

UNION OF INDUSTRIAL AND EMPLOYERS' CONFEDERATIONS OF EUROPE

# UNICE CUSTOMS POLICY

## Opening the Door to Global Trade



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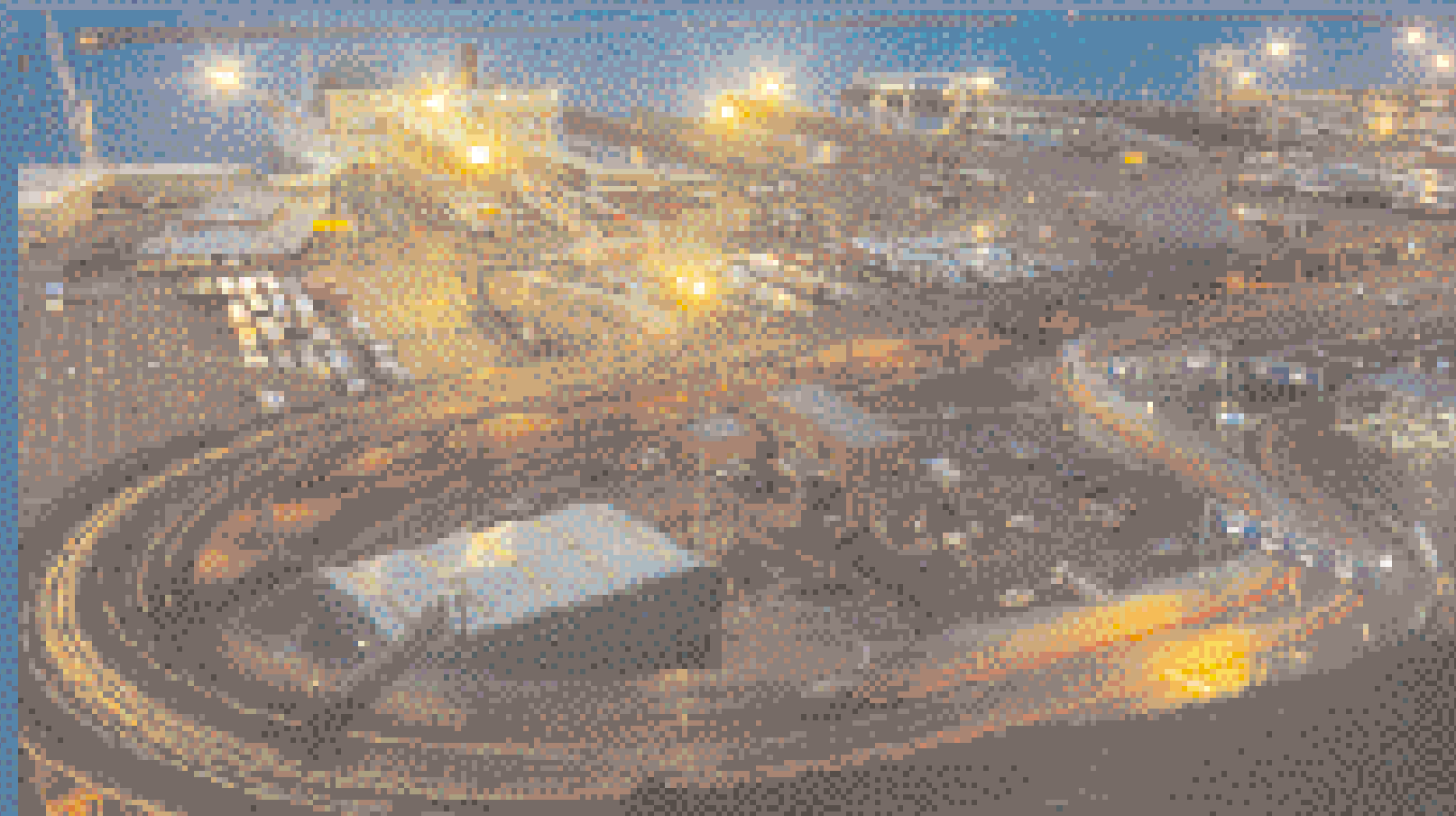
Rue Joseph II, 40/4 • B-1000 Brussels • Belgium

Tel : 32 2 237 65 11 • Fax : 32 2 231 14 45

E-mail : [main@unice.be](mailto:main@unice.be)

[www.unice.org](http://www.unice.org)

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## Opening the Door to Global Trade

January 2000

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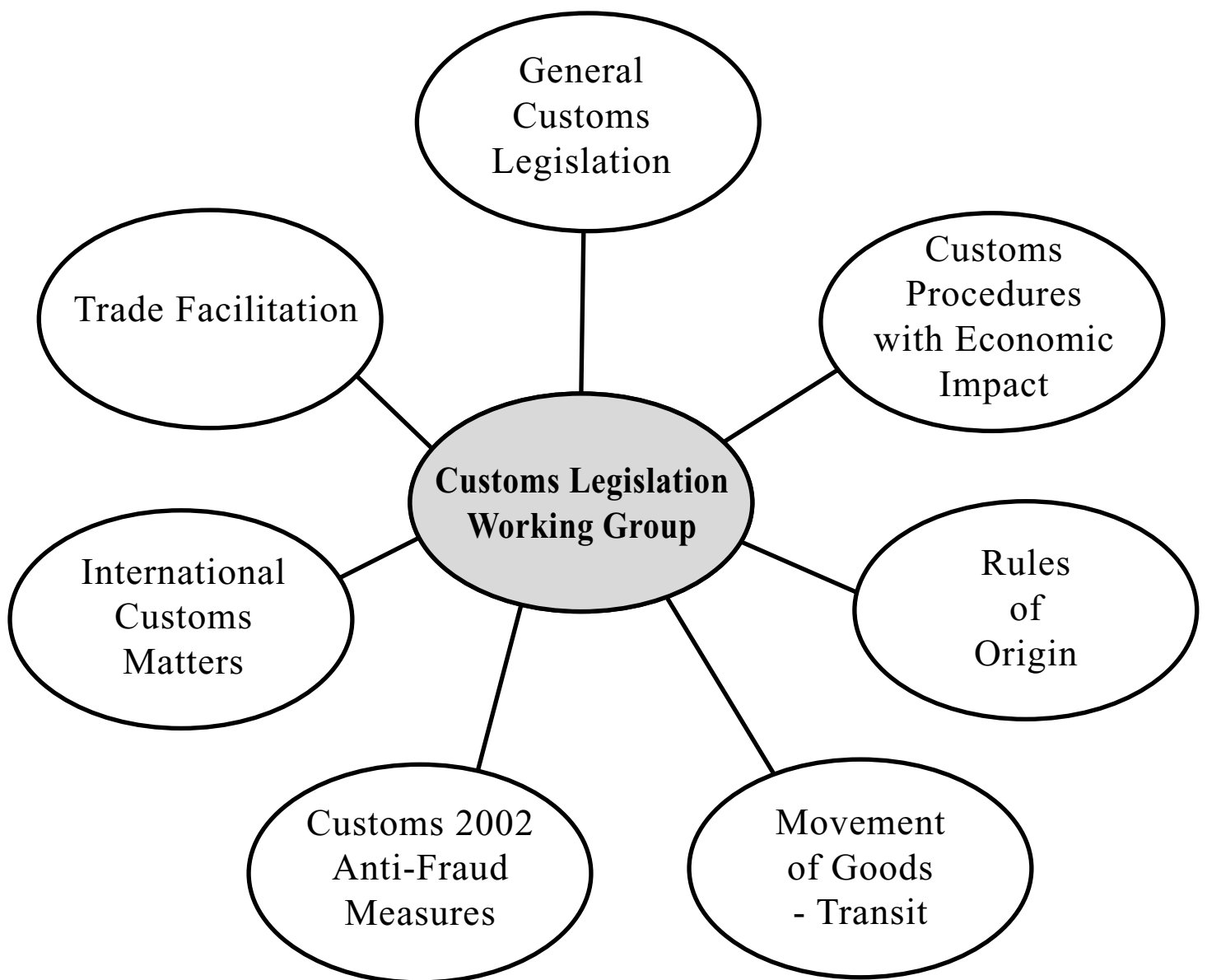
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# UNICE INITIATIVES IN THE FIELD OF CUSTOMS



## Making customs rules more friendly to economic operators

In the fierce competition resulting from globalisation, companies need greater certainty in the administrative handling of their international transactions. To this end customs legislation and, in parallel, customs administrations need to be modernised. Standardised and simplified customs procedures and the documents used at EU and global level should also be tied in with business practice. This will result in more cost-effective and efficient (electronic) interaction between customs administrations and companies.

In this framework, UNICE supports European Commission initiatives in the field of customs aimed at ensuring uniform and effective management of the Union's external frontiers, which requires notably the enforcement of uniform customs procedures, harmonised classification of infringements and sanctions as well as a reliable and rapid system for foreign-trade statistics.

UNICE believes that the on-going enlargement negotiations as well as the proliferation of negotiations on free-trade areas with non-EU countries/areas make it very urgent for the EU to modernise its customs policy and for national customs administrations to intensify their cooperation significantly to achieve the above-mentioned objectives as rapidly as possible.

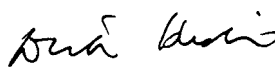
UNICE considers that the Customs 2002 programme is a good basis to work on in this respect. It welcomes in particular the proposals to deepen relations between the Commission, Member States and economic operators. A strengthened consultation procedure would provide operators with information and allow legislators to receive business input about envisaged changes to Community customs law which may have a major impact on the functioning of companies. This proposal fits in very well with the recent UNICE proposal to strengthen its partnership with DGXXI.

UNICE also supports the concrete and dynamic character given to the Customs 2002 programme, which complements action initiated by Member States in the framework of their responsibilities relating to implementation of customs law and endorses harmonisation of administrative behaviour, in particular regarding powers of sanction.

UNICE hopes that these principles, coupled with the major pillars of the UNICE customs strategy described in the first chapter of this compendium which contains the main UNICE's positions on customs matters, will not only facilitate discussions and contacts with European and national customs administrations but will also be a reliable aid in the elaboration of future decisions on the issues at stake. UNICE remains open to dialogue on these matters with the parties concerned, with a view to making customs rules more friendly to economic operators.

As Secretary General of UNICE and spokesman for the millions of large, medium and small European companies engaged in international trade, I call on the political authorities concerned to give the fullest possible consideration to the views expressed in the pages that follow. These UNICE positions have been developed by UNICE's «Customs Legislation» Working Group under the chairmanship of Mr Ad Snoodijk (VNO-NCW).

Brussels, January 2000



Dirk F. Hudig  
Secretary General of UNICE



## Summary and Future Priorities

### 1. The issue

Four strong tendencies are currently reshaping international trade rules:

- the increase in electronic commerce which necessitates a re-think about economic operators' needs and objectives at every step of the customs sequence;
- the globalisation of trade which requires more and more harmonisation of customs rules and procedures with every major trading partner (at bilateral level) and in the framework of the G7, WTO-WCO;
- the gradual lowering of customs duties at global level (WTO negotiations) and at bilateral level (free-trade agreements) and the need for customs administrations to adapt to this new situation;
- the current EU (and even global) trend (Agenda 2000, fight against bribery and corruption) which has resulted in a marked increase in financial means to combat fraud and consequently an increase in anti-fraud measures. These measures should not impede development of legitimate trade.

### 2. UNICE position

- UNICE Strategy in the field of customs (19 March 1999).

### 3. UNICE's requests

In this framework, UNICE strategy in the field of customs is built around the following two major pillars:

#### 1. Simplification and harmonisation of customs formalities to ensure the free movement of goods

A couple of years ago the European Commission started work on simplification and rationalisation of the different customs regimes and formalities mainly to cope with a significant increase in trade.

In doing so it has not always kept in mind the need of economic operators to have :

- harmonised forms and data required for customs clearance,
- simpler and easier rules/procedures to apply/follow while maintaining an effective fight against fraud,
- more flexibility when laying down transition terms for introduction of changes to tariffs and rules,
- speedy and flexible arbitration of customs disputes,
- a strong market access policy but no market opening without rules or customs controls.

### 2. Computerisation of trade and fight against fraud

In these fields UNICE favours:

- a reconsideration of the role of customs administrations in international trade, taking into account the increasing part played by electronic commerce;
- better cooperation among customs administrations, in collaboration with the business community in view of a more effective fight against customs fraud.

### 4. Future UNICE actions

- Defend at European level the "right to trade in good faith" at the lowest possible cost.
- Strengthen transparency and integrity in customs and operators' practices.
- Strive for seamless integrated transactions and international support to economic operators.

# UNICE strategy in the field of customs

19 March 1999

## I. Preliminary comments

A European customs policy is of paramount importance for European companies, as it will give them greater certainty in the administrative handling of their international transactions. To be effective this policy will have to be geared towards global market access, and incorporate important developments which have had a profound effect on the way companies operate in recent years. It will also have to favour the international harmonisation of practices, simplification of rules and co-operation with operators, and foster the coherence of customs administrative practices in the EU and administrative support to companies. UNICE presents here its detailed strategy for this matter.

## II. Considerations on trade facilitation and customs rules

1. In the field of international trade UNICE favours a strong market access policy but does not envisage market opening without rules or customs controls.
2. UNICE accepts the validity of customs disciplines in the European Union's foreign trade provided that such disciplines are compatible with the legitimate requirements of fluidity and rapidity which are indispensable for business development. Customs intervention is necessary to ensure good application of the regulatory mechanisms companies need for the security of their transactions.
3. Compliance with customs legislation - nationally and internationally - is normally enforced by customs administrations procedures ranging from physical border controls to administrative controls, and often a mixture of both. To alleviate the burden of these rules on operators, trade facilitation is an absolute necessity at international and Community level.
4. Globalisation of international trade - in which electronic trade is playing an increasing part - makes it necessary to reconsider the role of customs administrations in international trade. In collaboration with the business community, customs administrations should endeavour more actively to reconcile the effectiveness of their controls with the need for greater facilitation in international trade transactions. Efforts should be made to reach this objective not only at Community level, but also in international bodies.
5. At international level, common customs procedures, as embodied in the Kyoto Convention, should be encouraged as they will enable the exchange of essential information between customs administrations and operators. Also, international customs co-operation at both international and bilateral level should be furthered in co-operation with the business community.

## III. Reforming European customs policy and trade developments

1. UNICE considers that European customs policy must incorporate the important developments which have had a profound effect on the way companies operate in recent years.
2. The first of these developments is globalisation, which has brought about an explosion in international trade with fiercer competition. It has also forced operators of all sizes, including SMEs, to assimilate a range of sometimes complex customs rules in force in different parts of the world.
3. Nowadays most European companies need to be familiar not only with EU rules (e.g. preferential rules of origin) but also with those applicable in other countries where they sell or manufacture their goods. In the area of customs, companies feel much more acutely than in the past an increased need for information and simplification of rules covering their activities worldwide.
4. In addition, genuine completion of the European single market remains a very important expectation for companies.
5. Although European customs rules are almost completely harmonised in the Community Customs Code, the continued existence of fifteen national customs administrations means that companies still have to deal with procedures and practices that may differ widely from one Member State to the next. The application of customs controls and supervisory powers of customs officials also vary from Member State to Member State, a situation which is incompatible with a single market.
6. Lastly, modernisation of commercial transactions, notably thanks to information technology and new



telematics tools, has profoundly changed the conditions in which companies operate by improving the quality, security and rapidity of operations. Paper supports are increasingly tending to disappear from commercial exchanges, whereas administrations continue to give preference to this form of communication.

