



European Commission

A guide to risk analysis and customs controls

Customs Policy Committee

A guide to risk analysis and customs controls

Customs Policy Committee (Deputies)

**Ad hoc expert group on the follow-up to the Maastricht
report**

**'Improved working methods: risk analysis and customs
controls'**

EUROPEAN COMMISSION

Directorate-General XXI — Customs and Indirect Taxation

This guide is intended for official use only.

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Preface

This guide is the result of close collaboration between the Member States and the Commission within the ad hoc group of experts on working methods, a working party of the Customs Policy Committee (Deputies). It is intended as an aid to Member States in the organisation of customs checks but is in no sense binding.

The aim is to draw up a non-exhaustive list of examples of specific risk analysis techniques, with particular reference to certain sensitive goods and high-risk customs procedures or regimes identified by the Commission and the Member States.

The European Commission hopes that customs administrations will take from the guide those elements which they find helpful, and that these will help them apply working methods suited to the specific international, national and local context in which each customs office carries out its daily work.

Many document references are cited in the guide. However, the basic texts throughout are the Customs Code and the Code implementing provisions, the references for which are given here and will not be repeated:

- **Customs Code:** Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽¹⁾;
- **Implementing provisions:** Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) 2913/92 establishing the Community Customs Code⁽²⁾, as last amended by Commission Regulation (EC) No 12/97⁽³⁾.

⁽¹⁾ OJ L 302, 19.10.1992, p.1.

⁽²⁾ OJ L 253, 11.10.1993, p.1.

⁽³⁾ OJ L 9, 13.1.1997, p.1.

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Chapter 1

Principles and definitions of risk analysis

Section 1

Principles

As a result of the completion of the single market on 1 January 1993, the entry into force of the Treaty on European Union, the enlargement of the Community to include new Member States and the rapid expansion of trade with the rest of the world, the Member States' customs administrations and the Commission (DG XXI) have had to redefine the role of customs in the Community and implement a new strategy. The first signposts were the Statement by the Heads of Customs Administrations of the Member States of the European Union concerning a framework strategy for Customs 2000 (December 1993) and then, more recently, Decision 97/210/EC of the European Parliament and of the Council of 19 December 1996 adopting an action programme for customs in the Community (Customs 2000)⁽¹⁾. Others are the Council Resolution of 25 October 1996 on the simplification and rationalisation of the Community's customs regulations and procedures, which calls on Member States to make more use of risk analysis⁽²⁾, and, in connection with the third pillar of the Treaty on European Union, the joint action of 9 June 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, for the refining of targeting criteria, selection methods, etc., and collection of customs and police information⁽³⁾.

There are two main reasons for looking at risk analysis at Community level.

Firstly, both the Customs 2000 decision and the joint action stress the need to obtain comparable results from customs checks throughout Community customs territory. Since the purpose of risk analysis is to allow customs to concentrate checks on high-risk areas while ensuring a fair degree of freedom for most trade flows as they cross frontiers, the single market requires that we establish principles which will govern such an approach throughout the Community. The purpose of this guide is to help implement and improve risk analysis techniques.

⁽¹⁾ OJ L 33, 4.2.1997, p. 24.

⁽²⁾ OJ C 332, 7.11.1996, p.1.

⁽³⁾ OJ L 159, 17.6.1997, p.1.

Secondly, the objectives of Community customs policy are many and varied: the rules are designed to ensure that import and export duties are paid, provisions concerning taxes and statistics complied with, and the interests of traders (via prohibitions, restrictions such as quotas, and preferences and other trade measures), consumers, citizens, our cultural heritage and the environment properly protected. However, where there are rules, there is, by the very nature of things, the risk that they will be broken — intentionally or otherwise. The purpose of risk analysis techniques is to identify and quantify the risks and develop procedures — for example, for determining what documents or goods should be checked — so that this aspect of customs officers' activities can be concentrated on risk areas where unintentional or deliberate breaches of the regulations are most likely to occur.

Definitions

The definitions which follow hold for the purposes of this guide.

▶ **Risk**

This means the likelihood that something will prevent the application of Community or national measures concerning the customs treatment of goods.

▶ **Risk analysis**

This means a working method which aims to optimise the use of human and financial customs resources while minimising the risk. This can be achieved by:

- identifying the risk;
- assessing the level or degree of risk;
- formulating the risk;
- allocating resources to target the risk.

▶ **Risk assessment**

This means estimating the degree of risk inherent in any customs activity so that priorities for carrying out checks may be defined.

▶ **Risk areas**

These mean customs regimes, procedures and other areas where the customs authorities exercise their responsibilities. This also applies to traders.

▶ **Risk indicators**

These mean factors expressed in relation to a given risk which, taken together, increase or reduce the degree or level of the risk inherent in each risk area.

▶ **Risk profile**

This means a set of paper or electronic documentation, tailored to regional and/or local traffic, which a customs office uses in

risk analysis. The documentation identifies known risk areas, actual incidents and the corresponding risk indicators, estimates the degree of risk, establishes an action plan of checks to be carried out and allocates the available resources.

Chapter 2

Guidelines

Section 1

Information

The effectiveness of risk analysis depends above all on the extent and quality of the information and intelligence available to customs services. Hence the need for reliable, complete and updated information, and the ability to use it.

1.1. Sources of information

Where risk analysis is concerned, the main consequence of the single market has been that all customs offices now need easy, quick access to information on trends in risks and on risk areas for the whole European Union, even if the information is previously processed by a central department which specialises in intelligence.

Sources of information include:

- local customs offices;
- regional customs offices;
- central customs offices;
- specialist customs intelligence departments;
- other government departments and public institutions (e.g. ministries of agriculture, trade, or transport, the police);
- tax inspections, a varying proportion of which are carried out in most Member States by the department responsible for customs checks;
- businesses (airlines, shipping lines, agents, port and airport operators, competitors);
- other Member States and international organisations;
- the general or specialist press;
- commercial and trade organisations.

International computerised databases and communications networks, including those of the European Commission, have a prominent part to play.

- Where the Commission is concerned, operational customs information can be transmitted and received by the following:
- Communications networks such as the CIS (customs information system). This system is available at numerous points throughout the Community, including all major ports and airports, and incorporates a database containing the information exchanged via the system⁽¹⁾. It contains only information from messages sent over the network concerning suspected or confirmed irregularities which the Member State concerned has decided to report under the current rules.
 - The **CIS/SCENT/fiscal SCENT** electronic communications networks, comprising the databases listed below and used for mutual assistance purposes, which allows designated Member State departments access to specialised databases within and outside the Commission.
 - The **Comext** database, for foreign trade statistics.
 - The **CELEX** database, which contains all Community legislation (the Treaties, secondary legislation, case law of the Court of Justice).
 - The **IRENE** database on irregularities and recoveries notified to the Commission by Member States under various provisions (European Agricultural Guidance and Guarantee Fund (EAGGF), Council Regulation (EC) No 515/97, own resources, Regulation 1552/89⁽²⁾). The Commission is currently running IRENE on an experimental basis and Member States do not yet have direct access. They regularly receive statistics on the information in the system and it is now being modernised so as to make it directly available to Member States, make it easier to access and operate and enable it to analyse the data it contains.
 - The **TARIC** database (containing the Community's integrated tariff), which electronically transmits updates on the Community rules governing customs treatment of imports and exports to all the Member States' central customs offices at least once a day. TARIC is based on the combined nomenclature (CN) to which are added all the trade policy and common agricultural policy measures having a bearing

⁽¹⁾ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p.1).

⁽²⁾ Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ L 155, 7.6.1989, p.1), as last amended by Council Regulation (Euratom, EC) No 1355/96 of 8 July 1996 (OJ L 175, 13.7.1996, p. 3).

on the Common Customs Tariff (CCT). TARIC already contains some risk indicators regarding restrictive measures and embargoes.

- The **BTI** (binding tariff information) and **BOI** databases (binding origin information).
- Other databases such as **SIGL** (textile quotas).

► Sources outside the Commission include:

- **Dun and Bradstreet** (for information on commercial firms);
- **Lloyds Seadata** (for information on ships);
- **Piers** (for some manifests);
- **Marinfo/Yachtinfo** (for shipping movements).

1.2. Use

Information is raw data which may have undergone only minimum analysis or processing. It is basic data used principally for operational or sometimes management purposes, on such matters as traffic volume or total value of imports in a given period. General trends, such as an increase or decrease in traffic, can be identified to enable administrative and operational decisions to be taken.

Information becomes intelligence when it is analysed to identify trends in specified risk areas or areas of potential fraud, when it is collected or collated as applying specifically to those areas, or when it is used to build up a file in a particular case of fraud.

It is this intelligence which will play a major part in the identification and prioritisation of risk indicators (see Section 2 below). Intelligence can be operational, tactical or strategic:

► Operational intelligence

This is information which allows direct action on the ground, without the addition of further information and regardless of when the action is taken. A typical example is information on the present location and current or imminent movements of a suspect consignment due to arrive from a third country for customs clearance at a specific customs office. Such intelligence requires an immediate response to ensure detection, and if necessary seizure of the goods. It is often time-critical and applies to fraud and smuggling in general.

• **Tactical intelligence**

This is information gathered to provide analytical support for the investigation and prosecution process. Information concerning traffic, means of transport and individuals or organisations is collected and analysed. Among other things, this identifies organisations and their activities, shows up relationships and may reveal a fraudulent trade flow.

• **Strategic intelligence**

This is evaluated information on broad patterns and trends. Customs policy planners and management use it to identify problem areas and make decisions on resource allocation, the use of specific measures and techniques and any changes to legislation. Strategic intelligence includes information on smuggling methods and trends and the identification of types of, and trends in, customs fraud.

Systems-based checks must also be considered in this context (see Section 3 below). Some examples of intelligence are provided in Annex I.

The stages of risk analysis

Once information or intelligence has been collected and processed, risk analysis requires planning if it is to be effective. The first step could be to assess the human and financial resources available to a Member State's central departments, customs clearance offices and investigation teams during a given reference period (for instance, a year).

This paves the way for a process the various stages of which are summarised below.

2.1. Determining risk areas

Scrutiny of existing Community and national legislation requiring customs checks can reveal the sort of risk areas defined in Chapter 1, and new legislation or changes in existing rules may give rise to new ones. For instance, new anti-dumping legislation on a particular product originating in a given country, adopted during a given year, should alert customs to the possibility of diversion. This in itself enables a risk area to be identified, serving as a basis for risk analysis proper.

Similarly, the appearance of new trade flows which may affect economic activity, consumption patterns or public safety should be noted. They may give rise to new risk areas, perhaps necessitating a risk analysis.

Nor should it be forgotten that an individual trader or group of traders may constitute a risk area. Traders are very important factors. As a rule, structures, operating methods, reputation and financial standing are good indicators of whether a particular trader represents a risk area and should be subjected to risk analysis.

2.2. Identifying risks in practice

The next task is to identify precisely what the likely risks in each area are and how they might arise. The main risk might be unlawful introduction into the customs territory (smuggling), unlawful removal of goods from customs supervision, non-compliance with prohibitions or restrictions or underpayment of customs duty. But the risk may also be identified more precisely in the light of the type of goods, the customs regime or procedure used or the operator concerned (see Chapter 3 below).

2.3. Risk indicators

Once the risk has been identified, the risk indicators — as defined in Chapter 1 — must be determined before proceeding to the risk assessment. Some indicators will apply across the board to all risk areas while others may be specific to one sector only. The risk indicators normally identified in each risk area (see Chapter 3) may relate to the product, the trader or the regimes or procedures used.

Product-based risk indicators include tariff classification (where there are high import or export duties), origin or provenance (where tariff quotas, quantitative restrictions or preferential regimes are in place), value (where anti-dumping duties have been imposed) and volume.

Trader-based risk indicators include certain types of behaviour and changes in behaviour patterns (business or customs strategy). A trader's record of past compliance with or infringements or irregularities against customs or tax law has also to be taken into consideration.

Indicators based on the regimes or procedures used may arise out of the detailed rules that have to be followed (e.g. non-compliance with accounting requirements for the simplified procedures).

An example is given in Annex II.

2.4. Assessing risks

The degree or level of risk assessed as being inherent in a particular case expresses the likelihood of an irregularity occurring when certain conditions are met. The assessment is the result of combining the risk indicators for product, trader and regime or procedure.

- ▶ In practice, the risk assessment may be expressed:
 - by a code letter, e.g. h – high, m – medium, l – low;
 - in figures, e.g. x = 1 and so on, to indicate the priority to be given to checks in accordance with the level of risk;
 - by an additional letter to indicate the type of check required, e.g. d – documentary check on papers accompanying the goods, p – post-clearance checks at trader's premises, or i – physical inspection of goods;

- by any other means appropriate to the situation, including coefficients (multipliers).

This makes it possible, using a risk profile, to rank the risks in order of priority, draw up an action plan and decide what checks are to be carried out.

An example is given in Annex III.

2.5. Risk profiles

2.5.1. Description

A risk profile is the tool a customs office uses to put risk analysis into practice. It is designed to supplement and in many cases replace ad hoc checks on documents and goods by planned working methods. Its actual form may vary from one Member State to another but it must be comprehensive and suited to local conditions. A risk profile may be kept as a dossier or managed by computer, but ease of access by customs officers is paramount.

It may be in sections relating to different types of goods. Separate risk profiles may be drawn up for imports and exports. They may also be drawn up for individual products, especially particularly sensitive ones. A risk profile should include a description of the risk area, a risk identification and assessment, risk indicators, checks to be carried out, date of action, results of action taken and evaluation of its effectiveness (stating the indicators used).

To remain effective a risk profile must be flexible so that new risks may be identified and gauged, and risks that have been measured and found acceptable may be classed as low.

An essential part of a risk profile is continuous review. To remain effective a risk profile must reflect newly identified risks. Risk profile managers must review each profile at regular intervals to ensure that it is always up to date and reflects the latest relevant information (e.g. the latest legislation).

2.5.2. Formulation

In outline, the construction of risk profiles follows the basic cycle of the 'systems approach', which works as in the diagram below: information available to central or local customs services allows them to determine a risk area, identify and assess the risks, and decide what checks should be carried out; the

decision is followed by action, which itself provides information; and underpinning the whole, feedback is essential at all stages.



▮ Information

As described in Section 1, the information must be as full as possible to allow risk areas and actual risks to be determined and qualitative and quantitative data to be collected on products, traders and trade flows, so that relevant and comprehensive risk profiles can be drawn up.

▮ Assessment

This should be carried out as described above.

▮ Decision

Depending on the assessment result, the decision stage will involve looking at the different types of check available (physical, documentary, post-clearance) and determining which to apply to the operation in question, taking into account resources and other constraints, including the burden this will imply for traders.

▮ Action

The last stage, action, involves putting the decision into effect and reporting on the results so as to update the risk analysis and add to the risk profile.

▮ Feedback

Feedback is essential at all stages if checks are to be adapted in the light of results. If the risk profile is to be effective, it must be kept accurate, relevant and up-to-date and unnecessary information must be weeded out.

2.5.3. Use

Thus risk profiles may be considered to have at least five functions:

- as a source of information on a trader's activity or on particular goods;

- in determining risk areas;
- in assessing the extent of the risks involved in given risk areas in the light of the risk indicators adopted;
- in drawing up a plan of action and determining the types of checks to be carried out (the information available can be used to ensure optimum allocation of resources); and
- in testing the effectiveness of the checks.

In the single market, it is essential to pool experience on risk profiling; similarly, it should be possible to circulate risk profiles and notify customs in other places. Continuous updating of risk profiles and profiling methods is also vital if the system is to work properly, especially when new EC or national legislation is being developed or new trade activities or trade policies introduced.

2.6. Conclusion

To ensure that the risk analysis programme can be monitored effectively:

- customs services must have the right information to hand for risk analysis to be effective;
- policy and operational objectives must be clearly set out;
- the duties and responsibilities not only of those carrying out customs checks but of those assessing the results must be clearly defined;
- there must be a satisfactory management control system in place to evaluate performance.

An example of a risk profile is given in Annex IV.

Practical applications

3.1. Goods declarations

A risk assessment strategy builds upon and refines the processing of goods declarations. All such declarations are processed in some way, either manually or electronically, to calculate and collect duties or levies, collect trade statistics, and ensure that appropriate documents are attached, endorsed, removed, returned or checked as a preliminary to deciding whether the goods should be inspected.

