

Committee on Regional Trade Agreements

EXAMINATION OF THE SYSTEM OF EUROPEAN CUMULATION OF ORIGIN¹

Note on the Meeting of 1 December 1998

Chairman: Mr. C. Pérez del Castillo

1. The Chairman said that it was the second time the Committee would be addressing the European system of cumulation of origin, following the discussion held at the previous Session under the Chairmanship of Mr. J.M. Noirfalisse. With the presence of experts from some of the countries involved in the system, the meeting provided a first opportunity for Members to clarify how the system worked as well as the nature of the practical changes introduced. Noting that the summary records of that meeting had been distributed as document WT/REG/GEN/M/1, the Chairman drew Members' attention to the REG/GEN symbol, which had been created to deal with issues that concern simultaneously a number of regional trade agreements (RTAs). Documents for that day's discussions included also WT/REG/GEN/N/1 and G/RO/N/23. He noted that, following the last meeting, the delegations of Japan and the United States (US) had submitted written questions, both of a procedural and substantive nature, which had been distributed to all delegations. He said that he would invite the representatives of the United States and of Japan to pose their questions orally, so that replies could also be given in a similar manner. Before that, however, he invited delegations to make comments of a general nature.

2. The representative of the United States said that her delegation was frustrated and disappointed because the notification of the European system of cumulation had been made 18 months after its request for information. She was equally disappointed because the notification of the system, which had been in force for around 2 years, had just been made and frustrated that it consisted only of four newly-written introductory paragraphs followed by the regulations themselves. She was, however, pleased that experts from the parties to the system were present at the meeting, so that meaningful discussions could be held. Commenting on the fact that it had been said that the European system of cumulation was a technical matter, she said that, while the nuts and bolts of the system of cumulation was technical, its existence and operation was not only a technical matter but also a legal issue. The scope and effect of the regime were enormous; by her delegation's account, more than 40 RTAs in Europe already used the scheme and, together, its participating countries were responsible for more than 42 per cent of world trade. For all the countries involved, preferential trade was a very significant portion of their trade. The rules of origin scheme not only bound those countries in the various RTAs together technically, but also legally. It was the legal link that enabled separate free trade zones established under a number of Free Trade Agreements (FTAs) to merge into a Europe-wide network, as stated in paragraph 1 of document WT/REG/GEN/N/1. That statement

¹ This is of relevance for the examination of the following agreements: the Free-Trade Agreements (FTAs) between the European Communities (EC) and Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovak Republic and Slovenia; the FTAs between EFTA and Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovenia; the Central European Free-Trade Area (CEFTA); the FTAs between the Czech Republic and Bulgaria, Estonia, Latvia and Lithuania; the FTAs between the Slovak Republic and Bulgaria, Latvia and Lithuania; and the FTAs between Slovenia and Bulgaria, Estonia, Latvia and Lithuania.

begged the question as to why so much time had been spent examining individual RTAs if the real situation was essentially one agreement with multiple parties. Clearly the answer was because information had not been given on the rules of origin regime earlier, even though it had been in effect for most countries since 1 January 1997. It also raised the question of what kind of discrimination third parties faced in trading with the European countries. What third parties were facing was not a series of individual FTAs between various countries where the magnitude of trade, preferential or not, was relatively small, but rather one big market where the individual flows between the countries were really relevant. Her delegation was reviewing that regime from two points of view, namely, how it worked technically and what it meant legally. She appreciated the information already provided by the parties, and on the basis of it written questions had been submitted and distributed in the Committee on Rules of Origin and also in the Committee on Regional Trade Agreements. She hoped to have replies both orally and in written form, so as to enable her delegation to proceed with its own technical and legal analysis of the regime. Pending completion of that analysis and the discussions in the Committee, it might be necessary to revisit some aspects of the reviews of individual agreements. That could be necessary, given that the discussion of such important element of the agreements was taking place only after the completion of the factual examination for most of the agreements concerned.

3. The representative of Korea informed the Committee that his delegation had also prepared comments and questions on the system of cumulation, which were available in the room. While they had come at a late stage, he hoped that they would be discussed at that day's meeting.

4. The representative of Hong Kong, China said that the fact that her delegation had not prepared any specific questions did not mean that there was a lack of interest in the topic. It was interested in the replies that were to be given to the questions posed. In the context of the Committee's discussion on systemic issues, her delegation had put forward views which derived from the experience gained in the area of rules of origin in the context of the examination of individual agreements.

5. The Chairman noted that while some questions had already been put forward and that they would give some impetus to the debate, that meeting would not only deal with them. Any delegation wanting to comment on what was being said at the meeting could do so, and that was why it had been decided that that questions would be addressed one-by-one.

6. The representative of European Communities said that his delegation, as well as its European partners in the system of cumulation, would be happy to reply to any questions posed orally at the meeting. Such replies would be supplemented by written replies to be distributed later on. It had to be clear to all that at that meeting, the Committee would be examining rules of origin, and not coverage of the agreements, which had already been examined in other circumstances. Rules of origin were the backbone to the RTAs signed between the European Communities (EC) and its European partners. He objected to the comment made in relation to the discrimination brought by the system of cumulation, as that was far from the truth. The new system of cumulation was not of interest only to its parties, but also for third parties. Until very recently, third parties wanting to have access to the markets of the EC or its European partners had to respect rules of origin that were different among the countries, and that was now past history. Nowadays, an input going into one country party to the system was treated in the same manner in all other participating countries.

7. The representative of Japan said that his delegation would like to receive written replies to the questions it had posed in written form.

Questions and Replies

8. Addressing Bulgaria, the Czech Republic, Hungary, Iceland, Liechtenstein, Norway, Poland, Romania, the Slovak Republic, Slovenia and Switzerland, the representative of the United States requested information on the method and date of domestic publication of the protocols relating to preferential rules of origin, undertaken in accordance with paragraph 3(c) of Annex II of the Agreement on Rules of Origin in a manner "as to enable governments and traders to become acquainted with them" as described in paragraph 1 of Article X of GATT 1994. She also requested that the date, or dates, of the implementation of the system of cumulation be provided.

