



Union of Industrial and Employers' Confederations of Europe
Union des Confédérations de l'Industrie et des Employeurs d'Europe

23 March 1998

**Preliminary UNICE comments on the Communication from the Commission
on the management of preferential tariff arrangements [COM(97) 402 final]**

Executive Summary

- Following the withdrawal of origin certificates wrongly issued by certain beneficiary countries, the Council requested the Commission to table proposals in order to take into account the good faith of economic operators who would find it difficult to pay a customs debt.
- By issuing its communication, the Commission did not want to reduce the debate to the problem of importers but to widen it, to cover the broader prospects for new methods of management of preferential regimes. However, the Commission view is that the possibility of an origin declaration being invalid is a commercial risk which it is therefore logical for the importer to assume.
- In its position at annex, UNICE favours modernisation, standardisation and radical simplification of the preferential rules of origin but totally rejects the Commission's contention about commercial risk. UNICE believes that an importer who acts in good faith should be entitled to rely upon evidence of origin under the condition it is provided by a duly authorised exporter in the country of export or validated by the customs authority in that country.
- UNICE considers that the only satisfactory solution to the problems of invalid origin certificates and declarations is to transfer the onus of proof of origin from the importer to the exporter and/or export authority. UNICE suggests that the current origin certificates be replaced by a system of invoice declarations by authorised exporters.
- UNICE recognises that a major part of the problem is that some beneficiary countries simply do not have the skills, resources or means to enable them satisfactorily to control or verify origin statements. UNICE therefore strongly supports training and on-going support actions in view of restoring third countries' confidence in the preferential tariff arrangements.
- UNICE supports the idea to monitoring the beneficiary countries and, in the case of negative findings, it suggests that Community importers be informed through an "early warning system". For UNICE it is clear that, if an origin declaration proves to be invalid, this situation should no longer be grounds for post-clearance recovery of duty unless the EU customs authority can show that the importer did not act in good faith.
- In cases of failure to apply rules of administrative cooperation, UNICE asks the Commission to make more use of article 9 of the GSP Regulation, which provides the possibility of withdrawing preferential treatment.

- UNICE supports actions taken by the Commission and by Member States to rectify the situation based on Customs 2000 and wishes to establish an efficient partnership between customs and operators which will enable close consultation with the many economic sectors involved. This is all the more justified when fraud in preferential origin circumvents commercial measures.
- Finally UNICE would like to draw Commission's attention to the need to keep preferential agreements totally in conformity with WTO/GATT provisions and avoid creating new sources of conflict between members and non-members of these arrangements.

**Preliminary UNICE comments on the Communication from the Commission
on the management of preferential tariff arrangements [COM(97) 402 final]**

1. Introduction

- 1.1. In its Communication on the Management of Preferential Tariff Arrangements, the Commission considers that discrepancies in applying these arrangements should be seen in a wider political context than customs problems alone. UNICE shares this perception.
- 1.2. UNICE thinks it about time the Commission put some order into an increasing number of complex and unmanageable sets of preferential agreements and supports a plan for remedying the current crisis.
- 1.3. UNICE does not believe that the problems which have arisen over the past few years are attributable, either wholly or mainly, to fraud on the part of economic operators in the EU. In UNICE's view, in the vast majority of cases, the problems arise from a combination of the complexity of the origin rules and inadequate provision in the preference agreements for the management and control of origin documentation by the beneficiary countries.
- 1.4. In UNICE's opinion, there may, in some cases, be fraud on the part of exporters in countries which benefit from preferential arrangements, and there may even be some instances of collusion between exporters and importers, but these account for a small minority of invalid origin certificates.

2. Introducing importer good faith and facilitating exporter access

- 2.1. UNICE supports the Commission's objectives which aim at furthering development of the beneficiary countries, promoting cooperation between partner countries and preparing accession candidates for integration.
- 2.2. UNICE favours modernisation, standardisation and radical simplification of the preferential rules of origin, which cover most of the products traded between two parties.
- 2.3. On the other hand, UNICE strongly rejects the Commission's contention that the possibility of an origin declaration being invalid is a commercial risk which it is therefore logical for the importer to assume. For UNICE, the problem is clearly placed into the area of political risk and this is borne out by the fact that it is impossible to insure against it under affordable commercial conditions.