7. Companies which have had to make the necessary efforts to keep up with their competitors expect customs administrations to modernise as well, so that maximum benefit is drawn from the reforms and investments they have had to make. For instance, the difficulties of computerising Community transit does not give them a very reassuring picture of the capacity of European customs administrations to adapt in this regard.

#### IV. UNICE's priority objectives

1. In the field of customs, UNICE favours international harmonisation of practices, simplification of rules and co-operation with administrations.
2. UNICE fully endorses the action programme for customs in the Community (Customs 2000) laid down in European Parliament and Council decision 210/47/EC. However, it considers that the guidelines should be specified in greater detail and, above all, implemented rapidly. But there are other areas where interesting progress can be made.
3. In the light of the above, UNICE attaches particular importance to the following points:

##### a) Simplification of customs rules and controls

- In the European Union and in the international framework where WTO could be an essential vector for action, progress towards this goal should be sought constantly.
- Good results can be obtained with modernisation of equipment, notably, through information technology, and individualisation of procedures. Conclusion of Memoranda of Understanding with economic operators seems to be an excellent route for making progress. Similarly, simplified procedures are to be encouraged in risk analysis techniques and audit techniques.

##### b) Harmonisation of customs practice in Europe

- Harmonisation of customs procedures throughout the EU is essential to the credibility of the single market and to avoid distortion of competition between companies in different Member States. However, to

be beneficial, harmonisation must be based on the best available practices which achieve the highest levels of trade facilitation. UNICE is therefore opposed to any harmonisation based on existing practices which are not necessarily the best. Instead, Member States should be encouraged to adopt efficient (and in particular cost-effective) procedures based on the maximum use of information technology and modern management techniques such as risk analysis. These procedures should then become the European standards which the Commission should encourage and, where necessary, assist all customs administrations to adopt.

- In the longer term, UNICE believes that the widespread use of Single European Authorisations (SEAs), by encouraging Member States to work closely together and to exchange information, will be a powerful and effective force for achieving harmonisation based on best practice.
- UNICE does not believe that the Commission can impose a complete harmonisation on Member States. Clearly, however, it has an important role to play in promoting and supporting those initiatives such as SEAs and international trade prototypes which will lead to effective harmonisation, and ensuring that the benefits are made available as of right to companies throughout the EU.
- Finally, to ensure effective harmonisation of customs requirements at European level, it is necessary to reduce the licence requirements still maintained for intra-EU trade in dual-use products.

##### c) Effective combating of fraud

- Serious fraud has been observed in application of European customs rules. UNICE is perfectly aware that these irregularities, which cause an unacceptable prejudice to the European Union, must be energetically combated and totally eradicated. European companies do not want to be considered responsible for this traffic, in which most of them are victims. This fraud sidesteps application of the mechanisms which regulate international trade, and distorts the conditions for commercial competition.
- An upgrading of the combat against customs fraud should not involve a general increase in the formalities and constraints on honest companies, or establishment of unjustified assumptions about liability which, as is the case with certificates of origin, can only hamper international transactions and artificially increase their cost.

- Rather, more effective combating of customs fraud should be sought in improved operation of national customs administrations and cooperation between them.

#### **d) Establishment of structured relations with trade operators**

- In the European Union, true partnership must be organised at all levels (European, national, local) between customs administrations and companies in order to develop reciprocal exchanges of information and views. It is indispensable to put in place conditions conducive to better dialogue in order to make progress towards good customs management.
- This partnership must be clearly structured in order to give companies guarantees of good representation in expression and defence of their interests.

#### **e) Development of international support**

- In the European Union, customs administrations can provide companies engaged in foreign markets with important support. They often have very useful information on the levies, charges and customs formalities applicable in other countries. Some of them have customs attachés abroad who can be focal points for specialist information geared to the concerns of companies.
- The Commission has developed a well documented database on market access. It is essential for companies that this database is regularly updated. It could also be extended by information about the customs formalities and procedures encountered in certain countries (as already exists in the pilot project covering Korea and Poland).
- It can also be noted that, with the considerable growth in trade, disputes with customs administrations are becoming increasingly frequent. International rules, notably those derived from WTO, are not always and everywhere fully implemented in national law. A specific international procedure for customs arbitration could facilitate settlement of disputes which are limited to customs problems of a purely technical nature. The Commission could intervene to this end in international negotiations, in liaison with the World Customs Organization (WCO) which could provide the necessary support.

#### **f) Greater consideration for practical customs constraints in negotiations on and follow-up of international agreements on movements of goods**

- These bilateral or multilateral agreements signed by the European Union necessarily make use of customs mechanisms to ensure that obligations are met (certificates, attestations, specific controls). The systems put in place are often highly complex and not always compatible with the administrative situation on the ground in some countries.
- The shortcomings which may appear in operation of the customs apparatus are harmful to the reliability of agreements and are ultimately felt in the life of companies.
- It would therefore be appropriate to pay close attention to the design and application of the customs measures incorporated in these agreements. Support and training for countries which are experiencing difficulties can only be encouraged.

#### **g) Pursue work to modernise customs in the framework of trade facilitation, and incorporate simplification of formalities in electronic commerce**

- In order for companies to gain maximum benefit from electronic commerce, it is necessary for electronic customs certificates ("single administrative message") to be legally acceptable in their digital form. A great deal of harmonisation work is needed here so that legal conflicts are avoided between different national documents in digital form.
- Work to harmonise the data required by customs administrations is currently under way in WCO and G7. WTO appears to be the most appropriate forum for negotiating trade facilitation principles. Companies and governments should work in close cooperation to ensure compatibility between national and international standards, and their electronic interfaces.
- Governments should also reach agreement within WTO and WCO in order to improve the transparency and efficiency of customs procedures implemented through information technologies.

## V. Conclusion

1. UNICE favours the setting-up of an effective European customs policy which fosters the coherence of administrative practices in the EU and administrative support to companies. In this framework UNICE very strongly supports innovative projects such as the SEA project which is one of the most significant developments in EU customs law and one which holds the key to achieving a true single market for customs purposes.
2. UNICE can only welcome the new mission of customs administration for the future, as recently defined in the Commission report to the Council and European Parliament on implementation of the Customs 2000 programme (COM (1998) 471 final). This refers: "in addition to the traditional role played by customs as the collector of own resources and the guardian of the financial interests of the Community, its new tasks, involving the regulation of trade by monitoring the correct implementation of all the common policies and Community legislation governing imports and exports, are constantly expanding".
- 3 This mission brings together the areas for priority action which UNICE has always supported in its earlier positions, i.e.:
  - ensure transparency in implementation of EU law by the customs administrations of Member States;
  - encourage coordinated development of new working methods;
  - strengthen the common training policy;
  - intensify information and communication with customs users;
  - contribute to emergence of an international customs environment conducive to optimal management of the Union's external frontier, making a particular effort vis-a-vis the customs administrations of the associate countries which aim to accede to the Union.
4. In this new Community customs framework, UNICE as the voice of European companies of all sizes wishes to:
  - work in close partnership with administrations on all subjects which touch on the interests of companies;
  - support deployment of the "Community reflex" in the quest for rapid solutions, notably through coordinated development of shared tools;
  - participate in the necessary strengthening of coherence between customs actions in the Union;
  - promote greater unity of vision in Community customs action, notably by supporting implementation of renewed programmes.
5. In addition to this, UNICE is convinced that, while it is indispensable to demonstrate a true Community dynamic in the area of customs (namely that administrations act within a strengthened Community framework, and UNICE is prepared to help them), governments must also facilitate the task of companies so that they can focus their efforts on holding their own against international competition. The vitality of the European economy and employment depend on this challenge being met. The new mission of customs should be to facilitate this task.

## Summary and Future Priorities

### 1. Definition

"Transit is a customs regime which allows the transportation of a good from one to another place of a customs territory. During the transportation, the goods are not submitted to customs duties and/or other economic measures."

### 2. The issue

Following instances of fraud and mismanagement in the transit regime, the Commission issued an action plan to re-shape the regime and limit importer access. It also undertook to computerise the regime. UNICE supports the fight against fraud. It however criticised the Commission proposals which could undermine operator confidence in transit and hamper internal market traffic flows.

### 3. UNICE positions

- UNICE Comments on (26 October 1998) :
  - Summary of proceedings and Conclusions of 15-16 June 1998 meeting of the Transit Contact Group (DOC. XXI.1184/98)
  - Document amending Appendices I and II of the Convention of 20 May 1987 on a Common Transit procedure (DOC. XXI/1402/97 – Rev.3)
- UNICE position on the reform of Community transit (25 February 1998).
- UNICE position on the Communication from the Commission to the European Parliament and the Council : an Action Plan for transit in Europe (25 October 1997).

### 4. UNICE's requests

- Efficient partnership between customs and operators.
- Streamlined transit procedures and no additional measures which could hamper traffic flows notably in the identification of goods in the transit declaration (for community and common transit).
- Harmonised and fully implemented computerised transit (minimise transition periods as much as possible).
- More flexibility in the use of a comprehensive guarantee (notably regarding the conditions of access).
- Training for customs officers.

### 5. Future UNICE actions

- Continue to criticise the step-by-step approach which does not take into account the broad impact of the transit regime in the internal market.
- Support regular consultation of operators during drafting and updating of the Community manual for transit procedures.
- Support the establishment of computerised transit procedures for transit by rail, air and maritime transport.

**UNICE Comments on:  
Summary of proceedings and Conclusions of 15-16 June 1998 meeting of the  
Transit Contact Group (DOC. XXI.1184/98)  
Document amending Appendices I and II of the Convention of 20 May 1987  
on a Common Transit procedure (DOC. XXI/1402/97 – Rev.3)  
26 October 1998**

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**1. Identification of goods in the transit declaration**

UNICE can understand that the HS code will be an objective to be achieved in the medium term. However it pleads that special cases will require special treatment, provided that the number of cases to be discussed is not limited in advance. The same applies to the indication of an approximate (or statistical) value.

**2. Coverage of the financial risk connected with the transit operation**

The conclusions of the 15-16 June panel discussion are only acceptable to UNICE if the comprehensive guarantee is also available (with conditions) for the transit of sensitive goods. Criteria to be met for a comprehensive guarantee or a waiver should mainly depend on the risk analysis of the economic operator involved and not only on the goods transported.

**3. Monitoring the movement of goods in transit**

UNICE believes that rigid itineraries are economically unjustified. Only where routes will not hamper transport of the goods could these be imposed in exceptional situations. Where transporters can offer reliable commercial monitoring techniques, customs authorities should not add their own rules.

**4. Discharge from transit**

UNICE would like to obtain clarification on the subject of discharge from transit. Where until now the Customs Code only prescribes when transit will end, the draft Decision on Common Transit explicitly formulates in Article 39 that discharge can only take place after a comparison between the data supplied by the office of departure and those supplied by the office of destination. As far as we know, a similar obligation is not included in Community customs legislation.

**Conclusion**

UNICE remains of the view that the Commission has chosen to address the symptoms of the problem – namely, loss of revenue – and not the root causes. In effect, all that the Commission is likely to achieve is a transfer of the administrative formalities of an outdated and inadequate system from the Commission and Member States to the business community. The existing Community and Common Transit systems are inherently susceptible to fraud and this problem will finally be resolved only when the Commission recognises that a fundamentally different approach is required to securing the movement of goods on which duties and taxes have not been paid.

UNICE looks forward to continuing its active collaboration with the Commission on reform of the Community Transit regime. It wishes to receive Commission legislative revision documents as early as possible so that it can give its input at the most appropriate time.

# UNICE position paper on the Communication from the Commission to the European Parliament and the Council: An action plan for transit in Europe - a new customs policy

25 October 1997

## 1. Introduction - General observations

- 1.1 UNICE has examined with great attention the important communication which the European Commission has just submitted to the European Parliament and the Council on transit, and has deliberated especially on the proposals formulated in the annexed action plan.
- 1.2 UNICE considers that the orientations outlined by the Commission in this document are positive, and should constitute a solid basis for remedying the serious crisis currently affecting transit, and permanently consolidating the proper functioning of this customs procedure which, for European companies, is a pre-condition for freedom of movement with suspension of customs duties and the possibility of fulfilling their customs obligations in the place of their choice in the Community.
- 1.3 These orientations are in line with the main observations made by the Committee of Enquiry of the European Parliament in its report. UNICE confirms its position taken on 25 February 1997 with regard to the reform of Community transit.
  - 1.3.1 UNICE remains very attached to the maintenance of a flexible and efficient Community transit procedure and opposes any modification of the regulations which would increase the constraints and costs weighing on companies. UNICE also supports the implementation of simplified procedures for bona fide operators.
  - 1.3.2 It vigorously supports the project of computerising the procedure, which conforms with the general trend towards modernisation of European companies.
  - 1.3.3 UNICE thinks that, while this computerisation is a necessary condition for the reform of transit, it is not on its own sufficient to guarantee the smooth functioning of the procedure. Major changes will have to be made to the administrative management of the system within the Community and in European partner countries (EFTA Member States and Visegrad countries). The European Commission must without delay be given the necessary powers and resources to ensure that the actions decided are correctly and uniformly applied by the

responsible national administrations.

- 1.3.4 Furthermore, UNICE wishes, without excluding indispensable developments resulting from modifications of the economic (and notably tax) environment, that the legal framework which will be adopted to implement the reform henceforth be endowed with a certain stability in order to give to the operators the security they need for engaging in their business.
- 1.3.5 UNICE draws attention to the fact that unnecessarily frequent regulatory changes cause the procedure to lose credibility, and unavoidably disrupt contractual relations. It is thus vitally important that the changes not be adopted and introduced without thorough reflection about all their consequences, in close consultation with the various companies concerned. UNICE is ready to play its role in this dialogue.

## 2. Specific considerations relating to the action plan

Some elements of the action plan can already be accepted without reservation. Others, however, require more thought and must be further elaborated.

### 2.1 Partnership between customs and operators

- 2.1.1 UNICE notes with great satisfaction that the Commission reserved a very prominent place in this project for the creation of a genuine partnership with the operators, in the spirit of the "Customs 2000" programme, which from the start has received its full approval.
- 2.1.2 Close and constant consultation with the many economic sectors indeed appears indispensable for the success of a reform which has a very direct impact on the conditions for engaging in commercial and industrial operations, the competitiveness of companies and the terms of competition.
- 2.1.3 The proposals concerning the introduction of a European Quality Charter for the public customs service, for transit mediators and correspondents with the customs services, and for local transit correspondents, can only be encouraged.



- 2.1.4 However, it is essential for all these proposals to be expressed in clearer and more specific language in order to ensure that a true climate of confidence is built up between customs and operators. In particular, these proposals must stipulate the consequences attached to the granting of facilities or simplified procedures for users.
- 2.1.5 The same is true for the idea of a free telephone number and that of a partial delegation of certain administrative tasks to trustworthy operators. Within the framework of the transit reform, Memoranda of Understanding (MOUs) should find very privileged application.
- 2.1.6 UNICE can only encourage the association of operators in various training actions organised by the Community and national authorities, which should bring the parties closer together and contribute to a better mutual understanding of the problems.
- 2.1.7 The creation of a Customs / Operators contact group for transit is also attractive, if the activity of this Group covers common transit and is well integrated into the functioning of the "Customs and Indirect Taxation" Advisory Committee, which should be re-examined. This structure could constitute one of the working groups provided for in article 10 of the decision 91/453 EEC.

