



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
CUSTOMS POLICY
Rules of origin

GREEN PAPER

THE FUTURE OF RULES OF ORIGIN IN PREFERENTIAL TRADE ARRANGEMENTS

COM(2003)787 final of 18 December 2003

A summary report of the results of the consultation process

Brussels, 24 August 2004

INTRODUCTION

THE COMMISSION'S GREEN PAPER ON THE FUTURE OF RULES OF ORIGIN IN PREFERENTIAL TRADE ARRANGEMENTS

- In the context of international trade liberalisation, the Commission adopted on 18 December 2003 a Green Paper on 'the future of rules of origin in preferential trade arrangements' (COM(2003)787 final), which provided:
 - an overall assessment of the current problems of origin in preferential arrangements;
 - a focus on aspects which require a consistent approach to bring them under control;
 - an overview of the options available, particularly as regards the systems for certification, declaration and control of the originating status of products and ways of refocusing the current system of administrative cooperation.
- With this discussion and consultation paper, the Commission hoped to prompt corresponding analyses from other interested parties and imaginative responses to the options presented — or even alternative proposals.

THE OBJECTIVES OF THIS SUMMARY REPORT

- This report's main objective is to give a clear view and summary of the opinions and comments made by the contributors. It does not contain any Commission comment or opinion regarding the substance of the Green Paper or the replies.
- The report has been divided into three main parts:
 - **Part 1** deals with the revision of the rules for the determination of origin, including cumulation;
 - **Part 2** concerns the necessary improvement of the procedures for the management and control of origin;
 - **Part 3** tackles the sensitive issue of compliance by the authorities with their obligations resulting from the arrangements, insofar as fight against fraud and administrative co-operation are concerned.
- These parts are, as far as possible, built accordingly to the structure and the questions featuring in the Green Paper and the related questionnaire, a reference to the questions numbering being made in the text of the report. However they group on each topic the contributions on both the diagnosis and the remedies.

THE CONSULTATION PROCESS AND ITS RESULTS

- The objective of the consultation process launched by the Green Paper is to help the Commission to formulate guidelines in line with the objectives of the preferential arrangements, taking account of the various interests at stake and the contributions received.
- The consultation process ran from January 2004 until 15 March 2004 and involved international traders and competent authorities of the Member States, Accession and Candidate Countries and countries taking part in various preferential arrangements with the European Union.
- The Commission received 100 contributions from:
 - 19 private companies;
 - 28 national or local trade or business organisations;
 - 17 various European trade or business organisations;
 - 4 consultancy groups;
 - 13 authorities of Member States (including new Member States);
 - 10 authorities from third countries;
 - 7 international or regional organisations;
 - 1 research centre;
 - 1 non governmental organisation.
- **Annex I** contains details about the contributors and their category of activity, except when confidentiality was demanded.
- **Annex II** shows, through consolidated figures, a summary of the results, based on the questions raised in the questionnaire on the Green Paper. However, since only 37 % of contributors made use of the available questionnaire, it was often difficult to allocate precise answers to specific questions and to properly structure the analysis. Moreover, comments related to specific questions are signalled but their content cannot be reflected in a table even if there has been an attempt to show their main elements in the report itself.
- A "**Read Me**" aims at helping the reader to better understand how the Annexes are structured.

KEY RESULTS

The following is a summary of some of the key findings from the contributions received:

- The present origin rules do not fit current economic reality for the following reasons:
 - they do not correspond to the global production model of the market,
 - they reflect past defensive policy aims,
 - they do not correspond to the new manufacturing and processing operations which are currently taking place,
 - they do not reflect technological advances,
 - they should take more into consideration actual market, trade, industry and agriculture conditions.
- The current origin rules are seen as too complex, restrictive and they lack transparency.
- There is a clear call for rationalisation and simplification of the origin rules.
- The current system should be changed in order to provide an adequate level of assurance that the products for which preferential treatment is claimed do actually satisfy the origin rules.
- The system of paper-based certificates should be replaced by an electronic document.
- There is a need for increased Community monitoring and greater coordination and cooperation to ensure compliance with the rules of origin.
- There was support for the introduction into preferential agreements of clauses on suspensions of preferences and financial liability.

