantee covering a single operation is the simplest form, but also the least flexible. It has to be lodged at the office of departure for a given transit operation, in the form of a guarantor's undertaking,[68] or a cash deposit covering the amount of duty and tax that will be incurred. Where the deposit is in the form of cash, it is returned when the transit operation is discharged at the office of departure.[69]

The principle of a flat-rate guarantee in respect of customs debt is enunciated in Article 192(3) CCC. Where transit is concerned, this guarantee still covers only one operation but neither the office of departure, nor the transit operation in respect of which the guarantee is provided, nor the principal, is identified at the outset of the operation. What is involved here is an undertaking furnished by a guarantor to any operator who requests it, in the form of a flat-rate voucher which allows an operator to cover up to ECU 7 000 per transit declaration.[70] However, the guarantor may limit the validity of the flat-rate guarantee by excluding cover for sensitive goods coming under Annex 52 IPs and, in the case of other goods, by limiting to seven the number of these vouchers that may be used per individual means of transport.[71] The office of departure may not, in principle, require a guarantee in excess of ECU 7 000 per transit declaration, whatever the sums actually involved, except in respect of goods coming under Annex 52 IPs - if the quantity of goods carried exceeds the quantity corresponding to the flat-rate amount of ECU 7 000[72] - and in

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65 Articles 95(1) and (2) CCC, Articles 375 and 377 and Annex 55 IPs.
66 Article 95(3) CCC, Article 376 and Annex 56 IPs.
67 Article 195 CCC, Article 359(3), (4) and (5) and Annexes 48, 49 and 50 IPs
68 Annex 49 IPs
69 Article 373 IPs
70 Articles 367 and 370, and Annex 54 IPs
71 Article 371 IPs
72 Articles 368(3) and 369 IPs

respect of operations involving increased risk, particularly those for which use of the comprehensive guarantee has been temporarily suspended - if a guarantee of ECU 7 000 is insufficient.[73] In both cases, the requisite guarantee has to be made up to the required level by the presentation of sufficient ECU 7 000 flat-rate guarantee vouchers to cover the duties and other charges involved.[74]

Article 191 CCC accepts the principle of a comprehensive guarantee in respect of customs debt whilst the second subsection of Article 192(1) CCC specifies that, where debts vary over time, the amount of the guarantee has to be set at a level which will allow the debts to be covered at all times. The new Article 360 IPs now makes use of a comprehensive guarantee by a principal subject to an authorisation which is granted only to those fulfilling certain conditions, namely that they are established in the Member State in which the guarantee is put up and have used the procedure regularly in the preceding six months or are known to be financially sound and not to have committed any serious infringements of the customs or tax laws.

The comprehensive guarantee is put up at a guarantee office by the guarantor, in the form of a bond[75] which constitutes the undertaking by the guarantor and its acceptance by customs, fixes the amount of the guarantee and authorises the principal to carry out any transit operation not exceeding the amount of the guarantee from any office of departure.[76] The amount of the guarantee is set at a level equivalent to at least 30% of the duties and other charges payable in one week (i.e. to cover about 2 days' worth of such charges), the minimum being ECU 7 000.[77] This is calculated by taking the total amount of duties and other charges payable (based on the highest level of taxes and charges applicable in any of the countries involved) on all consignments made by the operator during a year, or the number he estimates he will make, and dividing the sum by 52.[78] The amount is reviewed annually and readjusted if necessary.[79] On the basis of the guarantor's bond the principal receives one or more guarantee vouchers which state the amount of the guarantee and name the persons authorised to represent the principal by signing transit declarations on his behalf. Each guarantee voucher is valid for a maximum of two years but may be renewed subject to certain conditions.[80] The reference number of the guarantee voucher must be entered on every T (transit) declaration.[81]

At the instigation of the Commission or a Member State, use of the comprehensive guarantee may be temporarily prohibited in respect of goods regarded as presenting an increased risk of fraud, a Commission decision adopted in accordance with the committee procedure.[82] The list of goods affected by such decisions is published in the C series of the Official Journal at least once a year and the Commission also decides at least once a

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73 Article 368(2) IPs
74 Article 368(4) IPs
75 Annex 48 IPs
76 Article 360(2) and (3) IPs
77 Article 361(1) IPs
78 Article 361(2)
79 Article 361(3) IPs
80 Articles 360(4) and 363 to 366 IPs
81 Article 360(5)
82 Article 362 IPs

year whether or not this prohibition should stand.[83] Where a prohibition applies, the words "Article 362" and the CN heading for the goods must be entered on the T form. Copy 5 of such a form then has to be returned, no later than the working day following the day on which the form was presented at destination. In agreement with the Commission, Spain adopted measures of this kind under the old Article 360 IPs, to prohibit the use of the comprehensive guarantee in respect of cigarettes (on 1 February 1996) and Germany did the same in respect of several agricultural products (on 1 April 1996). Unless they are renewed these decisions will cease to have effect on 31 December 1996 at the latest.

The status of the guarantor in Community transit

The guarantor has to be a third party established in the Community and approved by the customs authorities of a Member State. He has to give a written undertaking to pay, jointly and severally with the debtor for whom he provides the guarantee (the principal), the amount of debt which falls due and which he has secured.[84] Although the guarantor and the principal are jointly and severally liable, the conditions under which each has to meet his liabilities (or is released from them), and the time limits involved, differ. The guarantor can only be held liable where the customs debt is not extinguished, or can still arise and be claimed from the debtor,[85] where the guarantor has been advised that a T1 declaration was not discharged within the 12 months following the date of its registration,[86] and where he has been notified that he is or may be required to pay amounts which he secured in respect of a given transit operation within three years of the date of registration of the T1 declaration.[87] Where these conditions do not apply, the guarantor is released from his undertakings.

7. Customs debt in transit

Just as the rules on guarantees were repeated in the transit rules, so the rules on other factors bearing on debt - i.e. the event(s) giving rise to the debt, the time, the place, the debtor, the amount, entry in the accounts and recovery - have also been taken over, together with all their shortcomings and contradictions.

Tax liability in transit is specifically discussed in section III.

The dutiable event and the time when it is incurred

Customs debt on imports[88] may be incurred under the transit procedure either because goods have been unlawfully removed from customs supervision[89] or because obligations

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83 Article 362(2) and (3) IPs

84 Article 359(3) IPs which refers to Article 195 CCC

85 Article 199(1) CCC

86 Article 374(1) IPs

87 Article 374(2) IPs

88 The question of customs debt on exports does not really seem to arise in transit as, here, the factor giving rise to such debt is either the export declaration (Article 209 CCC) or removing goods liable to export duty from the customs territory without making a declaration (Article 210 CCC). Even where the goods concerned are in transit and the provisions of Article 91(1)(b) CCC, the fourth indent of Article 310(1) and

undertaken in respect of the procedure have not been met.[90] Transit cannot give rise to "unlawful introduction"[91] because, by definition, transit occurs before or after such introduction.

In the majority of cases, therefore, customs debt in transit will be incurred through goods being unlawfully removed from customs supervision at the time when they are removed, the fact being established either because the goods simply fail to be presented at destination, or because it is subsequently found that their presentation was regular ony in appearance (forged seals and/or documents, substitution of goods). Article 204 of the IPs will only apply in the event of an unfulfilled obligation not having led to the goods being unlawfully removed and in as far as the debtor is not in a position to establish, in accordance with Articles 859 *et seq.* of the IPs, that the failure had no significant effect on the correct operation of the transit procedure. However, the implementing provisions refer to the concept of "offence or irregularity" (with criminal connotations beyond the customs and tax domains) instead of "dutiable event", in particular with reference to the recovery of debt;[92] to establish a link between these two
concepts an administrative arrangement was adotped specifying that the "offence or irregularity" in question had to be an act giving rise to "a liability to payment of charges".

The debtor

The debtor in the event of a customs debt incurred in transit under the conditions laid down in Article 203 CCC may be any of the persons listed in Article 203(3), the first one being the person who removed the goods and his accomplices, but also, where appropriate, the persons required to fulfil the obligations in connection with the procedure concerned, namely - for transit operations - the principal and possibly, under Article 96 CCC, the carrier or the recipient. These same persons, responsible for presenting the goods at destination, become the debtor where debt is incurred pursuant to Article 204 CCC.

Where goods are unlawfully removed, the responsibility for which lies of course in the first instance with the person removing them, it is clear that the majority of customs departments tend to give priority to the recovery of duty from the principal (or his guarantor) rather than search for the persons actually responsible for the unlawful removal, both because the debtor can be identified easily and because his solvency is assured by the guarantee that has been lodged.

Pursuant to Article 213 CCC all the potential debtors are jointly and severally liable for the customs debt even though, for the reasons already specified, the principal generally shoulders alone the onus of the debt, notwithstanding the statement recorded in the

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Article 463 ff IPs apply, the transit procedure applies to goods exiting after the lodging of an export declaration and, therefore, after the dutiable event. If goods are removed without a declaration, this, like "irregular introduction", has nothing to do with the transit procedure.

89 Article 203 CCC

90 Article 204 CCC

91 Article 202 CCC

92 Articles 378 and 379 IPs

minutes of the Council meeting at which Council Regulation (EEC) No. 3813/81 amending Regulation (EEC) No. 222/77 was adopted,[93] which stipulates that "... Member States will take all measures necessary to enable them to recover the duties or other charges from any person involved in the Community transit operation in question and concerned in the offence or irregularity and who is or should be aware of the offence or irregularity".

The place where debt is incurred

The question of the place where the customs debt is incurred should be of marginal importance in a customs union where import duties accrue to the Community's own resources. However, this question remains relevant, especially in the context of a procedure governing the movement of goods such as transit, insofar as the place where the customs debt is incurred (a) determines the Member State responsible for recording it and transferring it to the Community budget, (b) avoids positive or negative conflicts of jurisdiction between Member States for recovery and, particularly in the case of transit, (c) enables the place where tax liabilities are incurred to be established and their allocation to the national budgets of the Member States concerned.

Article 215(1) CCC lays down the principle that a customs debt is incurred at the place where the events from which it arises occur; in the case of transit this is the place where the goods were unlawfully removed or where an obligation in connection with the procedure was not fulfilled, provided such a place can be determined. Failing this, Article 215(2) CCC stipulates that the customs debt is incurred at the place where the irregularity is discovered.

While reaffirming the primacy of Article 215 CCC, Articles 378 and 379 IPs lay down a rule specific to transit by which, where goods are not presented at destination and the place of "the offence or irregularity" (meaning "the place where the dutiable event occurred") cannot be established, the latter is deemed to have been committed in the Member State to which the office of departure belongs (place of entry for the procedure) or in the Member State to which the office of transit at the point of entry into the Community belongs, to which a transit advice note has been given (external Community transit operation with crossing into a third country or common transit operation). This is not an irrebuttable presumption and proof of the place where the offence or irregularity was actually committed (or indeed of the regularity of the operation) can be brought within three years of the declaration being registered, which singularly complicates the recovery procedure.

This specific rule appears to echo Article 215(3) CCC which determines the place where the customs debt is incurred, in the specific case of a customs procedure not being discharged, as being the place where the goods were placed under the procedure or the place where they entered the Community under that procedure. This paragraph should apply to a procedure such as transit, although its discharge is not explicitly covered by the code, since failure to discharge the procedure is the inevitable consequence of the non-presentation of goods at destination (through unlawful removal) and transit is moreover the only customs procedure "under which" goods are likely to have already been placed at the

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93 Compendium of Administrative Arrangements, p. 198

time when they enter the Community. However, contrary to Articles 378 and 379, this provision would seem to establish an irrefutable presumption as to the place where the debt is incurred, in derogation from the principle established by Article 215(1), in the case of debt arising from failure to discharge a customs procedure, whether or not the place where the dutiable event occurred can be identified.

The consequence would be that whenever transit operations (and other suspensive arrangements) are not discharged due to unlawful removal of the goods, reference should be made not to the place where the removal occurred or was discovered, but rather to the place where the goods were placed under the procedure or where they entered the Community under the procedure, which would result in Article 378 IPs being partly incompatible with the code.

However, such an interpretation and its corollary appear difficult to reconcile with:

- firstly, the logic behind the determination of the place where the customs debt is incurred: the place where the dutiable event occurred, if known (first paragraph); or, failing this, the place where the irregularity was discovered (second paragraph); or, failing this and in the specific case of a customs procedure not having been discharged, the place where the goods were placed under the procedure or the place of entry (third paragraph);
- secondly, efforts to align the conditions governing the incurrence of tax liability and those under which payment becomes due on those applicable to customs debt, as reflected both by the customs provisions specific to transit and the provisions contained in the tax directives and establishing the time and place where tax liability (VAT or excise duty) is incurred for goods placed under a suspensive procedure, namely the time and place where the goods cease to be under the procedure (in other words, the place where the goods are presumed to have been used: see point III).

In any event, in addition to the fact that the discharge of transit operations is not defined, it should be possible to assume that Article 215(3) CCC, in referring to a customs procedure not being discharged, applies to a customs debt arising from the non-fulfilment of the obligation to discharge the procedure (Article 204 CCC) and not from the prior unlawful removal of the goods under the procedure (Article 203).

The question remains open but, at any rate, the provisions establishing the place where the customs debt is incurred certainly deserve to be clarified.

Recovery

Recovery of customs debt incurred in transit has to obey the general rules applicable to entry in the accounts and payment of the debt, in particular with regard to the time-limits by which the Member States must enter the debt in the accounts, the amount of duty must be notified to the debtor and payment obtained.[94] But here too - primarily because of the tax aspect of transit and the uncertainty as to the actual existence of a debt which can result from the time-limits for implementing administrative cooperation (return of control copy 5, inquiry procedures) - special provisions[95] were adopted for the collection of duties and levies in transit, applicable to the case of a consignment failing to be presented at

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94 Article 217 *et seq.* CCC

95 Articles 378 and 379 IPs

destination and the place where the "offence or irregularity" occurs (dutiable event) cannot be established.

In this case, and in theory without prejudice to any proceedings for the recovery of duties from another possible debtor and to the request for information sent within 10 weeks of the declaration being registered, the principal is notified as soon as possible and within 11 months of the declaration being registered (which corresponds to the time-limit for the inquiry procedure at the end of which the office of departure no longer has any reason to defer proceedings against the principal: see point 4. He then has three months to bring the proof of the regularity of the operation or of the actual place where the offence or irregularity occurred,[96] by producing either of the "alternative" documents provided for in Article 380 IPs (a document endorsed by customs and certifying that the goods have either been presented at destination or placed under a customs procedure in a third country).

The 11-month time-limit for notification was designed to be a specific constraint for the office of departure of the transit operation as one of the customs authorities' obligations to ensure recovery of duties. But if Article 379 IPs were to be interpreted in the sense that a principal to whom no notification was sent within 11 months of the declaration being registered could invoke the expiry of that period to release himself from the obligation to settle the customs debt, that would mean limiting the normal time-limit for communicating the amount of duty to the debtor which is fixed at three years by the code.[97] However, it should be noted that the period laid down in Article 221(3) CCC runs from the date when the customs debt was incurred, while the 11-month periodo runs from the date of registration of the T-declaration.

Article 378 IPs stipulates that in the absence of proof of the regularity of the operation, the Member State of departure or the Member State of entry levies the duties and other charges "in accordance with Community or national provisions". If the actual place where debt was incurred is established within three years of registration of the

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96 Article 379 IPs

97 Article 221(3) CCC

T-declaration, the Member State to which this place belongs proceeds with the recovery of charges other than own resources and repays those which were paid to the first Member State.

A comparable presumption and notification system was set up to deal with offences and irregularities affecting goods moving in the Community under cover of a TIR or ATA carnet,[98] subject to the adjustments required to comply with the provisions of the TIR and ATA Conventions.

As for the question of knowing if, in view of the various types of debt involved - customs and Community on the one hand, and tax and national on the other - the first type of debt takes priority over the second vis-à-vis the debtor and, where applicable, its guarantor, [it should be noted] that under no circumstances can the existence of a tax liability resulting from the same chargeable/dutiable event as the customs debt (see point III) justify the non-recovery of the whole or part of that amount.

Non-recovery or repayment/remission

These situations are covered in general by the code and in particular by its Articles 220(2)(b) (post-clearance non-recovery in the event of error on the part of the customs authorities) and 239 (specific cases calling for repayment or remission and resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned).

In the first case, it is quite obvious that the person theoretically liable for the debt must be released from his liability in the event of the debt having been incurred only because the customs authorities acted in such a way as might justifiably have led the debtor to believe that he was fulfilling his obligations. The Court of Justice of the European Communities has produced a large body of case law on the subject laying down detailed conditions for the implementation of Article 220(2)(b) CCC.

In the second case, the circumstances justifying repayment/remission[99] do not refer specifically to transit. In addition, the cases of non-recovery or remission referred to the Commission by the Member States are few and far between and do not allow a genuine body of legal principles to be established. Each situations must therefore be assessed on an individual basis bearing in mind the exceptional character of the circumstances, which go beyond the normal level of risk associated with trade operations carried out by a reasonably well-informed and diligent trader, without calling into question the objective character of customs debt, in particular for the principal who undertakes to carry through the transit operation.

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98 DAC Article 454 and 455

99 cf. Articles 899 to 903 IPs

III. TRANSIT, INTERNAL MARKET AND TAX HARMONIZATION

Introduction

This chapter sets out to discuss the continuing usefulness of customs transit in the movement of goods within the customs (and fiscal) territory of the Community where tax controls at the internal borders have been abolished on 1 January 1993 and free movement of Community goods is the rule.

Section 1 looks at the role and tax implications of external transit in this context, specifically in relation to imports of non-Community goods. Section 2 examines the cases of intra-Community free movement of Community goods, which requires the prior recognition of Community status; it reports on cases where internal transit is still used in this kind of trade, even if only occasionally.

Sections 3 and 4 deal respectively with the tax implications of using the transit procedure for an export operation and with the T2 common transit procedure.

Lastly, section 5 considers the tax liability which can arise in the context of a transit operation, its guarantee and recovery. Although transit is a customs procedure, in actual fact it also covers - sometimes primarily or even exclusively - tax liabilities (VAT and excise duties).

1. External transit within the framework of imports procedures

With regard to both VAT and excise duties, the chargeable event is the import of goods which, where goods are placed under external transit procedure at the time of entry into the territory of the Community, is supposed to take place in the Member State on the territory of which the goods are and at the time when they cease to be covered by this suspensive procedure.

External Community transit is a customs and tax procedure under which import charges are suspended. It enables non-Community goods to circulate on the customs and tax territory of the Community avoiding tax liabilities for as long as they are not placed in a situation giving rise to customs debt/tax liability (declaration of release for free circulation and for home use, unlawful removal from customs supervision, etc).

Thus, as long as the goods in question remain under the external Community transit, the tax procedures relating to intra-Community trade in goods are not applicable.

In this connection, the question arises as to whether the system established by the 6th VAT Directive[100] and the Directive on excise duties - general arrangement,[101] applicable to trade

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100 Council Directive No 77/388/EEC of 17 May 1977 on harmonization of the legislation of the Member States concerning the taxation of the turnover - common System of value-added tax: uniform basis of

between Member States constitutes an alternative to Community transit. When non-Community goods entering the Community in a Member State are intended for another Member State, the trader concerned may, instead of placing them under the transit procedure and clearing them through customs in the Member State of destination, clear them at their point of entry in the Community.

In this case, the goods acquire the status of Community goods for customs purposes and the tax procedures governing intra-Community trade apply to their movement from the Member State of entry to the Member State of destination.

VAT on imports and external transit

As regards VAT, the traders concerned must then apply the following formalities:

(1) They have to be registered for VAT purposes in each Member State from where goods which are intended for them enter the Community. But registration for VAT purposes is very different from one Member State to the other, and certain Member States require a tax representative and the lodging of a guarantee.[102]

(2) In that Member State they must fulfill all the declaratory obligations in connection with the fact that they are supposed to carry out taxable transactions on its territory (intra-Community deliveries of goods). This involves in particular the submission of a periodic VAT declaration and a record of the intra-Community deliveries.

It should be noted that Article 28c D of the 6th VAT Directive provides for such imports to be exempted from tax in the Member State of entry. However, this exemption does not affect the declaratory obligations to be fulfilled in the Member State of entry.