## 2.2 Prevention and elimination of fraud

- 2.2.1 As the project currently stands, UNICE must remain very prudent with respect to the proposals which, for honest operators (who bear no responsibility for the transit crisis), threaten to modify the conditions of access to the procedure, while aggravating the constraints and the costs of operations, in particular for small and medium-sized companies. Generalised application of these measures would considerably limit the financial advantages of the transit system.
- 2.2.2 UNICE believes it is indispensable that these measures not be adopted without consulting all of the professions concerned, within the framework of the partnership indicated above, in order to carefully weigh the advantages and drawbacks for economic activity and the security of the procedure.

The following measures can be classified in this category:

- the re-examination of the transit procedures applicable to certain modes of transport, especially maritime;
- the institution of a single transit system for exchanges within the area concerned;

- differentiated access to transit according to the reliability of the operators. In this regard, one must be especially careful to avoid administrative arbitrariness and guarantee a non-discriminatory practice. Objective criteria must be established at the European level. UNICE does not favour the idea of a "blacklist";
- reinforcement of the rules concerning the sealing of means of transport, the route plans and route deadlines, which threaten to complicate the implementation of transit without absolutely guaranteeing greater security;
- the application of a full guarantee for non-accredited operators, no matter how sensitive the operations they perform. Increasing the guarantees will not necessarily eliminate all fraud.

2.2.3 In its combat against fraud on a European scale, UNICE would like the Commission to ensure that these trade-restricting measures are not applied disproportionately to all economic operators (see above).

## 2.3 Customs cooperation in Europe

2.3.1 UNICE welcomes the fact that access of the Visegrad countries to common transit constitutes an essential component of the EU's pre-accession strategy vis-à-vis these countries. By so doing, the transit system enables these countries to integrate more fully in the European economy and to benefit from a common legislative framework and enhanced access to the single market.

2.3.2 As rightly stated in the Commission's action plan, creation of an integrated European transit system cannot be achieved within the existing TIR agreement. Under these circumstances, it does not make much sense to discuss measures for integrating the various types of transit on the European continent unless the basic conditions of the TIR framework are modified. It therefore appears necessary for the Commission to accelerate on-going negotiations on the TIR convention.

2.3.3 While the Commission's action plan stresses the need to integrate the various transit systems in Europe, it also proposes a relatively undifferentiated opt-out clause for those countries which are unable or unwilling to pursue harmonisation ("suspension of the application of

the convention...(…)for a limited period, in certain exceptional situations"). In addition, the scope of this option is unclear. In any event, UNICE regards this opt-out clause as unsuitable for solving the problems that may arise during the integration process. An operational timetable that allows for negotiations in order to overcome differences seems preferable.

## 2.4 New computerised transit system (NCTS)

2.4.1 UNICE strongly supports computerisation of transit, but would like to stress that this computerisation cannot be an end in itself. Without a streamlining of administrative procedures, both in European institutions and in Member States, electronic data interchange will probably not have a very positive impact. Moreover, whereas the new burden on business is easy to predict, the advantages for reliable operators are only vaguely defined. Thus, the criteria whereby a firm is eligible to be accredited should be clarified.

2.4.2 UNICE is concerned by some aspects linked to implementation of the computerised system. First, the transition period (co-existence of computerised and paper systems) should be as short as possible. Under no circumstances should the difficulties of this transition lead to limitations on the routes and offices that operators can use.

2.4.3 Second, UNICE hopes that the Visegrad countries can integrate very rapidly in the new computerised system. It goes without saying that integration of the CEEC accession candidates in the new administrative procedures is highly desirable.

2.4.4 UNICE would also like the Commission to promote the emergence of "priority channels" between two computerised customs offices by offering operators administrative facilitation measures (e.g. simplified formalities and goods designations). These measures would seek to offset the technical constraints resulting from implementation of computerisation during the transition period. The present system of accredited consignor and consignee should also be maintained.

2.4.5 Lastly, UNICE draws the Commission's attention to the ever more frequent danger of hackers. This risk, which is not negligible, could have the consequence that the system would be as susceptible to abuse as it is now to forged or counterfeit stamps. UNICE would like the Commission to take the most appropriate measures to protect access to the new computerised transit system.

## 2.5. Liability of debtors for protection of different financial interests

2.5.1. UNICE supports the Commission proposal in which it expresses its wish to address those directly responsible for the infringement of the customs procedure, without precluding the possibility of recovering debts from the principal and his guarantor in the event of difficulties in recovering them from any other persons liable.

2.5.2. UNICE is convinced that, by acting this way, the number of fraud cases will diminish considerably. UNICE hopes that this proposal will be adopted as rapidly as possible.

## 3. Conclusions

3.1 UNICE would like the measures proposed by the Commission to be capable of making transit definitively secure, within the proposed timetable, and bringing to an end the instances of major fraud which have considerably weakened the operation of this customs procedure to the detriment of administrations and operators.

3.2 UNICE hopes that the Commission and national customs administrations will pursue their efforts towards effective, rapid and balanced implementation of reform as well as computerisation of the system in such a way that solutions are found which do not penalise honest operators and do not impede the flow of traffic, an indispensable factor for the development of trade and for the competitiveness of companies in Europe.



# UNICE position on the reform of Community transit

25 February 1997

## 1. Introduction

Given the extent of fraud which, in the European Community, is currently weakening the functioning of Community transit in all its forms, the European Parliament has set up a committee of enquiry. For its part, the Commission proposes to undertake a major revision of Community transit. Its services have drafted an interim report which explores the areas in which reforms are necessary to re-establish a healthy situation.

For UNICE, it is essential that the transit procedure remains an attractive procedure for economic operators, and allows companies to remain competitive.

UNICE welcomes any development of Community customs legislation which ensures improved effectiveness in the fight against the fraud afflicting transit, provided that the prescribed measures do not appear contrary to the general objective of simplifying the formalities and lessening the administrative burden or costs borne by economic operators.

## 2. Comments

### ■ UNICE remains very attached to maintenance of a flexible and efficient procedure for Community transit

- This procedure is an important element in companies' commercial strategy for extra-Community trade: it guarantees all operators, whatever their geographical location within the European Union, the proximity of the customs office which allows them to optimise application of the different rules and economic customs procedures provided for in the Community Customs Code. Smooth operation of this procedure helps to open up the large internal market and promotes the development of Community trade and its economy.
- European companies therefore greatly deplore the current crisis situation and support the Commission's wish to preserve a system which, since its institution in 1968, has enabled them to realise a considerable volume of regular transactions.
- They would like more precise information on the exact nature and the real impact of the deficiencies that have been observed. The most serious damage appears to result essentially from blatant fraud, in the category of major international crime committed by a minority of individuals belonging to organised gangs whose motivation is totally foreign to that which animates the world of trade and industry.

- Thus, solution of the present difficulties should be sought more through an improvement in the effectiveness of customs policing (information exchange, intensification of surveillance and control of persons and goods flows, sanctions matching the seriousness of irregularities) than through an increase in the obligations and constraints on all honest operators.
- This approach is all the more appropriate at a time when European companies are confronted with the present economic difficulties and must meet the challenge of trade globalisation.
- It is up to the competent administrative bodies to make the necessary adaptations to their operating procedures in order to eradicate this type of fraud, without penalising mainstream companies and taking account of the increase in international trade.

### ■ In this context, computerisation is clearly of great importance

- European companies regret that this technical adaptation was not launched sooner, bearing in mind the widespread use of computers in everyday business practice. Computerisation of Community transit will clearly make administrative processing more rapid and more secure, even if it cannot eliminate all risk of fraud.
- European companies consider it very important to put in place rapidly an operational computer system covering all the countries concerned. Partial application involving continued use of a "paper" procedure in some commercial relations can only complicate the applicable rules, limit the effectiveness of computerisation in the fight against fraud and cause abnormal distortions of treatment between economic operators. European companies would like the timetable for execution of the project to take account of this concern, the priority of which has been underlined by the European Union's Council of Ministers. They would also like more resources to be deployed for execution and monitoring of the project.
- Lastly, since this is a public order measure, which responds essentially to the need to guarantee proper collection of import duties and taxes, European companies believe that they should not be expected to contribute in any form whatsoever to its installation and use, aspects which must be paid for in full from national or Community budgets.

■ Regarding the regulatory measures envisaged by the Commission, UNICE opposes any changes to Community provisions which would lead to an increase in the constraints and costs imposed on them

- These proposals relate notably to surety bonds for operations, stricter routes for sensitive products, excessively short forwarding periods, limitation of customs control points and sealed transport units. All of these restrictions reduce the flexibility of the procedure and increase the burden on companies in terms of both time and money.
- This situation would not correspond to the spirit of partnership set out in the "Customs 2000" programme which European companies welcomed with great satisfaction, and would disappoint their expectations. Moreover, it would run the risk of having an abnormal influence on operators in their choice of transit mode, given that road transit is more particularly targeted by the restrictive measures.
- In addition, European companies call on the Commission to ensure that the notion of "authorised companies" referred to in Community rules, in order to institute application of more advantageous customs treatment for a number of regular operators, is clearly defined and applied uniformly everywhere. This would guarantee homogeneity in the fight against fraud.

■ But, above all, UNICE believes it essential rapidly to improve the effectiveness of the battle against customs fraud in Community transit

- The present arrangements, which rely too exclusively on the juxtaposition of national actions, lack cohesion and comprise many weaknesses. The freedom of movement attached to transit should not constitute an advantage for the organisation of fraudulent traffic which disturbs the European economy as a whole. It is important to adapt and modernise the means and methods used by customs police in Member States, to increase sanctions, to develop mutual information exchange and, above all, to organise close coordination of some interventions which may take the form of joint actions.
- The competent authorities should measure more accurately what is presently at stake and endeavour, in the framework of the European Union and with all transit partner countries, to define a well thought-out strategy to combat customs fraud. They should pragmatically determine the range of different measures to achieve the objectives set out above

without interfering with the institutional questions which touch on the penal and judicial areas.

- The crisis which is undermining Community transit could thus open up a field of original reflection about experimentation with new formulas favouring a deepening of the European Union and proper application of preferential agreements.

■ Lastly, in the present critical situation and prior to any internal consolidation, UNICE is concerned at the Community transit procedure being extended to other partners

- It appears dangerous to include in its operation countries which, because of lack of experience, cannot provide the same guarantees in terms of general security of operations and capacity to computerise the procedure.

UNICE believes it would be prudent to wait until the operation of the regime is fully consolidated before admitting new countries to the common transit system.

### 3. Conclusion

UNICE calls for urgent decisions to be taken to tackle the present crisis situation in transit. It would like to pursue the constructive dialogue opened with the Community institutions so that reform of the transit system can lead to solutions which help to reduce fraud substantially without penalising honest operators and to improve traffic flows, an essential factor for the development of commerce and international trade.

### Summary and Future Priorities

#### 1. Definition

"Customs regimes with economic impact are: warehousing, inward and outward processing, customs transformation and temporary admission. They are all independent of tariff nomenclatures, they have a conditional character and if the conditions are met they offer the beneficiary a "customs advantage" (either a duty suspension or an exemption of some trade policy measures)."

#### 2. The issue

The Commission undertook to modernise and streamline its legislation concerning all the customs regimes with economic impact in view of adapting them to modern trade practices. To date, UNICE has reacted only to the modernisation of inward processing (procedure which allows third- country goods to be imported free of duty provided they are to undergo processing operations in the Community and then to be re-exported as finished products) in order to ensure that imported goods are deemed to fulfil the economic conditions test necessary to benefit from the relief.

#### 3. UNICE positions

- UNICE position on the importance of using customs economic regimes and the future application and measurement of economic conditions (DOC. XXI/1580/1997) (26 October 1998).
- UNICE Comments on the Commission proposal on a new system of economic conditions applicable for the future of the inward processing relief regime (12 November 1997).
- UNICE comments on the Commission's Report on the operation and future shape of the economic customs procedures for inward processing (22 November 1996)

#### 4. UNICE's requests

- Imported goods destined to undergo IPR (Inward Processing Relief) are deemed to fulfil the economic conditions test unless they are declared sensitive.
- IPR licence becomes automatically operational if within a fixed time limit no decision is taken by administrations.
- The list of sensitive products should be limited to an absolute minimum, reviewed periodically and any new product should meet strict criteria.
- Economic operators should have the right to appeal in order to contest the inclusion or withdrawal of a product from the list.

- Transparency, harmonised application and greater simplification of the operating conditions.

#### 5. Expected developments

The Commission has undertaken to reshape every regime with economic impact and will organise Matthaeus seminars on this issue.

#### 6. Future UNICE actions

- Support more simple and comprehensible rules, providing that modifications do not affect operations, and ensure that procedures are uniformly applied to prevent unequal treatment of operators.
- Ensure transparency through regular publication of certain details of authorisations issued.
- Support development and refinement of risk assessment techniques to prevent fraud.
- Monitor the issue notably in the light of the forthcoming EU enlargement, WTO negotiations (notably linked to the CAP reform) and bilateral free-trade agreements. The objective is to ensure that outsourcing and inward processing remain to the advantage of European business.

# UNICE Comments on working paper XXI/1864/1998, rev.2-dated 6 May 1999 - on "Modernisation of customs procedures with economic impact"

8 October 1999

## I. Introduction

As already stated in its previous position paper on working paper XXI/1580/1997, UNICE is of the opinion that simplification and modernisation of customs procedures with economic impact are long overdue reforms. The burden of complying with the procedures has made the economic regimes unattractive for many companies, particularly those small and medium-sized enterprises which stand to benefit most from them.

UNICE has always called for more simple and comprehensible rules providing that modifications do not affect current operations. It also pleads for procedures to be uniformly applied to prevent unequal treatment of operators. Finally, in order to make access to the procedure easier, faster and more flexible, it has pleaded for a more appropriate administrative framework to be set up plus a division of responsibility between customs and operators which can prevent abuse and ensure that procedures are correctly operated in full transparency.

UNICE greatly welcomes the fact that the section for customs procedures with economic impact in Regulation (EEC) No 2454/93 is now more simply and transparently worded. It would seem to be a good example of clear-cut and understandable legislation.

UNICE would nevertheless welcome an explanatory note (a manual as suggested by UNICE for the transit rules; this could also simplify potentially complex operational rules for the processing of agricultural goods) to this section as a guide to customs authorities and operators on economic customs procedures.

## II. Comments on articles

Articles 496 to 555 of the Section for Customs procedures with economic impact give rise to the following comments:

### 1. Definitions

*Art. 496*

'Main accounts' has been changed into 'accounts'. Further down in the text the term 'main accounts' is still used (art. 498). Can the reach of this definition be explained? If, say, the main account of a company is held outside the European Union, but this account can be consulted from a company within the Union, will this company be deemed

to hold its main accounts within the Union?