9. The representative of Switzerland said that the new rules had been published and distributed by the general customs of Switzerland in its documentation, which had been broadly available for exporters, traders and authorities in charge of applying the system, before the entry into force of the modifications all at the same time. Press conferences at a very high level were also organized. The decision of the Federal Council, or the Council of Ministers, had been widely reported. Under the Swiss law, the legal publication of all decisions taken under an international agreement was not obligatory, but the rules of origin related to the agreement with the EC had been published in May 1998. The system of cumulation had been implemented by all the countries at the same time. The representative of Hungary said that the rules had been officially published in April 1997 and entered into force 1 July 1997. That showed that traders had plenty of time to get officially acquainted with the new rules of origin. Further, information had also been given for more than a year through Chambers of Commerce and other means. His delegation thought his country had also acted in accordance with the Agreement on Rules of Origin. He reiterated that his delegation considered that this Committee was being advised of these preferential rules of origin for information purposes, given their importance, but that the legal aspects were to be dealt with in another Committee. The representative of Norway said the system of cumulation had been published in an Official Circular from the Directory of Customs and Excise, issued to customs and traders on 30 July, 2 and 31 December 1996. In addition, individual circulars were issued on 15 January for Bulgaria, 14 April for Lithuania, 5 May for Romania and 1 July for Hungary and Poland. With respect to information provided to governments, a common communication on behalf of the EC and the participating countries had been conveyed to the Market Access Division of the WTO Secretariat on 17 September 1998 with the request that it be distributed to Members. Norway also published in early 1997 a pamphlet on the pan-European system of cumulation. The system of cumulation had been implemented for all countries at the same date, namely 1 January 1997, except for Lithuania and Romania, with implementation taking place on 1 April 1997, and Hungary and Poland on 1 July 1997. The representative of Slovenia said that the relevant material had been officially published in the Official Gazette of the Republic of Slovenia on different dates, but that there had been an average of 30 days advanced notice between publication and implementation. At the informal level, there had been a wide distribution of information on the new rules through publications in trade journals, seminars and others. The date of implementation was 1 January 1997 for all countries, except for Lithuania, with implementation taking place on 1 March 1997, and Romania on 1 July 1997. He supported the comments made by the representative of Hungary and affirmed that legal aspects of that issue should be handled in another context and that this Committee was simply carrying out an information exercise. The representative of Romania said that the official publication of any international agreement or any law was an obligation laid down by the Constitution. The Protocols concerning the cumulation of origin had been published in the Official Romanian Gazette well in advance of their implementation, thus allowing the business community and all interested parties to be informed of the new system. However, he did not yet have the precise dates of the publication of the relevant material, but he would provide them later. The representative of Poland said that new system of cumulation entered into force in Poland on 1 July 1997 and that it had been published on Poland's Official Journal 104 dated 4 September 1997. Because of the delay in the publication, a Ministerial Communiqué that explained the operation of the system, including the amendments to the drawback

system, had been published in advance to the entry into force of the system and reprinted in the specialized press.

10. The representative of the United States noted that the notification made by the EC included a reference to the origin Protocols concerning Estonia, Latvia, Lithuania and European Economic Area (EEA). She asked the EC whether the introduction of the system of European cumulation of origin concerned any countries other than those which were identified in the notification. She also requested the EC to provide an explanation of the meaning of the reference in the notification to EEA, given that the notification also referred individually to Iceland, Norway and Liechtenstein. Further, she requested the EC, Bulgaria, the Czech Republic, Hungary, Iceland, Liechtenstein, Norway, Poland, Romania, the Slovak Republic, Slovenia and Switzerland to confirm that, to the extent that implementation of the protocols resulted in changes to preferential rules of origin or new preferential rules of origin, such changes had not been applied retroactively, in accordance with paragraph 3(e) of Annex II of the Agreement on Rules of Origin.

11. The representative of the European Communities stated that the introduction of the system of pan-European cumulation of origin concerned the agreements of the EC with Norway, Iceland, Switzerland, Poland, Hungary, Czech Republic, Slovak Republic, Bulgaria, Romania, Slovenia, Latvia, Lithuania and Estonia, as well as the EEA. The fact that some of the countries were not Members of the WTO did not prevent the EC from notifying all the agreements, without exception. The EEA and the bilateral agreements with Iceland, Norway and Switzerland were applied at the same time and for that reason the EC notified all of them. The representative of the European Communities, speaking also on behalf of the other parties to the cumulation system, stated that the implementation of the protocols obviously resulted in changes to the preferential rules. In some cases, there had been the need for a retro-active application due to the adoption procedure. Nevertheless, all the rules had been widely communicated before the final stages of adoption, for example, by means of a press release of the Commission, the information sent out by "Agence Europe" and inclusion in the Bulletin of the Commission. It had to be added that the text of the Protocols, before adoption, could be found in CELEX public database from the date of adoption by the Commission, that is, from 14 December 1995. He also pointed out that all modifications related to customs duties were immediately included in the EC TARIC.

12. Referring to the fact that she had heard in another Committee meeting the representative of Poland saying that the cumulation system applied to agreements that were not included in the notification, the representative of the United States requested the other participating countries of the cumulation system to indicate whether that was the case. The representative of Turkey recalled that, as stated in the meeting held on 23 September 1998 on the cumulation system, his country would join the system as from 1 January 1999. Referring again to the comment made by Poland, the representative of the United States reiterated her question on whether there were any other agreement using the cumulation system that was not included in the notification. The representative of Poland said that the cumulation system also applied to the agreements between Poland and respectively Lithuania, Latvia and Estonia, and that the latter two were not yet ratified. The representative of the United States inquired about the situation of Andorra and San Marino. The representative of the European Communities said that statements relating to each of these countries were included at the end of the Protocols. The EC had a customs union with each of these countries, so they had been integrated in the system of cumulation. Coverage included all products of San Marino and all but agricultural products of Andorra. He drew the attention of the Committee to the fact that those countries were not Members of the WTO and that their population together were less than 100,000 inhabitants.

