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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject : Council Decision on the signature and provisional application of the
Interim Partnership Agreement between the European Community, of the
one part, and the Pacific States, of the other part

PROTOCOL I
ON MUTUAL ADMINISTRATIVE ASSISTANCE
IN CUSTOMS MATTERS

ARTICLE 1

Definitions

For the purposes of this Protocol:

- (a) "customs legislation" means any legal or regulatory provisions applicable in the territories of the EC Party and Pacific States, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;
- (b) "applicant authority" means a competent administrative authority which has been designated by a Pacific State or the EC Party for this purpose and which makes a request for assistance on the basis of this Protocol;
- (c) "requested authority" means a competent administrative authority which has been designated by a Party or a Pacific State for this purpose and which receives a request for assistance on the basis of this Protocol;

- (d) "personal data" means all information relating to an identified or identifiable individual;
- (e) "operation in breach of customs legislation" means any violation or attempted violation of customs legislation.

ARTICLE 2

Scope

1. The Parties and the Pacific States shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of the customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.

2. Assistance in customs matters, as provided for in this Protocol, shall apply to any administrative authority of the Parties and the Pacific States and which is competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.
3. Assistance to recover duties, taxes or fines is not covered by this Protocol.

ARTICLE 3

Assistance on request

1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.

2. At the request of the applicant authority, the requested authority shall inform it:
 - (a) whether goods exported from the territory of the Pacific States or the EC Party have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;
 - (b) whether goods imported into the territory of the Pacific States or the EC Party have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.

3. At the request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:
 - (a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
 - (b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation;

- (c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation; and
- (d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

ARTICLE 4

Spontaneous assistance

The Parties and the Pacific States shall assist each other, on their own initiative and in accordance with their legal or regulatory provisions, if they consider that to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:

- activities which are or appear to be operations in breach of customs legislation and which may be of interest to the other Party or a Pacific State,

- new means or methods employed in carrying out operations in breach of customs legislation,
- goods known to be subject to operations in breach of customs legislation,
- natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation, and
- means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

ARTICLE 5

Delivery and notification

At the request of the applicant authority, the requested authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order:

- to deliver any documents, or

– to notify any decisions,

emanating from the applicant authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.

Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority.

ARTICLE 6

Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.

2. Requests pursuant to paragraph 1 shall include the following information:

- (a) the applicant authority;
- (b) the measure requested;
- (c) the object of and the reason for the request;
- (d) the legal or regulatory provisions and other legal elements involved;
- (e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations; and
- (f) a summary of the relevant facts and of the enquiries already carried out.

3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.

4. If a request does not meet the formal requirements set out above, its correction or completion may be requested. In the meantime precautionary measures may be ordered.

ARTICLE 7

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party or Pacific State, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the requested authority when the latter cannot act on its own.

2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party or Pacific State.

3. Duly authorised officials of a Party or Pacific State may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present in the offices of the requested authority or any other concerned authority in accordance with paragraph 1 to obtain information relating to activities that are or may be operations in breach of customs legislation which the applicant authority needs for the purposes of this Protocol.

4. Duly authorised officials of a Party or Pacific State involved may, with the Agreement of the other Party or Pacific State involved and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

ARTICLE 8

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents, certified copies or other items.

2. This information may be in computerised form.
3. Original documents shall be transmitted only upon request in cases where certified copies would be insufficient. These originals shall be returned at the earliest opportunity.

ARTICLE 9

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Pacific State or the EC Party is of the opinion that assistance under this Protocol would:
 - (a) be likely to prejudice the sovereignty of a Pacific State or that of a Member State of the European Community which has been requested to provide assistance under this Protocol; or
 - (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10(2); or

(c) violate an industrial, commercial or professional secret.

2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

4. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons thereof must be communicated to the applicant authority without delay.

ARTICLE 10

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Parties or the Pacific States. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party or the Pacific State that received it and the corresponding provisions applying to the European Community authorities.
2. Personal data may be exchanged only where the Party or the Pacific State which may receive them undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party or the Pacific State that may supply them. To that end, parties shall communicate to each other information on their applicable rules, including, where appropriate, legal provisions in force in the Member States of the European Community.

3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Protocol, is considered to be for the purposes of this Protocol. Therefore, the Parties or the Pacific States may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

4. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Parties or Pacific State wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

ARTICLE 11

Experts and witnesses

An official of a requested authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

ARTICLE 12

Assistance expenses

The Parties or Pacific States shall waive all claims against each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses of experts and witnesses, and those of interpreters and translators who are not public service employees.

ARTICLE 13

Implementation

1. The implementation of this Protocol shall be entrusted on the one hand to the customs authorities of the Pacific States and on the other hand to the competent services of the Commission of the European Communities and the customs authorities of the Member States as appropriate. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in particular in the field of data protection. They may recommend to the competent bodies amendments which they consider should be made to this Protocol.
2. The Parties and the Pacific States shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

ARTICLE 14

Other Agreements

1. Taking into account the respective competences of the European Community and the Member States, the provisions of this Protocol shall:
 - not affect the obligations of the Parties and the Pacific States under any other international agreement or convention,
 - be deemed complementary to Agreements on mutual assistance which have been or may be concluded between individual Member States of the European Community and Pacific States, and shall
 - not affect the European Community provisions governing the communication between the competent services of the Commission of the European Communities and the customs authorities of the Member States of the European Community of any information obtained under this Protocol which could be of interest to the European Community.
2. Notwithstanding the provisions of paragraph 1, the provisions of this Protocol shall take precedence over the provisions of any bilateral agreement on mutual assistance which has been or may be concluded between individual Member States of the European Community and any Pacific State in so far as the provisions of the latter are incompatible with those of this Protocol.
3. In respect of questions relating to the applicability of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the Trade Committee set up under Article 68 of this Agreement.

PROTOCOL II
CONCERNING THE DEFINITION OF THE CONCEPT OF
"ORIGINATING PRODUCTS" AND
METHODS OF ADMINISTRATIVE COOPERATION

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TITLE I

GENERAL PROVISIONS

ARTICLE 1

Definitions

For the purposes of this Protocol:

- (a) "manufacture" means any kind of working or processing including assembly or specific operations;
- (b) "material" means any ingredient, raw material, component or part, etc., used in the manufacture of the product;

- (c) "product" means the product being manufactured, even if it is intended for later use in another manufacturing operation;
- (d) "goods" means both materials and products;
- (e) "customs value" means the value as determined in accordance with the 1994 Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (WTO Agreement on customs valuation);
- (f) "ex-works price" means the price paid for the product ex-works to the manufacturer in the European Community or in a Pacific State in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes paid which are, or may be, repaid when the product obtained is exported;
- (g) "value of materials" means the customs value at the time of importation of the non-originating materials used, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the European Community or in a Pacific State;

- (h) "value of originating materials" means the value of such materials as defined in subparagraph (g) applied *mutatis mutandis*;
- (i) "value added" shall be taken to be the ex-works price minus the customs value of each of the materials incorporated which originate in the other countries or territories referred to in Articles 3 and 4 with which cumulation is applicable, or where the customs value is not known or cannot be ascertained, the first ascertainable price paid for the materials in the European Community or in one of the Pacific States;
- (j) "chapters" and "headings" mean the chapters and the four-digit headings used in the nomenclature which makes up the Harmonized Commodity Description and Coding System, referred to in this Protocol as "the Harmonized System" or "HS";
- (k) "classified" refers to the classification of a product or material under a particular heading;

- (l) "consignment" means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;
- (m) "territories" includes territorial waters;
- (n) "OCTs" means the Overseas Countries and Territories as defined in Annex VIII;
- (o) "other ACP States" means all the ACP States with the exception of the Pacific States.

TITLE II

DEFINITION OF THE CONCEPT OF "ORIGINATING PRODUCTS"

ARTICLE 2

General requirements

1. For the purpose of the Interim Partnership Agreement, hereinafter referred to as "the Agreement" the following products shall be considered as originating in the European Community:
 - (a) products wholly obtained in the European Community within the meaning of Article 5 of this Protocol;
 - (b) products obtained in the European Community incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the European Community within the meaning of Article 6.