The same question arises where accounts and documents are kept at the place where the customs arrangement is operational.

### 2. Application for and granting of a single authorisation

*Art. 500*

Do customs authorities of another country have to state their reasons for a rejection?

Can the operator appeal against a rejection by the customs authority of another country in his own country? Under (d), it says that the competent customs authority 'may issue' the authorisation. Why is there a restriction made here even if the other customs authorities have no objections?

### 3. Economic conditions

*Art. 502*

The condition that using Community sources is economically unviable links better with the Customs Code than the previously stipulated condition of 'economic impossibility'.

The criteria are meant to be non-cumulative. Could this not be made more clear with, say, 'or' after (d)?

*Art. 503*

Does this consultation mean that the period in which the customs authorities issue or reject an authorisation can be extended? If so, can the Commission tell us whether there is a fixed limit to that period?

*Art. 504*

Under what conditions will the Committee's conclusion be published?

*The decision on authorisation*

*Art. 507*

A reduced authorisation validity of three months maximum does not seem practicable. This implies that the holder of an authorisation is forced to apply for a renewal again rapidly.

### 4. General provisions

*Art. 509*

Goods under inward processing are not subject to

commercial policy measures (see art. 114 Customs Code). The wording of art. 509 is confusing, as it is stated now that commercial policy measures shall be applicable only to the extent that the goods are brought into the customs territory of the Community. It seems to contradict the present article 607 of the implementing provisions of the Customs Code.

## 5. Transfers

### *Art. 514*

UNICE wonders if this could lead to a cumulation of guarantees, which it would reject, or if it is meant to prevent such a cumulation.

## 6. Records

### *Art. 516*

It is stated that the records shall contain the information contained in the compulsory boxes laid down by the minimum list in Annex 37 for the declaration of entry for the arrangements. UNICE believes this to be an unnecessary tightening of the conditions.

## 7. Administrative co-operation

### *Art. 523*

As for the INF (information sheets): UNICE wonders how operators' confidential data will be protected.

## 8. Other provisions concerning the operation of the arrangements

### *Art. 534*

UNICE assumes that this provision can only be applied within the limits of articles 98 and 106 of the Customs Code.

What kind of evidence of identification (of customs status) can be asked for?

## 9. Additional conditions concerning grant of the authorisation

### *Art. 539*

Several derogations to the prior examination of economic conditions can be envisaged for agricultural products contained in a list of "sensitive products":

1. When, from a regulatory point of view, raw materials contained in compensatory products do not benefit from export refunds;
2. In the case of goods having reached or being likely to reach ceilings of EU commitments at the WTO. This approach is based on a prior evaluation made at the end of the fiscal year by the Commission services as to

whether WTO ceilings will or are likely to be reached during the next year. If this were the case, automatic access to IPR should be given for the products concerned and for a certain percentage of third-country raw materials according to an estimated lack of export refunds in the WTO refund budget. Clearly, the situation needs to be re-examined regularly during the year in question;

3. In the case of tailor-made contracts;

4. When the value of the product does not exceed a certain threshold. The value limit of EUR 200,000 is considered to be very modest compared with the EUR 600,000 proposed in the Commission's green paper. A higher limit would allow producers of non-Annex-II goods to respond more quickly and more flexibly to changing market conditions.

## 10. Processing under customs control

UNICE notices that the rules on processing under customs control (Chapter 4) are very concise, though the importance of this procedure is gaining in weight and volume.

## III. Conclusion

UNICE believes that adjustments in line with these additional comments will make the new provisions on customs procedures with economic impact more clear and understandable. UNICE also believes that these new provisions should take into account the necessity for consultation of the interests concerned for reasons of transparency. Transparency can also be obtained through regular publication of certain details of authorisations issued, without undermining commercial confidentiality.

UNICE calls for a rapid decision on reform of the economic regimes. The proposed direction could lead to better use of these regimes in the framework of access to the markets of non-EU countries.

UNICE agrees that further training together with the development and refinement of risk assessment techniques may be necessary in order to avoid abuse and to prevent fraud. To that end, flanking measures will be necessary in order not to impede trade.

If the Community institutions want to discuss the issues raised above in greater detail, UNICE representatives are willing to pursue the dialogue.

# UNICE position on the importance of using customs economic regimes and the future application and measurement of economic conditions (DOC. XXI/1580/1997)

26 October 1998

## I. Introduction

1. The main purpose of this UNICE position is to consider the issues arising from the Commission's proposals on application of the economic conditions and, in particular, how Articles 501 and 502 in Document 1580/1997 should be implemented in practice. It is complementary to its 12 November 1997 position on the application of the economic conditions for the inward processing regime.
2. In order to put these issues in context, however, it may be helpful to reiterate the problems which the existing economic test creates for Community businesses and the measures which UNICE considers necessary to overcome them.

## II. Background

3. Simplification of these regimes and, especially, relaxation of the economic conditions, are long overdue reforms. Not only do the efforts required to satisfy the economic test tie up valuable resources but the uncertainty it introduces make it difficult for companies to plan ahead and quote accurate forward prices for their products.
4. For some time, therefore, the burden of complying with the procedures has made the economic regimes unattractive to many companies, particularly those small and medium-sized enterprises which stand to benefit most from them. As a result, these companies have simply refrained from operating them and forgone the relief. The burden of additional cost which this imposes is all the harder to justify in view of the very small proportion of applications to operate economic regimes which are actually rejected on economic grounds.
5. The inability of companies to take advantage of the economic regimes has particularly serious consequences for the competitiveness of EU exports. Particularly where exporters are under pressure from exchange-rate movements, the availability of relief under the inward processing regime (IPR) can be critical in determining whether an export contract is won or lost. UNICE therefore believes that, since IPR is essentially an instrument of export promotion, there should be a presumption that relief will be allowed in all cases unless the goods have been formally declared to be sensitive following detailed examination of all

relevant facts. UNICE is pleased to see that provisions to this effect have been incorporated in the Commission's proposals.

6. Whilst IPR may directly benefit exports, industry considers it no less important to apply similar reforms to outward processing (OPR) and processing under customs control regimes. These regimes contribute to the economic prosperity of the EU by encouraging companies to undertake at least part of the manufacturing process in Europe rather than abroad. Once again, however, if these regimes are to be effective, access to them must be simple, inexpensive and, above all, certain.
7. Despite declining tariffs, there are many industry sectors which will continue to pay significant duties into the new millennium. For these sectors, the key challenge will be to maintain competitiveness and to exploit opportunities in both European and foreign markets. This will require a flexible approach to the sourcing, manufacture and distribution of goods which will be possible only with the assistance of simple customs procedures and the ability to move materials, components and finished products around the world without incurring unduly harsh financial penalties.
8. But, if the EU is not to lose out to foreign competition, the Commission too must recognise the reality of global sourcing and manufacturing and create a sympathetic regulatory environment in which companies can, without undue difficulty or penalty, import goods for processing and re-export, send goods outside the EU for part of the process or import them for processing before placing them on the Community market. The economic regimes, duly modernised, clearly form an important part of that environment.

## III Application of Articles 501 and 502 in document 1580/1997

9. UNICE warmly welcomes, therefore, the Commission's initiative to modernise customs procedures with economic impact. We are particularly pleased to see its proposals to achieve a better balance between the need, on the one hand, to promote international trade, and especially EU exports, and, on the other hand, to safeguard the interests of Community producers of the goods in question. However, a number of questions have to be answered about the practical implementation of these proposals, including:



- How will the sensitive list be managed?
- How will an adverse impact on Community producers be identified and assessed?
- Is there a need for continuous monitoring of trends and, if so, who should be responsible?

### III.1. The sensitive list

10. As already indicated in its 12 November 1997 position, UNICE welcomes the introduction of commercial sensitivity as the criterion to determine which products should be subject to prior examination of economic conditions. This will eliminate the cost of satisfying the economic test for the vast majority of goods where there is no adverse economic impact on EU producers. It will also provide certainty that relief will be available on those goods.
11. On the other hand, the inclusion of specific sensitive goods in Annex 71 of document 1580/97 will give reassurance to the suppliers of those goods that no application for relief on competitive products will be granted without a detailed assessment of the economic impact on their business.
12. However, if this approach is to work satisfactorily, a number of conditions must be met:
  - a) It must be possible to add items to, or delete items from, the sensitive list with the minimum of delay consistent with the need to justify such addition or deletion. The items on the list are exceptions to the general rule that no prior examination of economic conditions is required. Therefore, the burden of proving that such items should either be placed on, or should remain on, the list should rest with Community producers of the comparable goods. In the absence of any such proof being provided, the request for inclusion should lapse, or the request for removal should be accepted, within a fixed number of days from the request being made.
  - b) The list of sensitive goods should be reviewed by the Commission to ensure that it is kept to an absolute minimum and, if appropriate, Community producers should be asked to justify the continued listing of any item which appears no longer to be sensitive. Moreover, economic operators wishing to take advantage of the economic procedures should be able formally to request the removal of any item if they can produce prima facie evidence that it is no longer sensitive.
  - c) In considering requests for the addition or deletion of sensitive products, the Commission should

consult relevant European trade associations representing both applicants for the economic regimes and Community producers.

### III.2. Adverse impact on Community producers

13. Article 502.1, as proposed, requires Customs authorities and the Commission to ensure that the essential interests of Community producers are not adversely affected by use of the economic regimes. If strictly applied, this would seem to require the authorities to examine every authorisation after it has been granted, thereby undermining the whole purpose of modernisation of the regimes. UNICE does not, therefore, believe that Article 502.1 should be interpreted as placing on the authorities any obligation to take the initiative in reviewing authorisations which have already been granted.
14. On the contrary, UNICE considers that, consistent with its view as to the management of the list of sensitive goods, the onus should be on the EU producer claiming to be adversely affected by the authorisation to raise a formal objection, supported by appropriate financial and economic evidence.
15. In assessing the validity of any search objection, Customs and the Commission should adopt the principle that the authorisation should stand unless there are good reasons why it should be amended or revoked. UNICE believes that the objections of Community producers must be examined individually and that an authorisation should be reviewed only if the producer in question can demonstrate beyond reasonable doubt that:
  - a) it can supply the holder of the authorisation with goods (or processing capabilities) which are:
    - in all respects, identical or superior to those to which the authorisation relates;
    - capable of being delivered in the same quantities and to the same timetable; and
    - are available for delivery to the holder of the authorisation on at least the same terms and conditions as, and at a delivery price which is at least comparable to, those offered by the supplier of the goods or processing which are the subject of the authorisation.

### III.3. Monitoring the impact of authorisations

16. The proposition that Customs and the Commission are to examine the impact of an authorisation only on the

basis of a complaint from one or more Community producers assumes that producers are aware of relevant authorisations. There will be many cases in which the producer will be made aware of the grant of an authorisation by the potential customer to whom the authorisation has been given. However, this presupposes that the producer was in a position to compete for the business in the first place and there will, therefore, be many other cases in which the producer is unaware of both the potential business and the authorisation.

17. It is a matter of debate whether a Community producer is entitled to object to an authorisation which he believes adversely affects his business, even if he was unaware of the opportunity to supply the goods or processing. It could be argued – and with some justification – that, if a potential buyer was either unaware of what he had to offer, or was aware but did not invite him to tender, that represents a commercial failure on the part of the Community producer and that he is not therefore entitled to object to an authorisation.
18. However, if Community producers are to have the right to object to an authorisation of which they were not previously aware, they must clearly have some other source of information about authorisations which have been granted. This is a difficult issue, not least because of the commercially sensitive – and, therefore, confidential – nature of many transactions for which authorisations are granted.
19. Ideally, UNICE believes that the Customs authorities of the Commission should make available to the relevant trade association sufficient information to enable them to monitor trends in the types and values of goods or processing operations for which authorisations are being granted. It would then be up to those trade associations to analyse and evaluate such information and make it available to their members.

## Summary and Conclusions

20. The economic customs procedures are an important instrument of the Community's trade policy and are essential if European companies are to confront on equal terms their competitors in the global marketplace.
21. With the dismantling of trade barriers and the dwindling significance of geographical borders, companies are increasingly moving to exploit the benefits of globalisation. The Commission cannot stand aside from or ignore this trend; it must either create the right conditions for industry to flourish within the European Union or see economic activity go elsewhere with all that this means in terms of jobs and incomes.
22. The real issue at stake in modernisation of these regimes is not whether individual Community producers of components and materials will be at a competitive disadvantage because relief is allowed. Rather, it is whether whole industries producing finished products in the Community will move elsewhere if relief is not allowed – if that happens, the material and component suppliers will, of course, be amongst the principal losers. However, that does not mean that, where Community producers of materials and components are facing genuine economic difficulties, their interests should not be taken into account.
23. UNICE believes that the formula which the Commission is proposing represents a fair and realistic balance between the interests of all concerned. It is concerned, however, that failure to implement the proposals in accordance with the spirit in which they have been prepared could put that balance in jeopardy. This can be avoided only if clear and unambiguous rules are adopted for the management of the list of sensitive products and the practical application of Article 502.1. Furthermore, those rules must be based on the principle that relief should be allowed as a matter of course, except where there are proven, exceptional, reasons to the contrary.
24. UNICE therefore commends to the Commission and the other EU Institutions the principles and detailed conditions outlined in this presentation as it believes that the proposed approach will best serve the overall interests of all economic operators within the European Union. If Community institutions want to deepen the discussion further on the issues raised above, UNICE experts are willing to pursue the dialogue.



## UNICE comments on the Commission proposals on a new system of economic conditions applicable for the future of the inward processing relief regime

12 November 1997

It is with interest that UNICE is following the process through which the Commission wants to achieve modernisation and rationalisation of EC customs legislation.

Starting with the Inward Processing Relief (IPR) arrangements, proposals have been tabled to review the procedure applicable to the economic conditions test of the IPR regime. UNICE already voiced its interest in the reform and modernisation of Inward Processing Relief in its 22 November 1996 comments on the Commission's Report as a follow-up to the Leuven seminar.

Although UNICE is also interested in other aspects of the reform of the IPR regime it will limit itself in this commentary to the above-mentioned document, pending further proposals. UNICE is of the opinion that the IPR arrangements are primarily an export promotion instrument, but recognises that for certain sectors it may be necessary to safeguard the essential interests of community producers.

Therefore, UNICE can accept that Article 117, sub-c, of the Customs code is maintained provided that implementation thereof is based on the principle that imported goods destined to undergo IPR are deemed to fulfil the economic conditions test unless declared sensitive.

On the subject of the economic conditions test, UNICE accepts the idea of leaving administrations to verify whether the economic conditions are met, but within a fixed time limit. If no decision is taken within this period, the licence becomes automatically operational.

From the foregoing it may be clear that a list with sensitive products should be limited to an absolute minimum and should be reviewed periodically. Inclusion of any product on this list should meet strict criteria and these criteria must be clearly defined. The Community producer must prove separately that the new product to be added to the list is a sensitive product and therefore a different and additional proof is required. Inclusion of any goods should be open to the right of appeal by the economic operators concerned in order to secure legal certainty. The economic operator should also have the right to appeal in order to contest any withdrawal of products from the list of sensitive products.