13. The representative of the United States noted that the protocols stated that the cumulation might only be applied where the requirements for non-originating materials to obtain originating status were identical between the protocols. She then addressed three questions to the EC, Bulgaria,

the Czech Republic, Hungary, Iceland, Liechtenstein, Norway, Poland, Romania, the Slovak Republic, Slovenia and Switzerland. First, she wondered whether, in view of the notification, the situation was that the requirements for non-originating materials to obtain originating status - i.e., the preferential rules of origin were identical for all trade between some WTO Members, namely the EC, Bulgaria, the Czech Republic, Hungary, Iceland, Liechtenstein, Norway, Poland, Romania, the Slovak Republic, Slovenia, and Switzerland. Second, she requested those countries to identify the products, if any, in terms of Harmonized System (HS) heading or subheading, where the requirements for non-originating materials to obtain originating status for preferential trade between any of the Members just cited were not identical. Third, she asked for the identification of products, if any, in terms of HS heading or subheading, which were not covered under each specific individual preferential trade agreement subject to the cumulation system.

14. The representative of the European Communities, speaking also on behalf of the other parties to the cumulation system, drew the attention of the Committee to the fact that all countries applying the cumulation system applied exactly the same rules of origin and there were no exceptions to that. He said that the reply to the first question was yes; that was the major basic principle for the system to work without trade diversions or undue advantages to one country. Concerning the second question, he said that there were no such products. Regarding the third question, he said that all products covered by each of the agreements were covered by the system and that in any case, it was always to the economic operator to decide whether he wanted to use the system or not.

15. Reacting to the replies given, the representative of the United States stated that the questions she had just posed related to the differences in the rules of origin between the different agreements, given that the preferences in individual agreements did not necessarily match the preferences in other agreements. She wondered whether any of the parties to the system could explain how the system worked where the level of preferences was different. The representative of Switzerland that, if that were the case, there would be no effect on cumulation. The importation of an originating input for which the duties had not been completely dismantled would be subject to the payment of a duty, but the operator could still cumulate it as if it had been produced in his own country. The representative of the United States requested, and the parties to the system accepted, that the reply be supplied in a written form. The representative of Canada asked whether it was up to the Government to decide whether or not to apply the system of cumulation, and the representative of the European Communities replied in the negative, saying that it was up to the operator to make the decision. The representative of Australia said that if it was up to the economic operator to make the choice, presumably different results could be obtained for the same product depending on the choice of the operator. He wondered whether that could happen and if so how that was handled. Giving an example, the representative of Switzerland said that the duties for pharmaceutical products were zero and thus many operators would not bother to fulfil the cumulation rules. If the m.f.n. duties were very low, the operator might also take that same decision. The operator would chose to apply or not the cumulation system in light of the advantages it could get.

16. Making reference to the dates of publication in the Official Journal providing notice of implementation of the cumulation system to traders and governments, which were contained in the notification, the representative of the United States requested the EC to confirm that the degree of advance notice indicated therein was correct. She also requested information from Bulgaria, the Czech Republic, Hungary, Iceland, Liechtenstein, Norway, Poland, Romania, the Slovak Republic, Slovenia and Switzerland on the number of days of advance notice of the implementation of cumulation system that was provided, through publication, to traders and governments.

17. Confirming what had been said, the representative of the European Communities added that according to the legal procedures in force for the adoption of the decision, these were acts whose publication was not mandatory. Nevertheless, the EC and the Member States had widely disseminated the texts to the economic operators beforehand, as stated in paragraph 9. The

representative of Norway said that information on the finalization of negotiations on the system had been provided in a circular dated 2 December 1996, namely 29 days before its entry into force. Before that, several circulars had been issued giving an advance warning of the ongoing negotiations and the system that was about to come, and seminars held on the system. The representative of Slovenia said that formal advance notice differed from country to country, in the case of the EC it had been of 34 days, Lithuania 39 days and there had been cases of 14 and 8 days. In all cases, there had been sufficient advance notice of the implementation of the system of cumulation of origin. The representative of Romania said that there had been an advance notice of the implementation of the system but that he could not give the precise date; that information would be submitted later. The representative of Switzerland said that the publication of such information was not compulsory in the Swiss law, but that advance notice had been provided through various channels including publication by the Swiss customs administration, which had been widely distributed to customs offices and companies. Further, various associations of industries were informed of the system, and they had also informed their members. Chambers of commerce had also organized seminars explaining the new system.

18. Addressing her question to the EC, Bulgaria, the Czech Republic, Hungary, Iceland, Liechtenstein, Norway, Poland, Romania, the Slovak Republic, Slovenia and Switzerland, the representative of the United States requested these countries to confirm that each of them was not a party to a single Agreement, involving all of the members to whom the question was directed, which was an Agreement in accordance with Annex II, Paragraph 2 of the Agreement on Rules of Origin - i.e., a "contractual or autonomous trade regime leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article 1 of GATT 1994". She also requested those countries to confirm that individually each country was not a party to a single Agreement under Article XXIV of GATT 1994 which involved all of the Members to whom the question was directed. If that was not the case, she requested that indication be given of the date of its notification. Responding to both questions, the representative of the European Communities, speaking also on behalf of the other parties to the cumulation system, confirmed that, with the exception of the EEA agreement which had already been notified but which did not include all of the countries, the countries referred to were not parties to any such single agreement.

19. The representative of the United States noted that, according to the notification, diagonal cumulation of origin allowed products of certain third countries to be considered as originating under various bilateral preferential trade agreements, even though such third countries were not parties to the individual agreements which provided for the preferential treatment. Addressing her question to the EC, Bulgaria, the Czech Republic, Hungary, Iceland, Liechtenstein, Norway, Poland, Romania, the Slovak Republic, Slovenia and Switzerland, she asked whether it was true that, under the cumulation system, inputs that originated in certain third countries that were not a party to individual preferential trade Agreements but were participants in the cumulation system would be treated differently than inputs that originate in other third countries that were also not a party to such individual preferential trade Agreements, but were also not participating in the cumulation system, and that an explanation be given if that was not the case. Further, she asked whether it was true that for example, semi-finished auto parts originating in any country participating in the cumulation system, which were further processed or assembled in any other participating country, could always be considered as originating auto parts by countries in the cumulation system, and that such auto parts could be traded subject to preferential treatment between any of the countries involved in the system, even though there was no single individual preferential trade agreement among all the participants of the cumulation system that provided for such preferential treatment. She asked that an explanation be provided if that understanding was not correct.

