

# COMMISSION OF THE EUROPEAN COMMUNITIES

SEC (89) 1942

Brussels, 9 November 1989

WORKING DOCUMENT OF THE  
COMMISSION SERVICES ON THE  
CUSTOMS UNION IN THE CONTEXT  
OF THE INTERNAL MARKET

## PRELIMINARY REMARKS

The Treaty of Rome, as amended by the Single European Act, provided for the establishment by 31 December 1992 of an internal market comprising an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. As this deadline approaches, and in view of the changing international environment, it is appropriate to reflect on the nature of the customs union, which is the very basis of the Community, and to consider the role to be played by that union in the enhanced Community framework.

This working document draws attention to the fact that not only should the Community's customs union not be confused with a mere tariff union, but also that it places very considerable obligations on the Member States in areas which go far beyond customs matters in the strict sense.

Since the customs union is a central element in the implementation of the Community's common policies, in particular its commercial, agricultural and development policies, the efficient, uniform and coherent functioning of that union must be a major objective. In order to ensure such uniformity, a qualitative leap must be made, both in legislative and in operational terms.

In legislative terms, it will be necessary

- to adopt a Community customs code in order to achieve the necessary degree of consistency in customs legislation, and to facilitate its improvement and simplification,
- to perfect the customs mechanisms of the common policies,

- to introduce legislation governing penalties, and
- to improve decision-making machinery.

In operational terms, it will be necessary to equip the union with modern administrative structures.

Adjustments will therefore have to be made in the definition of tasks, the organization of services, the training of officials, and in working methods and allocation of resources.

Finally, the development of cooperation between the various administrations involved in the operation of the customs union is one of the basic conditions for its effectiveness.

In the opinion of the Commission services, the framework and scope of the Community's customs union and the conditions for its successful implementation are such that a joint effort is required from the Community institutions and the Member States.

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## INTRODUCTION

When, in accordance with the Single European Act, the internal market of the Community has been completed, a new step forward will also have been taken in terms of the customs union. Since the Treaty of Rome entered into force the customs union has been a vital instrument of Community integration and the mainstay of various Community policies. It will continue to be just as essential to the Community in future, as the proper functioning of the customs union is a prerequisite for success in a wide range of areas which, at first sight, go far beyond the scope of customs matters in the strict sense.

Due to the interdependence of so many of these elements, we cannot wait until the deadline set by the Single Act has expired before drawing up rules of implementation for this project.

The customs union must also take account of the general climate in which it functions. In the international context, consideration must be given to the general economic trends of increasing globalization (Uruguay Round), marked by the formation of large regional groups (e.g. the US-Canadian free-trade agreement), and of the integration of computers and data-transmission systems into international trading methods. Within the Community, the customs union enterprise is inextricably linked with the completion of the internal market.

It is therefore important to analyse in detail the present state of the customs union, on which the Community is based, before considering which legislative or operational changes will be necessary to ensure that the Community retains its identity. The coherence and uniformity of our customs union will also have important repercussions outside the Community, by creating the best possible conditions for a market which is open to the world economy.

## I. INSTITUTIONAL AND ECONOMIC FRAMEWORK OF THE CUSTOMS UNION

Article 9 of the Treaty of Rome stipulates that "the Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries".

According to Article XXIV of the GATT, the difference between a free-trade area and a customs union is that the Member States of the former abolish duties between themselves but retain their own tariff vis-a-vis third countries, whereas in the latter the member states also abolish duties between themselves but adopt a common tariff vis-a-vis the outside world.

It is clear that a strict interpretation of such texts cannot accurately describe the current state of the customs union in the Community context. No one can now dispute, contrary to certain widely held opinions expressed in the past, that the Community customs union is more than a mere tariff union and will move even further away from this narrow definition in future. The completion of the internal market and the elimination of internal frontiers will therefore require an approach different in qualitative terms from that adopted up to now.



A. The scope of the customs union in the Community

When the tariff union was established in 1968 it quickly became clear that, without minimizing the importance of what had already been accomplished, it would be necessary to go somewhat further if all distortions of treatment or trade deflections were to be eliminated. A common customs tariff alone was of little use if it could be applied differently from one country to another. The need to ensure fairness in trade and to place all the Community's firms on the same footing with regard to conditions of competition made it necessary to establish a uniform and binding body of customs legislation. The correct and uniform collection of duties across the Community for the agricultural products which are the subject of the common agricultural policy is a matter of such importance that it must be dealt with in a special manner.

The common customs rules, which were based on the customs procedure established in 1950, were broken down into various specific rules which were applied to the common agricultural policy or to the common commercial policy. The lack of an overall framework, however, resulted in disparities which must be corrected, emphasising once again the need for a high degree of consistency.

The free movement of goods, which is one of the great freedoms recognised by the Community, has not yet been achieved in its entirety. The existence of a common customs tariff is a necessary condition for the free movement of goods. Any other approach would maintain de facto obstacles to trade and the partitioning of the Community.