This processing of declarations makes it possible to target checks in the light of the previous analysis.

- Declarations fall into two categories:
 - those where customs must act in each case because EC legislation requires it or because without such action the control arrangements would not function;
 - those where customs intervention is not necessarily systematic but may vary according to an assessment of the risk.

Depending on how sophisticated the risk analysis techniques are, this second category may be subject to a minimum mandatory low interception rate to ensure and check general levels of compliance. Beyond this, customs intervention can be based upon risk analysis.

The interactive computerised processing of declarations is a great help since it automatically selects consignments for documentary or physical checks, as appropriate.

3.2. The 'targeting unit'

Local customs offices, or some of them, can be organised to reflect the risk-based approach. Where this is done, one team should be deployed to carry out mandatory processing of declarations, the low-level compliance checks and any risk-based selections. But the office could also have a 'targeting unit' with a small number of specialist staff whose only normal work is to test risk areas, target consignments to be checked in the light of national and/or local parameters and develop special expertise in such specific areas as the CAP. The unit combines the role of local intelligence (information gathering, analysis and dissemination) with front-line operational duties, targeting checks following risk assessment exercises.

This approach can be helped considerably by computerised selection. Most computer systems are designed to allow selection criteria to be applied at national and local level. An adequate local selection facility is crucial, especially for taking account of local trading characteristics; what may be a low risk nationally may be a high risk at a particular customs office and vice versa. The Community aspect must also be considered.

Routine selection can be performed by applying parameters (or computer search instructions) which experience has shown to be effective in detecting errors and misdeclarations.

Special selection parameters can be used to impose shorter-term checks; they may be used to assess the risk of particular types of imports or identify particular suspect consignments (for instance, all consignments from a specific group of countries to a particular importer).

Random selection can be used over and above these two types and can act as a control mechanism for identifying new routine and special selection parameters, making it less likely perhaps that declarants can avoid selection by learning those already in use. The concept is equally valid for exports.

To carry out its identification and testing role, the targeting unit needs to draw upon a number of information sources. Information can come from national headquarters, which receives input from similar teams across the country, collects it, analyses trends and disseminates it as appropriate. A local database can be used to record and retrieve information on the performance of the risk profile, infringements committed or suspected and particular risk factors. Past declarations and their supporting documents can be recalled from filing. Commercial documents and historic records can also play an important role.

For a targeting unit to be effective, it must first identify and determine the relative importance of the risk indicators present in its area of responsibility. This basically involves audit work, which certainly requires time and staff but is indispensable if the selection criteria and the checks carried out are to be effective. Teams must have proper training if they are to perform this task.

An example is given in Annex V.

3.3. Systems audits

3.3.1. Working with firms

Controls based on verification of a firm's own internal operating systems offer a systematic, flexible working method reflecting the fact that each company's in-house system, however

simple or complex, can be used to draw up risk indicators. Such controls can be regarded as a form of audit designed specifically to determine risk indicators.

The verification techniques used for an individual small firm will differ from those needed for a major company heavily involved in several customs regimes. The quantification of risk helps in resource allocation and the forward planning of systems-based audits. Note, however, that a systems audit consisting solely of the examination of documents and accounts is not fully reliable. Selective physical inspections will be needed to test and evaluate such systems.

Systems-based audits are a tool to be used in the development of risk profiles. 'Blanket' indicators, e.g. all imports from a given country of origin or of goods under a specific commodity code, can generally be determined from historical data.

The more closely customs can work with companies and become familiar with their internal systems, the more efficient will be the checks based on those systems.

3.3.2. Structured approach

The purpose of basing controls on systems audits is twofold:

- to be certain that a system actually allows for the verifications and checks necessary to carry out accurate and timely assessment of revenue (tax or duty) and see that any reliefs are properly applied;
- to ensure that those verifications and checks are operating properly.

Systems audits achieve this through a structured, systematic approach which encompasses several stages:

- (a) establishing and recording the manual and/or computer operations within the system;
- (b) identifying the revenue risks within the system by evaluating the key checks and weaknesses;
- (c) carrying out checks (physical or documentary);
- (d) identifying the allocation of responsibilities within a given company;
- (e) identifying the departments and staff directly or indirectly involved in customs clearance (e.g. logistics, commercial).

Controls based on systems audits rely largely on auditing of the trader's records, but one of the essential elements is testing the credibility of the records produced by the system.

The advantage of this approach is that by targeting resources and checks on potential risks within the system, errors which might lead to mistakes in revenue collection can be identified. If no such errors are found, it can be assumed that the system is producing the desired result. In any event, the auditing test results are always available to aid future risk analysis and guide decisions about the need for and frequency of future checks.

Systems audits are also used to gauge the relative importance of more specific risk indicators and build up a risk profile. For example, in the simplified import procedures, where the checking system set up by the relevant administration matches the initial and supplementary declarations submitted by a trader, the risk of the two not corresponding is very low, but if there were no cross-check by the administration, the risk would be much higher. Therefore, if we are to achieve consistency in risk profiling, the controls applied by each Member State in a given risk area will also need to be scrutinised.

Often the amount of revenue involved is used as a major criterion (i.e. if the revenue exceeds so many ecus, the risk must be high). However, this is not necessarily the case; an audit of the control system used for that risk area may show that control reliability is high and therefore the risk is low regardless of the sums involved.

The reliability of a trader's accounts is another important factor influencing the relative importance of risk indicators. These systems play a major revenue-accounting role in some risk areas (e.g. simplified entry procedures, inward and outward processing, CAP). The extent of risk can be determined accurately by performing a full audit of such systems. This also means that, when developed to their full potential, risk profiles may be trader-specific.

One possible method is to assess risk individually for each company and allocate each company a number. An example provided by the German customs administration is reproduced in Annex V to this document.

Risk analysis sheet

Existing and new EC legislation involving international trade in goods may be accompanied by a risk analysis sheet. For amendments to existing acts and new legislation, the sheet could be prepared before final adoption to allow the effect of the proposed legislation on customs checks to be assessed.

Note that this is a theoretical document based on analysis of a legal text and therefore to be distinguished from a risk profile, which has a specific, immediate operational application.

Depending on the nature of the new legislation, the risk analysis sheet should cover the following aspects:

A. Risk sector

- ▶ A.1. Goods or products
for example, textiles, CAP products, common commercial policy (dumping), CITES (see Chapter 3 below);
- ▶ A.2. Customs regimes or procedures
for example, release for free circulation, export, suspensive arrangements, customs procedures with economic impact, simplified procedures;

B. Examples of actual risk

Nature of goods: misdescription

Origin: misdeclaration of origin

Value: false value declared in order to reduce the amount of duty charged.

C. Determination of general risk indicators

D. Risk evaluation (to determine the level or degree of risk relating to each general risk indicator)

Where a new anti-dumping duty is introduced on a specific product, statistics on the companies concerned could be used to compare the pattern of imports under the appropriate CN headings before and after imposition of the duty.

Chapter 3

Risk analysis in specific areas

Generally speaking, we find that some risks are common to all sections in this chapter. These include:

- incorrect or false, or partially incorrect or false, goods descriptions and/or accompanying documents;
- unlawful entry into the customs territory (smuggling: see Section 2.1 below);
- unlawful removal of goods from customs surveillance in general.

Likewise, certain indicators are common to all areas. The main ones are:

- cases where the economic operator and/or forwarding agent concerned has previously breached the rules or committed a customs and/or tax offence;
- lack of cooperation on the part of the economic operator;
- use of a carrier or forwarding agent of doubtful reliability;
- existence of specific prior intelligence concerning a particular product in particular circumstances (MA communications or special communications under a specific procedure);
- specific intelligence collected in other areas;
- high customs duties or charges having equivalent effect;
- low quantitative limits;
- container traffic;
- small consignments.

Risk sectors connected with specific or sensitive goods

➔ Subsection 1

Agricultural products covered by the common agricultural policy (CAP)

Products coming under the common agricultural policy are particularly sensitive because of the financial benefits involved. It is especially important to check such products when they are exported because of the scope for fraud in connection with refunds and aid available for products taken out of intervention stocks, where the requirement is that they be sent to a destination outside Community customs territory.

Regulations covering this area aim to encourage the use of risk analysis in this context. They are: Council Regulation (EEC) No 386/90 of 12 February 1990 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts⁽¹⁾, as last amended by Council Regulation (EC) No 163/94 of 24 January 1994⁽²⁾; and Commission Regulation (EC) No 3122/94 of 20 December 1994 laying down criteria for risk analysis as regards agricultural products receiving refunds⁽³⁾.

However, imports must also be scrutinised to counter the risk of some products escaping the normal rates of duty or current Community quotas or benefiting from a preferential regime for which they do not qualify.

Risk analysis can be very valuable here by effectively targeting consignments for further checks.

Risk analysis proper is the first part of a three-stage process which also includes carrying out checks and analysing the results. The material in all sections below will be taken in this order.

⁽¹⁾ OJ L 42, 16.2.1990, p. 6.

⁽²⁾ OJ L 24, 29.1.1994, p. 2.

⁽³⁾ OJ L 330, 21.12.1994, p. 31.

1.1. Risk analysis

1.1.1. Risk indicators

Risk indicators for exports qualifying for refunds are specifically covered in Commission Regulation (EC) No 3122/94 which is reproduced as Annex VI to this guide.

The purpose of this section is therefore to spell out some of the criteria applicable to exports qualifying for refunds. These criteria also apply to imports of agricultural equipment.

1.1.1.1. Product-based risk indicators

▮ Tariff classification

- declaration of CN codes that are hard to check without recourse to laboratory testing (e.g. different kinds of rice, dairy products with differing fat content, prepared food-stuffs);
- products entered under the heading 'other'.

▮ Origin

- no output of the product concerned in the declared country of origin;
- volume of imports into the Community exceeds the exporting country's capacity to produce the product concerned;
- the country does not produce the originating raw materials required in the manufacture of the finished product;
- the agricultural products assigned Community origin where the payment of refunds depends on this.

▮ Provenance/destination

- products leaving free zones for third countries.

▮ Value

- declared value clearly out of line with national or Community unit values;
- existence of a countervailing charge or specific additional duty.

- D Quantity/weight/volume
 - viewed in the light of the financial benefits granted on this basis;
 - declared weight out of proportion to the volume.

- D Date of import
 - mismatch between the date of import and the transport documents in the case of products whose value, and thus the duty they should pay, varies in accordance with the date on which they are declared.

- D Packaging
 - unsuitable packaging for the type of goods;
 - dubious labelling (badly printed, distorted, misspelt or faded);
 - no labelling;
 - labelling of the products themselves, or the instructions for them, badly translated;
 - packaging that does not allow easy inspection by the naked eye.

1.1.1.2. Trader-based risk indicators

- D Corporate structure
 - multinational/parent/subsidiary.

- D Weak financial structure

- D Business sector
 - a trader originally specialising in agricultural products originating in, or sent to, particular countries, changing his source of supplies or the destination of his products;
 - non-specialist trader effecting occasional operations;
 - whether or not a specialist forwarding agent is used;
 - new forwarding agent entering the market in a given type of product;

- specialist trader winding up operations or non-specialist trader starting to do regular business.

► **Trader's business strategy and situation**

- market position (monopoly/competition);
- switch to new sources of supply or new destinations following introduction of new quotas for usual supplying countries or special conditions for imports or exports;
- significant change in import volume compared with a given reference period.

► **Trader's customs status and strategy**

- pattern of clearance, (e.g. sudden switch to a different customs clearance office);
- customs authorisations: types of procedures used, whether trader uses simplified procedures;
- cancellation or withdrawal of authorisation to use a simplified or other customs procedure.

1.1.2. Identifying risks in practice

CAP risks may be identified in several ways:

- by analysing CAP commodities to identify the highest amounts of refund or lowest amounts of duty, where the rate of misdeclaration with a view to obtaining financial benefit is likely to be high; a table can be constructed ranking commodities by export refund value;
- by analysing statistics on CAP export and import traffic flows to identify customs clearance points where there are concentrations of high risk transactions (statistics showing the quantity of goods and the breakdown by origin or destination — EC and non-EC tonnage);
- by analysing the CAP export refund nomenclature and additional codes to identify the likely risk of misdescription for each code;
- by analysing refunds and levies by importer and exporter to identify the highest-risk traders in the light of the quantity and value of refunds or levies involved;
- by analysing the irregularities detected as a result of checks to ensure that high-risk commodities and traders are targeted;

- by making a detailed analysis of customs procedures, to identify potential systemic weaknesses and allow counter-measures to be devised and implemented;
- by analysis based on systems audits.

Other information which may be useful includes:

- intelligence from investigation sources;
- information from the intervention agency;
- information from other Member States (under arrangements for reporting irregularities);
- information from Commission sources (see Chapter 2, Section 1 above and the compendium of irregularity cases produced by DG VI; see also measures taken under Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Council Regulation (EEC) No 283/72⁽⁴⁾).

Information derived from risk analysis should be communicated to officials responsible for carrying out checks and their managers. This can be done in several ways:

- bulletins may be issued covering areas of risk by commodity;
- bulletins may be issued on a national basis providing information on refund rates, export levels and the percentage of CAP products checked;
- import levies and other import charges should be available on computer at all customs offices;
- positive intelligence concerning traders should be available on a national computer database;
- operational departments should be notified by telex/fax of details about suspect traders and recently discovered irregularities.

A regional network of CAP liaison officers may be used to facilitate the flow of information within and between regional units.

An example for the CAP is given in Annex VI.

⁽⁴⁾ OJ L 67, 14.3.1991, p. 11.

1.2. Implementing controls

► Organisation

Regional managers are encouraged to adopt a flexible approach to the deployment of resources within their respective regions. Mobile squads should be available for special control duties, as should specialist CAP teams, to be deployed at regional unit level. Local managers should be encouraged to concentrate resources on areas of greatest risk.

► Types of control

A number of regulations adopted under the common agricultural policy require specific checks to be carried out on exports qualifying for refunds. These include:

- Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products⁽⁵⁾, as last amended by Commission Regulation (EC) No 815/95 (particularly Article 35(4))⁽⁶⁾;
- Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC⁽⁷⁾, as last amended by Council Regulation (EEC) No 3235/94⁽⁸⁾;
- Council Regulation (EEC) No 386/90 of 12 February 1990 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts⁽⁹⁾, as last amended by Council Regulation (EC) No 163/94⁽¹⁰⁾;
- Commission Regulation (EEC) No 2030/90 of 17 July 1990 laying down detailed rules for the application of Council Regulation (EEC) No 386/90 as regards physical checks carried out at the time of export of agricultural products attracting refunds or other amounts⁽¹¹⁾, as last amended by Commission Regulation (EC) No 2221/95⁽¹²⁾.

⁽⁵⁾ OJ L 351, 14.12.1987, p. 1.

⁽⁶⁾ OJ L 116, 6.5.1997, p. 22.

⁽⁷⁾ OJ L 388, 30.12.1989, p. 18.

⁽⁸⁾ OJ L 338, 28.12.1994, p. 16.

⁽⁹⁾ OJ L 42, 16.2.1990, p. 6.

⁽¹⁰⁾ OJ L 24, 29.1.1994, p. 2.

⁽¹¹⁾ OJ L 186, 18.7.1990, p. 6.

⁽¹²⁾ OJ L 224, 21.9.1995, p. 13.

A variety of checks are required under these regulations, as follows:

- Physical checks at the rate of 5 % per product sector, or 5 % of all sectors where a Member State applies a selection system based on risk analysis carried out in accordance with the criteria set out in Commission Regulation (EC) No 3122/94. Where it does, a minimum rate of 2 % per product sector is mandatory;
- Checks on substitution in the case of export declarations accepted at an inland customs office (representative sample to be checked by each customs office of exit from the Community). This type of check depends directly on whether the type of risk analysis described in Section 1.1 and Commission Regulation (EC) No 3122/94 is used;
- Post-clearance checks to identify suspect operations or sectors. Verification of a trader's previous transactions may reveal inconsistencies, and post-clearance checks can therefore provide input in turn for the risk analysis process and the construction of risk profiles;
- Coordinated checks on an individual operator initiated or requested by Commission departments, Member State customs authorities carrying out a physical inspection, or the departments responsible for appraisal of payment request dossiers or post-clearance accounting checks.

