

**Notes concerning Protocol 1 to Annex V of the ACP-EC Partnership Agreement, concerning the definition of the concept of originating products and methods of administrative cooperation <sup>(1)</sup>**

(2002/C 228/02)

**1. ARTICLE 1(F) — EX-WORKS PRICE**

The ex-works price of a product shall include:

- the value of all materials used in manufacture,
- all costs (material costs as well as other costs) effectively incurred by the manufacturer. For example, the ex-works price of recorded video cassettes, records, discs, media-carrying computer software and other such products comprising an element of intellectual property rights shall as far as possible include all costs with regard to the use of intellectual property rights for the manufacture of the goods, paid for by the manufacturer, whether or not the holder of such rights has his seat or residence in the country of production.

No account shall be taken of commercial price reductions (e.g. for early payment, or large quantity deliveries).

**2. ARTICLE 2 — GENERAL REQUIREMENTS**

Originating products made up of materials 'wholly obtained' or 'sufficiently processed' in two or more ACP States are considered as products originating in the ACP State where the last working or processing took place, provided that the operations carried out go beyond those referred to in Article 5.

*Example:*

Australian woollen yarn (HS 51) is imported into Jamaica where it is made into fabrics (HS 5111). These fabrics are then sent to Guyana where they are made up into garments (HS 62). As garments of Chapter 62 must be manufactured from yarn, this requirement has been met if the processing carried out in all the ACP States concerned is taken into account, and the garments are considered as originating in Guyana.

If these garments are sent to Suriname for the affixing of labels, the garments will not be considered as originating in Suriname and continue to be originating in Guyana.

**3. ARTICLE 4 — APPLICATION OF THE VALUE TOLERANCE RULE IN THE TUNA PROCESSING INDUSTRY**

For the application of the value tolerance rule in the tuna processing industry, the 'given product' is defined as all processed tuna, exported under cover of one single movement certificate EUR.1, obtained from the same specie and classified under the same subheading of the Community's Combined Nomenclature (CN 8-digit code).

The amount of non-originating tuna which, by application of the value tolerance rule, may be used up to 15 % of the ex-works price of a given product is calculated as below:

- A. Identify under which sub-heading(s) of the Harmonised System (6-digit code) the non-originating tuna used is classified in the Harmonised System. In other words, determine whether the non-originating tuna used is albacore (HS 0302 31 or 0303 41), yellowfin (HS 0302 32 or 0303 42), skipjack (HS 0302 33 or 0303 43), bigeye tuna (HS 0302 34 or 0303 44), bluefin tuna (HS 0302 35 or 0303 45), southern bluefin tuna (HS 0302 36 or 0303 46) or other tuna (HS 0302 39 or 0303 49).
- B. Identify under which CN subheading (8-digit code) the processed tuna obtained from the non-originating tuna identified under 'A' is classified in the Community's Combined Nomenclature. In other words, determine whether the processed tuna in the production of which non-originating tuna is used, is tuna in oil (CN 1604 14 11), loins (CN 1604 14 16), tuna in brine (CN 1604 14 18) or other prepared or preserved tuna (CN 1604 20 70).
- C. Determine for the HS sub-heading(s) identified under A, the respective values of the non-originating tuna used to obtain the processed tuna identified under B and to be exported under cover of a movement certificate EUR.1 (or invoice declaration).
- D. Determine the ex-works price of the processed tuna identified under B and to be covered by the movement certificate EUR.1 (or invoice declaration).
- E. Calculate whether the amounts determined under C exceed 15 % of the corresponding amounts determined under D.

If non-originating tuna has been used and the entire consignment qualifies for preferential origin by application of the value tolerance rule, the application for the issue of the movement certificate EUR.1 or the invoice declaration must be endorsed by the exporter with: 'Value tolerance applied for ...' <sup>(2)</sup>.

The endorsement referred to above shall be inserted in the 'Remarks' box of the movement certificate EUR.1 or added to the invoice declaration.

<sup>(1)</sup> OJ L 317, 15.12.2000, p. 94.

<sup>(2)</sup> Description of species and type of the product in question.