Regarding the thresholds for management of the list, UNICE is in favour of the measures proposed in the

working paper XXI/1580/1997 rev. 1. Irrespective of whether IPR is applied for with or without the need for the economic conditions test, the decision to authorise or refuse IPR must be taken within a fixed time limit. Also withdrawal or temporary suspension of the authorisation for IPR must be embedded in a set of rules that safeguard the legitimate business interests of the economic operators concerned. Finally UNICE strongly supports the harmonisation of the economic test criteria and enforcement at EU level.

UNICE agrees that this new approach requires transparency and harmonised application of IPR throughout the Community and therefore welcomes the exchange of information and publication of authorisations on condition that the confidentiality of information submitted by business is preserved. It doubts however whether the proposed threshold of ECU 100,000 is representative and considers that such a threshold will cause an unmanageable and counterproductive workload.

UNICE is very much interested in any further development in the process to review the IPR regime and would like to receive upcoming proposals on this subject in order to facilitate a constructive consultation procedure with the Commission. UNICE remains very concerned to see the reform in progress take the form of better harmonisation and above all greater simplification of the operating conditions for inward processing in the European Union.

# UNICE comments on the Commission's Report on the operation and future shape of the economic customs procedures for inward processing

22 November 1996

## 1. General remarks

- UNICE welcomes the Commission's report on the operation and future shape of the economic customs procedure for Inward Processing Relief (IPR), which is a valuable contribution to the planned modernisation of EC customs legislation.
  - UNICE wants to draw attention to the fast growing economic importance of the IPR arrangements, illustrated by statistics from suspension and drawback authorisations granted from 1988 to 1994. However, UNICE notes with regret that due to the complicated, costly and time-consuming legislation and implementing provisions, too many firms refrain from using the system, thereby losing unknown amounts of duty reliefs. Unduly lengthy waiting periods for authorisation indicate that also some customs authorities find the provisions difficult to apply. This situation underlines how urgent it is to modernise and simplify both legislation and working methods.
  - UNICE finds it essential that the procedure promotes exports and enables Community enterprises to compete on an equal footing with third-country companies selling the same products.
  - UNICE supports the principles put forward by the Commission allowing all processing operators equal treatment on the single market. With a view to preventing distortion of competition between operators, measures should be adopted rapidly to guarantee uniform application based on common parameters, in the European Community, of the rules governing the functioning of inward processing.
  - UNICE welcomes the proposal to establish an effective partnership between companies and customs, which should contribute to more transparent procedures, encourage a faster and more accurate information flow to companies, especially SMEs, and facilitate a faster goods flow across borders.
  - UNICE wants to emphasise that the IPR revision should not compromise provisions safeguarding against fraud.
- Companies regard the existing rules as complicated and leading to distortion of treatment between operators in different Member States.
  - While maintaining the safeguard clause so that the essential interests of the European Community are not adversely affected, UNICE believes that ex-ante testing of economic conditions should be limited to products declared sensitive and, for that category, should be simplified.
  - A drastic simplification of today's authorisation procedure is justified. Authorisation should be granted without any delay. The same maximum period of validity should apply in all Member States. In continuous operations, which are often multi-annual, authorisation should be valid until further notice. Proposals on retrospective authorisation and single authorisation are supported.
  - UNICE shares the Commission's view that security should be required only exceptionally, and that equivalence should continue to exist. The same rules should be applied in all Member States.
  - The current transfer procedure causes additional work-load and expense for industry and public administration, and should therefore be simplified.
  - The simplified procedures proposed by the Commission are supported and should even be extended, in order for traders to be able to operate in a rational way.
  - The proposed modern working methods and flanking measures are highly encouraged.
  - UNICE sees no reason to create divergent provisions for the agricultural sector.

## 2. Summary of specific comments

- The specific comments presented by UNICE are summarised as follows:

## 3. Economic conditions

To UNICE's knowledge, it is only in rare cases that inward processing has been refused. This is not surprising, as the

applicants are likely to have better market knowledge than the public administration. 21 economic conditions, some of them laid down in quite extensive detail, have to be considered by operators. In many cases producers find it too complicated or impossible to check the required data and therefore they refrain from applying for an IPR authorisation. The economic conditions also constitute a cumbersome and difficult control element for authorities. In the interests of bona fide operators who have applied for a licence in good faith and later on find that they are dealing with a product declared sensitive, the relevant legal provision (Article 9, paragraph 4 of Community Customs Code) should be applied to arrive to an optimal solution in the light of the changed situation.

UNICE believes that recourse to economic conditions should be possible for products that are declared sensitive. For all other products it could be assumed that the economic conditions are fulfilled. In order to ensure uniform and transparent application in the Community it could be envisaged that authorisations exceeding a given threshold are published. If economic operators believe that their essential interests are adversely affected they might ask to have their product(s) declared sensitive. For products whose sensitivity is accepted the economic test would apply. This testing should be simplified and, apart from de minimis rules, be restricted to:

- absence of Community production in sufficient quantity or quality;
- uneconomic pricing;
- manufacture in compliance with industrial or commercial property rights.

In this respect UNICE supports the development of a computer tool for appropriate management of such a system.

#### 4. Authorisations

UNICE wants to underline the assessment made by the Commission concerning the difficulties experienced by traders in connection with the authorisation procedures, which UNICE considers to be too cumbersome, costly and time-consuming, and which do not correspond to the needs facing today's companies. UNICE agrees fully with the Commission that the procedures for granting IPR authorisations must be flexible, fast, straightforward and uniform within the Community. Thus, a drastic simplification of today's application procedure is fully justified.

It is of decisive importance that authorisation for IPR is granted without any delay. Today's waiting periods - up to six months in some countries and as long as 20 months in

others - are unacceptable to economic players. Customers on the world markets do not wait until EU customs authorities have coordinated actions and checked documents. The maximum period for the issue of authorisation should be the same in each Member State.

The validity period of authorisations should allow the arrangements to operate effectively. To do so, they should be able to cover a period of 24 months in the case of a first application. The same validity period should be introduced for all products. After this first period, the authorisation could be prolonged until further notice. This would avoid the need for unduly frequent use of the authorisation procedure.

It would be desirable to lay down special provisions where inward processing concerns continuous operations which are often multi-annual. In these cases, authorisations should be valid until further notice.

The provision on retrospective authorisation is fully supported by UNICE.

UNICE agrees with the Commission statement that the single authorisation procedure, which allows the holder to carry out processing operations at several plants in two or more Member States, should be radically streamlined in order to exploit the advantages of the internal market to the full. In order to achieve this goal, the customs office in the Member State of import should retain sole responsibility for the IPR exercise, by being the single point of authorisation and the sole supervisor of the IPR process.

#### 5. Provision of security

A situation where duties and taxes are not being paid is practically non-existent, especially since no customs duties become due when the processed goods are re-exported. As a rule, processing enterprises are production establishments with fixed plant and machinery.

In the legislation it is said that security can be required, which has created different applications in the Member States. This has caused different competition situations for process operators in the Community, which of course must be avoided. Therefore, UNICE feels that security is superfluous for inward processing operations. There may be situations, however, where security is necessary. UNICE therefore shares the Commission's view that security should be required only in exceptional cases.

#### 6. Equivalent compensation

UNICE supports the Commission's view that equivalent compensation should continue to exist. Abandoning the

equivalence system would amount to depriving inward processing of one of its key components. Companies need flexibility in their acquisitions, and equivalence promotes competitiveness on world markets. Equivalence criteria should be simple and clear, in order to reduce uncertainty among operators and allow uniform application in all Member States. UNICE rejects the proposal put forward by the Commission that the use of equivalence should be made conditional on the profitability of the operation.

## 7. Processing yield

As a rule, the real rate of yield should be used, as it concerns inward processing operations which are well mastered by operators and which the authority can easily post-verify on the basis of commercial records. If actual rates are applied, periodic revisions are no longer necessary. However, in certain cases an average rate of yield can make the discharge of inward processing easy. This possibility should therefore be retained. Standard rates of yield prescribed by decree should be laid down only in the agricultural sector to avoid distortions of competition if the same corresponding yield rates for production operations are already provided for in the applicable agricultural rules.

## 8. Transfers

The Commission notes that the simplifications of the transfer procedures seem to be neutralised by administrative complications. UNICE agrees with the statement made by the Commission that the procedures for transfer of goods and intermediate products are too complicated, as prior approval of at least two customs authorities is required.

UNICE is of the opinion that the monitoring of a transfer procedure in an inward processing operation is dispensable. The importer of the goods for inward processing assumes the risk of incurring a customs debt. The amount is levied by the supervising customs office at the latest on expiry of the deadline for presentation of the goods to that office. For this reason, there is no need to monitor the transfer of goods from the supervising customs office to the company where the processing is carried out. This holds true also for the export of processed goods. The person holding the authorisation will incur the customs debt to the extent that he or she cannot prove that the processed goods are exported. It is therefore in the interest of the holder of the authorisation to provide such evidence.

Those remarks also apply to the transfer of the processed goods to the customs office of exit.

UNICE also believes that no special monitoring is necessary for the transfer of goods between two or more

operators. An informal transfer of goods should be possible. The obligation to pay duties should a customs debt be incurred would be passed on automatically to the holder of the authorisation.

In UNICE's opinion, the current transfer procedure is superfluous and it causes an additional work-load and expense for industry and public administration. Consequently, all types of transfer should be drastically simplified. In a single market, where the administrations of each Member State are supposed to practice the same level of competence, the consent of the second authority is not justified. Administrative cooperation between the national authorities and the Commission will suffice to avoid changes in the economic conditions entailing distortions of competition. The necessary verifications should be carried out on the basis of commercial documents.

## 9. Simplified procedures

It is true that there are different possibilities to use simplified procedures according to the existing customs legislation. The Commission has found that these simplified procedures are not applied uniformly in all Member States. This means that traders receive unequal treatment which results in distortions of competition. All these simplified procedures should be restructured in order to be easier to apply. Export-oriented companies in the Community should be able to react with a high degree of flexibility, transfers of unaltered and processed goods must be generally possible, i.e. with no special authorisation being required. No cases of abuse of inward processing are known. This means that the Commission's proposal should be extended somewhat.

It is of great importance that simplified procedures enable traders to use the inward processing facility in a flexible way. In order to achieve such a goal, existing simplified procedures should be easier to apply and should not be bound by numerous prerequisites and conditions. New simplified procedures should be developed in order to make the application of inward processing as favourable as possible for traders. It should be possible to apply simplified transfers into subsequent procedures, e.g. customs warehousing. Globalised deadlines for re-exportation should be a matter of course and decided upon according to operational requirements. Such deadlines make the discharge of inward processing easier for both industry and customs authorities.

The legal provisions for simplified procedures should be laid down in such a way that they make exports possible without presentation of the goods to the customs office, to the extent that the interests of the customs authorities are not infringed.

## 10. Discharge of the procedure

UNICE supports the Commission's view that rules and methods of calculation are unclear and obscure. In suggesting a possible future approach simplifications are welcome.

A more precise judgement of the future options proposed by the Commission would require an in-depth sectoral analysis of the real advantages and drawbacks for operators as well as possible risks concerning proper application of trade-defence instruments. UNICE is willing to take part in any discussions that might be held on this subject, on the basis of more specific proposals by the Commission.

## 11. Introduction of modern working methods

Modern working methods, flexible opening hours, a stronger orientation to customers' needs, a more rational, economically oriented outlook and the customs authorities' advisory function in the Member States are called for. Customs, as an administrative body within an economic system, must better cope with the new challenges and support the Community's processing industry in view of keen competition on world markets. The purely fiscal approach is in many cases too predominant.

So-called integrating systems are important but must be used selectively. These systems can only be used for companies with extensive international activities.

A system with customs auxiliaries is really worth promoting. Correctly applied it would be of great importance as it would save time and administrative costs for both industry and customs authorities. In Sweden a similar system was effectively working before Sweden entered the European Union.

Appropriate equipment with adequate EDP systems is an important part of modern working methods. However, a prerequisite for acceptable functioning is that such systems can easily communicate with the commercial EDP systems used by industry.

Apparently, industry in many Member States often has serious problems in obtaining the necessary information for using the IPR system in an effective way. It is very important to introduce business advisory units throughout the EU. It would also be of great value to simplify the legislation as well as its language in order to make it easier for industry to adapt its work to the regulations in force. It is of course also necessary to have the same application of the rules in all Member States in order to avoid distortions of competition.

## 12. Flanking measures

### *(a) Information campaigns for small firms*

UNICE welcomes the initiative taken by the Commission to prepare information on economic customs procedures directed at small companies. As noted by the Commission, the needs of these firms, which contribute substantially to total EU employment, are often forgotten in the day-to-day running of economic customs procedures. UNICE would like to stress the importance of adapting the information in order to make it easy to read and understand by potential users among those companies, who in most cases have no customs expertise of their own.

UNICE appreciates that the Commission encourages Member States to provide as much information as possible to the respective national firms on the functioning and benefits of the economic customs procedures.

### *(b) Business advisory units*

UNICE considers that business advisory units providing specialist advice and information to firms should be set up by customs authorities in all Member States. The task of providing service to the business sector is as important as the controlling and duty-collecting functions of customs. It is also of mutual benefit, as described by the Commission. Information on the organisation and running of the existing units could be exchanged among Member States, in order to give ideas to both customs and business on possible improvements in the running of such units or on the setting-up of new ones.

### *(c) Harmonisation of control procedures*

The Commission aims to train agents for monitoring undertakings. The quality of such controls presupposes sound knowledge of the industrial base. For this reason, it should be possible to organise training modules on whose drafting firms and authorities would work together.

## 13. The agricultural sector

UNICE considers it necessary to have the smallest possible differences between different types of goods. It is necessary to minimise special rules for agricultural products.

### Summary and Future Priorities

#### 1. The issue

The issue is the right for every European company to choose the customs administration through which they discharge their customs responsibility irrespective of where the goods are entering or leaving the Community.

#### 2. UNICE position

UNICE position on the single European authorisation procedure (SEA - "One-Stop Shop") (14 December 1998)

#### 3. UNICE's requests

For the setting-up of a single European authorisation procedure, UNICE insists that the following conditions must be met:

- the system must operate for exports as well as imports;
- it must be sufficiently flexible to allow the maximum number of businesses to take advantage of it, and be tailored to the situation of companies of all sizes;
- customs procedures and practices must be harmonised in such a way as to guarantee correct application of EU customs rules and equality of treatment between economic operators in the different Member States.

#### 4. Expected developments

The debate among business experts is focusing on whether they should approve these experiments, under certain conditions, or without any strict conditions.

#### 5. Future UNICE actions

- Support SEA procedure to be accessible to SMEs as well as multinationals.
- Support extension of International Prototype Projects which aim at diminishing customs costs and disputes at international level.



## UNICE position on the single European authorisation procedure ("One-Stop Shop")

14 December 1998

1. UNICE supports an arrangement whereby European companies can choose a single customs office to process all their customs transactions in the European Union. In this approach, within the limits of the Customs Code, all goods which form part of a company's foreign trade, irrespective of where they enter, leave the Community customs territory, or remain there temporarily, could be governed by the single European authorisation. However, UNICE insists that the following conditions must be met:
  - the system must operate for exports as well as imports;
  - it must be sufficiently flexible to allow the maximum number of businesses to take advantage of it, and be tailored to the situation of companies of all sizes;
  - customs procedures and practices adopted in the system by Member States must be harmonised in such a way as to guarantee correct application of EU customs rules and equality of treatment between economic operators in the different Member States.
  