As a rule, internal company systems audits may also be carried out at any time, since reliable information about the import, export or warehousing business and its administrative organisation is a precondition for deciding whether a documentary check and/or physical inspection will provide sufficient cover for a given risk (see Chapter 2, Section 3.3).

1.3 Analysing the results

The effectiveness of controls must be carefully analysed. The primary output of any check consists of the errors and irregularities identified. These are used to guide future checks. Controls that show no errors or irregularities are as valuable as those that do, since they provide positive assurance that the area in question may be regarded as one of low or zero risk.

Special care must be taken in making out the verification certificates provided for in Community legislation and in drafting records of checks, since these are valuable sources of guidance for future checks.

An example of risk analysis in connection with agricultural products is given in Annex VII.

↳ Subsection 2

Imports and exports of textiles and clothing products

The textile and clothing industry is crucially important in the context of the common commercial policy because of its impact on the Community's economy, particularly in terms of output levels.

The steady upward trend in imports of textile and clothing products into the Community from low-cost non-EC countries is causing a crisis in the Community industry. Furthermore, these imports, which are subject to quantitative restrictions and import licensing, frequently involve irregularities.

In an effort to regulate this important trade sector, bilateral agreements have therefore been concluded with the exporting countries.

To ensure strict implementation of the agreements and to counter fraud requires the introduction of special risk analysis techniques designed to detect and prevent illicit imports of these products.

This section deals principally with imports. Risk analysis in relation to exports mainly concerns two areas:

- textiles outward processing traffic (OPT), where it may relate to checks on economic OPT authorisations and licences or tariff OPT authorisations and documentary proof of origin (preferential or non-preferential), and where the risk of irregularity arises mainly when products are re-imported (ensuring that the fabric re-imported after assembly is the same as the exported fabric);
- preferential origin, where analysis may relate to documentary proof of Community preferential origin.

Note that trade in textiles and clothing is governed by the multifibre agreement (MFA)⁽¹³⁾ and the agreement on textiles and clothing resulting from the Uruguay Round.

The discussion for textiles contains general information which is valid for all sections of this chapter, with some adjustments to suit the type of goods, and will not be repeated each time.

⁽¹³⁾ Protocol extending the arrangement regarding international trade in textiles (OJ L 341, 4.12.1986, p. 34); Council Decision 94/288/EC of 16 May 1994 concerning the conclusion of the protocol maintaining in force the arrangement regarding international trade in textiles (OJ L 124, 18.5.1994, p. 11).

2.1. Risk analysis

There is a distinction between theoretical or universal risk indicators and identification of risks in practice.

2.1.1. Risk indicators

2.1.1.1. Product-based risk indicators

■ Tariff classification

The proper implementation of measures concerning textile and clothing products depends crucially on the tariff classification and category assigned to the goods. By misdescribing goods, traders exporting from non-EC countries can evade the requirement to obtain export licences and textile origin certificates from the authorities, or wrongfully obtain preferential origin certificates. Similarly, on import into the Community, they can evade the CCT duty at the rate applicable to the correct CN code, circumvent a quantitative restriction or ban on imports of the true category from the country concerned or unlawfully obtain preferential tariff treatment.

The following specific risk indicators deserve attention:

- use of a CN code difficult to verify with the naked eye (e.g. codes stipulating 'a percentage of material contained in mixed yarns');
- categories of textiles that are particularly sensitive to fraud because they are subject to specific quantity ceilings (e.g. Category 4 T-shirts described as 'dresses' or 'night-shirts').

■ Origin

The country of origin is invariably the decisive factor in determining whether imports of a particular product are subject to commercial policy measures and great care must therefore be taken in verifying the declared origin of textile products, checking any documentary evidence presented in support of declarations and requesting such evidence or specific additional declarations from the importer in case of doubt. Here, a number of observations apply depending on the type of origin rules concerned.

- **Non-preferential origin:** Certain products from certain countries of origin are subject to special measures and therefore particularly susceptible to fraud. The difficulty lies in identifying such products when the origin declared is

more advantageous than the real one (for instance, because there are no quantitative restrictions or documentary proof of origin requirements or only a chamber of commerce certificate is required). Provided other criteria have been met, thorough inspections may be dispensed with where products enjoy no special advantage, but products declared as having origins which confer advantage should be subject to random checks, plus more thorough inspection based on specific intelligence available about those particular products and origins.

- **Preferential origin:** The granting of tariff concessions, which in some cases (ACP (African, Caribbean and Pacific States party to the Lomé Convention), LDC (least developed countries) or GSP (generalised system of preferences)) may be exempt from any quantitative restriction, depends on presentation of the documentary proof of origin required by the regime concerned (Form A certificates (for GSP), EUR 1 certificates, ATR, invoice declarations, etc., all bearing the official stamp of the designated issuing authority) and compliance with the direct transport provisions (single transport document, no-handling certificate, etc.). Checks on these two points can reveal forged certificates, whereas detection of irregular certificates (not applicable to the products imported⁽¹⁴⁾ or inconsistent with the preferential rules of origin) will normally require post-clearance verification by the exporting country or some other way of obtaining detailed information on the materials used in manufacturing the products, the processing carried out in the exporting country and the shipment of the finished products to the Community. When post-clearance verification shows certificates of origin to be false or incorrect, the non-preferential rate generally applies; this means that the duties evaded may be charged without prejudice to any penalty, particularly where the false or incorrect certificate allowed a quota to be circumvented. The geographical areas accounting for the majority of misdeclarations of origin are Asia and north Africa.

In cases of both preferential and non-preferential origin the following may well give cause for suspicion:

- there is no manufacturer of the product concerned in the declared country of origin;
- the volume of imports into the Community exceeds the exporting country's capacity to produce the product concerned;
- the country does not produce the originating raw materials required in the manufacture of the finished product.

⁽¹⁴⁾ This will often be detected in physical inspections.

► Place of consignment

The following merit attention:

- a declared country of origin eligible for particularly favourable treatment (e.g. ACP, OCTs (overseas countries and territories), LDC-GSP, any country granted a derogation) situated near a country subject to restrictive measures, especially when goods are routed to the Community via the less-favoured country;
- compliance with the direct transport rule should be a prime concern, and risk indicators may be sought by comparing transport documents with declarations;
- products leaving free zones bound for Community customs territory.

► Value

Textile and clothing products are often subject to customs duties somewhat above the Community average. Hence, particular attention should be paid to customs value as operators could be tempted to lower it.

Particular attention should be paid to:

- value understated (which can have the same effect as classification under the wrong tariff heading) and where a value that seems low in relation to the number of articles or packages can be a useful indicator;
- value overstated (which can help the trader avoid anti-dumping duties) and where the declaration of a high value should alert customs services to the possibility of products originating in a country subject to anti-dumping duties in the sector concerned (see Section 1.3 below).

► Quantity

- mismatch between the weight and number of packages;
- mismatch between the number of packages and the number of articles.

► Route used

- long-distance transport including transit through a number of countries and a stopover, or transshipment, in non-EC countries;
- choice of uneconomic route;

- a series of transit operations (e.g. interruption and resumption of transit — see Section 2.1 below);
- uneconomic means of transport.

► Packaging and labelling

- unsuitable packaging for the type of goods;
- dubious labelling (badly printed, distorted, misspelt or faded);
- no labelling;
- instructions or information on product labels poorly translated;
- labelling that is easy to remove;
- labelling that does not indicate the type of fibre or give washing instructions.

► Statistics

- trade flow analysis (sudden change in the supplier countries — see also trader-based risk indicators below);
- change in supplier countries.

2.1.1.2. Trader-based risk indicators

These risk indicators relate to the identity and reliability of the trader responsible for the import or export transaction. Considerations will include:

► Corporate structure

- whether the trader is a multinational, a parent company or a subsidiary, with particular reference to EC firms setting up companies in non-EC countries for the purposes of economic outward processing.

► Weak financial structure

- high level of indebtedness.

- D Business sector
 - firms producing similar goods in the Community;
 - trader specialising in textiles and clothing originating in particular countries;
 - non-specialist trader effecting occasional operations;
 - whether or not a specialist forwarding agent is used;
 - specialist trader winding up operations or non-specialist trader starting to do regular business.

- D Trader's business strategy and situation
 - market position (monopoly/competition);
 - switch to new sources of supply following introduction of new quotas for usual supplying countries;
 - substantial change in volume of imports or number of licences applied for, compared with a given reference period.

- D Trader's customs status and strategy
 - types of procedure used, with particular attention to withdrawal of authorisation to use a simplified procedure or other customs procedure;
 - changing pattern of clearance (e.g. sudden switch to a different customs clearance office);
 - authorisations: types of procedure used, whether a trader uses simplified procedures;
 - cancellation or withdrawal of an authorisation to use a simplified procedure or other customs procedure.

2.1.1.3. Procedure-based risk indicators

Special customs regimes such as economic outward processing are available for textiles and clothing⁽¹⁵⁾. Where these are used, in addition to the above points, it is necessary to identify the reimported products. This may be done by comparing them

⁽¹⁵⁾ See Council Regulation (EC) No 3036/94 of 8 December 1994 establishing economic outward processing arrangements applicable to certain textiles and clothing products reimported into the Community after working or processing in certain countries (OJ L 322, 15.12.1994, p.1), implemented by Commission Regulation (EC) No 3017/95 of 10 December 1995 (OJ L 314, 28.12.1995, p. 40).

with samples taken when the temporary export goods are cleared on exit from the Community or by checking the quantities reimported.

Special care should also be taken where transit procedures are used (see Section 2.2 below).

2.1.2. Identifying risks in practice

For practical purposes these risk indicators can be identified in a number of ways:

- by analysing categories of goods subject to quantitative or tariff restrictions to pinpoint sectors presenting the highest probability of irregularities (for example because a quota is running low and there is a risk of misdeclaration in a neighbouring category);
- by analysing any national statistics which break down the number of irregularities detected by commodity code, customs office, country of consignment or origin, trader and type of infringement;
- by analysing, and notifying local customs offices of quotas with depletion rates in excess of 75 %, this being a high-risk indicator for fraud involving traders with no allocation or countries whose quota is already exhausted or soon will be.

Other information which may be useful includes:

- intelligence from various investigation sources, especially audits;
- information from departments responsible for issuing licences (very useful if licences have been refused or rejected);
- information from other Member States;
- information from operational units, particularly recently-detected irregularities;
- information from databases (see Chapter 2, Section 1.1 above).

Risk analysis information can be communicated to operational units in a number of ways:

- by circulating bulletins listing recently-identified risks to all customs offices;
- by circulating monthly quota-depletion bulletins (above 75 %) to all customs offices, with appropriate warning of the need to upgrade the rate of controls;
- identification of target sectors in the course of liaison visits to operational units.

2.2. Implementing controls

2.2.1. Organisation

2.2.1.1. With computers

Commodity codes (including those likely to be used for misdescription) and countries of origin for which import licences and/or documentary proof of origin are required can be programmed into the national computer system for processing declarations and/or transmitting customs inspection data. Note that product declarations indicating these codes and origins will not be accepted for the purposes of release for free circulation until the relevant documents have been presented. Where such documents determine the level of duty only, the declarations may be accepted subject to compliance with guarantee requirements. Products (CN code/origin/other factor) subject to special controls, even if only for a specific period, may be specially indexed. The system could also be used to circulate the bulletins referred to above.

2.2.1.2. Without computers

Member States should set up internal arrangements to circulate the necessary particulars at sufficiently frequent intervals for local customs offices to act on them effectively.

2.2.2. Types of control

For textiles in general, it is particularly important to check the stamps. The need for such checks varies with the type and origin of the product; the less favourable treatment a particular product receives, the less the authorities need to check the origin certificate (customs) and export licence (trade ministry). Conversely, the more favourable the treatment compared with that of goods subject to tight restrictions, the greater the need for thorough checks on the product and any certificates.

In addition to checking all documents relating to a consignment to see that the descriptions of the textiles are consistent, it is also especially important in this field to carry out physical inspections and even laboratory analyses to determine whether the imported products are really those described in the documents presented, or whether they belong to another category subject to quantitative restrictions or fall under a CN code requiring special measures.

2.2.2.1. With computers

Input into the computer system requires a percentage of entries covered by a licence or documentary proof of origin and a percentage declared not to require such papers; this should be checked by the operational department prior to clearance for free circulation.

Local managers can programme verification rates based on the characteristics of the traffic flows they handle. Where possible, information on irregularities identified by other customs offices, collected by specialised teams and circulated to all offices, may also be entered.

2.2.2.2. Without computers

These controls should be based on the Member State's regular information dissemination system, backed up by similar arrangements at local level.

Whatever the system used, post-clearance checks, particularly those on certificates of origin, and checks carried out by mobile teams within the customs territory can prove valuable in helping build up future risk profiles.

2.3. Analysing the results

It is important to monitor the results of customs checks, and this implies feedback (see Chapter 2, Section 2.5.2). For example, analyses of the number and type of irregularities detected should be used to guide future checks and review existing risk profiles to ensure that they remain effective.

In particular, customs may compare total imports subject to restrictions with the total number of irregularities detected to check that the proper level of physical inspections and documentary checks is being carried out at customs offices.

The analysis should also look at the best control rate, methods of detection and any similar experience in other Member States. The SCENT system should be useful here.

➔ Subsection 3

Goods subject to anti-dumping or countervailing duties

Anti-dumping duties on specific products or product groups originating in certain countries are imposed by individual regulations based on Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from

countries who are not members of the European Community⁽¹⁶⁾, as last amended by Regulation (EC) No 2331/96 of 2 December 1996⁽¹⁷⁾. Article 13 specifically covers the risk of circumvention in connection with assembly operations.

Regulation (EC) No 384/96 therefore represents the basic anti-dumping legislation whilst individual anti-dumping duties are then imposed by separate Community regulations specifying:

- the product concerned;
- its origin;
- the rate of duty to be levied;
- the exporters eligible for reduced or zero rates of duty.

Anti-dumping measures may be suspended by decision of the Commission for a period of nine months with the possibility of a further extension not exceeding one year. They are virtually all imposed with reference to the origin of the products. This, together with the low prices charged by some suppliers targeted by a specific anti-dumping measure and the very high rates of anti-dumping duties which may be applied, suggests that evasion of anti-dumping duties may seriously affect collection of own resources.

In principle any product might be subject to anti-dumping duties at some time, but in practice such measures tend to be commoner in particular sectors. Examples include certain textile and clothing products, fibres and yarns (especially from Asian countries), steel and other metals (mainly from central Europe), electronic goods (microchips, colour televisions, computers, computer parts, disks), capital goods (mainly from Asian countries), chemicals, ores and mineral products. Anti-dumping and countervailing duties have also recently been imposed on consumer goods such as cigarette lighters and bicycles, and items for use in manufacturing (ball-bearings and pallets).

3.1. Risk analysis

3.1.1. Risk indicators

3.1.1.1. Product- or transaction-based risk indicators

In addition to the general risk indicators listed in previous sections, customs should be alert to:

- **Tariff classification**
 - systematic declaration of products under the subheading 'other'.

⁽¹⁶⁾ OJ L 56, 6.3.1996, p.1.

⁽¹⁷⁾ OJ L 317, 6.12.1996, p.1.

- ▶ **Product type**
 - imports of parts and components where the anti-dumping duties apply to the finished product alone (and vice versa).

- ▶ **Origin**
 - declared origin is a country near one on which anti-dumping duties have been imposed for the same product;
 - doubts about whether the declared country of origin has the production capacity for the item concerned;
 - imports consigned from a preferential country lying on a direct route between the country subject to anti-dumping duties and the point of entry into the Community, where no preferential certificate is produced.

- ▶ **Provenance**
 - country of consignment bordering on, or close to, a country subject to anti-dumping duties on the same products.

- ▶ **Value**
 - sales prior to import (where anti-dumping legislation imposes a minimum price, fictitious sales prior to importation may be fabricated as a means of writing up the value of the goods);
 - the declared value, which should always be carefully checked;
 - the date of consignment laid down in the regulation;
 - whether fixed duties apply (when there is a risk of the value being understated to lower the tax base);
 - whether variable duties apply (when there is a risk of the value being overstated, i.e. the inverse of the above);
 - whether the free-at-frontier price is higher than the transaction value;
 - whether payment is postponed until after the deadline of 30 days following release for free circulation.

3.1.1.2. Trader-based risk indicators

These indicators are very similar to those listed in previous sections .

