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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Action plan for monitoring the functioning of preferential trade arrangements

This Communication from the Commission to the Council sets out an Action Plan for monitoring the functioning of preferential trade arrangements.

Action Plan for monitoring the functioning of preferential trade arrangements

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1. INTRODUCTION

The aim of proper monitoring the functioning of preferential arrangements is to ensure that the legal framework is implemented correctly and that preferences are applied only to imports genuinely originating in the partner/beneficiary country or region in question.¹

The Commission has significant rights and powers available to it in connection with its obligation to supervise and monitor the proper implementation of rules of origin and when examining applications for repayment or remission of import duties. Insufficient monitoring may have serious consequences, such as allowing a 'special situation'² to be established under Article 239 of the Customs Code.

Monitoring thus helps to protect the EU's financial interests and makes for fair trade between the EU and its trade partners.

The Commission suggested in point 3.2.1 of Communication COM(2005) 100 final of 16 March 2005 that, initially, legal bases, technical modalities and funding of expenses involved in monitoring should be identified and that a central point should be established to which data on the practical use of preferential arrangements were to be directed (see point 2.2.). Since then the Commission has established a Task Force³ to monitor the implementation of rules of origin and this acts as this 'central point'.

2. LEGAL FRAMEWORK, OBLIGATIONS AND MANAGEMENT ARRANGEMENTS UNDER THE CURRENT SYSTEM

2.1 Legal framework

2.1.1 Autonomous and bilateral preferential arrangements

The Generalised System of Preferences (GSP)⁴ provides a legal framework for monitoring activity, including verification visits by Commission or Member State customs officials.

The Overseas Countries and Territories (OCT) Decision⁵ does not provide a legal framework for monitoring activity, but the future 'Overseas Association Decision'⁶ will.

¹ Countries benefiting from autonomous trade measures are referred to as 'beneficiary countries', whereas those with which the EU has agreed bilateral preferential arrangements are referred to as 'partner countries'.

² A special situation results from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

³ The Task Force was set up by amending DG TAXUD's organigram in September 2013.

⁴ Currently Article 97k and as of 1 January 2017 Articles 68 and 69 of Regulation (EEC) No 2454/93 (Customs Code Implementing Provisions), as amended by Regulation (EU) No 1063/2010.

Pending the conclusion and application of revised Economic Partnership Agreements (EPAs) with the African, Caribbean and Pacific countries a temporary unilateral scheme has been in place under the Market Access Regulation (MAR)⁷ since 1 January 2008. . Annex I to the MAR contains a list of regions or states which have concluded negotiations within the meaning of Article 2(2) and Article 4(3) provides a legal framework for monitoring implementation of the rules of origin in respect of trade with them. As of 1 October 2014, however, the list will be restricted to countries with which there is an EPA applied and the scope of monitoring under the MAR will be limited. As a result, the MAR ACP beneficiary countries will remain only the EPA partner countries falling under these bilateral agreements.

No other autonomous or preferential arrangement (apart from the GSP, the OCT Decision and the MAR) contains explicit provisions on monitoring.

2.1.2 Management of administrative errors (MAE) clause

If monitoring activities with beneficiary/partner countries reveal that errors in the management of preferential arrangements have led to EU import duties being lost, the management of administrative errors clause may be triggered. Under this clause, which the EU is proposing in new preferential trade agreements under negotiation, the contracting party facing such losses may request that the body identified for this purpose in the agreement examines possible measures to resolve the situation.

2.1.3 Customs cooperation, mutual administrative assistance and temporary withdrawal of preferences

Preferential trade arrangements usually include customs cooperation and mutual administrative assistance⁸ provisions involving regular information exchange and liaison to ensure the correct application of customs legislation, in particular by preventing, investigating and combating illicit operations.

These provisions provide under certain conditions for the temporary withdrawal or suspension of preferences in response to a beneficiary/partner country's:

⁵ Council Decision No. 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (OJ L 314, 30.11.2001).