Uniformity in legislation however - which has still not entirely been achieved in the Community - is not in itself sufficient to ensure the smooth operation of the customs union. Over the years it has become obvious that the uniform implementation of that legislation presupposes the existence of several other elements.

Experience has shown that a high degree of uniformity is required not only in the areas of customs technique and procedures, but also, and perhaps above all, in those policy areas where customs intervention is the determining factor. This is the case for the common policies which still have to be perfected, and the successful implementation of which depends on the existence of an effective customs tool with precise rules which are uniformly applied.

The customs union is therefore not merely an instrument of budgetary policy, but above all one of the key elements in the economic integration of the Community.

1) The common policies

In policy matters, the importance of the customs union is particularly obvious in the following areas :

- Commercial policy

The Community has been playing an increasing role in this field as a result of developments in international trade and the need felt by the Member States to establish and then strengthen the degree of solidarity between them. Tensions have arisen over recent years in particular, as keener competition has led to increased conflicts of interest and as unfair practices have become more apparent. The Community can only confront these problems effectively in a unified stance.

The implementation of commercial policy measures or defensive measures against illicit commercial practices (in particular antidumping measures) is largely based on customs technique. Correct application of the Generalised System of Preferences is also based on the same mechanisms. All of this requires the Community to adopt a common strategy in advance, and to apply it uniformly.

Nevertheless it should be recalled that the importance of strengthening the international role of the Community in the trade policy area arises not only from the Community's commercial defence needs, but also from its responsibility, as the world's largest trading power, in maintaining an open international trading system. It is only in such a system that the Community's full potential as an exporter can be realised.

Uniformity of conception and implementation by all members of the union is also an essential prerequisite in achieving the objectives of other commercial policy measures, such as the various customs procedures with economic impact (inward processing, etc.), quotas and tariff suspensions.

In this regard, the elimination of physical frontiers between Member States will involve a re-examination of the existence of residual national quantitative restrictions.

#### - Agricultural and fishery policy

In those areas in which there is a common organization of markets, measures uniformly governing international trade in the products concerned are a necessary

complement to internal mechanisms. It was necessary for example, in ensuring the satisfactory implementation of the common agricultural policy, the Community's first common policy, to incorporate customs provisions into its rules long before a general set of customs rules had been drawn up.

- Development policy

The major importance of the customs union is also apparent in cases where products originating in developing countries are permitted access to the Community market at preferential rates or even free of customs duty. This policy of assisting economic development is based, in the trade area, on the drawing up of special origin rules specific to relations of this type (Lomé Convention, Mediterranean policy, etc.). Such rules are intended either to encourage local production in order to guarantee a minimum export income, or to give the countries concerned the incentive to develop a processing industry which should enable their viable integration into world trade on a long-term basis. This is why various origin requirements have been introduced in the form of provisions concerning, for example, sufficient processing as a condition for gaining access to the Community market, or cumulation of working operations with other developing countries.

- Environment policy

By definition, this area knows no frontiers since it concerns the entire planet. Measures have been adopted by the Community, both independently and in the context of international arrangements, and these measures are implemented to a large extent on the basis of customs intervention.

The following may be cited by way of example :

- a) the protection of certain species of flora and fauna and the prevention of illegal trading in those species;
- b) the monitoring of international movements of dangerous products and toxic or radioactive waste. Identical levels of control will have to be guaranteed at all points along the external frontier of the Community as completion of the internal market approaches;
- c) in the area of public health and consumer protection, measures to take account of the consequences of the Chernobyl disaster on the quality of food products.

The successful implementation of these various measures in trade with third countries also depends on the effectiveness of the customs union.

- Monitoring of certain sensitive products

This area, which is concerned primarily with strategic goods, arms and high-technology products, is usually dealt with in the context of European Political Cooperation.

The Council has, however, recently adopted a Regulation on the export of products which might be used to produce chemical weapons (1). This development demonstrates that necessity and common interest may sometimes produce common action, despite the opposition expressed in the past to the transfer of competence to Community institutions. In cases such as this, the task of monitoring restrictions or prohibitions again falls to the customs union.

2) A common interpretation of the rules applicable

The Court of Justice of the European Communities has developed a very substantial body of case law in the area of trade. It has delivered an impressive number and diversity of judgments, compliance with which requires a certain self-discipline on the part of the Member States.

The pivotal role played by the Court has enabled the customs union to function smoothly rather than to remain, as might otherwise have been the case, an unbalanced and largely theoretical construction. When several countries set themselves the ambitious objective of establishing a number of common rules, it follows that those countries must be prepared to accept as binding a common interpretation of those rules by a body set up for that purpose.