2.4. As a basic principle of all preferential tariff arrangements, therefore, it is UNICE's view that an importer who acts in good faith should be entitled to rely upon evidence of origin which is:

- . provided by a duly authorised and approved exporter in the country of export;
- or
- . validated by the customs or other competent authority in that country.

3. **Liability of debtors for protection of different financial interests**

3.1. UNICE thinks that Commission communication does not fully take into account the fact that Community importers in certain instances are confronted with erroneous use of the preferential agreements in the beneficiary countries.

3.2. Whereas the Council asked the Commission to undertake a study with a view to finding an overall solution to "discharge" Community importers from their liability in the case of *"irregularities, committed by the authorities of the beneficiary countries, which Community traders cannot reasonably detect"*, UNICE believes that the Commission study should not be based on the assumption that Community importers should be held responsible in the context of commercial risk as suggested by the Commission.

3.3. UNICE firmly believes that it is too easy a way out to combat fraud by neutralising its effects through holding the Community importer directly responsible for the full customs debt. UNICE does not share the idea that genuine good faith would lead to abandoning principles regarding the management of preferential tariff arrangements (e.g. origin, value, etc.). On the contrary it would meet the requirements for a modern customs administration and, once included in the customs legislation, be subject to the jurisprudence of the European Court of Justice.

3.4. Importers should not be held liable for custom debt when it is impossible to prove that they were aware of the irregularity. Moreover it cannot be contested that they are the least well placed parties in the chain to know the exact manufacturing conditions of a product. UNICE believes that the direction taken by the Commission in its communication concerning the reference to normal commercial risk would inject too much uncertainty into contracts, which hardly seems compatible with current business practice. In this regard, the official stamp affixed by the administrative department of the exporting country on the certificate of origin could give the importer a fallacious impression of complete security.

3.5. UNICE considers that the only satisfactory solution to the problems of invalid origin certificates and declarations is to transfer the onus of proof of origin from the importer to the exporter and/or the export authority. UNICE is aware that this somewhat radical approach raises a number of politically sensitive issues and that any change could be brought about only as a part of any re-negotiation of the agreements in question.

3.6. UNICE recognises that a major part of the problem is that some beneficiary countries simply do not have the skills, resources or infrastructure to enable them satisfactorily to control or verify origin statements. UNICE therefore strongly supports training and on-going support actions in view of restoring third countries' confidence in the preferential tariff arrangements.

4. Monitoring the system

- 4.1. UNICE supports the plan to monitor the beneficiary countries and, in the case of negative findings, it suggests that Community importers be informed through an "early warning system". UNICE also supports adoption of provisional measures with respect to third countries not meeting their obligations as well as any supplementary measure which could clarify the functioning of preferential arrangements.
- 4.2. However UNICE believes that these measures should not be adopted without consultation of Community operators, within the framework of the partnership indicated under point 6, so that the advantages and drawbacks for economic activity and the security of the procedure can be carefully weighed.
- 4.3. UNICE recommends that the onus of proof should be transferred to the beneficiary countries by dispensing with Forms A and other certificates of origin and replacing them with a system of invoice declarations by authorised exporters. The latter would be required to satisfy the local customs authority as to the origin status of their products before making any declarations of origin, and the whole system would be subject to periodic review by EU auditors.
- 4.4. UNICE is of the opinion that the above system should substantially solve the problem of invalid origin documents but wishes to make it clear that, having transferred the onus of proof to the exporters and their customs authorities, EU importers must then be indemnified against any error, negligence or fraud on the part of either. In other words, the fact that an origin declaration made under these arrangements subsequently proves to be invalid should no longer be grounds for post-clearance recovery of duty unless the EU customs authority can show that the importer did not act in good faith. Any loss of own resources arising from invalid origin declarations would be a matter for the Commission to take up with the country concerned.
- 4.5. In principle, UNICE believes that, pending reform of the origin arrangements, the Commission should be prepared temporarily to waive its right to recover duty in any case where the importer has acted in good faith and has made reasonable efforts to establish the origin status of all goods imported under preferential arrangements, irrespective of whether the authority in the country of export has made an "error" as envisaged in Article 220.2(b) of the Community Customs Code. The criterion by which to judge whether "reasonable efforts" have been made should be that the importer has applied for and received Binding Origin Information relating to the goods in question.