PART 1

REVISING THE RULES FOR THE DETERMINATION OF ORIGIN

I. PROBLEMS REGARDING DETERMINATION OF ORIGIN (questions 1 to 5)

1	Assuming the DDA negotiations result in a substantial cut in duties, will preferential duties continue to be attractive to traders, in view of the costs and formalities, if current origin rules and procedures are maintained?
1a	What is according to your knowledge and/or experience the average cost, expressed as a percentage of the ex-works price of the exported product, of the formalities an exporter has to comply with, in relation with preferential origin? Indicate, where appropriate, the preferential arrangements and/or the economic sectors concerned.
1b	What is according to your knowledge and/or experience the average cost, expressed as a percentage of the customs value of the imported product, of the formalities an importer has to comply with, in relation with preferential treatment? Indicate, where appropriate, the preferential arrangements and economic sectors concerned.
2a	Do the preferential origin rules fit the current objectives of the Community's commercial, industrial, agricultural and development policies - as a whole? (i) Commercial policy? (ii) Industrial policy? (iii) Agricultural policy (<i>incl. fishery policy</i>)? (iv) Development policy? (v) Other policies? If YES, what policies (regional, environmental ...)?
2b	Do the preferential origin rules fit the current objectives of the Community's commercial, industrial, agricultural and development policies – <i>insofar as specific economic sector, country or group of beneficiary countries are concerned</i> ?
2c	According to your knowledge and/or experience, what are the main problems encountered in applying/complying with the rules of origin, that prevent both the exporter and the importer to draw the benefits from tariff preferences? Indicate the preferential arrangement and/or economic sectors concerned
3a	Are there any reasons (e.g. failure to invest in manufacturing, internal administrative structures and procedures, human or plant health regulations) other than the complexity and rigour of the origin rules to explain why certain beneficiary countries or groups of countries make so little use of the preference made available? <i>If YES, what reasons?</i>
3b	Why is cumulation of origin not used more, particularly by certain groups of developing countries? <i>Indicate what preferential arrangements and/or economic sectors are, according to your knowledge, more particularly concerned</i>
3c	Is (should be) cumulation of origin: (i) an instrument for enhanced economic integration in a region, favouring sourcing of materials or intermediate products within that region? (ii) an appropriate alternative to a direct relaxation of the list rules for the preferential arrangement(s) concerned, allowing a wider choice in sourcing materials and intermediate products from third countries? (iii) an appropriate substitute to the conclusion of extended preferential agreements?

4	Does failure to obey the origin rules stem mainly: (i) from the complexity and/or ignorance of the rules? (ii) from the impossibility of obeying them if one wants to export goods? (iii) from deliberate intent to commit fraud? (iv) is this failure made easier by the limited possibilities to monitor the proper application of preferential rules of origin?
5	Given the current number and range of preferential arrangements, can the relevant origin rules contribute appropriately and flexibly to achieving the objectives of the arrangements?
5a	Are (should be) preferential rules of origin: (i) 'neutral' instruments of Community policies? (ii) active (offensive or defensive) instruments of Community policies?
5b	Is a full harmonisation of preferential rules of origin in different arrangements appropriate/feasible?
5c	Would a more tailor-made approach (by arrangement, region and/or sector) be favoured in order to fit in with the various situations and objectives at stake?

1. Attractiveness of preferential arrangements in the context of liberalisation of trade (questions 1 to 1b)

- Most of the responses (67 % of 'yes' to question 1) express the fact that preferential duties are still attractive to traders, but, in the context of DDA negotiations, their scope needs to be reviewed.
- The trend is however less obvious insofar as public authorities in the EU Member States and regional or international organisations (50 %) are concerned.
- However, none of the responses mentioned a complete deletion of preferential arrangements, which still seem useful.

2. Role of rules of origin in the context of the Community's policies and in specific economic sectors, countries or groups of beneficiary countries (questions 2a, 2b & 5 to 5c)

- Responses regarding this point show a lack of enthusiasm about the positive impact of preferential arrangements and related rules of origin, which are not seen as attaining their objectives as a whole in the context of Community's policies (question 2a). While the opinions are almost equally split on commercial and development policies, only 33% of the replies find that preferential arrangements fit the objectives of the Community agricultural and fishery policies. For 61 % of the replies, they do not sufficiently take into account the other policies (regional, environmental, social). Only the Community's industrial policy seems to really benefit from preferential arrangements. (65 % of 'yes' to question 2a(ii)).