2. For the purpose of the Agreement, the following products shall be considered as originating in a Pacific State:

- (a) products wholly obtained in a Pacific State within the meaning of Article 5 of this Protocol;
- (b) products obtained in a Pacific State incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in that Pacific State within the meaning of Article 6.

ARTICLE 3

Cumulation in the European Community

1. Without prejudice to the provisions of Article 2(1), products shall be considered as originating in the European Community if they are obtained there, incorporating materials originating in a Pacific State, in the other ACP States or in the OCTs, provided the working or processing carried out in the European Community goes beyond the operations referred to in Article 7. It shall not be necessary for such materials to have undergone sufficient working or processing.

2. Where the working or processing carried out in the European Community does not go beyond the operations referred to in Article 7, the product obtained shall be considered as originating in the European Community only where the value added there is greater than the value of the materials used originating in any one of the other countries or territories referred to in paragraph 1. If this is not so, the product obtained shall be considered as originating in the country or territory which accounts for the highest value of originating materials used in the manufacture in the European Community.

3. Products originating in one of the countries or territories referred to in paragraphs 1 and 2, which do not undergo any working or processing in the European Community, retain their origin if exported into one of these countries or territories.

4. For the purpose of implementing Article 2(1)(b), working or processing carried out in a Pacific State, in the other ACP States or in the OCT shall be considered as having been carried out in the European Community when the products obtained undergo subsequent working or processing in the European Community. Where pursuant to this provision the originating products are obtained in two or more of the countries or territories concerned, they shall be considered as originating in the European Community only if the working or processing goes beyond the operations referred to in Article 7.

5. Where the working or processing carried out in the European Community does not go beyond the operations referred to in Article 7, the product obtained shall be considered as originating in the European Community only where the value added there is greater than the value of the materials used in any one of the other countries or territories referred to in paragraph 4. If this is not so, the product obtained shall be considered as originating in the country or territory which accounts for the highest value of materials used in the manufacture.

6. The cumulation provided in this Article may only be applied provided that:

- (a) the countries involved in the acquisition of the originating status and the country of destination have concluded an agreement on administrative cooperation which ensures a correct implementation of this Article;
- (b) materials and products have acquired originating status by the application of the rules of origin identical to those given in this Protocol;

(c) the European Community will provide the Pacific States, through the European Commission, with details of agreements on administrative cooperation with the other countries or territories referred to in this Article. The European Commission shall publish in the *Official Journal of the European Union* (C series) and the Pacific States shall publish according to their own procedures, the date on which the cumulation provided for in this Article may be applied with those countries or territories listed in this Article which have fulfilled the necessary requirements.

7. The cumulation provided for in this Article may only be applied after 1 October 2015 for the products listed in Annex IX and after 1 January 2010 for rice of tariff heading 1006 respectively.

ARTICLE 4

Cumulation in the Pacific States

1. Without prejudice to the provisions of Article 2(2), products shall be considered as originating in a Pacific State if they are obtained there, incorporating materials originating in the European Community, in the other ACP States, in the OCT or in the other Pacific States, provided the working or processing carried out in that Pacific State goes beyond that of the operations referred to in Article 7. It shall not be necessary for such materials to have undergone sufficient working or processing.

2. Where the working or processing carried out in the Pacific State does not go beyond the operations referred to in Article 7, the product obtained shall be considered as originating in that Pacific State only where the value added there is greater than the value of the materials used originating in any one of the other countries or territories referred to in paragraph 1. If this is not so, the product obtained shall be considered as originating in the country or territory which accounts for the highest value of originating materials used in the manufacture in that Pacific State.

3. Products originating in one of the countries or territories referred to in paragraphs 1 and 2 of this Article, which do not undergo any working or processing in the Pacific State, retain their origin if exported into one of these countries or territories.

4. For the purpose of implementing Article 2(2)(b), working or processing carried out in the European Community, in the other Pacific States, in the other ACP States or in the OCT shall be considered as having been carried out in a Pacific State when the products obtained undergo subsequent working or processing in this Pacific State. Where pursuant to this provision the originating products are obtained in two or more of the countries or territories concerned, they shall be considered as originating in this Pacific State only if the working or processing goes beyond the operations referred to in Article 7.

5. Where the working or processing carried out in the Pacific State does not go beyond the operations referred to in Article 7, the product obtained shall be considered as originating in that Pacific State only where the value added there is greater than the value of the materials used in any one of the other countries or territories referred to in paragraph 4. If this is not so, the product obtained shall be considered as originating in the country or territory which accounts for the highest value of materials used in the manufacture.

6. The cumulation provided in this Article may only be applied provided that:
- (a) the countries involved in the acquisition of the originating status and the country of destination have concluded an agreement on administrative cooperation which ensures a correct implementation of this Article;
 - (b) materials and products have acquired originating status by the application of the rules of origin identical to those given in this Protocol;
 - (c) the Pacific States will provide the European Community, through the European Commission, with details of agreements on administrative cooperation with the other countries or territories referred to in this Article. The European Commission shall publish in the *Official Journal of the European Union* (C series) and the Pacific States shall publish according to their own procedures, the date on which the cumulation provided for in this Article may be applied with those countries or territories listed in this Article which have fulfilled the necessary requirements.

7. The cumulation provided for in this Article shall not be applicable to the products listed in Annex IX. Notwithstanding that, the cumulation provided for in this Article may only be applied after 1 October 2015 for the products listed in Annex IX and after 1 January 2010 for rice of tariff heading 1006 respectively, when the materials used in the manufacture of such products are originating, or the working or processing is carried out in a Pacific State or in an other ACP State member of an Economic Partnership Agreement (EPA).

8. This Article shall not apply to products of Annex XI originating in South Africa. The cumulation provided for in this Article shall apply to the products originating in South Africa listed in Annex XII after 31 December 2009.

ARTICLE 4 bis

Cumulation with neighbouring developing countries

1. At the request of the Pacific States and following the provisions of Article 41(2), materials originating in a neighbouring developing country, other than an ACP State, belonging to a coherent geographical entity, a listing of which is at Annex VIII bis, can be considered as materials originating in a Pacific State when incorporated into a product obtained there. It shall not be necessary that such materials have undergone sufficient working or processing, provided that:
 - (a) the working or processing carried out in the Pacific State exceeds the operations listed in Article 7;
 - (b) the Pacific States, the European Community and the neighbouring developing countries concerned have concluded an agreement on adequate administrative cooperation procedures which will ensure correct implementation of this paragraph.
2. The cumulation provided for in this Article shall not be applicable to the products to be listed upon a decision of the Special Committee on Customs Cooperation and Rules of Origin.

3. For the purpose of determining whether the products originate in the neighbouring developing country as defined in Annex VIII bis, the provisions of this Protocol shall apply.

ARTICLE 5

Wholly obtained products

1. The following shall be considered as wholly obtained in a Pacific State or in the European Community:

- (a) mineral products extracted from their soil or from their seabed;
- (b) fruit and vegetable products harvested there;
- (c) live animals born and raised there;
- (d) products from live animals raised there;

- (e) (i) products obtained by hunting or fishing conducted there;
- (ii) products of aquaculture, including mariculture, where the fish are born and raised there;
- (f) products of sea fishing and other products taken from the sea outside the territorial waters of the European Community or of a Pacific State by their vessels;
- (g) products made aboard their factory ships exclusively from products referred to in subparagraph (f);
- (h) used articles collected there fit only for the recovery of raw materials, including used tyres fit only for retreading or for use as waste;
- (i) waste and scrap resulting from manufacturing operations conducted there;
- (j) products extracted from marine soil or subsoil outside their territorial waters provided that they have sole rights to work that soil or subsoil;
- (k) goods produced there exclusively from the products specified in subparagraphs (a) to (j).

2. The terms "their vessels" and "their factory ships" in paragraph 1(f) and (g) shall apply only to vessels and factory ships:

- (a) which are registered in a Member State of the European Community or in a Pacific State;
- (b) which sail under the flag of a Member State of the European Community or of a Pacific State;
- (c) which meet one of the following conditions:
 - (i) they are at least 50 per cent owned by nationals of a Member State of the European Community or of a Pacific State;
 - or
 - (ii) they are owned by companies
 - which have their head office and their main place of business in a Member State of the European Community or in a Pacific State; and
 - which are at least 50 per cent owned by a Member State of the European Community or by a Pacific State, public entities or nationals of that State.