2. To help with preparation of this reference framework, the Commission should monitor trials on-going and to take place in certain countries without imposing any conditions or limitations whatsoever, other than to require regular reports of progress and of any difficulties which the parties may encounter, particularly those arising from constraints imposed by Community law.
  
3. The Commission and other Member States should be kept fully informed of the authorisations granted and of the results observed during the monitoring phase. If, after the trials, the initiative is assessed positively, the Commission should recommend it as a "best practice" and could then consider the possibility of making it a standard procedure.
  
4. Under the conditions set out above, UNICE strongly believes that this initiative will greatly facilitate trade while giving companies greater certainty in the administrative handling of their international transactions. This initiative should be actively encouraged and supported by governments and customs authorities as it will increase transparency between Member States' practices, and result in more cost-effective and efficient interaction between customs administrations and companies. The Commission should endeavour to persuade third countries, notably the United States, to put in place equivalent systems to the benefit of exports by European companies.

### Summary and Future Priorities

#### 1. Definition

“Rules of origin are the criteria used to define where a product was made. They are linked to the application of trade measures such as quotas and preferential tariffs. Preferential rules of origin are those rules of origin which grant preferential tariffs”

- Support modernisation, standardisation and radical simplification of the preferential rules of origin which cover most of the products traded between two parties.
- Follow closely the on-going discussion linked to the notion of good faith. UNICE might review its position in the coming months.

#### 2. The issue

Following massive fraud in the management of preferential agreements, the Commission issued a communication to rectify the situation. UNICE supports the fight against fraud but strongly criticised the Commission's assumption that an invalid origin declaration is a commercial risk which the importer must always assume.

#### 3. UNICE positions

- UNICE comments on the notion of «good faith» in preferential tariff arrangements (26 October 1998).
- UNICE preliminary comments on the Communication from the Commission on the management of preferential tariff arrangements (20 March 1998).

#### 4. UNICE's requests

- New management rules for preferential arrangements should not impose additional constraints on economic operators.
- Modernisation, standardisation and radical simplification of the preferential rules of origin which cover most of the products traded between two parties.
- Introducing importer good faith and facilitating exporter access.
- Monitoring the system through an early warning system.
- More use of article 9 of the GSP Regulation which provides for the possibility of withdrawing preferential treatment.
- Efficient partnership between customs and operators which will enable close and on-going consultation with the many economic sectors involved.

#### 5. Future UNICE actions

- Strongly support the view that an importer who acts in good faith should be entitled to rely upon evidence of origin on condition it is provided by a duly authorised exporter.



## UNICE comments on the notion of "good faith" in preferential tariff arrangements

26 October 1998

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The concept of good faith is in UNICE's view a central question in the on-going reform of the preferential tariff arrangements. Therefore, it would like to underline its views on this key issue which it hopes it will be taken into account by the European legislator.

1. As stated in its 23 March 1998 position, UNICE believes that an importer who acts in good faith should be entitled to rely upon evidence of origin on condition it is provided by a duly authorised exporter in the country of export or validated by the customs authority in that country.
2. UNICE is against a rigid framework which would try strictly to define the obligation of every party involved and which would run the risk of tying business hands and would not correspond to today's flexible business practices. Moreover it is questionable whether any legal text (being a compromise) will be useful to reach the fixed objectives.
3. UNICE believes that jurisprudence from the European Court on this subject gives enough to go on. In addition UNICE believes that the discussion on «good faith» should be disconnected from the proposal to amend Article 220 and Article 221 of the Customs Code. In this respect, UNICE doubts whether the legal basis for the proposed formulation is correct. The question arises as to whether it is possible to recover a customs debt before the liability has been determined.

However, UNICE understands the practical, legal and political difficulties of finding a solution to this issue. Moreover the fact that no international agreement makes reference to the financial liability of the parties involved does not help.

For these reasons, UNICE experts are ready to study the question with Commission officials in order to find a solution which would be acceptable to every party concerned and would give greater certainty to economic operators.

# UNICE preliminary comments on the Communication from the Commission on the management of preferential tariff arrangements

23 March 1998

## 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 customs 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 it 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.

## Summary and Future Priorities

### 1. The Issue : existing dialogues

#### EU-US relationship / TABD

- Since 1995, UNICE has been actively involved in the Transatlantic Business Dialogue (TABD). It is an informal process whereby European and American companies and business associations develop joint EU-US trade policy recommendations, with the view to eliminate barriers to trade and investment between both sides of the Atlantic. These recommendations are submitted for action to the European Commission and US Administration. The aim of TABD is to boost transatlantic trade and investment opportunities through the removal of costly inefficiencies caused by excessive regulation, duplication and differences in the EU and US regulatory systems and procedures.
- Since its creation, the TABD structure comprises a working group of CEOs in charge of defining recommendations in the field of customs policy.

#### Principal priorities in the field of customs

- Embracing the principles of the World Customs Organization for a modern customs administration.
- Simplify, harmonise and computerise procedures, make origin and valuation decisions more clear and uniform, improve cargo release, customs inspection and licensing rules, streamline payments systems, and make border procedures more transparent.
- Obtain full acceptance of EU Origin by the US administration and increase "de minimis value" for duty assessment only, in the EU.

#### EU-Mercosur relationship / MEBF

- Since beginning 1999, UNICE has also been involved in the activities of the Mercosur / EU business forum (MEBF). The MEBF is a forum of business leaders from Mercosur countries, the associated members Chile and Bolivia and the European Union. Entrepreneurs on both sides identify obstacles to trade and investment between the Mercosur and the EU and develop joint recommendations as to how such obstacles can be reduced. The MEBF's central idea is to give business an opportunity to develop recommendations on the basis of its activities and experience in the respective markets. The MEBF wants to contribute to the negotiations between the EU and the Mercosur about improving trade and investment conditions, accelerating growth, creating jobs and improving competitiveness.

#### Principal priorities in the field of customs

- Improve simplification, convergence and modernisation of customs practices and increase transparency in customs regulations.
- Reach agreement on a protocol on mutual administrative assistance on customs matters.
- Support the work underway in the WCO to harmonise non-preferential rules of origin. Rules of origin should be clear and predictable, applied in an impartial, transparent, consistent and neutral manner.

#### Other bilateral dialogues

- UNICE is also following closely the activities held within the ASEM framework which covers the relationship between the EU and ASEAN countries as well as Japan, Korea and China. Since beginning 1999, CEOs from both parties have been invited to give their views, notably concerning customs matters in the framework of the Trade Facilitation Action Plan (TFAP).
- UNICE has set up a Task Force on Enlargement in order to follow closely the on-going negotiations on enlargement of the EU and to table recommendations to officials from parties involved. Customs issues have been identified as one of the main difficulties encountered by EU business in the candidate countries.
- Customs issues are also included in the various UNICE positions on other EU-bilateral relations (e.g. on Russia, Ukraine, Eurasian countries, etc.).

### 2. Future UNICE actions

- Support for fast and complete implementation of business dialogues recommendations by customs authorities.
- Support for simplification and harmonisation of customs practices in bilateral and multilateral agreements.
- Continue to monitor closely customs issues in the framework of international business dialogues, notably trying to ensure a maximum harmonisation at global level and similar simplification of customs procedures between regional blocks.

## TABD-BERLIN DECLARATION

29 - 30 October 1999

(Extract on Customs)

### CUSTOMS

The TABD is pleased to report progress on customs issues during a year in which government and private sector representatives, under the aegis of the TABD forum, met twice (in Brussels and in Washington) for formal discussions. The TABD also expanded the EU-US joint Customs Cooperation Committee to include an ad hoc Business-Customs working party. Industry hopes to have the opportunity to continue this cooperation.

Our discussions have yielded progress on the EU de minimis issue, the consideration of "EU origin" labeling and marking, and the simplification and harmonization of trade data elements. US industry raised the issue of EU conversion to FOB versus CIF basis for entered value. Since the European Commission was reviewing this issue, it is agreed to await the results of their review prior to further discussions. Recently, the Commission recommended retention of CIF. US industry has requested EU industry to survey their members regarding inclusion of this on next year's agenda.

Industry is convinced that the principal priorities for customs administrations should be to simplify, consolidate, and modernize customs practices. This will require true harmonization of customs requirements, effective risk management techniques, and a more sophisticated use of existing databases. The widespread use of risk analysis will result in reduced costs for both the trade and customs communities and in an improvement of customs controls.

The business community agreed to actively participate in this work, especially in reaching a mutually acceptable definition of the data elements to be required. The business community also pledged to lobby the EU and US administrations in support of the more politically sensitive changes proposed by the TABD.

### CUSTOMS: de minimis (low value) entries

De minimis is the lowest value for which duty is not assessed regardless of commodity. It generally represents the value threshold where the cost of determining, processing and collecting duty exceeds the potential duty revenue to be collected. These are generally regarded as low risk imports. The US level is \$200. The EU level is 22 Euros (about \$25). The EU level is justified by the fact that the Value-Added Tax (VAT) is applicable for all internal and foreign transactions on goods.

The current EU levels (22 Euros) results in a disproportionately high burden on low value transactions and fails to reflect the low value, low risk nature of these

goods. Two over-riding issues are impeding progress on this issue; VAT assessment and collection, and then if that is resolved, potential marketplace discrimination against local sales (as they must pay VAT).

The TABD recommends that the EU Administration develop a new system to collect customs duties and VAT for low value goods. The objective is to reduce the administrative burden on both the trade and government while preserving fair competition inside and outside the EU. The EU Administration must also encourage Member States to expand the use of simplified procedures already established under EU law-including the periodic (instead of per shipment) report of data and payment of applicable duties and VAT. By the TABD mid-year meeting in 2000, the EU administration agrees to report on the extent to which these simplified procedures are being used by the Member States as well as the efforts expended to encourage all member states to implement the simplified procedures to collect VAT.

### CUSTOMS: Integrity

All customs administrations should participate in the World Customs Organization integrity initiative and promote integrity in other forums whenever and wherever possible. Industry should promote the highest standards in its own transactions.

The US Customs Service now includes integrity training in all of its technical assistance projects. The EC considers customs integrity as one of the conditions of EU enlargement. Both EU and US are signatories to the Arusha Declaration and are openly urging adoption by all non-signatories. Both the US and EU will actively support customs integrity reform as an important improvement in the international trade process during the next WTO new multilateral trade negotiation round.

Increased focus must be placed on customs integrity, especially in developing and less developed economies. True transparency and predictability of the trade process is not possible without integrity safeguards. Governments must address the cultural aspects of their society that stifle economic growth and divert trade to other more predictable and transparent countries. Additionally, customs must be provided the resources to repair and prevent integrity problems (i.e. adequate wage levels).

### CUSTOMS: Utilization of Trade Data

Government and business should work together to determine the most efficient and effective way to collect and exchange data. The ITP (International trade prototype) could be one mechanism, and is now being used to evaluate potential improvements. The traditional method



often requires redundant submissions of data to various regulatory agencies resulting in additional costs, transcription errors, and reconciliation issues. These administrative costs should become more significant relative to the customs duties collected as tariff rates continue to decline in the next millennium

Evaluation of improved methodologies has identified the issue of impediments to the exchange of data between government agencies of the same country. In addition, legal issues relating to the exchange of data between foreign governments have been raised.

The ITP, or an equivalent system, should be used as a platform to address these issues. This year, industry will coordinate issues and share information on data security and privacy with the work now underway in the e-commerce area. The TABD urges both Governments to support and to fund the development of supporting electronic systems. The TABD particularly urges the US and the EU to work with the trade community in redefining the scope of the data requirements and to find solutions to solve the latest problems on security and confidentiality.

### **CUSTOMS: One Stop Shop**

Customs should be designated as the lead government agency to accept entry declaration data and to share it with all other necessary agencies (a "single window"). Other agencies could then act on that data without the need for separate, redundant submission for the same transaction. This would assist the shipper/ filer from identifying other necessary but not obvious government agencies.

A second "One Stop" issue in the EU and US regards the consistent processing of goods no matter where they enter into a customs territory. Every company must have the ability to choose the customs office through which they discharge their responsibility, irrespective of where the goods are entering or leaving the customs territory (a "single authorization"). A consolidation and exchange of the data would be required to implement the one stop shop principle. Again, the development of improved automation systems is essential for implementation of this proposal.

The US Customs Service already serves as the focal point for a significant portion of importer clearance requirements. The US is now implementing remote filing, and the development and implementation of ACE (Automated Commercial Environment) and ITDS (International Trade Data System) will further advance its ability to collect data, eliminate redundant forms, and measure cargo release time from a central database. For the EU, a drastic change of the current customs processes is required to provide true harmonization regarding remote filing and one-stop data collection.

The TABD again urges the US government to support the development and funding of ACE and ITDS as critical systems for customs automation. The TABD further urges the European Commission to harmonize customs procedures and practices among all member states in order to guarantee a correct and uniform application of the EU customs code.

The US and the European Commission must also enable the importer/entry filer to use standard data elements to make entry in any port regardless of the port of arrival of the merchandise.

### **CUSTOMS: EU Origin**

As the EU is one entity for standardization and trade, recognition of "EU origin" for marking, labeling, and entry documentation purposes should be acceptable to the US Administration. The cost of the follow up of the goods in relation to the political definition of origin constitutes a high cost for EU business in the context of the single market.

Allowing EU origin would require a change in US statute. US Customs believes this proposal warrants consideration, and discussions are underway within the US government to evaluate its effects. An initial survey among representatives of US industry produced no overt objections to the idea, but many questions remain about how it would be specifically implemented. The TABD would support a limited test of "EU origin" for specified commodities during a trial period.

The TABD is pleased to see the US government discussing the allowance of EU origin. The US has agreed to report on the status of this proposal's consideration within the government at the TABD 2000 Mid Year Meeting.

# TABD – CHARLOTTE DECLARATION

5 - 7 NOVEMBER 1998

(Extract on Customs)

## I. Issue Statement

Customs issues remain an important part of the TABD. We regret that meaningful progress has not been made this year. We believe that the customs administrations were not sufficiently motivated to act forcefully on our previous submissions or to follow-up the Rome communiqué and agreements.

## II. Background / Action Required

One important agreement coming out of Rome was the creation of a working group linked with the MAA. It has yet to meet. We vigorously urge the two administrations to support an active customs-trade working group, even if the business sectors cannot directly participate in the Joint Customs Cooperation Committee (we now understand that such direct participation is prohibited by the term of reference).

We previously agreed to defer our work on harmonisation of data elements pending completion of the G7 working group. We now request to review an official comment on the G7 report after communication to the business through the administrations. We would like the European Commission to follow up examples of the cargo release being withheld pending the submission of the complete consumption entry.

In the same way, we continue to call on the two administrations to work together for obtaining some progress on two main items: the acceptance of "EU Origin" by the US administration and for increased "de minimis value" for duty assessment only, in the EU. In addition to finalising the requirements for the chamber of commerce certificate of origin, we expect the EU and US implementation of the "one stop shop" principle over the next few months (remote location / national entry processing).