The traders can therefore choose between the two systems (external transit or tax procedure) weighing the pros and cons in relation to their own situation.

In view of current Community tax legislation, external transit up to the point of destination within the Community is still simpler and cheaper in certain cases than the tax procedures applicable at the external frontier whenever the Member State of entry is not the Member State of destination/home use where the taxable buyer is established.

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agreement (OJ L145, 13.6.1977 - corrigendum: OJ L 149 of the 17.6.1977), as last amended by Council Directive No 95/7/CE (OJ L 102, 5.5.1995).

101 Council Directive No 92/12/EEC of 25 February 1992 relating to the general arrangement, to detention, to the movement and to controls of the products subject to excise duties (OJ L76, 23.3.1992), as last amended by Council Directive No 94/74/EC of 22 December 1994 (OJ L365, 31.12.1994).

102 cf. in this respect the Commission Report to the Council and the European Parliament on arrangements for taxing transactions carried out by non-established taxable persons (COM (94) 471 final of 3.11.1994)

Conversely, implementation of new VAT arrangements, as recently presented by the Commission,[103] would lead to the abolition of existing declaratory obligations in the

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103 cf. "A COMMON SYSTEM OF VAT: a programme for the single market" (COM (96) 328 final of 22.7.1996)

Member State of entry into the Community of the goods intended for another Member State. The arrangements envisage a single place of taxation in the Community, where traders will be able to fulfil all their obligations (declaration and payment of tax) and to exercise their deduction entitlement, including in relation to VAT due or paid on the import. This could reduce the usefulness of systematic use of the external transit procedure and decrease pressure on the system. However, the entry into force of the new VAT arrangements is scheduled for 2003 at the earliest and it is not therefore of immediate relevance.

Excise duties on imports and external transit

Goods are subject to excise duty at the time of their production or of their importation into the Community. The entry of goods into the Community, including from a third territory for tax purposes, is regarded as importation. When the goods, upon entry, are placed under a Community customs procedure such as external transit, they are considered as having been imported at the time when they cease to be covered by the procedure.[104] Excise duty becomes due at the time when the goods are released for home use or at the time when they go missing. Under external transit rules, imports of goods in any form, whether or not irregular, is regarded as release for home use. The time and place where the liability arises determine the Member State responsible for levying the excise duty and the applicable rate.[105]

2. Intra-Community movement of Community goods

Since 1 January 1993 Community goods moving within the customs (and tax) territory of the Community are no longer subjected to any customs formality (transit or other) owing to the abolition of the internal borders and the introduction of Community VAT and excise duty systems.

Accordingly, the principle that goods transported between two points in the customs territory of the Community are deemed to be Community goods applies,[106] except where:

- it is established that they do not have Community status,[107] in particular by virtue of the document which accompanies them or by the mode of transport used and their provenance;
- they move under cover of a TIR or ATA carnet, a Rhine Manifest, a NATO form 302 or by post in packages or accompanied by a document bearing a special label;[108]
- they were transported by sea from or via a third country or a free zone or by air from a third country;[109]

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104 Article 5(1) directive 92/12
105 Article 6 directive 92/12
106 Article 313(1) IPs
107 Article 313(1) IPs
108 Article 313(2)(a) and (d) + Annex 40 (postal label) IPs
109 Article 313(2)(c) and (e) IPs

- they enter the territory of a third country,[110] thereby losing their Community status (except where it can be preserved by using the internal transit procedure).

- they are sea fishery catches or other products obtained from the sea by ships, the Community status of which must be justified by a document T2M.[111]

Except the latter case, the Community status of the goods covered by these various exceptions has to be established[112] by means of a document T2L (including on invoice or transport document) or equivalent documentary evidence[113] or, for products subject to excise duty, by means of the accompanying document provided for in Regulation (EEC) No 2719/92.[114]

Goods considered to be Community goods, or whose Community status has been established as specified above, can move freely in the internal market and consequently trade in such goods is carried out exclusively under tax procedures, with no need for the transit customs procedure.

Conversely, other Community goods which enter the territory of a third country may retain their status only by means of internal transit. Moreover, in view of the difference between customs and tax territorial applications, internal Community transit also covers the movement of Community goods within the customs territory of the Community, between the parts of this territory which do not belong to the same territory for tax purposes.

Tax procedures

VAT

Any sale of assets between taxable persons involving transport of the assets between two Member States calls for two separate operations: supply of goods which is liable to tax in the Member State of departure, but is likely to benefit from an exemption, and intra-Community acquisition of goods for which the purchaser is liable to tax in the Member State of arrival of the goods (intra-Community acquisition being defined as "acquisition of the right too dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods by or on behalf of the vendor or the person acquiring the goods to a Member State other than that from which the goods are

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110 Article 4(7) CCC and Article 313(2)(b) IPs

111 Articles 325 *et seq.* IPs

112 Article 314 IPs

113 cf. Article 319 to 323 IPs: symbol "T2L" on TIR or ATA carnets, vehicle registration plate, code number and ownership mark of wagons and containers, truthful declaration of contents of packagings and of the goods accompanying travellers or contained in their baggage

114 Commission Regulation (EEC) No 2719/92 of 11 September 1992 on the accompanying administrative document for the movement under duty-suspension arrangements of products subject to excise duty (OJ L276, 19.9.1992), amended by Commission Regulation (EEC) No 2225/93 of 27 July 1993 (OJ L198, 7.8.1993)

dispatched or transported"). This does not therefore involve a suspensive system but rather a procedure based on the principle that the two taxable parties to the transaction are exempted/liable to tax.

For a transaction to qualify for tax exemption as an intra-Community supply of goods, the vendor must be able to provide evidence that the assets have been transported out of the Member State of departure, but within the Community, as well as particulars of the purchaser as a taxable person registered for VAT purposes in a Member State other than that of departure of the goods consigned or transported.

In addition, the vendor must issue an invoice giving his tax code and the tax code of the purchaser registered for VAT purposes in another Member State. He must also record his supplies in a periodic declaration (monthly or quarterly) and, lastly, draw up a quarterly statement of the intra-Community supplies of goods that he carried out.

The purchaser has to record his intra-Community acquisitions in his periodic return. No document is required to accompany intra-Community supply of goods.

Excise duty

The movement of goods subject to excise duty in the Community is governed by Directive 92/12/EEC referred to above. Under the Directive, a system of intra-Community movement for products subject to excise duty under suspension arrangements is applicable to movements between two tax warehouses (under the responsibility of authorized warehousekeepers) or between an authorized warehousekeepr and a registered trader or a non-registered trader.[115] Access to suspensive intra-Community arrangements for products subject to excise duty is thus reserved to authorized warehousekeepers under the conditions defined by the Directive and the Member States.[116]

The transport is carried out under cover of an accompanying administrative or trade document drawn up in four copies, including a copy to be returned to the consignor for discharge, without this implying direct control of the movement by the authorities of the Member States, whether at departure or at destination.[117] The accompanying document is also used for the export procedure and accompanies the goods to the customs office of exit from the Community. Excise duty on products under internal transit (Community or TIR or ATA) is deemed to be suspended and the transit document, adapted for the purpose of intra-Community movement of goods subject to excise duties, acts as the accompanying document.[118]

The authorized warehousekeeper who dispatches the goods remains liable for tax purposes in respect of the goods in question until he receives proof that the consignee has taken delivery of the consignment. The warehousekeeper and, where applicable, the

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115 Articles 15 and 16 Directive 92/12

116 Article 13 Directive 92/12

117 Articles 18 and 19 Directive 92/12 and Regulation (EEC) No 2719/92

118 Articles 5(2) and 18(4) Directive 92/12

transporter, are released from their liability by the proof that the consignment has been taken delivery of. A system based on presumption for the determination of the place where the goods are released for home use has been established, similar to the one applicable to transit.[119]

The duty-suspension intra-Community movement arrangements for products subject to excise duty require the lodging of a guarantee to cover the risks inherent in the operation, the detailed rules for which are laid down by the Member States. The

[119] Article 20 Directive 92/12

guarantee is lodged by the authorized warehousekeeper or, where applicable, by the consignor and the carrier jointly and severally bound, or by the carrier or the owner of the products in the place of the authorized warehousekeeper. A guarantee may also be required from the recipient. A guarantee waiver is admissible only for mineral oils transported by sea or pipeline [*Translator's note*: the actual tax and customs terminology for this concept is unkown to the translator and cannot be accurately researched given the tight translation deadline].[120]

The transit procedures

Internal Community transit saw its scope significantly reduced with the completion of the internal market. Until 31 December 1992, the main role of T2 internal Community transit had been to cover the movement of Community goods between Member States by facilitating the crossing of internal Community borders and establishing the link between the "dispatch" declaration in the Member State of departure and the "introduction" declaration in the Member State of destination.

At present, it is still applicable in the following situations:

- in the event of movement between two points of the Community via a third country: since 1 January 1993 the essential vocation of internal transit has been the carriage of Community goods between two points of the customs territory of the Community via the territory of a third country while retaining their Community status.[121]

However, internal Community transit is only applicable to transit operations which enter the territory of third countries and provided this possibility is envisaged by an international agreement,[122] which can only refer to the T2 common transit procedure or, in a rather theoretical way, transit via the territory of the Principality of Andorra or of the Republic of San Marino, which are the only States with which the Community has concluded an agreement contemplating the possibility of applying Community transit;

- whenever a Community provision provides expressly for its application,[123] i.e. currently in trade with the Principality ofo Andorra and with the Republic of San Marino with which the Community has concluded a customs union agreement and in the event of movements between a part of the customs territory of the EC where the 6th VAT Directive and Directive 92/12 apply and a part of this territory where these directives do not apply (third territories for tax purposes), or between such territorities (cf. following point);

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120 Article 15(3) Directive 92/12

121 Article 163(1) CCC

122 Article 163(2) CCC and Article 311(a) IPs: there might be some contradiction between these provisions and Articles 313(2)(b) and 314(1) IPs which require proof of Community status by means of a T2L in the event of transit via a third country, which could lead to unnecessary duplication of formalities.

123 Article 165 CCC

Thus, internal transit is only used in the Community where Community goods are transported via a third customs or tax territory.

Trade with third Community territories for tax purposes

Be it for VAT or excise duty, certain parts of the customs territory of the Community are not subject to the provisions of the relevant directives, which means that neither the VAT procedure of intra-Community supply/acquisition nor the duty-suspension arrangements for the movement of products subject to excise duty are applicable to movements between such territories and the remainder of the customs territory of the Community while, from a customs point of view, the goods retain their Community status.

Pursuant to Article 311(c) of the IPs, internal Community transit applies to such movements, mostly by sea, under the same conditions prevailing throughout the Community before 1 January 1993. The 6th VAT Directive provides for the possibility of using the Community transit procedure for the carriage of Community goods entering the tax territory of the Community from a part of the customs territory considered as third territory for VAT purposes, when the place of arrival of the consignment or transport is outside the Member State of their entry in the tax territory. This entry gives then rise to import formalities for tax purposes, inspired by those which apply to release for free circulation of goods from third countries. Conversely, Article 311(c) IPs makes internal Community transit mandatory for all movements between territories where different tax provisions apply. A reform of transit by sea and of the provisions concerning proof of Community status for goods transported by sea, which is likely to affect the current situation, is in hand.

3. Export and transit

Export not involving transit

Export is defined in Article 161 CCC as the procedure which allows Community goods to leave the customs territory of the Community.

Under the export procedures,[124] the goods move from the office of export (to which the exporter is responsible or at which the goods are packed or loaded for export shipment) to the office of exit from the Community accompanied only by copy 3 of the export declaration which is endorsed there with a customs stamp certifying exit. As export is not a suspensive procedure, no security is required. In the case of the excise-duty suspensive procedure however, the goods are accompanied to the office of exit from the Community by the accompanying administrative document for excise-duty purposes so as to ensure that the excise-duty security continues to cover the consignment until the goods have left Community territory.

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[124] Articles 161 and 162 CCC and Articles 788 to 796 IPs.

Export involving transit

Community goods not subject to a Community measure requiring their export

Where Community goods are exported to (or via) third countries with which the Community has concluded an agreement allowing application of the internal transit/T2

procedure or a transit Convention (common transit, TIR), the Community goods declared for export at the competent office may be placed under the transit procedure there and cross the external frontier under cover of the relevant transit document, as the export procedure is opened and discharged by the transit procedure at the office of export/departure where the said goods also leave the VAT and excise-duty tax procedures. If the transit procedure is not discharged and it is determined that the goods have remained in the Community, the situation need only be regularized as regards the tax arrangements (notwithstanding any penalties).

Community goods subject to a Community measure requiring their export

As stated in point II.1, the external Community transit procedure (T1), designed in theory for non-Community goods, does in fact apply to certain Community goods in cases where they are subject to a Community measure (granting an advantage or imposing a charge) requiring their export.[125]

Placing the Community goods under the T1 external Community transit procedure confers exemption from the requirement to certify the goods' departure at the external frontier of the Community customs territory under the export procedure. The result is that the suspensive procedure for the movement of goods under the excise-duty arrangements ends at the office of departure for the T1 operation, where their exit is also certified on the export declaration to serve as evidence of the exporter's entitlement to exemption from VAT.

In both situations where export involves transit, failure to discharge the transit procedure, insofar as the goods have remained in the Community, need only be regularized as far as taxes are concerned (notwithstanding cancellation of the export procedure and subsequent penalties).

4. The T2 common transit procedure and the movement of Community goods within the Community

Three distinct situations exist:

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125 Article 91(1)(b) CCC and Article 310(1) IPs.

Export outside the Community to or via a common transit Contracting Party

Though common transit is not obligatory, Community goods declared for export may still be placed under the T2 common transit procedure at a customs office located within the Community whether their place of final destination is in one of the common transit partner countries or they are to be conveyed across the territory of one of the said countries en route to a final destination situated outside the Community and the countries in question.

Re-entry into the Community of Community goods which have been held in the territory of another common transit Contracting Party

Subject to compliance with certain conditions (customs surveillance/no change to the goods, time-limits, etc.), Community goods consigned under the T2 procedure to a common transit Contracting Party may be placed under the T2 procedure again (provided the T form is endorsed with the word "export") at an office of departure in that country to re-enter the Community at an office located within Community territory, thereby maintaining their Community status from the point of view of customs.

The re-entry of the goods is treated from a tax viewpoint as re-import of the goods in the state in which they were exported thereby conferring exemption from VAT on import provided that the exporter and the re-importer are one and the same person and that the goods were eligible for duty exemption on re-import (returned goods procedure).

Shipment of Community goods between two points in the Community via the territory of one or more common transit Contracting Parties

Community goods are placed under the T2 common transit procedure at an office of departure to go to an office of destination both of which may be located within the Community even though the aim of using the common transit procedure is to maintain the goods' Community status and to suspend duties and taxes only while they are passing through the EFTA country.

This procedure dovetails harmlessly with the transitional VAT system for intra-Community supply and acquisition: the fact that the goods have left the Community does not constitute export within the fiscal meaning (unless the goods stay in the EFTA country) and their return to the Community is not an import for VAT purposes as, from the Community's viewpoint, everything should proceed as if the goods had never left the Community. Any failure to present the goods at destination therefore and to discharge the T2 procedure duly cannot have any customs implications for the Community (unless the goods have been substituted), only fiscal consequences (question of the exemption of the intra-Community supply under the VAT taxpayer's declaration obligations).

As far as excise duty is concerned, an authorized warehousekeeper who uses a T2 common transit procedure is exempted from using the accompanying document for excise-duty purposes provided that the consignee is an authorized warehousekeeper or, where

appropriate, a registered or non-registered trader, and the transit document contains the endorsements essential for the movement of products subject to excise-duty within the Community.[126]

5. Transit and tax liability

Incurring liability and person(s) liable

We have seen how, when goods are placed under the external transit procedure with a view to their import into the Community, the chargeable event of VAT and excise duties is supposed to take place in the Member State in which the goods left the procedure.

In cases where a transit document is not discharged, therefore, an import is deemed[127] to take place for VAT and excise-duty purposes at the point when, for customs purposes, a customs debt is incurred in relation to the goods covered by the transit document.

Level of the guarantee

Point II.6 examined the question of the respective scopes of the general and specific customs provisions concerning transit in relation to the amount of the debt to be covered by the security and the respective proportions of customs debt and tax liability making up this amount: the principal is in fact obliged not only to provide a security capable of covering the full amount of any customs debt that may be incurred[128] but also to ensure payment of any other charges that may be incurred in respect of the goods.[129]

Although this dual obligation poses no problems in relation to the individual guarantee, it leads to an awkward situation as far as the comprehensive guarantee is concerned in view of the way the amount of this is calculated:[130] at a level of 30% of the amount of the duties and taxes in one week, covering the whole of the customs debt would lead to a drastic shortfall in the security of the tax liability, in particular in view of the sometimes extremely high level of the excise duties.

Procedures for recovering tax liabilities

The Community's provisions on VAT do not include any rules regarding the recovery as such of VAT under the transit procedure either on import in general or as regards the person liable and his obligations on import. In both cases the 6th VAT Directive refers to the relevant national legislation.[131] On excise duties, Directive 92/12 also makes reference

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126 Article 5(2), Dir. 92/12.

127 subject to what was said in point II.7 as regards establishing the place where the customs debt was incurred in the event of failure to discharge a customs procedure and to problems reconciling Article 215 CCC with Articles 378 and 379 IPs, specific to transit.

128 Article 192 CCC.

129 Article 94(1) CCC.

130 Article 361 IPs.

131 Articles 21(2) and 23, 6th VAT Directive.

to the procedures established by each Member State in relation to the levying and collection of excise duties.[132]

However, in the case of transit, special provisions are contained in Articles 378 and 379 IPs (see point II.7) relating to the recovery of other charges, notably establishing the place where recovery takes place and the procedures to be followed with regard to the person liable and his security.

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132 Article 6(2), Directive 92/12.