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(1) Council Regulation (EEC) No 428/89 of 20 February 1989 concerning the export of certain chemical products (OJ No L 50, 22.2.1989, p. 1)

B. The customs union in the international context

The globalization of trade already referred to is encouraging the formation of regional groups internationally. This development has already taken place in various parts of the world, including South East Asia and Latin America. Two types of group exist in Western Europe : the Community and the European Free Trade Association.

Although the basic idea which has prompted countries to move closer together economically is much the same in all cases, i.e. the creation of conditions favourable to the development of trade, very marked differences exist in the nature and conception of the various groups.

Of the most important international commercial groupings, the Community is the only one to have provided for the transfer of sovereignty to institutions set up specifically for that purpose. The customs union is a good illustration of this. The Member States considered that it was only possible to achieve the objectives of the Treaties by setting up such institutions and by agreeing to comply with detailed rules which they had freely imposed on themselves.

Our existing customs union must now advance even further because it is not yet complete. In view of the progress already made, the ambitious and voluntary commitment already made must be confirmed and reinforced. This does not, of course, rule out the possibility of concrete forms of cooperation with third countries or groups of third countries, particularly under preferential tariff agreements.

C. The customs union and the internal market

As one of the fundamental bases of the Community, the customs union is also a cornerstone of the internal market.

It is, of course, true that the existence of the customs union alone is not enough to ensure that goods may in fact move freely within the Community. A glance at the current situation demonstrates this quite clearly. The existence of common rules on trade with third countries does not by itself guarantee the free movement of goods within the customs territory.

This is why a White Paper was drawn up by the Commission containing a list of measures necessary to end the disparities which still give rise, in intra-Community trade, to specific formalities and customs interventions in the broad sense. Matters relating to taxation, statistics, agricultural policy, transport, monetary problems, trade mark law, and other non-tariff barriers are the main stumbling blocks.

The customs union, while not of itself sufficient to guarantee the free movement of goods, is a necessary condition for the completion of the internal market. If the present barriers continue to exist, even in another form, and the real burden on the economic operators of the Community remains undiminished, the internal market cannot operate smoothly, save as a mere semblance of such a market.



In this respect it must be observed that the current inadequacies of the internal market persist only because internal frontiers are still in place. The compartmentalization of national markets, notably through the continued existence of formalities governing intra-Community trade, also masks the deficiencies which exist in relation to trade with third countries. The continued existence of internal "customs" formalities offers a tempting pretext for the addition of other formalities in such trade, thereby leading to infringements of the rule that goods traded with third countries should be afforded uniform treatment throughout the customs territory. Once the measures necessary in this area for the realisation of the internal market, including the Common Commercial Policy aspects, have been adopted, however, it will no longer be possible to resort to such formalities.

It is, moreover, inconceivable that such disparities should be maintained if there is also to be a uniform implementation of the rules and rapid handling of trade operations with third countries through computerization. The use of computers and data-transmission systems requires particularly close coordination between the partners concerned if it is to play its full role in abolishing the internal frontiers. It should be noted in this context that in order to draw maximum benefit from data transmission systems while preserving individual independence, a general will must exist for the adoption of a common coding system and common standards. Decisions will also have to be made at an stage early enough to enable their timely integration into the programmes of firms and administrations.

## I. THE IMPLEMENTATION OF THE CUSTOMS UNION IN THE CONTEXT OF THE SINGLE MARKET

In the context of the internal market, described in Article 8a of the Treaty as comprising an area without internal frontiers in which the free movement of goods, inter alia, is ensured, the customs union will have two dimensions, one internal, the other external.

### A. The internal dimension of the customs union

This will be, a priori, one of the most visible expressions of the customs union, both for European citizens travelling from one Member State to another and for firms carrying out intra-Community transactions.

It should be recalled here that although the Commission White Paper predates the Single European Act, it remains the basis for its implementation. For the purposes of presentation and analysis, the White Paper distinguishes between physical, technical and fiscal frontiers, but it is always clear that the achievement of a genuinely free movement of goods within the Community will proceed from all three of these elements. This is because

- a) the removal of physical frontiers is necessary but not in itself sufficient to bring about the abolition of the internal frontiers,
- b) the removal of technical frontiers, through the elimination of differences between national standards, is vital to achieving the economies of scale expected of the single market, and
- c) the removal of fiscal frontiers implies not only the disappearance of customs operations at the geographical internal frontiers but also the elimination of the checks and formalities linked to the crossing of those frontiers.

The internal market will not be a reality until these three types of "frontier" have been abolished. Only when that happens will it be possible to remove all checks and formalities which now exist solely for the purposes of trade between Member States.

At that stage movements of goods within the Community will be placed on the same footing as movements within a single Member State. This means in practice that the conditions under which the vast majority of goods move between the Member States will be comparable to those which exist today at national level-in other words without customs documents or procedures.