3. Notwithstanding the provisions of paragraph 2, the European Community shall recognise, upon request of a Pacific State, that vessels chartered or leased by the Pacific State shall be treated as "their vessels" to undertake fisheries activities in its exclusive economic zone provided that the charter or lease agreement, for which the European Community has been offered the right of first refusal, has been accepted by the Special Committee on Customs Cooperation and Rules of Origin as providing adequate opportunities for developing the capacity of the Pacific State to fish on its own account and in particular as conferring on the Pacific State the responsibility for the nautical and commercial management of the vessel at its disposal for a significant period of time.

4. The conditions of paragraph 2 can be fulfilled in different States insofar as they belong to Pacific States. In this case, products shall be deemed to have the origin of the State by whose nationals or by a company by which the vessel or factory ship is owned in accordance with paragraph 2(c). In the event of a vessel or factory ship owned by nationals or companies of States belonging to different Economic Partnership Agreements, the products shall be deemed to have the origin of the State whose nationals or companies contribute to the highest share in accordance to the provisions of paragraph 2(c).

ARTICLE 6

Sufficiently worked or processed products

1. For the purposes of Article 2, products which are not wholly obtained are considered to be sufficiently worked or processed when the conditions set out in the List in Annex II are fulfilled.
2. Notwithstanding paragraph 1, the products which are listed in Annex II(a) can be considered to be sufficiently worked or processed, for the purposes of Article 2, when the conditions set out in that Annex are fulfilled.
3. The conditions referred to in paragraphs 1 and 2 above indicate, for all products covered by this Agreement, the working or processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials. Accordingly, it follows that if a product which has acquired originating status by fulfilling the conditions set out in either List is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture.

4. Notwithstanding paragraphs 1 and 2, non-originating materials which, according to the conditions set out in Annex II and Annex II(a), should not be used in the manufacture of a given product may nevertheless be used, provided that:

- (a) their total value does not exceed 15 per cent of the ex-works price of the product;
- (b) any of the percentages given in the List for the maximum value of non-originating materials are not exceeded through the application of this paragraph.

5. The provisions of paragraph 4 shall not apply to products of Chapters 50 to 63 of the Harmonized System.

6. (a) The Parties recognise that since the Lomé Convention was signed in 1976, Pacific States have not been able to develop an adequate national fleet respecting the vessel conditions of Article 5.2 of the present Protocol II. The Parties also recognise the special circumstances of the Pacific States encompassing the insufficient wholly-obtained fish to meet on-land demand, the very limited fishing capacity of the Pacific States' fishing fleet, the reduced processing capability due to physical and economic factors, the low risk of destabilising the EU market due to large inflows of fishery products from the Pacific States, the geographical isolation of the Pacific States as well as the distance to the EU market. The Parties also share the final goal of promoting further development in the Pacific States while promoting sustainable fisheries and good fisheries governance.

- (b) The Parties recognise the enormous importance of fisheries to the people of the Pacific States and that the fish, for example tuna in the Western and Central Pacific Ocean is the most important shared natural resource for long-term income and employment generation for the Pacific States. This shared fisheries resource in the waters of the Pacific States is subject to various management regimes at regional, sub-regional and national levels, including the Vessel Day Scheme aiming at regional sustainable tuna purse seine fisheries. These activities are subject to monitoring within the framework of the Western and Central Pacific Fisheries Commission, including the Vessel Monitoring System and Observer Programmes. In this context, the Parties agree that notwithstanding paragraph 1, when circumstances are such that wholly obtained products as defined in Article 5 paragraphs 1(f) and 1(g) cannot be sufficiently utilised to satisfy the on-land demand and following the prior notification to the European Commission by a Pacific State, processed fishery products of headings 1604 and 1605 manufactured in on-land premises in that State from non-originating materials of Chapter 03 that have been landed in a port of that State shall be considered as sufficiently worked or processed for the purposes of Article 2. The notification to the European Commission shall indicate the reasons why the application of this paragraph will stimulate the development of the fisheries sector in that State, and shall include the necessary information about the species concerned, the products to be manufactured as well as an indication of the respective quantities to be involved.

- (c) A report on the implementation of subparagraph (b) shall be drawn up no later than three years after the notification.
- (d) On the basis of this report, the European Community and the requesting Pacific State shall hold consultations on the utilisation of subparagraph (b), taking into account in particular its development effects and the effective conservation and sustainable management of the resources and, if appropriate, amend it.
- (e) Subparagraph (b) shall apply without prejudice to sanitary and phytosanitary measures in force in the EU, effective conservation and sustainable management of fishing resources and support to combat illegal, unreported and unregulated fishing activities in the region.
- (f) The provisions of this paragraph shall be applicable to imports from a Pacific State from the first day after the publication in the Official Journal of the European Union of a notice informing that the State concerned has made a notification to the European Commission in accordance with subparagraph (b).

7. Paragraphs 1 to 6 shall apply subject to the provisions of Article 7.

ARTICLE 7

Insufficient working or processing

1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 6 are satisfied:

- (a) preserving operations to ensure that the products remain in good condition during transport and storage;
- (b) breaking-up and assembly of packages;
- (c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
- (d) ironing or pressing of textiles;
- (e) simple painting and polishing operations;

- (f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (g) operations to colour sugar or form sugar lumps; partial or total milling of crystal sugar;
- (h) peeling, stoning and shelling, of fruits, nuts and vegetables;
- (i) sharpening, simple grinding or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles);
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (m) simple mixing of products, whether or not of different kinds; mixing of sugar with any other material;

- (n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (o) a combination of two or more operations specified in (a) to (n);
- (p) slaughter of animals.

2. All operations carried out either in the European Community or in the Pacific States on a given product shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.

ARTICLE 8

Unit of qualification

1. The unit of qualification for the application of the provisions of this Protocol shall be the particular product which is considered as the basic unit when determining classification using the nomenclature of the Harmonized System.

Accordingly, it follows that:

- (a) when a product composed of a group or assembly of articles is classified under the terms of the Harmonized System in a single heading, the whole constitutes the unit of qualification;
- (b) when a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each product must be taken individually when applying the provisions of this Protocol.

2. Where, under General Rule 5 for the interpretation of the Harmonized System, packaging is included with the product for classification purposes, it shall be included for the purposes of determining origin.

ARTICLE 9

Accessories, spare parts and tools

Accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle, which are part of the normal equipment and included in the price thereof or which are not separately invoiced, shall be regarded as one with the piece of equipment, machine, apparatus or vehicle in question.

ARTICLE 10

Sets

Sets, as defined in General Rule 3 for the interpretation of the Harmonized System, shall be regarded as originating when all component products are originating. Nevertheless, when a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of the non-originating products does not exceed 15 per cent of the ex-works price of the set.

ARTICLE 11

Neutral elements

In order to determine whether a product is originating, it shall not be necessary to determine the origin of the following which might be used in its manufacture:

- (a) energy and fuel;
- (b) plant and equipment;
- (c) machines and tools;
- (d) goods which do not enter and which are not intended to enter into the final composition of the product.

TITLE III

TERRITORIAL REQUIREMENTS

ARTICLE 12

Principle of territoriality

1. Except as provided for in Articles 3 and 4 the conditions for acquiring originating status set out in Title II must be fulfilled without interruption in the Pacific States or in the European Community.

2. Except as provided for in Articles 3 and 4 where originating goods exported from a Pacific State or from the European Community to another country return, they must be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that:
 - (a) the returning goods are the same goods as those exported; and

 - (b) they have not undergone any operation beyond that necessary to preserve them in good condition while in that country or while being exported.

ARTICLE 13

Direct transport

1. The preferential treatment provided for under the Agreement applies only to products, satisfying the requirements of this Protocol, which are transported directly between a Pacific State and the European Community or through the territories of the other countries referred to in Articles 3 and 4 to which cumulation is applicable. However, products constituting one single consignment may be transported through other territories with, should the occasion arise, trans-shipment or temporary warehousing in such territories, provided that they remain under the surveillance of the customs authorities in the country of transit or warehousing and do not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition.