GLOSSARY
CUSTOMS TERMS USED IN TRANSIT

CUSTOMS TERMS	DEFINITIONS
Customs rules (CCC Art. 1)	Customs rules consist of the Code and the provisions adopted at Community or national level to implement them, without prejudice to special rules laid down in other fields and to trade between the Community and third countries and goods covered by the treaties establishing the ECSC, EC or EAEC
Code [Community Customs Code] (CCC)	Council Regulation (EEC) No 2913/92, 12 October 1992 (OJ L 302, 19.10.92)
Implementing provisions of the Code (IPC)	Commission Regulation (EEC) No 2454/93, 2 July 1993 (OJ L 293, 11.10.93)
Customs territory of the Community (CCC Art. 3)	Territory as defined by Article 3 of the Code
Customs status of goods (CCC Art. 4(6))	Status of goods as Community or non-Community goods
Community goods (CCC Art. 4(7))	Goods: - wholly obtained or produced in the customs territory of the Community under the conditions referred to in Article 23 and not incorporating goods imported from countries or territories not forming part of the customs territory of the Community, - imported from countries or territories not forming part of the customs territory of the Community which have been released for free circulation, - obtained or produced in the customs territory of the Community, either from goods referred to in the second indent alone or from goods referred to in first and second indents

Non-Community goods (CCC Art. 4(8))	Goods other than those referred to above. Community goods lose their status when they are actually removed from the customs territory of the Community (without internal transit)
Release for free circulation (CCC Art. 79)	The customs regime that confers on non-Community goods the customs status of Community goods and entails application of commercial policy measures, completion of the other formalities laid down in respect of the importation of goods and the charging of any duties legally due
Customs authorities (CCC Art. 4(3))	The authorities responsible, *inter alia*, for applying customs rules
Customs office (CCC Art. 4(4))	Any office at which all or some of the formalities laid down by customs rules may be completed
Office of departure (IPC Art. 309(b))	The customs office where the Community transit operation begins
Office of transit (IPC Art. 309, c)	The customs office at the point of exit from the customs territory of the Community when the consignment is leaving that territory in the course of a Community transit operation via a frontier between a Member State and a third country or the customs office at the point of entry into the customs territory when the goods have crossed the territory of a third country in the course of a Community transit operation
Office of destination (IPC Art. 309(d))	The customs office where goods placed under the Community transit procedure must be produced to complete the Community transit operation
Office of guarantee (IPC Art. 309(e))	The customs office where a comprehensive or flat-rate guarantee is lodged
Central office (IPC Art. 358)	The central body designated by each Member State to which documents must be returned by the competent offices in the Member State of destination

Supervision by the customs authorities (CCC Art. 4(13))	Action taken in general by those authorities with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed
Control by the customs authorities (CCC Art. 4(14))	The performance of specific acts such as examining goods, verifying the existence and authenticity of documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed
Customs-approved treatment or use of goods (CCC Art. 4(15))	- placing of goods under a customs procedure - their entry into a free zone or free warehouse - their reexportation from the customs territory of the Community - their destruction or abandonment to the Exchequer
Customs procedure (CCC Art. 4(16))	- release for free circulation - transit - customs warehousing - inward processing - processing under customs control - temporary admission - outward processing - exportation
Customs procedure with economic impact (CCC Art. 84(1)(b))	- customs warehousing - inward processing - processing under customs control - temporary importation - outward processing
Suspensive customs procedures (CCC Art.84(1)(a))	- external transit - customs warehousing - inward processing (in the suspension system) - processing under customs control - temporary importation
Customs declaration (CCC Art. 4(17))	Act whereby a person indicates in the prescribed form and manner a wish to place goods under a given customs procedure

Declarant (CCC Art. 4(18))	Person making the customs declaration in his own name or the person in whose name a customs declaration is made
Holder of the procedure (CCC Art. 4(21) and 96(1))	Person on whose behalf the customs declaration was made or the person to whom the rights and obligations of the abovementioned person in respect of a customs procedure have been transferred (in Community and common transit, the holder is known as the principal)
Presentation of goods to customs (CCC Art. 4(19))	Notification to the customs authorities, in the manner laid down, of the arrival of goods at the customs office or at any other place designated or approved by the customs authorities
Import and export duties (CCC Art. 4(10)(11))	- customs duties and charges having an effect equivalent to customs duties payable on the importation/exportation of goods - agricultural levies and other export charges introduced under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products
Customs debt (CCC Art. 4(9))	Obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply to specific goods under the Community provisions in force
Debtor (CCC Art. 4(12))	Any person liable for payment of a customs debt
Entry in the accounts (CCC Art. 217)	entry by the customs authorities in the accounting records or on any other equivalent medium of every amount of customs duty resulting from a customs debt, as calculated by those authorities as soon as they have the necessary particulars
Commercial policy measures (IPC Art. 1(7))	Non-tariff measures established, as part of the common commercial policy, in the form of Community provisions governing the import and export of goods, such as surveillance or safeguard measures, quantitative restrictions or limits and import or export prohibitions

SUMMARY

ABBREVIATIONS USED

CCC	Community Customs Code (Council Regulation (EEC) No 2913/92 of 12 October 1992 - OJ L 302, 19.10.1992)
IPs	Implementing provisions of the Code (Commission Regulation (EEC) No 2453/93 of 2 July 1993 - OJ L 253, 11.10.1993)
CAA	Compendium of administrative arrangements, conclusions and interpretations relating to transit and the SAD (Doc XXI/175/94, 22 July 1994).
WTO	World Trade Organization
GATT	General Agreement on Tariffs and Trade
WCO	World Customs Organization (former Customs Cooperation Council)
TIR	Transports Internationaux Routiers - Abbreviation used for the carnet serving as international transit document under the 1975 TIR Convention
ATA	Abbreviation used for the carnet serving as the international customs document of temporary admission under the 1961 ATA Convention or the 1990 Istanbul Convention
LVI/CIM	International bill of lading representing the contract of carriage of goods by rail (International Convention concerning the carriage of Goods by Rail)
TR	Transfer note representing the contract of carriage by large container (Intercontainer)

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ANNEX III

TRANSIT FRAUD

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TRANSIT FRAUD

All customs régimes necessarily include control provisions that are intended to prevent the incorrect functioning of operations. However, a specific feature of the frauds encountered in the area of transit is the manipulation of the administrative procedures already described in this report, as an essential element in perpetrating the fraud [1].

The dimensions of transit fraud

Frauds perpetrated by means of or on the occasion of transit are difficult to quantify exactly.

In the first place, the evaluation of frauds effectively perpetrated, on the basis of frauds detected, is very difficult, as it is clear that only a part of fraud is detected .

In the second place, even if it were possible to quantify the exact number of frauds, the lack of statistical information, which has already been mentioned, makes it impossible to calculate the total amount of duties and taxes involved in transit operations and/or to know whether or not those charges were recovered.

The figures given in the Commission's communications (750 million ECU for 1990 - 1994, i.e. 320 MECU in own resources and 430 MECU for VAT and excise duties) and in UCLAF's contribution to the Committee of Enquiry of the European Parliament (975 MECU for 1990-1995, i.e. 407 MECU in own resources and 568 MECU in VAT and excise duties) thus reflect the global amounts involved in frauds recorded, in particular on the basis of communications in the framework of mutual administrative assistance (Regulation (EEC) n° 1468/81).

The volume of fraud established in the reference period is not constant but goes up and down, with peaks in 1990, 1993, 1994 and 1995.

Basic fraud methods

Fraud mechanisms in the transit area can be considered to fall into four main categories :

A. Non presentation of the goods, vehicle, and transit documents

This can involve:

(i) a one-off fraud against a principal, involving a single operation covered by a genuine guarantee; or

(ii) a one-off fraud by the principal, involving a single operation where the load is falsely described in order to reduce, on the one hand the level of the guarantee, and on the other, the amount of tax/duty payable in the event of an irregularity; sometimes, false commercial or official documents are also used to support the misdescription of the goods carried; or

(iii) a one-off fraud involving a single operation carried out under cover of a fake guarantee certificate (with or without the knowledge of the principal); or

(iv) compound frauds where a series of legitimate operations is used to build confidence with the principal (i.e. reassuring him of the absence of risk) and then when large numbers are involved they disappear (fraud against the principal).

B. Use of false documentation to simulate arrival of the goods at destination

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[1] cf. les communications de la Commission "Fraude dans la procédure de transit -Solutions prévues et perspectives dégagées pour l'avenir" n° COM(95)108 final.du 29 mars 1995 et "Action de la Commission en matière de lutte contre la fraude dans le transit" n° SEC(96)290 final.du 3 avril 1996

(i) false stamps; or

(ii) stolen stamps (or stamps which have otherwise been irregularly applied); or

(iii) false documents (return copies).

C. Misdesription of goods or use of false transit documents; dissimulation or substitution of the goods: these mechanisms involve actually presenting documents during the journey or at destination, in order to cover a movement which is apparently regular and which concerns non-sensitive goods; in reality, the goods - or some of them - are highly sensitive and the aim of these manipulations is to place goods on the Community market without having to comply with the applicable formalities and/or duties and taxes payable.

D. False declaration of the status of goods (Community instead of non-Community) or substitution of the latter for the former

Corruption by customs officials cannot be considered as a specific type de fraud even if it obviously facilitates the perpetration of one or the other of the frauds already mentioned (in particular, under B (ii)).

In passing it should be noted that many of the frauds which are described as ▒transit frauds▒ are in fact really not or not properly transit frauds :

- for example, the unauthorized removal of goods from a port (or from any other place under customs control) and their movement under cover of a totally false accompanying document that was never issued by the customs authorities is a result of lack of adequate surveillance in the port and will never be prevented by any changes in transit procedures.

- another example concerns goods declared for export as, for example, oranges, for which an export refund is payable, but the cargo is actually mandarin oranges for which no refund is allowed. Except when there is also a misdescription of the goods on the transit document (in particular, to create a coherent paper chain to facilitate committing the real irregularity), this irregularity does not involve the transit procedure. It would essentially be a matter of a false declaration under a procedure other than transit and of inadequate controls, not under the transit procedure, but in connection with the export formalities.

- again, if goods actually leave the Community after a transit movement has been concluded, and are re-introduced irregularly afterwards (carrousel traffic), this does not mean that the transit system is at fault. The reintroduction of the goods may take place by means of smuggling (clandestine transport, unloading from small boats outside designated customs sites..), and the fact that the goods had at some time travelled under a transit procedure does not mean that any irregularity can be attributed to that procedure.

Measures taken to prevent or counter transit fraud

The actions implemented to counter fraudulent manipulations have not only consisted of enquiries aimed at elucidating all the elements of the fraud for the purposes of administrative and legal proceedings, but also measures aimed at strengthening controls.

Such anti-fraud measures consist in particular of the following :

a) provisions and procédures, including administrative arrangements, aimed at ensuring administrative cooperation between the services responsible for the application of the transit procedures, including the enquiry procedure that is specific to the transit regime, post clearance checks on return copies, and the early warning system by which the office of departure informs the office of destination of the placement under the régime of certain "sensitive" (high-risk) products;

b) routine controls and interventions carried out by the control services under the transit legislation or the administrative cooperation procedure, including the use of techniques such as "risk analysis" and post clearance import (or export) controls on commercial operators;

c) horizontal customs provisions on mutual administrative assistance (R. 1468/81) involving the exchange between Member States, and between them and the Commission, of information on suspected or established frauds and irregularities of Community interest, together with the tools and techniques put in place in this context (computerized systems for exchanging anti-fraud information, access to date bases, task forces, ad-hoc groups of investigators,....);

d) specific investigations carried out at national level and Community enquiry missions carried out in certain third countries under the relevant provisions of agreements concluded between the Community and those countries;

Of the above elements, only the Community framework for mutual administrative assistance and its practical application to "transit" fraud cases (enquiries) are dealt with below, the other elements being detailed elsewhere in this report.

Community framework for mutual administrative assistance (enquiries)

Enquiries concerning a single Community customs legislation and with a view to protecting a single external frontier, cannot take place in isolation. That is why the Community has established horizontal mutual administrative assistance measures in order to overcome the administrative division of the single customs territory, to prevent fraudsters from exploiting these administrative divisions, and to give efforts to combat customs irregularities the necessary Community dimension. These measures are as follows:

1. A legal basis in Community law for providing and requesting assistance to/from the customs investigation services of other Member States (R. 1468/81) and, in certain cases, of third countries, in particular the CEECs and most of the ex-Soviet republics (bilateral agreements containing a protocol on "mutual assisance");

2. Computerized systems linking the investigation services of the Member States' customs services with each other and with the competent Commission services, for the purposes of transmitting anti-fraud information under Regulation 1468/81. These systems are used for transmitting information on enquiries concerning cases of fraud in the transit area as well as for any other type of customs fraud, and also give access to Community or private data bases which are useful to customs investigators generally (Eurostat....).

In addition, however, as a specific result of frauds in the transit area, the network consisting of all the terminals linked to the customs mutual assistance systems (CIS/ SCENT) has been put to use, in the absence of any other practical possibility, to carry the Early Warning System (EWS) by which offices of destination (Community/Common Transit, including EFTA and, from 1.7.96, the Visegrad 4) are informed of the placing under the transit procedures - including TIR - of ▒high-risk▒ consignments.

3. In addition to "alert" type information exchanged between local customs services via the Customs Information System (CIS) a standardized fiche for ▒AM▒ (mutual assistance) communications is used for transmission by the Commission to the central customs administrations of the Member States, under R. 1468/81, of information on specific cases of established or suspected fraud, which should be the subject of enquiries at Community level. The first communications on frauds in the transit sector were received by the Commission's services in 1990, the findings at national level dating from at least one year earlier. In September 1996, the number of AM communications on cases of transit fraud which were therefore being coordinated at Community level was 89, i.e. 10% of all AM communications and 57% of those having budgetary implications.

4. The organisation by the Commission of:

- meetings of the ▒Mutual Assistance▒ Committee to discuss, inter alia, practical problems in the application of the provisions in question (contact persons...);

- task forces composed of experts from the Commission and the Member States to share intelligence in specific areas (eg., by product, as in the case of cigarettes; ou by procedure, eg transit), with a view to detecting cases for which specific enquiries are likely to be necessary;

- ad-hoc groups consisting of investigators working on a specific fraud case or dossier, in order to exchange information relating to the case in question and, where appropriate, coordinate the enquiries and interventions by the different services concerned (house searches...);

- Community enquiry missions carried out by teams consisting of representative of the Commission and the Member States principally concerned, which are lead by the Commission and which go to third countries in order to assist the local authorities in enquiries aimed at assembling the necessary elements of proof, with a view to pursuing enquiries in the Community, on transactions concerning goods that have been the subject of frauds in the Community as well as on persons having played a rôle in the operations in question.

Judicial assistance within the European Union

In addition to the Community framework (1st pillar) described above, the 3rd pillar of the TUE provides for cooperation in the area of justice and home affairs.

Actions have been taken, by the Commission services competent for coordinating enquiries at Community level, to ensure that the judicial authorities who are responsible at national level for handling criminal proceedings against the perpetrators of frauds against the transit regime, are aware of the need to make effective use of the relevant provisions on legal assistance. This is necessary to ensure that the results of the good cooperation between the customs services under the administrative cooperation provisions are used to the full.

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ANNEX IV

THE ACTORS IN TRANSIT

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THE ACTORS IN TRANSIT

LEGISLATIVE ORIENTED

The term "legislative oriented" is deliberately vague and covers the consultation stage and the preparatory work as well as actual process of law making. It also covers "soft law", or administrative instructions which "interpret" the existing law in particular cases. As there are three different legal contexts (Community transit, Common transit and TIR) the players and their roles are slightly different in each context.

COMMUNITY TRANSIT

The Commission

has the sole right to propose changes to Community law at EP/Council level or Commission level and then participates in the legislative process until the new law is adopted.

The Member States in Council

approve by qualified majority and in co-decision with the European Parliament all changes to the Customs Code.

The European Parliament

adopts by co-decision with the Council all changes to the Customs Code.

National Parliaments

subject Community Legislation at European Parliament/Council level to various degrees to controls, which are more or less effective according to the Member State concerned.

The Economic and Social Committee

is consulted in relation to any proposal to amend Community Transit and their advice is taken into account by the Commission, the Council and the Parliament.

The Member States in the Customs Code Committee (Transit Section)

vote on all changes, by qualified majority, to the Code implementing provisions; It also is the forum where disputes or doubts as to the meaning of the Customs Legislation are debated and decided upon. This is done either by the adoption of opinions recorded in the minutes or by the Commission deciding upon the need for a formal change to the law. In which case the Committee is consulted and the ideas discussed until the Commission feels it is in a position to make a formal proposal.

The Customs Policy Committee

operates at two levels; the highest consists of the Directors General of the Community Customs Administrations and is chaired by the Director General of DG XXI. Its work is prepared by meetings at Deputy Director General level and these meetings are chaired by the DG XXI Director of Customs. Its role is to consider the policy guidelines to be given to work in the customs field and to give policy advice to the Customs Code Committee when experts are unable to resolve problems there at a technical level. This Committee has not been set up under Community legislation, but will be formalised (but outside the formal decision making process) when the Customs 2000 programme is adopted.

The Club

is the name given to the annual informal meeting between the Directors General of the Member States Customs Administrations and Turkey. The Director General of DG XXI is invited to be present and participate. This informal group usually tends to discuss things like administrative co-operation and other issues that do not fall, or only partially, under Community competencies. In a way the informal discussion can lead to new approaches and ideas that can be developed (or rejected) by the other more formal actors in the process.

The Advisory Committee for the coordination of fraud prevention (COCOLAF)

has been created by a Commission's decision of 23 February 1994 ; it brings together representatives from the Member States' administrations, dealing with the coordination of anti-fraud activity in all Community sectors, in particular those affecting the Community's budget (own resources, export refunds, structural funds, ...). Among other matters, it gives its opinion on the annual anti-fraud programme and the annual report on anti-fraud activity. It is chaired by UCLAF.

The Mutual Assistance Committee

is a non-statutory Committee which meets in the framework of Regulation (EEC) N° 1468/81 on mutual assistance in customs and agricultural matters, and is co-chaired by DG XXI (policy matters) and UCLAF (operational matters).

The Advisory Committee on own resources

deals with questions concerning the implementation of Regulation (EEC) N° 1552/89 of 29 May 1989 relating to the system of Community own resources and brings together representatives of Member States' authorities responsible for own resources. It is chaired by DG XIX.

The Personal Representatives Group

operates as an *ad hoc* group in the framework of the sound financial management (SEM 2000) initiated by the Commission, with a view to identifying priority actions on Community and national level to improve budget execution and to remedy the failures in financial management identified *inter alia* by the Court of Auditors. The SEM 2000 initiative has been supported by the Madrid European Council of 15-16 December 1995. The group associates senior representatives of the Commission and of the Member States' financial administrations under the chairmanship of Commissioners Liikanen and Gradin.

The Advisory Committee on Customs and Indirect Taxation questions

brings together representatives of all the sections of trade and industry (as well as Customs officers' Trade Unions) that are concerned by the customs and indirect taxation. This group has been set up under Community law. All changes being considered should be discussed with them before the Commission makes any proposals. The Committee tends to operate through working groups preparing dossiers for the annual plenary session. Often the consultation is made and the advices are given by written procedure without a meeting taken place.

The "trade"

is free to put forward its point(s) of view on legislative changes in many ways. Firstly they can work at national level to influence the point of view of national administrations. Then they are always able to approach the Commission or MEPs (either at national or European level) to make their view known. Then there is the formal framework of the Consultative Committee.

COMMON TRANSIT

The Commission

acts as the representative of the Community at Joint Committee and Working Group levels. At Community level, it has the sole right to propose the changes to Community law in relation with the Common transit arrangements.

The Member States in Council

adopt a common position by qualified majority concerning all changes to the Common transit system on the basis of a Commission proposal before the latter acting in the Joint Committee on behalf of the Community can agree to changes to the Convention or Joint Committee Decisions to amend the Appendices.

The Member States in the Customs Code Committee (Transit Section)

are involved in all negotiations carried out by the Commission in the Common Transit Working Group (see below). The Community positions are common and worked out in the Committee. As and when negotiations seem to require a modification of the Community position the Commission will consult the Customs Code Committee.

The other States concerned

will all have "different" legislative and consultative processes they have to take into account in working out their positions.

The Common Transit Working Group

is the Common transit equivalent of the Customs Code Committee in that it works out common interpretations of the law where required and considers changes that will be necessary which it proposes to the Joint Committee.

The Common Transit Joint Committee

takes "decisions" at two levels (Recommendations and Decisions). Changes to the Convention itself are recommended by consensus to the contracting parties. The decisions of changing the Appendices, which by and large are the operating provisions equivalent to the Code implementing provisions, are taken directly by the Joint Committee acting by consensus, after that the Community position has been agreed by the Council upon a Commission proposal.

From this it can be seen that any changes the Community wishes to see made to the Common transit system can effectively be blocked or rendered more difficult by a single EFTA or Visegrad country.

THE TIR

The Commission

acts as the representative of the Community at the Administrative Committee and WP 30 levels (see below). However as a customs union the Community has no voting rights in the Administrative Committee, but the Member States must vote in accordance with the Community position.

The Member States in the Council

are involved in all negotiations affecting the Convention carried out by the Commission in the WP 30 (see below). The Community positions are worked out in the Council. As and when negotiations seem to require a modification of the Community position the Commission will consult the Member States.

The Member States in the Customs Legislation Committee

In this non statutory Committee which is dedicated to Community coordination concerning Customs matters at international level, the Member States are involved in all negociations carried out by the Commission in the WP 30. The Community positions are common and worked out in the Committee.

The other Contracting parties concerned

will all have "different" legislative and consultative processes they have to take into account in working out their positions.

Working Party 30

is open to all members of the United Nations and at the invitation of the Chairman any interested international organisations and is not limited to the 58 Contracting parties to the Convention. It prepares the work of the Administrative Committee and deals with matters other than transit as well. Effectively it has to work on a consensus basis even if technically speaking a vote is always possible. The Commission represents the Community; the Member States may speak but have to follow the common position agreed in the Council (see above).

The TIR Administrative Committee

adopts "decisions" at three levels. Changes to the Convention itself and its Annexes are in practice made by consensus. Such recommendations are acceptable to the Community as they have always been reached on the basis of a common position of the *Council*. Any consequential changes to the Customs code and the Implementing provisions are then adopted by the usual process of Community legislation on the basis of a Commission proposal. The Administrative Committee also adopts Explanatory notes, which clarify certain provisions of the Convention, and comments on the Convention which are not legally binding on the Contracting Parties.

