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2nd REPORT

ON

THE RECOVERY OF TRADITIONAL OWN RESOURCES IN CASES OF FRAUD AND IRREGULARITIES

(SAMPLE B 94)

(presented by the Commission)

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INTRODUCTION

This report outlines progress in recovering traditional own resources in six cases of fraud and irregularities deemed particularly important on the basis of selection criteria explained below. The own resources at stake in the six cases total some ECU 124 million.

Responsibility for collecting traditional own resources (TOR) falls on the Member States.[1] In particular they have the task of establishing entitlements, recovering and verifying them and making them available.[2] They keep separate accounts of entitlements not yet recovered or in dispute and send the Commission a statement of these amounts every quarter.

The Commission monitors the Member States' application of Community rules and the action they take to collect, recover and make available entitlements. It does so on the basis of information it receives from the Member States concerning the separate account of unrecovered entitlements, cases of fraud reported under the mutual assistance arrangements in accordance with Regulation No 1468/81 and write-offs mentioned in the Member States' annual reports on their recovery activities.[3]

Given the very high number of cases reported on fraud and mutual assistance forms (over 2 000 per year), the Commission has established a monitoring method based on samples. Two types of sample are taken, each consisting of a number of cases which are closely monitored until final clearance. **Sample A** is taken by selecting cases involving entitlements of over ECU 500 000 on the basis of fraud and irregularity forms. **Sample B** is formed on the basis of mutual assistance (AM) forms or other sources, by selecting cases involving more than ECU 1 million. The two samples differ in size and in purpose:

- sample A is broader (around 100 cases) and lends itself to an essentially statistical analysis;
- sample B is much smaller (6 cases) and is used to keep track of individual cases which are particularly important.

Samples A and B account for around 70% and 30% of the amounts evaded in cases of fraud and irregularities reported to the Commission between the first half of 1989 and the first half of 1993.

On 6 September 1995 the Commission presented a report to the budgetary authority on the first A-type sample - A94 (COM(95)398 final).

This is the first report to cover a B-type sample (B94). It outlines the situation at 31 December 1996 in respect of six cases selected on the basis of the criteria described at point 1.1.

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1 Under Article 8 of Council Decision 94/728/EC, Euratom.

2 On the basis of Council Regulation (EEC), Euratom) No 1552/89 (Regulation No 1552/89), in particular Article 6(2)(b) thereof

3 Provided for in Article 17(2) of Regulation No 1552/89.

Given the complexity of the cases in question, which typify the difficulties encountered in recovering TOR, the report inevitably shows that only a tiny proportion of the amounts at stake have been recovered. The Commission will continue to monitor these cases until final clearance and will give a further update on the sample at a later date.

1. SAMPLING METHODOLOGY AND CHARACTERIZATION OF CASES

1.1 Method of selecting sample B94

Since 1994 the Commission (DG XIX) has drawn up an annual list of cases of fraud or irregularities which come to its attention either through notifications under the mutual assistance arrangements or otherwise. The list is constantly updated.

Each year a number of cases are selected from the list to form a "B" sample for closer monitoring, on the basis of the **following criteria**:

1. very high cost to the Community budget, i.e. over ECU 1 million;
2. investigations launched by a Commission department (UCLAF, DGs VI, XIV, XIX, XX or XXI);
3. responsibility for recovery shared between Member States;
4. time-limit approaching for recovering amount due from debtor;
5. interest shown by the budgetary control authorities in certain cases of fraud or irregularities.

Cases are included in the sample if they meet the first two criteria and at least one of the other three.

Of the 89 cases recorded between 1989 and 1993, six cases were chosen on the basis of the above criteria to be monitored until final clearance:

Case No 1: Fraudulent removal from the **transit** arrangements of **cattle, sheep and meat originating in various eastern European countries**;

Case No 2: Fraudulent removal from the transit arrangements of **milk powder** originating in eastern European countries;

Case No 3: Reimportation into the Federal Republic of Germany of **Dutch butter** exported with export refunds to the former GDR;

Case No 4: Application of the preferential arrangements for **canned tuna imported from the Seychelles** on the basis of improperly issued EUR 1 certificates;

Case No 5: Application of the preferential arrangements for **shrimps imported from the Faroes** on the basis of wrongly issued EUR 1 certificates;

Case No 6: Application of the release for free circulation arrangements to **television sets imported from Turkey** on the basis of improperly issued ATR certificates.

The reasons for selecting these cases are summarized in the following table:

Table I

Choice of cases in 1st sample

		AM forms	Customs procedure in question	Criteria 1 Estimated amounts	Criteria 2 Commission inspection	Criteria 3 Shared recovery	Criteria 4 Time-limit approaching	Criteria 5
1	Cattle, sheep and meat from E. Europe	46-47/90 54/91, 56/91 7/92, 13/92 38/92, 65/92	Transit	ECU 50 million	X	B, D, F, I, NL	X	Court of auditors (partly)
2	Milk powder	19/93	Transit	ECU 6.4 million	X	B, E, F		
3	German/ Dutch butter	----	Release for free circulation	ECU 7 million	X	D, NL		
4	Seychelles tuna	10/92	Release for free circulation	ECU 1.5 million	X	B, F, IRL, NL, UK	X	Court of Auditors
5	Faroese shrimps	2/90	Release for free circulation	ECU 10 million	X	B, DK, F, NL, UK	X	Court of Auditors
6	Turkish TVs	33/88	Release for free circulation	ECU 45 million	X	All except IRL and L	X	Court of Auditors

According to initial estimates based on the AM forms, before questions were put to the Member States, these six cases involved a total of around ECU 121 million in TOR.

By comparison, once the Member States had been asked to report on progress in recovery, the total amount at stake turned out to be ECU 124 million.

1.2 Information on the recovery situation

Information on recovery by national authorities was obtained in reply to questions put by DG XIX to the relevant national departments. Except in the case of the German/Dutch butter, these questions were formulated on the basis of the disputed transit documents or certificates of preferential origin.[4]

This accurate data supplied by the national authorities replaced the Commission's previous figures for the cases under surveillance, which had been based on its own estimates or those of the national investigation departments.

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[4] In the case concerning **cattle, sheep and meat from Eastern Europe**, the German authorities drew up a standard questionnaire and sent the Commission the answers it received from customs offices, covering more than 1300 T1 documents. This first series of reports has already been updated by the German authorities.

The estimates produced by comparing mutual assistance cases with a large number of fraud cases reported to the Commission under Regulation No 1552/89 were broken down into those concerning the A account (amounts already made available) and the B account (amounts awaiting recovery). When the figures became available, the amounts barred by lapse of time were indicated. The breakdown between A and B accounts is presented for each Member State in a table on each case in the sample.

The Commission accepts the data supplied by the Member States as it stands until it finds proof to the contrary, notably as a result of inspections.

1.3 Characterization of cases

The six cases selected fall into two distinct categories.