Originating products may be transported by pipeline across territory other than that of a Pacific State or the European Community.

2. Evidence that the conditions set out in paragraph 1 have been fulfilled shall be supplied to the customs authorities of the importing country by the production of:

(a) a single transport document covering the passage from the exporting country through the country of transit; or

(b) a certificate issued by the customs authorities of the country of transit:

(i) giving an exact description of the products;

(ii) stating the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used;

and

(iii) certifying the conditions under which the products remained in the transit country; or

(c) failing these, any substantiating documents.

ARTICLE 14

Exhibitions

1. Originating products, sent for exhibition in a country or territory other than those referred to in Articles 3 and 4 to which cumulation is applicable and sold after the exhibition for importation in the European Community or in a Pacific State shall benefit on importation from the provisions of the Agreement provided it is shown to the satisfaction of the customs authorities that:
 - (a) an exporter has consigned these products from a Pacific State or from the European Community to the country in which the exhibition is held and has exhibited them there;
 - (b) the products have been sold or otherwise disposed of by that exporter to a person in a Pacific State or in the European Community;

(c) the products have been consigned during the exhibition or immediately thereafter in the state in which they were sent for exhibition;

and

(d) the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition.

2. A proof of origin must be issued or made out in accordance with the provisions of Title IV and submitted to the customs authorities of the importing country in the normal manner. The name and address of the exhibition must be indicated thereon. Where necessary, additional documentary evidence of the conditions under which they have been exhibited may be required.

3. Paragraph 1 shall apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display which is not organised for private purposes in shops or business premises with a view to the sale of foreign products, and during which the products remain under customs control.

TITLE IV

PROOF OF ORIGIN

ARTICLE 15

General requirements

1. Products originating in a Pacific State shall, on importation into the European Community and products originating in the European Community shall, on importation into a Pacific State, benefit from the provisions of the Agreement upon submission of either:

- (a) a movement certificate EUR.1, a specimen of which appears in Annex III; or
- (b) in the cases specified in Article 20(1), a declaration, subsequently referred to as the "invoice declaration", given by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified; the text of the invoice declaration appears in Annex IV.

2. Notwithstanding paragraph 1, originating products within the meaning of this Protocol shall, in the cases specified in Article 25, benefit from the Agreement without it being necessary to submit any of the documents referred to above.

3. For the purpose of applying the provisions of this Title, the exporters shall endeavour to use a language common to both the Pacific States and the European Community.

ARTICLE 16

Procedure for the issue of a movement certificate EUR.1

1. A movement certificate EUR.1 shall be issued by the customs authorities of the exporting country on application having been made in writing by the exporter or, under the exporter's responsibility, by his authorised representative.

2. For this purpose, the exporter or his authorised representative shall fill out both the movement certificate EUR.1 and the application form, specimens of which appear in Annex III. These forms shall be completed in accordance with the provisions of this Protocol. If they are handwritten, they shall be completed in ink and in printed characters. The description of the products must be given in the box reserved for this purpose without leaving any blank lines. Where the box is not completely filled, a horizontal line must be drawn below the last line of the description, the empty space being crossed through.

3. The exporter applying for the issue of a movement certificate EUR.1 shall be prepared to submit at any time, at the request of the customs authorities of the exporting country where the movement certificate EUR.1 is issued, all appropriate documents proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Protocol.

4. A movement certificate EUR.1 shall be issued by the customs authorities of a Member State of the European Community or of a Pacific State if the products concerned can be considered as products originating in the European Community or in a Pacific State or in one of the other countries or territories referred to in Articles 3 and 4 and fulfill the other requirements of this Protocol.

5. The issuing customs authorities shall take any steps necessary to verify the originating status of the products and the fulfilment of the other requirements of this Protocol. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate. The issuing customs authorities shall also ensure that the forms referred to in paragraph 2 are duly completed. In particular, they shall check whether the space reserved for the description of the products has been completed in such a manner as to exclude all possibility of fraudulent additions.

6. The date of issue of the movement certificate EUR.1 shall be indicated in Box 11 of the certificate.

7. A movement certificate EUR.1 shall be issued by the customs authorities and made available to the exporter as soon as actual exportation has been effected or ensured.

ARTICLE 17

Movement certificates EUR.1 issued retrospectively

1. Notwithstanding Article 16(7), a movement certificate EUR.1 may exceptionally be issued after exportation of the products to which it relates if:

- (a) it was not issued at the time of exportation because of errors or involuntary omissions or special circumstances; or
- (b) it is demonstrated to the satisfaction of the customs authorities that a movement certificate EUR.1 was issued but was not accepted at importation for technical reasons.

2. For the implementation of paragraph 1, the exporter must indicate in his application the place and date of exportation of the products to which the movement certificate EUR.1 relates, and state the reasons for his request.

3. The customs authorities may issue a movement certificate EUR.1 retrospectively only after verifying that the information supplied in the exporter's application agrees with that in the corresponding file.

4. Movement certificates EUR.1 issued retrospectively must be endorsed with the following phrase in English:

"ISSUED RETROSPECTIVELY"

5. The endorsement referred to in paragraph 4 shall be inserted in the "Remarks" box of the movement certificate EUR.1.

ARTICLE 18

Issue of a duplicate movement certificate EUR.1

1. In the event of theft, loss or destruction of a movement certificate EUR.1, the exporter may apply to the customs authorities which issued it for a duplicate made out on the basis of the export documents in their possession.
2. The duplicate issued in this way must be endorsed with the following word in English:
"DUPLICATE"
3. The endorsement referred to in paragraph 2 shall be inserted in the 'Remarks' box of the duplicate movement certificate EUR.1.
4. The duplicate, which must bear the date of issue of the original movement certificate EUR.1, shall take effect as from that date.

ARTICLE 19

Issue of movement certificates EUR.1
on the basis of a proof of origin issued or made out previously

When originating products are placed under the control of a customs office in a Pacific State or in the European Community, it shall be possible to replace the original proof of origin by one or more movement certificates EUR.1 for the purpose of sending all or some of these products elsewhere within the Pacific States or within the European Community. The replacement movement certificate(s) EUR.1 shall be issued by the customs office under whose control the products are placed and endorsed by the customs authority under whose control the products are placed.

ARTICLE 20

Conditions for making out an invoice declaration

1. An invoice declaration as referred to in Article 15(1)(b) may be made out:
 - (a) by an approved exporter within the meaning of Article 21, or

(b) by any exporter for any consignment consisting of one or more packages containing originating products whose total value does not exceed EUR 6 000.

2. An invoice declaration may be made out if the products concerned can be considered as products originating in a Pacific State or in the European Community or in one of the other countries or territories referred to in Articles 3 and 4 and fulfil the other requirements of this Protocol.

3. The exporter making out an invoice declaration shall be prepared to submit at any time, at the request of the customs authorities of the exporting country, all appropriate documents proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Protocol.

4. An invoice declaration shall be made out by the exporter by typing, stamping or printing on the invoice, the delivery note or another commercial document, the declaration, the text of which appears in Annex IV to this Protocol, using one of the linguistic versions set out in that Annex and in accordance with the provisions of the domestic law of the exporting country. If the declaration is handwritten, it shall be written in ink and in printed characters.

5. Invoice declarations shall bear the original signature of the exporter in manuscript. However, an approved exporter within the meaning of Article 21 shall not be required to sign such declarations provided that he gives the customs authorities of the exporting country a written undertaking that he accepts full responsibility for any invoice declaration which identifies him as if it had been signed in manuscript by him.

6. An invoice declaration may be made out by the exporter when the products to which it relates are exported, or after exportation on condition that it is presented in the importing country no longer than two years after the importation of the products to which it relates.

ARTICLE 21

Approved exporter

1. The customs authorities of the exporting country may authorise any exporter who makes frequent shipments of products under the trade cooperation provisions of the Agreement to make out invoice declarations irrespective of the value of the products concerned. An exporter seeking such authorisation must offer to the satisfaction of the customs authorities all guarantees necessary to verify the originating status of the products as well as the fulfilment of the other requirements of this Protocol.