The trade issues that inspired the TABD are even more important given today's difficult and uncertain economic environment than when they were first adopted in Seville. We believe the development of trade between the US and EU makes it necessary to reconsider the role of customs procedures in international trade. Business has much to offer in guiding the reform and the modernisation of the customs process. The US and EU governments must

provide a "bilateral" policy framework from which both administrations and business can challenge non-tariff barriers. Trade facilitation is an absolute necessity at this level. In that regard, we regret the absence of customs actions in the draft action plan of the Transatlantic Economic Partnership.

Despite these disappointing results, we acknowledged some encouraging action from the administrations during our last meeting in Brussels. EU and US agreed to activate the joint working group between Business and the Administration. We seem to have aligned the issues and we have agreement to work actively to bring about change. Our success can only be measured by the results we achieve.



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## TABD – ROME DECLARATION

7 NOVEMBER 1997

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(Extract on Customs)

Import and export procedures remain one of the main non-tariff barriers for both large and small companies. The transatlantic business community appreciates the cooperation of the US and the EU administrations to reduce costs and barriers to trade through the convergence and modernisation of customs practices. We urge the US and EU Administrations to accelerate the process of implementing the recommendations which the administrations accepted in Chicago last November. There are major savings to be made if we can, on both sides, simplify, harmonise and computerise procedures, make origin and valuation decisions more clear and uniform, improve cargo release, customs inspection and licensing rules, streamline payments systems, and make all countries border procedures more transparent and accessible. Transaction costs, in short, can be vastly reduced. The US and EU administrations are urged to consult with the TABD in the implementation process.

## TABD-CHICAGO DECLARATION

9 November 1996

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(Extract on Customs)

The transatlantic business community notes the important progress that has been made within the TABD framework toward modernising global trade practices. We are pleased to note that the US and the EU administrations have accepted our recommendations with respect to:

- Embracing the principles of the World Customs Organization (WCO) for a modern customs administration.
- Ensuring timely binding classification rulings and reasonable notice before reclassification takes effect.
- Harmonizing the data elements of customs declarations and are working toward that end.
- Accepting and processing of customs declarations prior to arrival of the cargo and to separate procedures for the release of the cargo from those required for entry, duty payment, and collection of statistics.

We call on governments to continue their partnership with business to implement these recommendations, or to ensure their immediate effect, and to resolve remaining issues.

## MEBF – RIO DECLARATION

### 23 FEBRUARY 1999

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(Extract on Customs)

#### 1. Customs Procedures / Trade Facilitation

- a) MEBF recommends that the EU and Mercosur should make simplification, convergence and modernisation of customs practices a matter of high priority. They should:
- establish a consultative process and information-sharing;
  - increase transparency in customs regulations and proper application on both sides;
  - develop efficient customs administrations using international standards and find “best customs practices”. The World Customs Organization (WCO) and the International Chamber of Commerce (ICC) are developing international customs models that should set norms and standards for customs procedures.
- b) MEBF will share its experience on customs procedures as input to the process of improving procedures and implementation.
- c) MEBF recommends that the EU and Mercosur should reach agreement on a Protocol on Mutual Administrative Assistance on customs matters, that will aid the implementation of business facilitation measures in this area.

#### 2. Rules of Origin

- a) MEBF encourages the EU and Mercosur governments actively to support the work underway in the framework of World Customs Organization to harmonise non-preferential rules of origin.
- b) MEBF looks for rules of origin that are clear and predictable, applied in an impartial, transparent, consistent and neutral manner.
- c) Simplified procedures should apply for exports below a certain value and for authorised exporters.

### Summary and Future Priorities

#### 1. Definition

"Trade facilitation means the modernisation of customs legislation and administration that tie in with today's business practices"

#### 2. The issue

Following the issuing of a background note by the WTO on trade facilitation on 23 May 1997 (which presents a global picture of the work already done in other international organisations on the subject), the EU established its strategy to be submitted to the WTO in its 20 August 1997 EU paper. UNICE supported the EU strategy and pointed out its main concerns in its 9 January 1998 position.

#### 3. UNICE positions

- UNICE preliminary position on the European Community's objectives in WTO for trade facilitation (19 March 1999).
- UNICE position on Trade facilitation (9 January 1998).

#### 4. UNICE's requests

- Standardised customs procedures that tie in with business practices.
- Simplification and harmonisation of forms and databases for customs clearance.
- Obligation on customs administrations to give operators binding information about currency, value, origin, and other information for customs clearance.
- Flexible design of transition clauses when tariffs are changed.
- Standardisation of dispute settlement procedures.

#### 5. Expected developments

Despite the Seattle failure, the Commission will continue to contribute to the work carried out in Geneva on this subject and to press for negotiations to be launched as soon as possible.

#### 6. Future UNICE actions

- Pursue its work of convincing administrations and business communities in developed and developing countries of the benefit of a WTO agreement on trade facilitation.

- Support harmonisation and simplification of documents and data at international and world level as provided in the Kyoto Convention adopted on June 1999.
- Strengthen automation and convergence of official controls and establishment of modern customs and management techniques.

# UNICE preliminary position on the European Community's objectives in WTO for trade facilitation

19 March 1999

## SUMMARY

- In its position paper at annex, UNICE agrees with the Commission when it says that trade facilitation is necessary and can only make a large contribution to improving the situation of companies engaged in international trade.
- For UNICE this reform should involve a decrease, rationalisation and harmonisation of the documents requested of companies by customs. Customs regulations should be more transparent and uniform, and in conformity with WTO principles.
- UNICE is also of the opinion that formalities during customs controls should be simplified and the system of "risk analysis" should be used more often. For UNICE, negotiations on trade facilitation should be launched during the 1999 WTO Ministerial meeting. An agreement in this area would make it possible to streamline customs regulations in parallel with the progressive lowering of customs duties.
- The major priorities for UNICE in this field are:
  - administrative rules governing international trade, which are adapted to globalisation and modernisation of trade;
  - processing administrative formalities linked to international trade transactions notably in the field of transport, technical controls and means of payments;
  - an efficient fight against corruption and fraudulent traffic, without increasing the constraints and burden on companies;
  - co-operation between operators and customs, which should evolve towards true partnership.
  - "One-Stop Clearance" procedure, which will allow the delegation of controls;
- Lastly, for UNICE trade facilitation should clearly offer new business opportunities to companies and allow them to carry out their international transactions smoothly.

## 1. Introduction

1.1 UNICE supports the 22 September Communication from the European Community on trade facilitation submitted to the WTO entitled "Assessment of the scope for WTO Rules in the field of Import, Export and Customs procedures" and proposals on this subject in the Commission's discussion document dated 27 November 1998. It shares the view of the European Community that trade facilitation is "an issue in which all gain". It also supports the definition of trade facilitation as "the systematic rationalisation of procedures, information flows and documentation for international traders and agencies in order to facilitate the international trade transaction process".

1.2. UNICE considers that incorporation of questions linked to simplification and harmonisation of customs procedures in the global and binding framework of WTO can only make a large contribution to improving the situation of companies engaged in international trade.

However, UNICE would like any obligations agreed in this context to be concrete and precise. The time has come to go beyond the stage of simple statements of principle and to agree on highly practical provisions to facilitate trade notably in the field of customs procedures.

1.3 UNICE considers that, in the light of soaring trade volumes, the progressive reduction of customs duties in the framework of bilateral, regional or multilateral tariff agreements, increasing trade liberalisation and mounting competitive pressures, customs procedures may have become one of the biggest non-tariff barriers to trade. To ensure that, in the fierce competition resulting from globalisation, companies obtain greater certainty in the administrative handling of their international transactions, UNICE wants to draw the attention of European institutions and customs authorities to the following recommendations in the field of import, export, transit and other customs procedures.

## 2. Documents and required customs information

### 2.1. How much information is necessary?

2.1.1. UNICE agrees with the EU suggestions detailed under point 2.3 of the Communication (The scope for WTO rules) which are: need to avoid procedural obstacles, adoption of international standards, and streamlining and harmonisation of messages. However, it points out that the wide and divergent range of documentation and data requirements needs to be reduced. The remaining requirements should be standardised. It should also be detailed what information is essential for moving goods (maximum data set), and how much information can be retrieved from commercial documentation or, where necessary, through an audit at a later stage. Customs authorities should rely on the same type of information.

### 2.2. How to obtain information?

2.2.1. UNICE believes that computerisation is a key element in this process of simplification. Networking of operators and administrations should be improved, notably by refining the EU Market Access database accessible through the internet. It would be also important to define customs documents and information required by the WTO and WCO member countries. The scope for companies to gain access and submit applications to customs databases should be created or expanded (e.g. in DGXXI's TARIC database). Customs officers as well as warehouses should be licensed and professional standards should be defined.

### 2.3. How to ensure transparency?

2.3.1. UNICE believes that lack of transparency in customs regulations is one of the main difficulties for business. Often administrative obligations are not made public, sometimes because they are in violation of WTO rules. Traders are defenceless against customs arbitrariness, as customs power to delay clearance of goods at borders is practically unrestrained, even in many developed countries. UNICE is therefore in favour of any measure which would allow a move towards a limitation of the discretionary powers of customs and other government agencies involved in administering trade. UNICE proposes the setting-up of an accelerated procedure for international arbitration on customs matters which is readily accessible to companies.

Greater transparency could also be ensured through systems comparable to pre-shipment inspection whereby non-administrative bodies carry out controls for customs purposes outside the regulatory framework of customs authorities. In this context also, the transparency rules applicable to inspection bodies (as defined in article 6 of the WTO agreement) should be developed and specified in greater detail in order to provide exporters with better guarantees.

2.3.2. UNICE considers that, within the tasks of customs administrations, apart from fulfilling their traditional tasks of revenue collection and enforcement of restrictions and prohibition, the facilitation of legitimate trade is also becoming increasingly significant. Effective trade facilitation would do more to discourage illegitimate trade, without harming revenue collection. Customs should therefore seek to make regulations and documentation as transparent as possible.

2.3.3. Significant improvements in transparency and predictability could be sought in the following areas:

- obligation on customs authorities to let operators know in advance what information they must provide on currency, value, origin and other essential aspects for customs clearance;
- greater flexibility in application of transition clauses when duties and customs rules are modified.

## 3. Customs controls and formalities

### 3.1. What scope for a possible Trade Facilitation Agreement ?

3.1.1. Generally speaking UNICE supports the proposals for consideration detailed under item 3.4. (Proposals for consideration in a WTO trade facilitation framework) which are: introduction of automated customs clearance, post-clearance controls, simplified procedures and authorised operators. However, with the progressive reduction of customs duties and quotas in the framework of bilateral, regional or multilateral liberalisation agreements, it may seem excessive to apply comprehensive customs controls for collection of statistics on foreign trade. The quality of these statistics must be maintained but should not form a barrier to trade.

3.1.2. UNICE considers that trade regimes should be

addressed in a set of provisions that state clearly the definition and scope of such regime, the eligibility of operators to benefit from them and how to ensure their application in a co-ordinated and harmonised manner (e.g. preferential regimes and related rules of origin). UNICE agrees that there would be merit in elaborating WTO provisions that progressively promote the universal introduction of these modern procedures and guide their development in a trade-enhancing and equitable manner. A WTO Agreement on Trade Facilitation could set parameters along these lines.

- 3.1.3. In addition, UNICE endorses the Commission's approach as described in its most recent discussion document for the 113 Committee on trade facilitation and which seeks to secure an agreement to launch negotiations on this matter at the 1999 WTO ministerial meeting. Regarding more particularly the rules relating to the other WTO agreements (origin rules, import licences, technical barriers to trade, customs value and pre-shipment inspection), UNICE would like their operation to be improved, notably in the areas of simplification and harmonisation of procedures and documents, implementation of controls and use of electronic media. UNICE also supports the proposed rationalisation of the structure of the committees for these WTO agreements, bringing them all under the umbrella of trade facilitation. Among other things, this would enable less developed countries to solve some of their problems of resources and management.

### 3.2. How to ensure the efficiency of customs controls?

- 3.2.1. To ensure efficiency in the customs controls of information and avoid high costs for both customs and operators, UNICE suggests that documentation requirements should be dissociated from border crossing whenever possible. This can be achieved in two ways: first, increased co-operation between authorities of the exporting and importing country could allow export data to be verified in the exporting country, communicated to the authorities of the importing country, and thus become the valid basis for importation. Second, authorities could agree, at international level, to reduce the formalities in order to cope with increased trade flows. In this context "authorised traders", be it large multinationals or SMEs, could benefit from minimal formalities at borders while complying with the necessary administrative paperwork in audit-based controls. In addition, UNICE favours introduction of the concept of risk analysis for

economic operators, which it believes to be an efficient method for ensuring the effectiveness of customs controls without adding excessive obstacles to trade flows.

### 3.3. What are top priorities for business ?

#### 3.3.1. Transport and means of payment

UNICE believes that, in international trade, customs facilitation cannot be taken in isolation from facilitation of connected procedures such as transport, technical controls and means of payment.

UNICE supports the idea of coordination within WTO with a view to simplifying, harmonising and computerising transport documents.

In addition, UNICE supports an examination of how to simplify and harmonise rules governing means of payment.

#### 3.3.2. Corruption and integrity

UNICE is firmly convinced that corruption and genuine fraud should be energetically combated, but efficiency must not be sought in an excessive increase in the obligations and constraints imposed on operators active in international trade. Because trade facilitation is an essential factor for companies' competitiveness on a global market, it is not ready to accept that operators are hampered by very strict legislative frameworks which do not correspond to today's flexible business practices. UNICE is aware that globalisation for governments also means budgetary constraints but does not favour the establishment in WTO of "hard rules" (strong and demanding commitments which would not be compatible with widely differing situations) as not only inappropriate but also as merely treating the symptoms. In fact, it is difficult to eradicate such problems via simple or short-term measures, or through the threat of dispute settlement. On the other hand, UNICE could support, in a trade facilitation framework, benchmarking via soft rules linked to fixed objectives and certain generally agreed standards of performance, so as to give political guidance to administrations as to the direction they should be taking in terms of medium to long-term administrative reform.

#### 3.3.3. Cooperation between trade and customs

UNICE is pleased that the revision of the Kyoto Convention moves in the right direction by

suggesting that customs administrations seek to co-operate with representatives of business. This trend should be confirmed and made explicit in the framework of WTO. It also believes that, to be really effective, this “partnership” should be further developed in terms of requiring such co-operation and building “structured relations” with trade operators. Such co-operation should comprise the following actions: development of international support for economic operators (for example in the framework of international customs agreements), greater consideration for practical customs constraints in negotiations on and follow-up of international agreements on movement of goods, encouragement of transparency in implementation of rules, new working methods, common training policy and better communication with customs users.

#### 3.3.4. Single clearance procedure (“One-Stop Clearance”)

UNICE favours the co-ordination of different agencies concerned with import and export. In view of the proliferation of regulatory controls worldwide, rationalisation of procedural aspects of controls is essential to streamline trade flows, while IT-based means of information exchange between traders and government makes it more feasible. UNICE very strongly encourages administrations to ensure, over time, a level of co-ordination and delegation of controls to customs, to enable all verifications to be carried out once only. Such a system should operate for exports as well as imports, and should be sufficiently flexible to allow the maximum number of businesses to take advantage of it, and harmonised to guarantee equality of treatment between economic operators.