20. The representative of the European Communities, speaking also on behalf of the other parties to the cumulation system, said that the first question was not completely clear. If the question was supposed to raise the matter of Andorra and San Marino, these two countries were clearly identified in

each one of the Protocols, they were in customs unions with the EC and that as a consequence they applied the same preferences as the EC. They were not Members of the WTO; further, it had to be pointed out that their combined population accounted for less than 100,000 inhabitants. He responded in the negative to the second question, saying that the products would be considered as originating only if a bilateral preferential trade agreement between the exporting and the importing country existed. For example, if parts of a car were produced in Bulgaria and the production fulfilled the origin rules, then, if those car parts were exported to the EC, they would be treated as originating and could, as such, be assembled into a motor vehicle. If the same parts were exported to Latvia, they would be treated as non-originating as no agreement existed between Bulgaria and Latvia.

21. The representative of the United States said that the first question did not concern Andorra and San Marino, and she provided an example to illustrate the issue. The EC and Poland had a FTA and neither Slovenia nor the US were parties to it. She wondered whether the inputs of Slovenia, which was a participant in the system of cumulation, and those of the US, which did not participate in such system, would be treated differently. Replying to that, the representative of Switzerland said that inputs from the US were third-country inputs and would pay the duty when going into the EC. Slovenia was not a party to the agreement but it had FTAs both with the EC and Poland; therefore, through cumulation, Slovenian input could be included into the ratio of originating inputs. The representative of the European Communities said that Members should leave the meeting with clear ideas. Until the end of 1996, each agreement was self-limited, i.e. the EC had agreements with Switzerland and Poland, which in turn had an agreement with Switzerland. However, the goods obtained through the bilateral cumulation under the EC/Switzerland agreement were considered as third-country goods when exported to Poland. The pan-European cumulation system dismantled all those barriers, so that, for example, goods obtained in the framework of Norway-Lithuania bilateral cumulation would be considered as originating by all the countries in the area. A multiple agreement had not been concluded, what was in force was a series of bilateral agreements. Whenever a modification was to be made, it had to be made to all of them and at the same time. That implied a lot of work from all the participants but at the same time the result was that a good originating in the framework of any kind of relation within the zone would be considered as originating by all the other countries of the area. For example, an input from Canada, US or Australia which was used Poland would be limited until 1996 to the preferential origin between the EC and Poland, while with the new system it would be considered as originating within the zone. That was also the objective that the EC wished to obtain in the context of EC relations with the Mediterranean basin countries.

22. Referring to the example proposed by the US, the representative of the Korea wondered what would be the situation if Slovenia was replaced with Latvia. The representative of Switzerland said that Latvia inputs into the EC would be treated for cumulation because there was a FTA between the EC and Latvia. If Poland imported from Latvia, then, given that there was not yet a FTA between the two, cumulation could not yet apply. However, that situation would only last during a transition period because such FTA was going to be ratified and enter into force in the near future. The representative of Norway added that the system was not yet fully operating as some agreements were still lacking, but they were under way. In the trade between Latvia and the EC, cumulation was applied. If the final product was going to be exported to Poland, then, provided it had EC origin, most probably it would receive preferential treatment into Poland. If the product had Latvian origin, most certainly it would not be liable to preferential treatment into Poland, because there was no agreement between the two. The representative of Australia requested confirmation on his understanding according to which in the case involving Poland, Latvia and EC, cumulation, which produced tariff preferences, did not operate between Poland and Latvia because there was no agreement between the two. He also presumed that the good originating in Poland and traded under the terms of the agreement with the EC, i.e. deemed to have EC origin, would then attract preferences if it went to Latvia. His delegation wanted to be sure that, notwithstanding the fact that both countries participated in the cumulation system, cumulation did not operate between the two countries if there was no preferential agreement between them. The representative of Norway reaffirmed that cumulation was

not possible between Poland and Latvia because there was no agreement between the two. If there was cumulation in trade between the EC and Poland, and cumulation with Latvian products, that was possible because there was an agreement between the EC and Latvia. If the product exported from the EC to Poland had EC origin, there would certainly be a preference into Poland. However, if the product had Latvian origin, the customs authorities of Poland would most probably not give a preference to it because there was no agreement between Poland and Latvia.

23. The Chairman called the attention of Members to the fact that, while it was very clear that the system was not yet fully operational, the purpose of the meeting was to clarify the philosophy of the system and how in practice it would work. From the examples presented, it seemed very clear to him that in order to have cumulation, bilateral preferential agreements between the countries involved were needed. While the Committee could look at various examples, the important was to be clear on how the system would function once it would be fully operational.

24. The representative of the United States asked how products from the Faroe Islands, and in particular agricultural products, were treated in the system. Further, she noted that the EC had signed but not yet ratified a number of FTAs with the Mediterranean countries, including one with Morocco which was not yet in force. In light of that, and also of the fact that France continued to have a waiver under Article IX of the WTO to govern its historical preferences with Morocco, she wondered how the products of Morocco imported into the EC were treated under the system. The representative of the European Communities said that the EC and the Faroe Islands had an FTA, but that the Faroe Islands did not participate in the cumulation system. The cooperation agreement concluded in the 1970s with Morocco still applied, and once concluded, the FTA being negotiated would put an end to the historical preferences that concerned certain tomatoes, beans and other agricultural products. The representative of Norway said that his country also had a bilateral agreement with the Faroe Islands but that the Faroe Islands did not participate in the cumulation system. The States of the European Free Trade Association (EFTA) had also signed a FTA with Morocco, but the agreement had not yet entered into force.

25. The representative of the United States stated that, under the terms of certain product-specific preferential rules of origin set forth as an Annex to the protocols, for example Annex II of the protocol for the Norway/EC Agreement, certain non-originating materials could not be used in the manufacture of a product if that product was to achieve originating status and preferential treatment. However, in Article 6.2 of the Norway/EC Protocol, an article which was presumed to exist in every notified protocol, it was stated that non-originating materials might nevertheless be used, provided that their total value did not exceed 10 per cent of the ex-works price of the final product. She asked the EC, Bulgaria, the Czech Republic, Hungary, Iceland, Liechtenstein, Norway, Poland, Romania, the Slovak Republic, Slovenia and Switzerland whether it was correct to state that such a provision appeared to allow for the use of a certain de minimis amount of non-originating content as a general exception to whatever prohibition or limitation that might exist in a product-specific rule of origin with regard to the use of non-originating material. If that was not correct, she requested that an explanation be provided. She then asked whether the 10 percent ceiling of the de minimis rule, which allowed the use of a certain level of non-originating materials in the production of an originating product, applied to all third countries that were not participants to the EC/Norway Agreement, or only to third countries except the participants in the cumulation system. Further, she asked whether, for example under the EC/Norway Agreement, the value of materials produced in third countries not parties to the Agreement could exceed the 10 percent de minimis without rendering the final product non-originating if those materials originated in a third country that was a participant in the cumulation system.