2. The customs authorities may grant the status of approved exporter subject to any conditions which they consider appropriate.
3. The customs authorities shall grant to the approved exporter a customs authorisation number which shall appear on the invoice declaration.
4. The customs authorities shall monitor the use of the authorisation by the approved exporter.
5. The customs authorities may withdraw the authorisation at any time. They shall do so where the approved exporter no longer offers the guarantees referred to in paragraph 1, does not fulfil the conditions referred to in paragraph 2 or otherwise makes an incorrect use of the authorisation.

ARTICLE 22

Validity of proof of origin

1. A proof of origin shall be valid for ten months from the date of issue in the exporting country, and must be submitted within the said period to the customs authorities of the importing country.

2. Proofs of origin which are submitted to the customs authorities of the importing country after the final date for presentation specified in paragraph 1 may be accepted for the purpose of applying preferential treatment, where the failure to submit these documents by the final date set is due to exceptional circumstances.

3. In other cases of belated presentation, the customs authorities of the importing country may accept the proofs of origin where the products have been submitted before the said final date.

ARTICLE 23

Submission of proof of origin

Proof of origin shall be submitted to the customs authorities of the importing country in accordance with the procedures applicable in that country. The said authorities may require a translation of a proof of origin and may also require the import declaration to be accompanied by a statement from the importer to the effect that the products meet the conditions required for the implementation of the Agreement.

ARTICLE 24

Importation by instalments

Where, at the request of the importer and on the conditions laid down by the customs authorities of the importing country, dismantled or non-assembled products within the meaning of General Rule 2(a) for the interpretation of the Harmonized System falling within Sections XVI and XVII or heading 7308 and 9406 of the Harmonized System are imported by instalments, a single proof of origin for such products shall be submitted to the customs authorities upon importation of the first instalment.

ARTICLE 25

Exemptions from proof of origin

1. Products sent as small packages from private persons to private persons or forming part of travellers' personal luggage shall be admitted as originating products without requiring the submission of a proof of origin, provided that such products are not imported by way of trade and have been declared as meeting the requirements of this Protocol and where there is no doubt as to the veracity of such a declaration. In the case of products sent by post, this declaration can be made on customs declaration CN22/CN23 or on a sheet of paper annexed to that document.

2. Imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as imports by way of trade if it is evident from the nature and quantity of the products that no commercial purpose is in view.

3. Furthermore, the total value of these products shall not exceed EUR 500 in the case of small packages or EUR 1 200 in the case of products forming part of travellers' personal luggage.

ARTICLE 26

Information procedure for cumulation purposes

1. When Articles 3(1) and 4(1) are applied, the evidence of originating status within the meaning of this Protocol of the materials coming from a Pacific State, from the European Community, from another ACP State or from an OCT shall be given by a movement certificate EUR.1 or by the supplier's declaration, a specimen of which appears in Annex V A to this Protocol, given by the exporter in the State or in the European Community from which the materials came.

2. When Articles 3(4) and 4(4) are applied, the evidence of the working or processing carried out in a Pacific State, in the European Community, in another ACP State or in an OCT shall be given by the supplier's declaration a specimen of which appears in Annex V B to this Protocol, given by the exporter in the State or in the European Community from which the materials came.
3. A separate supplier's declaration shall be made out by the supplier for each consignment of goods on the commercial invoice related to that shipment or in an annex to that invoice, or on a delivery note or other commercial document related to that shipment which describes the materials concerned in sufficient detail to enable them to be identified.
4. The supplier's declaration may be made out on a pre-printed form.
5. The suppliers' declarations shall bear the original signature of the supplier in manuscript. However, where the invoice and the supplier's declaration are established using electronic data-processing methods, the supplier's declaration need not be signed in manuscript provided the responsible official in the supplying company is identified to the satisfaction of the customs authorities in the State where the suppliers' declarations are established. The said customs authorities may lay down conditions for the implementation of this paragraph.

6. The supplier's declarations shall be submitted to the customs authorities in the exporting country requested to issue the movement certificate EUR.1.

7. The supplier making out a declaration must be prepared to submit at any time, at the request of the customs authorities of the country where the declaration is made out, all appropriate documents proving that the information given on this declaration is correct.

8. Suppliers' declarations made and information certificates issued before the date of entry into force of this Protocol in accordance with Article 26 of Protocol 1 to the Cotonou Agreement shall remain valid.

ARTICLE 27

Supporting documents

The documents referred to in Articles 16(3) and 20(3) used for the purpose of proving that products covered by a movement certificate EUR.1 or an invoice declaration can be considered as products originating in a Pacific State, in the European Community or in one of the other countries or territories referred to in Articles 3 and 4 and fulfil the other requirements of this Protocol may consist inter alia of the following:

- (a) direct evidence of the processes carried out by the exporter or supplier to obtain the goods concerned, contained for example in his accounts or internal bookkeeping;
- (b) documents proving the originating status of materials used, issued or made out in a Pacific State, in the European Community or in one of the other countries or territories referred to in Articles 3 and 4 where these documents are used in accordance with national law;

- (c) documents proving the working or processing of materials in a Pacific State, in the European Community or in one of the other countries or territories referred to in Articles 3 and 4, issued or made out in a Pacific State, in the European Community or in one of the other countries or territories referred to in Articles 3 and 4 where these documents are used in accordance with national law;
- (d) movement certificates EUR.1 or invoice declarations proving the originating status of materials used, issued or made out in a Pacific State, in the European Community or in one of the other countries or territories referred to in Articles 3 and 4 and in accordance with this Protocol.

ARTICLE 28

Preservation of proof of origin and supporting documents

1. The exporter applying for the issue of a movement certificate EUR.1 shall keep for at least three years the documents referred to in Article 16(3).

2. The exporter making out an invoice declaration shall keep for at least three years a copy of this invoice declaration as well as the documents referred to in Article 20(3).
3. The supplier making out a supplier's declaration shall keep for at least three years copies of the declaration and of the invoice, delivery notes or other commercial document to which this declaration is annexed as well as the documents referred to in Article 26(7).
4. The customs authorities of the exporting country issuing a movement certificate EUR.1 shall keep for at least three years the application form referred to in Article 16(2).
5. The customs authorities of the importing country shall keep for at least three years the movement certificates EUR.1 and the invoice declarations submitted to them.

ARTICLE 29

Discrepancies and formal errors

1. The discovery of slight discrepancies between the statements made in the proof of origin and those made in the documents submitted to the customs office for the purpose of carrying out the formalities for importing the products shall not ipso facto render the proof of origin null and void if it is duly established that this document does correspond to the products submitted.

2. Obvious formal errors such as typing errors on a proof of origin should not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.

ARTICLE 30

Amounts expressed in euro

1. For the application of the provisions of Article 20(1)(b) and Article 25(3) in cases where products are invoiced in a currency other than the euro, amounts in the national currencies of a Pacific State, of the Member States of the European Community and of the other countries or territories referred to in Articles 3 and 4 equivalent to the amounts expressed in euro shall be fixed annually by each of the countries concerned.
2. A consignment shall benefit from the provisions of Article 20(1)(b) or Article 25(3) by reference to the currency in which the invoice is drawn up, according to the amount fixed by the country concerned.
3. The amounts to be used in any given national currency shall be the equivalent in that currency of the amounts expressed in euro as at the first working day of October. The amounts shall be communicated to the European Commission by 15 October and shall apply from 1 January the following year. The European Commission shall notify all countries concerned of the relevant amounts.

4. A country may round up or down the amount resulting from the conversion into its national currency of an amount expressed in euro. The rounded-off amount may not differ from the amount resulting from the conversion by more than 5 per cent. A country may retain unchanged its national currency equivalent of an amount expressed in euro if, at the time of the annual adjustment provided for in paragraph 3, the conversion of that amount, prior to any rounding-off, results in an increase of less than 15 per cent in the national currency equivalent. The national currency equivalent may be retained unchanged if the conversion would result in a decrease in that equivalent value.

5. The amounts expressed in euro shall be reviewed by the Special Committee on Customs Cooperation and Rules of Origin at the request of the European Community or of the Pacific States. When carrying out this review, the Special Committee on Customs Cooperation and Rules of Origin shall consider the desirability of preserving the effects of the limits concerned in real terms. For this purpose, it may decide to modify the amounts expressed in euro.