International prototype projects which aim to establish single clearance systems between two parties, such as the one currently on-going between the United Kingdom and the US, could serve as a basis for reflection at global level. Any administration seeking to maintain separate or unharmonised control functions should bear the burden of proof.

## 4. Conclusion

- 4.1 UNICE shares the idea that trade facilitation is “an issue in which all gain” and that it can offer new trading opportunities, especially for small and medium sized enterprises. It also agrees that, for these benefits to be realised, co-operation at the multilateral level is required, “in order to develop harmonised solutions necessary for traders to most effectively carry out international transactions”. In this framework UNICE supports WTO political back-up to the WCO. UNICE is convinced that, to achieve trade facilitation, a permanent and trustful dialogue at national and international level is needed between customs authorities and operators.
- 4.2. Development co-operation and technical assistance are an important part of any agreement on trade facilitation. UNICE would like less developed countries – future emerging markets – to be able to play an active part in such an agreement. With that in mind, technical assistance should enable them to modernise their private and public infrastructures and meet their commitments more easily. European companies are prepared to work to that end with their partners.
- 4.3. These are UNICE’s preliminary reactions to the trade facilitation dossier. It is willing to examine its position in greater depth since it attaches great importance to the results that can be achieved in this area.
- 4.4. UNICE encourages the European Community to play an active role in this area and its experts are ready to reflect on any new EU proposals in order to find solutions which will fit into the proposed EU framework and which address the justified concerns of economic operators.



## UNICE position on trade facilitation

9 January 1998

In the fierce competition resulting from globalisation, companies need greater certainty in the administrative handling of their international transactions. Therefore, UNICE supports the strategy set out in the 20 August 1997 EU paper on trade facilitation submitted to the WTO. UNICE firmly believes that the existing variety of customs procedures and lack of documentary standards are often at odds with today's administrative business systems and form obstacles to legitimate trade.

Not only modernisation of customs legislation and, parallel to this, modernisation of the customs administrations are necessary, but also standardised customs procedures and documents should be introduced that tie in with business practices. This will result in more cost-effective and efficient (electronic) interaction between the customs administrations and companies, allowing the effectiveness of controls to be strengthened through risk assessment and targeted checks on commercial records.

More specifically, UNICE is of the opinion that marked improvements could be sought in the following areas:

- simplification and harmonisation of forms and data required for customs clearance;
- obligation on customs administrations to give operators advance and binding information about currency, value, origin and other information essential for customs clearance;
- easing of constraints imposed for customs clearance (duration and form of controls, taking of samples, guarantee and surety requirements, etc.);
- allowing more flexibility when laying down transition terms for introduction of changes to tariffs and rules;
- standardisation of dispute settlement procedures (proportionality of fines and sanctions, seizure of goods, etc.).

UNICE welcomes the fact that the Secretariat of the World Trade Organisation presented a global picture of work already done in other international organisations on the subject of trade facilitation, in its Background Note (G/C/W/80 of 23 May 1997). With the EU, however, UNICE believes that the WTO, as a global organisation, should give political impetus to the promotion of trade

facilitation and its implementation. UNICE also believes that the EU should have a leading role in this process.

Although UNICE agrees that a new WTO Agreement on Trade Facilitation has the advantage that it would be backed by a binding Dispute Settlement mechanism, thought should be given to the institution of a specific international arbitration procedure which would be more flexible and allow companies rapidly and easily to settle technical customs disputes resulting from non-observation of customs commitments made by States.

## Summary and Future Priorities

### 1. Definition

“Rules of origin are the criteria used to define where a product was made. They are linked to the application of trade measures such as quotas, preferential tariffs, anti-dumping actions and countervailing duties. Non-preferential rules of origin are those rules of origin which do not grant preferential tariffs”

### 2. The issue

The on-going harmonisation of rules of origin at WTO level aims at creating rules of origin which are broadly accepted worldwide. UNICE strongly supports this objective but has criticised the criteria used by the negotiators in this exercise because they were too complex, burdensome and not product-friendly for European industry.

### 3. UNICE positions

- UNICE position on the on-going WCO negotiations on non-preferential rules of origin (27 April 1998).
- UNICE statement on the harmonisation of non-preferential rules of origin and trade defence instruments (11 July 1997).

### 4. UNICE's requests

- Neutral and objective non-preferential rules of origin among all the WTO members.
- Consistency between the proposed rules of origin and other existing trade policy instruments.
- More precise guidelines as to the technical work that the WCO technical committee on origin should do.
- Close correlation between marking regimes and the harmonised rules that will emerge from the WTO exercise.
- Simple and trade-facilitating rules of origin appropriate to the global economy.

### 5. Expected developments

- WCO finished the negotiations at technical level.
- Considering Seattle deadlock, WTO members might reopen some chapters for further analysis.

### 6. Future UNICE actions

- Support very simple rules where economic sense should prevail to determine origin.
- Support the following basic principles: neutrality, consistency with other trade policy instruments and correlation with marking regimes.
- Follow closely the on-going debate on the origin rules and possible other criteria for their harmonisation at world level (notably taking into account issues related to anti-dumping and intellectual property).

# UNICE position on the on-going WCO negotiations on non-preferential rules of origin

27 April 1998

## 1. Introduction

- 1.1. During the past two years UNICE has followed with interest the negotiations taking place in the World Customs Organisation (WCO) Technical Committee on non-preferential rules of origin. These negotiations were due to be completed by 1 July 1998.
- 1.2. Primarily its interest concerns the horizontal aspects of this issue and UNICE is therefore examining the compatibility of the results of the negotiations with the objectives formulated in the preamble to the WTO Agreement on Rules of Origin concluded during the Uruguay Round negotiations.

## 2. Clear and predictable origin rules are in the interests of European business and international trade

- 2.1. The objectives of these negotiations aim at setting up origin rules that are clear and predictable, applied in an impartial, transparent, consistent and neutral manner. UNICE strongly supports these objectives, as it did during the Uruguay Round negotiations.
- 2.2. Moreover UNICE has always endorsed the principles set out in the Agreement on Rules of Origin which says that origin is given to a product "wholly obtained or with minimal operations or processes" or which has undergone "substantial transformation either by change in tariff classification or by supplementary criteria including ad-valorem percentages" (Part IV, Article 9, section 2c).

## 3. Difficulties to set-up world-level harmonised rules of origin

- 3.1. However, from the start of the negotiations it was clear that it would be extremely difficult to meet these objectives when using the above-mentioned techniques of change in tariff heading supported by supplementary criteria such as value added or manufacturing processing operations.
- 3.2. Difficulties encountered by WCO in drafting non-preferential rules of origin in line with WTO's mandate appear to be occasioned principally by:
- the consideration given by some national delegations to the political implications (legitimate

interests of states) as compared with examination of purely technical criteria;

- the absence of a voting procedure to settle matters when no consensus can be reached.

- 3.3. UNICE considers that WTO should give WCO more precise guidelines to achieve the objectives which it has been set, giving priority to examination of technical criteria and authorising recourse to voting in impasse situations.

## 4. Complexity and uniformity of rules of origin

- 4.1. Although it can be expected that a complete set of origin rules will take many more years to develop, UNICE is of the opinion that the rules formulated thus far give rise to serious doubts about the present negotiating format for achieving the pursued objectives. Insofar as the rules relate to simple working or processing it is not too difficult to demonstrate that goods have acquired origin. The majority of working or processing, however, is complex and must comply with complex origin rules. As a consequence it will require operators to administer in closer detail the inputs used in working or processing in order to be able to demonstrate to the authorities that the goods have acquired origin.
- 4.2. UNICE considers that the situation is rendered even more difficult for operators to administer because of the impact of these rules of origin on product markings ("made in...").

In this regard the obligations arising from the WTO agreement on rules of origin prompt Member States of the European Union and the Commission to be particularly attentive to the following problems:

- in accordance with the principle of uniformity, there should be a "good match" between the provisions on origin currently being negotiated within WCO as part of the WTO harmonisation programme and the highly specific objectives in the particular areas of markings;
- conformity of the rules of origin which currently exist at Community or national level (international trade, markings) with the provisions of article 2.2 of the WTO agreement which require Members not to

apply to imported or exported products rules which are stricter than those in force for national products;

- whether or not it would be appropriate to put in place a Community legal mechanism enabling the EU to guarantee vis-à-vis WTO that the principle of uniformity laid down in the WTO agreement will be adhered to after the WCO negotiations.

## 5. Changes in international trade

5.1. Since the negotiations started many changes in international trade have taken place. The results of the Uruguay Round as well as the International Technology Agreement have resulted in reduced tariffs, and even elimination in some cases, and further tariff negotiations are under consideration. Thus, the scope of origin rules is diminishing except for specific cases such as application of anti-dumping instrument and other trade-policy instruments.

5.2. Added to these trade-policy developments UNICE notices a further globalising world economy in which electronic trade will enable small and medium enterprises to join. This will require further trade facilitation that is at odds with complex rules of origin.

5.3. UNICE believes that nowadays a wide consensus exists between the main trading partners on the subject of simplification of non-preferential rules of origin.

## 6. Conclusion: possible alternative solutions ?

6.1. Therefore in the light of developments in international trade, UNICE calls on the parties involved in implementation of the agreement on origin rules to find possible new forms of negotiations along the lines of the Marrakesh Agreement in order to:

- avoid imposing disproportionate administrative costs on economic operators ;
- avoid creating unnecessary obstacles to international trade;
- facilitate formalities to allow for future technical progress and the creation of new products.

6.2. UNICE is ready to reflect on the issues raised in this document with the EU institutions and particularly Community negotiators in the WCO in order to find solutions which address the justified concerns of economic operators.

## UNICE statement on the harmonisation of non-preferential rules of origin and trade defence instruments

11 July 1997

In accordance with the agreement on rules of origin concluded during the Uruguay Round, the European Community is currently developing proposals for the harmonisation of non-preferential rules of origin for negotiation with the other WTO members. The aim of the current negotiations is to develop neutral and objective non-preferential rules of origin among all members of the WTO.

UNICE fully supports this initiative. Indeed, the vast variety of rules of origin serving different purposes constitutes a serious impediment to trade. UNICE therefore encourages the negotiators and, in particular, the European Community to pursue their efforts towards this goal.

It is not UNICE's task to comment on the specific proposals prepared by the services of the European Commission. It invites them to work in close cooperation with the sectors concerned.

UNICE urges the European Commission to ensure consistency between the proposed rules of origin and other existing trade policy instruments. In particular, special consideration should be given to the trade-defence instruments of the European Community, especially the anti-circumvention rules contained therein.

Anti-circumvention rules aim at counteracting practices for which there is insufficient due cause or economic justification other than the imposition of the duty.

Circumvention of trade defence measures can take many forms. For instance, the setting up in the Community of an assembly operation of parts and components of a finished product following the adoption of anti-dumping measures on imports of that finished product can, under certain conditions, constitute a circumvention of anti-dumping measures.

At any rate, it must be avoided that an operation constituting a circumvention of trade-defence measures could at the same time confer origin on the processed product. This would indeed gravely jeopardise the anti-circumvention rules and, hence, seriously affect the efficiency of the trade-defence instruments.

In addition, UNICE recalls that it was recognised during the Uruguay Round that the circumvention of trade-defence measures constitutes a serious problem that

should be adequately tackled by uniform rules. The current negotiations on non-preferential rules of origin should not pre-empt the results of the negotiations yet to come on anti-circumvention rules within the WTO.

UNICE is convinced that neutral and objective rules of origin can be developed without undermining the effectiveness of the trade-defence instruments of the European Community.

## Summary and Future Priorities

### 1. The issue

There is no arbitration body at international level to which economic operators facing difficulties with economic procedures could refer to.

### 2. UNICE position

UNICE proposal to set up a special procedure for international arbitration on customs matters  
(26 October 1998)

### 3. UNICE's requests

- UNICE believes that there are circumstances in which it is difficult for operators to obtain satisfactory treatment of their complaints. In particular, in some countries, the legal system fails to provide an efficient or cost-effective mechanism for dealing with customs disputes.
- Such arbitration procedure should be open to operators to seek redress against decisions of customs authorities which they believe to be based on a failure correctly to:
  - incorporate the provisions of international agreements in national law; or
  - interpret or implement such provisions.
- UNICE also believes that such a procedure should be set up under the auspices of the WTO.
- The procedure should be simple and transparent and designed to provide decisions as rapidly as possible.

### 4. Future UNICE actions

- In the medium/long term, support an arbitration procedure to give economic operators direct access to an independent authority from which they can seek redress against decisions of customs authorities.
- In the short term, investigate establishment of a platform for discussions within the WCO framework.
- Continue to follow closely the developments in this field, notably linked to the revision of the WTO Dispute Settlement Understanding and the anti-fraud inquiries to European operators.

# UNICE proposal to set up a special procedure for international arbitration on customs matters

26 October 1998

## I. Introduction

1. Disputes between economic operators and customs authorities are normally dealt with through the legal system of the country concerned. Generally speaking, this works well but there are some circumstances in which it is difficult for operators to obtain satisfactory treatment of their complaints.
2. In particular, in some countries, the legal system fails to provide an efficient or cost-effective mechanism for dealing with customs disputes. Furthermore, there is no direct remedy available in any country to an operator who believes that local law or customs practice fails to reflect correctly the requirements of an international agreement. UNICE believes that these two problems require different solutions.

## II. Unsatisfactory legal systems

3. UNICE believes that the most appropriate solution to this problem would be to strengthen the provisions of the revised Kyoto Convention which already contains quite specific requirements in connection with appeals against decisions of a customs authority.
4. Ways in which these provisions might be strengthened include more specific guidelines on timing and costs, the latter aimed at ensuring that the first stage of appeal, at least, should be readily available to all operators.
5. Operators face particular difficulties in dealing with disputes in foreign jurisdictions in which they have no presence. It would be helpful, therefore, to include in the Convention specific provisions to give foreign operators the same rights and access to the appeals processes as domestic operators.

## III. Failure to reflect international agreements in national law and practice

6. At present, the only remedy available in disputes arising from failure to implement international agreements is to complain either to the customs authority concerned or at political level. However, there can be no guarantee that even a wholly justified complaint will be considered, let alone upheld.

7. Furthermore, this approach is probably not a realistic option for foreign operators whose sole remedy, therefore, is to try and persuade their own customs authority to support their complaint and to raise it either with the foreign customs authority concerned or the body responsible for managing the international agreement.

8. However, this is inevitably a time-consuming process with, in this case again, no guarantee that the complaint will even be seriously considered.

## IV. International customs arbitration procedure

9. UNICE believes, therefore, that an international arbitration procedure should be established to give individual economic operators direct access to an independent authority from which they can seek redress against decisions of customs authorities which they believe to be based on a failure correctly to:
  - incorporate the provisions of international agreements in national law; or
  - interpret or implement such provisions.
10. The procedure should be set up under the auspices of WTO with arbitrators nominated by both WCO and the business community and with an independent chairman. Such a framework should allow for direct access to arbitration by economic operators, with decisions taken within a fixed period of time.
11. The procedure should be simple and transparent and designed to provide decisions as rapidly as possible and at the least possible expense to both the complainant and the customs authority concerned.

## V. Conclusion

12. UNICE is ready to reflect on the proposal raised in this document with the EU institutions in order to find a solution which addresses the justified concerns of economic operators.