- The **livestock and meat, milk powder and German/Dutch butter** cases involve the deliberate infringement of existing legislation by importers whose good faith must be in doubt.
  These are cases of proven fraud or of exploitation of loopholes in customs legislation.

- In the other three cases **(Seychelles tuna, Faroese shrimps and Turkish TVs)** importers asked for preferential treatment when presenting their goods for customs clearance, on the basis of certificates which Community inspections later revealed to have been wrongly issued by the authorities in the exporting countries. As a result the importers found themselves in an irregular situation, having incurred a customs debt for which they were liable retrospectively.

The distinction between fraud proper and irregularities is relevant for two reasons: in relation to the period of limitation and from a procedural point of view.

Firstly, in the case of irregularities, the normal period of limitation stipulated in the Customs Code is three years, while in fraud cases liable to prosecution the national limitation period applies.

Secondly, the distinction is essential for determining the action to be taken by the national authorities to recover the traditional own resources at stake.

- **In the case of proven fraud**, investigation departments normally seek to identify the perpetrators and determine their criminal and financial responsibility.
  However, evidence of the fraudulent activity is generally found on national territory or in other Member States. Any missions to exporting countries outside the Union are conducted mainly for the purposes of prevention.
- **In the case of irregularities,** where certificates entitling goods to preferential treatment are subsequently found to be invalid, evidence of their invalidity can be obtained only by investigating the firms that produced the goods in the exporting countries.

A Community mission of inquiry may be conducted in accordance with the mutual assistance Regulation. If the resulting report shows that the certificates are invalid, post-clearance recovery proceedings are instituted.

In the three cases of irregularities in the present sample, missions of inquiry established that the certificates issued for the imports in question were invalid.

2. DESCRIPTION OF CASES SELECTED AND PROGRESS IN RECOVERY

2.1 Fraud cases proper (proven or assimilated fraud)

2.1.1 Removal of cattle, sheep and meat originating in eastern Europe from the transit arrangements

Background

Between 1990 and 1993, cattle, sheep and meat were imported from various eastern European countries (Poland, Hungary, Czechoslovakia and Romania) into Germany, where they were placed under the **external transit arrangements,** supposedly destined for countries outside the Union (the Maghreb, Niger, etc.).

The transit operations in question were either **falsely discharged using fake stamps or not discharged at all**. As a result tens of thousands of cattle and sheep were imported illegally into the Community customs territory.

These unprecedented fraud networks, masterminded by criminal organizations, were uncovered by a number of national investigating departments. The traffic began in Germany, but also affected Belgium, France, the Netherlands and Italy, while some consignments even reached the United Kingdom.

The Commission warned all the Member States by means of AM forms,[5] on the basis of which the relevant national investigating departments drew up reports, notified debtors of the customs debt (establishment within the meaning of Regulation No 1552/89) and, where possible, made seizures. A number of persons have been successfully prosecuted. Some investigations by national departments are still under way.

While national prosecution services were taking these steps to put an end to the fraud, the Commission tightened up legislation on the transit arrangements, which had proved to be inadequate, by introducing the following changes:
- allowing for a ban on the use of the comprehensive guarantee for high-risk goods;
- allowing for a compulsory itinerary in cases where the comprehensive guarantee has been suspended, and a ban on changes to the office of destination;
- fixing the amount of the comprehensive guarantee at 100% of duties and other charges payable, except in certain specific cases;
- laying down stricter conditions governing entitlement to and use of the comprehensive guarantee;
- excluding traders who commit serious infringements against the TIR arrangements;
- establishing other special inspection measures regarding high-risk goods.

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5 AM forms 46-47/90, 54-56/91, 7-13-38-65/92

Initial estimates of the economic and financial impact of these fraudulent imports, calculated on the basis of the transit documents covered by the AM forms which meet the monitoring criteria, put the cost to the Community budget as follows:[6]

Livestock	148 635 head	ECU 20 million
Meat	6 400 tonnes	ECU 30 million
		ECU 50 million

Outcome of recovery measures

Progress in recovery depends on **two conditions**:

- Investigations must be complete so that the debtor can be identified, the debt legally defined and the debtor notified of the debt.
  Many of the investigations in Germany had not been completed when the Member States replied to the Commission's questionnaire. In some cases the German authorities asked for assistance from the Dutch authorities, under Regulation No 1468/81, as the latter had evidence that the livestock or meat had been imported fraudulently into the Netherlands. The Dutch authorities have still not replied to these requests.
- Where offenders are caught red-handed or there is enough evidence to prosecute, cases are brought before the courts, which then decide whether the defrauder is liable for the debt. Some Member States have taken precautionary measures (guarantees consisting of movable or immovable property) pending the end of the proceedings.

Because of these conditions, many transit operations were still unresolved when the German authorities drew up notices using transit forms, which they sent to the Commission.

Acting on the joint conclusions of the German and Dutch investigating departments, set out in a report by the FIOD (the Dutch investigating department), the German authorities wrote to the Dutch, Belgian and French authorities in October 1994, since the livestock and meat had been fraudulently imported into all three countries.

The Belgian authorities questioned this unilateral attempt to attribute responsibility, while the Dutch authorities subsequently denied the conclusions of the report by their own department. Although three carriers involved in the transit operation were sentenced to fines or imprisonment in the Netherlands, the Commission was not informed of the consequences of these sentences for the recovery of TOR

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6 The monitoring of recovery does not cover all cases where there were similar AM forms during the period 1990-94. The total financial impact is in fact:

Livestock	155 655 head	ECU 25 million
Meat	7 260 tonnes	ECU 33.4 million
		ECU 58.4 million

Under the Customs Code, **the principal is held generally liable - and his security retained** - where a transit procedure is not discharged. However, the German authorities did not apply the relevant rules, as they only detected the first infringements (forged T1 copies or failure to send back T1 copies) after 14 months.

The large firms which had presented the goods at customs and were liable to pay the debts subsequently filed for bankruptcy.

Given the position of these Member States, **the proportion of own resources actually recovered is still very low** (see Tables II-a and b below).

In some cases established entitlements which have not yet been recovered or are in dispute were entered in the B account by different Member States for the same operations: first by the State where the principal named in the transit document was established and then by the State where the fraud was detected.

In a number of undischarged operations none of the Member States has taken any action. In some cases the Member States concerned do not accept responsibility for recovery, so that the entitlements in question have not yet been entered in the accounts. In other cases, although the amounts have been entered in the B account, no practical steps have yet been taken to recover them.

The biggest problem concerns entitlements which have not been established and have become time-barred. Even where the national period of limitation applies, the Commission takes the view that entitlements should be established as soon as possible. It will remind the Member States of their obligations - in the event of failure to identify the perpetrator of a fraud, amounts must be established for each individual document in accordance with Community rules.

