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COMMUNICATION FROM THE COMMISSION

ON THE MANAGEMENT  
OF PREFERENTIAL TARIFF ARRANGEMENTS

# COMMISSION COMMUNICATION ON THE MANAGEMENT OF PREFERENTIAL TARIFF ARRANGEMENTS

(summary)

## The importance of preferential tariff arrangements

As the leading entity in world trade, the Community puts this economic advantage to use in its external policies of which preferential tariff arrangements are one of the main implementing instruments.

These arrangements have been gathering more momentum in successive stages (association of the Western-European countries, development-aid, pre-accession strategy for the CEECs, Mediterranean policy, increasing trade with Asian countries), and now involve very significant volumes of trade. From being the exception, they have, in many cases, become the rule, and they play an important part in the Community's external policies and in dealings by traders.

## A global set of problems

Even if the discrepancies in applying the arrangements are essentially customs problems, the Commission considers that they should be seen in a wider political context.

The requirement for clarifying the conditions for applying the arrangements implies taking their objectives into account : furthering the development of the beneficiary countries (particularly, in the light of the Singapore Conference), promoting cooperation between partner-countries, preparing the integration of candidates for accession.

## Political advantage for the Community as a whole

The European Parliament is greatly concerned by two essential characteristics of this problem : the fight against fraud, and the Community's external policy on development.

Due to the discovery of these discrepancies, the Council decided, on 28 May 1996, to request the Commission to initiate, in particular, a study of the conditions for the recovery of the customs duties which are due.

To be effective, the study requested should reconcile two non-conflicting aims :

- the simplification of formalities in trade
- the fight against the fraudulent use of the arrangements, so that the tariff preferences are granted only to the designated beneficiaries.

## Strengthening of the preferential arrangements through analysis of their discrepancies

The actual Communication should be composed of two parts : firstly, a detailed analysis of the discrepancies; secondly, as a result of this analysis, proposals aiming at reforming the conditions of application.

### The players in preferential tariff arrangements

The players in preferential tariff arrangements are often responsible for such a situation, but they are also a victim of it.

- *Community traders* : they use these arrangements to their benefit, but they are also the first to be affected by the discrepancies, especially the importers who are liable for the customs debt. In this respect, there exists a legal precedent which weighs the importers down with the burden of “commercial risk” whenever they use the arrangements;

- *Customs authorities of the Member States* : they are the main ones responsible for the application of the arrangements, in that they are called upon to detect fraud and violations, and to recover unpaid duties;

- *Authorities in the beneficiary countries* : they are responsible for issuing certificates of origin;

- *Producers and exporters in third countries* : it is they who have to ask for the issue of certificates of origin from the authorities in third countries.

### The answers to be provided

For the provision of the answers, it will be necessary, amongst other things :

- to settle previous cases on the basis of the regulations existing at the time that the facts were established, in conformity with the legal precedent setting out that faith in the certificate of origin is not normally protected, but constitutes a “normal commercial risk”;

- to restore confidence in the arrangements, particularly by making sure that the Member States, first and foremost responsible in the application of them, attain this in an uniform and harmonized manner;

- to make all of the players in the arrangements aware of their responsibilities, in their common interest, so that they assume their obligations on this question and to put them in a position to do so;

- to legislate, whenever it becomes necessary.

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## **1. Introduction**

In compliance with the provisions of Article 152 of the Treaty, the Council requested the Commission (Decision No 96/C 170/01 of 28 May 1996, on post-clearance recovery of customs debt<sup>1</sup>) to carry out a study with a view to finding an overall solution to various problems which have arisen in the application of preferential customs arrangements, especially the problems of recovery; in part, the problems of recovery stem from irregularities, committed by the authorities of the beneficiary countries, which Community traders cannot reasonably detect.

While satisfying the Council's request, the Commission, already aware of the necessity, considers that other aspects in the application of preferential tariff arrangements should also be examined, wherever there are numerous discrepancies. Solutions to be provided for these discrepancies should be sought, while bearing in mind the Community's commitments on the issue of development-aid, the necessity for cementing economic relations with its partners, compliance with customs regulations, and respect for the legitimate interests of traders and those of the Community budget.

### ***1.1 Preferential tariff arrangements : the Community at the heart of the largest set of preferential trade agreements and arrangements***

The Community is unquestionably the most-accessible market in the world, and it is largely through the openness of its trade policy that it has been able to carve itself a major political role on the world-stage.

The Community has contracted agreements with, or granted tariff preferences to, almost two hundred countries and territories. In fact, every country in the world, with the exception of the United States, Japan and a few others, benefits from preferential tariff arrangements with the Community (cf. Annex I). Product-coverage, as well as the preferential margin relative to the MFN-duties ("most-favoured nation" clause), varies from one system to another. Current estimates show that about half of the goods coming into the Community do so within the scope of one of these systems.

Correspondingly, the customs unions, to which the Community is party, also fall within this set of problems.

### ***1.2 Numerous discrepancies in implementing preferential tariff arrangements***

The Commission is regularly informed, by its own departments for investigation and/or control, by the Court of Auditors or by the Member States, of discrepancies in the preferential tariff arrangements. For some time now, the Commission has been working with the Member States to monitor the situation and to identify the problems which arise in applying the arrangements. It has emerged that these discrepancies result from the way in which the various participants (authorities and traders, in the beneficiary countries and in the Community) apply or do not apply the arrangements, as well as from a certain lack of legislation.

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<sup>1</sup> OJ No C 170 of 14.6.1996, p. 1.

As will be seen later, the commercial advantage, obtained by the misuse of the preferential system (in particular, through non-observance of the rules of origin), is at the very root of the problem of these discrepancies. Besides the negative effect on the tariff (granting preferential customs duties unduly), this unfair advantage has a perverse effect on commercial policy, including those aspects which are the most sensitive for the Community's economy (circumvention of anti-dumping measures and of quantitative quotas).

Investigations, carried out by the Community in the beneficiary countries, have shown that the suspicions of fraud are well-founded, with the irregularities detected often representing 70 - 100 % of the imports which are checked. The table in Annex II gives an overall picture of the damage caused by such behaviour.

Such fraud is politically and economically intolerable and threatens the pursuit of the aims of these arrangements, the competitiveness and the survival of Community industry, and fair trade. Furthermore, it undermines the legitimate confidence which traders should have in the arrangements; it also creates a considerable loss for the Community's own resources.

Given the scale of the problem, the Commission decided to carry out a general overview, the findings of which are the subject of this communication.

### ***1.3 The purpose of this Communication***

This Communication, therefore, sets out to analyse the discrepancies which have occurred in the application of these arrangements, in relation to the objectives which they are supposed to attain.

Such an analysis should cover the causes and the consequences of these discrepancies, for the Community, as well as for the beneficiary countries, the economic operators and the Community's own resources, in order to be able to propose appropriate solutions, with the following two-fold aim in mind:

- to make the arrangements more effective by reminding the various parties, involved in implementing them in the Community or in the beneficiary countries, of their responsibilities, without as such overburdening exclusively one or other of the parties with the responsibility for the discrepancies ;
- to guarantee compliance with the Community's commercial policy, thus ensuring its uniform application, and with the pursuit of the aim of supporting the development of its partners, notably the least-developed countries.

## **2. Preferential arrangements: *raison d'être*, form and impact**

### ***2.1 Political, historical and geographical justification***

Through these arrangements, the Community has been pursuing the aim of development-aid. The Lomé Convention and the arrangements for the Overseas Countries and Territories (OCT) were so negotiated. In the same way, under the aegis of the United Nations, the Community runs the largest scheme of generalized preferences (GSP) in the world, mainly benefiting the countries of Asia and Latin-America.



The Community has prepared for each new wave of accessions, since the early 'Seventies, by negotiating agreements to phase in free trade with prospective Member States prior to full membership. This strategy was employed with the countries of the European Free Trade Association (EFTA) and, now, with the Central and Eastern-European Countries (CEEC). The agreements provide for preferential tariff arrangements to be granted to the relevant countries before they join the Community.

The Community also maintains close economic links with its neighbours, such as Norway, Iceland (through the European Economic Area (EEA)), Switzerland (through EFTA), and the Mediterranean countries or those countries with which it has concluded a customs union (Andorra, San Marino and Turkey).

## **2.2 Major political and economic impact**

Under these arrangements, goods, particularly manufactures, enter the Community free of customs duty or at a reduced rate of duty.

In general terms, the arrangements are part of the Community's commercial policy and are a key component of its external policies. They are thus instrumental in forging special relationships with the Community's partners, such as third countries in the EEA. In fact, the resulting tariff preferences provide an incentive to the traders to get their supplies from partner-countries. In other respects, the arrangements are an instrument for development policy, aiming at the speedy sale, on the Community market, of products originating in the developing countries, and thus to encourage industrialisation, investment and the processing of raw materials. The final objective of these arrangements is to promote, gradually and harmoniously, long-lasting social and economic development in these countries.

It should be noted that, in its Communication on improving market-access for the least-developed countries (COM 97/156 final, of 16 April 1997), the Commission presented its assessment and its goals in opening up the Community market to the least-developed countries so as to give them a foothold in the world economy. The Commission has also presented a "Green Book" on relations between the European Union and the ACP countries at the dawning of the 21st century, with the aim of strengthening political and economic links with these States.

## **2.3 Preferential tariff arrangements : two legal forms**

In accordance with the provisions laid down by the bodies governing international trade, preferential tariff arrangements may take one of two legal forms, each of which has consequences for the way they operate. They are:

- contractual (*agreement-based*), i.e. negotiated accords, most of which are fully or partially reciprocal (EEA, EFTA, CEEC, Mediterranean Agreements, Lomé Convention, customs unions);
- *autonomous*, i.e. non-negotiated and not reciprocal (OCT, GSP, some countries of former Yugoslavia).

### **3. Functioning of the preferential tariff arrangements**

#### ***3.1 Types of trade covered***

Trading with beneficiary countries is not necessarily carried out under these arrangements.