- The main reasons given by contributors were that present rules of origin do not fit the economic realities for the reasons mentioned below:
 - they do not correspond to the global production model of the market,
 - they reflect past defensive policy aims,
 - they do not correspond to the new manufacturing and processing operations which are currently taking place,
 - they do not reflect technological advances,
 - they should take more into consideration actual market, trade, industry and agriculture conditions.
 - The need of modernisation of preferential rules of origin was emphasised, since at present, preferential rules of origin are too often used as a defensive trade instrument.
 - The majority of the replies (85% of 'yes' to question 5a(ii)) consider that rules of origin should play an active role, in particular in promoting market access of the goods produced by developing countries to the Community, while only a minority (30 % of 'yes' to question 5a(i)) see them as being or expected to be 'neutral'.
 - 69% stated that the harmonisation of origin rules was quite often seen as a very important aim in preferential agreements, which could act as a remedy to many problems regarding preferential origin (question 5b). Standardization of rules of origin could contribute to making rules of origin more transparent and easier to apply. Harmonised rules are also, in practice, easier to monitor. In this way, in order to contribute to the uniformity of preferential rules of origin, separate bilateral agreements should be amended only when strictly necessary. Otherwise, the process of the harmonisation of the rules of origin could be undermined.
 - As an apparent paradox, most of the replies also strongly underlined the fact that preferential origin rules should be adapted to the objectives of preferential agreements or arrangements (70 % of 'yes' to question 5c).
 - The majority of the responses seem to be more in favour of a 'tailor-made approach of the harmonisation' by arrangement, region or sector, in order to correspond more to the various situations and objectives of the different arrangements.
 - Some contributors were thus suggesting that, in order to create rules of origin that will suit the developing countries, there could be exemptions from harmonisation regarding unilateral agreements. That would give a possibility to meet more efficiently the needs of the developing countries, whose restricted production capacity should be taken into account.
3. Application problems with rules of origin, reasons for the little use of preferences, and for the failure to obey origin rules (questions 2c, 3a & 4)

- There were a lot of comments in replies from contributors relating to these issues.
- Most of the time, the main problem for applying rules of origin in preferential arrangements derives from the complexity of the rules in general (96 % of 'yes' to question 4(i)).
- A majority of the contributors were of a view that the rules of origin are too strict which lead to a limited use of preferential arrangements (comments on question 2c).
- The majority of the answers highlighted that traders also suffer from lack of consistency of rules of origin, ignorance, misunderstanding, misinterpretation and the inability of authorities to monitor compliance of these rules at the time of exportation.
- Finally, the lack of consistency in the rules must be regarded as a contributory factor to the failure of obeying rules of origin. The fact that the rule for a particular product can vary (either on a permanent or temporary basis), from one agreement to another, results in confusion and provides a potential for misapplication by exporters and exporting country authorities.
- Nevertheless, there are also other reasons than the complexity and stringency of rules of origin as far as certain products are concerned (94 % of 'yes' to question 3a and 62 % of 'yes' to question 4(ii)). These include supply side considerations such as the structure of an economy, national development strategy, competitiveness, sector diversification and dependency, speed in shifting resources to expanding sectors, poor infrastructure, inadequate manufacturing bases, capacity constraints, institutional weaknesses, bad governance, corruption, lack of confidence from EC traders and the impact of regional integration. These factors contribute to the limited use of preferences by most beneficiary countries.
- A minority of contributors believed that the failure of obeying the origin rules stems from deliberate intent to commit fraud (only 13 % of 'yes' to question 4(iii)).
- On the other hand, a majority (69 % of 'yes' to question 4(iv)) replied that limited monitoring of the correct application of the rules is a factor as regards in non compliance with the rules.
- In conclusion, responses reveal a strong need of simplification and greater flexibility in the rules of origin, as well as a demand for their harmonisation insofar as the objectives of given preferential arrangements allows it.

4. Role of cumulation of origin (questions 3b & 3c)

- Regarding the role of cumulation, in the majority of the replies (84 % of 'yes' to question 3c(i)) cumulation should be an instrument for enhanced economic integration in a region, which offers increased possibilities of sourcing of materials or intermediate products within that region.
- A lot of responses share a similar opinion explaining that the benefits of cumulation are easily seen. The benefits are: improved market access for products from all partners in a preferential area, increased economic cooperation and trade between partner countries, increased

incentives for inward investment and more efficient sourcing of raw materials and intermediate products.