The Commission is now examining how Community legislation is applied by the Member States concerned. It will have to make a judgment on the degree of diligence shown by the national authorities in recovering own resources, in particular where there is no consultation. Similarly, where entitlements have not been established in accordance with legislation and have subsequently been time-barred, steps will have to be taken to ensure that the Member States assume their responsibilities. The Commission's accounting departments have already drawn up estimates of amounts owed by Belgium, Germany, France and the Netherlands.

Table II - 1a

Livestock (cattle and sheep) from eastern Europe - Responsibility for recovery

Reference	Number of T1s	Issuing Office	Member States concerned	Responsibility recognized (Number of T1s)	Responsibility attributed (Number of T1s)	Responsibility to be attributed (Number of T1s)	Amounts entered in the accounts (ECU) "A" a/c	"B" a/c	Evaluation of amounts to be attributed (ECU)
AM forms Nos 56/91 & 56/91(S1)92 (Circuit B-1)	153	Frankfurt/ Oder	Germany Italy	152		1 T1	41 500	3 658 000	
AM form No 54/91 (Circuit B-2)	20	Frankfurt/ Oder	Germany Belgium[1]	20 (20)				672 650 (582 300)	
AM forms Nos 38/92 & 38/92(S1)92 (Circuit B-3)	131 60 + 71 + 8 (TIR)		Germany Netherlands Belgium France[1] Netherlands	104 26 (2) 8	3		100 000 340 000 180 000	1 970 000 (115 700)	
AM form No 13/92 (Circuit B-4)	8	Waidhaus	Germany Belgium	5 3			183 500	271 780	
AM forms Nos 46/90 & 47/90 (S1)92 (Circuit B-5)	673	Various German border towns	Germany Netherlands Belgium[1] France	421		503 T1		14 000 000 (35 500)	16 303 000
TOTAL	985 + 8(TIR)			739	3		845 000	20 572 430	16 303 000

[1] Cases and amounts entered in the accounts twice.

Table II - b

Meat from eastern Europe - Responsibility for recovery

AM Reference	Number of T1s involved	Issuing Office	Member States concerned	Responsi-bility recognized (number of T1s)	Responsi-bility attributed (number of T1s)	Responsi-bility to be attributed	Amounts entered in B account (ECU)	Evaluation of amounts to be attributed (ECU)
AM form No 7/92 (Circuit V-1)	20	Rotterdam	Belgium Netherlands France (according to NL)	2	18	18 T1	3 200	280 000
AM form No 65/92 (Circuit V-2)	267 + 3 TIR (84 H + 87 S + 78 R + 21 C)		Germany Belgium[1] Netherlands France[1]	75 235 (6 T1) (4 T1)		2 T1	7 169 214 11 600000 (432 957) (369 162)	
AM form No 65/92 contd. (Circuit V-2A)	11 T1		Germany Netherlands Belgium France Portugal					
TOTAL	289 + 3			322	18	(20)	18 772 414	280 000

[1] Cases and amounts entered in the accounts twice.

2.1.2 Removal of milk powder from transit arrangements

Background

Between June 1991 and October 1992 milk powder from Poland was placed under the **external Community transit arrangements** in Antwerp for carriage to Spain.

In August 1992 four T1 documents (No 5 control copies drawn up for consignments of milk powder) arrived at Antwerp by post direct from Irun in Spain. As T1s discharged in Spain are normally sent via the designated central offices (Madrid or Barcelona), the Belgian authorities asked the Spanish authorities to carry out *ex post* checks on these documents under the mutual assistance Regulation (No 1468/81). In November 1992 the Spanish authorities replied that the four documents had neither been discharged nor sent by Irun customs office.

Meanwhile the Belgian authorities had discovered other, similar T1 documents. Subsequent checks on all these documents by the Spanish authorities revealed that, in each case, **discharge had been falsified**.

To date 229 consignments have been identified. The goods in question were transported by lorries registered in France and in Spain, except for five consignments where the carrier has not been identified.

The French authorities launched an investigation in response to requests for assistance from the Belgian authorities and a request for information from the Commission. They were able to reconstitute 154 consignments transported by a French carrier to Spain, on the basis of documents seized from the carrier in question (consignment notes, invoices, drivers' records indicating the distance travelled). The confiscated documents showed that the goods were unloaded in Spain. The carrier in question has recently been notified of the infringements detected by the French authorities.

The Belgian authorities found additional evidence that some consignments had been unloaded in Spain. On 16 August 1995 they again asked the Spanish authorities for assistance. Besides the 154 consignments transported by French vehicles and unloaded in Spain, it is suspected that another 74 consignments carried by Spanish lorries or by an unknown means of transport were also unloaded in Spain, although this cannot be proved for all the consignments in question.

According to AM form No 19/93, issued by the Commission, the **amount of duties evaded** in these fraudulent transit operations, covering 190 consignments and around 4000 t of milk powder, comes to ECU 6.4 million. In fraud form No 94/6-28, drawn up under Regulation No 1552/89, the Belgian authorities reported that a total of 5700 t of milk powder had been placed under the transit arrangements, for which the duties evaded came to ECU 8.9 million (229 consignments).

The Commission has sent reminders to the national authorities concerned, and the Belgian and French investigation departments have produced evidence that some quantities of milk powder were unloaded in Spain. Even so, the Spanish authorities were slow to launch investigations, which are still under way.

On the basis of the fraud notifications sent by French customs to Spanish customs, copies of which were received by the Commission, **two Community teams** visited Spain - the last on 25 January 1996 - to discuss with the authorities there what measures should be taken to handle the case effectively.

Outcome of recovery measures

The Belgian authorities warned the Commission on several occasions that **the guarantee held as security from the principal**, a customs agent, **was insufficient** to cover all of the TOR at stake. They considered it unfair to pursue recovery from the principal, as this would cause him to go bankrupt. As the Member State of departure, Belgium claimed that it need only recover and enter in the accounts entitlements in respect of consignments of which no trace could be found, since the evidence gathered by the investigating departments showed that most of the consignments had been unloaded fraudulently in Spain.

Since the Member States concerned had failed to take appropriate action on the conclusions of the investigations and after four years no firm case had yet been brought against the French carrier and the Spanish consignees, the Commission asked the Spanish and French authorities - by letters dated 23 April 1996 and 20 March 1996 respectively - to commence legal proceedings. By a decision of the Directorate-General of French Customs on 22 June 1996, a document initiating proceedings was lodged on 30 July 1996 at the *Tribunal de Grande Instance* in Bayonne.

On 23 December 1996 the Commission asked the French authorities for further information on the action brought against the carrier. On the same day it asked Spain to report on progress in the fraud investigations and in the prosecution of the defrauders.