However, there are some situations in which it will not be possible to avoid the use of an administrative procedure to cover the movement of Community goods between Member States, e.g. in the case of goods subject to checks on their final use, agricultural products for which refunds have been requested, and goods dispatched from one Member State to another via a third country (generally an EFTA country).

Movements of non-Community goods will, as a result of their status, continue to be subject to a customs transit procedure as at present. The post 1992 transit procedures will however, no longer require checks or formalities to be carried out at the internal frontiers, since these will have disappeared.

## B. External dimension of the customs union

Since the customs union is one of the central elements on which implementation of the common policies pursued by the Community depends, the efficient, uniform and coherent functioning of that union must be a major objective and an essential prerequisite for an effective international presence.

The vital need for uniformity is expressed in both legislative and operational terms.

### 1) Legislative aspects

#### a) The completion of customs legislation

Creation of the customs union requires a uniform set of rules. This primarily involves customs legislation, which, despite its undeniable coherence, still remains much too fragmented.

Completing this set of rules requires initiatives in the following areas :

#### - The Community customs code

The conversion of directives into regulations has been a useful step towards a more satisfactory implementation of Community customs law. It must be recognised, however, that the fragmentation of the latter in a multitude of legal instruments encourages neither transparency nor simplicity.

Only a consolidation of customs rules, i.e. the adoption of a Community customs code, will enable these difficulties to be overcome. In addition, it will allow us to evaluate the contribution made by the creation of the customs union in building the Community. This substantial legislative work will also reflect the uniformity of the rules governing trade between the Community, the world's leading commercial power, and its partners, by placing them all in a single instrument.

This task of consolidation, which was started several years ago, also serves as an opportunity to simplify the rules. The various instruments adopted so far, particularly those based on Articles 100 or 235 of the Treaty which required unanimity, were mostly the result of compromise which saw the sanctioning of certain national practices and derogations. This was necessary, perhaps regrettably so, in order that some progress might be achieved, and resulted from political and economic conflicts of interest or different conceptions of customs law. Since the Single European Act, however, all decisions based on Articles 28, 100A and 113 are taken by qualified majority.

The context therefore lends itself particularly well to the task of simplifying Community customs legislation. Apart from the obvious interest of economic operators in the endeavour, awareness of the fact that complex rules encourage fraud and irregularities is in itself an incentive for action. The various Community institutions, in their respective roles, will of course be sensitive to such considerations when they come to examine the Commission's proposal on the matter.

- Simplified procedures

A greater degree of coherence will have to be established with regard to procedures, and in particular simplified procedures will have to be authorized in a more consistent manner than at present. It would be wrong to ask Member States who are most advanced in this respect to return to a less open attitude. On the contrary, it is the other Member States who will have to make a special effort in this area over the next few years. In order to ensure the necessary alignment, it will therefore be necessary to define standard procedures at Community level with a greater degree of precision than at present. These procedures will have to be based on objective criteria which, due to their largely automatic nature, will treat all Community firms alike. Here again, there are sound reasons for this development because, in the absence of standard rules, trade would inevitably be deflected towards the more flexible Member States.

- The administration of customs rules

Certain aspects of this task will have to be transferred to the Community so as to ensure

equal treatment of all economic operators and optimum implementation of Community rules.

The administration of tariff quotas, for example, will have to be carried out entirely by the Commission, in accordance with a recent ruling by the Court of Justice. For optimum efficiency, this system will also have to extend to ECSC products, despite the fact that they fall within a distinct legal framework. The same procedure will also have to apply to products liable to quantitative restrictions subject to the finalization of control procedures under the subsidiarity principle.

The need to transfer administrative responsibility to the Community might also arise in other areas. One particular example might be the assessment of whether the administrative conditions relating to authorizations for procedures with economic impact (inward and outward processing) are being complied with, an area which involves economic considerations and consequences as well as aspects of customs technique.

- Computerization

There can be no question of successfully administering Community rules, in the manner outlined above, without adequate use of computers. Since customs formalities cannot be dissociated from commercial documentation in general, action should also be taken to introduce legislation at international level for the establishment of norms for data exchange and electronic data transmission.

That would enable new developments in this area to be fully integrated not only at the level of implementation but also at the drafting stage of Community legislation, since it is no longer enough simply to computerize traditional procedures. The development of Community legislation and of the customs procedures stemming from it must be carefully conceived in this regard.

The computerization aspect, therefore, no longer falls exclusively within the scope of rules internal to the Community, but also falls within the framework of international treaty negotiation.

- Mutual administrative assistance

Again on the basis of international treaties, the Community will have to develop another external aspect to the customs union through the conclusion of mutual assistance agreements with third countries aimed at ensuring the correct implementation of customs legislation and combating fraud. Such agreements, the need for which is growing in view of the increasing complexity of economic and financial channels, the growth in international trade and the fact that free movement of goods within the Community is fast becoming a reality, will provide the Community with additional scope for action on this matter in areas where such action is desirable.