26. Replying to the first question, the representative of the European Communities, speaking also on behalf of the other parties to the cumulation system, said the understanding was correct and that, for comparison, the de minimis ceiling in the North American Free Trade Agreement was of 7 per

cent, and 10 per cent in the Canada-Israel agreement and in the Central American Common Market. He then provided an example of how that worked to indicate the purpose of such rule. The rule applying up to 1996 for canned fish was that of totally obtained product, that is, basically the fish had to be caught by vessels belonging to nationals of the area. The new system allowed a producer to use in its preparation, for example, in a soup, a fish that could only be caught in the China sea and retain the originating status provided that non-originating fish did not account for more than 10 per cent. Replying in the affirmative to the second question, he said that the 10 per cent ceiling applied to all products that could not be considered as originating in the framework of the EC-Norway Agreement. That meant that the rule applied to products originating in all countries except those participating in the system which had a similar agreement with the EC and Norway. Replying to the third question, he said that the products originating in other countries with which Norway had an agreement in the framework of the pan-European cumulation were considered as originating in Norway and in that case, the 10 per cent ceiling was not applicable. The ceiling referred to products imported from outside the zone. Complementing that reply, the representative of Norway said that products originating from other countries within the zone were not counted when using the 10 percent ceiling, and that all of the ceiling was available for countries outside the zone. That was not the case previously, and that new situation was in favour of third countries. The representative of Switzerland said that the 10 per cent could be used on each input, provided they were bought from different suppliers. Replying to a question posed by the representative of the United States on whether that meant that different shipments were required, that is whether different packages from different suppliers coming in the same shipment would be considered as one, the representative of Switzerland said that the ceiling applied to originating goods and how they were classified in terms of HS tariff.

27. The representative of the Korea requested that the given example be modified, so to have the agreement between EC and Poland and products from Lithuania. He wondered whether the Lithuanian products would be considered as third-country inputs since there was no agreement between Poland and Lithuania. The representative of Norway said that presumably there would be no possibility for cumulation and the 10 per cent tolerance rule would be applied. If however the Lithuanian products were exported to the EC as originating products, the EC could cumulate them and export the final product to Poland; the whole of the 10 per cent tolerance rule would be open to countries outside the zone. The representative of the United States said that it was his understanding that, in the case of a product manufactured in the EC having a 10 per cent input from Latvia and a 10 per cent input from the US and ultimately exported to the Czech Republic, the 10 per cent from the US would qualify under the de minimis rule. However, if 10 per cent of the inputs came from the US and 10 per cent from Japan, neither the inputs from Japan nor those from the US would qualify. Essentially, this meant that the product coming from Latvia had a more favourable treatment than that of Japan, even though Latvia was not a party to the EC-Czech Republic agreement. He wondered whether that was correct. The representative of Switzerland responded by saying that, while it was correct to say that in the case of inputs from Latvia and the US, the inputs from the US would be used under the de minimis, in the case of inputs from the US and Japan the producer could use either the US or the Japanese input under the de minimis, depending on how the rule was made. That worked in the same way as in the NAFTA and in the Canada-Israel agreements. The representative of Norway said that the tolerance rule existed before the pan-European system of cumulation, but that after the new system such rules were extended to all countries of Central and Eastern Europe. The representative of the European Communities said that he appreciated the efforts made by delegates to understand the system insofar as it concerned Estonia, Latvia and Lithuania, but noted that it concerned a temporary situation. What was important was to assess the objectives of the agreements and what had already been achieved.

28. The representative of the United States said that she would start posing questions based on different hypothetical scenarios. In the first such scenario, an automobile engine was assembled in Norway and exported to the EC and, in order for it to receive preferential tariff treatment under the EC/Norway Agreement, the value of non-originating inputs might not exceed 40 per cent of the

ex-works price of the automobile engine. Also, the preferential tariff rate applicable to the relevant automobile engine and to inputs under each of the individual EFTA preferential trade agreements with the Czech Republic, Hungary, Poland, Romania, Slovak Republic and Slovenia was not at zero. Further, the engine would meet the applicable value content requirement only if a particular steel forging for the engine originated - i.e. was forged - in either the EU or Norway. If the steel forging for the engine was non-originating, the value of non-originating inputs for the engine would exceed 40 per cent of the ex-works price paid for the engine. She said that it was her understanding that, prior to implementation of the system of cumulation, if the steel forging for the automobile engine assembled in Norway had been forged in Poland or the US or any other Member not a party to the Norway-EC Agreement, the content requirement for the engine would not have been met because the steel forging would not have originated in either Norway or the EC. Further, the engine would not have been eligible for a preferential tariff treatment when exported from Norway to the EU. She then requested EC and Norway to confirm such understanding, or otherwise explain. Regarding the situation after the implementation of the system of cumulation, she requested those countries to confirm that if the steel forging for the engine assembled in Norway was forged in Poland, or any other participant in the cumulation system, the content requirement for the engine would be met, because the steel forging originating in Poland would be deemed to originate in either Norway or the EC, and the engine would be eligible for a preferential tariff treatment when exported from Norway to the EU. If that understanding could not be confirmed, she requested that an explanation be given.

29. The representative of the European Communities, speaking also on behalf of Norway congratulated the US for the example given, and said it referred to Note 3.1 of the Annex I of the Protocol on pan-European cumulation, which gave as an example "an engine of heading No.8407, for which the rule states that the value of the non-originating materials which may be incorporated may not exceed 40 per cent of the ex-works price, made from "other alloy steel roughly shaped by forging" of heading No.ex 7224. If this forging had been forged in the State Party concerned from a non-originating ingot, it has already acquired originating status by virtue of the rule for heading No.ex 7224 in the list. The forging can then count as originating in the value calculation for the engine regardless of whether it was produced in the same factory or in another factory in the State Party concerned. The value of the non-originating ingot is thus not taken into account when adding up the value of the non-originating materials used". That meant that if in the manufacture of any product an intermediate product was given originating status, then the whole product should be considered as originating. For example, the rules concerning TVs provided that, to be originating, added value within the area should be 60 per cent. That rule was also applicable to the manufacture of cathodic tubes. If in the manufacture of the tube there was a third-country input which amounted for less than 40 per cent of its value-added, then the whole tube would be originating. The TV set would make use of that tube, and once again a maxim of 40 per cent of the final value could be non-originating. At the end, all the non-originating inputs would far exceed 40 per cent. He summarized saying that Note 3.1 of Annex I allowed for much more third-parties inputs than it would initially appear. Concerning the specific questions posed by the US, he replied in the affirmative to both of them.