- Nevertheless, the contributors believe that present provisions are too restrictive. Cumulation at present is too complex and difficult, with too many strict rules, added to the context of limited regional capacities and opportunities. There is also a need of promoting regional cumulation amongst Least Developed Countries.
- On the other hand, organisations representing Community interests in a sector as sensitive as the sugar industry are claiming for a specific approach, excluding any relaxation of the conditions and even implying a prohibition or at least a limitation of the scope of cumulation, where necessary.

II. POSSIBLE SOLUTIONS TO THE PROBLEMS REGARDING DETERMINATION OF ORIGIN (questions 10 to 15)

10	Against the backdrop of the trend towards lower customs duties, would gearing the rules of preferential origin primarily to access by Community products to third country markets and access by developing countries' products to the Community market seem to be compatible with maintaining sufficient Community production and export capacity to ensure growth and employment?
11	What conditions could the origin rules for a given product or sector be designed to suit, particularly under reciprocal agreements, <u>in order to facilitate Community exports</u> , without jeopardising Community production or Community suppliers of the raw materials used? <i>Indicate the preferential arrangements and sectors concerned</i>
12a	What conditions could the origin rules for a given product or sector be designed to suit <u>in order to contribute to development in the country of export</u> , without jeopardising Community production? <i>Indicate the preferential arrangements and sectors concerned</i>
12b	What type of development and what types of economic activity in the beneficiary countries should origin rules promote in this way?
13a	Does the approach need to be refined according to the industrial or agricultural sector in question, and if so, in what way?
13b	Do the interests of large businesses and SMEs differ in this respect?
13c	According to your specific problems and needs, what are your suggestions, by preferential arrangement and/or economic sector, regarding the determination of the preferential originating status of products ('list rules')?
13d	Should relaxation of conditions for cumulation be envisaged in various preferential arrangements? In what preferential arrangement and/or economic sector, for what purpose and how?
13e	Should an extension of the scope of cumulation be envisaged in various preferential arrangements? In what preferential arrangement and/or economic sector, for what purpose, to what extent, and how?
13f	According to your specific problems and needs, what are your suggestions, by preferential arrangement and/or economic sector, regarding the rules for cumulation of origin?
14a	How can a strategy of internationally funded technical assistance primarily geared to development be reconciled with partnerships between the Community and given countries or groups of countries?

14b	Could the Community conceivably organise technical assistance on demand?
14c	How can (existing or new) programmes and financing tools for technical assistance be best used?
14d	How can we ensure technical assistance is programmed precisely where and when it is most needed?
15	Would regrouping origin rules and their management into fewer legal instruments (for example covering large regional groups of countries applying identical rules and cumulation of origin) make them more transparent for all those involved and more likely to be applied correctly?

1. Relaxation of preferential rules of origin (question 10)

- Relaxation of preferential rules of origin was considered in the context of the actual trend towards lower customs duties. In this respect, a majority of responses (73 % of 'yes' to question 10) were supporting an idea of gearing the preferential rules of origin towards a better access to Community markets. Such an approach also seems compatible with maintaining sufficient Community production and export capacities, ensuring growth and employment.
- Contributors underlined that, in the view of lower MFN duties, Community attention should be drawn to development aspects and thus give better market access to the developing countries, while staying in line with the EU policy on multilateral trade liberalization.
- For the majority, it is considered appropriate to facilitate the access of goods produced in developing countries, in particular the least developed ones, to the Community market. Nonetheless attention should also be paid to the requirements of exports from the Community, and the Community's needs should be taken into account. In this context, the basic trade policy of the EU should promote multilateral liberalisation and global market access, keeping in mind the needs of developing countries, which should also be reflected in the future rules of origin.
- Simplification of preferential rules of origin would give greater market access which is essential for growth and employment. Improved market access and its exploitation under simplified preferential rules will also increase demand in developing countries and have a positive impact on Community exports in the long term.

2. Conditions making preferential rules of origin suitable both for the Community exports and for development and needs of the exporting country (questions 11 to 13c)

- Replies underlined that rules of origin should reflect the chosen balance of policy objectives and the basic trade policy as above.
- Contributors stated that the rules of origin should benefit manufacture within the Free Trade Agreements. They should not be constructed in such a way as to hinder efficient sourcing.