TITLE V

ARRANGEMENTS FOR ADMINISTRATIVE COOPERATION

ARTICLE 31

Administrative conditions for products to benefit from the Agreement

1. Products originating within the meaning of this Protocol in the Pacific States or in the European Community shall benefit, at the time of the customs import declaration, from the preferences resulting from the Agreement only on condition that they were exported on or after the date on which the exporting country complies with the provisions laid down in paragraph 2.
2. The Contracting Parties shall undertake to put in place:
 - (a) the necessary national and regional arrangements required for the implementation and enforcement of the rules and procedures laid down in this Protocol, including where appropriate the arrangements necessary for the application of Articles 3 and 4;

- (b) the administrative structures and systems necessary for an appropriate management and control of the origin of products and compliance with the other conditions laid down in this Protocol.

They shall make the notifications referred to in Article 32.

ARTICLE 32

Notification of information related to customs authorities

1. The Pacific States and the Member States of the European Community shall provide each other, through the Commission of the European Communities, with the addresses of the customs authorities responsible for issuing and verifying movement certificates EUR.1 and invoice declarations or supplier's declarations, and with specimen impressions of the stamps used in their customs offices for the issue of these certificates.

Movement certificates EUR.1 and invoice declarations or suppliers' declarations shall be accepted for the purpose of applying preferential treatment from the date the information is received by the Commission of the European Communities.

2. The Pacific States and the Member States of the European Community shall inform each other immediately whenever there are any changes to the information referred to in paragraph 1.

3. The authorities referred to in paragraph 1 shall act under the authority of the government of the country concerned. The authorities in charge of control and verification shall be part of the governmental authorities of the country concerned.

ARTICLE 33

Mutual assistance

1. In order to ensure the proper application of this Protocol, the European Community, the Pacific States and the other countries referred to in Articles 3 and 4 shall assist each other, through the competent customs administrations, in checking the authenticity of the movement certificates EUR.1, the invoice declarations or the supplier's declarations and the correctness of the information given in these documents. The Pacific States shall also:

- (a) provide the European Community and each other with all the necessary support in the event of a request for a monitoring of the proper management and control of the Protocol in the country concerned, including visits on the spot;

(b) in accordance with Article 34, verify the originating status of products and the compliance with the other conditions laid down in this Protocol.

2. The authorities consulted shall furnish the relevant information concerning the conditions under which the product has been made, indicating especially the conditions in which the rules of origin have been respected in the various Pacific States, in the European Community and the other countries concerned referred to in Articles 3 and 4.

ARTICLE 34

Verification of proof of origin

1. Subsequent verifications of proof of origin shall be carried out based on risk analysis and at random or whenever the customs authorities of the importing country have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of this Protocol.

2. For the purposes of implementing the provisions of paragraph 1, the customs authorities of the importing country shall return the movement certificate EUR.1 and the invoice, if it has been submitted, the invoice declaration, or a copy of these documents, to the customs authorities of the exporting country giving, where appropriate, the reasons for the request of verification. Any documents and information obtained suggesting that the information given on the proof of origin is incorrect shall be forwarded in support of the request for verification.
3. The verification shall be carried out by the customs authorities of the exporting country. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate.
4. If the customs authorities of the importing country decide to suspend the granting of preferential treatment to the products concerned while awaiting the results of the verification, release of the products shall be offered to the importer subject to any precautionary measures judged necessary.
5. The customs authorities requesting the verification shall be informed of the results of this verification as soon as possible. These results must indicate clearly whether the documents are authentic and whether the products concerned can be considered as products originating in a Pacific State, in the European Community or in one of the other countries referred to in Articles 3 and 4 and fulfil the other requirements of this Protocol.

6. If in cases of reasonable doubt there is no reply within ten months of the date of the verification request or if the reply does not contain sufficient information to determine the authenticity of the document in question or the real origin of the products, the requesting customs authorities shall, except in exceptional circumstances, refuse entitlement to the preferences.

7. Where the verification procedure or any other available information appears to indicate that the provisions of this Protocol are being contravened, the exporting country on its own initiative or at the request of the importing country shall carry out appropriate enquires or arrange for such enquiries to be carried out with due urgency to identify and prevent such contraventions and for this purpose the exporting country concerned may invite the participation of the importing country in these verifications.

ARTICLE 35

Verification of suppliers' declarations

1. Verification of suppliers' declarations shall be carried out based on risk analysis and at random or whenever the customs authorities of the country where such declarations have been taken into account to issue a movement certificate EUR.1 or to make out an invoice declaration, have reasonable doubts as to the authenticity of the document or the correctness of the information given in this document.

2. The customs authorities to which a supplier's declaration is submitted may request the customs authorities of the State where the declaration was made to issue an information certificate, a specimen of which appears in Annex VI to this Protocol. Alternatively, the certifying authorities to which a supplier's declaration is submitted may request the exporter to produce an information certificate issued by the customs authorities of the State where the declaration was made.

A copy of the information certificate shall be preserved by the office which has issued it for at least three years.

3. The customs authorities requesting the verification shall be informed of the results thereof as soon as possible. The results must indicate clearly whether the information given in the supplier's declaration is correct and make it possible for them to determine whether and to what extent this supplier's declaration could be taken into account for issuing a movement certificate EUR.1 or for making out an invoice declaration.

4. The verification shall be carried out by the customs authorities of the country where the supplier's declaration was made out. For this purpose, they shall have the right to call for any evidence or to carry out any inspection of the supplier's account or any other check which they consider appropriate in order to verify the correctness of any supplier's declaration.

5. Any movement certificate EUR.1 or invoice declaration issued or made out on the basis of an incorrect supplier's declaration shall be considered null and void.

ARTICLE 36

Dispute settlement

Where disputes arise in relation to the verification procedures of Articles 34 and 35 which cannot be settled between the customs authorities requesting a verification and the customs authorities responsible for carrying out this verification or where they raise a question as to the interpretation of this Protocol, they shall be submitted to the Special Committee on Customs Cooperation and Rules of Origin.

In all cases the settlement of disputes between the importer and the customs authorities of the importing country shall take place under the legislation of that country.

ARTICLE 37

Penalties

Penalties shall be imposed on any person who draws up, or causes to be drawn up, a document which contains incorrect information for the purpose of obtaining a preferential treatment for products.

ARTICLE 38

Free zones

1. The Pacific States and the European Community shall take all necessary steps to ensure that products traded under cover of a proof of origin or a supplier's declaration and which in the course of transport use a free zone situated in their territory, are not substituted by other goods and do not undergo handling other than normal operations designed to prevent their deterioration.
2. By means of an exemption from the provisions contained in paragraph 1, when products originating in a Pacific State or in the European Community are imported into a free zone under cover of a proof of origin and undergo treatment or processing, the authorities concerned shall issue a new movement certificate EUR.1 at the exporter's request, if the treatment or processing undergone complies with the provisions of this Protocol.

ARTICLE 39

Derogations

1. Derogations from this Protocol may be adopted by the Special Committee on Customs Cooperation and Rules of Origin, hereafter in this Article referred to as "the Committee", where the development of existing industries or the creation of new industries in the Pacific States justifies them.

The Pacific State or States concerned shall, either before or when it submits the matter to the Committee, notify the European Community of its request for derogation together with the reasons for the request in accordance with paragraph 2.

The European Community shall respond positively to all the Pacific States' requests which are duly justified in conformity with this Article and which cannot cause serious injury to an established European Community industry.

2. In order to facilitate the examination by the Committee of requests for derogation, the Pacific State or States making the request shall, by means of the form given in Annex VII to this Protocol, furnish in support of its request the fullest possible information covering in particular the points listed below:

- description of the finished product,
- nature and quantity of materials originating in a third country,
- nature and quantity of materials originating in a Pacific States or the countries or territories referred to in Articles 3 and 4 or the materials which have been processed there,
- manufacturing processes,
- value added,
- number of employees in the enterprise concerned,

- anticipated volume of exports to the European Community,
- other possible sources of supply for raw materials,
- reasons for the duration requested in the light of efforts made to find new sources of supply,
- other observations.

The same rules shall apply to any requests for extension.

