



**COUNCIL OF
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From: ACP Working Party
To: Permanent Representatives Committee/Council
No. Cion doc.: 12732/12 - COM(2012) 362 final

Subject: Draft Council Decision on the association of the overseas countries and territories with the European Union ("Overseas Association Decision")
- Adoption of the legislative act (**LA + S**)
= Statement

Statement by the Commission to be entered into the Council minutes

"The Commission regrets the lack of agreement in the Council as regards the inclusion of the proposed Article 47 on Management of Administrative Errors in the Council Decision.

The purpose of that Article was to explicitly confirm in the Decision that in case of error by the competent OCT authorities in the issuance of certificates and methods of administrative cooperation, and where this error leads to losses affecting Union import duties, the Member State with whom the OCT that has committed the error has special relations, shall compensate the Union budget for the loss incurred.

The Commission considers that the financial burden of such losses incurred is not to be borne by the Union budget and thus by all other Member States.

The Commission recalls that, according to Article 4(3) of TEU, Member States shall take all appropriate measures to ensure fulfilment of the obligations arising from the Treaties. One of those obligations relates to Article 29 of TFEU which stipulates that customs duties which are payable should be levied. A Member State's refusal to compensate the loss of funds which should have been collected and made available hinders the proper functioning of the Union's own resources system thus disrupting the financial equilibrium of the Union. Member States should protect Union's financial interests and assume the financial responsibility resulting from their special relationship with their OCTs listed in Annex II of TFEU.

Although the proposed Article is therefore not to be included in the Decision, the Commission considers that its content is in accordance with the Member States' already existing obligations under the Treaties. The Commission is applying this legal approach in current cases of losses incurred in case of errors by the competent OCT authorities and will continue to apply it in future cases."