- Regarding conditions for development, the majority of replies agreed that the dominant factor in designing the future rules of origin has to enable developing countries to benefit from their competitive advantage and produce competitively priced goods. In the responses, it was clearly stated that transparent and simple rules would in general make it easier for developing countries to use correctly rules of origin and increase the utilisation of the preferential schemes.
- Moreover if the future origin rules are designed to be clear, simple and transparent it would also be easier for Small and Medium Size Enterprises to understand and use them properly.
- A majority considered that any future rules of origin could be tailored to the industrial or agricultural sector in question (63 % of 'yes' to question 13a) even if it was often highlighted by several categories of respondents (especially by public authorities) that refining rules of origin according to the specific economic sectors would run counter to the simplification approach. Opinions are evenly divided with regard to the different interests of large or small and medium size enterprises in that respect (51 % of 'yes' to question 13b).
- In general, those supporting a revision of the rules in order to simplify them and/or to relax the conditions for a product to be considered as 'originating' plead for an in-depth reflection before envisaging any change. They find important that new rules are established for a long period and not subject to frequent amendments, in order to allow firms and investors to rely on them where deciding on investments, location of production processes, sourcing of inputs and export strategies.

3. Suggestions regarding cumulation of origin (questions 13d to 13f)

- Regarding these two issues, relaxation of conditions and extension of the scope of cumulation were supported by the majority of responses (78 % of 'yes' to question 13d and 72 % to question 13e).
- Contributors underlined the fact that rules of cumulation are very complex and difficult to understand. Moreover according to the replies cumulation is only partial and often limited to a few countries or countries which have no "geographical" relations.
- In this respect, it was noted that cumulation rules should be made clearer, simpler and more transparent, in order to give the possibility for regional groupings of countries to make a better and increased use of cumulation rules, which would generate more trade within those regions.
- The subject of the cumulation in the GSP countries was mentioned by some contributors. In their opinion, all GSP countries should be included in the cumulation area. This would lead to better sourcing possibilities and to a system that would be more efficient. As a result, trade between developing countries would probably also increase.
- To sum up opinions of the majority of contributors:
 - Relaxation of the conditions for cumulation would be effective if there is liberalization in rules of origin and increased transparency.

- In the context of GSP and with respect to Least Developed Countries, extension of cumulation is needed as they are not able to produce all the raw materials needed in order to benefit from the preferences.

4. Technical assistance (question 14)

- In general, it appears that simplified and harmonised rules of origin would reduce the need for technical assistance.
- Nevertheless, the responses regarding the topic are quite positive, as increased technical assistance would be desirable provided there are sufficient financial and human resources (75 % of 'yes' to question 14b). If so, then this could be achieved in various ways, such as through electronic networking or data banks.
- Besides, increased technical assistance will also require increased cooperation between the different actors of trade, as well as intensification of regional training.

5. Attaining more transparency by regrouping rules of origin into fewer legal instruments (question 15)

- 84 % of contributors believe that regrouping origin rules and their management into fewer legal instruments would make them more transparent for all those involved, and more likely to be applied correctly.
- Indeed, regrouping of numerous origin protocols should help make the origin rules more intelligible for exporters and authorities. It should also make the rules and protocols easier to amend.
- However, it is important to underline that acting on the grouping and rationalising rules of origin only will not fully solve the problem faced by operators concerning the comprehension, monitoring and correct application of the rules which still remain very complex.

PART 2

IMPROVING THE PROCEDURES FOR MANAGEMENT AND CONTROL OF ORIGIN

I. PROBLEMS REGARDING MANAGEMENT AND CONTROL OF ORIGIN (questions 6a to 7)

6a	Is round-the-clock supervision of our trading partners' implementation of preferential arrangements really conceivable?
6b	Is it possible to increase/redirect our monitoring capacity in this field to ensure the arrangements are used properly, partly in the interests of Community traders themselves, and if so how?
7	Do you agree with all or part of the analysis of the limitations of the current system of administrative cooperation on preferential origin?

1. Monitoring and supervision of trading partners (questions 6a & 6b)

- Regarding the proposal on round-the-clock supervision of trading partners in implementing preferential arrangements, most of answers highlight that it is inconceivable and impracticable (only 20 % of 'yes' to question 6a).
- Responses support the idea of increasing community monitoring capacity to ensure proper use of arrangements by traders (81 % of 'yes' to question 6b), but under the condition that there are sufficient staff and financial resources to do so. That confirms the opinion expressed by a majority, who also considers the limited possibility of monitoring as one of the reasons explaining failure to obey the rules (69 % of 'yes' to question 4(iv)).
- However contributors, especially public authorities, underlined that greater monitoring possibilities would be of limited help to the main problem related to complexity of origin rules. Monitoring would be successful if it fulfils the following criteria:
 - highly simplified, liberal and flexible origin rules;
 - greater information opportunities in developing countries;
 - education and training programmes undertaken by the Community ensuring that exporting countries are kept aware of developments and changes;
 - more efficient methods of control by a wider use of risk analysis.