The fact that a country is eligible for tariff preferences does not mean that all of its exports are carried out in the context of the Community's preferential arrangements. All of the preferential agreements and arrangements set economic and customs criteria (nomenclature, customs value and, most importantly, rules of origin) which the goods must first satisfy, in order to qualify for preferential treatment. Products which are not covered by the agreements or which fail the criteria must be charged the full common customs tariff (CCT) duty on entry into the Community.

One significant point is that the arrangements are merely optional.

#### ***3.2 Preferential rules of origin***

Of the criteria mentioned in item 3.1 above, the essential one is that known as "rules of origin". Normally, these rules are enshrined in a protocol or separate instrument, most commonly annexed to the agreements or arrangements concerned.

##### ***3.2.1 The purpose of preferential rules of origin***

The aim of the preferential rules of origin is to allow only those products from partner-countries or from beneficiary countries to benefit from the preferences, without leading to a deflection of traffic which would prejudice trade with the Community. In accordance with these principles, the rules tend to favour an economic integration based on the reciprocal advantages to be gained in conventional relationships, and to contribute to the development of industry in the beneficiary countries by giving them the means of controlling the running of their own resources. To achieve these ends, the rules of origin, which vary little from one system to another, introduce standards for limiting the use of raw materials from non-beneficiary countries, and for maintaining most of the processing activity in the partner-countries or beneficiary countries.

To meet the needs of economic integration, the rules of origin are complemented by provisions for "cumulation", thereby allowing a beneficiary country to use goods originating in another beneficiary country and/or in the Community. The extent of the cumulation is adapted to the desired level of integration.

##### ***3.2.2 Basic mechanisms***

By way of example, under the rules of origin in the Protocols, which have been in force since the start of the year, among the Community, the EFTA countries and the CEECs<sup>1</sup>, preferential treatment is granted only to those goods, coming from these countries, which:

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<sup>1</sup> E.g., OJ N° L343 of 31.12.1996 on the Europe Agreement between the EC and the Czech Republic

- have been wholly obtained in these countries or have undergone sufficient working there (the conditions are laid down, product-by-product, and appear in an annex to the protocols);
- have been subject to the levying of customs duties (and on which such duties have not been reimbursed) in respect of any third-country components used in the manufacture of products deemed to have undergone sufficient working;
- have been shipped directly to the Community;
- are accompanied by a specific certificate proving that they satisfy the relevant conditions.

Preferential treatment is also granted to:

- goods produced using components from two partner-countries, e.g. the Community and Slovakia (bilateral cumulation);
- goods produced using components from three or more partner-countries, e.g. the Community, Switzerland and Slovenia (diagonal cumulation);
- goods produced using components from several member countries of a regional group, e.g. Vietnam, Indonesia and Singapore, all of which are members of ASEAN (regional cumulation);
- goods obtained by successive transformations within the EEA (total cumulation).

#### **4. The players in preferential tariff arrangements**

##### **4.1 Economic players**

Preferential treatment is on offer as an ease-of-access in trading with certain countries. It is not granted automatically and is dependent on the traders deciding what steps to take : the exporter who proposes or accepts to supply his client with a certificate leading to the preference, and the importer who may decide to submit it to the customs authorities at the time of importation.

##### *4.1.1 Traders outside of the Community*

After checking that the products satisfy the criteria to qualify for preferential treatment, the exporters are required to make a formal request to the competent authorities of the exporting country for the issue of a certificate of origin, while providing them with all of the relevant information. Given the financial advantage to be obtained, the provision or otherwise of a certificate of origin is included in the calculations when the contract is negotiated with the Community importer (or successive contracts when there is a middleman, agent or distributor involved).

Once issued, the certificate of origin is forwarded, by the exporter, to the importer, either directly or through a middleman.

#### *4.1.2 Community importers*

From the negotiations described in item 4.1.1 above, it follows that, in practice, the importer knows if the goods will be sold to him with or without a certificate of origin, even before any request is submitted to the authorities in the exporting country.

The importer is responsible for the accuracy of all of the details in the import declaration (type, origin, value, quantity, application for preferential treatment, etc.) and is therefore legally liable, in the eyes of the administrations of the Member States, for the consequences of any inexactitude in one or other of these references.

#### *4.1.3 Good faith on the part of the importer, and commercial risk*

For obvious commercial and technical reasons (organisation of after-sales service, health policy, etc.) the importer usually checks on the quality of the products, before signing the contract and while it is being carried out, which puts him in the position of knowing the pertinent facts as to the originating status of the products. Such information may be passive (received from the exporter) or active (when he insists that his supplier uses specific components or raw materials, or that he will obtain them for him).

In this respect, the Commission points out that faith in the validity of a certificate of origin is not protected, this being a normal "commercial risk" as given by the Court of Justice of the European Communities<sup>1</sup>.

The plea of good faith can only be invoked by the importer in the event of an error made by the competent authorities in respect of origin certificates, that is 'only if it was the competent authorities themselves which created the basis for the expectations' (Judgment of 14 May 1996 of the ECJ, Joined Cases C-153/94 and C-204/94 - "Faroe Seafood").

In this context, it is to be noted that instances of genuine "good faith", as regularly pleaded by importers in an attempt to avoid recovery of duties, are not common. In these particular cases, the concept of 'commercial risk' itself stands in the way of the importers being released from the obligations defined by the Community Customs Code.

It is altogether possible, however, and is often the case, that the importers include protection-clauses in their contracts, so that their suppliers are liable for the financial consequences of any false declarations of origin, in the same way as they do for other elements in their transactions (quality, quantity, terms of delivery, etc.)

#### *4.2 Authorities in beneficiary countries*

Customs offices in the Member States are not always in a position to determine, at the time of importation, whether the goods are eligible for preferential treatment or not. Community agreements and regulations on preferential arrangements make the

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<sup>1</sup> Case Van Gend & Loos NV; Joined Cases 98 and 230/83; Judgment of the ECJ of 13.11.1984

beneficiary countries responsible for issuing the certificates of origin, in the spirit of cooperation and trust.

To this effect, it is up to the third countries to designate the authorities responsible for verifying, at the time of exportation, if the goods satisfy all of the conditions necessary for preferential treatment, prior to the issue of the certificates requested by the exporters. These authorities are obliged, also, to provide the Member States with the relevant information (within a prescribed time-limit) to allow the latter, in case of doubt at the time of importation or later, to make sure that the goods can effectively be granted preference.

The conditions, for the assistance to be given by the beneficiary countries, are given, in all of the agreements on preferential arrangements, under the heading "Methods of administrative cooperation".

#### **4.3 *Authorities in the Member States***

The customs authorities in the Member States are responsible for verifying and accepting import declarations, and for carrying out any controls which they deem necessary when goods are brought onto the customs territory of the Community.

These authorities have the jurisdiction to exercise their independent powers, also, when imports are made under preferential tariff arrangements. Given the difficulty of verifying the origin of the goods at the point of entry, the authorities have the additional power of calling on the beneficiary countries for assistance, as pointed out in item 4.2.

The authorities of the Member States may ask the authorities of the beneficiary countries to verify the authenticity and content of the certificates supposedly issued by them, and to communicate all the information necessary to make sure that the goods do indeed qualify for preferential treatment.

In the event of random sampling or when there is "reasonable doubt", the information requested must be communicated, therefore, within a strict time-limit. If the answer is not received within the time-limit, or if the answer is insufficient, then it cannot be confirmed that the goods qualify for preferential treatment. This results in a refusal by the Member States to grant preferential treatment, and in the consequent recovery of the customs duties due.

If an investigation is to be carried out, the authorities of the Member States may give the importer the option of having the goods cleared, against the appropriate guarantees, if it is decided not to grant preferential treatment until the findings are obtained. Practically, and as intended by the scheme, this means that the guarantees to be taken should be at the level of the full duties due, as soon as there is reasonable doubt.

The possibility which Member States have, of appealing for administrative cooperation, is therefore a decisive element in the process of verifying the proper application of these arrangements. Experience shows, however, that controls, carried out in this manner, become much more effective when preceded, accompanied or followed, as necessary, by verifications and investigations carried out by the Member States themselves, either on their own or co-ordinated at Community level.

Moreover, since the infringement of the preferential rules of origin is a natural consequence of some irregularity or fraud, the Member States are bound to inform the Commission of their suspicions or their findings on this question, seeing that this information is of interest to the Community, in accordance with the provisions of Regulation (EEC) No 1468/81, as amended, on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters<sup>1</sup>.

Finally, as recently confirmed by the European Court of Justice ("Faroe Seafood" Judgment, mentioned above), the Member State authorities may proceed with the recovery of duties when a Community fact-finding mission concludes that the disputed goods do not qualify for preferential treatment.

Administrative cooperation is, therefore, a vital factor for the arrangements to function properly, but its effectiveness depends on the authorities of the beneficiary countries and of the Member States making use of its provisions to the full.

## **5. *Discrepancies in the application of preferential tariff arrangements***

Despite the existence of an instrument for administrative cooperation with partner-countries, much improved upon and extended in re-negotiated agreements and in the introduction of the new GSP scheme, it must be admitted that the discrepancies are numerous and are becoming worse, with the result that goods which are not eligible are benefiting in correctly from preferential treatment.

Preferential treatment can be obtained incorrectly by using the wrong tariff classification for the goods, or by giving a false indication of the customs value, or, as is becoming more common, by the traders concerned not abiding by the rules of origin.

In the main, discrepancies are detected through inquiries or fact-finding missions, whether they are co-ordinated at Community level or carried out within the Member States (for example, textile products from Bangladesh); given their widespread nature, they can be identified by the the variety of problems created.

Investigations are focused on imports of those products which are the most susceptible to fraud, and have shown that discrepancies are likely to appear under any of the arrangements and that there is not necessarily a direct correlation between the standard of administrative infrastructure and the type of fraud.