As regards the request from the Belgian authorities for the Belgian principal to be released from his responsibility for the consignments found to have been transported to France and unloaded in Spain, the Commission does not agree with Belgium's view or its interpretation of the rules applicable at that time, which have since been replaced by Article 379 of the provisions implementing the Customs Code. Under Articles 360 to 369 and 379 of those provisions, the principal and his guarantor are liable for the non-discharge of transit documents and the principal remains entirely responsible for paying the duties as long as a designated debtor, defrauder or carrier has not honoured the debt. This case shows that Community provisions are deficient in two respects: on the one hand they do not clearly define which authorities should accept the information specified in Article 378 paragraph 1 of the Implementing Provision nor do they define the criteria for acceptance of such information and on the other hand, with regard to the country where the transit offence took place they do not clearly define to what extent a Member State, other than the Member State of departure, is obliged to proceed with recovery.

Table II-2

Milk powder

Member State	A account	B account	Court proceedings
Belgium	Nil	Nil	
Spain	Nil	Nil	
France	Nil	Nil	X

2.1.3 German/Dutch butter

Background

On 15 August 1990 a cargo of 2000 t of butter was sent by sea from the Netherlands to the former GDR after some ECU 4 million had been paid in **export refunds**.

The cargo was unloaded two days later and given customs clearance in Wismar in the former GDR, but the butter was immediately transferred to refrigerated warehouses in West Germany without any levy being collected.

The Dutch investigation department was alerted to the case by its German counterparts. The Dutch authorities then intervened to demand repayment of the refunds unduly received by the exporter, since the butter had been reimported into the Community territory. This "export refund" aspect of the case has already been followed up through administrative action and in the courts. On 28 August 1996 the *College van Beroep voor het bedrijfsleven* rejected an appeal by the exporter against a decision by the Dutch dairy products board demanding repayment of the refund. Following this judgment, the Dutch authorities confiscated the bank guarantee of ECU 2.3 million and commenced a civil action to recover the balance.

The recovery of export refunds is a matter of agricultural policy and, as mentioned above, is dealt with in accordance with agricultural legislation. By contrast, **where butter previously exported with refunds is reimported into the Community without levies being paid,** this constitutes an infringement giving rise to a customs debt.

It is recovery of this debt which is the Commission's target. It has called into question the attitude of the German authorities, who claim that no customs debt has arisen because no administrative measures have been adopted to implement Community legislation vis-à-vis debtors. The amount of TOR at stake is ECU 6 856 665.

Outcome of recovery measures

The Commission rejected the German authorities' argument that there was no need for the importer to complete any customs formalities in importing into the Federal Republic butter which had previously been exported with refunds from the Netherlands to the GDR during the short-lived customs union between the two German states.

On the contrary, the Federal Republic's representatives on the relevant agricultural committees gave an undertaking that measures would be adopted to implement Regulations (EEC) Nos 2252/90 and 2060/90, thus preventing butter which had received export refunds from being reimported into the Community on reunification.

Accordingly the Commission asked the German authorities by letter dated 22 June 1994 to make available the amount of levies at stake - ECU 6 856 665 (DM 12 684 000) - and on 16 August 1994 drew up a recovery order for that amount.

The Commission considered that the importer was able to import the butter into the Community without paying any levies because of **negligence on the part of the German authorities**.

The German authorities refused to act on the Commission's request. As the Commission was unable to accept the reasons they cited for this refusal in a letter dated 3 February 1995, it sent a letter of formal notice on 13 September 1995, allowing two months for a reply. The reply did not arrive until 11 January 1996 and added nothing to the position already stated by the German authorities. The Commission sent Germany a reasoned opinion on 30 October 1996.

Table II-3

German/Dutch butter

Member State	A account	B account	Recovery order	Stage in proceedings
Germany	nil	nil	ECU 6 856 665, 16.8.94	Letter of formal notice 13.9.95 Reasoned opinion, 30.10.96

2.2 Cases of irregularities (invalid preferential certificates)

2.2.1 Seychelles tuna

Background

As part of its anti-fraud operations, the Commission conducted surveys at the end of 1991 on **imports of canned fish from various non-member countries (ACP and non-ACP States),** acting on suspicions expressed by the industry in the Community.

A survey in the Seychelles found that the unloading of tuna by Community or ACP boats could not account for the volume of canned tuna exported from that country to the Community. As the Seychelles has a limited fishing capacity depending on the year (or indeed no capacity at all until two boats were put into service in 1991) and no Community boats are thought to fish in Seychelles waters, the local cannery could only have produced all of its consignments of canned tuna by buying fish from other countries.

In order to clarify this apparent contravention of **the rules of origin laid down in Protocol No 1 to the Lomé Convention**, the Community organized a mission to the Seychelles from 7 to 19 December 1992, in cooperation with the Seychelles authorities. The Community representatives wanted to check whether certain preferential certificates were in order. However, since the Seychelles authorities were unable to present the registers which might have contained the relevant information, checks could be made only at the headquarters of the exporter.

The inspection revealed that over the last few years large quantities of fish (5368 tonnes) caught by **boats from non-member countries** (in particular Japan, Russia, Panama and Malta) had been used in part to **manufacture canned tuna subsequently exported to the Community under cover of EUR 1 certificates** (2000 t).

The Community team inspected a total of 214 EUR 1 certificates issued by the Seychelles authorities between 9 January 1990 and 2 December 1992 and containing all the information needed to make an accurate decision on their validity. Each certificate generally covered several containers (in some cases more than 20).

The outcome of the inspection was as follows:

- Of the 214 certificates, 54 concerned consignments of canned tuna which met all the criteria of the rules on origin under the Lomé Convention and were therefore entitled to preferential treatment on import into the Community.
- 1 certificate covered only third-country products (not originating in the Seychelles) and was therefore invalid for the purposes of preferential treatment.
- The other 159 certificates were issued for "mixed" consignments consisting of originating and non-originating products within the meaning of Protocol No 1 to the Lomé Convention.

Using the available commercial documents, it was possible to identify for each container and each certificate the number of boxes containing cans of "originating" tuna and the number of "non-originating" boxes. From a legal point of view this distinction was vital if the procedure for recovering customs duties on third-country products was to be implemented.

The list of certificates indicating in detail for each container and each certificate the number of **boxes of originating and non-originating goods in accordance with the Lomé Convention criteria** was sent to the Member States concerned (Belgium, France, Ireland, the Netherlands and the United Kingdom) on 19 July 1993 so that they could recover the duties evaded.

As the consignments were "mixed", the customs debt was not based on the total amounts on the certificates, but on the quantity of non-originating goods identified separately for each certificate. The amounts to be recovered *ex post* were initially estimated at ECU 1.5 million by the investigating departments.

Outcome of recovery measures

The **total amount of TOR** at stake, as entered in the accounts by the Member States, is in fact ECU 1.84 million, compared with the initial estimate of ECU 1.5 million (AM form No 10/92).

Although the Seychelles authorities initially accepted the conclusions of the Community mission, they subsequently tried to avoid the consequences of the invalidity of the EUR1 certificates. Between November 1993 and March 1995 they contacted the Commission several times requesting that post-clearance recovery be abandoned.

The Community importers who were the subject of recovery proceedings had invoked the **safeguard clauses laid down in their business contracts** and turned against the Seychelles exporters, a consortium of canneries, the main industry on the islands, suspending payments to Seychelles suppliers.