Particular attention should be paid to:

- ▶ **Corporate structure**
 - legal relationship between the importing firm (parent) and enterprises in the countries to which the anti-dumping duty applies (subsidiaries), or a special commercial relationship.

- ▶ **Business strategy**
 - changes in supplier country following introduction of anti-dumping duties;
 - double invoicing;
 - suspect supplier or forwarder;
 - private persons transporting microelectronic components from high-risk countries (organised smuggling).

3.1.2. Identifying risks in practice

In the context of anti-dumping duties, risks may be identified by:

- analysing traffic flows for goods subject to anti-dumping duties to identify import patterns since introduction of the measure;
- analysing imports by known importers or exporters of the goods to identify any changes in declarations, with particular reference to commodity codes and country of origin;
- analysing commodity codes to identify risk of misdescription for each;
- physical inspection, including checking net weight⁽¹⁸⁾, and if necessary laboratory testing of imports where false declarations are suspected⁽¹⁹⁾.

Additional information may be available in the form of:

- intelligence obtained from investigations;
- information from other Member States;
- information from the Commission.

⁽¹⁸⁾ For example, fax paper, where duty varies according to net weight.

⁽¹⁹⁾ For example, check whether one model of video tape has been swapped for another (the duty depending on the difference between the price for a given VHS model and the uncleared free-at-frontier price), or check the recording time of the tape.

National anti-dumping bulletins may be issued giving details of new duties or changes to existing measures.

3.2. Implementing controls

The factors described in previous sections apply here.

Within their respective regions, regional managers should be encouraged to adopt a flexible approach to the deployment of resources. Mobile task forces should be available for carrying out special checks and specialist teams should be deployed at regional level. Local managers should be encouraged to concentrate resources on areas of greatest risk. The following types of checks could be carried out:

- documentary and physical checks (weighing, sampling) on goods subject to anti-dumping duty to identify wrongful claims to an exemption or reduction;
- documentary and physical checks on goods suspected of having been misdescribed to evade anti-dumping duty;
- post-clearance statistical analysis to identify patterns such as a sharp drop in imports following imposition of an anti-dumping duty, or possible misdescription or misdeclaration of origin;
- post-clearance controls at premises.

3.3. Analysing the results

In addition to the remarks made in previous sections, note that detection rates resulting from checks should be analysed and monitored in close and constant liaison with investigative departments and other units, and the feedback from this process used to guide future checks.

➔ Subsection 4

Imports and exports of counterfeit and pirated goods

Counterfeit and pirated goods are covered by Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and

pirated goods⁽²⁰⁾, which is implemented by Commission Regulation (EC) No 1367/95 of 16 June 1995⁽²¹⁾. The basic Regulation includes a definition of these categories of products and lays down the procedure the customs authorities should follow to ensure compliance with the prohibition (see also Council Regulation (EEC) No 339/93 of 8 February 1993 on checks for conformity with the rules on product safety in the case of products imported from third countries⁽²²⁾).

It is essential to focus attention on such goods because of:

- the economic injury to the holder of a right (within the meaning of Article 1(2)(c) of Council Regulation (EC) No 3295/94) when competition is distorted in this way;
- the financial implications of the consequent inability to cover the often very high cost of research;
- the social implications (counterfeiting jeopardises thousands of jobs in Europe);
- consumer protection (e.g. counterfeit vehicle spare parts or medicines may be dangerous).

4.1. Risk analysis

4.1.1. Risk indicators

Apart from the general risk indicators mentioned in previous sections, the following points should also be taken into consideration.

4.1.1.1. Product-based risk indicators

Customs should pay particular attention to the content of requests for customs action by the holder of a right, because the information supplied will include a number of risk indicators:

- ▶ Product type (particularly where the holder does not have a tariff or economic outward processing authorisation which would allow him legally to manufacture some products outside Community customs territory)
 - luxury products and/or products of leading European designer brands (clothing, perfumes, fashion accessories such as watches, sunglasses);

⁽²⁰⁾ OJ L 341, 30.12.1994, p. 8.

⁽²¹⁾ OJ L 133, 17.6.1995, p. 2.

⁽²²⁾ OJ L 40, 17.2.1993, p. 1.

- spare parts for vehicles, aircraft and other capital goods;
- pharmaceuticals and chemicals;
- toys and video games;
- foodstuffs;
- data and audiovisual media;
- printed works;
- plans, designs, models (note that, unlike other products listed here, these come under the heading of copyright, intellectual property and similar rights).

D Origin/provenance/destination (a key factor here)

- goods originating in or consigned from a country identified by the holder of a right as a country where such goods are manufactured, or a high-risk country;
- goods originating in or consigned from a country bordering on, or close to, one identified as a high-risk country;
- goods bound for a suspect country (e.g. special labelling or other details suggesting an intention to manufacture counterfeit or pirated goods).

D Value

- declared value excessively low in relation to the number or type of items.

D Packaging/size

- packaging unsuited to the type of goods;
- dubious labelling (badly printed, distorted, misspelt or faded);
- no labelling on packages;
- goods and labels imported separately;
- goods and packaging imported separately;
- unusual combinations of products (e.g. watches and perfume, or goods from different manufacturers);
- goods in non-standard packaging (e.g. watches in bags rather than boxes);

- badly translated product labelling or instructions;
- in the case of textiles, labelling not indicating type of fibre or care instructions;
- no manufacturer's guarantee;
- small postal consignments from suspect country with sender's name missing, incomplete or illegible.

► **Itinerary and mode of transport**

- route crosses the territory of a high-risk country;
- expensive or unusual means of transport for the type of product, the country of origin or the country of consignment;
- goods sent by post, where special attention should be paid to the packaging (see above).

4.1.1.2. Trader-based risk indicators

- suspect importer, forwarding agent or declarant;
- goods of the type listed above for sale to a particular target group of consumers.

4.1.2. Identifying risks in practice

The general comments made in relation to previous sections apply here.

4.2. Implementing controls

In addition to remarks made under the previous headings, note the importance in this case (a) of the particulars given in the request for action which, if sufficiently detailed, allow a greater degree of accuracy in the targeting of controls (see Article 3 of Commission Regulation (EC) No 1367/95) and (b) of sampling, which means counterfeit and pirated goods can be clearly identified (see Article 6(1) of Council Regulation (EC) No 3295/94).

Traders submitting a request for action under Regulation (EC) No 3295/94 should not use the procedure as a means of reaching a compromise with those responsible for the counterfeit-

ing, or with any other party involved. Customs departments receiving such requests should therefore check that they are truthful and genuine.

However, under Article 4 of Council Regulation (EC) No 3295/94, the customs may also act before the holder of a right applies for action. Officials must therefore be familiar with European consumer demand and preferences and potential areas of fraudulent traffic.

Article 10 of the Regulation excludes passenger luggage from its scope as long as the goods are of a non-commercial nature. Nevertheless, it might be worthwhile setting up a suitable programme of targeted checks to ensure that travellers do not exceed the tax-free allowances to which the Article refers. Checks on travellers might also provide clues about certain countries or types of goods which would serve as guidance for controls on commercial traffic.

4.3. Analysing the results

The general comments made in relation to previous sections apply here.

Note that under Article 5(2)(b) of Commission Regulation (EC) No 1367/95 each Member State must send detailed quarterly reports to the Commission, which then forwards this information to the others.

➔ Subsection 5

International trade in endangered animal and plant species — CITES (1973 Washington Convention)

The aim of CITES, concluded under the auspices of the United Nations, is to protect endangered species of wild fauna and flora by regulating international trade in those species and in readily recognisable parts and derivatives thereof. It has been signed and ratified by the Community and its Member States.

Council Regulation No (EC) 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein⁽²³⁾, as amended by Commission Regulation (EC) No 938/97 of 26 May 1997⁽²⁴⁾, and Commission Regulation (EC)

⁽²³⁾ OJ L 61, 3.3.1997, p. 1.

⁽²⁴⁾ OJ L 140, 30.5.1997, p. 1.

No 939/97 of 26 May 1997 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97⁽²⁵⁾ set out a number of implementing measures.

Regulation (EC) No 338/97 in particular stresses that, with the abolition of checks at internal borders as a consequence of the single market, surveillance of trade must be tightened up at the Community's external frontiers by means of strict checks on documents and goods at frontier customs offices through which such goods are brought into the Community. The regulation also emphasises the need for customs administrations to designate specific customs offices with the requisite trained personnel to be responsible for the formalities and checks necessary for assigning a customs treatment to specimens entering the Community.

5.1. Risk analysis

5.1.1. Risk indicators

5.1.1.1. Product-based risk indicators

In addition to the general risk indicators listed in previous sections, customs should be alert to the following:

- ▶ **Type of goods**
 - evident or suspected mismatch between the documents issued by the scientific authorities and the specimens presented;
 - misdescription of specimens to enable them to qualify for an annex providing for less onerous formalities or, particularly, as exceptions under Annexes I and II to the Convention;
 - common species or skins presented in such quantities that the presence of rare ones is likely;
 - bird feathers of abnormal colour (often dyed);
 - major parts of animals obviously carved or cut so that identification of the species is rendered more difficult (e.g. caiman skins);
 - products obviously obtained from protected species (e.g. garments and accessories made of dressed skins, objects made of ivory or rhino horn, herbal medicines); in this connection, note that most of the frauds detected so far have involved derived products rather than actual specimens. It is

⁽²⁵⁾ OJ L 140, 30.5.1997, p. 9.

therefore important to keep a close watch on this type of consignment, and the validity of this indicator is closely linked to the country of origin or consignment (see below).

► **Origin/consignment/destination**

- high-risk countries including those listed in Annex III to the Convention, or neighbouring countries;
- assumed or intended use in conjunction with the country of origin (e.g. parts of specimens — such as tiger and rhino — from some countries can be used to make prohibited pharmaceutical products);
- colonial past of some Member States (those with colonies, former colonies or protectorates should be particularly careful with consignments from these countries);
- high-risk destinations (particularly south-east Asia in the case of ivory and rhino horn).

► **Quantity**

- number of specimens actually imported higher than the number given in the import declaration (particularly in the case of dangerous or poisonous animals).

► **Packaging/mode of transport**

- packaging with air holes;
- mode of transport (transport by sea, especially in containers, by air and in passenger luggage are all high-risk);
- household removals (by sea or air container);
- parcel post (especially for plants or reptiles);
- mixed consignments of different plants or animals (some may not be mentioned in the declaration).

5.1.1.2. Trader-based risk indicators

In addition to the general risk indicators listed in previous sections, customs should pay attention to the following:

► **Trader's business strategy and situation**

- quasi-monopoly, competition;
- pattern of activity over a significant reference period.

- D Importer's activity
 - zoos or wildlife parks;
 - botanical gardens;
 - pharmacology laboratories;
 - factories which treat skins and furs;
 - collectors.

- D Customs strategy
 - changes in choice of customs clearance point (presentation of goods and declarations at offices other than those authorised by the Member States under the regulation);
 - cancellation or withdrawal of prior authorisations.

5.1.1.3. Document-based risk indicators⁽²⁶⁾

Document-based risk indicators include import and export permits, re-export certificates, certificates of origin issued under CITES rules, certificate of introduction from the sea, import notification:

- no specific import or export documentation issued by the competent scientific authorities;
- documentation suspect as regards the points which should be certified by the authorities;
- late presentation of the export permit issued by the third country in an attempt to use it to import a larger number of goods.

5.1.2. Identifying risks in practice

The factors described in previous sections apply here. However, given the nature and diversity of the specimens of fauna and flora involved, often described in trade and customs documents by their scientific name, customs departments responsible for surveillance of these products (in particular at the office of entry) might find it helpful to stay in close contact with the national bodies recognised as authorities in such matters.

⁽²⁶⁾ This is the terminology of the CITES convention and the Community regulations quoted at the beginning of Section 1.5.

5.2. Implementing controls

Comments made in previous sections apply here. The type of check will depend on whether the goods are personal effects, consignments of specimens obviously for commercial purposes, or postal consignments.

Nearly all CITES fraud cases detected in the Member States relate to imports in the broadest sense of the term. At present less risk would appear to attach to exports and re-exports.

5.3. Analysing the results

The general observations made in previous sections apply.

➔ Subsection 6

Controls on the export and re-export (including transshipment) of dual-use goods

These controls are required under Council Regulation (EC) No 3381/94 of 19 December 1994 setting up a Community regime for the control of exports of dual-use goods⁽²⁷⁾, as last amended by Council Regulation (EC) No 837/95 of 10 April 1995⁽²⁸⁾, and under Council Decision 94/942/CFSP of 19 December 1994 on the joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union concerning the control of exports of dual-use goods⁽²⁹⁾, as last amended by Decision 97/419/CFSP of 26 June 1997⁽³⁰⁾. The system of checking export licences on dual-use goods is designed to ensure that the Member States and the European Union comply with their international commitments on non-proliferation.

For the purposes of the regulation:

- 'dual-use goods' means goods which can be used for both civil and military purposes (Article 2(a));
- 'exporter' means any natural or legal person established in the Community on whose behalf the export declaration is made and who is the owner of the dual-use goods or has a similar right of disposal over them (Article 2(b)).

⁽²⁷⁾ OJ L 367, 31.12.1994, p. 1.

⁽²⁸⁾ OJ L 90, 21.4.1995, p. 1.

⁽²⁹⁾ OJ L 367, 31.12.1994, p. 8.

⁽³⁰⁾ OJ L 178, 7.7.1997, p. 1.

The customs regimes concerned are export and re-export as the regulation does not cover transit, apart from national measures (Article 3.3).

An authorisation is required for each export, whether individual, general (for a specific type of goods) or global (for a specific operator). Simplified procedures may also be used.

6.1. Risk analysis

6.1.1. Risk indicators

In addition to the general risk indicators listed in previous sections, customs should be alert to the following:

6.1.1.1. Product-based risk indicators

- ▶ **Product type**
 - goods subject to licence or end-use controls;
 - spare parts forming a whole which is subject to the legislation concerned.

- ▶ **Description**
 - incorrect, vague or inadequate description of the goods.

- ▶ **Value**
 - high value in relation to weight;
 - high value in relation to the type of product declared;
 - insurance cover higher than would be expected for the type of product declared.

- ▶ **Packaging**
 - packing unsuitably worded for the purpose.

6.1.1.2. Transaction-based risk indicators

The country of destination and the intended or theoretically possible end-use of the export goods are all crucial to risk analysis for this type of goods and customs procedure since the

national authorisations are issued partly on the basis of these factors. The following should therefore be taken into consideration:

- ▶ **Destination as such**
 - sensitivity of destination or end-use;
 - variability of destination or end-use;
 - consignment to free zone;
 - country of destination bordering on sensitive countries;
 - prior intra-Community transfer suggesting subsequent export;
 - high-risk consignee;
 - new consignee;
 - forwarding agent specialised in clearance of sensitive goods;
 - equipment carried by engineers or technicians to be used for repairs under the outward processing procedure;
 - temporary export for exhibition or demonstration.

- ▶ **Route and mode of transport**
 - non-standard routing to the declared destination;
 - shipping company or airline belonging to a sensitive country.

6.1.1.3. Trader-based risk indicators

- ▶ **Corporate and business structure**
 - foreign affiliates or subsidiaries;
 - monopoly/competition.

- ▶ **Business and financial management**
 - foreign ownership or control (shareholders, directors);
 - directors domiciled abroad;

- inadequate management;
- weak financial position;
- inadequate (paper or computer) records, ascertained by checking business records against customs documents;
- suspicions about supplier, purchaser or forwarder.

▮ Type of activity

- whether or not an officially approved exporter;
- whether a manufacturer or trader in goods under licence;
- unfamiliar forwarding agent.

▮ Trader's customs situation and strategy

- cancellation or withdrawal of authorisation.

6.1.2. Identifying risks in practice

In addition to the methods listed in previous sections, risk indicators may be identified in practice by:

- ascertaining corporate structure and ownership, affiliates and subsidiaries, customers, suppliers, forwarders;
- liaising with local VAT offices;
- requiring proper records to be kept, including computerised licence records;
- obtaining a product and price list and gauging the sensitivity of the products;
- obtaining a list of customers for sensitive products;
- keeping copies of licences issued to the exporter;
- collaborating with licensing authorities and the police.