30. The representative of the United States referred to a second scenario in which automobile engines were assembled in Norway and exported to the EC, with the assembly method resulting in the engine meeting the value content requirement for preferential tariff treatment, even though the steel forging used as an input for the engine did not originate in either Norway or the EC. She then requested both these countries to confirm that her understandings were true, or explain otherwise. First, it was her understanding that, that prior to implementation of cumulation and upon export of the automobile engine from Norway to the EC, drawback would have been available for a refund of the duties paid on the steel forging used as an input for the engine if it had been imported into Norway as originating in the US or any other country that was not a party to the EC/Norway Agreement. Second, she also understood that after implementation of cumulation, drawback would not be available for a refund of the duties paid on the steel forging used as an input for the engine if it had

been imported into Norway as originating in the US or any other country that was not a party to the EC/Norway Agreement, unless such country was a participant in the cumulation system. In other words, she wondered whether it was correct to say that upon export of the engine from Norway to the EC, drawback was available for a refund of the duties paid on the steel forging only if it was imported into Norway as an originating product of any other participant in the cumulation system. Third, she asked the representatives of Bulgaria, Czech Republic, Hungary, Iceland, Liechtenstein, Poland, Romania, Slovak Republic, Slovenia and Switzerland whether the understandings just presented by her, as well as those contained in paragraph 28, remained true if their respective countries were replaced for Norway in the scenarios described in those paragraphs. Addressing a fourth question to the EC and Norway, she asked whether under each of the respective individual preferential agreements for which protocols have been submitted by participants of the cumulation system, the distinction in drawback treatment of inputs, based on whether inputs had as their origin one of participants in the cumulation system, also applied to inputs used in "preparations" classified in HS Chapters 16 through 21. Fifth, she requested these countries to identify the products, if any, in terms of HS heading or subheading, within HS Chapters 16 through 21, for which there was no differentiation of drawback treatment between goods originating in participants in the cumulation system and other Members.

31. The representative of the European Communities, speaking also on behalf of Norway replied in the negative to the first question, saying that the "no-drawback" rule had always been in force in the EC-Norway agreement. That meant that since 1973 all third-country materials covered by the agreement and used to obtain an originating product had to be subject to the customs duties in the country where the origin was obtained and that those duties could not be refunded on exportation. Regarding the second question, he said that the "no-drawback" rule was applicable to all third-country materials used to obtain an originating product. As already mentioned, the products originating from one of the other countries with which the exporting country had an agreement were considered as originating. As for the third question, the representative of the European Communities, speaking also on behalf of the other parties to the cumulation system, said that the understandings referred to in paragraph 28, as well as the second understanding presented in paragraph 30, remained correct. The first understanding spelled out in that same paragraph 30 remained correct in the framework of the Agreements with Iceland and Switzerland and in the framework of the Agreements with Bulgaria, the Czech Republic, Hungary, Poland, Romania, the Slovak Republic and Slovenia. As for the fourth and fifth questions, the representative of the European Communities, speaking also on behalf of Norway replied that, as already stated, the same rules were applicable to all products covered by the existing agreements and that, from the point of view of the cumulation system, no differentiation existed. As far as it concerned the product coverage of each one of the bilateral agreements, that was indicated in each one of the agreements and the preferential rates applied could be easily found in the each national TARIC. He repeated that the "no-drawback" rule applied to all the products imported from outside the zone.

32. Given that there was no agreement on what the term "coverage" meant, the representative of the United States requested the EC representative to indicate whether the answer to her fourth question was yes or no. Reaffirming that that day's discussion did not concern coverage of the agreements, the representative of the European Communities said that the rules were identical for all products covered by the agreements and that it was up to the economic operator to decide whether it was going to apply the cumulation rules or not. The "no-drawback" rule applied to all the products covered by the agreement and there were no exceptions for agricultural products covered by Chapters 16 to 21. The representative of the United States asked whether it was not possible to respond to her question simply in the affirmative or in the negative because the products in Chapters 16-21 were treated differently by different agreements. The representative of the European Communities said that, with respect to rules of origin, all products were dealt with in the same manner in all agreements.

33. The representative of the United States proposed a case in which durum wheat was exported from Hungary to Poland to make pasta subject to a tariff rate. He asked whether there would be a duty drawback for the input from Hungary into Poland if the product was re-exported to Italy duty-free. The representative of the European Communities said that drawback was applicable only to third-country inputs. In a case where flour was imported from Canada into Hungary to make pasta, which would then be exported to Italy, a Hungarian operator wishing to make use of the cumulation system would have to pay the duty for the Canadian flour before a certificate of origin providing for the preferential treatment of the pasta into Italy could be issued. That was identical for all the cumulation system. In reply to a clarification requested by the Chairman, the representative of the European Communities responded that there would be no drawback when the pasta was exported to Italy, as inputs from third countries had to pay a duty somewhere in the zone. Referring back to his example, the representative of the United States asked whether there would be a duty drawback on the duty paid to the Polish authorities. The representative of the European Communities responded that the no-drawback rule was applicable in the framework of the pan-European system; flour imported from Canada into Hungary and thereon exported to the EC was not an originating product so it was most likely that the flour imported would not be liable for a tariff in Hungary but in the EC. The representative of Norway said that if the flour from Hungary was sent to Poland, where pasta was made and then exported to the EC, the first question was whether that Hungarian flour was covered by the CEFTA; if that was the case, then there was the possibility for preferential treatment because it was an originating product. In the export of the pasta from Poland to the EC, the question was whether the pasta was originating; if that was the case, preferential treatment would be involved if pasta was covered by the EC-Poland agreement. If no duty had been paid when the flour entered Poland, no drawback would be refunded but if a preferential duty had been paid, he was of the opinion that drawback would be paid, because it was an originating product in the framework of Central European Free Trade Agreement and because the no drawback rule related to third-country inputs. Concerning the example given by the EC, the representative of Hungary said that the Hungarian operator had the choice to either opt for a preferential export to the EC and thus not make use of drawback possibilities or to go for m.f.n. treatment and have the possibility to use the drawback system. However, in order to provide for a smooth transition, there was an exemption for these rules until January 2001.