The Committee may modify the form.

3. The examination of requests shall in particular take into account:
 - (a) the level of development or the geographical situation of the Pacific State concerned;

- (b) cases where the application of the existing rules of origin would significantly affect the ability of an existing industry in a Pacific State to continue its exports to the European Community, with particular reference to cases where this could lead to cessation of its activities;
 - (c) specific cases where it can be clearly demonstrated that significant investment in an industry could be deterred by the rules of origin and where a derogation favouring the realisation of the investment programme would enable these rules to be satisfied by stages.
4. In every case an examination shall be made to ascertain whether the rules relating to cumulation of origin do not provide a solution to the problem.
5. In addition, an examination shall be carried out with a favourable bias having particular regard to:
- (a) the economic and social impact of the decision to be taken especially in respect of employment;
 - (b) the need to apply the derogation for a period taking into account the particular situation of the Pacific State concerned and its difficulties.

6. In the examination of requests, special account shall be taken, case by case, of the possibility of conferring originating status on products which include in their composition materials originating in neighbouring developing countries, least-developed countries or developing countries with which one or more Pacific States have special relations, provided that satisfactory administrative cooperation can be established.

7. Without prejudice to paragraphs 1 to 6, the derogation shall be granted where the value added to the non-originating products used in the Pacific State concerned is at least 45 % of the value of the finished product, provided that the derogation is not such as to cause serious injury to an economic sector of the European Community or of one or more of its Member States.

8. The Committee shall take steps necessary to ensure that a decision is reached as soon as possible and in any case not later than 75 working days after the request is received by the EC Co-chairman of the Committee. If the European Community does not inform a Pacific State of its position on the request within this period, the request shall be deemed to have been accepted.

9.

(a) The derogation shall be valid for a period, generally of five years, to be determined by the Committee.

- (b) The derogation decision may provide for renewals without a new decision of the Committee being necessary, provided that the Pacific State or States concerned submit(s), three months before the end of each period, a proof that it is/they are still unable to meet the conditions of this Protocol which have been derogated from.

If any objection is made to the extension, the Committee shall examine it as soon as possible and decide whether to prolong the derogation. The Committee shall proceed as provided for in paragraph 8. All necessary measures shall be taken to avoid interruptions in the application of the derogation.

- (c) In the periods referred to in subparagraphs (a) and (b), the Committee may review the terms for implementing the derogation should a significant change be found to have taken place in the substantive factors governing the decision to grant the derogation. On conclusion of its review the Committee may decide to amend the terms of its decision as regards the scope of derogation or any other condition previously laid down.

TITLE VI

CEUTA AND MELILLA

ARTICLE 40

Special conditions

1. The term "European Community" used in this Protocol does not cover Ceuta and Melilla. The term "products originating in the European Community" does not cover products originating in Ceuta and Melilla.
2. The provisions of this Protocol shall apply *mutatis mutandis* in determining whether products may be deemed as originating in a Pacific State when imported into Ceuta and Melilla.

3. Where products wholly obtained in Ceuta, Melilla or in the European Community undergo working and processing in a Pacific State, they shall be considered as having been wholly obtained in a Pacific State.
4. Working or processing carried out in Ceuta, Melilla or in the European Community shall be considered as having been carried out in a Pacific State, when materials undergo further working or processing in a Pacific State.
5. For the purpose of implementing paragraphs 3 and 4, the insufficient operations listed in Article 7 of this Protocol shall not be considered as working or processing.
6. Ceuta and Melilla shall be considered as a single territory.

TITLE VII

FINAL PROVISIONS

ARTICLE 41

Revision and application of rules of origin

1. The Trade Committee may decide to amend the provisions of this Protocol.
2. In accordance with Article 68 of the Agreement, the Special Committee on Customs Cooperation and Rules of Origin shall, inter alia, take decisions on derogations from this Protocol, under the conditions laid down in Article 39.

ARTICLE 42

Annexes

The Annexes to this Protocol shall form an integral part thereof.

ARTICLE 43

Implementation of the Protocol

The European Community and the Pacific States shall each take the steps necessary to implement this Protocol.

Introductory notes to the list in Annex II

Note 1:

The list sets out the conditions required for all products to be considered as sufficiently worked or processed within the meaning of Article 6 of the Protocol.

Note 2:

1. The first two columns in the list describe the product obtained. The first column gives the heading number or chapter number used in the Harmonized System and the second column gives the description of goods used in that system for that heading or chapter. For each entry in the first two columns a rule is specified in column 3 or 4. Where, in some cases, the entry in the first column is preceded by an "ex", this signifies that the rules in column 3 or 4 apply only to the part of that heading as described in column 2.

2. Where several heading numbers are grouped together in column 1 or a chapter number is given and the description of products in column 2 is therefore given in general terms, the adjacent rules in column 3 or 4 apply to all products which, under the Harmonized System, are classified in headings of the chapter or in any of the headings grouped together in column 1.
3. Where there are different rules in the list applying to different products within a heading, each indent contains the description of that part of the heading covered by the adjacent rules in column 3 or 4.
4. Where, for an entry in the first two columns, a rule is specified in both column 3 and 4, the exporter may opt, as an alternative, to apply either the rule set out in column 3 or that set out in column 4. If no origin rule is given in column 4, the rule set out in column 3 has to be applied.

Note 3:

1. The provisions of Article 6 of the Protocol concerning products having acquired originating status which are used in the manufacture of other products apply regardless of whether this status has been acquired inside the factory where these products are used or in another factory in the European Community or in the Pacific States.

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, is made from "other alloy steel roughly shaped by forging" of heading No ex 7224.

If this forging has been forged in the European Community 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 European Community. The value of the non-originating ingot is thus not taken into account when adding up the value of the non-originating materials used.

2. The rule in the list represents the minimum amount of working or processing required and the carrying out of more working or processing also confers originating status; conversely, the carrying out of less working or processing cannot confer originating status. Therefore, if a rule provides that non-originating material at a certain level of manufacture may be used, the use of such material at an earlier stage of manufacture is allowed and the use of such material at a later stage is not.

3. Without prejudice to Note 3.2 where a rule states that "materials of any heading" may be used, materials of the same heading as the product may also be used, subject, however, to any specific limitations which may also be contained in the rule. However, the expression "manufacture from materials of any heading, including other materials of heading No ..." means that only materials classified in the same heading as the product of a different description than that of the product as given in column 2 of the list may be used.

4. When a rule in the list specifies that a product may be manufactured from more than one material, this means that any one or more materials may be used. It does not require that all of those materials be used.

Example:

The rule for fabrics of heading Nos 5208 to 5212 provides that natural fibres may be used and that chemical materials among other materials may also be used. This does not mean that both have to be used; it is possible to use one or the other or both.

5. Where a rule in the list specifies that a product must be manufactured from a particular material, the condition obviously does not prevent the use of other materials which, because of their inherent nature, cannot satisfy the rule. (See also Note 6.3 below in relation to textiles).

Example:

The rule for prepared foods of heading No 1904 which specifically excludes the use of cereals and their derivatives does not prevent the use of mineral salts, chemicals and other additives which are not products from cereals.

However, this does not apply to products which, although they cannot be manufactured from the particular materials specified in the list, can be produced from a material of the same nature at an earlier stage of manufacture.

Example:

In the case of an article of apparel of ex Chapter 62 made from non-woven materials, if the use of only non-originating yarn is allowed for this class of article, it is not possible to start from non-woven cloth – even if non-woven cloths cannot normally be made from yarn. In such cases, the starting material would normally be at the stage before yarn – that is the fibre stage.

6. Where, in a rule in the list, two percentages are given for the maximum value of non-originating materials that can be used, then these percentages may not be added together. In other words, the maximum value of all the non-originating materials used may never exceed the highest of the percentages given. Furthermore, the individual percentages must not be exceeded in relation to the particular materials they apply to.