### **5.1 *Types of irregularity or fraud in preferential origin***

From analysis of the cases so far recorded, several types of irregularity or fraud can be identified, as described below. Needless to say, the irregularities or instances of fraud which are the most difficult to detect are those which are most rampant.

- certificates which are irregular as to form (incomplete, not signed and/or not stamped by the official authorities), certificates which are authentic but which

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<sup>1</sup> OJ No L144, 2.6.1981, as amended in OJ No L90, 2.4.1987.

have been issued in respect of a product which is not covered by the agreement or arrangements, false or falsified certificates.

There is generally little difficulty in detecting such cases.

- certificates which are authentic but which have been issued for goods which have not been obtained in the beneficiary country. The detection of such irregularities, made possible through administrative cooperation, may require a delicate approach if there is complicity between the authorities, responsible for the issue or control of the certificates, and the fraudsters;
- certificates which are authentic but which have been issued for goods which have been obtained in the beneficiary country without respecting the rules of origin - these are, by far, the most common (for example, orange-juice from Israel).

The implementation of administrative co-operation plays an important part in the detection of irregularities, but is no substitute for the investigation of traders' operations which should, in any case, be carried out by the Member States.

## **5.2 *Products concerned***

No category of products is untouched by such discrepancies, but investigations, in general reflection of the specialisation of the export-industries in those countries benefiting from arrangements, concentrate on the most-sensitive products, the ones which are the most attractive to traders for the purposes of fraud (for example, televisions from Turkey).

The tables in Annex II contain instances of fraud and the effective levels of recovery. The extent of the problem, and the most-sensitive products, can be identified therefrom, as well as an assessment of the negative impact, on the proper functioning of these arrangements taken as a whole, resulting from not capitalizing on the results obtained.

## **5.3 *Responsibilities of the traders and of the authorities in case of discrepancies***

### **5.3.1 *Traders outside of the Community***

The rules of origin are conceived in such a way as to give the traders every opportunity to know whether the products they manufacture are in accordance or not. Moreover, the traders usually manufacture a limited range of products, often subject to such rules, for the same market. Investigations show that it is not usual to find an importer who is really not aware of the rules of origin. Nevertheless, some problems have arisen concerning the interpretation of these rules, such as confusion among the various preferential arrangements.

In providing Community importers with a certificate of origin for goods which do not qualify, these traders give them with the means of eluding payment of the customs duties normally due. When they negotiate the sale of the goods, they are aware that the provision of a certificate of origin is a definite advantage to the importer.

In the majority of cases investigated, unscrupulous traders have obtained certificates of origin by simply concealing the real status of the products. During investigations, some traders have exerted pressure on the authorities in an attempt to delay or influence the issue.

### 5.3.2. *Traders inside of the Community*

Since they are responsible for the accuracy of the declarations they make to customs authorities, importers are presumed to know the rules of origin, in the same way that they should know the tariff nomenclature and other customs regulations.

The fact that a certificate of origin is presented with the import declaration - a deliberate act on the part of the importer - makes the importer liable for any duties not paid at the time of importation, as has already been stated earlier by the Commission.

In awareness of this, it is up to the importer to take the necessary precautions, in order to meet his responsibilities, especially at the time of negotiating the contract. Even before concluding a commercial contract, for example, the importer can also apply to customs authorities in the Community for an evaluation of the origin of his product, by means of the new "binding origin information" procedure. Apart from the fact that this instrument gives him some guarantee for his commercial operation, it could also be an element of proof in determining his good faith in the case of a dispute at the time of clearance through customs<sup>1</sup>.

Investigations show that a *de facto* solidarity can develop between traders in beneficiary countries, which have been subjected to an inquiry, and traders in the Community, in view of their common interest in protecting and maintaining trade relations in an environment made favourable by the possibility of preferential treatment. This solidarity is often practised jointly, especially to put pressure on the authorities in the beneficiary countries, in an attempt to avoid the foreseeable consequences of an inspection or to cancel its effects.

### 5.3.3 *Authorities of the beneficiary countries*

Investigations show that the most significant fraud detected over the past few years concerns goods imported from countries at very different stages of development (for example, fabric from the Maldives, shrimps from the Faroe Islands). It stems from a disregard for the provisions for administrative cooperation, and from frailties in the administrative structure.

### 5.3.4 *Authorities of the Member States*

Though aware that the provisions for administrative cooperation are enforced to very different extents by the beneficiary countries and that, therefore, recourse to them is very uncertain, the Member States too often persist in

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<sup>1</sup> Regulations (EC) No 82/97 of 19.12.1996 (OJ No L 17, 21.1.1997, p.1) and No 12/97 of 18.12.1996 (OJ No L 9, 13.1.1997, p.1).



relying upon them, without coming to an operational decision on the question of investigation and recovery.

The safeguard measures, which should come into operation when checks become necessary, especially in cases of reasonable doubt, are not implemented in the same way by all Member States. This favours the deflection of trade, complicates the issue of recovery of duties in the case of a positive result, and leads to the unequal treatment of traders.

In spite of the Commission's attempts at co-ordination, the findings of Community fact-finding missions are not used to their full extent. This paves the way for dubious imports without involving any great risk for traders.

Another problem arises when Member States claim that the certificates have not been invalidated by the third country, as a reason for not recovering duty after some irregularity has been found. Such grounds are provided for by the regulations, and are not, therefore, an acceptable excuse. Case law in the Community has constantly confirmed that the decisive criterion for recovery is ineligibility.

By adopting such course of action, the Member States, artificially and without any legal justification, are transferring their own responsibility onto the authorities in the beneficiary countries.

#### ***5.4 The importers' grounds for complaint***

Community importers also complain often about these discrepancies which occur in the arrangements, especially since actions for recovery can come into operation two or three years after the importation has taken place.

However, it has been found, in many instances of investigation, that importers are usually informed that their operations are being investigated, either in the initial stages by the Member State, or by the exporters when it is underway. In this context, they are aware of the results of the verification, even before the results have been communicated to the requesting authorities, but they do not always make the necessary arrangements to put their house in order, despite the time available before the procedures for recovery can come into being. In so doing, they contribute to the continuance of the negative effects of the discrepancies, to the detriment of those importers who abide by the rules, and of Community producers.

#### ***5.5 Discrepancies in the particular context of developing countries***

Awareness of these discrepancies and the responsibilities of traders and authorities alike in the matter does not exonerate the Community from examining the underlying causes of such a situation, especially in so far as development policy is concerned. It has to be pointed out, in this respect, that the partner beneficiary countries do not find themselves on the same footing vis-à-vis Community rules. Many of them, especially those coming from the emerging economies in Asia, have certainly been able to avail themselves considerably of the advantages offered to them by the Community, and have been able, in accordance with the objectives of the rules of origin, to intensify their industrialisation-process by integrating their production-network from top to bottom, with the aid of internal and external investment,

relieved, if needed, through regional cooperation. Nevertheless, there are other countries, especially the least-developed ones (LLDCs) and those having a similar level of development (sub-Saharan Africa, insular states), which have not been able to take full advantage of the substantial commercial benefits made available to them, because of their economic, institutional, administrative or financial structures which often do not allow them to start up an industrial process. Because of these weaknesses, some of these countries are trying to develop an industrial basis by concentrating an intensive labour-force on the activity of 'last working or processing', which does not always meet the requirements for the rules of origin. The Commission has recently examined this problem in its Communication on improving access to the Community market for LLDCs.

Steps are necessary to confront this situation. On the one hand, it is certainly not conceivable that insistence on genuine controls and abidance by the rules should be forgone, since this would only lead to jeopardising the preferential arrangements, to the detriment of their ultimate aim of promoting development. On the other hand, however, it is just as inconceivable to let these countries, which are amongst the poorest in the world, fail to avail themselves of benefits vital to their survival. The Commission has already put forward concrete proposals, in the context of the abovementioned Communication, to improve the rules of origin by simplifying them and clarifying the conditions for applying them. The same concerns are also taken into consideration in the definition of the necessary actions, discussed in item 9, for remedying the discrepancies of the preferential arrangements.

## **6. Consequences of difficulties in applying preferential tariff arrangements**

### ***6.1 Consequences on Community policies***

Political and economic relations with the countries concerned are affected by this situation. In particular these discrepancies have negative consequences on the commercial policy of the Community, thwarting its effectiveness and endangering the development and economic integration of the beneficiary countries which are precisely the *raison d'être* of the preferential tariff regimes.

#### ***6.1.1 Consequences for manufacturers***

On the other hand, the industrial community is affected by the distortion of competition thus created and complains about the lack of firmness of the measures adopted and of their application. They emphasise the serious consequences, in terms of employment and the closing-down of firms in the Community.

Thus, Community production faces competition which had not been anticipated. The imported goods benefit not only from entry into the Community at reduced duties, but also from the conditions specified for a particular concession not being applied (for example, allowing the use of components which are even cheaper than those actually produced in the beneficiary country). In this way, the price of such products on the Community market can be artificially lowered, and helps to force Community manufacturers of identical or similar products into bankruptcy.

Community industry is sometimes unwilling to accept certain concessions granted to third countries by the Community. Industry is quite justified in insisting that these concessions be limited to those products and countries for which they are intended and which meet the conditions and basic requirements for the arrangements. This is all the more justified when fraud in preferential origin circumvents commercial measures such as quotas and anti-dumping duties.

Many manufacturers have protested at this situation, both to the Member States and to the Commission, and put a lot of faith in their capacity to react in such a way as to end this detrimental situation or, at least, to limit its negative effects.

#### *6.1.2 Consequences for importers*

Those importers who use the regimes in the proper way are facing direct unfair competition from imports of products which do not qualify but which have been wrongly granted preferential treatment. The very economic survival of these importers could be seriously threatened, if such unfair competition is allowed to continue. It should not be forgotten that they play a central role in the implementation of preferential arrangements, arrangements which are still of vital importance to a number of developing countries.