34. The representative of the European Communities proposed a case in which the if parts of a TV set were imported from Japan into Hungary, where those third-country inputs would pay a duty. A Hungarian producer would manufacture TV sets and export them to the EC. If he wanted these exports to the benefit from preferential treatment, he would have to respect the rule of a maximum of 40 per cent of third-country inputs and give up the possibility for having drawback on duties paid for these inputs. However, if he preferred not to use the pan-European system he would not pay the duties on the Japanese parts but he would pay duties when the TV sets were sent to the EC. The representative of Australia sought confirmation that his understanding on what had been said by Norway was correct, that is, in the case of flour exported from Hungary to Poland and, after transformation, exported to Italy, drawback could take place if there was a rate of duty, though preferential, on the imports of Hungarian flour to Poland. He also asked what would happen if the m.f.n. rate applied because flour was not covered in terms of duty reductions, irrespective of whether it was actually mentioned in the agreement. The representative of Norway drew the attention of delegates to Article 15 of the Protocol, where paragraph 1 clearly stated that "non-originating materials used in the manufacture of products ... shall not be subject ... to drawback". In other words, no drawback was possible on non-originating material used and drawback was allowed if originating materials were used. That was the scenario he used before, where drawback could be paid with respect to preferential duty paid on the originating flour used. Drawback could however not take place if a third-country input was used and not if the m.f.n. rate was used. The representative of the United States said that his understanding was that the Protocols to most of the agreements concerned used a positive listing so that when an item was not included therein, it was not eligible for preferential treatment. In light of that, and given the comment just made regarding the m.f.n. rate, he

asked whether the duty drawback would apply for products not inscribed in the Protocols' positive lists. The representative of Canada asked whether only Article 15 was relevant, as the only distinction made there was whether the product was or not a non-originating material. Her understanding was that for originating materials, drawback was allowed whether or not there was a preference and whether or not m.f.n. rate was paid.

35. The Chairman said that his understanding was that Article 15 said that non-originating materials would not qualify for drawback. Thus, in the case concerning Canadian flour drawback would not be possible, while drawback would apply in the case of Hungarian flour if duties had been paid. The representative of Norway confirmed that such understanding was correct. He hoped that if the cumulation system would be in the agenda of another meeting, questions could be submitted in written form in advance, as it was difficult to tackle on the spot numerous additional questions. He also drew the attention of delegates to paragraph 5 of Article 15, where it was said that the no drawback provisions "shall apply only in respect of materials which are of the kind to which the Agreement applies". That meant that if the actual agreement did not cover a particular product, the m.f.n. duty would apply and drawback could then be granted to that product. The representative of the United States asked whether, putting aside the question of whether bilateral agricultural agreements were or not covered by the respective FTAs, all products included in the bilateral agricultural agreements were traded by better than m.f.n. rates if they met the rules of origin. In other words, whether it was true that there were no products in the bilateral agreements that would not have some sort type of preference attached to them. The representative of Switzerland requested that the question be put in writing. The Chairman agreed with that, noting that the Committee had already devoted some time to that discussion but that some issues remained yet to be clarified. The Committee would look forward for receiving the written replies promised by the parties to the system, and also any additional questions that Members might have following the debate. The representative of the United States noted that, before tabling any additional question, she would like to receive first the written replies of the parties to the system to the questions posed by the various delegations and the Secretariat's minutes of that day's meeting. The Chairman agreed with that approach.

36. The representative of the United States noted that the protocols published in the Official Journal and submitted by the EC in the joint notification addressed the treatment of sets, as defined in General Rule 3 of the Harmonized System. For example, Article 10 of the amendment of the protocol to the EC/Norway Agreement stated that when a set was composed of originating and non-originating products, the set as a whole should be regarded as originating, provided that the value of the non-originating products did not exceed 15 per cent of the ex-works price of the set. Addressing her question to the EC, Bulgaria, the Czech Republic, Hungary, Iceland, Liechtenstein, Norway, Poland, Romania, the Slovak Republic, Slovenia and Switzerland, she asked if for purposes of determining whether a set was originating and thus subject to preferential tariff treatment, the value of products that originated in participants in the cumulation system could exceed 15 per cent. She wondered if it was true that preferential treatment would be accorded to a set that was exported from the EC to Norway which included products of which 55 per cent of the value originated in the EC and 45 per cent originated in the Czech Republic. If that understanding could not be confirmed, she requested that an explanation be given.

37. The representative of the European Communities, speaking also on behalf of the other parties to the cumulation system, said that as already indicated, the products originating in the other countries with which Norway had an agreement were considered as originating in Norway. In that case, if, for instance, the set was composed of 50 per cent of Czech originating materials, 35 per cent of EC originating materials and 15 per cent of US originating materials, it could be exported from the EC to Norway as a Czech originating product.

38. The representative of the United States noted that, according to the notification, the cumulation system appeared to allow for production operations to take place in a limited number of