OPERATIONAL

For all three systems this term covers the actual steps needed to carry out, monitor and control a movement up to writing off the return copy 5, as well as the steps needed if the operation is irregular, whether or not a fraud has taken place. It also covers management of the system, the allocation of the necessary resources, guidance, training and information and the issue of instructions at a national level; all operational decisions including for example the allocation of permission to use simplified procedures and monitoring that they are used correctly. It also includes management and monitoring at an international level. In short all the non-legislative actions or individual decisions needed to run the system.

The Member States

responsibility is both to operate the system correctly, co-operating at all levels with the others and ensuring that all the requirements on time periods are fully met. At central level they have to manage their performance adequately and act as the conduit through which the Commission should be kept properly informed of the level of performance and they should bring to the attention of the Commission and of the other Member States any problems that emerge that require interpretation or action at Community level. They are also responsible for the training and performance of their staff and information of their trade, which includes providing clear and adequate instructions and guidance.

The other States concerned

have similar responsibilities to the Member States, but in relation to the Common transit and the TIR managment bodies rather than the Commission.

The Commission

is responsible for monitoring the application and performance of the 3 systems of transit from a Community perspective. It has to identify problems and present solutions for adoption and ensure that (some) action is taken. It chairs the Customs Code Committee and represents the Community in the Common transit Working Group and WP 30 when operational aspects are discussed.

Through DG XIX, in close cooperation with DG XX and XXI, the Commission audits the transit system from a traditional own resources point of view. Either in association with the competent services of the Member State involved or at its own descretion the functioning of the transit arrangements is subjet, at regular intervals, to on-the-spot checks by the Commission in the framework of its annual control programme.

The Trade

has different responsibilities according to the role of the different players. However these responsibilities can generally be described as carrying out the regulations and rules correctly, making sure their staff are aware of what they should do and that they do it. They are responsible for choosing the other companies they work with with due care and attention and for working with the Customs Administrations to avoid fraud where possible and to help in combating it where it has occurred.

The different roles are:

* *Principal* - who assumes the risk for particular shipments and who is responsible for the movement and for accounting for any loss of tax or duty. This is a key role that can be taken on by any of the players involved. In particular cases the roles can even be combined. Principals must act responsibly in respect to the guarantees they put forward and ensure they are really adequate for the risk of potential loss accepted at any one time
* *Guarantor* - who provides the guarantee for the principal
* *Freight forwarders* - who act as agents in arranging for goods to be delivered to a given place. These usually act as principals. They are responsible for the whole operation and must chose the transport companies with care and reject any transaction that appears to carry any undue risk.
* *The haulier* - who actually carries the goods and who is responsible for their safety and arrival.
* *The owner* (or person responsible for the goods) -who requires the forwarding agents to move the goods on his behalf. He is responsible for choosing his forwarding agents and/or transport company well. He is also responsible for ensuring that the goods are correctly described to the declarant acting on his behalf so that the correct tax and duty can be collected if a loss takes place.
* *The recipient* to whom the goods are destined is responsible to report their arrival to Customs if he is an authorised consignee or if nobody else does and he knows that the goods are moving under customs transit.

The European Court of Auditors

has a control function which covers the legality and regularity of receipts ; this imposes on the Court the need to ensure a good financial administration by those it audits ; this function results in annual reports in relation with the execution of the annual budget, special reports (own initiative or requested by Council or Commission), and "statements on assurance" (reliability of accounts). Its other function is a "consultative" one where it issues opinions, which can be compulsory (on financial Regulations) or optional (on request of an other institution) on what it has observed while carrying out its control function. The Court can also present informal observations at its own initiative.

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ANNEX V

V. Transit computerization project

1. OBJECTIVES

· to increase the efficiency and effectiveness of operation in the Community/common transit procedure;

· to improve performance in preventing and detecting fraud in the Community/common transit procedure;

· to bring about faster and more secure operation of the Community/common transit procedure, and at the same time to offer enhanced facilities to the Economic Operators where appropriate and feasible.

2. ESSENTIAL ELEMENTS

-Real time control based on official informations.

-The transit declaration data are sent electronically by the office of departure to the office of destination before the departure of the goods.

-Advance message allows the office of destination to assess the risk and allocate resources in advance of the arrival of the goods and to react immediately when the allotted delay is over.

-Electronic checks may be made on guarantees at office of departure before the departure of the goods

-Reducing the paper Customs documents.

3. WORKING

At the Office of Departure

-Electronic declaration received from the economic operator at the customs Office of Departure

-Electronic checks to verify the validity of the guarantee

-Electronic transmission in real time of the data of the transit declaration by the Office of Departure to the Office of Destination including the description of the goods and the allocated journey time.

-Where the goods don't arrive within the allocated time periode, an alert of "non arrival" is automatically generated at the end of this delay at the Office of Departure where an automated enquiry procedure will be initiated at the same time.

At the Office of Destination

-The data of the transit declaration are received "in advance" of the arrival of the goods

-The Office of Destination assesses the relevant risk and allocates resources for control purposes prior to the arrival of the goods.

-If the goods arrive within the allocated delay, the control results are returned electronically to the Office of Departure to enable the transit movement to be discharged and the guarantee to be released.

At the Office of Transit

-Electronic notification received from Office of Departure giving advance notice of goods crossing frontier

-Notification sent to Office of Departure advising that goods have crossed the frontier

Other issues

-National administrations will maintain databases for movements, guarantees, trading partners

4. TECHNICAL ARCHITECTURE

The system will be based as far as possible on existing national infrastructures, with specific national transit applications being developed for each administration, which will be interconnected via a network.

Standard interfaces will be provided between the Standard Transit Application and Nationally Developed Transit Application modules.

The intention is to avoid technical disruption to national systems as far as possible while at the same time ensuring that some 3,000 customs offices throughout Europe are computerised.

5. LEGAL ISSUES

Changes needed to the legal provisions in the Community and Common Transit systems and architecture.

Consideration being given to the use of Commodity Codes to identify goods and other datas required on an electronic declaration.

Defining the solution of legislative constraints regarding data protection, including transmission of data across national boundaries.

6. BENEFITS

1. National Benefits

-increasing the efficiency and effectiveness of operation of the transit procedure

-providing the statistical backround to improve management of resources

-allowing staff to concentrate more on physical controls than on administrative tasks

-improving the overall control of the regime

-providing effective fraud prevention and detection

2. Trade

-reduction in administrative work

-rationalisation and harmonisation of work practices throughout the EU, EFTA and V4

-increased speed of movements

-more rapid clearance and quicker discharge of guarantees

-safer and more secure procedures for principals and benefits through integration of commercial EDI (Electronic Data Interchange) systems with national administrations.

3. EC Benefits

-reduce losses of own resources

-providing statistical backround to evaluate the operation of the system in real time

-contribute to the strategic requirements of Customs 2000 in providing a common infrastructure for many other future developments in the customs and indirect taxation areas

-increasing EC competitiveness by :

-promoting the use of computerised techniques and,

-contributing to the expansion of Electronic Data Interchange, providing a (potentially) seamless link between the trade and administrations.

7. MANAGEMENT AND ANTI FRAUD ADVANTAGES

a) improve features of the existing system which will lead to

- □ reduction of the number of enquiries
- □ quicker and more efficient processing of remaining enquiries
- □ quicker writing-off of transit movements and discharge of related guarantees
- □ quicker detection of non-presentation of goods at destination
- □ acceptance of validated declarations only

b) provide new features (feasible only through computerisation) that allow for

- □ completion of arrival controls at the office of destination
- □ transfer of declaration data from office of departure to office of destination without risk of falsification
- □ check of the guarantees validity
- □ monitoring of the guarantees usage
- □ risk analysis at office of destination and departure
- □ automatic verification of enquiries
- □ substitution of the return of copy 5 and the manual comparison with original declaration
- □ collection and analysis of statistics and audit information

c) provide new functionality (feasible only through computerisation) to reduce and prevent fraud by eliminating the possibility of

- □ successfully re-using the same copy 4/5 for more than one passage
- □ successfully using a forged copy 4/5 to cover passage across border
- □ sending a forged copy 5 to office of departure
- □ falsifying copy 4/5 to cover subtraction or substitution
- □ successfully presenting stolen, incorrect, false or non-validated guarantee certificate
- □ successfully presenting withdrawn guarantee certificate
- □ using stolen or forged stamps

decreasing the possibilities for

- □ subtraction or substitution of goods
- □ fraudulent declaration by an authorised consignor
- □ fraudulent "Conform" by an authorised consignee
- □ clearance by a corrupt officer
- □ T2 substitution
- □ using false seals
- □ avoiding control through corruption
- □ using insufficient or over-used guarantee
- □ irregular use of genuine guarantee
- □ fictitious Transit movement to support re-fund claims

8. COSTS AND FUNDING

Amounts allocated or considered for the Transit Computerization Project are as follows :

-PHASE 0 (1993-1994) : 1.153.640 ECU

-PHASE 1 (1994-1997) : 4.133.774 ECU

-PHASE 2 (1997-1998) : 9.265.265 ECU

-PHASE 3 (1998-1999) : 10.526.000 ECU

Currently the funding for central development has been provided mainly from the IDA (Interchange of Data between Administrations) Programme. The financing of this programme (line B5-7210) was greatly reduced during the course of the 1996 budgetary procedure. Of the 50 MECU asked for by the Commission, only 30 MECU has been allocated of which 7.5 MECU has been reserved by the Parliament.

These important restrictions have not yet had any influence on the progress of the project or on the CCN / CSI project (which has the objective of developing the platform for the system when it is operational). This is because the Budgetary Authority approved transfer No. 49/95 at the end of 1995 (15 Million ECU coming from the 1995 reserve), and because the Commission gave priority to the carrying out of the Transit Computerisation Project. However, delays in carrying out this project would arise and implementation of the system could not be guaranteed for the financial year 1998 if a transfer of funds from the reserve of the 1996 budget and the reestablishment of the PDB 97 at 39,5 Millions ECU (PDB = 30 Millions

ECU) are not approved by the Budgetary Authority.

9. IMPLEMENTATION TIMETABLE

PHASE 0 (Feasibility Study) AND PHASE 1 (Development of System Specifications)

The Transit Computerisation Project is being progressed in a number of phases. Phase 0 was completed in **November 1994**. The current Phase 1 was authorised by the Joint EC/EFTA Committee in December 1994 and is due to be completed within the next few months. The time schedule for the future phases of the project is shown in the following paragraphs.

PHASE 2 (Construction and Pilot Implementation)

This phase is planned to **commence in 1997 and be completed in 1998**. Consideration is being given to requesting the Steering Committee to authorise commencement of Phase 2 to run in parallel with Phase 1 to minimise project delay. During the Construction and Pilot Implementation phase the organisation, software, hardware, and communications required to support a pilot transit phase will be constructed, tested and integrated. The New Computerised Transit System will be implemented and operated in a limited number of pilot sites in parallel with the existing paper-based system, for a period of 4 to 6 months.

PHASE 3 (Implementation and Extension)

This phase will **commence in 1998 and continue into 1999**. During this phase the pilot network infrastructure will be expanded to the operational network infrastructure. The transition to and the running-in of the operational service in the pilot countries including the extension of the service to all national Transit Offices will be performed. In addition, the operational service will be extended via national pilots to the other countries and the required legislative, organisational, and procedural framework will be implemented.

PHASE 4 (Operation and Maintenance)

This phase will be effected **from 1999** onwards and consist of the on-going activities required for the operational service. The responsibilities for operational activities will require definition and approval by the participants. Service level agreements will be developed to ensure that the Commission, national administrations and economic operators are both aware of, and fully accept their respective responsibilities.

[Other documents] [Index] [Previous] [Next]

EUROPEAN COMMISSION

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INTERIM REPORT

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ANNEX VI

BROAD AREAS OF DIFFICULTIES AND SUGGESTIONS FOR A REFORM

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Introduction

Any improvement in the functioning of the system is to be welcomed provided that the cost is not higher than the benefits. By cost the authors do not just mean the cost in money terms to the administrations, but must also consider the side effects, for example the introduction of a new method may mean that the resources available for another in terms of money and or manpower is diminished. In addition any changes will inevitably have effects on the cost efficiency of the operators that may have more adverse effects on the system than they have positive ones.

In addition some suggestions might be intended to palliate the deficiencies of the paper based system but might not actually be usable until the same time as it is intended to introduce the new computerised transit system. While others are ideas that could be useful both in the short term and in the long term when the computerised system has been bedded in and is running satisfactorily. Some of the changes suggested would require changes in legislation that would take a long time to get agreement on between all the actors involved, while others could be introduced administratively, but even here to get agreement from all the administrations involved will take time.

The intention is to render the system more efficient and fraud proof [1] as well as to make it easier to detect irregularities and to chase down those discovered. **Part 1** takes the broad areas of difficulty and considers all the suggestions[2] that have been put forward in many fora under four main headings:

I. Improving the documentation and writing off procedure as well as the enquiry procedure

II. Improving control measures

III. Allocation of risk and definition of responsibility

IV. Level of guarantees

This is followed by some consideration of five groups of supporting measures (which corresponds to Part V of the synoptic table in the body of the Report) under **Part 2**:

A. At legal and instructional level; clarity and coherence

B. Understanding at the operational level

C. Better management, clear priorities

D. Increased co-operation between administrations

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1 Where reference is made in this Section to a kind of fraud the classification established Annex III is used.

2 The authors of sugestions put to Parliament are identified in footnotes. This does not exclude the fact that they and others may have put forward these ideas or others to the Commission in meetings of the Customs Code Committeee, in informal meetings or in writing at earlier or subsequent occasions.

E. Sanctions

Within each of these main areas the suggestions are set out with the source of the suggestion, the problem it is intended to ameliorate, with an assessment of how effective it might be, and saying whether it is a short term or long term suggestion and how it could be implemented. A provisional judgement is made where possible as to whether or not it should be put forward for adoption or for further study.

PART 1. BROAD AREAS OF OPERATIONAL DIFFICULTIES

I. Improving the documentation and writing off procedure

By 1998 the computerisation of transit should be in operation even if not universally applied. It will probably be some years before the paper based system is completely replaced. The computerised system is intended to address most of the problems encountered at present under this section. It would eliminate the problem of false stamps and accompanying documents, it should cut out the delays inherent in the sorting system with multiple stages involved and the delays involved in using snail mail. It should be sufficiently robust to deal with the sheer numbers involved and any reasonable growth in trade. In the longer term it should provide a complete answer to the current backlog in writing off and consequently is not discussed in detail in this section that instead examines what changes if any could be made to the current system to render it more effective in the meantime. (See Report Part II.B.1 and Annex V for information on computerisation).

There seem to be two main problems involved with the paper based system:

- Firstly it is easy to fake the stamps used or to obtain stolen ones in order to falsify the copy 5s so that it looks like the goods arrived where they were supposed to go even though actually the goods did not

- Secondly it is so slow that it takes a long time to write off the transit operations against return copy 5s before it can be seen if the goods have legitimately arrived or whether they have disappeared or been the subject of false stamps etc..

This slowness allows the trail to go cold in relation to attempts to deal with fraud found; it also leads to uncertainty on the behalf of operators as to what exactly their obligations to pay tax and duty will be. It may be up to a year after an operation takes place that they are confronted with the fact that it has gone wrong. This leads to situations where there is building up of false confidence by the fraudsters after a series of legitimate operations in which the quantity of the operation can be increased and suddenly a large quantity disappears and it takes too long to discover what has happened. The result is that the principal and the guarantor can be involved in huge losses that can go beyond their ability to pay. This is leading to escalating costs of guarantees and is making the system expensive for the trade to operate.

I.A The problem of fake or stolen stamps

The paper-based system is based on the use of official stamps to authenticate a document and certain entries thereon. In particular, the presence of an official stamp on copy 5 of the document is taken as proof that the consignment has been presented at destination and permits the office of departure to write off the operation. The use of a fake or stolen stamp covers up the failure to present goods at their destination and, unless further checks are carried out, means that an operation will be considered to have been properly conducted and therefore written off.

The use of stamps by customs which are not necessarily used only for transit documentation, but for all other documents that require stamping, means that, in some cases, they are relatively easy to steal. They are small, and may not quickly be missed as there may be other similar ones in use in the same room. In addition simple stamps are fairly easy to forge and the imprints made by the forged stamps may not be easy to detect given that the imprint of the rubber stamps is often distorted, unclear or faint because not enough ink has been used. A number of ideas have been put forward to improve the situation.

There is reason to believe that the plethora of different customs stamps used in transit makes it very difficult to check their authenticity at a glance, with the result that the only solution in cases of doubt is to carry out retrospective checks, i.e. to ask the office purported to have endorsed the document to confirm the stamp's authenticity, something which entails further delays.

There is reason to believe that the plethora of different customs stamps used in transit makes it very difficult to check their authenticity at a glance, with the result that the only solution in cases of doubts is to carry out retrospective checks, i.e. to ask the office purported to have endorsed the document to confirm the stamp's authenticity, something which entails further delays.

I.A.1. Improving the information flow and checking

One of the problems is the number of transit offices, some 3000, and the use of many different types of rubber stamps. They are not even necessarily uniform inside a single administration. This means that it is vital to pass on and keep up to date information on the actual stamps in use in all the transit offices to all the others involved. Without this, and even with it, it is difficult for the office of departure to be up to date about the stamps which others are using and to keep track of which have been stolen or mislaid. It is therefore difficult to be certain in some cases that the stamp used is an official one or not or whether it is one that has been faked or stolen[3]. Valuable time and resources are used in checking the validity of stamps that turn out to be perfectly OK. It is certainly necessary to continue to improve on the exchange of information on stolen stamps and the offices that are at any given time empowered as transit offices.

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[3] Freight Forward Europe- Contribution No 1 PE 216.320,
The Danish Freight Forwarders Association (Dansk Speditørforening)- Contribution No 5 PE 216.328,
UK Customs and Excise- Notice to Members No 1 PE 216.330

A number of Member States have introduced technical backup systems for comparing the imprint on a particular document with the 'standard' stamp used by the office involved provided for them under the official exchange of information system to see if there are discrepancies. This is useful and other Member States should be encouraged to do the same, but it is doubtful if all transit offices could be given this backup; and in any case it can only function if all the stamps are in the memory of the device and then absolutely accurately. The use of photocopying techniques in passing on impressions of stamps distorts the size, the example passed on must be perfectly accurate and absolutely clear. There is then the fact that the impression on the document itself may not be good enough for a satisfactory comparison.

One thing that emerges from the above is that the exchange of information and comparisons would be much facilitated if there were fewer offices involved.

I.A.2 Standard stamps of improved quality

Another possibility would be to introduce a standard stamp model for use by all offices. Against this is the point that this would in a way make forgery even easier as there is only one model to follow! However if good metal stamps were introduced in all customs administrations this would be harder to forge with sufficient quality, especially if some complex piece of engraving was incorporated. If these machines were fixed and large they would be more difficult to steal and their loss would rapidly be noticed. Such machines could use serial numbers for each transaction in the way many archive stamps do. Presumably it would not be too difficult to change the numbering from time to time to confuse fraudsters. The numbering could however be done by separate electronic stamping machines which are on the market. These numbers would not make it easier for the office of despatch to detect fraud but it would make it easier in the case of an enquiry for the office of destination to state whether the impression was theirs or not.

This would require a change in the law and agreement on the layout. It could however be introduced gradually and should be cheaper than the solutions set out subsequently below even if it would not be as effective. This could be an avenue to explore as it might be possible to take effective action before the computerisation makes it unnecessary.