#### *6.2 Economic consequences for third countries*

Given the objective of the rules of origin in relation to the preferential treatment of the goods, it has to be noted that operations which violate these rules do not give the exporting countries the real economic advantage intended by the arrangements, due to the fact that the value added there is non-existent or very low. This is particularly obvious when products are not manufactured in the country, but simply trans-shipped there. Even if there is some industrial activity involving final processing or subcontracting, it is likely to be short-lived and the profit in terms of development is very low, seldom involving long-term investment, transfer of technology, or training of local staff.

However, for some LLDCs, it is true that an industrial activity giving little local added value often represents a godsend. The goods thus produced do not qualify for preference (other than in specific individual cases on the basis of an *ad hoc* decision for derogation: Communication on improved access to the Community market, mentioned above, paragraph 1.2, "rules of origin"), and it is important that the Community makes full use of the stimulant effect of preferences in the establishment of a more complete industrial network in these countries.

#### *6.3 Consequences for the Member States and the Commission*

Due to the prevalence of laxity in the implementation of administrative cooperation and, hence, to its lack of credibility, customs departments have serious difficulties in making traders abide by these arrangements.

However, on analysis, the proper application (for which the Member States alone are competent) of the provisions for administrative cooperation and of the conclusions of

Community fact-finding missions would be a positive contribution towards rectifying the current situation and towards dissuading a number of unscrupulous traders.

Responsible for co-ordinating the management of the arrangements and the activities of investigation and control, the Commission is too often forced to go beyond its competence and to intervene, on behalf of the Member States, with respect to the beneficiary countries.

Given that its powers of action and control are somewhat limited, the Commission is often not able to prevent the negative effects, on commercial policy, on Community policies and on own resources, of these discrepancies which arise from the non-observance of the arrangements by those participants directly involved.

With regard to own resources, it should be noted that the revenue not collected as a result of these discrepancies has to be made up in another way; to some extent, this loss of revenue is balanced out and borne by the rest of the European taxpayers rather than by the importers who should normally have paid them.

## **7. The future of preferential tariff arrangements**

### **7.1 *Preparation for enlargement, and its impact on preferential tariff arrangements***

Pressure on these arrangements has increased in recent years, due to the necessary extension or reinforcement of preferential measures granted to countries applying for membership.

Preparation for enlargement is a special opportunity to encourage these countries, both at the level of the traders and the authorities, to apply correctly the procedures for managing and controlling these preferences within a cooperation framework with the Union. The future will be better prepared for these countries, the sooner these procedures are put into use.

In so doing, by managing the arrangements, and by obtaining real means of appraisal to act or react according to the circumstances and in transparency, the Union will be able to determine the suitable conditions for a progressive transition ensuring these countries full participation in the Union.

### **7.2 *Reduced tariff advantages for certain products***

This reduction comes from the general lowering of CCT-duties, as a result of the conclusions of the Uruguay Round, the application of which comes to an end in 2004. With this general reduction in tariff advantages, products will attract duty of less than two or three per cent, and application for the preferential arrangements will eventually be of little interest. Of course, the preferential arrangements will still be attractive for sensitive products with higher duties, such as agricultural and fishery products or textile products and shoes.

This gives an indication of the need to adapt the rules of origin to the mid-term and long-term situations. However, for the time being, tariff reductions granted by the Community are still considerably attractive. It is therefore advisable to define the means which will enable these instruments to continue playing their *rôle* fully.

### 7.3 *Appropriateness of the rules of origin in the new context of world trade*

It could be asked whether there is a link between the amount of discrepancies and the way that the preferential rules of origin are structured. In its Communication of 16 April 97, the Commission gave an initial breakdown in this respect and proposed guidelines for improving the situation, notably by targeting the more coherent use of derogations and the simplification of these same rules.

### 8. **Options for the Commission**

On the problem of discrepancies, the option of expanding the concept of good faith, thereby sheltering unscrupulous traders and penalizing the traders who abide by the rules of the game, is clearly not acceptable. The Commission considers that the only possible option is to improve the way that the arrangements work, in the interests of all of the parties concerned. As for the past, that can be dealt with only under the legislation in force at the time.

This option is fully in line with the declaration that the Commission put in the Minutes of the Council Session of 28 May 1996, an extract of which is given below :

The Commission "... *takes due note of the Council's request to carry out this study.*

*It observes nevertheless that the thrust of the Council's request would lead to the substantial amendment of current regulations.*

*The Commission draws attention to the role, under current law, of importers who, as pointed out by the Commission in its Work Programme (COM (96) 17) on the fight against irregularities and fraud, and in accordance with the decisions of the European Court of Justice, remain, in principle, legally and financially liable.*

*However, it will examine this request in a constructive manner, and in the light of the recent decisions of the Court, while bearing in mind the criteria for the smooth operation of Community policies and giving priority to the strengthening of the coherence of the rules and of the current provisions, as well as the need to protect the financial interests of the Union."*

### 9. **Actions necessary for remedying the discrepancies in preferential tariff arrangements**

Actions already taken by the Commission and by the Member States should help to rectify the situation, but will not be enough, and other actions will have to be contemplated.

To a large extent, such actions should be based, in particular on the various programmes of work or action, for example in the customs field ("Customs 2000") aimed, amongst other things, at standardizing and clarifying the conditions for applying the common commercial policy and protecting the financial interests of the Community.

## **9.1 *Actions under development***

### **9.1.1 *Modernization of the preferential rules of origin***

At the Commission's instigation, the Community has, for a number of years, been overhauling, unifying and simplifying the preferential rules of origin. This is a result of the explosion in the number of conventional preferential agreements since the start of the decade, and of the need to make the rules more accessible and more transparent.

Since 1 July 1997, the preferential rules of origin applied by the Community in dealings with Europe (EEA, EFTA, CEECs, i.e. more than thirty countries) are identical. The same text has been proposed to the twelve Mediterranean countries, and some of them are about to accept it.

This action of standardizing and improving the preferential rules of origin is based, *inter alia*, on simplification of the documentation (abolition of the EUR.2 and APR.1, and general use of invoice declarations), on the use of largely-standardised wording (for example, for the basic definitions, such as "wholly obtained"), or on the promotion of a new type of relation with traders (generalization of the concept of "approved exporters").

Moreover, where it was possible, some of these new rules have also been incorporated into the ACP/OCT Conventions, as well as into the GSP.

### **9.1.2 *Attributing the management of the preferential tariff arrangements to the customs administrations of the beneficiary countries***

The main task of the administrations of the Member States in this matter lies in checking certificates of origin and their content, both at import and at export. It is not a question of checking every certificate, but to carry out checks on the basis of risk-analysis techniques. These administrations also have the task of issuing binding origin information, which has been part of the Community customs regulations since the beginning of 1997.

Clearly, the workload of these administrations has increased as a result, but such is the price for the smooth operation of a system of preferential rules of origin. Just as the Community customs administrations take full responsibility for managing the rules of origin, so it seems essential that their counterparts in partner countries do the same, provided that these customs administrations really do have the necessary power and competence, and especially that they make real use of them, in particular with regard to controlling traders. This would allow full use of the knowledge of customs law, common to all customs administrations. In large part, the customs law is harmonized at international level (classification, value, etc.). Action in this direction is ready to be started.

### **9.1.3 *Raising the awareness of the beneficiary countries***

The first preferential arrangements go back to the 'Seventies. Since then, the Community has made great efforts to explain what the preferential origin rules mean, how they should be applied and why greater administrative cooperation is necessary.

These acts are intended in particular for the central authorities of the third countries concerned, and then proceed to training activities for the people responsible for managing and applying the origin rules in practice. During the last three years, about twenty such seminars were organized by the Community in various parts of the world.

In addition, the Community has called on specialized organizations to help these countries gain a better grasp of the rules and differentiate between the Community rules and those that these same countries have also to apply with respect to other donor-countries of preferences.

Moreover, although it is not their *raison d'être*, the Community fact-finding missions can also have indirect teaching effects, in the same way as information seminars organized in these countries, by helping the local administrations improve their knowledge as regards control.

Lastly, since 1994, the Commission has organized regular meetings (ten or so) within the framework of the Customs Code Committee (Origin Section), open to EFTA/CEEC/Baltic countries, as well as to all of the Mediterranean countries.

#### *9.1.4 Controlling the practical application of preferential arrangements in the Community*

During recent years, several control-and-monitoring campaigns on origin have taken place in the Member States, particularly concerning preferential arrangements, in order to examine all of the aspects of the application of the preferential rules of origin, both on imports and on exports.

These controls, carried out during the years 1992-1995, gave rise to the observation of various anomalies; the most serious being as follows:

- the rules of origin are not always interpreted uniformly by the Member States;
- the customs of some Member States are very decentralized; therefore, the overall examination of fraud is not always carried out centrally;
- the simplified procedures allow greater flexibility for the benefit of the companies, but at the same time limit the possibilities of control by the customs authorities;
- it is often difficult, within the intended deadline, to obtain satisfactory answers to retrospective controls of the evidence of the origin; this has created enormous difficulties for the collection of outstanding custom duties.

These control measures are additional to other similar campaigns carried out by the Commission within the framework of the follow-up to the annual reports of the Court of Auditors.