Essential as they are, the administrative cooperation clauses which currently exist in the free-trade agreements, the Lomé Convention, the Generalized System of Preferences and the



multifibre agreement, relate only to very specific categories of goods. They do not therefore satisfy all the requirements of the Community, which in present circumstances needs to be able to cooperate on a reciprocal basis with its main trading partners as an entity in its own right.

b) Perfecting the customs mechanisms of the common policies

Besides the rules referred to above, it is also essential that non-customs rules which are applied by the customs authorities should be harmonized or aligned to the requisite extent. This is necessary in order to complete those common policies implemented on the basis of customs intervention, as the rules for such implementation must be as simple as possible in everybody's interest. In particular, the scope for national derogations, and provisions based on an overly national approach, will have to be reconsidered where they are liable to hamper or distort the principles underlying the notion of free movement. Although it is hardly likely, for example, that Articles 36 and 115 of the Treaty will be rescinded, the provisions by which they are implemented will have to be changed. The two notions of internal market and customs union are indissociable in this respect because, once all internal frontiers have been abolished, it will hardly be possible to continue using such frontiers to obstruct the marketing of a product once it has been imported into the Community at any point. The same reasoning also applies to exports.

c) Introduction of legislation governing penalties

Further action is necessary in regard to legislation governing penalties. Although the

basic provisions of customs law now form part of the Community legal order, the latter does not cover breaches of that law. These are governed exclusively by the legislation in force in each of the Member States. The autonomy of national legislation in this area may however adversely affect the proper functioning of the customs union.

Firstly, no account is taken of the fact that when an infringement of customs law is committed the whole of the Community customs territory is concerned. Secondly, disparities in treatment may result depending upon where an infringement is discovered. This has major repercussions for the internal market since unlawful operations naturally will tend to become concentrated in those Member States where criminal prosecution appears least likely. This, of course, is a field which is still not governed by any secondary legislation, except as far as competition is concerned, but such serious warning signals of a possible malfunction in the system should provide an incentive to take action.

This problem has an impact not only on the correct collection of customs duties, the Community's own resources, but especially on the need to ensure that Community traders enjoy the conditions of healthy and fair competition which they are entitled to expect. The Community subscribes to a resolutely open approach to world trade; such openness must not be synonymous with naiveté or weakness.

The greatest difficulty involved in harmonizing penalties results from the fact that legislation on customs penalties is closely linked with the system of criminal law of

each Member State. A general harmonization of Member States' criminal legislation is not, however, envisaged for the foreseeable future. It is therefore necessary to concentrate efforts on those areas which are most specific to customs law. Initial action could consist in harmonizing administrative penalties, in particular fines for infringements of Community customs law. Further action should aim at examining and defining, in respect of each Member State, those provisions of its national criminal law which ought to be amended in the context of the single market. The principle that sanctions law may be harmonised in areas of Community competence was clearly set out by the Court of Justice in its judgment of 21.9.1989 in Case 68/88 (Commission v. the Hellenic Republic).

d) Improvement of decision-making machinery

The regulatory aspects of the customs union raise the question of decision-making machinery. As far as relations with third countries are concerned, especially in the context of international conventions, the mechanism for Community participation tends to be the inclusion of a customs union clause which confirms the Community's position and its special character in relation to other countries. This clause reaffirms the unitary nature of the Community vis-à-vis our trading partners, and the mutually supportive ensemble which the Community represents strengthens its negotiating capability which in turn accrues to the benefit of each Member State.

Until recently, however, this procedure suffered from a certain rigidity within the Community's internal system, namely the need for unanimity in adopting the common position to be put forward in international bodies. Developments in the case law of the Court of Justice of the European Communities, most recently expressed in the judgment in Case 275/87, have made it possible, in the case of international agreements in the customs field, to rely to a large extent on Article 113 of

the Treaty, which calls only for a qualified majority.

As has already been mentioned, the entry into force of the Single Act has taken this situation further, since in all cases in which Article 100A, and indeed also Article 28, are involved, the same qualified majority rule applies. This simplifies and accelerates the decision-making process to a considerable extent.

As far as the administration of instruments adopted by the Council is concerned, however, it must be regretted that resort to the Advisory Committee procedure has not yet become normal Council practice. On the other hand, the economic operators and users of public services who make up the Community increasingly require quick decisions relating to their day-to-day activities. It is obvious that the Regulatory Committee procedure in use at present no longer fulfills these requirements.

## 2) Operational aspects

Once the legislative base is secured, special attention will have to be devoted to the practical arrangements for operating the customs union. In order to secure a genuinely efficient, homogeneous and consistent operation, an infrastructure will have to be put in place based on computer processing techniques. This aspect is not only important for the national customs

authorities, which must undergo an unprecedented transformation, it is also of major importance to all those who have dealings with the customs authorities, and to those who are anxious to see the correct implementation of measures taken in various fields extraneous to customs in the strict sense.