**Example 1:***Details of the consignment:*

Raw material	Skipjack (HS 0303 43)	Yellowfin (HS 0303 42)	Albacore (HS 0303 41)
Quantity	10 tons	10 tons	10 tons
Price	EUR 850/ton	EUR 1 200/ton	EUR 2 200/ton
Status	100 % originating	— 5 % non-originating — 95 % originating	100 % originating
Exported product	in oil (CN 1604 14 11) 5,4 tons	in oil (CN 1604 14 11) 5,7 tons	in brine (CN 1604 14 18) 6 tons
Total ex-works price	EUR 12 000	EUR 16 000	EUR 28 000

*Calculation:*

A. Identify under which sub-heading(s) of the Harmonised System (6-digit code) the non-originating tuna used is classified in the Harmonised System:

— Yellowfin (HS 0303 42)

B. Identify under which CN subheading (8-digit code) the processed tuna obtained from the non-originating tuna identified under 'A' is classified in the Community's Combined Nomenclature.

— Tuna in oil (CN 1604 14 11)

C. Determine for the sub-heading(s) identified under A, the respective values of the non-originating tuna used to obtain the processed tuna identified under B

—  $(10 \text{ tons} \times 5\%) \times \text{EUR } 1\,200 = \text{EUR } 600$

D. Determine the ex-works price of the processed tuna identified under B

— EUR 16 000

E. Calculate whether the amounts determined under C exceed 15 % of the corresponding amounts determined under D

—  $600 : 1600 = 3,75 < 15\%$

*Conclusion:*

The entire consignment qualifies for preferential origin. The application for the issue of the movement certificate EUR.1 or the invoice declaration must be endorsed by the exporter with the following phrase: 'Value tolerance applied for yellowfin in oil of CN 1604 14 11'.

**Example 2:***Details of the consignment:*

Raw material	Skipjack (HS 0303 43)		
Quantity	30 tons		
Price	EUR 850/ton		
Status	— 5 % non-originating (used for production of tuna in oil) — 95 % originating		
Exported product	in oil (CN 1604 14 11) 9,8 tons	flakes (CN 1604 20 70) 1,6 tons	in brine (CN 1604 14 18) 4,9 tons
Total ex-works price	EUR 21 600	EUR 3 000	EUR 12 000

*Calculation:*

A. Identify under which sub-heading(s) of the Harmonised System (6-digit codes) the non-originating tuna used is classified in the Harmonised System:

— Skipjack (HS 0303 43)

B. Identify under which CN subheading (8-digit code) the processed tuna obtained from the non-originating tuna identified under 'A' is classified in the Community's Combined Nomenclature.

— Tuna in oil (CN 1604 14 11)

C. Determine for the sub-heading(s) identified under A, the respective values of the non-originating tuna used to obtain the processed tuna identified under B

—  $(30 \text{ tons} \times 5\%) \times \text{EUR } 850 = \text{EUR } 1\,275$

D. Determine the ex-works price of the processed tuna identified under B

— EUR 21 600

E. Calculate whether the amounts determined under C exceed 15 % of the corresponding amounts determined under D

—  $1\,275 : 216 = 5,90 < 15\%$

*Conclusion:*

The entire consignment qualifies for preferential origin. The application for the issue of the movement certificate EUR.1 or the invoice declaration must be endorsed by the exporter with the following phrase: 'Value tolerance applied for skipjack in oil of CN 1604 14 11'.

**Example 3:***Details of the consignment:*

Raw material	Skipjack (HS 0303 43)		Albacore (HS 0303 41)
Quantity	9 tons		10 tons
Price	EUR 850/ton		EUR 1 200/ton
Status	— 10 % non-originating (used for production of tuna in oil and tuna in brine) — 90 % originating		100 % originating
Exported product	in oil (CN 1604 14 11) 3,3 tons	in brine (CN 1604 14 18) 1,6 tons	in brine (CN 1604 14 18) 5,7 tons
Total ex-works price	EUR 7 000	EUR 3 500	EUR 15 000

*Calculation:*

A. Identify under which sub-heading(s) of the Harmonised System (6-digit code) the non-originating tuna used is classified in the Harmonised System:

— Skipjack (HS 0303 43)

B. Identify under which CN subheading (8-digit code) the processed tuna obtained from the non-originating tuna identified under 'A' is classified in the Community's Combined Nomenclature.