In the United Kingdom in particular the importers managed to persuade the Seychelles consortium to pay in their place and the customs authorities granted the consortium deadlines for payment. However, at the end of August 1995, the consortium asked the British authorities for a moratorium on the amounts outstanding, which came to around a third of the debt in the United Kingdom, arguing (wrongly) that only the British importers could be obliged to pay duties. The British authorities passed on this request to the Commission.

All these requests met the same response from the Members of the Commission, i.e. that **the customs debt could not be cancelled without a legal basis**.

On the basis of the Commission's replies, the UK authorities resumed recovery proceedings in the form of payment in instalments. The minimal debts which had arisen in the Netherlands and Ireland were recovered.

The large debts incurred in France, which account for half of the total, are challenged by the importers. Although these cases were submitted to the ACP/EEC Council, which endorsed the position of the Customs Cooperation Committee that the calculation of the debts should be checked, the cases were nevertheless brought before an appeal body, the *Commission de conciliation et d'expertise douanière* (Committee for Conciliation and Customs Expertise), which in April 1996 (i.e. two years later) found that the imported tuna may have included Seychelles tuna. However, the rules on origin laid down in the Protocol to the Lomé Convention provide that products of different origin must be treated separately if products from the country in question are to receive preferential treatment. There was no such separate treatment in the Seychelles. The French authorities intend to take this matter to the courts.

Table II - 4

Seychelles tuna

Country	EUR 1 recognized	Fraud forms	Amounts in A account (ECU)[7]	Amounts in B account (ECU)	Amounts time-barred (ECU)	Court proceedings
B	5	BE/94/06/39 BE/94/06/40		59 335		Yes
F	75	FR/94/11 FR/94/12		1 075 530		Planned
IRL	4	IRL/93/12/05	18 092			
NL	5	NL/93/12/107	73 148			
UK	69	EN/93/12/176, 177, 178 and 179; EN/94/06/40	353 916[8]	294 827	3 723	
Total	165	11 forms	445 156	1 429 692	3 723	

7 Figures at 31.10.96.

8 GBP 14 903.71 or ECU 18 048 in respect of imports for which the debt was less than ECU 10 000.

2.2.2 Faroese shrimps

Background

Following investigations in several Member States which led to AM form No 2/90, a Community mission to the Faroes established that **nearly 600 EUR 1 certificates issued by the Faroese authorities** for export to Belgium, Denmark, France, Netherlands and the United Kingdom **were invalid**.

On the strength of these EUR 1 certificates, consignments of shrimps fished by Canadian boats or by Faroese boats that were not fitted out in accordance with the rules on preferential treatment as well as shrimps from non-member countries which were merely shelled in the Faroes benefited unduly from a reduction in customs duties intended for goods originating in the Faroes. The relevant rules on origin applicable to all fish products, which were adopted in 1974 and later incorporated into the trade agreement concluded with the Faroes, are standard rules based on economic considerations and should not be particularly difficult for international traders to apply.

The Faroese authorities first acknowledged these facts, but then went back on this admission, claiming to have been unaware of certain rules on preferential origin, an assertion which is belied by the instructions issued to firms by the same authorities, the application of which they failed to monitor. The Faroese authorities also claimed that errors arose because a bilateral agreement with Denmark existed alongside the Community preferential arrangements.

In fact these errors could easily have been avoided if adequate checks had been conducted, which would in any case have affected only a small number of traders.

Under the relevant Community legislation, a reduction in duties could not be granted for the sole reason that **documents presented, albeit in good faith, for the granting of preferential tariff treatment** for goods entered for free circulation were later found to be false, forged or invalid.

In this particular case, Member States should have based their recovery measures on the cancellation of the offending certificates by the Faroese authorities and the facts set out in the report on the Community mission of inquiry of 15 October 1991, in which some of their officials took part.

The report was sent to all the Member States, in accordance with the rules adopted by the Council.

The amounts to be recovered *ex post* were initially estimated at ECU 10 million.

Outcome of recovery measures

Although it was established that the EUR 1 certificates issued by the Faroese authorities were invalid, not all of the TOR at stake was recovered, for a variety of reasons.

This was partly because of **the bilateral arrangements in force between Denmark and the Faroes**, which provided for an exemption on all imports of Faroese products into Denmark. This preferential scheme ended on 1 January 1992 with the signing of the trade agreement between the Community and the Faroes, enshrined in Article 20 of the National Customs Act. However, the Danish authorities considered that the Protocol on the Faroes annexed to Denmark's Act of Accession was still applicable, in the absence of any Council decision to the contrary.

Thus, imported shrimps intended for consumption in Denmark or re-export to non-member countries, notably after shelling, but not entitled to preferential treatment on the basis of the disputed EUR 1 certificates, were exempt from duty under Article 20 of the Danish Customs Act. The amount of exempted duties came to around ECU 11 million, thereby reducing the recoveries to be made by the Danish authorities to around 1/10 of the amounts at stake, i.e. ECU 962 950 (see Table II-5).

However, the shrimps imported into Denmark which benefited from this exemption were not in free circulation, and any re-export to other Member States would either have to be taxed or sent under the external transit arrangements (T1). The fact that Denmark did not take any steps to monitor such re-exports, other than a notice issued to the importers concerned, raises a number of problems on which the Commission will adopt a position shortly.
Another singular aspect of this case is that Denmark, Ireland and the United Kingdom applied **preferential national tariffs** on these imports until 1992.

In Belgium a court found in favour of a Belgian debtor against whom an action had been brought by the customs authorities there. The authorities have appealed against the decision. As a result of this case, Belgian and British importers, who form the majority and for whom these imports constitute a well-established trade, have felt even more justified in opposing post-clearance recovery, sometimes through legal action.

The UK High Court of Justice referred two cases to the European Court of Justice for a preliminary ruling on 14 April 1994 covering nearly all of the TOR established in the United Kingdom and entered in the B account there. The European Court gave a ruling on 14 May 1996 which has still to be interpreted by the British court.[9]

By contrast, the Dutch authorities have made available a total of ECU 295 232.

Leaving aside amounts time-barred, a relatively long period elapsed between the time when Member States were notified of the results of the Community mission establishing the invalidity of the EUR 1 certificates and the time when national authorities took the necessary steps to protect the Community's financial interests.

The Commission departments found that the Danish authorities had not sent out the recovery demands in good time, and as a result **some of the amounts at stake were barred through lapse of time**.

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9 Judgment of 14.5.1996 in Joined Cases 153-94 and 204-94 *Faroe Seafood*, [1996] ECR I-2465.

However, recovery of the amounts pending, confirmation of amounts already recovered and any action to be taken against Member States because of amounts time-barred all depend on how **the national courts interpret the judgment of the Court of Justice**. The Commission will ask for information from the Member States on decisions by the national courts and their implications for the recovery of TOR.