third countries that were not parties to the particular trade agreement under which originating status and preferential treatment were being conferred. She referred again to the protocol to the EC/Norway Agreement, in which Article 12 paragraph 1 on the Principle of Territoriality stated that achieving originating status had to be fulfilled "without interruption" in the EC or Norway, except as provided in Article 4. She then provided a third scenario, in which an automobile engine and its parts were manufactured in Norway and the EC. It was assumed that, in order for the automobile engine to receive preferential tariff treatment when exported from Norway to the EC under the EC/Norway Agreement, the value of non-originating inputs might not exceed 40 percent of the ex works price of the engine. However, before the engine was exported from Norway to the EC, most of the assembly and testing of the engine took place in Poland. The engine was then returned to Norway for some final assembly, underwent commercial markings and was shipped as a final product to the EC. The value-added by the operation in Poland was 35 percent of the ex works price, which did not exceed the value of the materials used in the production of the automobile engine, which therefore originated in Norway and the EC for purposes of the EC/Norway Agreement. Assuming that provisions similar to Articles 12 and 4 existed in each of the relevant protocols included in the notification, she requested that the EC, Bulgaria, the Czech Republic, Hungary, Iceland, Liechtenstein, Norway, Poland, Romania, the Slovak Republic, Slovenia and Switzerland confirm that her understandings based on that scenario were true, or explain otherwise. First, she asked whether it was true that the operations performed in Poland on the engine would not be viewed as violating the normal requirement that originating status had to be achieved "without interruption" in the EC or Norway. Second, she asked whether it was true that the final engine assembled in Poland would be "originating" and receive preferential tariff treatment under the Agreement between the EC and Norway. Third, she asked whether it was true that if the operations described as taking place in Poland would have taken place in the US or another country not party to the EC/Norway Agreement, but not a participant in the cumulation system, the engine would be non-originating and therefore ineligible for preferential tariff treatment under the Agreement between the EC and Norway. Fourth, she asked whether it was true that the exception to the principle of territoriality provided to participants in the cumulation system was in place and operational for all Members that had submitted the notification, for each of their respective individual agreements with other participants in the cumulation system. She also requested that products not covered by the exception to the principle of territoriality, if any, be indicated in terms of HS heading or subheading.

39. The representative of the European Communities, speaking also on behalf of the other parties to the cumulation system, said that it had to be kept in mind that all the 30 countries involved in the pan-European cumulation were united in a unique system, so that the assumption made that Polish materials would be considered non-originating was not correct. He also said that the answers assumed that the examples referred only to a situation after the implementation of the system. Concerning the first question, he said that the operation performed in Poland would be covered by the EFTA-Poland agreement and therefore they were considered as covered by Article 12.1. Replying to the second question, he said that the final engine assembled in Poland would be originating and receive preferential treatment. Depending on whether the highest value added was Norwegian or Polish, the product would be considered originating in Norway or Poland and would be granted, at importation into the EC, the preferential treatment foreseen in the EC-Norway or EC-Poland agreement. He replied in the affirmative to third question. As for the fourth question, he said that the exception to the principle of territoriality existed at that time in the framework of the EEA, the EC-Norway, the EC-Iceland and the EC-Switzerland agreements and that it would be introduced in the agreements with the other countries on 1 January 1999. The products excluded through that exception were the textile products of Chapter XI of the HS.

40. Referring again to the Protocol for the EC/Norway Agreement, the representative of the United States noted that Article 13, paragraph 1 on Direct Transport stated that preferential treatment provided for under the Agreement between Norway and the EC applied "only to products, satisfying the requirements of this Protocol, which are transported directly between the Community and Norway

or through the territories of the other countries referred to in Article 4." She proposed a fourth scenario in which an automobile engine and its inputs were the product of manufacturing operations in Norway and the EC. It was assumed that in order for the automobile engine to receive preferential tariff treatment under the EC/Norway Agreement, the value of non-originating inputs might not exceed 40 per cent of the ex works price of the engine. As a last step in the production operations, the product was exported from the EC to Poland, where final assembly and testing of the engine took place, as well as commercial marking and final packing. The value-added by the operation in Poland was 35 per cent of the ex works price, which did not exceed the value of the materials used in the production of the engine, which originated in Norway and the EC. The engine was then shipped from Poland to Norway. She wondered whether it was true that the automobile engine exported to Norway from Poland would receive preferential treatment under the Agreement between Norway and the EC, by virtue of the exceptions with regard to direct transport and principle of territoriality that were provided under cumulation to Poland and other countries referred to in Article 4 of the Protocol. If that understanding was not correct, she requested that an explanation be given.

41. The representative of the European Communities said that the example given could not be covered by the direct transport rule since a last step of production was done in Poland. In that situation, Article 4 would be applied. He then provided an example to indicate what was intended by the direct transport rules. If an engine originating in the EC was exported to Romania through the territory of Ukraine, either the situation was foreseen from the beginning of the transportation of the engine and thus the single transport document as well as the proof of origin would already have foreseen Romania as the country of destination, or, the situation was not foreseen at the start of the transport but the engine would have been under customs control in Ukraine, in which case Article 13.2 provided for the use of a non-manipulation certificate issued by the customs authority of Ukraine or any other substantiating documents to prove that the engine was the same that left the EC. The direct transport rule was very well known all around the world, as it was applied in the US-Caribbean Basin Initiative, the US-Israel FTA, Canada-Israel FTA, ASEAN FTA, Cartagena Agreement and in the GSP schemes of the US, Japan, Canada and New Zealand. He stressed the fact the rule simply allowed products to go from one party to that the other within the pan-European zone while ensuring that the products crossing different countries remained the same all the time. If that included crossing a third country, a non-manipulation certificate issued from that country's authorities was needed, indicating that the goods arriving and leaving the country were exactly the same. The direct transport rule was also widely used in the GSP scheme of the EC. For example, if a preferential treatment was applied to goods coming from the Philippines which had been unloaded and reloaded somewhere during the transportation, a certificate was issued by the authorities of the country where such operation took place indicating that the goods had not been manipulated.

42. The Chairman said that the Committee had had a fruitful discussion on the pan-European system of cumulation of origin at that meeting. The Committee had been able to progress somewhat in examining the issue, and that was due to a large extent to the fact that some delegations had posed written questions in advance of the meeting. That was an useful lesson that could be used in other meetings. During the meeting, the questions posed by the US had been addressed, and he thought that, to a large extent, they had received replies. The parties to the system had indicated that the written replies would be submitted in the near future. He requested that the replies reach the Secretariat by 11 December if possible, and that they address the written questions posed by the delegations of the US, Japan and Korea and also the questions posed orally during the meeting. The Secretariat would do its best to issue the minutes of the meeting between 11 December and early January. He set the deadline of 11 January 1999 for submitting new written questions and indicated that replies to those additional questions, if any, should reach the Secretariat by 31 January 1999. The next meeting on the issue would be planned for mid-February.

43. The representative of the United States requested that the date of the next meeting be scheduled in coordination with the Committee on Rules of Origin, so that their experts on rules of origin could attend both meetings.

44. The Committee took note of the comments made.