Note 4:

1. The term "natural fibres" is used in the list to refer to fibres other than artificial or synthetic fibres. It is restricted to the stages before spinning takes place, including waste, and, unless otherwise specified, includes fibres that have been carded, combed or otherwise processed but not spun.
2. The term "natural fibres" includes horsehair of heading No 0503, silk of heading Nos 5002 and 5003 as well as the wool fibres, fine or coarse animal hair of heading Nos 5101 to 5105, the cotton fibres of heading Nos 5201 to 5203 and the other vegetable fibres of heading Nos 5301 to 5305.
3. The terms "textile pulp", "chemical materials" and "paper-making materials" are used in the list to describe the materials not classified in Chapters 50 to 63, which can be used to manufacture artificial, synthetic or paper fibres or yarns.
4. The term "man-made staple fibres" is used in the list to refer to synthetic or artificial filament tow, staple fibres or waste, of heading Nos 5501 to 5507.

Note 5:

1. Where for a given product in the list a reference is made to this note, the conditions set out in column 3 shall not be applied to any basic textile materials, used in the manufacture of this product, which, taken together, represent 10 per cent or less of the total weight of all the basic textile materials used. (See also Notes 5.3 and 5.4 below).
2. However, the tolerance mentioned in Note 5.1 may only be applied to mixed products which have been made from two or more basic textile materials.

The following are the basic textile materials:

- silk,
- wool,
- coarse animal hair,
- fine animal hair,

- horsehair,
- cotton,
- paper-making materials and paper,
- flax,
- true hemp,
- jute and other textile bast fibres,
- sisal and other textile fibres of the genus *Agave*,
- coconut, abaca, ramie and other vegetable textile fibres,
- synthetic man-made filaments,
- artificial man-made filaments,

- current conducting filaments,
- synthetic man-made staple fibres of polypropylene,
- synthetic man-made staple fibres of polyester,
- synthetic man-made staple fibres of polyamide,
- synthetic man-made staple fibres of polyacrylonitrile,
- synthetic man-made staple fibres of polyimide,
- synthetic man-made staple fibres of polytetrafluoroethylene,
- synthetic man-made staple fibres of polyphenylene sulphide,
- synthetic man-made staple fibres of polyvinyl chloride,
- other synthetic man-made staple fibres,

- artificial man-made staple fibres of viscose,
- other artificial man-made staple fibres,
- yarn made of polyurethane segmented with flexible segments of polyether whether or not gimped,
- yarn made of polyurethane segmented with flexible segments of polyester whether or not gimped,
- products of heading No 5605 (metallized yarn) incorporating strip consisting of a core of aluminium foil or of a core of plastic film whether or not coated with aluminium powder, of a width not exceeding 5 mm, sandwiched by means of a transparent or coloured adhesive between two layers of plastic film,
- other products of heading No 5605.

Example:

A yarn of heading No 5205 made from cotton fibres of heading No 5203 and synthetic staple fibres of heading No 5506 is a mixed yarn. Therefore, non-originating synthetic staple fibres that do not satisfy the origin rules (which require manufacture from chemical materials or textile pulp) may be used up to a weight of 10 per cent of the yarn.

Example:

A woollen fabric of heading No 5112 made from woollen yarn of heading No 5107 and synthetic yarn of staple fibres of heading No 5509 is a mixed fabric. Therefore synthetic yarn which does not satisfy the origin rules (which require manufacture from chemical materials or textile pulp) or woollen yarn that does not satisfy the origin rules (which require manufacture from natural fibres, not carded or combed or otherwise prepared for spinning) or a combination of the two may be used provided their total weight does not exceed 10 per cent of the weight of the fabric.

Example:

Tufted textile fabric of heading No 5802 made from cotton yarn of heading No 5205 and cotton fabric of heading No 5210 is only a mixed product if the cotton fabric is itself a mixed fabric being made from yarns classified in two separate headings or if the cotton yarns used are themselves mixtures.

Example:

If the tufted textile fabric concerned had been made from cotton yarn of heading No 5205 and synthetic fabric of heading No 5407, then, obviously, the yarns used are two separate basic textile materials and the tufted textile fabric is accordingly a mixed product.

3. In the case of products incorporating "yarn made of polyurethane segmented with flexible segments of polyether whether or not gimped" this tolerance is 20 per cent in respect of this yarn.

4. In the case of products incorporating "strip consisting of a core of aluminium foil or of a core of plastic film whether or not coated with aluminium powder, of a width not exceeding 5 mm, sandwiched by means of an adhesive between two layers of plastic film", this tolerance is 30 per cent in respect of this strip.

Note 6:

1. In the case of those textile products, which are marked in the list by a footnote referring to this Introductory Note, textile trimmings and accessories which do not satisfy the rule set out in the list in column 3 for the made up products concerned may be used provided that their weight does not exceed 10 % of the total weight of all the textile materials incorporated.

Textile trimmings and accessories are those classified in Chapters 50 to 63. Linings and interlinings are not be regarded as trimmings or accessories.

2. Any non-textile trimmings and accessories or other materials used which contain textiles do not have to satisfy the conditions set out in column 3 even though they fall outside the scope of Note 3.5.

3. In accordance with Note 3.5, any non-originating non-textile trimmings and accessories or other product, which do not contain any textiles, may, anyway, be used freely where they cannot be made from the materials listed in column 3.

For example,¹ if a rule in the list says that for a particular textile item, such as a blouse, yarn must be used, this does not prevent the use of metal items, such as buttons, because they cannot be made from textile materials.

4. Where a percentage rule applies, the value of trimmings and accessories must be taken into account when calculating the value of the non-originating materials incorporated.

Note 7:

1. For the purposes of heading Nos ex 2707, 2713 to 2715, ex 2901, ex 2902 and ex 3403, the "specific processes" are the following:
 - (a) vacuum distillation;
 - (b) redistillation by a very thorough fractionation process²;

¹ This example is given for the purpose of explanation only. It is not legally binding.
² See additional Explanatory Note 4(b) to Chapter 27 of the Combined Nomenclature.

- (c) cracking;
- (d) reforming;
- (e) extraction by means of selective solvents;
- (f) the process comprising all the following operations: processing with concentrated sulphuric acid, oleum or sulphuric anhydride; neutralization with alkaline agents; decolorisation and purification with naturally active earth, activated earth, activated charcoal or bauxite;
- (g) polymerization;
- (h) alkylation;
- (i) isomerization.

2. For the purposes of heading Nos 2710, 2711 and 2712, the "specific processes" are the following:
- (a) vacuum distillation;
 - (b) redistillation by a very thorough fractionation process¹;
 - (c) cracking;
 - (d) reforming;
 - (e) extraction by means of selective solvents;
 - (f) the process comprising all the following operations: processing with concentrated sulphuric acid, oleum or sulphuric anhydride; neutralization with alkaline agents; decolorisation and purification with naturally active earth, activated earth, activated charcoal or bauxite;

¹ See additional Explanatory Note 4(b) to Chapter 27 of the Combined Nomenclature.

- (g) polymerization;
- (h) alkylation;
- (i) isomerization;
- (j) in respect of heavy oils falling within heading No ex 2710 only, desulphurisation with hydrogen resulting in a reduction of at least 85 per cent of the sulphur content of the products processed (ASTM D 1266-59 T method);
- (k) in respect of products falling within heading No 2710 only, deparaffining by a process other than filtering;

- (l) in respect of heavy oils falling within heading No ex 2710 only, treatment with hydrogen at a pressure of more than 20 bar and a temperature of more than 250°C with the use of a catalyst, other than to effect desulphurisation, when the hydrogen constitutes an active element in a chemical reaction. The further treatment with hydrogen of lubricating oils of heading No ex 2710 (e.g. hydrofinishing or decolorisation) in order, more especially, to improve colour or stability shall not, however, be deemed to be a specific process;
 - (m) in respect of fuel oils falling within heading No ex 2710 only, atmospheric distillation, on condition that less than 30 per cent of these products distils, by volume, including losses, at 300°C by the ASTM D 86 method;
 - (n) in respect of heavy oils other than gas oils and fuel oils falling within heading No ex 2710 only, treatment by means of a high-frequency electrical brush-discharge.
3. For the purposes of heading Nos ex 2707, 2713 to 2715, ex 2901, ex 2902 and ex 3403, simple operations such as cleaning, decanting, desalting, water separation, filtering, colouring, marking, obtaining a sulphur content as a result of mixing products with different sulphur contents, any combination of these operations or like operations do not confer origin.