⁶ Article 51 of Annex VI to the OAD proposal (COM(2012) 362 final, 16.7.2012).

⁷ Council Regulation (EC) No 1528/2007.

⁸ OLAF is in charge of the latter.

- repeated failure to verify originating status;⁹
- repeated refusal to carry out, and/or communicate the results of, subsequent verification of the proof of origin, or undue delay in doing so; and
- repeated refusal to grant authorisation for enquiry visits (to be initiated by OLAF and/or the Member States) to check the authenticity of documents or accuracy of information relevant to the granting of preferential treatment, or undue delay in doing so.

These provisions are included in the GSP Regulation¹⁰ and the future OAD,¹¹ and their inclusion is being proposed in new preferential arrangements.

2.1.4 Infringement procedures against Member States

Serious anomalies in the functioning of preferential trade arrangements may also stem from a Member State's failure to comply with EU law. Where it detects such a failure, the Commission may initiate the procedure for failure to fulfil an obligation provided for in Article 258 of the TFEU.

2.2 The Commission's obligations

It is the Commission which must ensure that preferential trade arrangements are implemented correctly.

Even if agreements do not explicitly refer to monitoring, they may entail certain options for the Commission, including:

- dialogue in the Joint or Cooperation Committees;
- general information requests; and
- warning EU importers in cases of doubt as to the correct implementation of the agreement.

In order to ensure the effectiveness and efficiency of preferential rules of origin, shortcomings need to be addressed and corrected. Ensuring compliance with preferential origin rules including rules on administrative cooperation is crucial for the credibility in the implementation of and during negotiations of any future Free Trade Agreement.

⁹ I.e. that the product(s) actually originate(s) in the region or state to which the preference has been granted.

¹⁰ Article 21 of Regulation (EU) No 978/2012 (OJ L 303, 31.10.2012).

¹¹ Article 46 of the OAD proposal (COM(2012) 362 final, 16.7.2012).

2.3 Management arrangements

2.3.1 Periodical reporting system

The information submitted by Member States and collected through the Commission's periodical reporting system, focuses mainly on the number of verifications requested per beneficiary country, replies received and compliance with reply deadlines.

The data are evaluated and beneficiary/partner countries are selected for monitoring meetings, in which Member State experts participate on a case-by-case basis. The Commission is currently evaluating the idea of setting up a monitoring database.

2.3.2 Specimen Management System (SMS) database

Arrangements providing for trade preferences usually include, in the chapter on administrative cooperation, a provision requiring beneficiary/partner countries to communicate to the Commission specimen impressions of the stamps their authorities use when issuing movement certificates or certificates of origin.

The Commission stores these impressions, along with the names of the authorities empowered to issue and control proofs of origin, in its Specimen Management System (SMS) database. The database is updated on an on-going basis and can be consulted by Member States' customs authorities when clearing goods or assessing the need to send verification requests to beneficiary/partner countries.

2.3.3 Notices to importers

In cases of reasonable doubt as to the origin of goods imported under preferential tariff arrangements, the Commission may publish notices to importers in the Official Journal.¹² Persons liable for customs debts in cases of incorrect proofs of origin cannot plead good faith if the Commission has published a notice signalling grounds for doubt as to the proper application of the arrangements by the country concerned.¹³

2.3.4 Registered exporter (REX) system

The Commission is currently finalising the IT required for the registered exporter (REX) system, which should cover GSP beneficiary countries and OCT exporters from 1 January 2017 and is due at a later stage to be applied in the context of free trade agreements.

¹² See Communication 2012/C 332/01 (OJ C 332, 30.10.2012, p. 1).

¹³ See Article 220(2)(b) of the Customs Code.

Rather than the competent authorities issuing proofs of origin, exporters in GSP beneficiary countries will issue origin statements as:

- (i) registered exporters — if the value of the consignment exceeds EUR 6 000; or
- (ii) non-registered exporters — if the value of the consignment does not exceed EUR 6 000.

The system will involve a central database with the information supplied by beneficiary country authorities (and Member State authorities using the same certification system for bilateral cumulation).