## 9.2 *The mechanisms : state of play and loopholes*

### 9.2.1 *Existing mechanisms*

- The agreements all contain a protocol on mutual assistance in customs matters, applicable within the framework of prevention of and fight against fraud, as well as the rules of origin contained in those agreements.
- Provision for intra-Community co-ordination and cooperation on customs matters (mutual assistance, circulation of information, etc.) is made by a horizontal measure (Regulations 1468/81 and 515/97)
- In both autonomous arrangements (GSP, former Yugoslav Republics, etc.) and in the conventional agreements (Europe Agreements, EFTA, etc.), there is a verification procedure for cases of reasonable doubt. If there is no reply within 10 months, or the reply is insufficient, the preferential treatment is refused.
- In the framework of the GSP, when it appears that there has been an infringement of the rules, the Union has the possibility to carry out investigations in collaboration with the authorities of the beneficiary country.
- With regard to the GSP, Regulations 3281/94 and 1256/96 (Article 9) provide for the possibility of withdrawing preferential treatment in cases of fraud or in the absence of administrative cooperation.
- In conventional agreements, difficulties, between the customs administrations of the two parties, in the application of the verification procedures are raised at the Association Committee, without prejudice to national provisions applicable to infractions

### 9.2.2 *Loopholes and missing provisions*

- With regard to the Union's internal situation, there is no legally-binding Community instrument to ensure that Member States do not apply different safeguard measures, in cases of reasonable doubt, with the resulting possibility of trade circumvention.
- With regard to beneficiary countries, firstly in the framework of the GSP, use has never been made of the provisions contained in Article 9, in cases where there has been a lack of administrative cooperation, because they are onerous and their application is dependent on the Member States. Furthermore, there are no provisions to enable the rapid implementation, by the Commission, of intermediate and provisional measures which could be adapted to the scale and specific nature of the different situations encountered.
- In the case of other preferential arrangements, again there are no legal provisions enabling the Commission or the Member States to adopt appropriate provisional measures and there are also no provisions similar to those contained in Article 9 of the GSP.



Therefore :

- In the framework of conventional agreements, no provisions are foreseen in cases where the Association Committee is unable to resolve differences of opinion.

- Likewise, in this conventional context, it is not always possible to confirm whether the provisions have been fully implemented in a partner country (as in the case of televisions from Turkey), or whether the third-country customs administrations really have the legal competence to check the originating status of products covered by certificates of origin which they have issued; there are even cases where they have claimed they were unable to carry out such controls (as in the case of orange-juice from Israel).

### **9.3 *Actions to be taken***

Restoring confidence in the preferential tariff arrangements involves all of the parties who use and manage these arrangements, whether inside the Union or in third countries, or whether administrations or traders.

In the first instance, this step should be based on an initial reminder, to all of the players, of their responsibilities, rights and obligations, and on abidance by the existing provisions, so that the situation can be rectified and sanctions can be applied for any violations if these obligations are not met. However, the Union should obtain additional instruments necessary to compensate for the weaknesses in the current system.

The Council and the Commission should cooperate closely to define the priorities for such actions and to agree on the time-table for carrying them out.

The following are, essentially, the actions to be taken :

#### **9.3.1 *Promotion of a more rigorous application of the existing provisions :***

- *by applying the rules strictly* and by not exceeding the required time-limits, in the event of lack of administrative cooperation, or by requiring the invalidation of certificates and by applying stronger sanctions against states which do not meet their general obligations;
- with regard to conventional agreements, by exploiting resolutely *all means of dialogue and all existing mechanisms* in order to convince the beneficiary countries to take all of the appropriate measures when discrepancies are observed in the application of these arrangements;
- by encouraging the Member States to make full use of the *system for communicating to the Commission all the irregularities* observed or suspected by the Member States;
- by making sure that *the measures and controls set up by the contracting countries*, to which they commit themselves at the time of the signature of an agreement, are effective;

- by requiring, as far as possible, our partners to provide copies of their national legislation and, if necessary, by helping them to set it up, in order to make sure that they will be able to have *the internal legal means of satisfying the obligations resulting from the agreements*;

### **9.3.2 Lessening the impact of loopholes by means of appropriate provisions :**

- by improving Community texts, through an across-the-board measure, *with the aim of standardizing actions taken by the Member States* for the recovery of duty or for taking precautionary measures for duty, as a result of observations made, amongst other things, in the findings of a Community fact-finding mission ;
- by using systematically an *early-warning system for importers* whenever a justified doubt concerning origin is established, so that the plea of good faith cannot be invoked unduly;
- by providing for the possibility of *monitoring actions in the beneficiary countries* by introducing into the texts the possibility for the Community to carry out controls in these countries regarding the implementation of the origin rules provided for in the agreements;
- by obtaining horizontal legal powers, making it possible to take uniform and rapid action throughout the Community with respect to third countries not respecting their obligations, in particular by introducing the possibility of adopting *provisional measures* (for example: guarantee for duties, temporary withdrawal of preferences, temporary quantitative controls, etc.) at the initiative of either the Commission or the Member States, subject to confirmation at a later date by the Council; these provisions should take account, according to the various preferential arrangements concerned, of the obligations resulting from the Community's international commitments;
- by imposing responsibility on the authorities of the GSP beneficiary countries by effective application of the provisions of Article 9 of the GSP Regulations (which can lead to the *total or partial suspension of the arrangements*) in the event of fraud or failure with regard to the rules for administrative cooperation;
- by introducing, into the text of the preferential arrangements, the possibility of *providing, for example, for temporary restrictive measures or the withdrawal of some preferences*. Such provision could, if need be, lead to the full withdrawal of the arrangements, in proportion to the size and seriousness of the case concerned, and in relation to the Community's international commitments.

### **9.3.3 Strengthening the provisions with supplementary measures :**

- by organizing, for the representatives of the beneficiary countries, *information actions* on administrative cooperation;

- by adopting, for national administrations and operators, a *training and information programme* in the various third countries, as well as in the Member States of the Community;
- by the regular organisation of *working meetings*, within the framework of the Customs Code Committee enlarged to include groups of beneficiary countries and within the framework of the joint customs cooperation committees, with a view to examining the conditions for applying these arrangements, their future development and desirable improvements;
- by *imposing responsibility on the traders and by personalizing* their relations with the customs authorities;
- by including them in the distribution-list for the *Explanatory Notes* concerning preferential agreements and arrangements;
- by drawing up a handbook, specially for them, specific to the various arrangements (ACP / CEECs / GSP / Mediterranean);
- by making available to third countries and the general public useful *information* (legislation, handbooks, binding origin information issued in the Community) on *modern computer media* (diskettes, CD-ROM, Internet);
- by publishing a notice in the Official Journal of the European Communities, C-series, encouraging traders to apply for *binding origin information* for the goods which they import, while drawing their attention to the risks arising from the acceptance of false certificates of origin.

#### 9.3.4 *Preparing for the future :*

- by putting into effect the actions envisaged in the "*Communication on the improvement of Community market-access for the least-developed countries*" and in particular, wherever justified, by enacting the derogations from the origin rules, as provided for by current regulations;
- by encouraging the setting up of *regional-cooperation* structures, in particular those allowing cooperation, including investment, between advanced and less advanced developing countries; by encouraging the use of regional cumulation within this framework;
- by preparing the Community reflection on *world harmonization* of GSP origin rules, announced by the UNCTAD as an action in the next few years;
- by *simplifying the system of preferential rules of origin* to take account of the future context of the world trade following the Uruguay Round;
- by considering, in accordance with the results of the above policy for encouraging regional cooperation, the future need for an *exemption as generalised as possible for the least-developed countries* and countries at a similar level of development.

## Annex I

### (a) List of agreements and other preferential tariff arrangements (1.7.1997)

ORIGIN	
<i>EEA</i>	
94/1/EEC (OJ L1, 03/01/94)	Council & Commission Decision of 13 December 1994 - Protocol 4 to the EEA Agreement on rules of origin
EEA Decision (OJ L86, 20/4/95)	Decision of the EEA Council No 1/95 of 10 March 1995 on the entry into force of the Agreement on the EEA for the Principality of Liechtenstein.
EEA Decision (OJ L21, 23/1/97)	Decision of the EEA Joint Committee No 71/96 of 22 November 1996 amending Protocol 4 to the EEA Agreement, on rules of origin.
<i>Norway</i>	
not yet published	Decision 1/96 of the EEC-Norway Joint Committee of 20 December 1996 amending Protocol 3 to the Agreement between the European Economic Community and the Kingdom of Norway concerning the definition of the concept of "originating products" and methods of administrative cooperation.
<i>Iceland</i>	
not yet published	Decision 1/96 of the EEC-Iceland Joint Committee of 19 December 1996 amending Protocol 3 to the Agreement between the European Economic Community and the Republic of Iceland concerning the definition of the concept of "originating products" and methods of administrative cooperation
<i>Switzerland</i>	
not yet published	Decision 1/96 of the EEC-Switzerland Joint Committee of 19 December 1996 amending Protocol 3 to the Agreement between the European Economic Community and the Swiss Confederation concerning the definition of the concept of "originating products" and methods of administrative cooperation.
<i>Poland</i>	
not yet published	Decision no 1/97 of the Association Council between the European Communities and their Member States, of the one part and Poland of the other part, of 30 June 1997 amending Protocol 4 to the Europe agreement establishing an association between the European Communities and their Member States, of the one part and Poland of the other part
<i>Hungary</i>	
97/230/ECSC, EC, Euratom (OJ L92, 7/4/97)	Decision no 3/96 of the Association Council between the European Communities and their Member States, of the one part and the Republic of Hungary of the other part, of 28 December 1996 amending Protocol 4 to the Europe agreement establishing an association between the European Communities and their Member States, of the one part and the Republic of Hungary of the other part
<i>Czech Republic</i>	
96/751/Euratom, ECSC, EC  (OJ L 343, 31/12/96)	Decision no 3/96 of the Association Council between the European Communities and their Member States, of the one part and the Czech Republic of the other part, of 29 November 1996 amending Protocol 4 to the Europe agreement establishing an association between the European Communities and their Member States, of the one part and the Czech Republic of the other part