A number of elements have to be examined in this regard:

a) Organization

The upheaval brought about by the establishment of the internal market will result in major changes for the customs authorities, which will no longer apply "customs" treatment to trade within the Community in goods that have Community status. In view of the increasing proportion of legislation adopted at Community level, a question which interests many people is that of the roles to be played respectively by the national customs authorities and by the Commission departments. The idea of a Community Customs Administration is frequently mentioned. The guiding principle here must be pragmatism.

In the context of a customs union as elaborate as that which is to be brought into being in the Community, it would appear necessary to rule out two approaches:

- firstly, an approach whereby existing compartmentalization is maintained and an excessively inter-governmental structure continues to apply,
- secondly, one based on excessive centralization towards the Commission.

A proper balance must be achieved between these two

extremes since the national and Community levels are complementary.

Customs officials will be concerned essentially with third country trade. The creation of the internal market will, moreover, entail redeployment of the manpower of the Member States' customs authorities which should place them in a better position to discharge their responsibilities to the benefit of the customs union as a whole.

On the other hand, the need to make the Community responsible for certain aspects of the administration of Community legislation must not result in the addition of a further layer of bureaucracy or decision-making. It must, on the contrary, expedite decision-making in such a way as to meet traders' needs.

As far as administrative cooperation and combating fraud are concerned, the principle of subsidiarity must be maintained and a genuine partnership must be established between the various national customs authorities as well as between them and the Commission.

In general, therefore, and without prejudice to the possible establishment of a Community customs structure, the way in which customs departments are organized within the Community must no longer be seen as a matter of administering a collection of adjacent national territories but of administering a customs union without internal frontiers based on the interdependence of its constituent entities. It is therefore of concern to all the parties involved.

Pending the creation of such a Community structure, one could envisage that, as a symbol of the unitary nature of the customs union, the customs officials of the Member States who carry out their duties in

uniform might display a common identification symbol (this might, for example, take the form of a badge with the word "Customs" against the background of a European flag).

The message embodied in this symbol would be directed primarily to travellers crossing the external frontiers of the Community. It would also, however, have an impact on the customs officials themselves by enhancing their feeling of belonging, irrespective of their nationality, to the same body and especially of working towards the same goal.

b) Modification of working methods

In order for a customs union to function smoothly, due regard must be had to striking a proper balance between simplifying international trade and combating fraud. This will call for a redefinition of working methods.

An increased volume of trade, the growing importance of office automation and electronic exchange of data, as well as general developments in the conduct of trade, mean that the customs union administration must, to be effective, make full use of the facilities provided by new technology.

The greater use of simplified procedures will, ipso facto, bring those customs authorities which have not so far had sufficiently close contacts with firms into much closer contact with them and will require that they genuinely serve the interests of the Community's external trade.

From this standpoint, customs checks will have to be more homogeneous and more selective than at present. This does not mean that there is any need for change in the degree of overall protection

against fraud but rather that selection criteria will have to be defined jointly and assessed at regular intervals on a more scientific basis in order, inter alia, that they may be implemented by means of the national computerized systems. In this respect, the Community may be likened to a chain - its protection against fraud will depend on the strength of its weakest link.

The work of the customs authorities in this area will have to be focused in such a way as to incorporate to a greater extent the economic, fiscal and financial aspects of trade. This will result in greater use of post-clearance checks on firms' records and the auditing of computerized systems. This greater degree of selectivity in intervention by the customs authorities will make it possible to speed up the release of goods subject to customs control while at the same time enabling the officials concerned to carry out adequate checks. Proper training should enable them to take proper account of the economic dimension of their duties in carrying out such checks.

c) Adapting resources

This, it must be remembered, involves the use of information technology, both in implementing customs clearance procedures (which will have to incorporate the computerization dimension to a greater extent in their original conception) and also in the implementation of legislation and the introduction of data communication and transfer systems.

As far as procedures are concerned, the use of computerized import declaration procedures in the case of trade with third countries will have to be extended so as to cover not only ordinary customs clearance but also the simplified procedures. This development will bring with it the twofold benefit



simplifying customs checks while ensuring standardization of customs procedures within the Community.

For trade within the Community, where the vast majority of movements of goods will be unrestricted, systems will nevertheless have to be developed to enable checks on movements of goods that are not in free circulation or which are consigned from one Member State to another subject to administrative controls. Such systems may be based on existing Community transit procedures, adjusted as to take account of computerization, but they must not incorporate any checks on crossing internal frontiers.

Apart from questions related to customs procedures, the information systems required for direct administration of certain rules by the Commission (for example, tariff quotas and classifications, quantitative restrictions, etc.) will have to be improved, extended and made more accessible to the Member States' customs authorities and to traders. This implies the development of new infrastructures within the Member States and within the Commission.