2. Comments on administrative cooperation (question 7)

- Most of the replies (86 % of 'yes' to question 7) agree with the analysis concerning the limitations of the current system of administrative cooperation on preferential origin:
- The current system in which a certificate of origin is issued by the competent authority in the exporting country is not fully effective. It does not provide the competent authority in the

importing country or the importers with the guarantees that 1) goods meet the necessary requirements and that 2) the competent authority in the exporting country complies on a daily basis with its obligation in terms of control and administrative co-operation.

II. POSSIBLE SOLUTIONS TO THE PROBLEMS REGARDING MANAGEMENT AND CONTROL OF ORIGIN (questions 18a to 23)

18a	If a tariff preference exists for a product (affecting the price), how is it incorporated into the conditions of an international trade transaction?
18b	How does the buyer/importer insure himself against the risk that preference may ultimately be withheld on import or later, if checks reveal that the product did not qualify for preference or was non-originating?
19	Which of the people involved in preferential arrangement are best placed to establish the origin of a product?
20	Should the authorities' main role be to establish the originating status of products or to check that it has been correctly established?
20a	As public authorities, what would you expect from the exporters as a counterpart of the benefits they draw from preferential arrangements based on the originating status of products?
20b	As public authorities, what would you expect from the importers as a counterpart of the benefits they draw from preferential arrangements based on the originating status of products?
20c	As an exporter, what would you expect from the public authorities as a counterpart of your responsibility in certifying the origin of the exported products?
20d	As an importer, what would you expect from the public authorities as a counterpart of your responsibility in declaring the origin of the imported products?
21	What do you think of the various options presented for the procedure's three components and of the analysis of their advantages and limitations? What option would you favour?
21a	Regarding certification of origin: (i) Improving the current system for establishing proof of origin? (ii) Introducing certification by the exporter only? (iii) Introducing an intermediate system of 'approved' or 'registered' exporters?
21b	Regarding declaration of origin: (i) Acting on debt and debt recovery? (ii) Acting on the importer's responsibility and the definition of commercial risk?
21c	Regarding control of origin: (i) Stepping up checks on the importer? (ii) Stepping up checks on the exporter, assuming the authorities of the country of export remain responsible for certifying origin? (iii) Stepping up checks on the exporter, assuming the exporter (whether or not he is registered or approved) bears sole responsibility for certifying origin and the importing country carries out checks directly? (iv) Stepping up checks on the exporter, assuming the exporter (whether or not he is registered or approved) bears sole responsibility for certifying origin and the exporting country provides importing country with assistance?

22	What combination of options would, in your opinion, offer the most balanced and coherent procedure for establishing a product's preferential origin, checking the truth and protecting the economic and financial interests at stake?
23	Are any other options and combinations conceivable?

1. Consideration of tariff preferences in international trade transactions
(questions 18a & 18b)

- Some of the contributors believe that the best insurance against uncertainty should be the knowledge of circumstances that determine the origin of goods and also the establishment of a close relationship and dialogue between suppliers and purchasers on the subject. However, a number note that the tariff and origin aspects do not represent top priorities in an international transaction and come far after quality or health standards for instance.
- Where preferential treatment is to be applied, the parties to the contract should together identify the requirements of the origin rules for the products in question and check how they are to be fulfilled. A clause relating to its application can be added in the sales contract. This is recommended to support the financial safety of the importers. However, strong doubts were expressed about the impact of such a clause where problems with origin are discovered years after the facts.

2. Establishing originating status (questions 19 to 20d)

- Most of the replies clearly say that the person who knows most about the origin of a product in relation to import and export is the exporter. The exporter is most familiar with all elements of transactions (costs, production method, sources of materials etc). The exporter, apparently, has the necessary knowledge on origin. Nonetheless there is not such clear view about exporter's knowledge to apply the origin rules. Therefore, in practice, support via consultation with the expert authorities is necessary. Such an approach brings us closer to the opinion on the role of the authorities in establishing the originating status.
- The authorities' main role should not be to establish the originating status of products prior to export. According to the replies, the role that should be played by competent governmental authorities is to "police" the system through the provision of prompt accurate advice and guidance to their exporters and by providing the importing country with timely and substantive assistance in checking that particular exporters have satisfied the rules for the preferences claimed.
- Authorities should therefore restrict their activities to providing advice and guidance, conducting control actions and ensuring administrative cooperation.