— B.1: Tuna in oil (CN 1604 14 11)

— B.2: Tuna in brine (CN 1604 14 18)

C. Determine for the sub-heading(s) identified under A, the respective values of the non-originating tuna used to obtain the processed tuna identified under B

— B.1:  $(6 \text{ tons} \times 10\%) \times \text{EUR } 850 = \text{EUR } 510$

— B.2:  $(3 \text{ tons} \times 10\%) \times \text{EUR } 850 = \text{EUR } 255$

D. Determine the ex-works price of the processed tuna identified under B

— B.1: EUR 7 000

— B.2: EUR 3 500

E. Calculate whether the amounts determined under C exceed 15 % of the corresponding amounts determined under D

$$\text{— B.1: } 510 : 70 = 7,29 < 15 \%$$

$$\text{— B.2: } 255 : 35 = 7,29 < 15 \%$$

*Conclusion:*

The entire consignment qualifies for preferential origin. The application for the issue of the movement certificate EUR.1 or the invoice declaration must be endorsed by the exporter with the following phrase: 'Value tolerance applied for skipjack in oil (CN 1604 14 11) and skipjack in brine (CN 1604 14 18)'.

#### **Example 4:**

*Details of the consignment:*

Raw material	Skipjack (HS 0303 43)		Albacore (HS 0303 41)
Quantity	10 tons		10 tons
Price	EUR 850/ton		EUR 1 200/ton
Status	— 15 % non-originating (used for production of tuna in oil) — 85 % originating		100 % originating
Exported product	in oil (CN 1604 14 11) 3,6 tons	in brine (CN 1604 14 18) 1,8 tons	in brine (CN 1604 14 18) 5,7 tons
Total ex-works price	EUR 7 600	EUR 3 600	EUR 15 000

*Calculation:*

A. Identify under which sub-heading(s) of the Harmonised System (6-digit code) the non-originating tuna used is classified in the Harmonised System:

— Skipjack (HS 0303 43)

B. Identify under which CN subheading (8-digit code) the processed tuna obtained from the non-originating tuna identified under 'A' is classified in the Community's Combined Nomenclature.

— Tuna in oil (CN 1604 14 11)

C. Determine for the sub-heading(s) identified under A, the respective values of the non-originating tuna used to obtain the processed tuna identified under B

$$\text{— } (10 \text{ tons} \times 15 \%) \times \text{EUR } 850 = \text{EUR } 1\,275$$

D. Determine the ex-works price of the processed tuna identified under B

— EUR 7 600

E. Calculate whether the amounts determined under C exceed 15 % of the corresponding amounts determined under D

$$\text{— } 1\,275 : 76 = 16,78 < 15 \%$$

*Conclusion:*

Not the entire consignment qualifies for preferential origin. A movement certificate EUR.1 or invoice declaration cannot be issued/made out for the tuna in oil (CN 1604 14 11).

#### **4. ARTICLE 6 — CUMULATION OF ORIGIN**

##### **4.1. Cumulation with the OCT and the Community**

###### *4.1.1. Cumulation with materials originating in the Community or in the OCT*

Products which have already obtained Community or OCT origin and which are further processed in the ACP will be considered as originating in the ACP provided that the operations carried out go beyond those referred to in Article 5.

*Example 1:*

Fish (HS Chapter 3) originating in St Pierre and Miquelon (OCT) are transported to Jamaica (ACP) where they are processed into preserved fish (HS 1604). The preserves will be considered as originating in Jamaica.

*Example 2:*

Fish (HS Chapter 3) originating in St Pierre and Miquelon and processed into preserved fish (HS 1604) in St Pierre and Miquelon are transported to Jamaica where labels are affixed and the products placed in boxes. As the operation in Jamaica is a minimal one, the preserves will be considered as originating in St Pierre and Miquelon.