<b>Slovak Republic</b> (not yet published)	Decision no 2/97 of the Association Council between the European Communities and their Member States, of the one part and the Slovak Republic of the other part, of 9 January 1997 amending Protocol 4 to the Europe agreement establishing an association between the European Communities and their Member States, of the one part and the Slovak Republic of the other part
<b>Romania</b> 97/127/ECSC, EC, Euratom (OJ L54, 24/2/97)	Decision no 1/97 of the Association Council between the European Communities and their Member States, of the one part and Romania of the other part, of 31 January 1997 amending Protocol 4 to the Europe agreement establishing an association between the European Communities and their Member States, of the one part and Romania of the other part
<b>Bulgaria</b> 97/302/ECSC, EC, Euratom (OJ L134, 24.5.1997)	Decision no 1/97 of the Association Council between the European Communities and their Member States, of the one part and the Republic of Bulgaria of the other part, of 6 May 1997 amending Protocol 4 to the Europe agreement establishing an association between the European Communities and their Member States, of the one part and the Republic of Bulgaria of the other part.
<b>Latvia</b> 97/268/ECSC, EC, Euratom (OJ L 111, 28.4.1997)	Decision no 1/97 of the Joint Committee between the European Communities, of the one part and the Republic of Latvia of the other part, of 20 March 1997 amending Protocol 3 to the Agreement on free-trade and trade-related matters between the European Community, the European Atomic Community and the European Coal and Steel Community, of the one part, and the Republic of Latvia of the other part
<b>Lithuania</b> 97/309/ECSC, EC, Euratom (OJ L 136, 27.5.1997)	Decision no 1/97 of the Joint Committee between the European Communities, of the one part and the Republic of Latvia of the other part, of 25 February 1997 amending Protocol 3 to the Agreement on free-trade and trade-related matters between the European Community, the European Atomic Community and the European Coal and Steel Community, of the one part, and the Republic of Lithuania of the other part
<b>Estonia</b> 97/267/ECSC, EC, Euratom (OJ L 111, 28.4.1997)	Decision no 1/97 of the Joint Committee between the European Communities, of the one part and the Republic of Estonia of the other part, of 6 March 1997 amending Protocol 3 to the Agreement on free-trade and trade-related matters between the European Community, the European Atomic Community and the European Coal and Steel Community, of the one part, and the Republic of Estonia of the other part
<b>Slovenia</b> 96/752/Euratom, ECSC, EC  (OJ L 344, 31/12/96)	Council and Commission Decision of 25 November 1996 on the conclusion of the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Republic of Slovenia, of the other part Protocol 4 concerning the definition of the concept of "originating products" and methods of administrative cooperation
<b>Faroe Islands</b> 97/126/EC (OJ L 53, 22/2/97)	Council Decision of 6 December 1996 - Protocol 3 to the Agreement with the Faroe Islands concerning the definition of the concept of "originating products" and methods of administrative cooperation.

<b><i>Ceuta and Mellila</i></b>	
88/1135/EEC (OJ L 114, 02/05/88)	Council Regulation of 7 March 1988 concerning the definitions of the concept of originating product and methods of administrative cooperation between the EEC, Ceuta and Mellila.
<b><i>ACP</i></b>	
90/0523/EEC (OJ L 290, 30/10/90)	Council Decision of 8 October 1990 on the procedure concerning derogations from the origin rules set out in Protocol No 1 to the 4th ACP/EEC Convention.
91/400/ECSC, EEC (OJ L 229, 17/08/91)	Decision of the Council and the Commission of 25 February 1991 on the conclusion of the Fourth ACP-EEC Convention.
93/514/EEC (OJ L 242, 28/09/93)	Decision 2/93 of the ACP/EEC Customs Co-operation Committee derogating from the concept of "originating products" to take account of the special situation of Mauritius with regard to canned tuna.
93/514/EEC (OJ L 242, 28/09/93)	Decision 3/93 of the ACP/EEC Customs Co-operation Committee derogating from the concept of "originating products" to take account of the special situation of Senegal with regard to canned tuna.
94/18/EC (OJ L 12, 15/01/94)	Decision 4/93 of the ACP/EEC Customs Co-operation Committee derogating from the concept of "originating products" to take account of the special situation of the Seychelles with regard to canned tuna.
94/386/EC (OJ L 176, 09/07/94)	Decision 1/94 of the ACP/EEC Customs Co-operation Committee derogating from the concept of "originating products" to take account of the special situation of Fiji with regard to certain garments.
94/946/EC (OJ L 371, 31/12/94)	Decision 2/94 of the ACP/EEC Customs Co-operation Committee modifying Decision No 4/93 derogating from the concept of "originating products" to take account of the special situation of the Seychelles with regard to canned tuna.
96/557/EC (OJ L 243, 24/09/1996)	Decision 1/96 of the ACP/EEC Customs Co-operation Committee of 02.09.1996 derogating from the concept of "originating products" to take account of the special situation of the Kingdom of Swaziland with regard to its manufacturing of yarn (HS Code 5402.52 and 5402.62).
96/558/EEC (OJ L 243, 24/09/96)	Decision 2/96 of the ACP/EEC Customs Co-operation Committee of 02.09.1996 derogating from the concept of "originating products" to take account of the special situation of Fiji, Mauritius and Senegal regarding the production of canned tuna and tuna loins.
<b><i>OCT</i></b>	
91/0482/EEC (OJ L 263, 19/09/91)	Council Decision of 25 July 1991 on the association of overseas countries and territories with the EEC.
94/724/EC (OJ L 288, 09/11/94)	Commission Decision of 31 October 1994 derogating from the definition of the concept of "originating products" to take account of the special situation of Montserrat with regard to goods of CN 8536 90 10.
95/375/EC (OJ L 222, 20/9/95)	Commission Decision of 8 September 1995 amending Decision 94/724/EC derogating from the definition of the concept of "originating products" to take account of the special situation of Montserrat with regard to connections and contact elements for wire and cables falling within CN 8536 90 10.
96/529/EC (OJ L 223, 04/09/1996)	Commission Decision of 29 July 1996 derogating from the definition of the concept of "originating products" to take account of the special situation of Saint Pierre and Miquelon with regard to frozen fillets of cod of CN code 0304 20.
<b><i>Cyprus</i></b>	
73/1246/EEC (OJ L 133, 21/05/73)	Council Decision of 14 May 1973 concerning the conclusion of an Agreement establishing an Association between EEC and the Republic of Cyprus.
77/2907/EEC (OJ L 339, 28/12/77)	Council Decision of 20 December 1977 on the conclusion of the Additional Protocol to the Agreement establishing an association between the EEC and the Republic of Cyprus.

87/607/EEC (OJ L 393, 31/12/87)	Council Decision of 21 December 1987 on the conclusion of the Protocol laying down the conditions and procedures for the implementation of the second stage of the Agreement establishing an Association between the EEC and the Republic of Cyprus and adapting certain provisions of the Agreement.
88/4264/EEC (OJ L 378, 31/12/88)	Council Regulation of 13 December 1988 on the application of Decision 1/88 of the EEC/Cyprus Association Council amending, as a result to the introduction of the HS, the protocol defining "originating products" and administrative co-operation.
89/2428/EEC (OJ L 230, 08/08/89)	Council Regulation of 28 July 1989 on the application of Decision No 1/89 of the EEC-Cyprus Association Council derogating from the provisions concerning the definition of the concept of "originating products" laid down in the agreement establishing an association between the EEC and the Republic of Cyprus.
90/3203/EEC (OJ L 307, 07/11/90)	Council Regulation of 22 October 1990 on the application of Decision 4/90 of the EEC/Cyprus Association Council again amending Articles 6 and 17 of the Protocol concerning the definition of the concept of "originating products" and methods of administrative co-operation.
95/576/EC (OJ L 326, 30/12/95)	Council Decision No 1/95 of the EC-Cyprus Association Council of 22 December 1995 derogating from the provisions concerning the definition of the concept of "originating products" laid down in the agreement establishing an association between the EEC and the Republic of Cyprus.
95/3056/EC (OJ L 326, 30/12/95)	Council Regulation of 30 October 1995 on the implementing methods for decision 1/95 of the EEC/Cyprus Association Council derogating from certain provisions laid down in the Association Agreement.
<b>Malta</b>	
76/939/EEC (OJ L 111, 28/04/76)	Council Regulation of 23 April 1976 concluding the Financial Protocol and the Protocol laying down certain provisions relating to the Agreement establishing an association between the EEC and Malta.
89/2229/EEC (OJ L 217, 27/07/89)	Council Regulation of 18 July 1989 on the application of the Decision No 1/89 of the EEC-Malta Association Council amending, as a result of the introduction of the HS, Protocol No 2 concerning the definition of the concept of "originating products" and methods of administrative co-operation.
90/2175/EEC (OJ L 198, 28/07/90)	Council Regulation of 23 July 1990 on the application of Decision 2/90 of the EEC/Malta Association Council again amending Articles 6 and 17 of the Protocol concerning the definition of the concept of "originating products" and methods of administrative co-operation.
91/3451/EEC (OJ L 327, 29/11/91)	Council Regulation of 25 November 1991 implementing the joint declaration attached to Decision 1/89 of the EEC/Malta Association Council.
91/607/EEC (OJ L 331, 03/12/91)	Decision No 1/91 of the EEC-Malta Association Council of 25 November 1991 amending Annex III of Protocol No 2 concerning the definition of the concept of "originating products" and methods of administrative co-operation.
<b>Israel</b>	
96/206/ECSC, EC  OJ. L71, 20/03/96)	Decision of the Council and the Commission of 22 December 1995 on the conclusion of an Interim Agreement on trade and trade-related matters between the European Community and the European Coal and Steel Community, of the one part and the State of Israel on the other part Protocol No 3 concerning the definition of the concept of "originating products" and methods of administrative cooperation