3. Opinions on certification of origin (question 21a)

- The opinions on certification of origin are divided between those who are satisfied with the current system for establishing proof of origin or would only like to see the system improved

and those who opt for a different system on certification of origin based on a status of 'registered' or 'approved' exporter (72 % of 'yes' to question 21a(iii)). Only a minority would support a system leaving any exporter the right to certify origin (28 % of 'yes' to question 21a(ii)).

- However, it is shown from the figures that most of the contributors have not made a clear choice between the two systems, often both receiving support from the same contributor (which is illustrated by the 72 % of 'yes' to both questions 21a(i) and 21a(iii)). This paradox could be explained by the fact that, those favouring a system based on the 'approved exporter' also consider that an alternative system should be maintained for those exporters not being in a position to be 'approved'.
- Indeed, most of the replies put forward the fact that the current system has to be changed in order to provide, in a more efficient way, an adequate level of assurance that the products for which preferential treatment is claimed have satisfied the appropriate rules of origin. Moreover, the system of paper-based certificates should be replaced by an electronic document.
- Several contributors believe that the system should allow the exporter – on his own account – to issue the relevant proof of origin through a declaration on the invoice or another commercial document.
- Furthermore and whatever is the system used for certification, having in mind the dynamic nature of EU's preferential arrangements which are changeable and constantly evolving, there is strong need for the Commission and Member States to provide ongoing training and technical assistance to authorities in developing countries.

4. Opinions on declaration of origin (question 21b)

- Regarding the declaration of origin there are two issues to which contributors were asked to consider: the issue of debt recovery and the question on the importer's responsibility and definition of commercial risk.
- Concerning the first issue, a majority of contributors believe that legitimate interests of importers should be protected against unfair recovery actions. They would not favour any step backwards with regard to the customs debt (64 % of 'no' to question 21b(i)). Importers who have acted in 'good faith' and with 'due care' should not take any responsibility resulting from errors of the authorities of exporting country. Some replies request that the concept of 'due care' be more elaborated insofar as preferential treatment and origin are concerned.
- Concerning the second topic in question – acting on the importer's responsibility and definition of commercial risk – it is obvious for contributors that declaration of preferential origin must be based on a direct, commercial relationship between the exporter and the importer. In this respect a special declaration on the fulfilment of the origin rules, in the import declaration is not necessary. Such an origin clause should figure in the sales contract. This would clarify the responsibilities between the importers and exporters. However a majority remains against increasing the level of responsibility of the importers, which would

lead them to renounce to the risk of claiming preferential treatment (57 % of 'no' to question 21b(ii)).

5. Opinions on control of origin (question 21c)

- Regarding control of origin, the majority of replies opt for stepping up checks on the exporter, assuming either that the current system of certification is maintained and improved or the exporting country provides assistance for control of self-certification by the exporter (68 % of 'yes' to question 21c(ii) and 54 % to question 21c(iv), to be compared to 35 % of 'yes' to question 21c(i), which refers to checks on the importer).
- According to the contributions, procedures for post subsequent verifications and administrative co-operation must be improved and it should be required that the authorities carrying out the investigations should have the appropriate legal competence, which is not the case in many developing countries.

6. Suggestions regarding most efficient procedures for management and control of preferential origin (questions 22 & 23)

- Contributors made a lot of suggestions regarding this topic. Here are their suggestions and comments:
 - in order to prevent and limit the risk of error, misunderstanding or misinterpretation, preferential rules of origin should be simple and flexible;
 - there is a need for effective assistance from the exporting country to the authorities of the importing country;
 - there is a strong need to develop an electronic-based system with electronic certificates of origin.
- Some of the replies suggested having a procedure based on the exporter's declaration insofar as it is based on standard declarations, without any other information relating to the acquisition of originating status. There are also opinions that the preferential origin of products cannot be established by approved or registered exporters. In this particular matter it is difficult to give one common solution because of different approaches made by contributors.