**4.1.2. Cumulation of working and processing**

Non-originating products processed in the Community or in the OCT without obtaining origin and which are further processed in the ACP will be considered as originating in the ACP provided all operations carried out and taken together are sufficient within the meaning of Article 4.

*Example 1:*

Australian woollen yarn (HS 51) is imported into the Community where it is made into fabrics (HS 5111). These fabrics are then sent to Guyana where they are sewn together into garments (HS 62). As garments of Chapter 62 must be manufactured from yarn, this requirement has been met if the processing carried out in the Community, the OCT and the ACP States concerned is taken into account, and the garments are considered as originating in Guyana.

*Example 2:*

Australian woollen yarn (HS 51) is imported into the Community where it is made into fabrics (HS 5111). These fabrics are then sent to Guyana where they are dyed. Fabrics of HS 5111 are originating if they are obtained from natural fibres or under certain conditions when they are printed accompanied by two preparatory or finishing operations. As a result, the non-originating fabric which is dyed in Guyana will not obtain ACP origin.

**4.2. Cumulation with South Africa****4.2.1. Cumulation with materials originating in South Africa <sup>(1)</sup>**

Products which have already obtained South African origin and which are further processed in the ACP will be considered as originating in the ACP provided the value added in the ACP exceeds the value of the materials used originating in South Africa.

*Example:*

Cotton fabrics (HS 52) originating from South Africa are made into garments (HS 62) in Mauritius. These garments are considered as originating in Mauritius, provided the value added in Mauritius exceeds the value of the cotton fabric.

**4.2.2. Cumulation of working and processing within SACU**

Non-originating products processed in South Africa without obtaining origin and which are further processed in an ACP State, Member State of SACU, will be considered as originating in the ACP provided all operations carried out and taken together, are sufficient within the meaning of Article 4.

*Example:*

Australian woollen yarn (HS 51) is imported into South Africa where it is made into fabrics (HS 5111). These fabrics are then sent to Namibia where they are sewn together into garments (HS 62). Garments of Chapter 62 are originating if manufactured from yarn. This requirement has been met if the processing carried out in all SACU countries is taken into account. As a result, the garments are considered as originating in Namibia.

**5. ARTICLE 9 — ORIGIN RULE FOR SETS**

The origin rule for sets applies only to sets within the meaning of General Rule 3 for the interpretation of the Harmonised System.

According to this provision each product of which the set is composed, with the exception of products the value of which does not exceed 15 per cent of the total value of the set, must fulfil the origin criteria for the heading under which the product would have been classified if it were a separate product and not included in a set regardless of the heading under which the whole set is classified in accordance with the text of the General Rule referred to above.

<sup>(1)</sup> Subject to the provisions of Article 6(8) of Protocol 1.

These provisions remain applicable even if the 15 % tolerance is used for that product which under the text of the General Rule referred to above determines the classification of the whole set.

#### 6. ARTICLE 14 — DOCUMENTARY EVIDENCE FOR USED GOODS

Evidences of origin may be issued also for used or any other goods where, because of a considerable time lapse between the date of production or importation on the one hand and the date of exportation on the other hand, the usual supporting documents are no longer available, provided that:

- (a) the date of production or importation of the goods lies beyond that period of time during which, according to the respective legislation in the country of exportation, records must be kept by traders;
- (b) the goods can be deemed to be originating on the grounds of other evidences, like declarations of the producer or any other trader, an expert's opinion, by marks on the goods or descriptions of them, etc.;
- (c) there is no indication that the goods do not comply with the requirements of the origin rules.

#### 7. ARTICLE 14 (AND 23) — SUBMISSION OF PROOF OF ORIGIN IN CASE OF ELECTRONIC TRANSMISSION OF THE IMPORT DECLARATION

In cases where import declarations are transmitted electronically to the customs authorities of the importing State, it rests with these authorities to decide, within the framework and according to the provisions of the customs legislation applicable in the importing State, when and to what extent the documents constituting evidence of originating status shall actually be submitted.