This should form part of a general improvement in communication systems. At the present time, a number of Community systems developed under the CADDIA programme (Cooperation in Automization of Documentation and Data for Import, Export and Agriculture) are making use of the facilities offered by information technology. An example is the SCENT system (System of customs enforcement network). In the area of combating fraud, where the rapid dissemination of information is of fundamental importance, this system links the central departments concerned in the Member States to those with an operational role within the Commission.

The existing systems were, however, developed in the absence of any overall concept based on a sound telecommunications and data transfer infrastructure. From now on, a more homogeneous approach will have to be adopted to the entire system.

The introduction of such an infrastructure will simplify communications between the Commission and the Member States and between the Member States themselves. For example, the systems in question will enable improvements to be made in implementing the transit procedures and will permit an optimum use of TARIC (community integrated customs tariff).

This also raises the basic question of standards and systems design. Traders have adapted quickly to technological change and have computerized their systems on an international level. The customs union must take account of this if it is to avoid an imbalance between the business world and the administrative authorities. Since it is also imperative that the various systems be able to communicate with one another, each customs authority will no longer be able to determine its criteria unilaterally.

For this reason, EDIFACT (Electronic data interchange for administration, commerce and transport), a standard adopted by the International Standardization Organization, will have to be gradually introduced in the customs field so that standard messages may be used and a more rational system for coding data may be established throughout the Community. Programmes are to be set in train which will make possible the transition from the existing systems to the new standards between now and the end of 1992. Among trading organizations the TEDIS programme (Trade Electronic Interchange Systems) coordinates and promotes standardization work in the EDI area.

d) Training

The establishment of the internal market will make it necessary to redefine the role to be played by customs officials within the Community in ensuring the proper functioning of the customs union. This role will focus henceforth on the uniform implementation of customs law at the external frontier as a necessary means for implementing the various Community policies governing external trade. At the same time, it will be necessary to ensure that abolition of the internal frontiers does not give rise to distortions of competition, deflection of trade or an increased risk of fraud.

The measures taken by each of the national customs authorities concerned will not, of themselves, be sufficient to attain the objectives sought. While it might appear desirable over time to set up a Community customs training establishment, it will be necessary in the immediate future to supplement the training efforts already being made at national level. This can be done through the establishment of common programmes designed to enhance customs officials' awareness of the increasingly Community-wide dimension of their responsibilities and the need for close cooperation between them even as they continue to report to their own national authorities.

The training programme, on which a start has already been made at Community level, concerns at the same time :

- training personnel at present working in the national customs training establishments;

- national officials responsible for applying those measures on which the smooth functioning of the customs union depends; and
- exchanges of officials.

A number of opportunities, of course, exist at present for officials of the Member States to meet one another and for meetings between them and Commission officials, since wide-ranging exchanges of ideas already take place within the various official committees which operate in the customs sphere. This does not, however, adequately meet the requirements of strengthening the customs union and exchanges of experience and a more broadly based interchange of views and attitudes involving those concerned with customs operations are therefore bound to be mutually beneficial and to result in better understanding.

This means that an eventual Community customs training establishment should not confine itself to customs matters in the strict sense but should also make the officials concerned more aware of the general context by emphasizing the political and economic objectives of Community law. The study of languages, initiation into data processing and monitoring techniques should also feature prominently in its curriculum.

Such a training establishment would serve as an ideal meeting point for the interchange of ideas between Community customs officials. It will operate as a catalyst by reminding those concerned that while they remain national officials they are also, increasingly, Community personnel, without there being the slightest incompatibility between the two roles. Bringing people together in this way will foster the feeling of working together for the same cause.

A programme will have to be developed for the exchange of officials between the national customs authorities and between those authorities and the Commission, along the lines of the MATTHEUS programme adopted by the Commission in Spring 1989. A broader awareness of the concepts and procedures employed by others, including the Commission, will necessarily result in a greater degree of harmonization of customs operations within the Community and should particularly help in establishing the atmosphere of mutual trust, which is necessary to ensure efficient and uniform controls on the external borders of the Community.

In addition, it might be worthwhile to set up training programmes at a later date for business people involved in international trading operations and for certain officials from third countries who have to deal with the Community customs machinery.

Finally, some importance should be given to the question of providing information to those concerned by customs matters as well as to the public at large.

e) The development of administrative cooperation

The greater the degree of integration of the Community, the more the smooth functioning of the customs union, and thus of the internal market, will come to depend on cooperation between the national customs authorities and between them and the Commission.

The complementary nature of the interests involved and the most recent changes in the patterns of international trade, including trade within the Community, have made this greater level of cooperation inevitable. It must focus in future both on the correct implementation of customs legislation, and on breaches of that legislation and the combating of fraud.

