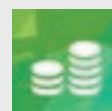


Special Report

# Are preferential trade arrangements appropriately managed?



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**Special Report**

**Are preferential  
trade arrangements  
appropriately managed?**

(pursuant to Article 287(4), second subparagraph, TFEU)

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## **Reply of the Commission**

<b>ACP</b>	African, Caribbean and Pacific Group of States
<b>AC</b>	Administrative cooperation
<b>AMA</b>	Mutual assistance concerning agricultural or fishery products
<b>CCC</b>	Community Customs Code
<b>CCIP</b>	Customs Code Implementing Provisions
<b>CGE</b>	Computable General Equilibrium Model
<b>CLWP</b>	Commission's legislative work programme
<b>EPE</b>	<i>Ex post</i> evaluation
<b>EPA</b>	Economic partnership agreement
<b>EU</b>	European Union
<b>FAO</b>	Food and Agriculture Organisation of the United Nations
<b>FTA</b>	Free trade agreement
<b>GSP</b>	Generalised system of preferences
<b>GTAP</b>	Global Trade Analysis Project
<b>IA</b>	Impact assessment
<b>ILO</b>	International Labour Organisation
<b>MA</b>	Mutual assistance
<b>OLAF</b>	European Anti-Fraud Office
<b>PTAs</b>	Preferential trade arrangements
<b>SIA</b>	Sustainability impact assessment
<b>TOR</b>	Traditional own resources
<b>TRIPS</b>	Agreement on Trade-Related Aspects of Intellectual Property Rights

**Administrative cooperation (AC):** exchange of information between beneficiary/partner countries, the Commission and the Member States, whereby the former inform the Commission, which conveys this information to Member States, of the authorities competent to issue certificates of origin or movement certificates and the specimen of stamps used therein. Member States send requests to these authorities in order to confirm the validity and/or authenticity of proofs of preferential origin and movement certificates.

**Cariforum:** body that comprises Caribbean ACP states for the purpose of promoting and coordinating policy dialogue, cooperation and regional integration, mainly within the framework of the Cotonou Agreement between the ACP and the European Union and also the Cariforum–EU Economic Partnership Agreement (EPA).

**Comext:** the statistical database on trade of goods from and between European Union countries (intra and extra EU). These statistics cover the transactions of more than 11 000 goods classified in the Combined Nomenclature.

**Computable General Equilibrium Model (CGE):** a quantitative economic model used to simulate how an economy reacts to changes in policy, in areas such as taxation, migration and trade policy. It assumes that markets in an economy tend toward equilibrium, if not disturbed by shocks, and in principle lead to an efficient allocation of resources. The first CGE model was constructed by Leif Johansen in 1960.

**Cumulation:** a system that allows products originating in country A to be further processed or added to products originating in country B, as if they had originated in country B. The resulting product would have the origin of country B. The working or processing carried out in each beneficiary/partner country on originating products does not have to be 'sufficient working or processing' as set out in the list rules.

**Customs controls:** specific acts performed by customs authorities in order to ensure the correct application of customs rules; such acts may include examining goods, verifying declaration data and the existence and authenticity of electronic or written documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other similar acts.

**Customs declaration:** the act whereby a person indicates a wish to place goods under a given customs procedure.

**EU's generalised system of preferences (GSP):** a unilateral trade arrangement by which the EU grants developing countries and territories preferential access to its market in the form of reduced tariffs for their goods upon entry in the EU market. The standard GSP provides preferences to developing countries and territories over more than 6 200 tariff lines, whereas the special GSP in favour of sustainable development and good governance, known as GSP +, offers additional tariff reductions to assist vulnerable developing countries in their ratification and application of international agreements in these fields. The EBA 'everything but arms' scheme supplies quota free duty-free for all products for the least developed countries.

**Free trade areas and customs unions:** preferential trade arrangements, which represent an exception to the most favoured nation (MFN) treatment rule of the GATT and the GATS by virtue of which trader partners grant reciprocally preferential access to their products and services in order to facilitate trade between them. While both lead to the reciprocal elimination of tariffs and quotas in the constituent territories and the discrimination of non-members' trade, the latter implies the establishment of a common customs tariff among them.