The systems audit that must be carried out before a trader is authorised as an exporter of dual-use goods is essential to a proper, accurate identification of the above indicators.

6.2. Implementing controls

- ▶ In the case of an exporter holding a global authorisation or exports of goods covered by a general authorisation, then over and above the prior systems audit (see above) the checks carried out when an exporter advises customs of his intention to load or after the goods are exported should include the following, as appropriate:
 - programmed inspections, preferably varying the selection of goods;
 - cross-checking of orders, contracts, invoices and licences against entries for export and transshipment, ATA and TIR carnets, shipping papers, bills of lading, air waybills and manifests, CIM and CMR consignment notes and documentary evidence of the place where payment was received;
 - scrutiny of destination and purpose of trips by engineers and technicians.

- ▶ Exports under individual authorisations should be checked at the office of export and exit in accordance with Articles 788 to 796 of the Customs Code Implementing Provisions, preferably by a specialist. As there will have been no prior audit, these checks must be systematic and should comprise:
 - examination of commercial export papers and transshipments with reference to the description of goods, value, weight, destination, consignee, route and licence number or name;
 - inspection of the goods.

6.3. Analysing the results

The general comments made for previous sections apply here.

↳ Subsection 7

Imports of nuclear products, including use of transit procedures

The term 'nuclear products' covers:

- Nuclear materials subject to security measures under the Euratom Treaty, the International Atomic Energy Agency (IAEA) or the Non-proliferation Treaty which, to a greater or lesser extent, present a risk of direct or indirect use for

military purposes. This category (including, for instance, plutonium and highly-enriched uranium) is the most dangerous since it presents the risk of contamination as well as nuclear proliferation. The materials are defined in Category 0, Section OC of Council Decision 94/942/CFSP of 19 December 1994 on the joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union concerning the control of exports of dual-use goods;

- Radioactive substances not subject to security measures. With these products the danger of contamination comes from radiation given off by the substance although, in the form in which it is presented, the substance cannot be used as nuclear fuel. This category includes various substances such as caesium, commonly used for medical purposes.

As in other areas, customs may be faced with legitimate imports and exports for which the customs formalities have not been properly completed.

However, in this sector the main risk is illicit imports of nuclear products following the break-up of the Soviet Union and the subsequent disintegration of central systems for the control and management of those products. This has led to smuggling of dangerous radioactive materials, illicitly acquired and clandestinely sold, and the object is to ensure that any materials finding their way to European Union territory do not end up in non-EC countries or the hands of fringe political groups or criminal organisations. Transit procedures are therefore extremely important. The enforcement implications are beyond the scope of this section. Here the object is simply to draw attention to the need for rigorous risk analysis to prevent illicit imports or transit movements and, as in previous sections, to identify factors which might facilitate the task⁽³¹⁾.

Note that at the Moscow nuclear safety summit on 19 and 20 April 1996 agreement was reached on a number of international cooperation measures to prevent smuggling, with each country concerned, EU Member States and others, called on to designate a national contact point responsible for identifying potential nuclear risks and exchanging information⁽³²⁾. Since 1996, the Europol drugs unit has also been working to improve the exchange of information so that data on seizures in one

⁽³¹⁾ See also:

- communication from the Commission to the Council and the European Parliament — the illicit traffic in radioactive substances and nuclear materials, 7 November 1994 (COM(94) 383);
- confidential Council report adopted by the Essen European Council on a European strategy to combat illicit nuclear traffic;
- communication from the Commission to the Council and the European Parliament on illicit trafficking in nuclear materials and radioactive substances, 19 April 1996 (COM(96) 171).

⁽³²⁾ See Parliament Resolution No PE 198.3.55 (implementation of the Communication of 1994 and the conclusions of the Essen European Council).

Member State can be swiftly transmitted to the others. The SCENT and CIS systems also provide fast and reliable communications between customs departments, particularly cases of actual or suspected customs fraud in this field.

7.1. Risk analysis

7.1.1. Risk indicators

7.1.1.1. Product and transport-based risk indicators

The following indicators in particular are relevant:

- ▶ **Tariff classification**
 - misdeclaration of code;
 - possible misclassification.

- ▶ **Product type**
 - level of radioactivity specified on the customs declaration, particularly if below the authorised threshold.

- ▶ **Description**
 - misdescription, vague or inadequate description.

- ▶ **Origin**
 - declared origin or provenance dubious or involving high-risk country.

- ▶ **Country of consignment**
 - declared provenance dubious;
 - declaration refers to a high-risk country.

- ▶ **Value**
 - declared value low for the type of goods (in the case of a legitimate consignment).

- D Quantity
 - declared quantity low in relation to the declared value.

- D Mode of transport
 - in sealed containers whose structure includes lead, reinforced concrete, steel or other strong metal casing (special containers required for the carriage of nuclear products);
 - in the baggage of high-risk persons (engineers, technicians, nationals of certain third countries)⁽³³⁾;
 - whether specialised or non-specialised.

- D Itinerary
 - change in the planned itinerary;
 - numerous stops en route;
 - transshipment or change of means of transport.

- D Packaging
 - type of packaging used.

- D Economic rationale of the operation
 - credibility of the business transaction (commercial incentive, economic rationale).

7.1.1.2. Trader-based risk indicators

- D Corporate and business structure
 - existence of subsidiaries in high-risk countries;
 - associates who are nationals of a high-risk country;
 - use of shell ('letter-box') companies.

⁽³³⁾ This involves using air couriers who are instructed to deliver a package to a given address, without necessarily knowing what the contents are.

- ▶ **Type of activity**
 - potential user of the type of goods;
 - suspect supplier or forwarder;
 - carrier known to specialise in transport of nuclear or other dangerous products;
 - high-risk occupations, i.e. individuals likely to carry such materials (engineering or technical personnel);
 - compatibility of the operation with the firm's normal requirements.

- ▶ **Customs situation**
 - cancellation or withdrawal of authorisations or approvals.

7.1.2. Identifying risks in practice

The general comments set out in previous sections can be applied here.

In addition, it would be in Member States' interests to acquire radiation detection equipment. Contact between national administrations and specialised bodies (especially Member States' own organisations, Europol and the IEC) is also important in identifying risks in practice. Similarly, checks on prior import authorisations could prove a useful source of information for risk profiling in this area.

7.2. Implementing controls

Physical checks carried out by customs on suspicion that a consignment may contain nuclear or other dangerous products must comply with the safety rules laid down by individual Member States.

Note that actual physical searches of consignments or individuals, especially persons in high-risk occupations, are generally carried out on the strength of detailed prior investigation and enquiries, including undercover work. In this connection relations with investigation units are crucial.

7.3. Analysing the results

The general comments set out in previous sections apply here.

➔ Subsection 8

Imports and exports (including transit) of hazardous waste and other dangerous products

Other types of dangerous product may enter, transit or leave Community customs territory, and it is essential to ensure that such operations are carried out in accordance with the current rules.

A number of different products and substances come under this generic heading, including:

- radioactive waste (as opposed to the nuclear products and radioactive substances referred to in Section 1.7 — see legislation referred to below);
- non-radioactive waste (see legislation referred to below);
- other products, e.g.
 - chemical products including:
 - chemicals as such (see legislation referred to below),
 - ozone-depleting products⁽³⁴⁾;
 - products potentially hazardous to consumers⁽³⁵⁾, including:
 - toys⁽³⁶⁾,
 - pharmaceutical products,
 - cosmetics,
 - foodstuffs,
 - dangerous imitations (see Section 1.4, counterfeit and pirated goods).

⁽³⁴⁾ Council Regulation (EC) No 3093/94 of 15 December 1994 on substances that deplete the ozone layer (OJ L 333, 22.12.1994, p. 1).

⁽³⁵⁾ In particular Council Regulation (EEC) No 339/93 of 8 February 1993 on checks for conformity with the rules on product safety in the case of products imported from third countries (OJ L 40, 17.2.1993, p. 1).

⁽³⁶⁾ Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys (OJ L 187, 16.7.1988, p. 1), as last amended by Directive 93/68/EEC of 22 July 1993 (OJ L 220, 31.8.1993, p. 1).

What follows principally concerns radioactive and non-radioactive waste⁽³⁷⁾ and those chemical products subject to special customs rules.

Shipments of radioactive waste are regulated by Council Directive 92/3/Euratom of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community⁽³⁸⁾, Commission Decision 93/552/Euratom of 1 October 1993 (establishing the standard document for the supervision and control of shipments of radioactive waste referred to in Council Directive 92/3/Euratom), and Council Regulation (Euratom) No 1493/93 of 8 June 1993 on shipments of radioactive substances between Member States⁽³⁹⁾. In this context, 'radioactive waste' means any material which contains or is contaminated by radio-nuclides and for which no use is foreseen (Article 2 of Directive 92/3/Euratom).

Shipments of non-radioactive waste are covered by Council Regulation (EC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community⁽⁴⁰⁾, as last amended by Council Regulation (EC) No 120/97 of 20 January 1997⁽⁴¹⁾, Council Directive 75/442/EEC of 15 July 1975 on waste⁽⁴²⁾, and Commission Decision 94/774/EC on the standard consignment note referred to in Council Regulation (EEC) No 259/93⁽⁴³⁾, as last amended by Directive 91/692/EEC of 23 December 1991⁽⁴⁴⁾. Risk analysis techniques help customs detect such consignments before they pose a threat to public health.

As regards shipments of chemicals, Council Regulation (EEC) No 2455/92 of 23 July 1992⁽⁴⁵⁾ concerning exports and imports of certain dangerous chemical products, as last amended by Regulation (EC) No 1237/97⁽⁴⁶⁾, provides for 'a common system of notification and information for imports from and exports to third countries of certain chemicals which are banned or severely restricted on account of their effects on human health and the environment' (Article 1 (1)).

Specific rules have also been adopted to deal with the transport of dangerous goods by road (Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the

⁽³⁷⁾ OJ L 35, 12.2.1992, p. 24.

⁽³⁸⁾ OJ L 268, 29.10.1993, p. 83.

⁽³⁹⁾ OJ L 148, 19.6.1993, p. 1.

⁽⁴⁰⁾ OJ L 30, 6.2.1993, p. 1.

⁽⁴¹⁾ OJ L 22, 24.1.1997, p. 14.

⁽⁴²⁾ OJ L 194, 25.7.1975, p. 39, as last amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

⁽⁴³⁾ OJ L 310, 3.12.1994, p. 70.

⁽⁴⁴⁾ OJ L 377, 31.12.1991, p. 48.

⁽⁴⁵⁾ OJ L 251, 29.8.1992, p. 13.

⁽⁴⁶⁾ OJ L 173, 1.7.1997, p. 37.

Member States with regard to the transport of dangerous goods by road⁽⁴⁷⁾, as last amended by Directive 96/86/EC of 13 December 1996⁽⁴⁸⁾.

8.1. Risk analysis

8.1.1. Risk indicators

In addition to the general risk indicators listed in previous sections, the following are relevant.

8.1.1.1. Product-based risk indicators

Radioactive waste

- ▮ **Origin/provenance/destination**
 - material not easily identified but originating in or despatched from a country possessing installations capable of producing such waste;
 - waste bound for a country bordering on or close to prohibited areas as defined in Article 11 of Directive 92/3/Euratom;
 - reconsignment of waste by an undertaking taking advantage of the provisions of Article 14 but not complying with the conditions (reconsignment of excessive quantities of waste).

- ▮ **Value/quantity**
 - declared value low in relation to the declared quantity.

- ▮ **Packaging**
 - excessive packaging suggesting the presence of radioactive waste.

⁽⁴⁷⁾ OJ L 319, 12.12.1994, p. 7.

⁽⁴⁸⁾ OJ L 335, 24.12.1996, p. 43.

► **Documentation**

- no import or export authorisation.

Non-radioactive waste

- Authorisation period

- waste being moved before an authorisation has been issued by the competent authority (prior written authorisation is always necessary for the disposal of waste; for the processing of waste the level of authorisation depends on whether the product is on the green, orange or red list (see Annexes II, III and IV to Council Regulation (EEC) No 259/93).

- Suspicious movements

- transfer not followed by processing or elimination;
- discrepancies between movements forecast and quantities actually transported or processed;
- failure to comply with notification requirements or supply information such as particulars of the means of transport or accurate load weight;
- authorisation invalid (expiry date passed or authorised tonnage already reached);
- exports to sensitive countries, particularly developing countries.

- Abuse of lists or procedures

- misclassifying goods in the green list (self-regulation) instead of the orange list (prior authorisation);
- switching procedures to evade the prior authorisation requirement (e.g. misdeclaring waste for processing rather than elimination to evade the stricter rules on disposal).

- Disposal or processing site

- non-compliance with national requirements;
- high cost of elimination or processing.

- Improper use of documents relating to control and monitoring of cross-frontier movements of waste

- failure to comply with rules governing use of forms.

- Possible evasion of the requirement to clear goods in an authorised place

- old or defective means of transport;
- declared value abnormally low.

Chemicals

- misdescription in order to circumvent Annex 1 of Council Regulation (EEC) No 2455/92 (notification requirement) or the list of banned chemicals;
- stating that the level of concentration of a substance covered by Annex II of the aforementioned Regulation is below the threshold above which labelling is required under Community legislation (PIC or 'prior informed consent' procedure, see Article 1 of Council Regulation (EEC) No 2455/92);
- import of a strictly regulated chemical by a firm whose activities give reason to suspect that it might be used for prohibited purposes.

8.1.1.2. Trader-based risk indicators

- ▮ Corporate structure
 - multinational, affiliate, parent company, subsidiary.
- ▮ Financial situation
 - business in debt or suffering loss of financial credibility.
- ▮ Business strategy
 - no safety adviser within the meaning of Council Directive 96/35/EC of 3 June 1996 on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway;
 - use of brokers to sell waste⁽⁴⁹⁾.
- ▮ Market position
 - pattern of activity over a significant reference period;
 - whether the operation in question is in line with the company's usual activities.
- ▮ Customs strategy
 - changes in choice of customs clearance point;
 - cancellation or withdrawal of authorisations.

⁽⁴⁹⁾ OJ L 145, 19.6.1996, p. 10.

8.1.2. Identifying risks in practice

Apart from the factors described in previous sections, particular attention should be paid to information on suspected cases of fraud (trader credibility) and analysis of records of traders' past fraud or irregularities.

It is also useful to maintain close contact with the departments specialising in waste and other dangerous products.

8.2. Implementing controls

The factors already described in previous sections apply.

In addition, traffic movement controls are of fundamental importance here. It is often when they are actually on the roads that customs officers are likely to become aware, in the light of the risk indicators described above, of which vehicles and consignments merit further investigation.

However, checks carried out at the premises of high-risk operators (producers, holders, end-users) also represent a major source of information on the pattern of operations. Similarly, there are a number of considerations relating specifically to waste. In the first place, controls can be tailored to different types of movement, depending on origin, destination and point of consignment (e.g. movement within or between Member States, export from the Community, export to ACP States, import into the Community, transit). For each of these, Community rules impose limits based on the country of destination or origin and the types of operation permitted.

It should also be remembered that the OECD and HS codes are not really aligned and that no commodity codes are given for waste on the red list (Annex IV to Council Regulation (EEC) No 259/93).

8.3. Analysing the results

The general comments made for previous sections apply here.

Risk sectors linked to customs arrangements or procedures

➔ Subsection 1

Production of goods to customs

This generic term covers the introduction of goods into Community customs territory, their presentation to customs, the summary declaration and temporary storage (Articles 37 to 57 of the Customs Code and Articles 182 to 197 of the Implementing Provisions).

At this juncture, the goods have not yet been assigned a specific customs treatment. It is thus possible that they may be introduced unlawfully into the customs territory or removed from customs supervision after their introduction. The sensitivity of the goods (see Section 1 above) is therefore a factor here, in conjunction of course with others. Preventing the unlawful introduction of goods (i.e. goods bypassing customs, or prohibited or restricted goods such as narcotics brought in illegally by whatever means) is the essence of the fight against fraud and the work of the Member States' customs intelligence services. Risk analysis will therefore depend primarily on the information these services provide on the basis of their own enquiries and information from sources.

1.1. Risk analysis

1.1.1. Risk indicators

A distinction has to be drawn between two types of fraudulent traffic, namely, outright smuggling (not going through a customs office), and unlawful introduction through a customs office or unlawful removal from customs supervision after introduction.