Table II-5

Faroese shrimps

Country	EUR 1	Fraud form	A account (ECU)	B account (ECU)	Amounts time-barred or exempt (ECU)	Judgment
B	5	BE 92/06/06		67 958		Yes
DK	266		962 950		11 000 000	Yes
F	21	FR 92/06/09 FR 92/06/10		29 883		
NL	12		295 232			
UK	185	10 fraud forms		1 604 238	29/4/89 1 018 646	Yes
Total	599		1 258 182	1 902 079	12 018 646	

2.2.3 Colour television sets from Turkey

Background

In 1988 the Commission received information from various sources on low prices practised by Turkish exporters of TV sets which suggested that the Turkish authorities issued ATRs for products that were not entitled to preferential treatment
Components originating from non-member countries were used in Turkey to manufacture TV sets exported to the Community Customs duties on the imported components were either **suspended** (with no compensatory levy being collected) or refunded under **the drawback scheme.**

Since the TV sets manufactured from these components were not taxed in Turkey, they could not be re-exported to the Community in free circulation using ATR documents, unless a compensatory levy were collected on re-export.

On the basis of this information, the Commission warned the Member States (AM form No 33/88) and launched an investigation into exports of this kind from Turkey. First they asked the Turkish authorities to check the situation on the ground - but without success. After two years' delay, the Turkish authorities finally agreed that a Community mission be sent from 18 October to 9 November 1993.

The mission confirmed that the exports of TV sets and the corresponding certificates for release for free circulation did not meet the requirements of the EEC-Turkey agreement.

In the light of the facts established during the mission, which were not challenged by either the exporters or the Turkish authorities, a list of invalid certificates was drawn up and sent to national authorities. The Commission considered that the amount of duties payable because of the invalidity of the ATR1 certificates should be calculated on the basis of the value of the TV sets for which exemption from duties had been requested under the Agreement. The rate applicable to such goods was 14%.

The **financial impact** of the invalid ATR1 certificates on TOR was initially estimated at ECU 45 million, including ECU 5 million in anti-dumping duties.

Outcome of recovery measures

The problems encountered by the Member States in recovering entitlements in this case have been extremely complex.

First the Turkish authorities fostered doubts as to the true status of the exports to the Community for as long as possible. It was not until January 1995 that they announced measures intended to resolve the problem in future. However, these rather late measures affecting Turkish exporters could not apply to imports into the Community and could not allow the retrospective cancellation of **debts in respect of imports already carried out** which had not been affected by the limitation period of three years, or the resulting post-clearance recovery.

As regards amounts outstanding from the past, the Turkish authorities undertook to introduce a compensatory levy to be collected in the next three years which was intended to give the wrongly issued ATR certificates retrospective validity. There is no provision for this in either the Customs Code or the EEC-Turkey association agreement.

These arguments were taken up by importers and by the national authorities in the Member States, who on several occasions appealed direct to Members of the Commission, asking for exemption from post-clearance recovery. Delegates representing most of the Member States concerned made similar requests in customs legislation committees, based on the same arguments.

The Dutch and French delegations have sent the Commission **requests for amendments to the Customs Code on the protection of importers' good faith,** aimed either at obtaining an exemption from the recovery of debts incurred in the past on imports of Turkish TV sets or at exempting importers in future from the financial consequences of preferential certificates unduly issued by non-member countries and subsequently found to be invalid.

The aim behind these requests was to make the Community budget meet the cost of any failure to recover debts. The Commission has not acted on these requests, as they undermine existing legislation and the very basis of the system of preferences governing all trade with non-member countries.

In 1994 the Commission asked national authorities on several occasions to recover the TOR at stake or obtain security, while allowing debtors payment facilities that were compatible with the provisions of the Customs Code.[10]

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[10] Letters from DG XIX No 1720, dated 2 3 1994, No 3141, dated 21.4.1994 and No 8957, dated 25.11 94 to the Permanent Representatives of the Member States concerned and letter from DG XIX No 15885 dated 6.10 94 to the heads of customs departments.

The Commission maintains this position, even though the Member States have failed to take appropriate action. It considers that Member States should have taken all necessary steps to protect the TOR, while respecting the rights of debtors, at least after 1 April 1994, when relations with Turkey were clarified. To date only Denmark has recovered the entitlements in respect of the (very few) imports of Turkish colour TVs to that country.

Of the other Member States concerned, only the United Kingdom has produced a detailed statement of the debts for which it is responsible, some of which have been entered in the B account and others time-barred. The Netherlands has made available the amounts which have not been time-barred, having set July 1992 as the point of limitation. Some Member States (Belgium, France, Germany, Spain and Portugal) have entered amounts due in the B account and notified the Commission, but not in sufficient detail. The other Member States (Greece and Italy) failed to reply to the Commission's request for information.

In some cases no real recovery measures have been taken to follow up the entry of entitlements in the B account. The Member States concerned appear to be waiting for a Commission decision on requests for reimbursement before taking any action. The requests, which cover around ECU 5 million, were submitted by German debtors under the legislation in force at that time, which is now incorporated in Articles 235 to 242 of the Customs Code.

Recently there have been fresh developments in the case. By Decision of 28 May 1996, the Council asked the Commission to conduct a study with a view to finding a solution to the problems of post-clearance recovery of customs duties in relation to documentary evidence of preferential status, particularly in the context of the protection of good faith and the avoidance of discrimination between Community traders.[11] The Court of Justice shed some light on this matter in its *Faroe Seafood* judgment (see footnote 9, Section 2.2.2) which might also have implications for the monitoring of recovery in this case. The Commission is preparing a communication on the subject which will be sent to the Council shortly.

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11 OJ C 170, 14 June 1996.

Table II-6

Turkish colour television sets

MS	Number of ATRs	Fraud forms	Number of TVs		Financial impact	A account	B account	Estimate of amounts time-barred	Date of limitation applied
			Declared	Estimated	(ECU)				
B	16	5	28366	31 236	845 000		558 000(1)	(2)	30.05.91
DK			938	738	12 500	25 500			(3)
D	503			674 370	14 000 000		10 500 000	9 821 000	1.1.92
EL(4)				4 974	84 500				
E	302			399 407	8 600 000		3 093 000		1.6.92
F	384	12	397 687	368 936	7 850 000		10 000 000(1)		1.1.91
I	216			191 473	4 000 000				
NL	119			223 463	5 580 000	994 481		1 567 400	1.7.92
P	53			79 443	1 700 000	7 132	1 154 289		1.2.92
UK	314			584 121	13 000 000		3 886 225(1)	2 722 000	18.10.91
Total	1907	17	426.991	2.558.161	55.672.000	1.027.113	29.191.514	14.110.400	

(1) The amount was notified in order to interrupt the period of limitation but has not yet been recovered.
(2) Still to be determined.
(3) Under scrutiny.
(4) The Greek authorities have not taken any action.