To ensure compliance with the rules of origin, beneficiary countries will verify the originating status of goods at the request of Member State customs authorities and carry out regular controls and audits on exporters on their own initiative.

3. WEAKNESSES OF THE CURRENT SYSTEM

The current monitoring activities suffer from the following weaknesses:

- the periodical reporting system focuses mainly on collecting quantitative information on the formalities of administrative cooperation and only to a minor extent on ensuring compliance with the origin rules as such;
- there is as yet no periodical reporting system on beneficiary countries' management and control of preferential origin;
- the data currently used for monitoring are basically provided by Member States and, in some cases, other Commission services. Other sources are not exploited and the verification visits referred to in Communication COM(2005) 100 have not yet been carried out;
- any shortcomings detected are addressed in writing or during monitoring meetings between the Commission, Member States and beneficiary/partner countries concerned. Such meetings are currently organised on a case-by-case basis and in addition to meetings of the committees established under bilateral agreements; other means of addressing shortcomings are not yet exploited;
- the Commission's monitoring activity does not cover Member States' measures to ensure compliance with the origin rules, in particular when issuing proofs of origin; and
- the Common Risk Management System ¹⁴ does not include risk profiles for origin rules.

¹⁴ The European Commission on 8 January 2013 adopted a Communication on Customs Risk Management and the Security of the Supply Chain (COM/2012/793). It sets out a strategy to enable customs to better tackle risks associated with goods being traded in international supply chains.

The cumulative effect of these weaknesses incites the Commission to further improve the current system.

4. REMEDIES

In order to address the weaknesses of the current system, it is important to focus on the following objectives.

4.1 Enhancing collection of data and identifying failures in implementation

4.1.1 Collection and analysis of data

The information relevant for monitoring should be complemented by data from the Integrated Statistical Database (ISDB), COMEXT, COMTRADE and TARIC data, and information from Member States.

As a first step, the Commission should carry out a general assessment of available data for the 89 GSP beneficiary countries, focusing on potential risks arising from trade flows and differences in duty levels, and taking into account information from Member States.

At a later stage, information on other beneficiary/partner countries could be assessed.

4.1.2 Selection of countries for further monitoring

Based on its assessment, the Commission will select a limited number of beneficiary/partner countries for in-depth monitoring. In case of partner countries in whose preferential arrangements there are no explicit provisions related to monitoring, the partner country would have to explicitly agree to be subject to such monitoring.

As from 2014, the Commission will propose an annual monitoring plan focusing on countries and products for which more in-depth monitoring is considered useful, with some flexibility for short-term needs and risks.

4.1.3 Questionnaires

The Commission will send to the selected countries detailed questionnaires on the practical administration of origin rules and the issuing of proofs of preferential origin.

The questions will be adapted to particular circumstances and operations, particularly once the REX system is in place.

The answers will be evaluated and used to prepare monitoring meetings and visits.

4.2 Taking corrective measures

4.2.1 *Monitoring meetings, monitoring visits and Joint or Cooperation Committees*

Once the data (see point 4.1.1) and questionnaire answers (see point 4.1.3) have been evaluated, the Commission will decide on a case-by-case basis whether to organise:

- monitoring meetings;
- monitoring visits to the country concerned; or
- Joint or Cooperation Committee discussions

to address any concerns as to the correct application of preferential rules of origin and provide detailed explanations so as to raise awareness and give guidance.

In each case, the Commission will draft a detailed report, to be shared with the beneficiary/partner country, the findings of which will be fed into the following year's monitoring plan.

4.2.2 *Using corrective and safeguard mechanisms*

Depending on outcomes under this enhanced monitoring procedure (see point 4.2.1), the Commission should decide on the action to be taken – if possible in cooperation with the beneficiary/partner country – to address the risks identified. Measures may include:

- providing additional targeted training or technical assistance to officials in charge;
- issuing notices to importers (see point 2.3.3); or
- when such remedy is provided for in the preferential arrangement in question temporary withdrawal or suspension of preferences.