**Global Trade Analysis Project (GTAP):** a global network of researchers and policy makers conducting quantitative analysis of international policy issues. GTAP is coordinated by the Center for Global Trade Analysis in Purdue University. A regional single country CGE model developed by the Australian Industry Commission provided the inspiration for the GTAP project in 1990–91. The centrepiece of the Global Trade Analysis Project is a global database describing bilateral trade patterns, production, consumption and intermediate use of commodities and services.

**Impact assessment (IA):** an *ex ante* evaluation prepared by the Commission in order to provide policymakers with evidence of the advantages and disadvantages of possible policy options by assessing their potential impact.

**Local clearance procedure:** a simplified procedure whereby a trader receives the goods directly at his/her premises (or the designated place) and usually the customs declaration is lodged and the goods are released by means of an entry in the trader's own records.

**Mutual assistance (MA) communication:** transmission to Member States by the Commission of information concerning operations which constitute, or appear to constitute, breaches of customs or agricultural legislation that are of particular relevance at EU level.

**Mode 4:** Supply of services in cross-border trade delivered within the territory of a trade partner, with the EU supplier present as a natural person.



**REM-REC applications:** claims for remission/repayment of the customs debt or for waiver of subsequent entry in the accounts thereof submitted by the Member States' customs authorities to the Commission pursuant to Articles 871 and 905 of the CCIP.

**Revenue foregone:** the revenue that the EU forfeits due to the tariff preferences granted to beneficiary/partner countries of PTAs.

**Revenue lost:** customs duties due which can no longer be collected.

**Risk management/risk analysis:** the systematic identification of risk and implementation of all measures necessary to limit exposure to risk, preferably using automated data-processing techniques. This includes activities such as collecting data and information, analysing and assessing risk, prescribing and taking action and regular monitoring and review of the process and its outcomes, based on international, EU-wide and national sources and strategies.

**Risk profile:** a combination of risk criteria and control areas (eg. type of goods, countries of origin) which indicates the existence of risk and leads to a proposal to carry out a control measure. When these criteria are developed at EU level following a common risk management framework they are known as EU risk profiles.

**Simplified declaration procedure:** a simplified procedure whereby a trader presents goods to customs and lodges either a simplified declaration form or a commercial document (e.g. an invoice) instead of a detailed standard declaration.

**Sustainability impact assessment (SIA):** an independent study carried out by external consultants to provide negotiators with an evidence-based analysis of the potential economic, environmental and social impacts that a trade agreement might have, both in the EU and in the partner countries. External consultants are bound by the guidelines and terms of reference contained in the Commission's handbook on trade SIAs.

**Time-barring of the customs debt:** the fact that a customs debt can no longer be notified to the debtor because a period of 3 years has passed from the date on which the customs debt was incurred.

I  
Preferential trade arrangements (PTAs) allow trading partners to grant preferential terms in the context of their trade with each other. They can be either reciprocal or unilateral. The former reduce tariff barriers with the objective of increasing trade, economic growth, employment and consumer benefits for both parties. With the latter the EU grants preference without reciprocity with the objective of providing developing countries tariff-free access to the EU market, thereby contributing to poverty eradication and to promoting sustainable development.

II  
The objective of the Court's audit was to evaluate whether the Commission has appropriately assessed the economic effects of PTAs and whether the controls thereon are effective in ensuring that imports cannot wrongly benefit from a preferential tariff, resulting in the loss of EU revenue.

III  
The Court found that:

- (a) the Commission has not appropriately assessed all the economic effects of PTAs; however, the use of the impact assessment tool has increased and there has been progress in the quality of the analysis conducted;
- (b) the interim evaluation of the generalised system of preferences (GSP) shows that the policy has not yet fully delivered its intended benefits;
- (c) there are weaknesses in customs controls applied by the authorities of the selected Member States;
- (d) there are weaknesses in the Commission's supervision of Member States and beneficiary/partner countries in respect of PTAs; and
- (e) the legal provisions of the PTAs do not contain sufficient safeguards to protect the financial interests of the EU.