3. SUMMARY OF THE RECOVERY SITUATION

3.1 General picture

3.1.1 Monitoring

Thanks to the cooperation of the Member States, the Commission has a fairly complete picture of how they exercise their recovery responsibilities, sometimes in difficult circumstances, for example in the case of the present sample.

The cases covered in this report show that the systematic monitoring of recovery by national authorities is warranted. The Commission is aware of the additional workload caused by its action in this field. However, its aim is to safeguard the Union's financial interests and its action is often prompted by shortcomings and weaknesses detected in the recovery process.

3.1.2 Overall recovery situation for sample B/94 (Table II-7)

Table II-7 presents the recovery situation for each Member State and each case in the sample at 31 October 1996, broken down as follows:

- Amounts paid entered in the A account;
- Amounts awaiting recovery entered in the B account;
- Amounts to be recovered in cases where the Commission has challenged the action taken by Member States.

The sample covers TOR totalling ECU 124 million, representing 27% of the balance of B accounts at 31 December 1993. It includes examples of the most serious difficulties encountered by national authorities - invalid preferential certificates and removal from the Community transit arrangements.

Table II-7
Overall recovery situation in respect of sample B94

ECU million

1 Cases per Member State		2 Total per Member State	3 Entries in A account Payments made	4 Entries in B account (4a) Recovery pending	4 Entries in B account (4b) Cases referred to the courts	5 Limitation or exemption	6 Not entered Amounts (6A)	6 Not entered Infringement cases (6B)
B	No 1			12.9			PC	
	No 2						8 96	
	No 3							
	No 4	22.55		0.06				
	No 5				0.07			
	No 6			0.56				
DK	No 5				0.96	11.00		
	No 6	11.99	0.03					
D	No 1		0.32	27.46			PC	
	No 2							6.9
	No 3	45.18						
	No 5			10.50				
	No 6							
E	No 2							
	No 6	3.01		3.01				
F	No 1			0.48			PC	
	No 2							
	No 4	11.58			1 07			
	No 5			0.03				
	No 6			10.00				
IRL	No 4	0.018	0.018					
NL	No 1		0.52				PC	
							16.60	
	No 4	18.493	0.073					
	No 5		0.3					
	No 6		1					
P	No 6	1.157	0.007	1.15				
UK	No 4		0.35	0.29				
	No 5	10.04		0.2	1.6	1		
	No 6			3.9		2.7		
TOTAL		124.038	2.618	70.54	3 7	14.72	25.56	6.9

3.1.3 Comments

Actual recoveries (column 1)

Practically all recoveries that have taken place have been in cases of irregularities in preferential trade. Recovery proceedings in cases of fraud concern mainly the external transit arrangements, where nearly all of the amounts at stake are the subject of administrative or court appeals following demands for payment. The proportion of cases finally cleared is therefore still very low (less than 0.5%).

B account: Recoveries pending (column 4a)

This column indicates amounts not yet recovered. One might expect the lion's share of entitlements to be included in this category. However, the amount entered in the B account is actually much lower for two main reasons:

1. in some cases because the period of limitation expired before the demand for payment was presented to the debtor (column 3);

2. in other cases where amounts are not yet time-barred (period of limitation for fraud), some Member States have still to take the necessary steps to enter entitlements in the B account.

Cases referred to the courts (column 4b)

This category covers post-clearance recovery cases where the debtor has appealed against the demand for payment. It includes cases where certificates were invalid but the importers argue that they acted in good faith and are therefore refusing to pay duties *ex post*.

Recoverable entitlements not entered in the accounts/established by Member States (column 6)

A relatively large amount of recoverable TOR, representing around one quarter of the sample, has not been entered in the accounts, either temporarily or definitively.

In the case of imports of German/Dutch butter, the German authorities have refused outright to accept the Commission's remarks on the existence of a debt which should have been recovered. Given the importance of this dispute in determining the scope of Germany's obligations, infringement proceedings have been commenced.

3.1.4 Final clearance of cases in the sample

The Commission is concerned at the very low proportion of cases in the sample which have so far been cleared.

Actual recoveries have been minimal and the amounts involved in cases referred to the courts, a step which in some ways marks the end of administrative proceedings, are also relatively small.

By contrast, nearly all of the cases in the sample are still open and in more than half of these the Commission is in dispute with the Member States (infringement proceedings/recoverable entitlements not entered in the accounts).

To some extent this makes life easier for the perpetrators of fraud and irregularities.

3.2 List of shortcomings

Monitoring of sample B94 confirms a number of shortcomings in the recovery of TOR at national level.

3.2.1 Delays in investigations by the Member States

In criminal cases (livestock, milk powder), investigations by the national authorities generally take a very long time, mainly because of their complexity and the excessive workload on investigating departments. They are prolonged even further by difficulties in obtaining assistance from other Member States, which may be necessary to complete national investigations (see above).

Moreover, once investigations are completed, action by financial departments and administrative decisions on the debtor's position do not always follow immediately.

If a case is referred to the courts, a fresh investigation has to be conducted, leading to even longer delays. By the time the relevant departments finally have operational recovery orders, the perpetrators of the fraud are often out of reach.

3.2.2 Delays caused by various legal remedies in the Member States

Various national procedures exist for challenging recovery orders, including both administrative remedies and appeals, the main effect of which is to suspend recovery until after the time-limits for payment provided for by the Customs Code. For example:

- British debtors may contest the validity of a recovery order directly with the authorities, without going through any particular formalities. This negotiation procedure has not always been accompanied by the proper establishment of entitlements and calls into question the original establishment without making it clear whether a new entitlement has been established within the meaning of Article 2 of Regulation No 1552/89 or whether part of the debt has been remitted.
- When German debtors challenge a recovery order, the authorities may then decide to suspend execution for an indefinite period.
- In France disputes over the origin, value or nature of goods declared are referred to a special Customs Conciliation and Expertise Committee, which does not deliver its opinions immediately, but in its own time. As a result recovery is suspended indefinitely. The Commission intends to scrutinize this generous appeals procedure which does not seem to be in accordance with the provisions on the right of redress laid down in Title VII of the Community Customs Code and which, although largely ineffective, has the effect of calling into question the decisions taken.

In the case of the Seychelles tuna, the Community mission of inquiry established beyond doubt that the tuna could not possibly have originated in the Seychelles, a finding which was recorded in the report sent to the French authorities. The ACP-EEC Council of Ministers also adopted a decision on the case on 18 and 19 May 1994.

3.2.3 Delays and weaknesses in applying the rules on post-clearance recovery in undischarged transit operations

It was found that the rules on the post-clearance recovery of customs debts arising from the failure to discharge transit operations were not properly applied. On-the-spot inspections by the Commission in 1994 and 1995 revealed systematic delays in all the Member States, illustrated by the transit cases in the present sample.

In most cases the time-limits laid down in legislation for apprehending those responsible were exceeded, because the authorities concerned failed to act or acted too late.