I.A.3. Bar codes

In various contexts and in particular a seminar held in Denmark [4] the use of a bar code system similar to those used to identify goods and to charge for them in supermarkets was suggested; this idea has been put forward also by the Spanish customs and the CEDT [5] which produced a detailed paper on how this worked and how it could be made secure. Essentially, instead of a stamp, customs would attach to each document a sticker with a strong adhesive with a bar code particular to that document. The coded information would include the particulars of the office, the date and the number of the particular copy 5 involved. This information is coded into a series of numbers which are expressed in the form of bars. These are not understandable to the human eye and a special reading device is needed to obtain the information. Falsification could be avoided

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4 The Danish Freight Forwarders Association (Dansk Speditørforening)- Contribution No 5 PE 216.328

5 European Confederation of Tobacco Retailers- Contribution No 2 PE 216.742

by sequential numbering with alphanumerical control characters obtained via a complex mathematical algorithm. This would be periodically changed. This idea has been taken up for further consideration in relation to the TIR system, where of course there is less immediate possibility of computerisation.

This idea is worthy of further investigation and insofar as paper T1s continue to exist perhaps use could be made of the same bar codes and reading devices that may be introduced for the TIR. However the introduction of bar codes in Community and Common transit would need a change in the legislation in both cases and a very considerable investment in encoders and readers. Obviously the bar codes could only be used by offices of despatch when they were certain that the office of destination could read them (insofar as one can change destinations this would complicate matters) and would not be completely satisfactory if the intermediate check points, mobile or not, couldn't read them. It is doubtful whether a sufficient network could be set up before the computerised system was also beginning to function and the additional investment might end up by being at the cost of computerisation. However if this idea is taken up in TIR then it should be possible to use the equipment in the Community and Common transit systems as well as long as paper systems are being used.

I.A.4. Smart cards

The idea has been put forward of using 'smart cards' [6] as are being introduced in the banking system and which some people think will eventually replace cash. Here a machine records details of a transaction on the card and a special machine is needed to read the information and to add, subtract or alter details. This goes further than bar codes as the actual paper support is replaced by the smart card. This would be in direct competition with the idea of computerising the system but would not offer all the advantages of the latter. The capital outlay would presumably be more than for the bar codes and the cards would cost more than paper documents or computer transmissions. It would seem necessary to use a new smart card for each operation because of the need to preserve records which would be costly. This might be avoided if a legally satisfactory way was found to download the information and store it when the card could then be wiped and used again. In any case the card would need to be returned like the copy 5 and doing this may be costly as the cards are heavier than paper and will need to be 'read' in order to be sorted for the appropriate office of despatch.

It would take some time to implement the system and it is doubtful whether it could be introduced widely before the computerised system. In the long term if costs fall sufficiently it might be possible to consider this in addition to the computer system to replace paper accompanying documents, if this was ever felt necessary, without any need to be physically returned, by customs at least. Provisionally the Commission feels that this is not an idea that should be taken into consideration at this time.

I.B. The problem of slowness of the return and writing -off procedure

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[6] Among others by the Spanish and British Customs (Spanish Customs- Notice to Members No 19 PE 216.384 and UK Customs and Excise- Notice to Members No 1 PE 216.330)

Much stress has been placed in many of the submissions submitted about the problem of slowness in the documentation and the writing off of transactions and the adverse effect this has on tracing fraud found and on the position of traders who can be faced with large bills up to a year after the event. This time lag gives opportunities for further frauds to take place in one way or another in the meantime. Even the customs are aware of a need to improve things even to the extent of saying that in the majority of cases the procedures are pointless [7].

Though the periods laid down at present may not seem excessive, the fact that they are seldom respected does cause difficulties:

* Transactions not written off owing to administrative delays are mixed up with those not written off for reasons of fraud.

* Guarantees are tied up for unduly long periods: this either hampers traders' activities and unjustifiably increases their costs or causes the securities provided for in the comprehensive guarantee system to be routinely exceeded.

* The consequent delays in the inquiry procedures and appreciable reduction in the effectiveness of measures against fraud oblige customs to recover debts from honest traders.

* The Community and the Member States lose revenue.

To aid understanding of the analysis the routine at present is set out as follows :

* After a transit operation has been authorised, the haulier in most cases is given 8 days to present the goods at destination.

* The office of destination then has 10 days to process the copy 5 and to send it to the office of departure. There is a tendency to wait until sufficient copy 5s are available for a particular office of departure to justify the postal cost of sending the documents back which tends towards waiting until the 10 days are up before transmission, or perhaps even longer. The post costs money at a time when budgetary constraints are very important. This delay builds up at each stage of the process. Oddly enough the other levels of the process (see next paragraph) were actually introduced to centralise and speed up flows and sorting and to eliminate the need for numbers to build up in relation to individual offices.

  In some Member States it has been considered better, to avoid this delay (remember that potentially 3000 offices could be concerned - though obviously in particular cases the numbers will be much less), by setting up one or more central offices to which the copy 5s should be sent without delay or sorting by the office of destination. The collected copy 5s from the offices of destination are then sorted and despatched centrally; this sorting depends on the organisation of the Member State to which they are being sent, which might or might not have central offices of its own. Thus, where central sorting offices exist, sorting in the Member State of destination is crude and is refined in the Member State of departure into the

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[7] Danish Customs- Notice to Members No13 EP 217.699 and that writing off should be on the basis of risk analysis.

different offices of departure. This has been done to speed up the procedure, but no time periods have been written into the legislation in this regard. It is rather assumed that the Member State of destination takes the 10 days as applying to the whole process of returning the copy 5s that takes place on its territory. (see I. B5)

* The office of departure should start the enquiry procedure and inform the principal that an operation has not been written off within 10 weeks of the date on which the transaction was authorised.

* The customs have up to eleven months from the date the transaction was authorised in which to claim the amounts due on a non written-off transaction from the principal.

The delays allowed are too long or are not met

I.B.1. Reduction of the time allowed for movement of goods

It has been said that the time allowed for the physical movement of the goods (8 days in most cases) is extremely generous as it only takes 4 days at most to cross the Community with [8] modern systems of transport. The vehicles and the roads in the Community have improved dramatically since the transit system was introduced and there are no longer delays at internal frontiers. This unrealistically long time allowed gives rise to delays in identifying when something has gone wrong. This then delays the reaction of the police and customs making it more difficult to trace what has happened. Shortened time periods have been introduced for the movement of some sensitive goods and this seems to be working well. However to be effective the office of destination has to know when to raise the alarm so would need to be told about the movement (see II. A1 below). In the view of the Commission the time allowed for movement should be shortened. It should depend on the distance involved and the particular circumstances of the shipment. This has obvious connections with the need to limit the right to change destinations and the introduction of compulsory itineraries (II. A 1 below).

I.B.2. Delay for returning the Copy 5

Delays given for returns are not met because the customs are said to be dilatory and inefficient. Non-returned Copy 5s are said to be equal to one year trade! As it takes only 2-4 days for the transport to reach the other side of the Community it should not take more than 14 days for the return copy to arrive even by post. Why then does it take 10-12 months in some cases? It has been suggested that the Commission should monitor performance by the Member States who should make quarterly returns to them noting seizures, amount of police and customs resources used, analysis of cases encountered, identification of all known instigators etc.[9] (See the section on statistics under part 2 of this Section below). Another party suggests the concept of reverse proof where the customs have to show that there has been an irregularity if in the case of high risk

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[8] Finnish Customs- Notice to Members No 17 PE 217.818,
Swedish FFA (Sveriges Speditör Förbund)- Contribution No 9 PE 216.386 for risky products

[9] Freight Forward Europe- Contribution No 1 PE 216.320,
European Confederation of Tobacco Retailers- Contribution No 2 PE 216.742

goods the return copy is not available in 2 days and 15 days in other cases [10]. Generally the trade feels that the period for returning copy 5s should be shortened overall even if this means shorter times being allowed for the transport itself.

The Commission feels that the period allowed for transport should indeed be made more realistic in relation to individual operation with periods running from 1 to 4 days depending on the distance to be covered. This would overall help to cut the delay. it should be made clear in the legislation that the 10 days for returning the copy 5 applies not only to individual offices of destination but to the Member State concerned taken as a whole. However given that at present the Member States seem to be unable in all cases to meet the current deadline, it would in itself be pointless to reduce them. Instead intention should be given at a managerial level by the Member States as to how they could better organise the returns. In this respect see below I. B6 'lack of resources' and also I. B.3.

I.B.3. Alternatives to the copy 5 use of traders copies, trade documentation etc.

There have been many suggestions that there should be alternatives to using the copy 5 that could be accepted in lieu for writing off. The trade points out that often in the end trade records and documents can be used when a copy 5 goes missing and the enquiry procedure starts, when they have three months to show that the transaction actually has been regular in spite of a missing T form. Why shouldn't they be allowed to do this earlier if they wish [11] [10] even before it has been realised that the Copy 5 has gone missing, if this would allow quicker writing off and reduce their exposure? The use of a trade or official document certified by customs is already theoretically allowed instead of the copy 5 during the enquiry period, since 1 July 1996. Why can't be allowed at an earlier stage? In addition they ask if it is really necessary that the use of commercial documents has to be subject to the stamping by the office of destination?

In the view of the Commission the existing facility to use commercial documentation stamped by the destination office in the enquiry period should be allowed to prove its worth before any move is made to dispense with the need for official stamping. It is not practical to allow for this to be used before the other channels of writing off have been tried because it is an *ad hoc* system and its use would tend to complicate the smooth flow of normal business. But see below for another suggestion.

Some propose instead that the existing receipt notification system, using the tear-off portion of the copy 5 or the special receipt form TC 11 duly stamped, which at present can only be used to demonstrate arrival once the enquiry procedure has been started should be allowed to be used as an alternative to the copy 5 when presented by the trader to the office of departure. The present facilities are optional, but the customs do have to stamp the forms if requested.

Others suggest instead the use for all goods of a recto-verso photocopy of the copy 5 stamped itself by the office of destination. This system has been in use for sensitive goods since the

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[10] Fenex (Nederlanse Organisatie voor Expeditie en Logistiek inzake communautair douanevervoer)- Contribution No 13

[11] Bundesverband Spedition und Lagerei- Contribution No 4 PE 217.150.

beginning of 1996 (when it was introduced to allow for the rapid release of the 100% individual guarantees that are so much more expensive than global ones) and not only allow the release of the guarantee, but be used for the writing off procedure as well. The office of departure would have to accept this unless the administration can demonstrate subsequently that it is incorrect when the true copy 5 returns.

Alternatively they suggest there should always be an additional copy 5 incorporated into the SAD set which the customs has to stamp and which the trader could return to the office of despatch himself. Authorised consignees should be able to sign themselves a special form of receipt or an additional copy 5.[12]

The Commission feels that some form of alternative to the present copy 5 procedure should be made generally available at least to traders in whom the customs had confidence. They do not like the use of the tear off portion of the copy 5 or receipt as this would not allow the office of departure to see any comments made by the office of destination. If a recto verso photocopy of the copy 5 was used this would mean that any comments made by the office of destination would not have to be written out twice. However they feel that the introduction of an additional of parallel proof of arrival would cause extra work and potential confusion. Therefore they propose instead that the trader return the copy 5 himself to the office of departure. The use of this possibility should be restricted to traders in whom customs had confidence and should be used to discharge the guarantee and to fully write off the transaction. If it did not arrive an enquiry inside the customs would still be made to find out what happened and the principal would still be liable for any debt found for the full 11 month period. The office of departure could be requested by authorised principals to indicate on the copy 5 that the trader is responsible for its return. The copy 4 kept by the office of departure should be marked accordingly as well.

I.B.4. Too many offices?

As said above this is an element in the risk of forged stamps and particularly if it causes delays in getting copy 5s back to the office of departure. If numbers of copy 5s are allowed to build up before a despatch is deemed justified, then the more offices involved at both ends the longer it will take to achieve this critical mass. Even the sorting procedure takes longer in relation to the number of pigeon holes involved. There is a strong case for reducing the number of transit offices in this respect and in other situations discussed below (see also II. B2).

I.B.5. Too many stages involved each with delays?

As has been suggested above delays could be compounded if there are too many stages between the office of destination and the office of despatch for the copy 5[13]. Each Member State should review its arrangements from time to time to see what arrangement would be quicker for a given level of available resources.

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[12] Fenex (Nederlanse Organisatie voor Expeditie en Logistiek inzake communautair douanevervoer)- Contribution No 13,
Freight Transport Association (UK)- Contribution No 6 PE 217.350

[13] Association of European Airlines- Contribution No 12 PE 216.394

I.B.6. Lack of resources

This is implied in many submissions that suggest that the level of performance of customs has declined seriously since 1993 when with the abolition of internal frontiers the opportunity was taken to slim staff numbers. Specifically Spain [14] and Finland have said that more staff and better equipment are needed, but we imagine that many other countries feel the same way. However in a time of financial difficulties it is difficult to see where extra resources in material and staff are going to come from. There is especially the risk that extra cash resources would be at the detriment of the computerisation programme. The only possible realistic way of allocating more staff to transit procedures would be at the expense of other programmes and the Member States would have to weigh the balance of advantages very carefully. In some areas in this report if extra responsibilities can be given to the trade this might release a few staff for use in other areas. It would be particularly difficult to recruit more staff now when the introduction of computerisation should mean less will be needed in the near future. However those released by computerisation must be re deployed in reinforcing other aspects of the control system discussed below. But perhaps the Member States could be encouraged to spend more money on using the post more frequently and for smaller numbers of documents. (See also II. B3 increased resources in physical controls)

I.B.7. Numbers involved

In relation to the resources available there are just too many transit operations to be followed and written off. There needs to be a considerable cut in the numbers handled if there is to be any real chance of improving speed of controlling the documents, sending them back and writing them off so as to allow identification of the cases where the goods have been the subject of fraud. A number of ideas have been put forward in this area. (see also II. B4, reduced numbers would also aid concentration of physical controls)

Use of alternative movement transfer systems

Firstly it has been said that T documents are issued for goods intended for inward processing (IPR) where other movement systems are available. The use of the transit system for this should be discontinued[15]. They state that one of the problems is a lack of Community wide IPR authorisations and a positive discouragement by Member States for traders wishing to use the simplified procedures available for IPR. This is certainly an area that should be looked at in detail by the relevant services to see what if anything can be done here.

Use of commercial computer links

The same source also suggest [16] allowing other qualified operators to use the system available to airlines moving goods between airports using commercial computer transmission of data to replace the T1. They feel this could and should be extended to all operators in other branches of

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14 Spanish Customs- Notice to Members No 19 PE 216.384

15 Association of European Airlines- Contribution No 12 PE 216.394

16 Association of European Airlines- Contribution No 12 PE 216.394

the transport industry who offer the same level of security with direct computer links, unique shipment records numbers etc.. This is certainly an area that should be looked at, but at present we have no evidence that such traders exist moving goods into or out of the Community by surface transport. If any change was made here it would certainly involve legislation. The same submission also says that they feel more use should be made of this (level 2) simplification itself in relation to inter airport land movements as well, but many Member States are said to be reluctant to allow this. This allegation should be looked at to see whether it is true and why. (see also III. C3)

Declaration at the ports

The numbers involved in the Community transit system could be reduced by the increased use of full declarations for free circulation at the borders, it would not be necessary in most cases to actually pay VAT as there exist ways of avoiding this by quoting the registered VAT number in another Member State on the declaration. It is true however that some Member States insist in this case on having fiscal representatives in the country of declaration which complicates matters. Consideration should be given to increasing this practice and making it easier to use. It might be worthwhile to insist that all cases which involve the simple declaration for home use must be made at the ports. The land frontiers would need to be excluded from this as most imports will be under the TIR or common transit system and in any case the necessary facilities do not exist. In other words the Community transit system at the ports would only be available for goods where excises were involved, where another customs procedure was envisaged ensuite such as re-export, inward processing or customs warehousing. At present it is not known what the effect of this would be on the numbers of transit transactions and what the exact effect would be on the trade, in other words the cost effectiveness of the system.

I.C. Complexity and slowness of the inquiry procedure

The inquiry procedure often starts later than it should: experience shows that the failure to return copy 5 within 10 weeks is most often the result of administrative delays. Since its main purpose is to gather the particulars needed to write off the T document, any delays recorded in the inquiry procedure have the same consequences as the late return of a copy 5.

The enquiry procedure starts if the copy 5 is not returned after 10 weeks. It should have been returned after about 4 weeks if all had gone well. Firstly enquiries are made to the principal and if this doesn't clarify the situation an enquiry form TC 20 is sent to the declared office of destination within four months after the declaration was made (± 17½ weeks) giving some 7 weeks for contacts with the principal.

The office of destination either replies that the goods have arrived or that they have not. (In the case where they have not and a passage through a partner country in the Common transit is involved the TC 20 is sent on to the last office of passage). They must reply within 4 months (± 17½ weeks). If they do not the office of departure sends a reminder TC 22, if no reply to this is received within 3 months (±13 weeks) they address themselves to the principal.

The total delay could then be 11 months or some 48 weeks. The principal then has 3 months to try and find out what happened.

I.C.1. The ten week enquiry procedure delay

It has been suggested that the period of 10 weeks should be reduced at the request of the principal where he feels that their might be risks involved in issuing further T1s, the same organisation also suggests, to liven up customs, that if the 10 week period is not respected then, if this causes consequential damage to the principal in the case of fraud by third parties, the principal should be absolved of responsibility because of official dereliction of duty [17].

The first suggestion is worthy of consideration, but perhaps it should take the form of requesting customs to start the investigation procedure earlier if the principal has reason to believe that something has gone wrong. In this respect it would serve as a kind of early warning signal to customs and allow them to take action more quickly in particular cases. There is a case for generally shortening the period to say 5 weeks especially in all transactions involving the categories of sensitive goods (see following paragraph I. C2).

The second suggestion also deserves further consideration, but much attention will need to be given as to how it could be implemented and phrased. Perhaps it would not be reasonable to completely absolve the principal in these cases as it is his commercial judgement of the risk involved that led him to act as principal in the first place. To allow a complete absolution could lead to reckless behaviour and the acceptance of obviously risky endeavours. While in theory the full amount of the debt would still be recoverable from the perpetrator of the fraud the revenue would in practise still be at risk because in many cases it will not be possible to catch him or to recover the money. Both of these suggestions would involve a change to the Customs Code and to the Common transit Convention.

I.C.2. Reduction of the number of steps in the inquiry procedure and their length

In the view of the Commission, the delays are certainly too long. They should be shortened to five weeks instead of ten, two months instead of four for sending the TC 20, two months for replying to it and one month to give an answer to a reminder. This answer could perhaps be an interim reply with a definitive reply within another month. It is difficult to see how the stages could be cut down without risk of errors in the post, generating false results. However any reduction in the time periods would only be realistic if enough resources are available to do the work, although in theory this should only be a catch up operation as the actual work load would be the same on a continuing basis.

One marked improvement would be that, if the office of destination sends on a TC 20 to an office of passage, they should inform the office of departure of this so they can send the TC 22 if required straight to that office. Additionally use should be made of the fax where possible to pass on TC 20s and TC 22s. Use could also be made of the telephone, where feasible, to accelerate the reply. But most of all the common practice of waiting to receive the TC 22 reminder before any

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17 The Danish Freight Forwarders Association (Dansk Speditørforening)- Contribution No 5 PE 216.328

action is taken must stop. In this respect the necessity to comprehend the needs of other offices must be emphasized (see the section V.B."Understanding at the operational level" under Part 2 below) and proper managerial statistics are needed to identify the offices that do not keep to the delays provided so that action can be taken to help them react better to the needs of others (see the section V.C.1. on "Statistics" in "Clear priorities, proper organisation at management level" in Part 2 below).

I.C.3. Selection of enquiries

The suggestion has been made that enquiries should be concentrated on an assessed selective basis [18]. Others have suggested that the enquiry trigger time for sensitive goods should be reduced from 10 weeks to immediate [19]. The Commission agrees that the time period before starting enquiries should be cut. It would perhaps be wise to give priority to cases where the amounts at stake are highest. In cases where high risk goods subject to the advanced warning systems (prior information system) de facto the enquiry procedure already starts when and if a vehicle fails to arrive with it's cargo.

I.C.4. Reduction of the eleven month delay for notifying the principal

Amongst the trade some suggest that the maximum period of eleven months to approach the principal should be reduced to 3 months[20]. Other submissions [21] suggest 6 months. These suggestions are obviously designed to reduce the level of uncertainty in the trade in relation to the future. This would however only be possible if the enquiry procedure time horizon is shortened. There is a delicate balance to be struck here and if other improvements can be made to reduce fraud perhaps it would be better to concentrate on these as a method of reducing the uncertainty factor for the trade. On the other hand there are voices raised on the official side that want the period lengthened (see 1. C5 below).