#### 8. ARTICLE 15 — DESCRIPTION OF GOODS ON MOVEMENT CERTIFICATE EUR.1

##### Cases of large consignments

When the box, on the movement certificate EUR.1, provided for the description of the goods is insufficient to permit specification of the necessary particulars for identifying the goods, particularly in the case of large consignments, the exporter may specify the goods to which the certificate relates on attached invoices of the goods and, if necessary, additional commercial documents on condition that:

- (a) the invoice numbers are shown in Box 10 of the movement certificate EUR.1;
- (b) the invoices and, where relevant, additional commercial documents are firmly attached to the certificate prior to presentation to customs; and
- (c) the customs authorities have stamped the invoice and additional commercial documents, officially attaching them to the certificates.

#### 9. ARTICLE 15 — GOODS EXPORTED BY A CUSTOMS CLEARANCE AGENT

A customs clearance agent may be allowed to act as the authorised representative of the person who is the owner of the goods or has a similar right of disposal over them, even in cases where the person is not situated in the exporting country, as long as the agent is in a position to prove the originating status of the goods.

#### 10. ARTICLE 16 — TECHNICAL REASONS

A movement certificate EUR.1 may be rejected for 'technical reasons' because it was not made out in the prescribed manner. These are the cases which may give rise to subsequent presentation of a certificate issued retrospectively and they include, by way of example, the following:

- the movement certificate EUR.1 has been made out on a form other than the prescribed one (e.g. no guilloche background, differs significantly from the model in size or colour, no serial number, not printed in one of the officially-prescribed languages),
- one of the mandatory boxes (e.g. Box 4 on the EUR.1) has not been filled in <sup>(1)</sup>,
- the movement certificate EUR.1 has not been stamped and signed (i.e. in Box 11),
- the movement certificate EUR.1 is endorsed by a non-authorised authority,
- the stamp used is a new one which has not yet been notified,
- the movement certificate EUR.1 presented is a copy or photocopy rather than the original,

<sup>(1)</sup> If the goods description box (box 8) is not filled in, please refer to the note on Article 32: refusal of preferential treatment without verification

- the entry in boxes 2 or 5 refers to a country that does not belong to the Agreement (e.g. Israel or Cuba).

*Action to be taken:*

The document should be marked 'DOCUMENT NOT ACCEPTED', stating the reason(s), and then returned to the importer in order to enable him to get a new document issued retrospectively. The customs authorities, however, may keep a photocopy of the rejected document for the purposes of post-clearance verification or if they have grounds for suspecting fraud.

#### 11. ARTICLE 19 — PRACTICAL APPLICATION OF THE PROVISIONS CONCERNING INVOICE DECLARATION

The following guidelines shall apply:

- (a) The indication of non-originating products and therefore products which are not covered by the invoice declaration should not be made on the declaration itself. However, this indication should appear on the invoice in a precise way so as to avoid any misunderstandings.
- (b) Declarations made on photocopied invoices are acceptable provided such declarations bear the signature of the exporter under the same conditions as the original. Approved exporters who are authorised not to sign invoice declarations are not required to sign invoice declarations made on photocopied invoices.
- (c) An invoice declaration on the reverse of the invoice is acceptable.
- (d) The invoice declaration may be made on a separate sheet of the invoice provided that the sheet is obviously part of the invoice. A complementary form may not be used.
- (e) An invoice declaration made out on a label which is subsequently attached to the invoice is acceptable provided there is no doubt that the label has been affixed by the exporter. For example, the exporter's stamp or signature should cover both the label and the invoice.

#### 12. ARTICLE 19 — VALUE BASIS FOR THE ISSUE AND ACCEPTANCE OF INVOICE DECLARATIONS MADE OUT BY ANY EXPORTER

The ex-works price may be used as the value basis for deciding when an invoice declaration can be used instead of a movement certificate EUR.1 in reference to the value limit laid down in Article 19(1)(b). If the ex-works price is used as the value basis, the importing country shall accept invoice declarations made out by reference to that.