(a) Outright smuggling

As this involves goods being brought in unlawfully without going through customs at all, it is in theory difficult to know what type of goods might be involved. Nevertheless the location of a customs office and what kind of supervision is possible may provide valuable indicators. For instance, a customs office near a coast with creeks and bays where goods may be landed

easily, combined with little in the way of maritime surveillance, clearly represents a high risk. Similarly, the mode of transport and type of packaging used may provide indicators (see below).

(b) Unlawful introduction through a customs office

1.1.1.1. Product-related risk indicators

For goods introduced unlawfully through a customs office, the indicators described earlier, especially those relating to origin, provenance and packaging, constitute valuable, relevant information.

For goods removed from customs supervision after presentation to customs and the lodging of a summary declaration, the nature of the goods — particularly whether they are readily hidden, perishable or easy to carry because of their size or packaging (e.g. audiovisual equipment) — should alert customs to the possibility of physical disappearance. Remember, too, that the largest number of recorded irregularities are for goods subject to excise duty (particularly alcohol and cigarettes).

Attention should also be paid to the following indicators:

- ▮ **Presentation of goods to customs**
 - modus operandi of customs from the moment goods arrive, and the interval between their arrival at a customs office and actual presentation;
 - enforcement of the provisions of Article 41(b) of the Customs Code on the placing of goods exempt from customs duty under a customs procedure.

- ▮ **Summary declaration**
 - how the summary declaration is completed (possibility of mistakes in the electronic recording of information);
 - excessive interval between presentation of goods at customs and lodging of the summary declaration (possibility of substitution or removal).

- ▮ **Temporary storage**
 - type of facility available for storing goods;
 - no guarantee lodged to ensure payment of any customs or tax debt which might be incurred.

1.1.1.2. Trader-based risk indicators

The following should be taken into consideration:

- ▶ Corporate structure
 - foreign subsidiaries in trouble;
 - recently established companies.

- ▶ Declarant in a weak financial position

- ▶ Business in a sector involved in sensitive goods (see Section 1)
 - company established near a border and involved in an activity in which irregularities regularly occur;
 - use of a high-risk transport operator.

- ▶ Business strategy
 - changes in supplier country;
 - inappropriate supplier country for the type of goods shown in the summary declaration.

- ▶ Customs strategy
 - sudden change of office of entry;
 - cancellation or withdrawal of authorisation to use a simplified procedure or other customs procedure.

1.1.2. Identifying risks in practice

Apart from the factors described in Section 1, two practical ways of identifying risks and risk indicators should be emphasised:

- intelligence received from the fraud prevention services;
- intelligence obtained at local level on the frequency and regularity of incoming flows of goods and on declarants, and on communications networks with the rest of Community customs territory.

Here, customs must differentiate between the various types of transport.

- *Road*: This is the transport sector where it is most difficult to identify risks because customs generally have no advance documentary information. However, some Member States have monitoring posts at various points inside the country which enable them to analyse certain types of traffic. Prior systems audits and post-clearance checks at transport operators' premises also provide information which, when analysed, can help establish risk profiles.
- *Sea*: Where memorandums of understanding have been concluded with shipping companies, documentation (including the manifest) is available before the arrival or departure of a ship. In some cases it is available via a computer link to the company concerned. The documentation may therefore be analysed prior to clearance to allow targeting of controls. The targeting units described in Chapter 2, Section 3.2 would be particularly useful in this context.
- *Air*: The principle is the same as for maritime transport. In other words, under memorandums of understanding with airlines, information is available sufficiently in advance to allow adequate analysis. However, as turnover is even faster in air traffic than with shipping, some adjustments are necessary. One possibility is weekly analysis of regular and charter flights, using parameters based on current knowledge, fraud trends and airport logistics. Combined with analyses for specific categories of goods (e.g. counterfeit goods — see Section 1.4 above), this would allow risk profiles to be drawn up and used to select flights for more thorough checks.
- *Express parcels*: Here risk analysis will rely even more on memorandums of understanding and other forms of collaboration between customs services and specialist operators. It could be based on the companies' own internal tracking systems.

1.2. Implementing controls

The considerations set out in Section 1 also apply to the production of goods to customs.

As always, local knowledge of traffic, possible places of introduction and the pattern of economic activity, together with monitoring of temporary storage areas, are important factors. Similarly, the use of rapid and effective methods of scanning means of transport (including air and sea containers) and passengers can detect a suspect load which will then be subjected to detailed physical inspection.

Again, a distinction has to be drawn between the different means of transport.

- *Road*: Here the main element will be controls by roving customs squads, even where an audit or analysis of traffic over a given period has been carried out beforehand.
- *Sea*: Targeting could involve closer scrutiny of the documentation (bill of lading, manifest) and physical inspection of the goods and possibly the vessel as well.
- *Air*: Analysis (as described in the previous section) could give rise to detailed examination of the documentation (air waybill) and physical inspection of the cargo of selected high-risk flights.
- *Express parcels*: Regular checks on the express parcel companies' documentation and internal operating systems could prove useful.

1.3. Analysing the results

The general comments set out in previous sections apply here.

➔ Subsection 2

Transit procedures

Fraud occurs in traffic both under the Community/common transit procedure (governed respectively by Articles 91 to 97 of the Common Customs Code and the Interlaken convention of 20 May 1987 on a common transit procedure)⁽⁵⁰⁾, and in international transit under the 1975 Geneva customs convention on the international transport of goods under cover of international carriage of goods by road (TIR) carnets⁽⁵¹⁾. It has increased following the abolition of internal frontiers and the rise of organised crime, fuelled by the greater volume and ease of trade notably with the countries of central and eastern Europe and the former Soviet bloc.

A European Parliament committee of inquiry was mandated in January 1996 to examine the problem and submitted its final report on 20 February 1997. It made a number of recommendations on legislation and methods of operation.

⁽⁵⁰⁾ Approved by Council Decision 87/115/EEC of 15 June 1987 (OJ L 226, 13.8.1987), as last amended by Decision 1/95/EC-EFTA Joint Committee on common transit of 26.10.1995 (OJ L 117, 14.5.1996, p.13) to include the amendments to the Convention following its extension to the Visegrad countries.

⁽⁵¹⁾ Concluded on behalf of the Community; Council Regulation (EEC) No 2112/78 of 25 July 1978 (OJ L 252, 14.9.1978, p. 1).

Similarly, the Commission (DG XXI) set up a task force in December 1995 to find ways of rationalising transit procedures, and improving their efficiency and security. The outcome was the Commission communication entitled 'Action plan for transit in Europe — a new customs policy' (COM(97)188 final)⁽⁵²⁾ presented to Parliament and the Council on 30 April 1997. This identifies a number of ways — including new legislation — in which the system could be made more reliable.

A transit computerisation project is also nearing completion.

2.1. Risk analysis

2.1.1. Risk indicators

The general comments set out in previous sections apply.

2.1.1.1. Product-based risk indicators

- ▮ **Product type**
 - products particularly liable to fraud in connection with the requirements of Articles 362, 368 and 376 of the Implementing Provisions and/or the early warning system (e.g. products subject to excise duties and CAP products);
 - composite consignments or groupage.

- ▮ **Origin (see Section 1, above)**

- ▮ **Provenance/destination**
 - suspicions regarding the provenance of goods or the country where they were entered for the transit procedure;
 - direct consignments to countries with no market potential for the type of product exported;
 - goods consigned to high-risk geographical areas (e.g. central and eastern European countries).

⁽⁵²⁾ OJ C 176, 10.6.1997, p. 3.

- D Packaging/volume
 - appearance of goods (small packages are easier to conceal);
 - goods handled during transit.

- D Mode of transport
 - road haulage is known to be high-risk but precisely because it is now subject to strict surveillance, rail and air transport should also be carefully watched, as they too increasingly involve transshipment (with the attendant risk that goods will disappear);
 - duration of the operation (the longer the journey, the greater the risk);
 - vessels carrying mixed cargoes (Community and non-Community goods);
 - economics or suitability of the means of transport.

- D Route
 - lengthy route through several countries and/or involving transshipment;
 - lengthy route in Community territory;
 - in some cases, failure to use the office of destination specified in the transit document;
 - goods transiting the Community en route to a third country or vice versa;
 - complicated route plan;
 - unjustified detours.

2.1.1.2. Trader-based risk indicators

In general the major trader-based risk arises out of the fact that current legislation allows the party on whose account the transit goods are really carried to remain unknown.

- D Corporate structure
 - links with firms located in high-risk countries;
 - unfamiliar consignee;
 - consignee based in a high-risk country.

- ▶ **Weak financial position of the principal or carrier**

- ▶ **Type of activity**
 - transit experience of operator (operators carrying out one-off transit operations present a greater risk than regular operators well-known to customs);
 - known operator working outside his usual field;
 - carrier's reputation (e.g. solvency, previous offences);
 - operations involving a string of parties.

- ▶ **Customs situation**
 - type of guarantee lodged, particularly where a comprehensive guarantee is used;
 - operator who has been turned down for the authorised consignor or consignee procedure.

2.1.1.3. Procedure-based risk indicators

- type of transit procedure used;
- the same goods undergoing a succession of transit operations (greater risk of the goods going astray);
- goods dispatched from customs offices known to be experiencing operational difficulties;
- guarantee document looks suspicious (e.g. dates or country names hard to read);
- stamps illegible or too clear (possible falsification);
- absence or presence of seals, depending on circumstances (the presence of seals could lull customs into being less attentive).

2.1.2. Identifying risks in practice

The general observations made for earlier sections also apply to this customs procedure.

Comprehensive checks on the operation when the guarantee is lodged undoubtedly offer the best overall way of gauging the reliability of compliance with the procedure. Attention should also be drawn to the importance of pooling information, and particularly notifying the theft or loss of stamps and seals used

to authenticate transport documents. Finally, use of the recently improved prior information system provides some very important data which could be put to systematic use.

2.2. Implementing controls

The general factors already described in previous sections apply here.

In addition, inspection of the transit and transport documents is a high priority. Note, however, that with transit the usefulness of checks may depend on the type of fraud. This may consist of straightforward theft of the goods (and possibly also the means of transport) from a principal known to be normally reliable, or of a criminal operation. Risk-analysis techniques can hardly prevent simple theft, but customs can and should step up supervision of individual traders, particularly as they may also be using unknown or unfamiliar middlemen.

2.3. Analysing the results

The general observations made in previous sections apply, but customs should pay attention to some special factors. For the Community/common transit procedure the compliance checks provided for respectively in the Customs Code and Convention are very important. They include the verification of transit documents at the office of departure and the issuing of inquiry notices, reminders and notifications where Copy 5 of the transit document or the documentary proof of regularity provided for in Article 380 of the Implementing Provisions is not returned. The TIR Convention provides for its own specific but comparable checks.

➔ Subsection 3

Customs procedures with economic impact, goods placed in free zones or free warehouses

The purpose of the economic customs regimes, particularly those for inward and outward processing, is to create favourable conditions for the processing and storage industries and certain users in the Community while at the same time safeguarding the fundamental interests of Community producers.

Because of the powerful economic and budgetary interests at stake and the special, sometimes complex rules involved, use of these procedures can entail risks. Except in the case of the inward processing (drawback) procedure and temporary im-

portation with partial relief, the payment of customs duties and application of commercial policy measures are suspended for all goods entered for an economic customs procedure. On the other hand, these goods are still subject to plant and animal health and other measures. Checks must therefore be targeted and tailored to each situation.

3.1. Risk analysis

3.1.1. Risk indicators

In addition to the general indicators already mentioned in previous sections, customs should be alert to the following factors.

3.1.1.1. Product-based risk indicators

▮ General

- goods which would be subject to a quantitative quota or anti-dumping duty when released for free circulation;
- in certain cases, goods placed under a series of customs procedures;
- high-value goods;
- special methods of identifying goods stipulated in the authorisation (e.g. sealing, sampling, laboratory analysis; note that this risk indicator is directly relevant in deciding the rate of checks to be performed when the goods are cleared through customs).

▮ Inward processing

- sensitive agricultural products (e.g. rice, milk, meat, olive oil, wheat);
- cases where application has been made to use equivalent compensation, particularly for agricultural products and certain types of industrial product;
- complex yield coefficients.

▮ Outward processing (tariff)

- export of high-technology machinery (it is difficult for customs services to assess the difference between the reimported products and the goods exported for exchanging);

- triangular traffic;
 - complex yield coefficients;
 - cases where the duties to be deducted are assessed on a broader basis, leading to overstatement of quantity (or understatement of value at reimport);
 - economic outward processing of textiles — see Section 1.2.
- D Processing under customs control**
- goods misdeclared under a tariff heading covering goods eligible for this procedure;
 - lax interpretation of the list of goods eligible for the procedure.
- D Customs warehousing**
- public warehouse (numerous traders not all of whom are owners of the goods stored);
 - private warehouse, especially where the company is undergoing reorganisation;
 - Community and non-Community goods stored together in a customs warehouse;
 - inward processing or processing under customs control carried out in a customs warehouse.
- D Temporary admission**
- temporary admission with partial relief from customs duty:
 - high customs duties;
 - date of entry for the procedure;
 - temporary admission with full relief from customs duty:
 - low-volume, easily disposable goods (e.g. jewellery) or goods which can be used up or consumed;
 - mismatch between the declaration and the reason given for requesting relief;
 - a consignment of goods presented for temporary admission not all of which qualify (e.g. a machine tool plus products for processing in excess of what would be required for demonstration purposes at a trade fair);
 - clear abuse of the provisions of Article 688 of the Customs Code Implementing Provisions.

- ▶ Free zones and warehouses (checks may be performed at entrance or exit)
 - products subject to excise duty (e.g. alcohol, petroleum products);
 - activities arousing suspicion in a free zone.

3.1.1.2. Trader-based risk indicators

- ▶ General
 - operator a first-time user of an economic customs procedure;
 - operator uses a succession of economic customs procedures (same regime or a series of different ones);
 - operator requesting renewal of an authorisation on the basis of new particulars;
 - cases where the reliability of the operator's internal systems has not been established by a prior audit (especially for inward and outward processing, customs warehouses and free zones).
- ▶ Inward and outward processing
 - operator applying to use a procedure for different goods;
 - operator requesting a change in the conditions for operating the procedure (e.g. yields, aggregation of time limits, transfer conditions).

3.1.2. Identifying risks in practice

The general remarks made above apply here but the following factors specific to this sector should be noted:

- appraisal of applications;
- analysis of authorisations issued to an operator during a given reference period;
- use of information about irregularities detected nationally or at Community level;
- checking compensating products against approved means of identification.

3.2. Implementing controls

The general comments set out in previous sections apply.

Particular care should be taken when issuing authorisations to use certain procedures. Detailed checks should also be carried out when procedures are discharged to ensure that the operations were properly carried out and the conditions stipulated in the authorisation complied with.

3.3. Analysing the results

The general comments set out in previous sections apply.

➔ **Subsection 4**

Simplified procedures within the meaning of Article 76 of the Customs Code

These consist of the simplified declaration, the commercial or administrative document and entry in the operator's records.

They may represent a risk area even though such facilities are generally granted to companies known by the customs service to be particularly reliable. A company judged trustworthy at the time the facility was granted for a particular regime may nevertheless subsequently present a risk of evasion of customs rules.

Risk analysis may therefore prove useful in this area. However, because the simplified procedures involve cutting the information given on the initial declaration to a minimum, risk analysis will tend to be based more on familiarity with the operator's practices and should be combined with other types of checks (e.g. prior or post-clearance audit, or checking of the supplementary declarations referred to in Article 76(2) of the Customs Code) or under memorandums of understanding concluded with companies.

4.1. Risk analysis

4.1.1. Risk indicators

The general observations made in previous sections apply here. However it should be emphasised that risk analyses may be made at two levels and risk indicators can therefore be divided into two groups. Some indicators relate more specifically to the

risks to be assessed before granting an authorisation to use a simplified procedure while others help in targeting controls afterwards.

(a) Risk analysis prior to granting an authorisation

4.1.1.1. Product-based risk indicators

▮ Nature of the goods

- application relating to sensitive goods;
- application relating to a new type of goods;
- application relating to goods which the holder of the authorisation could use for purposes other than those intended.

4.1.1.2. Trader-based risk indicators

▮ Corporate and business structure

- complex structure (e.g. multinational/parent company/subsidiary);
- decision-making centre outside the Member State (e.g. in the case of off-shore companies);
- family structures.