It should be noted that current Community legislation already emphasises the main objective, namely the smooth functioning of the customs union as far as combating fraud and breaches of the law are concerned. This approach, economic in character, highlights the fact that the purpose of customs legislation in the broad sense is to ensure that trade is conducted in accordance with the law on economic and commercial competition, without in any way neglecting the budgetary aspects. Such an approach must be highlighted more than ever before. The targets involved in combating fraud are, for example, very extensive and wideranging. Although traditionally such action has been conceived in terms of the collection of duties and other charges, it must not be forgotten, again without minimizing the financial aspect, that the fundamental principle involved is the need to enable Community firms to operate in a healthy competitive environment.

When considered in the Community context, at the present time, the protection of the economic interests of each individual necessarily entails the cooperation of all.

Cooperation on the part of one's partners is the only way to ascertain in a common market that no distortions of competition exist between firms in the same field of economic activity. It is only possible to assess all the factors involved by considering these factors in their overall context and by organizing the necessary degree of coordination with others.

This demonstrates the need for the officials concerned to develop further a Community outlook. As far as the allocation of responsibilities is concerned, the principle of subsidiarity must be applied; in other words, at the practical level, detecting cases of fraud and carrying out investigations are matters for the Member States. The Commission departments must play a complementary role by coordinating cases which have a Community dimension or are of Community concern, by maintaining permanent momentum and by providing whatever specific operational assistance may be required, which may include using the economic and political muscle of the Community in its relations with its trading partners.

All of this presupposes working together to a greater extent on a day-to-day basis by means of direct contacts at a personal level. The dissemination and evaluation of information developed through the use of the SCENT computerized system, which are essential factors in this contact, must be intensified. Even greater recourse must be had to the speed and reliability of computerized interchange of data.

The need for ever-increasing levels of coordination at Community level in regard to combating fraud means that a number of improvements should also be made in the fairly near future to make it possible, inter alia, :

- to override the concept of national territorial limits by establishing a right to follow up infringements in the territory of the other Member States when the situation so warrants;
- to establish routine facilities for mutual assistance by making more flexible the internal procedures that are necessary for its operation;
- to link up the data files which have already been created, having due regard, of course, to ensuring the requisite degree of protection of private data;
- to forgo, as far as possible, derogations from Member States' obligation to provide assistance.

Action must also be taken against other forms of trafficking, even where they lack any economic impact (for example the Washington Convention on endangered species of fauna and flora) .  
Cooperation between the customs authorities in such areas must be reinforced in the context of the customs union.



Lastly, apart from questions of fraud and breaches of the law, there is another field in which cooperation is necessary, namely that of detecting possible shortcomings in customs legislation and disparities as regards its implementation. The customs union cannot operate correctly if such shortcomings are not remedied. In order to emphasise the complementary nature of the relationships between the Member States and the Commission, a Community inspectorate involving Commission officials and officials from the Member States could be entrusted with the task of carrying out specific studies on the implementation of Community customs provisions relating to trade with third countries, backed up by inspections at Community customs offices.

Based on a joint approach by the Commission and the Member States, such an inspectorate could not be regarded as a body set up to supervise Member States' operations and could therefore work in a constructive atmosphere. The creation of this inspectorate would be a useful adjunct to the provisions adopted by the Council concerning own resources controls (Regulation 1552/89 of 29 May 1989) inasmuch as it would also concern the economic aspect of the customs union, since it goes beyond the purely budgetary considerations.

f) Financing the necessary changes

The changes referred to above will certainly have an effect on the functioning of the customs authorities of the Member States as well as of the relevant Commission departments, in particular as far as costs are concerned. It is obvious that new infrastructures will have to be established rapidly if the requisite degree of homogeneity is to be achieved at the Community's external frontiers. This is especially true in relation to the computerization of customs offices.

Here it must be recognized, without making a value judgment, that, firstly, the different Member States do not possess comparable resources, even in relative terms, and, secondly, that they are not on an equal footing as far as infrastructure is concerned.

Indeed, a number of Member States whose trade flows are considerable have a customs infrastructure concentrated on a few large customs offices while others, particularly for geographical reasons, have to operate a large number of customs clearance offices and protect an external frontier which may be difficult to monitor.

These financial aspects of the problem must also be addressed because of the very scale of the reorganization of the customs service that will have to take place in the short term in order to deal with all the challenges to be faced.

## CONCLUSION

For the Community, the customs union is an ambitious concept, going well beyond the academic definitions which may have applied up to now. Just as achievement of the tariff union in 1968 did not spell the end of the customs service, completion of the internal market will not diminish the central role of the customs union.

On the contrary, the establishment of the Community single market in 1992 is inconceivable without a customs union which is well-structured, homogeneous and has the resources appropriate to face up to the new challenges. It is therefore essential that the exacting standards of a customs union be maintained or even strengthened. Any relaxation of such standards would cause the customs union to slide towards something resembling a free trade area, which would be bound to have an impact on the nature of the Community itself.

Before this can be achieved, however, a change in mentalities must come about and the measures suggested here must be implemented.