In cases where there is no ex-works price owing to the fact that the consignment is supplied free of charge, the customs value established by the authorities of the country of importation shall be considered as the basis for the value limit.

#### 13. ARTICLE 20 — APPROVED EXPORTER

The term 'exporter' may refer to persons or undertakings, regardless of whether they are producers or traders, as long as they comply with all the other provisions of this Protocol. Customs clearance agents may not be granted approved exporter status within the meaning of this Protocol.

The status of approved exporter may be granted only after an exporter has submitted a written application. When examining this, the customs authorities should give particular consideration to the following points:

- whether the exporter exports regularly: here, rather than focusing on a given number of consignments or a particular sum, the customs authorities should look into how regularly the operator carries out such operations,
- whether the exporter is at all times in a position to supply evidence of origin for the goods to be exported. In this connection it is necessary to consider whether the exporter knows the current rules of origin and is in possession of all the documents proving origin. In the case of producers, the authorities must make sure that the undertaking's stock accounts allow identification of the origin of goods and, in the case of new undertakings, that the system they have installed will permit such identification. For operators who are traders only, examination should focus more specifically on their usual trade flows,
- whether, in the light of his past exporting record, the exporter offers sufficient guarantees concerning the originating status of the goods and the ability to meet all resulting obligations.

Once an authorisation has been issued, exporters must:

- undertake to issue invoice declarations only for goods for which they hold all the necessary proof or accounting elements at the time of issue,
- assume full responsibility for the way the authorisation is used, particularly for incorrect origin statements or other misuse of the authorisation,
- assume responsibility for ensuring the person in the undertaking responsible for completing invoice declarations knows and understands the rules of origin,

- undertake to keep all documentary proofs of origin for a period of **at least** three years from the date that the declaration was made,
- undertake to produce proof of origin to the customs authorities at any time, and allow inspections by those authorities at any time.

The customs authorities must carry out regular controls on authorised exporters. These controls must ensure the continued compliance of the use of the authorisation and may be carried out at intervals determined, if possible, on the basis of risk analysis criteria.

The customs authorities must notify the European Commission of the national numbering system used for designating authorised exporters. The European Commission will then pass on the information to the customs authorities of the EU Member States.

#### 14. ARTICLE 24 — IMPORTATION BY INSTALMENTS

An importer wishing to take advantage of the provisions of this article must inform the exporter before the first instalment is exported that a single proof of origin for the complete product is required.

It is possible that each instalment is made up only of originating products. Where such instalments are accompanied by proofs of origin those separate proofs of origin shall be accepted by the customs authorities of the importing country for the instalments concerned, instead of a single proof of origin issued for the complete product.

#### 15. ARTICLE 32 — REFUSAL OF PREFERENTIAL TREATMENT WITHOUT VERIFICATION

This covers cases in which the proof of origin is considered inapplicable, *inter alia* for the following reasons:

- the goods to which the movement certificate EUR.1 refers are not eligible for preferential treatment,
- the goods description box (box 8 on EUR.1) is not filled in or refers to goods other than those presented,
- the proof of origin has been issued by a country not party to the Agreement even if the goods originate in a country party to the Agreement (e.g. EUR.1 issued in Israel for products originating in the ACP),
- one of the mandatory boxes on the movement certificate EUR.1 bears traces of non-authenticated erasures or

alterations (e.g. the boxes describing the goods or stating the number of packages, the country of destination or the country of origin),

- the time-limit on the movement certificate EUR.1 has expired for reasons other than those covered by the regulations (e.g. exceptional circumstances), except where the goods were presented before expiry of the time-limit,
- the proof of origin is produced retrospectively for goods that were initially imported fraudulently,
- box 4 on the movement certificate EUR.1 names a country not party to the Agreement.

#### *Action to be taken:*

The proof of origin should be marked 'INAPPLICABLE' and retained by the customs authorities to which it was presented in order to prevent any further attempt to use it.

Where it is appropriate to do so, the Customs authorities of the importing country shall inform the Customs authorities of the country of exportation about the refusal without delay.