PART 3

ENSURING A CORRECT APPLICATION OF THE ARRANGEMENTS AND THE PROTECTION AGAINST THE CONSEQUENCES OF FRAUD OR MISMANAGEMENT

I. PROBLEMS REGARDING THE CONSEQUENCES OF FRAUD AND ADMINISTRATIVE FAILURES TO MEET THE OBLIGATIONS IMPOSED BY PREFERENTIAL ARRANGEMENTS (questions 8a to 9)

8a	Do you agree with <i>the analysis made under GP, section 1.3?</i>
8b	Are the consequences inherent in the system, and should the taxpayer bear the costs?
9	Irrespective of the scale of the problem, does it damage the credibility of the preferential arrangements to grant the benefit of preferential tariffs for goods which do not in fact fulfil the conditions, even to an importer acting "in good faith" on grounds of equity and the protection of legitimate expectations?

- Most of the replies (65 % of 'yes' to question 8a) agree with the analysis, made in the Green Paper, of the consequences of fraud and administrative failures to meet the obligations resulting from the arrangements.
- In general, contributors say that making origin rules simpler and better adapted to meet the needs of traders would enhance the traders' willingness to take responsibility of economic consequences and it would also result in fewer burdens for the taxpayer.
- Most of the replies underlined that an importer who has acted in 'good faith' should not be penalised for inappropriate action or inaction by the parties in the preference receiving country. If the importer is able to prove that he has acted in good faith, he shall be exempted from subsequent recovery of duties. That means financial loss to the Community budget, which will inevitably damage the credibility of preferential regimes and frustrate controlling authorities.
- The obligations and responsibilities of traders and authorities should be specified in preferential arrangements more accurately. This would make it easier to determine, in connection with post verifications, that the traders and/or authorities have fulfilled the requirements provided in the arrangements. In this context, simplified and harmonised rules of origin would play an extremely positive role.
- There is also a need to improve legal security for the operators and to divide the risk of uncertainty between the exporter, the authorities and the importer. The system's credibility suffers if there is frequent abuse. However, lack of compliance results more from lack of understanding of complex rules than from real fraud which amounts to a very limited share of the total preferential imports. That may explain why the opinions are equally split on this aspect (52 % of 'yes' to question 9).

II. POSSIBLE SOLUTIONS TO IMPROVE PROTECTION AGAINST THE CONSEQUENCES OF FRAUD AND ADMINISTRATIVE FAILURES TO MEET THE OBLIGATIONS IMPOSED BY PREFERENTIAL ARRANGEMENTS (questions 16 to 17b)

16	How can we ensure, in the current legal situation, that problems of fraud and poor application of preferential arrangements are tackled quickly so as to protect both the economic and financial interests involved?
17a	How can introducing clauses on the suspension of preferences and financial liability into preferential agreements enhance the protection of the interests at stake?
17b	Can their scope be anything other than financial?

1. Legal solutions for problems of fraud and poor application of preferential arrangements (question 16)

- A majority of contributors underlined that part of the reason for fraud is the complexity of the rules of origin. Nonetheless, contributors also gave some suggestions to reduce problems of fraud.
- Their suggestions are mentioned below:
 - the obligations and the responsibilities of the exporters and the authorities in the exporting country should be clarified;
 - administrative cooperation should be made more efficient;
 - the authorities in the exporting country should deal with problems encountered in connection with exportation;
 - for the purpose of taking decisions by economic operators – to continue to claim preferences or not, there should be a greater use of the early warning system about potential origin irregularities with goods exported from particular countries;
 - a system should be introduced, allowing the Commission to be informed by EU Member States customs administration on a regular basis of those countries which have not provided substantive responses to the verification enquiries.

2. Opinions regarding clauses on the suspensions of preferences and financial liability into preferential agreements (questions 17a and 17b)

- Most of the comments on this topic supported the introduction of such clauses (71 % of 'yes' to question 17a). It would be a useful instrument which is easy to implement, provided they were used carefully and traders' interests were taken into account.
- Nonetheless, having in mind the practical use of such clauses, contributors underlined their concern about difficulties with imposing, in the importing country, financial responsibility, on the authorities of the exporting country. On the one hand, it is rather improbable that any

Contracting Party would be prepared to compensate for duties that have not been collected. On the other hand, this procedure would impose a risk on the authorities of the exporting country, which may lead them to tighten and delay the completion of export procedures for goods eligible to preferences. That is maybe why a majority considers that the scope and impact of such clauses may go beyond a pure financial dimension (63 % of 'yes' to question 17b).

- Moreover, suspensions will make the system less predictable which in turn will make traders insecure and less inclined to take advantage of preferential treatment.