▮ Customs situation

- new authorisation applied for when an authorisation granted earlier has had to be cancelled for stated reasons (second attempt);
- other authorisations or facilities cancelled or withdrawn.

▮ Commercial and financial management

- inadequate management;
- weak financial situation.

(b) Risk analysis for the purpose of targeting checks

4.1.1.3. Product-based risk indicators

- ▶ **Nature of the goods**
 - the type of goods to which the simplified procedure applies does not tally with the company's field of activity.

- ▶ **Origin/provenance**
 - high-risk country of origin or destination for the type of goods involved, or one bordering on such a country;
 - country of consignment which suggests an origin other than the one declared.

- ▶ **Quantity, value**
 - volume of goods disproportionately large for the activities or needs of the company;
 - declared value too low or, conversely, extremely high for the product and any restrictions attached to it.

- ▶ **Packaging**
 - suspect labelling on consignments;
 - packages not labelled.

4.1.1.4. Trader-based risk indicators

- ▶ **Business strategy**
 - switch to another supplier country following the introduction of additional quotas for the usual one, or other commercial policy measures;
 - significant change in volume of imports or number of licences applied for compared with a given reference period;
 - frequent use of forwarding agents or other intermediaries;
 - company practising policy of just-in-time deliveries (express deliveries) with risks inherent in the need for speed.

4.1.1.5. Risk indicators for authorising use of simplified procedures

- ▶ **Documentation, company records**
 - particulars on loading, nature of goods, quantity or weight missing from or shown inaccurately in the simplified documents or company records, depending on the simplified procedure used;
 - too much information in the documents, making them difficult to understand;
 - difficulty in accessing information at the company's premises (incorrectly filed or stored);
 - difficulty in comparing information because of where and how stock records are kept.

- ▶ **Implementation of the agreements contained in the authorisation**
 - within limits, 'forgetting' (perhaps repeatedly) to notify the arrival of a consignment where the local clearance procedure is used;
 - failure to comply with the deadline laid down in the authorisation for making the goods available where the local clearance procedure is used⁽⁵³⁾;
 - difficulty in identifying the goods covered by the simplified procedure stored at the company's premises;
 - simplified procedure involving more than one Member State (can be manipulated by companies).

4.1.2. Identification of risks in practice

The general observations set out in previous sections apply here, but there are some factors specific to this area.

The main specific observation concerns the auditing carried out prior to granting an authorisation to use a simplified procedure which will reveal most of the risks, using the indicators already described. The more thorough the audit, the more effectively the risks can be defined. Here, therefore, carrying out audits is recommended practice.

⁽⁵³⁾ Member States frequently detect irregularities of both types.

4.2. Implementing controls

The general observations made in previous sections apply to risk analysis in connection with simplified procedures.

However, special mention should be made of the regular customs checks at company premises, which, using the indicators described above in conjunction with those specifically related to particular products, will help reveal any other risks which may exist.

Similarly, the post-clearance checks provided for in Article 78 of the Customs Code are extremely important in this context.

Customs should be able to organise fairly regular post-clearance inspections and verifications geared to the volume and nature of the traffic under consideration.

4.3. Analysing the results

In addition to the observations made in previous sections, one of the main purposes of analysis in this case is to enable the authorities to judge whether a firm's authorisation to use a simplified procedure should continue, and if so, subject to what conditions.

Annex I

Risk analysis table used in Italy

| Imports | Risk area | | | | | | | |
|---|--------------|---------------------------|---------|-------------------|-----------|-----|-------------------|-------------------|
| | Anti-dumping | Quantitative restrictions | Embargo | Tariff preference | Excisable | VAT | OP | IP |
| Origin | 15 | 15 | 35 | 20 | | | 20 ⁽²⁾ | |
| Value ⁽¹⁾ | 5 | 5 | | 5 | 10 | 10 | | |
| Agricultural products subject to import timetable/IP | | | | | | | | 20 ⁽³⁾ |
| CN code | 15 | 15 | | 10 | 15 | | | |
| Quantity | 2 | 2 | | 2 | 10 | 10 | | |
| Top rate | | | | | | 15 | | |
| Request for non-payment of VAT (ceiling) | | | | | | | 10 | |
| Statistics and production capacity of exporting country | 5 | 5 | 5 | 5 | | | | |
| Previous irregularities in specific sector | 8 | 8 | 10 | 8 | | | | |
| Place of consignment | 5 | 5 | 10 | 10 | | | | |
| Equivalent composition | | | | | | | 20 | 20 |

Objective risk indicators

⁽¹⁾ Potential risk for operations over ITL 100 million or at top VAT rate.

⁽²⁾ In conjunction with presentation of certificates giving entitlement to lower tariff (e.g. form A, EUR 1).

⁽³⁾ In conjunction with deadlines (e.g. rice imported in July to be re-exported in December).

Risk analysis table used in Italy

| Export | Risk area | | | | | | | | | |
|---|------------------|------------------|-----------------------|---------|-------------------|----------------|-----------|-----|-------------------|-------------------|
| | Dairy (cheese) | Beef/veal | Agricultural products | Embargo | Dual-use products | Cultural goods | Excisable | VAT | OP | IP |
| Origin | 3 ⁽²⁾ | 5 ⁽²⁾ | 2 ⁽²⁾ | 10 | | | | | | |
| Value ⁽¹⁾ | | | | | 5 | 10 | 10 | 10 | 10 ⁽⁸⁾ | |
| Destination | 7 ⁽³⁾ | 7 ⁽³⁾ | 5 ⁽³⁾ | 50 | 20 | | | | | 10 ⁽⁹⁾ |
| CN code | | | | | 10 | | 15 | | | |
| Refund code | 8 ⁽⁴⁾ | 6 ⁽⁴⁾ | 1 ⁽⁴⁾ | | | | | | | |
| Quantity | 4 ⁽⁵⁾ | 4 ⁽⁵⁾ | 5 ⁽⁵⁾ | | | | 10 | 10 | 10 ⁽⁸⁾ | |
| Refund rate | 8 ⁽⁵⁾ | 8 ⁽⁵⁾ | 8 ⁽⁵⁾ | | | | | | | |
| Advance fixing | 3 ⁽⁶⁾ | 3 ⁽⁶⁾ | 5 ⁽⁶⁾ | | | | | | | |
| Prefinanced | 3 | 3 | 3 | | | | | | | |
| Top rate | | | | | | | | 15 | | |
| Irregularities in specific sectors | 3 ⁽⁷⁾ | 3 ⁽⁷⁾ | 3 ⁽⁷⁾ | | 5 | | | | | |
| Bans, restrictions: strategic materials, weapons, explosives, CITES | | | | | 10 | 30 | | | | |
| Incomplete documentation | 2 | 2 | 4 | | 10 | 20 | | | | |
| Failure to reexport | | | | | | | | | | 20 |
| Equivalent composition | | | | | | | | | 20 | 20 |

Objective risk indicators

- (¹) Potential risk for operations over ITL 100 million or at top VAT rate.
 (²) Potential risk where Community rules make refund conditional on EC origin.
 (³) Potential risk in the event of differential refunds, where goods are declared for high-rate destination and inefficiency of local customs makes it difficult to get valid proof of release onto market (LDCs).
 (⁴) Potential risk where a single CN code covers several refund codes depending on (organoleptic) product quality or presentation.
 (⁵) Potential risk where this indicator, taken in conjunction with others, arouses suspicion of fraud.
 (⁶) Potential risk where declaration is presented near expiry of certificate or after, on grounds of *force majeure*.
 (⁷) Potential risk where exports frequently contravene Council Regulation (EEC) No 595/91.
 (⁸) Value or quantity of temporary export goods increased to boost the amount to be deducted when duties charged on re-imports.
 (⁹) Third country of actual destination.

Community/common transit — objective risk indicators⁽¹⁾

Objective risk indicators

| Quantity ⁽²⁾ | Products subject to excise | VAT ⁽³⁾ | Previous irregularities in the sector | Documentation incomplete | Goods referred to in Annexes 52, 53 and 56 to Commission Regulation (EEC) No 2454/93, in Annexes VIII and VIIIa to the EEC/EFTA convention on common transit |
|-------------------------|----------------------------|--------------------|---------------------------------------|--------------------------|--|
| 5 | 10 | 10 | 15 | 5 | 15 |

⁽¹⁾ Other risk indicators may be:

- simplification of common/Community transit procedures (approved consignee/consignee);
- type of guarantee (individual, flat-rate, global);
- principal (business, including transit business, using the procedure frequently, regularly or occasionally).

⁽²⁾ Beneath minimum weight threshold in Annex III to Commission Regulation (EEC) No 1214/92 and the EEC/EFTA convention on a common transit procedure.

⁽³⁾ Top rate applicable.

Annex II

Information concerning imports/exports

Trader compliance

Previous/current activity

Financial consequences

Nature of the operation

Commercial credibility

Trade flows

Place of import/export

Date of arrival of goods at point of export

Annex III

Instructions used in Germany

Extract from the departmental instructions for the 'PRÜF' procedure

9.3. Risk factors

For the establishment of the annual audit plan and for the drawing up of the audit proposals with regard to the establishment of the audit plan required by Regulation (EEC) No 4045/89, a risk factor must be set for every data item in the table of subjects for surveillance. In this way it is possible to arrange the audits and surveillance measures foreseen in order of priority.

The risk factor is a two-digit number. The first digit (tens column) puts forward an assessment of the risk which is to be ascribed uniformly to all subjects for surveillance. The second digit (units) indicates the audit interval.

Key for first digit — assessment of risk

- ▶ 2 = high risk (risk factor = 2X)

An audit is to be carried out on the spot in such a way that the audit period immediately follows the previous audit (additional audit).

Examples of high risk might be:

- significant compliance problems (including organisational defects) at the time of the previous audit;
- significant risks associated with the sector (e.g. mineral oils trade, imports of electronics, textiles or meat);
- imports with preference certificate from developing countries of goods with a high value;
- high volume and complicated subjects for surveillance which can be checked only by using substantial resources;
- authorisation of an EDP-based accounting procedure;

- threat to revenue from the economic situation of an undertaking;
- annual revenue of more than DEM 400 000 (exclusive of VAT at import) or where an authorisation covers goods having a value equivalent to this level of revenue or a corresponding quantity of goods.

The reason must be given for the assessment 'high risk' for each subject for surveillance by means of an appropriate reference in the 'remarks' box. The catalogue of possible references includes significant compliance problems, organisational defects, risk sector (e.g. meat), preferences, complicated audit, new EDP procedure, economic situation, level of revenue and level of refunds.

● 3 = normal risk (risk factor = 3X)

The great majority of subjects for surveillance will be classified in this category. The audit interval should be set flexibly at between 3 and 5 years.

Subjects for surveillance bearing an amount of revenue (paid or for which an authorisation exists) of between DEM 100 000 and DEM 400 000 are to be put in this category.

● 4 = low risk (risk factor = 4X)

No audit interval is laid down for subjects for surveillance with this level of assessed risk. Each year, however, between five and ten per cent of these subjects for surveillance should undergo an abbreviated audit.

In order for these subjects for surveillance to be taken into account on a five-yearly basis when audit plans are established, it is accepted that the second digit (see below) of the risk factor may be set at 1, 2, 3, 4, or 5. Otherwise, the effect of using 8 as the second digit is that this subject for surveillance will be flagged in the audit plan proposed by PRÜF eight years after the previous audit. In this way, even when no audit interval is laid down, it is ensured that each of the subjects for surveillance will be proposed for audit at the latest after eight years.

● 9 = measures of fiscal supervision are sufficient (risk factor = 90)

On-the-spot audits may be dispensed with, where the value of the authorisation is less than DEM 20 000, where experience shows that abuses can be ruled out or where compliance can be ensured through measures of fiscal supervision.

Key for second digit — audit interval

Meaning

| | Risk factor |
|--|-------------|
| ▶ 1 annual on-the-spot audit | = X1 |
| ▶ 2 on-the-spot audit every two years | = X2 |
| ▶ 3 on-the-spot audit every three years | = X3 |
| ▶ 4 on-the-spot audit every four years | = X4 |
| ▶ 5 on-the-spot audit every five years | = X5 |
| ▶ 8 no audit foreseen | = 48 |
| ▶ 0 only measures of fiscal supervision foreseen | = 90 |

The following combinations of digits are thus possible to identify the risk factor:

| | |
|-------------|--|
| high risk | 21 or 22 |
| normal risk | 33, 34 or 35 |
| low risk | 48 for targeted consideration when the audit plan is established 41, 42, 43, 44 and 45 may also be used |

measures of fiscal supervision are sufficient 90

It is important to note that when a subject for surveillance has been audited, a new risk factor must be determined.

It should also be noted that risk factor 10, used hitherto for the EAGGF, has now been abolished. In future, the risk assessment and the audit interval laid down by the office responsible for the audit will also be taken into account in the implementation of the audit programme which must be established by the Hamburg-Jonas Head Customs Office (centralising office for the customs control of trade in agricultural products).

For all subjects for surveillance for which the risk factor was previously set at 10, risk is to be assessed, the audit interval is to be fixed and the appropriate key is to be introduced manually into the data-bank in accordance with the above rules.

Annex IV

Risk analysis table used in the United Kingdom

Risk profile for Parity A traffic, Liverpool EPU, UK

| Risk area | Good declared in foreign currency | Goods for which exemption is requested | Goods subject to excise duty | Composite goods; components of spirits |
|-------------------------------------|--|--|---|---|
| Example | Wrong currency code may be declared on entry. Customs check 10%. | Claims not valid, e.g. — returned goods; — end use; — inward processing; — antiques to which reduced rates apply. Customs carry out checks. | Incorrect quantity or alcohol content (see also composite goods below). Customs checks 10%. | Code C excise duties in the rate column of box 47. Where spirit components is understated, customs check 10%. Note possible omission of box 47. |
| Risk range | medium | low | low | medium |
| Counter measures/ plan of action | Examine Circuit 3 of entries for error in conversion rate. | 1. Use of local CHIEF ⁽¹⁾ selection profiles ⁽²⁾ for regulation applicants. 2. Selection for audit of entries by Circuit 3. | Use of local CHIEF ⁽¹⁾ selection profiles ⁽²⁾ for selected categories of goods subject to excise. | Selected from Circuit 3 ⁽³⁾ samples entering, if necessary. |
| Date of action | | | | |
| Results | | | | |
| Assessment | | | | |

⁽¹⁾ CHIEF = UK computerised imports and exports system.

⁽²⁾ Profile = customs checks based on CHIEF.

⁽³⁾ Circuit 3 = automatic customs clearance.

Annex V

Rouen agricultural intervention unit (AIU)

The Rouen Agricultural Intervention Unit (AIU), set up in March 1990, comprises nine staff under the direction of an inspector.

It is an integral unit within the Rouen customs office and its task is to process export declarations for agricultural products and import declarations for bulk grains and oilseeds and carry out documentary and physical checks specific to each common organisation of the market.

The unit is equipped to handle the various stages of export operations, from the lodging of declarations or acceptance of goods carried under transit arrangements through to loading on board ship.

In 1996, 119 COM7 declarations, 2 284 goods acceptance accompanying documents and 3 498 EX1 export declarations were processed.

The duties of the AIU are:

- to ensure that goods declared are actually present in the port area or in designated customs premises;
- to scrutinise stock records and check acceptances in warehouses and export zones;
- to discharge acceptances by systematically marking manifests;
- to stamp on export declarations and accompanying documents the date of exit of goods from the Community (information supplied by a data-handling server).

General pattern of checks

The AIU is qualified to handle agricultural products declared for export at the Rouen-Port office as well as products cleared through customs export formalities at an inland office and transported to the Port of Rouen under the external Community transit procedure.

Bulk oilseeds (sunflower and rape seed) and bulk grains imported and stored in silos in the port area are also the responsibility of the AIU. This ensures that a single service is responsible for dealing with all export and import operations relating to a given operator's agricultural products.

Goods are accepted and checks carried out on the basis of:

- a declaration that goods have been deposited in a warehouse for pre-financed goods (COM7);
- a declaration that goods have been directly exported or deposited in a warehouse in an export zone (EX1);
- a prior export declaration as used for 'bagging' procedures (sugar, flour);
- a prior export declaration as used for meat procedures.