I.C.5. Standardise the periods of notification, guarantee and prescription

The maximum time for notifying a trader that an operation has not been written off is 11 months and for notifying the guarantor it is 12 months. However the prescription time laid down in the Customs Code and in the Implementing provisions, in which a fault in the payment of customs duty can be uncovered and pursued, is three years. However according to the Implementing provisions if the trader/guarantor is not notified before the end of the eleven/twelve month period, one cannot go back to the trader/guarantor for the duty if a fault is established after one year has elapsed. (The provisions of Article 221(3) of the Code and Articles 374 and 379 of the Implementing Provisions seem to overlap each other in this area.) This emphasises the absolute need to give the trader/guarantor notification within the eleven/twelve month period laid down.

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18 The Danish Freight Forwarders Association (Dansk Speditørforening)- Contributions No 5 and No 11 PE 216.328 and 216.393,

19 Fenex (Nederlanse Organisatie voor Expeditie en Logistiek inzake communautair douanevervoer)- Contribution No 13

20 The Danish Freight Forwarders Association (Dansk Speditørforening)- Contribution No 5 PE 216.328

21 Swedish FFA (Sveriges Speditör Förbund)- Contribution No 9 PE 216.386

The problem from the customs point of view is that even eleven/twelve months is a very short period for investigating frauds. Indeed the Commission has expressed a wish to extend the notification time period to 3 years in order to be able to pick up cases that were at first missed and that have been subsequently revealed in the light of other investigations. Type B and C frauds in particular. However the guarantee would have run out two years beforehand (N.B. the guarantor gives a guarantee to the principal and is not himself liable) and the moneys would be that bit more difficult to collect. Thus the logic (reflected in the Customs Code for customs debt) is that the guarantee should also run for this length of time as well. This would all run contrary to the wishes of the trade for more certainty with a shorter periods and would drive up the amount at risk at any one time, (see IV below on guarantee problems). However an increase of this nature would put pressure on the trade to make more efforts to ensure that operations are carried out correctly and written off. If in most cases writing off can be made much quicker then an extension of the notification periods would only apply to the few cases which are not written off and would therefore not be so much of a burden on the trade. It should be noted that it would also mean that effectively the notification to the principal would still need to be made before two years and nine months had elapsed, if there was still to be three months for the trader to investigate while the guarantee was still valid and before the prescription period ran out.

Another argument put forward against this is that it could lead to a drop in pressure on the customs to do things quickly and efficiently because, after all they have plenty of time. The trade is very concerned that this would be totally the wrong signal at this juncture and would indicate to the criminal fraternity that the pressure on them, but not on the legitimate trade, was off.

In any case it should be noted that even at present that the trader has three months after notification to find out what happened. This is to give him a chance to lessen his liability if he can establish that the events took place in a place of lower VAT or Excise rates than where he started the operation. However it could easily imply that the guarantee given to him has expired at that time if the guarantor has not been informed in the meantime (and before the end of the twelve month period) that the operation has not been written off. and it would be that much more difficult for the authorities to obtain the moneys due. It has therefore been suggested that the guarantee period should anyway be extended to cover this problem, thus to fifteen months, that is to at least three months longer than the present notification period.

In short the wishes of the trade and the revenue are seemingly diametrically opposed and any change in this area will need very careful consideration.

I.C.6. No three months period for trader to investigate when fraud is already established

It has been suggested that when it is clearly established that goods have gone missing, and especially when the place and time of an irregularity is known to the customs, there is no need for the three month period of grace for the trader to establish his version of the facts so as to minimise his exposure. This period of grace only slows down the payment of the own resources and other taxes involved. While this may be true in the case where the time and place is known in the other cases the trader should surely have a chance to establish this for himself to the satisfaction of the customs. This provision is really without object if the principal is party to the fraud or should reasonably have known that an irregularity has taken place.

I.C.7. Co-operation between customs services in the enquiry procedure

Mention is made below of the lack of motivation of these services in working for a common end. The problem however only starts there because once the non arrival of a copy 5 is realised there is a chain of action that needs to be started to see whether the operation has or has not been completed leading to the use of the investigation branches when a fraud has been identified. Any delays in this chain are going to make the task of catching the perpetrators, already very difficult, even more so. A number of suggestions for improving the preliminary enquiry routine have been put forward. It has been alleged that customs have no incentive to chase fraud as in any case they will take recovery action against the principal involved[22]. To some extent this must be true given the extreme difficulty of catching those responsible with the resources and methods available given the need to protect the revenue.

It has been suggested that binding rules on the procedures to be followed at this leading to the subsequent stage should be worked out and enforced.[23] They suggest, for example, that once goods are found missing simultaneous efforts to trace the load be launched at each end. If this leads to no immediate results then there should be a set of specific questions to be asked of the office of destination. Then if there is no answer the level must be escalated to some central office. Another similar suggestion is that the rules at present found in national instruction manuals should henceforth be codified and placed in the Community law[24]. These are ideas that should be followed up so that each service is sure of its role and what each of the steps is that need to be taken. In this way clarity would be improved and perhaps some elementary mistakes avoided that are due purely to misunderstandings. In this context see below the remarks on the need for a common transit manual under Part 2. V.B.1.

Another interesting suggestion has been made by the French administration to post members of staff to the offices of departure most used in other Member States for the posting country to act as the focus for cross frontier enquiries. This is a sensible idea if not taken to extremes. There might be problems of language and culture that could be smoothed over in this way by a person with knowledge of both sides. In the view of the Commission the French Service should be invited on a bilateral basis to try this and if it works the necessary conclusions can be drawn by the other Member States.(see also V. B.4.)

I.C.8. Who should collect the debt?

Another submission suggests that the responsibility for collection of the debt should always be the Member State where the principal has his registered offices[25]. This suggestion, presumably made for practical reasons to centralise responsibility for action close to the principal, actually

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22 Freight Forward Europe- Contribution No 1 PE 216.320

23 Swedish FFA (Sveriges Speditör Förbund)- Communication No 9 PE 216.386

24 Bundesverband Spedition und Lagerei- Communication No 4 PE 217.150.

25 Fenex (Nederlanse Organisatie voor Expeditie en Logistiek inzake communautair douanevervoer)- Communication No 13
Bundesverband Spedition und Lagerei- Contribution No 4 PE 217.150.

has far reaching legal implications, because if the loss is found to have taken place in another Member State it is their VAT and Excise that is at stake.

II. Improving control measures

In this section control measures other than the simple documentation and writing off of the transactions are considered. Most of the points discussed are valid whether or not the documentation system is computerised or under the present paper based system. To a large extent they are concerned with discovering irregularities *en route* as early as possible and with locating where the irregularity has occurred so that remedial action can effectively be started as early as possible when there is a greater chance of success.

II.A. The physical control system is too lax

In view of the considerable growth in trade between the Community and non-member countries, some offices of entry no longer have the capacity to check a sufficient proportion of inward or outward consignments. Modern methods (risk analysis, auditing, scanning etc.) increase the efficiency of controls, but do not yet permit checks to be conducted on a scale that would deter fraudsters: it remains statistically worthwhile for them to use offices overwhelmed by traffic.

The delicate balance between the controls necessary and the facilities demanded by traders is at the crux of this problem. For many Member States, allocating additional human and material resources to reinforce customs controls is not currently a budget priority. And yet even the most sophisticated computerized transit system will still require the physical inspection of consignments to check the veracity of declarations.

II.A.1. Limit the physical conditions of movement

Binding itineraries

The suggestion has been made from many quarters [26]that the itineraries followed should be fixed and no deviation allowed. Knowing the routes in advance would aid *en route* checking of selected vehicles and would mean that it would be immediately suspicious if a vehicle seen off route and allow for earlier intervention. It has also been suggested[27], that for sensitive goods, only certain departure offices could be used. The introduction of shorter route times would have a similar effect to binding itineraries in that it would no longer be possible to pick the scenic route and still arrive on time. Modern transport is in any case to a large extent bound to use the best roads. On balance therefore for non sensitive products this is not felt to be a particularly useful innovation.

Changes in destinations

Again many have suggested as the corollary to binding itineraries, advanced warning of movements and reduced movement times that no change to declared destinations should be allowed; at least without another transit procedure being started or the customs immediately being informed of the decision and giving their approval for this[28]. However independently of these other considerations the right to change destination in itself is a hindrance to control as the office of departure, once it realises that no copy 5 has been received, has no idea where it might just possibly legitimately have been presented. In other words just because the anticipated office of destination knows nothing is not in itself a confirmation that something has actually gone wrong that introduces an element of uncertainty into the system. For sensitive goods the right to change destination has been curtailed and it would seem sensible to curtail it for all other goods as well as the freedom to change destination theoretically allows vehicles to roam at will and allows them, legitimately, to be anywhere. This hinders early identification of problems, because, even if a vehicle is well off it's expected itinerary, no offence has been committed as such.

II.A.2. Limitation of departure offices

It has been suggested above that the number of transit offices should be limited to cut down the time for returning copy 5s. It would also allow the concentration of physical checks on a lower number of sites which should allow for more expertise to be developed. However it would not

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26 The Danish Freight Forwarders Association (Dansk Speditørforening)- Contribution No 11 PE 216.393,
Fenex (Nederlanse Organisatie voor Expeditie en Logistiek inzake communautair douanevervoer)- Contribution No 13
European Confederation of Tobacco Retailers- Contribution No 2 PE 216.742

27 Spanish Customs- Notice to Members No 19 PE 216.384

28 The Danish Freight Forwarders Association (Dansk Speditørforening)- Contribution No 11 PE 216.393,
Swedish FFA (Sveriges Speditör Förbund)- Contribution No 9 PE 216.386,
Fenex (Nederlanse Organisatie voor Expeditie en Logistiek inzake communautair douanevervoer)- Contribution No 13,
Freight Forward Europe- Contribution No 1 PE 216.320 within Visigrad limit,
European Confederation of Tobacco Retailers- Contribution No 2 PE 216.742, destinations to offices with sufficient facilities

eliminate false declarations and the use of offices known to be weak in the area of physical checks (see also I. B4).

II.A.3. Definition of high risk goods

Apart from the fact that there are three different lists of high risk goods in relation to each type of guarantee (see 'Clarity' below) a number of suggestions have been made including the need to periodically reassess the goods involved perhaps in relation to the types of transport involved per Member State [29]. This is in order to assess the control measures needed in relation to these goods and to fix the appropriate type and level of guarantee. But is it salutary to note the Comment by the Court of Auditors that all shipments where the level of guarantee is less than 100% are high risk shipments. Certainly in the past the list(s) of high risk goods have been established ex-post facto when the level of loss has been established and an effort has to be made to identify the high risks before the losses take place. Here the use of risk analysis by specialised units such as investigation units should be encouraged and the results achieved in each Member State be made available to the others. It might be better to proceed on the lines not so much of definitive lists of high risk goods but to work at a more focused level depending on the mode of transport used and the Member State(s) involved, etc.. Various parts of the trade have asked for the customs to inform them about risks discovered so that they can avoid over extending themselves [30].

II.A.4. Vehicle plates

Vehicles using the TIR system are marked with rectangular blue plates with the letters TIR to aid identification by customs. This is not the case for vehicles using the Community or Common transit systems that are not marked in any way. It has been suggested that this be introduced in these regimes as well [31] [32] as this would allow police and customs in carrying out en route checks, especially if they can see which vehicles are involved. This is felt necessary because, these days, purely internal movement of goods from one Member State to another no longer, as a general rule, uses the transit system. One of the things about using plates is that vehicles used at one time for transit may not use it on other occasions. So the plates will need to be capable of being 'cancelled', by the use of a thick rubber band being placed over the plate, or folded shut as in the TIR system. In the TIR regime all the vehicles have to be approved and meet specific agreed standards and the plates have to be permanently fixed. this is controlled before each TIR departure.

The problem is that the unscrupulous, whom we are interested in identifying, will not use the plates correctly. That is when they don't want to be 'seen' they will take them off , cover them or 'cancel' them. There is still the risk, perhaps not very important, that movements outside the transit system will carry transit plates and *vice versa*. In this context the use of the TIR plates

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29 Court of Auditors- Notice to Members No 2 PE 216.331

30 The Danish Freight Forwarders Association (Dansk Speditørforening)- Contributions No 5 and No 11 PE 216.328 and 216.393,
Swedish FFA (Sveriges Speditör Förbund- Contribution No 9 PE 216.386

31 The Danish Freight Forwarders Association (Dansk Speditørforening) seminar

32 French Customs- Notice to Members No 16 PE 217.809

seems at a casual glance to be haphazard with many hauliers leaving them fixed at all time, perhaps as a way of advertising that they are long distance hauliers and not merely local operators. It is noteworthy that sometimes red TIR plates are seen which have no official significance at all!

It has also been suggested that so many vehicles would be marked that in the end it would have little interest and that consequently its use should be limited to the cargoes most at risk. The problem here is that the use of plates of this nature indicates to outsiders the possibility of an interesting load to steal, especially if the use is limited to sensitive products.

On balance the introduction of such plates seems to the Commission to be of little interest.

II.A.5/6. Sealing

Sealing is the general rule that proves to be an exception. TIR vehicles have to be capable of being sealed before they operate under the scheme, while this is not so in the Community or Common transit regimes. Here the general rule is still that either the vehicle or the packages must be sealed. But it is possible, if the goods are marked so that they can clearly be identified and are loaded onto a truck that has been agreed for transit purposes, to dispense with sealing. However in practice these conditions are not strictly applied and the Commission has heard estimates that as little as 10% of movements are in fact sealed. Perhaps this is because over the years customs have either lost confidence in its effectiveness even in type C substitution frauds. In fact it is sometimes felt that the use of sealing gives rise to false confidence as it is known that there are many clever people that are adept at breaking the sealing systems without leaving any obvious physical trace. It is felt that more attention be given to the use of sealing and that new methods of doing this should be looked at that are more difficult to break and to disguise the break. Wire cables seals instead of the ribbon type seals have been introduced in Finland [33] and could be examined by other administrations.

It should also not be forgotten that, if it is seriously intended to do a series of substitution frauds, the perpetrators are going to try to mark the packaging so that sealing is not required. They are then going to be extremely careful that the substitute packaging is identical to the originals so that the switch over is not casually discovered. Sealing would be useful to combat these cases as well. Even if it is not an absolute defence against substitution or theft (which will be discovered later if the seals are restored to apparent order) it is at least a deterrent. Obviously sealing is not going to be of any use in cases where the vehicle or the cargo is simply disappears. In the view of the Commission that more use could be made of sealing, but it is not recommended that it should be done systematically.

II.A.7. Licensing

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[33] Finnish Customs- Notice to Members No 17 PE 217.818

If unsatisfactory principals and hauliers could be eliminated from the system this would both reduce risks and the numbers being controlled [34]. It would also mean that licensed traders had a monopoly of the system and act against competitive pressures, especially if the conditions of entry imposed were too restrictive. It could be held that it would actually in the end have little effect as the frustrated fraudulent principals and hauliers would then have to focus their efforts on defrauding the righteous that would make them liable for even more claims for recovery of duty and tax than they are at present!

However the idea has merit from an official viewpoint; All other customs suspense regimes depend on prior permission to use them that cuts down the risk of abuse. If only licensed traders were to act as principals it would allow for analysis of the track record of the trader and for a systems analysis of this records and operating procedures as well as his financial security. Weak points could be identified and improvements made as a condition of getting the licence. In addition conditions could be laid down as to education and increasing other security measures such as company computerisation, satellite tracking, etc.. Especially in relation to the carriage of tobacco products it has been suggested that licensing would be restricted to only residents with a capital of more than 2 million ECU and with the staff involved required to have certificates that they have no administrative or police records relating to economic fraud or contraband. There would be a global guarantee of 2 million ECU. Strict operating criteria would need to be met including nearly all the items mentioned in this section.

Others have suggested that it is not necessary to go as far as to restrict the market to licensed traders, but merely to give them the right to relaxed procedural control conditions; this would operate more in the way of memoranda of understanding between the customs and the trader. This is especially interesting to the trade who would hope especially to have relaxed guarantee conditions in these cases, other operators having to provide 100% guarantees, this is further elaborated in the guarantee section below.

Although not strictly licensing the Spanish Customs have suggested strict controls on the authenticity (of the existence of?) of the shipper and the consignee[35]

The Commission is of the opinion, at this stage at least, that the idea of the possibility of relaxed controls and conditions for authorised principals and hauliers should be looked at very carefully, but is reluctant to go as far as saying that non authorised traders could never carry out transit operations. It is difficult to see how, in the time scales involved in transit, how any serious control of the status of the shipper and consignee could be carried out.

II.A.8. *No simplified procedures for high risk goods*

There have been several suggestions that where high risk goods are concerned extra risks are incurred if they are to be moved under simplified procedures of one kind or another. The Commission is inclined to think that this should be looked at more carefully, because just because

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[34] European Confederation of Tobacco Retailers- Contribution No 2 PE 216.742, Freight Forward Europe- Contribution No 1 PE 216.320

[35] Spanish Customs- Notice to Members No 19 PE 216.384

a simplified procedure is allowed does not necessarily imply that it is less secure. Presumably the simplified procedure would not have been allowed in the first place unless it offered sufficient guarantees as to its efficacy? Perhaps this should be looked at more on a case by case basis; to see if the trader who is allowed to use a simplified procedure offers all the security required for sensitive goods. even then it might not be necessary to disallow the use of all the simplifications that he enjoyed before.

II.A.9. *A 'Black List'?*

It seems obvious that a black list valid throughout the systems is needed, so that persons barred from transit in one Member State or partner country cannot simply move to another and continue to operate freely. Perhaps they are wanted for transit fraud in the first country, but because of some legal reason cannot be pursued over the border in another country. However such an obvious idea comes up against the different conditions in the countries concerned in protecting the citizen (such as the protection of data) and it is often illegal to pass on the information as to misdemeanours even within the country concerned, let alone to other countries. Until these problems are sorted out it is difficult to see how a workable black list could be implemented. This question should be studied by lawyers to see what the restraints are and how they might be surmounted (see V.D. 'Increased co-operation between administrations' and notably V.D.3. 'Legal difficulties in co-operation').

However, even then there will be problems in deciding what degree of misdemeanour would justify placing someone on the list. The mere suspicion that someone has committed a fraud, even if investigations continue and the person concerned has decided that discretion is the best part of valour and has disappeared to another legal jurisdiction, would be difficult to defend in terms of civil liberties; 'innocent until proven guilty'.

II.B. Insufficient physical controls.

II.B.1. Physical checks of contents

This is an area to which more attention must be given[36]. At present the lack of adequate physical checks at the start of the transit procedure allows not only for type C substitution frauds at import, but is a seriously weak point in export controls of agricultural goods where one is not certain that the goods actually exported are the goods for which a restitution may be given. If no substitution is involved this would not strictly be a transit fraud in the pure sense anyway. In addition in type A and B frauds it can mean that the actual cargo missing has a far higher value in revenue terms than that said to be missing. It is interesting to note that a number of administrations [37] have said that detailed tariff and value information should be recorded (on the T document) for each transit movement so that the correct tax and duty can be calculated if the goods go missing and so that

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[36] Court of Auditors- Notice to Members No 2 PE 216.331

[37] Spanish Customs- Notice to Members No 19 PE 216.384

the correct level of guarantee can be assessed. None of this is of much use if the goods are misdescribed in the first place. There is a tendency in the modern world to rely at times too much on paperwork and not enough attention is given to physical controls. While the possibility of physical control is always there as a deterrent, it will be less effective as a deterrent if few physical controls are known to take place, in other words the risk of getting caught is minimal.

II.B.2. Checks en route

Many have suggested that the elimination of transit advice note inside the Community and the abolition of all controls at frontiers have seriously weakened the system and that consequently it is more difficult to locate where and when a discrepancy has occurred. Obviously we cannot envisage the wholesale reintroduction of internal frontiers but as an alternative perhaps some forms of systematic or random controls en route could be considered[38]. These could be either at fixed check points or by using mobile units. To some extent this is already done using mobile units stopping vehicles from time to time. The use of check points would aid in locating where a truck is, if missing, allowing earlier start of investigations and would limit the current freedom to go anywhere inside the country concerned, or the Community in particular, before the absence of the truck and the goods is noted. It would also make substitutions of cargo that little bit more difficult.