<i>Algeria</i>	
78/2210/EEC (OJ L 263, 27/09/78)	Council Regulation of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria Protocol No 2 concerning the definition of the concept of "originating products" and methods of administrative cooperation
<i>Egypt</i>	
78/2213/CEE (OJ L 266, 27/09/78)	Council Regulation of 26 September 1978 on the conclusion of the Cooperation Agreement between the European Economic Community and the Arab Republic of Egypt Protocol No 2 concerning the definition of the concept of "originating products" and methods of administrative cooperation
89/3171/EEC (OJ L 310, 26/10/89)	Council Regulation of 16 October 1989 on the application of Decision No 1/89 of the EEC - Egypt Cooperation Council amending, as a consequence of the introduction of the harmonised system, Protocol No 2 concerning the definition of the concept of "originating products" and methods of administrative cooperation
(OJ L 310, 26/10/89)	Decision No 1/89 of the EEC - Egypt Cooperation Council, of 30 August 1989, amending, as a consequence of the introduction of the harmonized system, Protocol No 2 concerning the definition of the concept of "originating products" and methods of administrative cooperation
89/3172/EEC (OJ L 310, 26/10/89)	Council Regulation of 16 October 1989 on the application of Decision No 2/89 of the EEC - Egypt Cooperation Council amending, on account of the accession of Spain and Portugal to the European Communities, the Protocol concerning the definition of the concept of "originating products" and methods of administrative cooperation
(OJ L 310, 26/10/89)	Decision No 2/89 of the EEC - Egypt Cooperation Council, of 30 August 1989, amending, on account of the accession of Spain and Portugal to the European Communities, the Protocol concerning the definition of the concept of "originating products" and methods of administrative cooperation
<i>Lebanon</i>	
78/2214/EEC (OJ L 267, 27/09/78)	Council Regulation of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the Lebanese Republic Protocol No 2 concerning the definition of the concept of "originating products" and methods of administrative cooperation
80/2742/EEC (OJ L 286, 29/10/80)	Council Regulation of 27 October 1980 on the application of EEC-Lebanon Cooperation Council Decision No 3/80 amending the Protocol on the definition of the concept of originating products and methods of administrative cooperation to the Cooperation Agreement between the European Economic Community and the Lebanese Republic
Decision 3/80 (OJ L 286, 29/10/80)	Decision No 3/80 of the EEC-Lebanon Cooperation Council amending the Protocol on the definition of the concept of originating products and methods of administrative cooperation to the Cooperation Agreement between the European Economic Community and the Lebanese Republic
<i>Morocco</i>	
78/2211/EEC (OJ L 264, 27/09/78)	Council Regulation of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco Protocol No 2 concerning the definition of the concept of "originating products" and methods of administrative cooperation



<b>Syria</b>	
78/2216/EEC  (OJ L269, 27/09/78)	Council Regulation of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the Syrian Arab Republic Protocol No 2 concerning the definition of the concept of "originating products" and methods of administrative cooperation
<b>Tunisia</b>	
78/2212/EEC  (OJ L265, 27/09/78)	Council Regulation of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the Republic of Tunisia Protocol No 2 concerning the definition of the concept of "originating products" and methods of administrative cooperation
79/0561/EEC  (OJ. L80, 31/03/79)	Council Regulation of 5 March 1979 on the application of EEC-Tunisia Cooperation Council Decision No 3/78 amending the Protocol on the definition of the concept of originating products and methods of administrative cooperation to the Cooperation Agreement between the European Economic Community and the Republic of Tunisia
OJ L80, 31.03.79	Decision No 3/78 of the EEC-Tunisia Cooperation Council amending the Protocol on the definition of the concept of originating products and methods of administrative cooperation to the Cooperation Agreement between the European Economic Community and the Republic of Tunisia
89/3900/EEC  (OJ. L375, 23/12/89)	Council Regulation of 4 December 1989 on the application of Decision No 2/89 of the EEC-Tunisia Cooperation Council amending, on account of the accession of Spain and Portugal to the European Communities, the Protocol concerning the definition of the concept of "originating products" and methods of administrative cooperation
(OJ L 375, 23/12/89)	Decision No 2/89 of the EEC-Tunisia Cooperation Council amending, on account of the accession of Spain and Portugal to the European Communities, the Protocol concerning the definition of the concept of "originating products" and methods of administrative cooperation
<b>Jordan</b>	
78/2215/EEC  (OJ L 268, 27/09/78)	Council Regulation of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the Hashemite Kingdom of Jordan Protocol No 2 concerning the definition of the concept of "originating products" and methods of administrative cooperation
91/3579/EEC  (OJ. L345, 14/12/91)	Council Regulation of 25 November 1991 on the application of Decision No 3/91 of the EEC-Jordan Cooperation Council amending, as a consequence of the introduction of the harmonized system, Protocol 2 concerning the definition of the concept of originating products and methods of administrative cooperation
(OJ L 345, 14/12/91)	Decision No 3/91 of the EEC-Jordan Cooperation Council amending, as a consequence of the introduction of the harmonized system, Protocol 2 concerning the definition of the concept of originating products and methods of administrative cooperation
91/3580/EEC  (OJ. L345, 14/12/91)	Council Regulation of 25 November 1991 on the application of Decision No 4/91 of the EEC-Jordan Cooperation Council amending, on account of the accession of Spain and Portugal to the European Communities, the Protocol concerning the definition of the concept of originating products and methods of administrative cooperation
(OJ. L345, 14/12/91)	Decision No 4/91 of the EEC-Jordan Cooperation Council amending, on account of the accession of Spain and Portugal to the European Communities, the Protocol concerning the definition of the concept of originating products and methods of administrative cooperation

<i>Palestine</i>	
not yet published	Council Decision concerning the conclusion of an interim Association Agreement on trade and cooperation between the EC and the Palestine Authority
<i>GSP</i>	
93/2454/EEC  (OJ L 253, 11/10/93 )  Modified by: 97/12/EC (OJ L 9, 13/1/97)	Commission Regulation of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (Articles 67 to 97 relating to the definition of the concept of "originating products" and methods of administrative cooperation applicable to the importation into the Community of products originating in the developing countries
<i>Bosnia-Herzegovina and Croatia; Federal Republic of Yugoslavia; Former Yugoslav Republic of Macedonia</i>	
93/2454/EEC  (OJ L 253, 11/10/93 )  Modified by: 97/12/EC (OJ L 9, 13/1/97)	Commission Regulation of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (Articles 98 to 123 relating to the definition of the concept of "originating products" and methods of administrative cooperation applicable to the importation into the Community of products originating in the Republics of Bosnia-Herzegovin and Croatia; Federativ Republic of Yugoslavia; Former Yugoslav Republic of Macedonia and Territories of the West Bank and the Gaza Strip

**Annex I**

(b) List of customs unions to which the Community is party

<b>Turkey</b>	
64/732/EEC (OJ L 217, 29/12/64)	Council Decision of 23 December 1963 concerning the conclusion of an agreement establishing an Association between the EEC and Turkey
Reg 2760/72	Council Decision of 23 November 1970 on the conclusion of the Additional Protocol to the Agreement establishing an association between the EEC and Turkey
(OJ L 59, 5/3/72)	Decision No 4/72 of the Association Council on the definition of the concept of "originating products" from Turkey for implementation of Chapter I of Annex No 6 of the Additional Protocol to the Ankara Agreement
(OJ L 142, 4/6/75)	Decision No 1/75 of the Association Council amending Decision No 4/72 of the Association Council on the definition of the concept of "originating products" from Turkey for implementation of Chapter I of Annex No 6 of the Additional Protocol to the Ankara Agreement
96/142/EEC (OJ L 35, 13/2/96)	Decision No 1/95 of the Association Council EC-Turkey on implementing the final phase of the Customs Union
96/488/EEC (OJ L 200, 9.8.1996)	Decision No 1/96 of the EC-Turkey Customs Cooperation Committee of 20 May 1996 laying down detailed rules for the application of Decision No 1/95 of the EC-Turkey Association
96/528/ECSC  (OJ L 227, 07/09/96)	Commission Decision of 29 February 1996 on the conclusion of an Agreement between the European Coal and Steel Community and the Republic of Turkey on trade in products covered by the Treaty establishing the European Coal and Steel Community Protocol I on rules of origin
<b>Andorra</b>	
90/0680/EEC (OJ L 374, 31/12/90)	Council Decision of 26 November 1990 concerning the conclusion of an agreement between the EEC and Andorra. <i>Appendix concerning the definition of 'originating products' and methods of administrative cooperation</i>
92/116/EEC (OJ L 43, 19/2/92)	Decision no 7/91 of the Joint Committee of 31 December 1991 derogating from the definition of originating products to take account of the particular situation of the Principality of Andorra in the field of its production of certain agricultural goods
91/3915/EEC  (OJ L 372, 31/12/91)	Council Regulation of 19 December 1991 laying down rules for the application of Decision 7/91 of the EEC/Andorra Joint Committee to allow for derogation from origin rules in certain agricultural goods.
95/502/EC (OJ L 288, 1/12/95)	Decision no 2/95 of the Joint Committee of 6 November 1995 derogating from the definition of originating products to take account of the special situation affecting cattle farming in the Principality of Andorra
96/465/EC (OJ L 192, 2/8/96)	Decision no 3/96 of the Joint Committee modifying Decision no 7/91 of the Joint Committee of 31 December 1991 derogating from the definition of originating products to take account of the particular situation of the Principality of Andorra in the field of its production of certain agricultural goods
<b>San Marino</b>	
92/561/EEC (OJ L 359, 9/12/92)	Council Decision of 27 November 1992 concerning the conclusion of an interim agreement on trade and customs union between the EEC and the republic of San Marino.

Annex I

(c) Internal measures

<i>Internal measures</i>	
83/3351/EEC (OJ L 339, 05/12/83)	Council Regulation of 14 November 1993 on the procedure to facilitate the issue of certificates EUR 1 and the making out of forms EUR 2 under the provisions covering preferential trade between the EEC and certain countries.
91/1911/EEC (OJ L171, 29/06/91)	Council Regulation of 26 June 1991 concerning the application of Community provisions to the Canary Islands.

## ANNEX II

### 1. Number of cases and financial impact

The reports produced by the Commission on the fight against fraud and irregularities for the years 1995 and 1996 include numerous cases which illustrate this problem. A number of general aspects must however be mentioned :

Cases of irregularity and fraud involving the preferential regimes have an impact on the Communities' traditional own resources. These cases are either dealt with by the Member States and must then be communicated to the Commission on the basis of Regulation no 1552/89 or dealt with by the Commission in cooperation with the Member States (mutual assistance on the basis of Regulations nos 1468/81 and 515/97). Given that these irregularities often involve several Member States and that the investigations regularly require on the spot inspections in a non member country, it is the cases which have a higher budgetary impact which are in general dealt with by the Commission in cooperation with the Member States.