As a result own resources have been irretrievably lost, as the firms threatened with recovery proceedings (the principals) were declared bankrupt or were released from their legal obligations because the time-limit for seizure had passed.

The various recovery measures taken by the Member States have been undermined by slow-moving administrative and court appeals procedures and practical problems encountered by national government departments in actually collecting debts from the debtor once an administrative or court decision has been taken. Cross-border operations entail additional problems.

These difficulties of substance are compounded by shortcomings in applying customs legislation, particularly as regards the definition of customs debt and the establishment and entry in the accounts of TOR.

4.2. The increase in the number of cases of fraud and irregularities, particularly since the early 1990s, has highlighted the limits on the inspection capabilities of Member States' customs authorities. These are due mainly to the growing volume of transactions, the ever-increasing sophistication of products, the complexity of the rules to be applied and the number of customs procedures and preferential agreements open to traders. Increasingly, these authorities are confronted with fraud schemes organized by international criminal networks, often based in non-member countries and either operating under cover of dummy companies or using reputable firms which are unaware of the true nature of their business partners. In view of this situation, both the Council and Parliament have insisted that it is absolutely essential that Member States afford adequate protection to Community revenue as part of a general campaign against the waste and diversion of Community funds.[12]

Given the scale of these problems, we can hardly expect miracle solutions, and Member States must concentrate their efforts first and foremost on areas where progress is most likely, i.e. in the strict application of Community provisions, particularly as regards the incurring of customs debts, guarantees and the establishment and entry in the accounts of TOR. As well as stepping up measures to pursue defrauders, each Member State should consider introducing changes to court procedures so that cases can be dealt with more quickly.

On a more general note, it is worth considering whether a number of irregularities might be caused by complex Community and international rules, which sometimes strive to attain different goals at the same time. Application of certain international agreements may give rise to irregularities, usually as a result of a misinterpretation of Community rules or a failure to observe these rules by one link in the chain, as the (financial) consequences are then borne by others.

A striking example is in the preferential arrangements, which clearly need to be examined very carefully. It should be possible to cut the number of cases of irregularities by introducing more transparent legislation that is easy to apply in practice both for our international partners and individual traders.

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12 Most recently in the report by Mr Bardong, rapporteur for Parliament's Committee on Budgetary Control, and the Conclusions of the Madrid European Council of 27 November 1995.

4.3 The Commission committed itself to take a number of specific steps to rectify the factors which could be liable to impede the recovery of entitlements by the Member States:

Recovery procedures

With regard to the resources available to Member States to pursue (enforced) recovery, at the end of 1994 the Commission launched a comparative study of relevant national provisions by means of questionnaires addressed to the Member States and of seminars. The results highlighted certain shortcomings, such as differences in treatment under national law, and in particular different treatment of time limitations, the calling-in of guarantees, and the possibilities of appeal. Consequently, in accordance with the conclusions of the ECOFIN Council of 27 November 1995, the Commission, in co-operation with the representatives of the Member States in the framework of ACOR, is pursuing a review of options for the strengthening of recovery procedures for defrauded amounts.

External Community Transit

In relation to Transit, the Commission, on the basis of an interim report presented in October 1996, and in close co-operation with the Member States and the trade, is in the process of devising a strategy for the reform of transit arrangements and is drawing up measures designed to ensure the security of the different arrangements. The main emphasis in this review will focus on controlling access to the Common and Community arrangements, the protection of financial interests, the establishment of a system for the collection and exchange of statistics and information, and ensuring coherence and consistency between transit systems.

Also in relation to Transit, the Commission undertook a series of controls during the years 1994 and 1995 pursuant to Articles 18 paragraphs 2 and 3 of Regulation 1552/89. In almost all Member States, delays, sometimes of long duration, in the taking of recovery action were observed and the Member States were requested to rectify the situation for all Transit operations remaining undischarged after the legal time limit. The Commission is monitoring the actions taken in response to these requests.

Preferential tariff arrangements

The problems highlighted in regard to the recovery of debts incurred in the context of preferential tariffs gave rise to a number of control missions to the Member States by the Commission (on the basis of Article 18 paragraphs 2 or 3 of Regulation 1552/89). These missions confirmed that preference arrangements are not operating satisfactorily, particularly in relation to the issuing of preference certificates and the measures in place for ex-post control.

These observations led the Commission to strengthen the legislation on administrative co-operation between the beneficiary countries of Generalised System of Preferences (GSP) and of autonomous Community arrangements on the one hand and the Community as grantor of preferences[13] on the other. The new provisions, which entered into force on 1 January 1997, clarify the arrangements for Commission participation in investigations undertaken by the competent authorities of the beneficiary countries aimed at verifying the true origin of products exported under certificates of origin.

At a practical level, the Commission has established a computer system for the transmission of stamp impressions used to authenticate certificates of origin to the customs authorities of the Member States. This electronic transmission, allowing for greater speed in the circulation of information and for more legible models of stamps, is an important factor in the improvement of the effectiveness of controls on certificates of origin and on the circulation of goods.

Based on the findings of the control activities and on the analyses outlined above, and in accordance with a request of the Council contained in its decision of 28 May 1996[14], the Commission is currently preparing a communication on the subject of preferential arrangements. This will identify certain steps to be taken immediately and in the longer term with a view to the rectification of the problems arising from the implementation of these arrangements.

Improvement in the quality of information on recovery

The amendment of Council Regulation (EEC, EURATOM) n° 1552/89[15] included, for the first time in relation to the Community's own resources, the requirement for Member States to continuously update the Commission on the situation regarding recovery in cases of fraud and irregularities. To facilitate the transmission of data, a computer programme (OWNRES) has been developed. This will be operational before summer 1997.

In future, the Commission will have up-to-date information on the recovery situation for evaded resources in all such cases and will be in a position to propose appropriate measures, which it may consider necessary to mitigate any deficiencies in the actions taken at national level. In addition, the Commission will be proposing certain amendments to Council Regulation (EEC, EURATOM) n° 1552/89 aimed at clarifying the provisions concerning the responsibilities of the Member States in the case of non-recovery of entitlements.

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[13] Commission Regulation (EC) n° 12/97 of 18 December 1996 (OJ L n° 9 of 13.1.1997), amending Commission Regulation (EEC) n° 2454/93 (Implementing Provisions), and in particular Articles 93, 93a and 94.

[14] Decision n° 96/C/170/01, published in OJ C 170 of 14.6.1996, p.1.

[15] Council Regulation n° 1355/96 of 8.7.1996 (OJ L 175 of 13.7.1996, p. 3

Infringement proceedings

In one case ("German/Dutch butter"), the failings displayed by the national authorities in the protection of the financial interests of the Community, together with the refusal of those authorities to rectify the situation in relation to irregular imports from third countries, has led the Commission to deliver a reasoned opinion pursuant to Article 169 of the Treaty.

4.4 The results of the monitoring by the Commission of recovery in the present sample will be the subject of a communication dealing with the recovery of TOR in cases of fraud and irregularities.

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