The controls could be random, purely so or selected on the basis of systems analysis, or systematic for types of risk. There are various possibilities including once a day reporting in to a specified post, satellite tracking, etc. The control would not need to be total and could be limited to identifying vehicle and the details of load on the paperwork.

In a seminar held in Denmark it was said that it was completely ridiculous that satellite tracking was not used to trace vehicles at all times. It was said that even small operators use these systems to keep track of their own vehicle for commercial purposes. However it is difficult to see how it could be made obligatory for the use of the transit system, however there are possibilities of relaxing other restrictions on those traders who do use satellite tracking satisfactorily.

The introduction of fixed check points that have to be visited en route would, at first sight anyway seem, to be a negation of the advantages of the single internal market and the abolition of internal frontiers. It would mean extra expense for the trade and the reallocation of scarce resources by customs. However sections at least of the legitimate trade feel that this would safeguard the system to their advantage and for this reason it cannot be rejected out of hand. However if physical movement times are reduced and early warning of arrival are introduced then the need for fixed control points is made less important. In this respect the fixed control points exist between the Members of the Common transit system and the TIR in the form of borders and transit advice notes. However with the accession of the eastern European countries to the Union it may be necessary to review the situation in view of the vastly greater single area that this will involve. Mobile control units should continue to be used and where possible their use should be

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[38] The Danish Freight Forwarders Association (Dansk Speditørforening) seminar, European Confederation of Tobacco Retailers- Contribution No 2 PE 216.742

increased, perhaps this is an area that could absorb some of the staff made available by computerisation.

II.B.3. More resources

The effectiveness of any controls is directly linked to the quality and amount of the resources used in relation to the size of the problem. However, as said in the section above, in a time of financial difficulties it is difficult to see where extra resources in material and staff are going to come from. Again the only possible realistic way of allocating more staff to transit control procedures would be at the expense of other programmes and the Member States would have to weigh the balance of advantages very carefully. (See also I. B6)

II.B.4. Reduce numbers

The alternative given fixed resources is to reduce the size of the problem allowing concentration on the remaining problem. For this reason the suggestions considered in the section above are also worth considering in relation to the control effort. (see also I. B7)

II.C. Problems of communication between offices

II.C.1. Advanced warning of movements (Prior Information System)

The introduction of advanced warning of a movement for the office of destination [39] would allow earlier starts to checks if vehicle doesn't arrive at destination or even at specified check point. However in view of the time scales involved the post cannot be used as it seems to be at present in some cases. Instead communication will have to be between offices with similar telecommunication systems, telex, fax, SCENT. Although few transit offices are equipped with SCENT, use could be made of the links between central offices. The idea would be that if a vehicle was 6 hours overdue then the office of destination would immediately start to trace where it is via police, etc.. The office of departure should note route, truck registration number and the name of the driver[40], it would be useful to have this information transmitted as part of the advanced warning. The introduction of this system would only be effective if the freedom to change destination was limited. It should be noted that at least one administration claims that the present early warning system used for sensitive loads is not working as well as it should [41].

The question is whether the general introduction of the idea would detract from the efficiency of the current arrangements. It would certainly use up some scarce staff resources at both ends of the chain. It is previewed already for the computerised system, but should it be introduced earlier? This is certainly an area that merits further consideration, but these considerations must be analysed before any decision can be taken.

Obviously fixed checkpoints would also need to be informed and the offices controlling mobile checking vehicles (see II. B2 above).

II.D. Complexity and lack of guarantees for sea transport

The external transit procedure appears ill-suited to the demands, constraints and risks of sea transport, in which guarantees are normally dispensed with even though the scope for unloading or transhipment is greater than in other modes of transport. This special situation has, in sea traffic between Member States, led to the drafting of numerous exceptions to the presumption that goods have Community status, requiring that status to be proven and complicating the system's administration without offering any further guarantees.

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39 The Danish Freight Forwarders Association (Dansk Speditørforening)- Contribution No 5 PE 216.328,
Finnish Customs- Notice to Members No 17 PE 217.818,
Swedish FFA (Sveriges Speditör Förbund)- Contribution No 9 PE 216.386

40 Finnish Customs- Notice to Members No 17 PE 217.818

41 Spanish Customs- Notice to Members No 19 PE 216.384

The Commission has therefore put to the Customs Code Committee a proposal aimed at simplifying and reinforcing control of sea transit.

II.D.1. Reverse the burden of proof, prove Community status, except for regular sea routes

In the case of Community goods, rather than increasing the number of exceptions, it seems more sensible to reverse the current burden of proof for all shipments between Member States bar those by regular sea routes. Community status will have to be proven in all other cases. Failing such proof, the rules governing import or external transit (see II.D.2) will apply.

II.D.2. Limit the use of transit to regular sea routes

For non-Community goods, use of the external transit procedure would be compulsory only on regular sea routes, with a guarantee being required. In all other cases, the transit procedure would be optional.

II.E. Risks with Air and Rail Transit procedures

II.E.1. What are the risks?

The special air and rail transit control systems are very light and extremely simplified. This relaxation is based on the ability of the airlines and railway companies to control their own movements very carefully themselves. It must also have been influenced by the fact that they have been, until fairly recently, essentially state owned companies/state utilities; which could be relied on for a high level of probity. In particular they do not have to provide guarantees as it was thought that it was unlikely that anything would go wrong and because they could easily afford to pay out of their own pockets if it did. However the situation is changing rapidly and perhaps some of the basic assumptions are no longer valid in all cases. There is already some evidence that transit fraud is extending to these methods of transport, perhaps because it is already more difficult than it was in relation to road transport. The situation needs to be looked at carefully at both an international and a national level to see if any changes, overall or in relation to particular operators are now needed.

III. Identification and definition of responsibilities in relation to risks

It is a pecualirity of the Community transit procedure that the holder of the procedure - the principal - may often have to bear sole financial responsibility (customs and tax debts) for the goods involved in a transaction to which he was not a party and of which he was not the carrier. This situation, which is accounted for by the sheer number of "actors" involved in transit (the

principal, the instructing party, the consignee, the carrier), is further complicated by the fact that anyone can use the transit procedure, regardless of whether they are established in the Community, the only real condition being the provision of a guarantee to cover the duties and taxes at stake.

This flaw in the system has not gone unnoticed by criminal organizations, which have spotted the opportunity to carry out their activities and leave honest traders to bear the financial responsibility, without there being any need to prove their involvement in the fraud. This obviously applies only to the professional declarants, customs or forwarding agents.

Traders who possess their own means of transport and are parties to the transaction usually have far more control over the overall conduct of the operation, save where a vehicle or its load is hijacked, something no legal or administrative provision can counter.

It is therefore a question of defining the scope of the principal's liability in relation to the potential risk associated with the transport of the goods in question by the carrier concerned, on behalf of a given person and to a given consignee or destination. Should principals bear sole liability in order to bind them to take all necessary precautions before they agree to sign a T document or should the rules define more clearly the terms on which this liability is to be shared by the principal and the other parties involved in the transit operation?

The Community legal basis for this is unclear, in that it states that the principal's liability may be shared by a carrier and a consignee knowing a consignment to be in transit. Furthermore, in so far as the customs debt (though not the tax debt) is concerned, where goods are removed from customs supervision, the debtors are, in order, the person removing the goods, his accomplices, the receiver and only then the principal.

The principals, mainly freight forwarders, are complaining that they are having to bear the financial burden of the increase in the levels of fraud that are due to circumstances beyond their control and which they themselves cannot remedy[42]. They claim that the level of debt is now so high that it's payment is theoretical, as to do so would involve many bankruptcies and the total collapse of the vital transit system. They point out that insurance for principals is no longer available. The burden of paying for fraud presumably perpetrated by others is high, they can only meet this by spreading the cost to the other legitimate customers.

III.A. Multiplicity of responsible actors

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42 Freight Forward Europe- Contribution No 1 PE 216.320,
Bundesverband Spedition und Lagerei- Communication No 4 PE 217.150,
Fenex (Nederlanse Organisatie voor Expeditie en Logistiek inzake communautair douanevervoer)- Contribution No 13

III.A.1. Joint responsibility- spreading the risk

They ask if a way can be found so that the others jointly responsible also have to pay up? They point out that the parties with the largest economic interest, the buyers and sellers, are not legally responsible and neither is the actual transport company unless any of these can be shown to have been responsible for the fraud or to have 'fenced' the goods. They want a pecking order of responsibility established that serves so that the people lower in the ranking are not called upon unless those higher up can, successively, not pay. They say that this is already there in essence in Article 203(3) of the Customs Code, but, as it is expressed in such a way that all are equally responsible in no particular order, has the effect, in practice, it is always the principal that suffers. Especially if one of the others is situated in another Member State or an 'EFTA' country there is said to be reluctance by customs to involve them as this would involve (difficult) co-operation with another customs service.

Even if the law was changed in this sense (it should be examined to see what the actual effect would be) the practical problems would remain. In practice how much effort or time would need to be expended by customs to catch the fraudster or the 'fence' before it must be assumed that they will not be found? Even if the haulier and the consignee are also responsible for the presentation of the goods under Article 96(2) of the Code, the conditions of their financial responsibility in the case of non presentation are not however clearly defined. In the intra-Community movement of excise goods a partial solution has been found for this in so far there is the possibility of a joint guarantee to be furnished by the sender (equivalent to the freight forwarder) and the transport company as well as a single guarantee provided only by the sender. It would perhaps be more equitable if this was extended to the transit system so that the responsibility of the haulier could be engaged in real financial terms. (See Article 15 of Directive 92/12/EEC).

III.A.2. Absolution if there is third party fraud

The principals are particularly vehement that they should not be responsible if it is shown that fraud had been carried out by third parties and that no negligence can be shown on their part. They feel especially that this should be the case if they had warned the customs that a fraud was taking place or had taken place. The view of the Commission is that this request is impossible in revenue terms as in practice it would mean that all the revenue is lost as there would always be third party fraud that had nothing to do with the principal. This would amount to a total dismantling of the guarantee system and would mean the end of transit as we know it now. It is up to the trade to shoulder the burden of responsibility and do everything they can to minimise their exposure to risk, they are after all charging for their service and this includes taking on the risk.

Moratorium on claims

An extension of the above is the demand for a moratorium on all outstanding claims, on the grounds that the amounts are so high that payment would lead to the bankruptcy of debtors. Neither the Commission nor the Member States are in a position to accept this line of argument, because no legal basis provides for such a possibility and in any event a moratorium would only serve to defer the problem which would still remain at the end of a period of moratorium. As has

been stated on many occasions this is a business risk that has been taken in full awareness of the facts by the principals involved, they cannot expect to be bailed out because of their losses. It was, and is, up to them to make sure they did not take on too much risk. They are the providers of a service to commerce and should charge accordingly, if the charges become too high for other traders they always have the option in the Community to declare the goods for free circulation at the external frontier.

III.B. Incorrect implementation of rules or errors by Customs

Traders blame customs for delays in the writing-off and inquiry procedures, inadequate controls and a failure to take recovery proceedings against other potential debtors, even though no trader has ever formally complained to the European Commission about a customs administration's shortcomings. The Commission's on-the-spot inspections of customs administrations since 1994 have revealed shortcomings in the writing-off procedures, leading in particular to delays in recovery proceedings. Light was shed on the financial consequences of some of these shortcomings. As has been pointed out, such shortcomings can render it almost impossible to prosecute the perpetrators of fraud (or the principal in the case of removal from customs control) because the writing-off and inquiry procedures have taken so long. In a crisis where risks have been abnormally increased by organized crime, traders feel that responsibility for the proper conduct of transit operations should be shared equitably and no longer borne solely by honest traders.

III.B.1. Absolution if there are faults by customs

The operators feel strongly that customs also have their responsibilities and that the trade should be relieved of the burden of payment if customs do not meet their obligations. In effect, the trade are saying that, subsequent commitments would not have been entered into if they had been informed in time of an earlier fraud. However at present they already have the possibility of insisting on the use of the tear-off portion of the copy 5 or the form TC 11, and if one of these is not returned they should be able to infer that something is wrong fairly rapidly and they should use this more systematically. It is true that this would not demonstrate beyond doubt that no fraud had taken place because subsequently it could be realised that it had been faked by use of a false stamp, presumably done at least with the knowledge of the driver even if not with the knowledge of the transport company as such. If improvements can be made to the documentation and writing off system as described above the delays the trade are complaining of should be reduced to a level that this is no longer a real problem. If the trade return of the copy 5 is introduced then this will no longer be a problem at all see I. B3).

III.C. Absence of dialogue between customs and the trade

Like all customs procedures, the transit procedures are implemented by traders under customs supervision. In the case of a procedure involving transport under customs control, the level of supervision cannot match that exercised in localized procedures. Trust between honest users of the transit procedures and customs is therefore vital to the smooth conduct of operations.

At a time when the transit procedures are affected by fraud, reinforcing the dialogue between customs and traders is a priority if operations are to be supervised more closely and anomalies spotted in time. Greater familiarity with the rules of these procedures and their use should help both groups adapt the rules to the real needs of honest traders while safeguarding the financial interests of the Community and its Member States.

Without close cooperation between these two partners in transit, there is a risk that "bona fide" operators will lose the facilities and flexibility currently available to all.

It is said that the problem is that co-operation at present doesn't seem to bring advantages to the trade. If irregularities, including fraud by others, are reported the principal ends up by paying for the losses to the revenue[43]. The trade sees no direct advantages to be gained by increased security- for example no reductions in costs of guarantees, etc.

III.C.1. Memoranda of understanding

There may be a possibility to tackle this perceived problem by the route of Memoranda of Understanding between customs and individual companies in which the obligations on both sides are clearly set out. The memoranda could involve as a reward for better standards and co-operation with customs certain reduced controls and restrictions. There is a link with licensing (see II. A7 above) and guarantees (see IV. A3 below). See also III. C3 below.

The trade suggests that the division of responsibilities and the conditions that have to be met, should be set out. Companies with such memoranda would be released from the full guarantee obligations and have other advantages that would ease the financial burden. This is certainly an area that should be looked at further and there are certainly possibilities in this area, but it would necessarily have to include the transport companies as well.

III.C.2. Customs should inform the trade of probable high risk shipments

The trade says that where risky shipments are suspected the customs should increase the guarantee level so that the principal is given a signal to withdraw[44]. While in principle this seems reasonable, in fact unless the goods are already on the list of high risk products, where the guarantee is already 100%, customs are unlikely to know in practice as things are at present where a risk is particularly higher than normal. The adoption of some of the ideas set out above may later improve this situation and then indeed the customs should be better able to set the level of guarantee to individual circumstance.

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43 Freight Forward Europe- Contribution No 1 PE 216.320

44 Swedish FFA (Sveriges Speditör Förbund)- Contribution No 9 PE 216.386

III.C.3. Delegation of tasks to traders

Perhaps co-operation between the customs and the trade could be improved by involving the trade in carrying out some of the tasks done by customs at present. This could take a form similar to the simplified procedures at present in use. It could be extended by allowing other qualified operators to use the system available to airlines moving goods between airports using commercial computer transmission of data to replace the T1. This would imply a high level of commercial security with direct computer links, unique shipment records numbers, satellite scanning etc.. (see also I. B7). This would be in addition to the other ideas set out in III. C1 above.

IV. Guarantees

IV.A. The level of guarantees

There are effectively three types of guarantee.

- The simplest and most expensive from the point of view of the operator is the deposit in cash of the amount of tax and duty at stake in relation to each movement or provide another form of security.

- The Implementing Provisions of the Code also allow for the use of flat rate guarantee vouchers fixed at 7 000 ECU each. One flat rate guarantee voucher should be used for each movement unless the movement involves increased risks for which reason the guarantee of 7 000 ECU is clearly not sufficient. Then further flat rate guarantee vouchers may be required to cover the whole amount of tax and duty at stake for high risk goods.

- The global or comprehensive guarantee covers at any time more than one shipment of goods. These are not available for use with really high risk goods. The global guarantee is fixed at minimum 30% of the potential duty and tax deemed to be at risk and this is calculated by reference to one average week's transactions taking into account the highest levels of tax applicable in each of the countries concerned. Article 360(2) of the Implementing Provisions of the Code stipulates that the principal shall only use a global guarantee to cover active shipments of a cumulative value that is at any one time less than the amount of the guarantee itself.

In all cases the first problem from an official viewpoint is to be able to ascertain with any reliability the actual amount of tax and duty involved without in each case resorting to a full physical check of the goods concerned, or at least to have a sufficiently high rate of examination to actively discourage false declarations made either directly for fraudulent purposes or just to keep the level of guarantee down to an acceptable level for the trader providing the guarantee.

IV.A.1. Ambiguities in the law

Annex II shows the uncertainty engendered by the alignment of Article 192 of the Code (compulsory guarantee for the entire customs debt) and Article 361 of the Implementing

Provisions (comprehensive guarantee of 30% of a weekly base of duties and taxes) as to how exactly the amount of the transit guarantee is to be set.

Should the guarantee in all cases be set so as to cover all the traditional own resources (import duties) with priority being given to the accounting for them if the guarantee is called in? The Member State involved then being free to fix the priorities between other taxes involved for the remainder of the debt covered by the guarantee? The view of the Commission is that this is the case, which could involve a change to the current legislation to make this clearer; after all a loss to own resources is a common loss to all the Member States while the VAT and Excises only involve the one immediately concerned.

IV.A.2. How to fix a global guarantee on the base of insufficiently certain information?

The amount of the global guarantee is fixed by taking the total of last years shipments and dividing this by 52 to arrive at the amount for an 'average' week. This means that if the basis has to be properly arrived at, one needs to know what the actual amount over the year was. At present it would seem that from the official viewpoint one has no way of checking the figures submitted by the trader. This can only be cured by the keeping of better statistics which is discussed in Part 2. However even the accurate calculation of the last years figures can disguise an upward trend over the year which could mean that the amount arrived at is in reality too low. The problems this can give rise to are discussed below in IV. A3 and IV. B2.

IV.A.3. The calculation of the guarantee

The period of one week was chosen for the calculation because it was close to the time allowed for the physical movement of the goods and not in relation to the time allowed for writing off the copy 5s. Thus the real level of the guarantee is in fact much less than 30% in relation to the goods actually at risk at a given time. In addition over time the amount of unwritten off transactions has grown beyond the level upon which the level of 30% was fixed as reasonable. If it had been calculated on the basis of 10 weeks shipments being notionally at risk at any one time and if this has now risen to 20 weeks then obviously the apparent level of 30% has been reduced by half. In addition the 30% is also not a true reflection of the percentage of a current week's shipments. This is because the level of commitment of the principal could have grown over time with increased volume of movements since it was fixed and even then it was fixed on the average of the last year's transactions. In practice the global guarantee usually is only enough to cover about 2 days shipments, but up to 70 days or more could be at risk. If the level of guarantees are not high enough then there is a potential problem in collecting the actual amount of duty and tax still due. Should then the level of global guarantee be raised ? The short answer is yes, but if they were increased could the trade in turn be able to finance this higher level? On their own terms they say they cannot. The same would apply to revising the method of calculation to make the basis for applying the 30% more realistic.

Using global guarantees calculated in the current way often leaves a principal with a global guarantee that is actually less than the amount of liability he wishes to cover. Although in theory he may not use the guarantee to cover the 'extra' he will be sorely tempted to do so anyway with the lack of any control at present on this. The major problem is that the present level of global

guarantees isn't always sufficient in practice to cover the total amount of outstanding potential debt at any one time (which is why their use is no longer allowed for very high risk goods) even in the case of non-high risk goods with the present level of 30%. Thus there is a stark choice for the administrations, either find a way to monitor the use of global guarantees (see IV.B3/4 below) or to reset the levels at a more realistic level. Neither will be welcome to commerce, but in effect they would amount to the same thing. If the use was more strictly controlled the trade itself would need to ask for a percentage higher than the current 30. Ideally both courses of action should be taken at the same time.

Lower levels for authorised traders?