During the period 1989 to 1995, the Member States communicated 796 cases of irregularity affecting traditional own resources and involving the preferential regimes. The overall budgetary impact for these cases alone was ecu 111 million.

For the year 1995, the Member States communicated to the Commission 322 cases of irregularity involving the preferential regimes. The overall budgetary impact of these cases was ecu 52.6 million. This corresponds to 18% of all the cases of irregularity communicated in the area of own resources (see graph I). (As communications in this area are made on a 6 monthly basis, the full figures for 1996 are not yet available).

In 1996 the Commission handled, in cooperation with the Member States in the framework of mutual assistance, 39<sup>1</sup> cases involving the preferential regimes. For these cases alone the *estimated* global impact on traditional own resources (customs duties and anti-dumping duties) was ecu 220 million<sup>2</sup>. This amount corresponds to 49% of the estimated total number of cases of irregularity handled by the Commission in 1996 in the framework of mutual assistance (see graph II) and to 47% of the estimated total number of cases involving traditional own resources handled in 1996 by the Commission (see graph I).

Of course, these figures only indicate cases of irregularity actually detected either by a Member State (and notified to the Commission), or by the Commission. It is therefore only the visible part of the iceberg.

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<sup>1</sup> New cases or new investigations

<sup>2</sup> Almost half of this amount (104 Mecu) concerns duties which have been formally *identified* and are therefore recoverable.

This is all the more so since the Member States do not fully comply with their obligations which should provide a full picture of the situation regarding detected cases of irregularity. However, the obligations for the Member States to inform the Commission on the position regarding recovery procedures in progress were strengthened with the most recent amendment of Regulation 1552/89<sup>1</sup>. But, up to now, the Member States have not informed the Commission on a systematic basis if their recovery efforts have been successful. Experience and practice show however that the rate of recovery by Member States remains low and is only about 10%.

## 2. Products concerned

Cases of irregularity involving preferential regimes concern the following products :

a) Cases communicated by the Member States in 1995 (see graph III) :

	Number of cases	Budgetary impact
. agricultural products :	20	15%
. fishery products :	30	17%
. electronic products :	97	32%
. textile products :	94	24%
. other industrial products :	81	12%
		-----
		100%

b) Cases handled by the Commission in 1996 in cooperation with the Member States (see paragraph 4) :

. agricultural products	2	8%
. fishery products	3	26%
. electronic products :	7	6%
. textile products :	15	34%
. other industrial products :	7	26%

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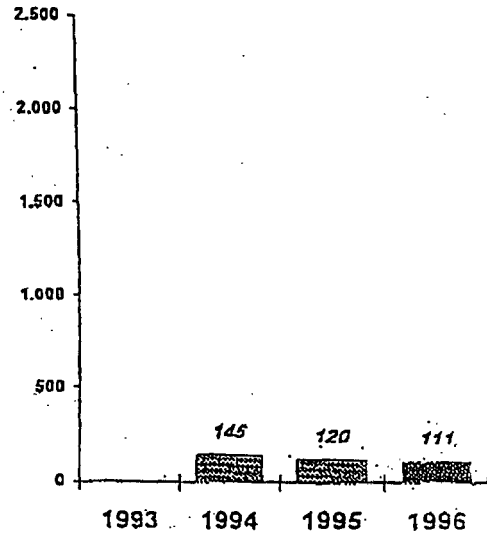
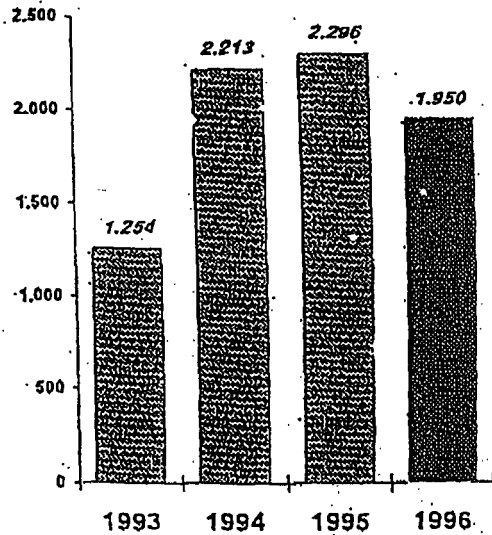
<sup>1</sup> Regulation no 1255/96.

# TRADITIONAL OWN RESOURCES 1993 - 1996

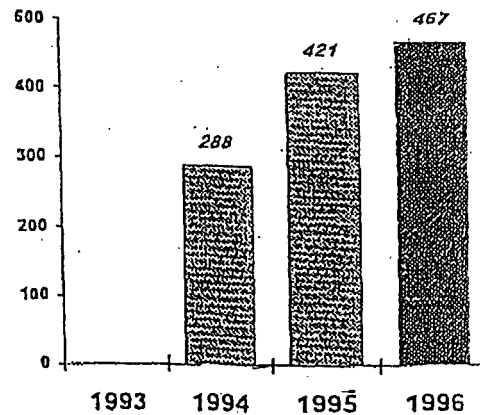
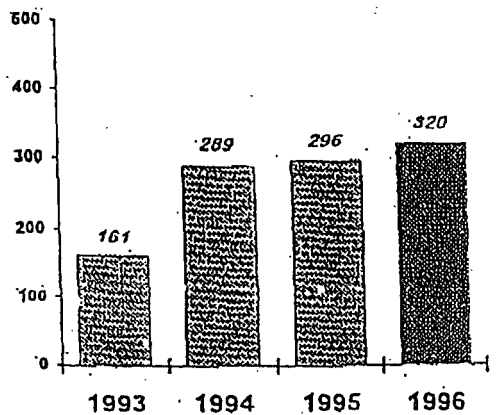
IRREGULARITIES FORMALLY  
COMMUNICATED (#) by  
MEMBER STATES

INQUIRIES carried out by  
the COMMISSION together  
with MEMBER STATES

## NUMBER of CASES



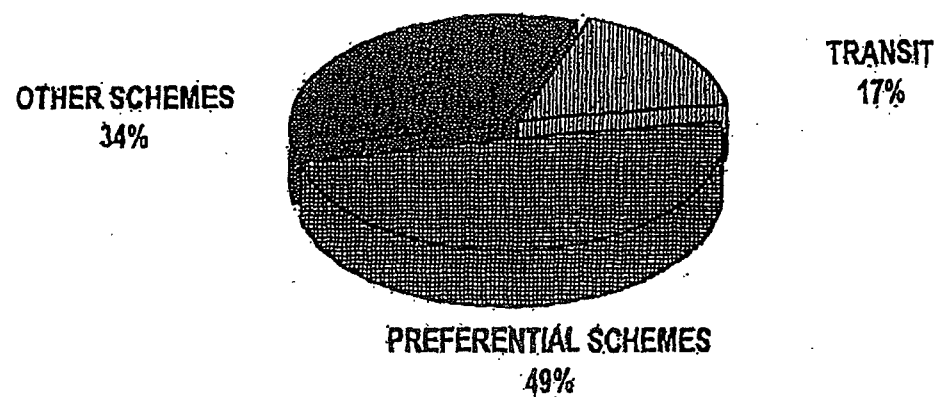
## AMOUNTS in MILLIONS of ECU



(#) under Regulation (EEC) 1552/89 : including estimate for the second half year 1996.

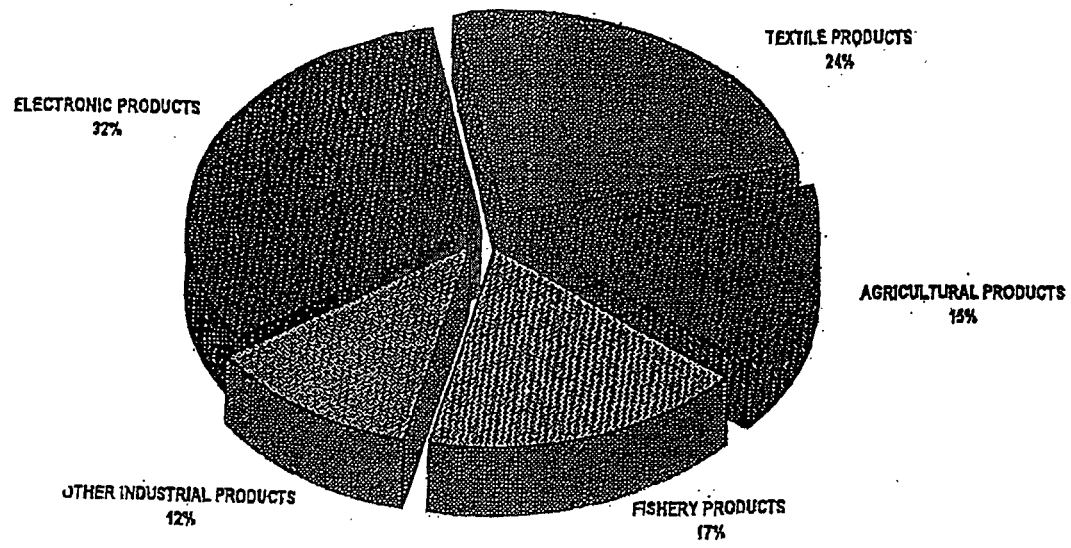
**INQUIRIES CARRIED OUT BY THE COMMISSION TOGETHER WITH MEMBER STATES  
IN 1996  
( IN THE CONTEXT OF MUTUAL ASSISTANCE )**

**TOTAL estimated financial impact on Community budget :  
448 Million ECU ( Customs and Antidumping duties)**





**PREFERENTIAL SCHEMES :**  
**cases communicated by Member States for 1995**  
**TOTAL FINANCIAL IMPACT : 52,6 Million ECU**



**PREFERENTIAL SCHEMES :**  
**Inquiries carried out by the Commission together with Member States in 1996**  
**( in the context of Mutual Assistance )**  
**TOTAL ESTIMATED FIN. IMPACT : 220 Million ECU**