4.2.3 *Risk profiles*

The Commission will also evaluate whether common risk profiles for origin should be developed and implemented and, if so, in what form. Work will continue to establish and keep up to date effective common standards in audit¹⁵ and *a posteriori* controls through the convergence of control standards project and the customs audit guide.

¹⁵Customs controls are identified as a priority under Art. 5 (2)b) of Regulation (EU) No 1294/2013 of the European Parliament and of the Council establishing an action programme for customs in the European Union for the period 2014-20 (Customs 2020) and repealing Decision 624/2007/EC.

4.2.4 *Monitoring of Member States' activities*

The need for the correct and uniform application of EU customs legislation is not limited to provisions relating to own resources, but relates to all aspects of customs law. As a matter of credibility in the Union's relations with beneficiary/partner countries, the Commission should also monitor Member States' arrangements for issuing of proofs of origin. This is particularly important when it comes to ensuring the traceability of preferential origin for the purposes of cumulation. Goods leaving a Member State may be used in the manufacture of products in a beneficiary/partner country from which they are then brought back under cumulation arrangements.

The Commission will send **questionnaires** on the practical administration of origin rules and the issuing of proofs of preferential origin to all Member States. On the basis of their answers and any other available information, the Commission will decide on the appropriate action.

4.2.5 *Amending the Customs Code Implementing Provisions,¹⁶ autonomous arrangements and bilateral preferential agreements*

When assessing the temporary withdrawal or suspension of preferential treatment under the GSP Regulation, the Commission should consider, whether these measures can exclusively be applied to specific CN headings in certain circumstances. This possibility is provided for in Articles 15, 19 and 21 of the GSP Regulation. As compared with hitting all preferential imports from one or more beneficiary countries, withdrawal or suspension for specific CN headings could be a more effective and efficient means of targeting problem areas, when they concern exclusively certain CN headings.

Thought could also be given to whether a legal framework for monitoring could be introduced in other autonomous schemes or negotiated under bilateral preferential arrangements. In the case of the latter, the approach might require careful further evaluation.

In addition, the Commission should assess in more detail how the periodical reporting system on beneficiary countries' management and control of preferential origin (as referred to in point 3.2.1 of Communication COM (2005) 100) can be incorporated in the various preferential arrangements.

4.3 Means and Follow-up activities

4.3.1 *Funding*

The monitoring activities referred to above will contribute to the objectives of the multi-annual Customs 2020 programme¹⁷ and be proposed for funding as regards:

¹⁶ Regulation (EEC) No 2454/93.

¹⁷ Regulation (EU) No 1294/2013 of the European Parliament and of the Council establishing an action programme for customs in the European Union for the period 2014-20 (Customs 2020) and repealing Decision 624/2007/EC.

- (i) travelling costs for Member State experts' participation in meetings and monitoring missions; and
- (ii) the development of IT programmes and databases.

Training activities for beneficiary/partner countries may be funded under the 2014-20 EU External Assistance Programmes.¹⁸

4.3.2 Reporting and sharing information

At the end of each calendar year, the Commission will publish a report on its monitoring activity. It will also share with Member States any relevant information it has gathered.

5. SUMMARY

Better monitoring of the functioning of preferential trade arrangements should be achieved by:

- periodical reporting systems related to beneficiary/partner countries and Member States;
- Enhanced collection of data, and
- analysing available information and identifying countries and products for which further monitoring appears necessary.

This monitoring should then be undertaken through:

- contacts with the countries concerned;
- the completion of questionnaires; and
- if necessary, monitoring meetings or visits.

Based on the outcome of the above measures, the Commission will assess the need for further action.

The implementation of this action plan should start directly after adoption of this Communication.

The Commission invites the Council to fully support the actions set out in this Communication.

¹⁸ Development Cooperation Instrument, European Development Fund (2014-20), European Neighbourhood Instrument, Pan-African Instrument. The legislative proposals for financing these measures are still under preparation.