External Community transit documents are presented to the AIU and incorporated by operators in the port data-processing system (Ademar).

▮ Pre-selection of declarations

All declarations concerning CAP products are selected for checking, presented to the AIU and automatically checked to ensure that all is in order (e.g. that all compulsory documents, such as those relating to the administration of procedures with economic impact, are present).

Every two weeks a meeting is held to set out guidelines for the checks to be carried out during the period immediately ahead. The officer responsible for documentation reports on the guidance scale for CAP checks. Comments are made on important horizontal or sectoral rules and notes on the basis of observations made in the course of physical checks.

At the end of the meeting, an inspection plan is drawn up. However, this plan does not prevent an officer from selecting a declaration relating to a specific or new type of traffic.

▮ Spot physical checks

In addition to the physical checks carried out pursuant to Council Regulation (EEC) No 386/90 (5 %, or 2 % where a risk analysis has been made), declared goods, together with goods in transit, are subject to 'flow control' spot checks in order to detect any substitution or removal of goods.

Spot checks, which in 1996 were carried out on 5.21 % of declarations and accompanying documents, involve:

- recognition and identification of means of transport and seals for goods accepted for the purposes of transit;

- checks on the presence of goods declared for direct export in warehouses and export zones, plus verification of stock records;
- tallying and checking of goods loaded on board, which may be exhaustive and include test weighing during loading;
- weighing containers in transit where the content consists exclusively of agricultural products;
- inspection of silos, during loading or at the end of the shift, in order to obtain weight readings and visual confirmation that the quality of the cereals on the conveyors is sound and merchantable and corresponds to their description;
- quantity verification devices placed in silo compartments and stock record verifications in the case of products placed under pre-financing arrangements; at the conclusion of these operations, customs seals are systematically affixed to the base of the compartments concerned.

The operational strength also includes two surveillance units (onshore and offshore) which, on their own initiative or in liaison with the AIU, carry out general surveillance of the movements of goods and monitor shipping within the port.

Summary

The characteristics of the Rouen agricultural intervention unit are:

- specialised expertise;
- thorough knowledge of the operators and products concerned;
- reliable handling of operations involving the export or acceptance of goods in transit;
- risk analysis and targeting expertise;
- the quality of its physical checks;
- spot checks and regular inspections ('flow control'); and
- checks on movements, undertaken independently by the surveillance units or as a result of management-directed monitoring measures.

Annex VI

Commission Regulation (EC) No 3122/94

of 20 December 1994 laying down criteria for risk analysis as regards agricultural products receiving refunds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 386/90 of 12 February 1990 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts⁽¹⁾, as amended by Council Regulation (EC) No 163/94⁽²⁾, and in particular Article 6 thereof,

Whereas the second subparagraph of Article 3 (2) of the said Regulation lays down that the rate of 5 % per product sector may be replaced by a rate of 5 % covering all sectors in so far as the Member State applies a system for selecting products to be physically checked based on a risk analysis provided a minimum rate of 2 % is respected; whereas the scrutiny rate may justifiably be reduced in the case of non-Annex II products;

Whereas the selection criteria should be defined in accordance with the procedure referred to in Article 6 of Regulation (EEC) No 386/90;

Whereas the criteria must be adopted before 1 January 1995 since the new version of Article 3 (2) of Regulation (EEC) No 386/90 provides for the use of risk analysis from that date;

Whereas the Commission's strategic anti-fraud programme has stressed greater use of risk analysis, with particular emphasis on the exploitation of databases; whereas that programme stresses cooperation between the Commission and the Member States while providing for such cooperation to be carried out with the utmost discretion;

Whereas these measures are necessary and appropriate and should be applied uniformly;

Whereas the measures provided for in this regulation are in accordance with the opinion of the relevant management committees,

⁽¹⁾ OJ L 42, 16.2.1990, p. 6.

⁽²⁾ OJ L 24, 29.1.1994, p. 2.

HAS ADOPTED THIS REGULATION:

Article 1

The aim of risk analysis shall be to enable the targeting of physical checks on those products, individuals and legal entities and sectors presenting the greatest risk. It shall therefore identify the risks involved and assess the level of those risks in order to permit the selection of goods to be physically checked.

Where, pursuant to the second subparagraph of Article 3 (2) of Regulation (EEC) No 386/90, the Member States use risk analysis, they may notably rely on a certain number of the following criteria to select the export declarations relating to products to be physically checked:

- ▶ 1. as regards the products:
 - their origin,
 - their nature,
 - their characteristics in terms of the refund nomenclature,
 - their value,
 - their customs status,
 - the risk of tariff slippage,
 - the rate of refund in terms of technical characteristics and the presentation of the goods (fat, water, meat, ash content, packaging, etc.),
 - their becoming newly eligible for refunds,
 - the quantity,
 - analyses of previous samples,
 - binding tariff information (BTI);

- ▶ 2. as regards trade:
 - its frequency,
 - the appearance of unusual trade and/or the development of new trade,
 - diversions of trade;

- ▶ 3. as regards the refund nomenclature:
 - the rate of refund,
 - the nomenclatures in respect of which most export refunds are paid,
 - the risks of slippage of refund rates in terms of technical characteristics and the presentation of the goods (fat, water, meat, ash content, packaging, etc.);

- ▶ 4. as regards the exporters:
 - their reputation and trustworthiness,
 - their financial position,
 - the appearance of new exporters,
 - exports without any immediately apparent economic justification,
 - previous disputes, in particular cases of fraud;

- ▶ 5. as regards irregularities:
 - detected or suspected in certain product sectors;

- ▶ 6. as regards the customs arrangements used:
 - the normal declaration procedure,
 - the simplified declaration procedure,
 - acceptance of the import declaration in application of Articles 790 and 791 of Commission Regulation (EEC) No 2454/93⁽³⁾;

- ▶ 7. as regards the arrangements for granting export refunds:
 - pre-financing (for processed or unprocessed products),
 - direct exports,
 - victualling.

⁽³⁾ OJ L 253, 11.10.1993, p. 1.

Article 2

Where the criteria referred to Article 1 are applied, the competent authorities shall ensure respect for professional secrecy and shall guarantee the confidentiality of any personal data which they hold or become aware of, in any form whatsoever. They shall in particular ensure that such data enjoys the protection granted to similar data under their national legislation and the corresponding provisions of Community law.

Such data may not be used for any purpose other than those provided for by this Regulation.

Article 3

(1) The Member States and the Commission shall jointly assess the reliability and relevance of these criteria on the basis of experience acquired in order to make — in case of need — any necessary adjustments to the system and selection parameters to make physical checks more effective and improve targeting.

(2) The Member States shall notify the Commission of:

- the measures taken, including instructions to national departments, to apply a selection system on the basis of risk analysis, in the light of the criteria referred to in paragraph 1,
- individual cases which could be of interest to the other Member States.

(3) The Member States shall ensure that a central body coordinates information on risk analysis.

Article 4

Where a Member State applies a selection system based on risk analysis, the percentage of physical checks carried out on non-Annex II products shall not be taken into account for the purposes of calculating the overall rate of 5 % for all sectors. In this case, a minimum rate of 2 % shall apply to all non-Annex II products.

Article 5

This Regulation shall enter into force on the seventh day following its publication in the Official Journal of the European Communities.

It shall apply from 1 January 1995 for export declarations accepted from that date.

This regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 December 1994.

For the Commission
René STEICHEN
Member of the Commission

Annex VII

Dutch customs information centre (DIC) risk analysis October 1993

Product: Frozen sweet corn

Tariff code: 0710 4000 000 904, declared as
0710 8090 090 004

Country of origin: Bulgaria (country code 068)

Legislation:

Sent to: DIC contact officials Laboratory

1. General

In October 1993 the risk analysis department of the customs information centre (DIC) was informed by customs office X, point of declaration Y, of a consignment of frozen sweet corn cooked in water imported under tariff code 0710 8090 090 004. Samples of the goods were sent to the laboratory, where it was established that the correct code was in fact 0710 4000 000 904.

The financial repercussions are that an import duty of only 8 % should have been paid, rather than the 18 % actually levied. However, an agricultural levy of NLG 28.44 to 35.70 per 100 kg should also have been charged. For the consignment concerned, which had a net weight of 18 000 kg, worth NLG 16 391, the import duty charged (18 % of NLG 16 391) was NLG 2 950.40. Duly adjusted, this duty (8 % of NLG 16 391) was NLG 1 311.30, but with an additional NLG 6 426 (NLG 35.70 per 100 kg) in agricultural levies. The total differential, including VAT (no Article 23 VAT permit was used), was therefore an underpayment of NLG 5 074.20.

The DIC was asked to analyse this irregularity to determine if it was necessary to have this case investigated further by the fiscal intelligence and investigation department (Dutch acronym FIOD) and the customs investigations department, or if the information should be made known to customs colleagues in some other way.

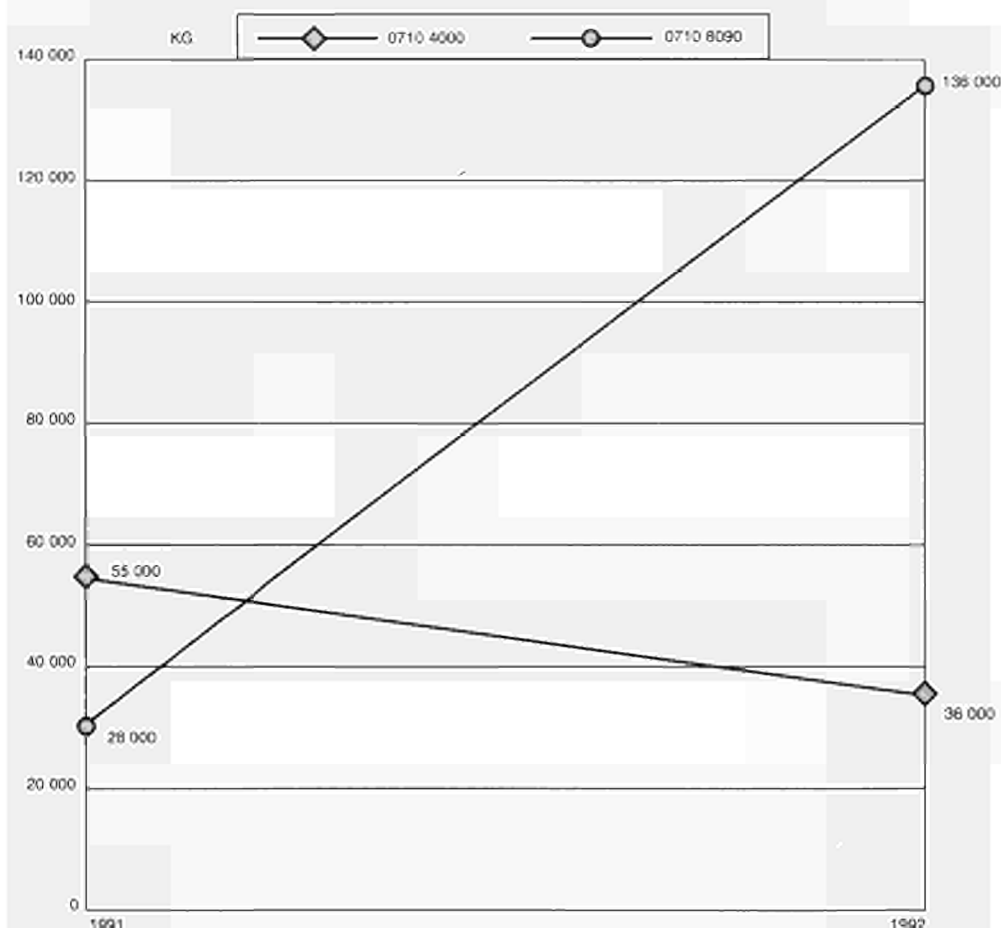
The information concerning this case was sent to the DIC, where it was analysed with the help of Sagitta (system for automatic processing of import declarations using terminals).

The information is detailed in point 5. The following analysis assesses Sagitta data and statistics and estimates the risks attached to imports of this product.

2. Statistics

The DIC requested statistics for the Netherlands' imports in 1991 and 1992 of goods coming under tariff heading 0710 4000 (lower import duties but with additional agricultural levy) and those coming under tariff heading 0710 8090 (higher import duty but no agricultural levy, and thus less dues).

The graph below gives a clear picture of the changes in these two headings: imports under heading 0710 8090 have increased by nearly 400 %, while those under the 'more expensive' heading 0710 4000 have fallen by more than 34 %.



However, it would be a mistake to leap to conclusions concerning this shift between the headings, as 0710 8090 is the residual heading for frozen vegetables, which can also be steamed or cooked in water.

3. Companies concerned

3.1. General

A request was submitted to the central customs administration in Apeldoorn for all data concerning imports of sweet corn (tariff code 0710 4000 000 904) and goods coming under code 0710 8090 090 004 from Bulgaria between 1 January and 14 October last year. It transpired that 15 such consignments had been imported during that period, 8 under tariff code 0710 8090 090 004 and 7 under 0710 4000 000 904.

3.2. Points of declaration

Five points of declaration were used:

| Point of declaration No | Point of declaration name | No of consignments |
|-------------------------|---------------------------|--------------------|
| 211 | T | 7 |
| 218 | U | 1 |
| 247 | V | 3 |
| 253 | W | 3 |
| 350 | Y | 1, corrected |

3.3. Importers

Four importers accounted for all the consignments of goods coming under tariff code 0710 8090 090 004 (without agricultural levy — greater risk):

| Code No ⁽¹⁾ | Importer ⁽¹⁾ | Address |
|------------------------|-------------------------|---------|
| 12345 | A B.V. | |
| 23456 | B B.V. | |
| 34567 | C B.V. | |
| 45678 | D B.V. | |

⁽¹⁾ The identity of the original importers and declarants has been masked for the purposes of confidentiality. Their true identity is used in the risk analysis for national use.

- A. Importer A B.V. declared only one consignment of 14 000 kg of goods coming under tariff code 0710 8090. Document inspection at point of declaration 218.
- B. Importer B B.V. made two electronic declarations at point of declaration 211 for a total of 18 061 kg leeks.
- C. C B.V. declared three consignments under tariff code 0710 8090, one of which was rejected. In accordance with the inspection level code the goods were not actually checked: they were declared at declaration point 247. There are no data on the company in Sagitta task 811, but information is available via relations management.
- D. The irregularities observed at declaration point 350 concerned importer D B.V., which is also active as an exporter in the poultry and egg sector, and received NLG 191 127 in export refunds in 1992.

3.4. Declarants

Sagitta data for imports of goods coming under tariff code 0170 8090 090 004 during the period under consideration produced the names of five declarants, plus one cash declarant about which nothing more is currently known.

| Customer No ⁽¹⁾ | Declarant ⁽¹⁾ | Address | Importer ⁽¹⁾ |
|----------------------------|--------------------------|---------|-------------------------|
| 1 | G B.V. | | D B.V. |
| 2 | H B.V. | | D B.V. |
| 3 | I B.V. | | A B.V. |
| 4 | J B.V. | | B B.V. |
| 5 | K B.V. | | A B.V. |
| 6 | L B.V. | | C B.V. |

⁽¹⁾ The identity of the original importers and declarants has been masked for the purposes of confidentiality. Their true identity is used in the risk analysis for national use.

4. Potential risks

The irregularity and the statistics referred to in Section 2 indicate that imports of goods under tariff code 0710 8090 090 004 do indeed entail risks. It is above all the fact that the goods were declared under a tariff code that is in principle subject to a high import duty (18 % rather than 8 %) that would suggest that there is at least a possibility that declarants are deliberately seeking to avoid the agricultural levy.

5. DIC recommendations on central risk analysis

The DIC's purpose in carrying out this risk analysis exercise is to highlight the possible avoidance of the agricultural levy, and to advise customs officials responsible for inspection on the preparation of inspection plans and selection profiles to aid their work. The DIC has drawn up recommendations for the preparation of selection profiles for use with the Sagitta system. These recommendations can be incorporated directly into profile files, but can also be adapted as necessary.

The selection profiles might look like this, with the recommended selection colour orange:

34 = 068
73 > 0710 4000 000 904
73 < 0711 1000 000 000

The risk analysis could be archived among the customer files cited under Section 3. The analysis shows that imports are not large-scale, and that the risk should therefore be considered moderate.



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