#### 16. ARTICLE 32 — TIME-LIMITS FOR THE VERIFICATION OF EVIDENCES OF ORIGIN

No country shall be obliged to answer a request for subsequent verification, as provided for in Article 32, received more than three years after the date of issue of a movement certificate EUR.1 or the date of making out an invoice declaration.

#### 17. ARTICLE 32 — REASONABLE DOUBT

The following cases, by way of example, come into this category:

- the document has not been signed by the exporter (except for declarations on the basis of invoices or commercial documents drawn up by approved exporters where such a possibility is provided for),
- the movement certificate EUR.1 has not been signed or dated by the issuing authority,
- the markings on the goods or packaging or the other accompanying documents refer to an origin other than that given on the movement certificate EUR.1,
- the particulars entered on the movement certificate EUR.1 show that there has been insufficient working to confer origin,

— the stamp used to endorse the document does not match that which has been notified.

*Action to be taken:*

The document is sent to the issuing authorities for post-clearance verification, with a statement of the reasons for the request for verification. Pending the results of this verification, all appropriate steps judged necessary by the customs authorities shall be taken to secure payment of any applicable duties.

**18. ANNEX I — INTRODUCTORY NOTE 6, POINT 6(1)**

The special rule for textile materials excludes linings and interlinings. The 'pocketing fabric' is a special woven fabric that is exclusively used for the production of pockets and can therefore not be considered as normal lining or interlining. The special rule applies therefore to 'pocketing fabric'. The rule applies to woven fabrics in the piece as well as to finished pockets originating in third countries.

**19. EXPLANATORY NOTES FOR ARTICLES 16 AND 32**

<b>DA</b>	AFVIST DOKUMENT	UANVENDELIGT
<b>DE</b>	DOKUMENT NICHT ANGENOMMEN	NICHT ANWENDBAR
<b>EL</b>	ΑΠΟΡΡΙΠΤΕΤΑΙ	ΜΗ ΑΠΟΔΕΚΤΟ
<b>EN</b>	DOCUMENT NOT ACCEPTED	INAPPLICABLE
<b>ES</b>	DOCUMENTO RECHAZADO	INAPLICABLE
<b>FI</b>	ASIAKIRJA HYLÄTTY	EI VOIDA KÄYTTÄÄ
<b>FR</b>	DOCUMENT REFUSÉ	INAPPLICABLE
<b>IT</b>	DOCUMENTO RESPINTO	INAPPLICABILE
<b>NL</b>	DOCUMENT GEWEIGERD	NIET VAN TOEPASSING
<b>PT</b>	DOCUMENTO RECUSADO	NÃO APLICÁVEL
<b>SV</b>	EJ GODTAGET DOKUMENT	OANVÄNDBART

**Final report of the Hearing Officer in case COMP/36.264 — Mercedes, pursuant to Article 15 of Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings (OJ L 162, 19.6.2001, p. 21)**

(2002/C 228/03)

The draft Decision gives rise to the following observations regarding the right to be heard.

There were no procedural problems. The Statement of Objections was sent to the undertaking concerned, DaimlerChrysler AG, on 31 March 1999. The undertaking replied by letter of 14 June 1999. The Oral Hearing took place on 29 June 1999.

The rather long duration of the procedure is mainly due to the fact that the undertaking concerned was afforded the opportunity of submitting several additional comments in writing after the Oral Hearing. On 7 December 1999 DaimlerChrysler AG presented a legal expert's report which analysed in detail the main question of the case, namely the application of Article 81 to the distribution of motor vehicles via a network of commercial agents. A further written submission from the undertaking was received by the Commission on 4 September 2000 after the judgment of the Court of First Instance of the European Communities in the Volkswagen AG case. The draft Decision to be submitted to the Advisory Committee on restrictive practices and monopolies was drafted by mid-2001 after all of DaimlerChrysler AG's submissions had been analysed.

It follows from the above observations that the rights of defence have been fully respected. The draft Decision deals only with objections in respect of which DaimlerChrysler AG has been afforded the opportunity of making known its views.

Done at Brussels on 4 September 2001.

Helmuth SCHRÖTER