One of the questions put by the trade is whether global or even individual guarantees be set at a lower level for approved or licensed operators with a good track record? This would especially be the case if the level of guarantee generally demanded has to be set at an even higher level than at present. In any case this would not mean that the amount of duty/tax due would be reduced, just that its collection would be extra to cashing the guarantee and therefore that bit more difficult potentially of course involving bankruptcies. Effectively this can only be translated as meaning that they would no longer have to provide a guarantee that covers all of the taxes and duties due for all the unwritten off shipments which is what they theoretically have to do at present (but see also IV. A1, what exactly does the guarantee cover?). It would not mean that the way of calculating the global guarantee would need to be changed but that it could be used more flexibly. (See also II. A7, licensing, and III. C1, Memoranda of understanding)

IV.B. Use of the guarantee

IV.B.1. Is the guarantee sufficient for a shipment?

The guarantee can only be sufficient if it is enough to meet all the liabilities if the shipment goes missing. In IV A1 above we have discussed whether the guarantee has actually in law to be large enough to cover all the import duties, VAT and excise duties involved. Assuming that this question is resolved, the size of the guarantee for a particular movement can only be correctly assessed if full information is known about the goods. Thus the value, tariff classification and quantity must be known. At present this is not always the case. The goods would then need to be controlled physically to see that the description tallied with reality. This is not even done systematically for declarations for free circulation and presumably the same or similar considerations would need to be applied to transit as well, using selection of consignments on a risk analysis basis. (See also II. B1 physical checks)

IV.B.2. Abusive use of global guarantee certificates

Article 360(2) of the implementing provisions stipulates that the principal shall only use a global guarantee to cover active shipments of a cumulative value that is at any one time less than the amount of the guarantee itself. However there is no mechanism for ensuring that this takes place correctly. Cases have arisen where principals have exceeded the limit. For example, given that it is normal to issue a number of copies of the global certificate so that the trader can operate in different places simultaneously theoretically at one time he could present at these different locations, say, three shipments that each separately amount to the total of the guarantee. Thus if anything goes wrong he has liabilities that far exceed the limits of the sole guarantee. The Commission has already proposed that one way of limiting the potential damage would be to issue several certificates limited in value which taken together total the full amount of the global guarantee. thus the three shipments together could not exceed the level of the guarantee. The

Member States have not accepted this proposal because it is not a full solution to the problem because there is always the possibility of using the partial certificates repeatedly.

The Commission feels that the only real way to solve the problem would be by using a central data base that can be accessed by any of the offices of despatch where an up to date record is kept in real time of the state of use of the guarantee. Offices of despatch would debit the total amount for each transaction and credit the account each time an operation is correctly written off. This can only be achieved when the whole of the Community and Common transit is fully computerised.

IV.B.3. Writing off the amount used

A crude approach might be to date stamp and enter the amount on the reverse of each global certificate. These would not be written off and so there would be no direct knowledge by the Customs of the actual situation, but it would at least at a glance give a rough indication of the potential level of commitment of the trader if all movements of more than, say, ten weeks were deducted and some kind of 'rule of thumb' percentage calculation applied to that in relation to the current standard level of unwritten of copy 5s at any time. In practice this would probably amount to reducing the period to be taken into account to somewhere between 3 and 5 weeks. This again would only be in the slightest effective if partial certificates were issued. This concept also needs further consideration before any assessment of its viability can be made.

IV.B.4. Use of smart cards ?

One alternative would be to keep the records of debiting and crediting upon smart cards that would themselves be the guarantee certificate. However this would mean they could only be used in offices equipped with the necessary equipment and that the trader would need to be called in whenever a copy 5 was written off to update his card with a credit. However effectively the trader could ask for daily or some other period automatic updates. Obviously in order to avoid multiplying the amount of the global guarantee each smart card issued could only represent a proportion of the total guarantee. This could operate per country but then the trade would complain of a lack of flexibility; It would be better to introduce the system and machinery at a system wide level. As in the case of using smart cards to replace T1s this would require a considerable investment overall in real terms and this might not be felt to be worthwhile when computerisation will provide a better solution in time. This idea merits further examination.

Forged global guarantee certificates

Global guarantee certificates[45] are usable everywhere in the area covered by the Common transit procedure and forgeries are said to be almost impossible to detect and require considerable enquiry efforts where they are said to be issued in another country. Full computerisation should allow for a better control of this problem. In the short term attention should be given to the need to insist on uniformity and security printing if this turns out after further investigation to be a significant problem in real terms. Obviously the use of smart cards, or simple cards with

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45 Finnish Customs- Notice to Members No 17 PE 217.818

magnetic strips, could get round this problem, or at least make forgery more difficult, but again at an investment cost and with a time scale that intrudes into computerisation.

IV.C. Risks involved in dispensing with guarantees

IV.C.1. What are the risks?

At present guarantees are not required for movements by sea, rail or air. This is because the risks are thought to be slight and because of the supposed financial position of the operators. There is evidence that fraud is extending to these areas (see II. D and E above). The basic assumptions should be re-examined and perhaps assessments of the risks should be made in individual cases rather than across the board as at present.

PART 2. SUPPORTING MEASURES *(Part V of the table in the Report)*

In Part 1 above we have set out some of the measures that could be taken to strengthen the transit system as such. However the adoption of these measures will not be sufficient as they and the rest of the system in place will still need to be applied correctly and effectively. This implies that efforts must be made to ensure that it is understood, and understood in the same way by all parties, and managed well. There are a number of issues here:

A at the legal and instructional level: clarity and coherence,

B at the operational level; understanding, which implies training both for the officials and trade,

C at management level; clear priorities, proper organization to meet these priorities and the necessary flexibility in the disposition in staff and other resources, and

D at international level, clearly defined ways of efficient communication and co-operation, and

E sanctions

V.A. Clarity and coherence at legal and instructional level

In this section we consider first the legal aspects relating to clarity, of which there are two separate aspects. One is the legal structure of all the interrelated law and the instructions and the other is the clarity of expression of the actual words themselves. We then move on to questions dealing with duplication of aspects of the system and questions related to the application in practice of the mass of law and instructions.

V.A.1. Need for the law to be clear; codification

The law has grown over time and is not always crystal clear in the way it is expressed. There are a number of cases where complex provisions have to be looked side by side to decide exactly

what the result is. This is sometimes due to law at the same level, for example in the Customs Code where Article 96 concerning the obligations of transit principals has to be read in conjunction with Article 203. It is made more complex by the structure of Community law where there are the Implementing provisions for the Code set out in a Commission regulation. Thus any Article in the Code cannot be completely understood without reference to the corresponding provisions of the Code Implementing Regulation and the Annexes thereto, and vice versa.

In the Common transit system only the transit provisions of the Code and the Implementing Regulation are reproduced. Thus, unless the national customs legislation of one of the 'EFTA' countries is identical in other respects to the Code (which is to some extent the case), it will mean that they have to be read in conjunction with different basic customs provisions. This might lead to differences in interpretation of the true meaning.

Below these sets of laws are the "Administrative Arrangements" that have been reached by common accord between all the parties (Commission, Member States, other countries) to the Community and Common Transit Agreement. Since they are a mixture of "binding" administrative rules and pure administrative information, a better definition of their scope and status both for administrations and trade is necessary.

Then there are, depending on the legal structure of the states involved, various structures of national law to settle further details and administrative instructions both to officials and the trade. It is these instructions that are actually put into practice daily.

To a large extent this cumbersome structure is dictated by the form of Community law issued both from autonomous and conventional sources, but it can be impenetrable to the uninitiated and it badly needs collecting and arranging in a single publication with a clear structure. This would be without a legal status in its own right. This will clearly have to distinguish which other national laws are called upon to be interpreted in conjunction with the purely transit provisions, although it is clear that these cannot be changed. The administrative arrangements clearly need a better defined legal status at the same time for those parts which have the nature of rules.

Operational instructions

At a lower level the Commission feels that it would clearly be useful to try and produce a single set of administrative instructions for officers and the trade that set things out from a practical rather than legal form. As clearly all details will not, and do not need to be, absolutely uniform- for example the organisation of internal administrative structures- each state will need a slightly different version to take this into account. The non common, or national, parts must be clearly indicated. There could be versions for the trade and a more complete version containing internal official considerations, including for example risk analysis techniques to be applied, for officials (see also V.B.1. 'A common manual on transit' below).

V.A.2. Need for the law to be clear; ambiguities

The current rules result from the codification of scattered texts specific to individual procedures - themselves the fruit of sometimes disparate customs concepts, traditions and management

practices - and still contain a number of ambiguities or grey areas, notably concerning the linkage of certain provisions of the Code and its Implementing Provisions.

Such uncertainty is particularly harmful in a system such as the transit procedure, which by definition calls for common management by a variety of authorities in different countries, and in which, moreover, the suspension of the debt and the guarantees affect taxation. As shown by Annex II, the area of greatest uncertainty is the debt, its security and recovery, and more specifically the amounts of the duties and taxes to be secured (and, if need be, collected), the order of priority, and the places where a debt is incurred and where it is to be collected (see IV.A.1 on the subject of guarantees).

V.A.3. Duplicate or parallel systems?

The existence of so many sub variants to the transit system, which have been introduced over time to meet particular needs and circumstance, while being useful in the cases concerned have inevitably led to confusion as well. This is because of the need to remember which constraints do and do not apply to each of them [46]. This needs to be examined carefully and any unnecessary differences eliminated. For example there are three different lists of high risk goods, do they need to be different, could they better be one list [47] perhaps with exceptions for one or more type of guarantee? Again it has been pointed out that some goods have to use the T1 and the T5 procedure at the same time [48]. Is this useful, it is certainly confusing? Another example is the parallelism between the tear-off portion of the copy 5 and the form TC 11.

V.A.4. Different administrative practices

The sometimes minor differences of requirements in the different States can lead to confusion on the part of officers in relation to other States' requirements and to transporters/principals making honest mistakes. All of which makes the operation of the system more difficult. More uniformity, but not total harmonisation, is perhaps needed, although the existence of a common set of administrative instructions or "Transit Manual" as suggested above should help here (see also V. B1).

V.B. Understanding at the operational level

V.B.1. A common Manual on Transit

The idea of a common manual on transit usable in all the countries concerned is not new and has been brought up on many occasions, especially in one of the most recent Seminars held on transit. The idea is a common set of administrative instructions and guidance that is valid throughout the

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46 Belgian Customs- Notice to Members No 20 PE 216.385

47 In the same sort of way they are summarized by the Court of Auditors in Notice to Members No 2 PE 216.331

48 Irish Customs- Notice to Members No18 PE 216.383

combined systems. As set out above a common clear well-ordered Transit Manual should be of great assistance in achieving better understanding at the operational level.

V.B.2. Memoranda of understanding

If, as suggested earlier in this report, individual traders and customs were to have memoranda of understanding that clearly sets out the responsibilities, tasks and conditions applicable, then this would also lead to a better operational understanding both on the part of the trade and the customs. However care must be taken in this respect not to create a monster with a life of its own where the legal constraints are ignored and every one is different as this would lead to more misunderstandings than it cleared up.

V.B.3. Seminars and formal training[49]

It has been suggested that much of the problem is a lack of awareness by individual customs staff of their place in the overall system. Many of them are merely carrying out a routine clerical task. Often in the same office which is at the same time an office of departure and of destination the staff are compartmentalised and never have contact. Thus the staff on the destination side never get to realise what kind of problems their counterparts have on the despatch side due to delays in other offices sending back copy 5s. How then can they appreciate the grief they themselves are causing in other offices of departure? This is a question both of management and of training. However this is not just a question for customs staff, it could equally be true inside the trade and could be addressed by awareness seminars, perhaps in the context of memoranda of understanding. Perhaps the companies involved need to look at financial or other inducements to make their staff more motivated to avoid or report fraud?

There is a continuing need for training both for the trade and officials. New staff are continually being introduced and new aspects of the system are introduced from time to time. Experience has shown as well that existing staff from time to time benefit from refresher courses as they may in practice have tended to forget certain aspects that they do not encounter directly day to day. The current efforts should be encouraged and developed.

Seminars are of two types; one is a disguised form of training where actually the object is to get people to listen to experts and learn. The other is where brainstorming takes place and is intended to lead to cross fertilisation of ideas, finding out what other people in the same position, or in positions that have a direct influence on others, do and think leading hopefully to improvements in understanding as well as to the introduction of new ideas. Both types of seminar are necessary and must be developed both inside the trade and inside official organisations, but there must also be contact between both parties. These seminars could be both national and international. In relation to officials there is already the Matthaeus programme for Community seminars, which are already open to administrators from the 'EFTA' countries and this should be used as the basis for a considerable effort in the near future and especially in relation to the introduction of the computerised system.

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[49] For a concrete plan of action in this field see Part 4

V.B.4. Cross postings between administrations.[50]

Provision for this already exists within the Matthaeus programme where officials from one Member State spend a time as 'operational' agents in a different Member State to learn how they do things and to see what their problems are. This is now usually done involving a return cross posting in the other direction at a subsequent date so that both sides benefit. This is useful and should be encouraged. However much depends on the follow up. Are the ideas generated committed to the record and considered by those responsible? In practice do things change as a result of these visits? Are they done at all levels of responsibility? Are they done systematically in that a number of officials are sent at different levels to the same other state at the same, or nearly the same time so that an overall view can be built up? To what extent are the results disseminated to colleagues? In any case this should be developed to include the 'EFTA' countries.

V.B.5. Evaluation ("monitoring") visits[51]

There have already been a number of visits of this nature where officials from a number of countries come together for a 'guided tour' in a series of visits on the same theme to the different countries concerned. This allows for building up of experience on how colleagues handle the same problems and permits the participants to glean what is called in the jargon 'best practices'. This has proved useful in the past and should certainly be continued in the future.

V.C. Clear priorities, proper organization at management level

Clearly any system can only be effective if it is properly managed. This requires clear statistical information, identification of the aims, the priorities and the correct application of the resources available and the introduction of new resources when necessary and if they are available. We have no revolutionary suggestions to make here, we merely point to the need for the Member States and the 'EFTA' countries to keep things continually under review and not to become bogged down in merely doing what they have always done in the same way.

V.C.1. Statistics and exchanges of information

At present there are no adequate statistics kept on transit. We do not know exactly how many operations there are, how many are not written off, what the amounts at risk are, how many cases are fraud or simply theft, how much money is being lost. The list at a global level is probably much longer than that. We need this information to be able at any time to be able to make an assessment of how successful the system is and whether it needs attention. The lack of this information has led to conjecture and uncertainty about the size of the problem we are facing. (see also V.C.3. below)

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50 For a concrete plan of action in this field see Part 4

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However the need for good statistics is also clear at a micro management level to be able to identify which are the major transit flows, which offices are really minor, which offices are meeting their objectives and which need help.

Serious work needs to be done in establishing just what figures are needed for the various purposes and to see how they can be obtained; this must also be taken into account in planning the computerisation programme to ensure that all the data needed to monitor and control the system is forthcoming in the future. It may however turn out to be too expensive in terms of money and manpower in the short term to get all the data needed; but this also needs to be looked at to see what can be done.

V.C.2. Allocation of resources and priorities

The responsability of management is to define the task(s) to be carried out and to determine the priorities to be given to the various aspects involved. They have to monitor at all times how the tasks are being achieved and to change the priorities accordingly. However it is not sufficient to set tasks and priorities if the necessary resources are not allocated to achieve the goals. If the resources are limited then the setting of tasks and priorities will have to take this into account. The Commission as well as the countries concerned must, each for their part, keep this area under review constantly and not sit back and assume that the current allocation of resources within the transit area, or between it and other customs tasks, is permanently appropriate or that the tasks and priorities are themselves immutable.

V.C.3. Constant evaluation

The functioning of any system needs to be kept constantly under review, if this is not done a problem which is minor can turn into a crisis before it can be dealt with. This can only be done by passing information on trends on to those in charge and for them to listen to what is being said. The proper uses of statistical information can quickly show up changing patterns to be examined. This is only possible if the statistics are kept and are properly organised so that they are readily understandable to managers, who are not mathematicians themselves. In this respect the changes over time in percentage terms are often more useful than merely presenting raw data. An examination should be undertaken at Community (or System wide) level to see what figures at various levels would be needed or useful to aid managerial overview of the operation of the system so as to identify trends quickly enough to take timely and effective action. This is obviously tied in with V. C1 above and the whole question of computerisation.

V.D. Increased co-operation between administrations.

The importance of this can not be stressed too much in the administration of an international system such as transit. We have identified the need to set out the methods of co-operation in a structured way as well as some of the problems, which go beyond the scope of this report, of judicial structures.

V.D.1. More co-operation between customs, including with the Common transit countries

Many organisations have complained about lack of co-operation between the customs services and between them and the Commission but have not made any suggestions as to how this could be improved. There are at least four stages in this co-operation:

- in working the writing off procedure
- investigation
- the fight against fraud
- Countries central offices and the Commission

In working the writing off procedure

In earlier sections we have already discussed how to improve this co-operation, but obviously individuals' awareness of their role is important in this, see V. B3 above.

Investigation

Here not only awareness and training need attention. There is also a potential need to further clarify and structure the roles of the services concerned. For example what should the office of destination do when a request TC 20 arrives if it turns out that the goods do not seem to have arrived. Do they need to do more than just inform the office of departure? In some cases, particularly where prior notice of arrival was given, they should themselves start to find out if anything is known about the movement on their territory. The experts in this area should try and work out a set of guidelines for action by the parties concerned at this stage.

The fight against fraud

In a similar way their should be an agreed set of rules of contact between services so that confusion about how to contact each other and what kind of information is needed is avoided. A fair amount of work has been done in this area, but further consideration must be given to improving this. Regular meetings at operational level to discuss methods and difficulties should be held.

Countries' central offices and the Commission

Here we are concerned with the central management of the system. There has to be a up to date steady flow of information and overall data between all concerned so that trends can be identified before they become problems. There then has to be concerted action to deal with any incipient problem on a co-operative basis, this should really be on a majority basis so that no one party, who perhaps is not yet having a problem can block action at a common level. The fora for this co-operation already exists -the Customs Code Committee and the Joint Committee - but the unanimity required in the Common transit system and the fact that the major party in the system has only one vote, although it represents 15 of the 22 players is an obstacle to action being taken smoothly. This needs further consideration and will be a very tricky area of contention with the possibility that the Community might be seen by the others as a bully. A block vote by the Community could be seen as a way of actually arriving at decisions that only a slight majority

actually want as Community positions are reached by qualified majority. From an institutional point of view the whole question raises a number of very difficult questions.

V.D.2. A single investigation service?

One of the more interesting suggestions made is to create a single investigative service[52] with freedom to act in any Member State and endowed with sufficient resources. Indeed this idea has also been put forward in a broader context of fraud than just transit by the President of the Parliament in a speech at the Interparliamentary Conference in Brussels on 23 April 1996. In the view of the working party drawing up this document this kind of question goes far beyond its remit, as it involves fundamental questions of national sovereignty.

V.D.3. Legal difficulties in co-operation

The problem arises because there are 15 (20) different jurisdictions and methods with different legal systems. This is compounded by the difficulty of locating who to co-operate with. Commissioner Liikanen has underlined the lack of a homogenous procedure for co-ordinating recovery action between the Member States [53] pointing out that the investigative trail usually covers a number of Member States and that there is considerable reluctance being shown by the Member States in the area of the Title VI of the TEU to improve co-operation in the area of justice.

V.D.4. Harmonisation of confidentiality rules

Commissioner Liikanen has also pointed to the withholding of information that could be of vital interest in another Member State because of national confidentiality rules. This could be aggravated by local jealousies, as there is no direct result for you if somebody else makes the kill. He also points out that poor co-operation between legal systems allows offenders to continue operations in another State even after they have been identified as having been involved in fraud in another.

V.E. Sanctions

There is also the problem of each country having a different definition of the offences involved in transit for what are in fact the same misdemeanours. The punishments for these offences will also differ, sometimes considerably. This is already the subject of a study between the Member States and DG XXI in the whole field of customs legislation. In the transit area there is the further complication in that some non-Community countries are also involved. This aspect as such is not considered to be within the mandate of the Working Group.

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52 European Confederation of Tobacco Retailers Contribution No 2 PE 216.742

53 Note to Members No 5 PE 217.310