5. GSP Arrangements

- 5.1. In cases of failure to apply rules of administrative cooperation, the Commission should make more use of article 9 of the GSP Regulation, which provides the possibility of withdrawing preferential treatment. UNICE deplores the fact that this article has never been used in the past and asks for changes to allow the provisions of that article to be applied when the situation so justifies.

- 5.2. If negotiations for the new GSP are completed on time, the arrangements described under point 4.4. could be introduced as early as 1 January 1999, although it is understood that the present scheme may be extended for a further 12 months. This raises the question of what action, if any, the Commission can take to alleviate the burden currently imposed on importers by unforeseen duty demands.
- 5.3. It is worth adding that many of the measures envisaged by the Commission to remedy the crisis seem unlikely to produce certain and rapid results. It is probable that their effects will only be felt in the long term, i.e. at a time when the tariff advantages will have almost completely disappeared because of the generalised reduction in customs duties.

6. Partnership between customs and operators

- 6.1. UNICE supports actions taken by the Commission and by Member States to rectify the situation based on Customs 2000, which aims at clarifying the conditions for applying the common commercial policy.
- 6.2. For UNICE it is important to make every effort to preserve the confidence of operators, and more particularly importers, in a system which would not be detrimental to honest operators. Otherwise there is a risk that they will eventually turn away from such a system whose essential objective is to promote development in selected non-EU countries with an economic lag.
- 6.3. For the reason mentioned-above and still in the spirit of Customs 2000, UNICE wishes to establish an efficient partnership between customs and operators which will enable close and on-going consultation with the many economic sectors involved.
- 6.4. Close consultation with the many economic sectors appears indispensable for the success of a reform and moreover to preserve the competitiveness of European companies. This is all the more justified when fraud in preferential origins circumvents commercial measures such as quotas, safeguards and anti-dumping duties.

7. Requests for clarifications

- 7.1. UNICE would like from the Commission more explanations regarding the list of measures tabled in the communication, in view of preparing for the future, especially on the following points:
- how it plans to put into effect the actions envisaged in the "*Communication on the improvement of Community market-access for least-developed countries*" and especially regarding derogations from the rules of origin which could lead to burdensome situations for Community producers;
 - encouraging the setting-up of regional cooperation structures, in particular those allowing investment between advanced and less advanced developing countries, and regional cumulation within this framework;

- the *"exemption as generalised as possible for the least-developed countries"* and countries at a similar level of development, considering the fact that these countries already benefit from wide product cover within the GSP;
- the Community statements on the UNCTAD proposal regarding *"world harmonization of GSP origin rules"*, as well as on its plan for *"simplifying the system of preferential rules of origin to take account of the future context of the world trade following the Uruguay Round"*.

8. Conclusion

- 8.1.** Finally UNICE would like to draw Commission's attention to the need to keep these agreements totally in conformity with WTO/GATT provisions and avoid creating new sources of conflict between members and non-members of these arrangements.
- 8.2.** UNICE believes that allowing the present arrangement for managing origin to continue is in the interest of none of the parties concerned. For EU importers, there is either a substantial administrative burden in trying to establish the origin status of the goods they wish to buy or the risk of unforeseen duty liabilities. For the beneficiary countries, there is the threat that they will lose their markets in Europe. And, for the Commission, there is the loss of own resources. UNICE considers that the proposals set out above are fair, reasonable and workable and represent the optimum solution to the present difficulties.
- 8.3.** These UNICE preliminary comments do not prejudice the views UNICE might take after the Symposium to be organised on this question. If during this Symposium further questions arise or comments need to be made, its experts are willing to study them and pursue dialogue.