IV  
In order to improve the assessment of the economic effects of PTAs the Commission should:

- (a) unless duly justified, carry out an impact assessment (IA) and a sustainability impact assessment (SIA) for each PTA, providing an in-depth, comprehensive and quantified analysis of the expected economic effects, including an estimate of revenue foregone;
- (b) involve Eurostat routinely in the quality assessment of the statistical data sources used in SIAs, and ensure the timeliness of the analysis carried out for negotiators;
- (c) carry out interim and *ex post* evaluations in order to assess the extent to which PTAs with a significant impact meet their policy objectives and how their performance can be improved in key economic sectors and including an estimate of revenue foregone.

## Executive summary

### V

In order to improve the protection of the EU's financial interests the Commission should:

- (a) create EU risk profiles on PTAs so that Member States have a common approach to risk analysis in order to reduce losses to the EU budget;
- (b) verify that Member States improve the effectiveness of their risk management systems and control strategy to reduce losses to the EU budget;
- (c) encourage Member States to adopt appropriate precautionary measures upon receipt of a mutual assistance (MA) communication;
- (d) evaluate and carry out monitoring visits on a risk basis to countries benefiting from preferential treatment notably regarding the rules of origin and cumulation;
- (e) require the Member States to improve the quality of the information they provide concerning administrative cooperation;
- (f) improve the financial follow-up of OLAF investigations in order to prevent losses to the EU budget due to time-barring;
- (g) reinforce the EU's position in reciprocal PTAs and make more use of precautionary and safeguard measures including them in all future trade agreements; and
- (h) promote the replacement of origin and movement certificates with exporters' self-certification.

# Introduction

## Preferential trade arrangements

### 01

Preferential trade arrangements (PTAs) allow trading partners to grant preferential terms in the context of their trade with each other. They can be either reciprocal or unilateral. The former reduce tariff barriers with the objective of increasing trade, economic growth, employment and consumer benefits for both parties. With the latter the EU grants preference without reciprocity with the objective of providing developing countries tariff-free access to the EU market, thereby contributing to poverty eradication and to promoting sustainable development.

### 02

At the end of 2013, 39 PTAs were in force covering trade between the EU and 180 countries and territories. In 2011 the value of goods imported into the EU under PTAs amounted to more than 242 billion euro, representing 14 % of EU imports. **Annex I** provides an overview of the data for the 10 Member States which imported the most, and the 10 beneficiary/partner countries which exported the most, under PTAs that year.

### 03

According to the Treaty on the Functioning of the EU<sup>1</sup>, common commercial policy is the exclusive competence of the Union. The procedure for establishing PTAs is set out in its Articles 206 and 207.

### 04

The Commission is responsible for negotiating the PTAs, assessing and evaluating their economic, social and environmental impacts and supervising their implementation by Member States and beneficiary/partner countries.

### 05

The Member States' customs authorities bear the main responsibility for overseeing the EU's international trade. In particular, they implement measures to safeguard the financial interests of the EU and to protect it from unfair or illegal trading practices, while encouraging legitimate trade.

<sup>1</sup> Article 3(1)(e) and Article 3(2) TFEU.

## Introduction

### 06

The authorities of the beneficiary/ partner countries are responsible for checking that the arrangements are adhered to and they therefore play an essential part in the initial determination of the 'originating' status of the products.

### Assessment of the effects of PTAs by the Commission

### 07

There are two types of *ex ante* assessments used to support decision-making in trade matters: impact assessments (IAs) and sustainability impact assessments (SIAs). IAs are a Commission-wide tool used to support decision-making in the case of initiatives with expected significant impacts. SIAs are a trade-specific instrument, providing a more detailed analysis of trade agreements under negotiation.

### 08

In 2002<sup>2</sup> the Commission introduced IAs to help identify the main options for achieving the intended policy objectives and analyse their likely impacts in the economic, social and environmental fields. IAs also set out a framework for monitoring and evaluation. IAs are carried out by the Commission before the negotiation mandate is proposed for adoption by the Council.

### 09

Since 2003, the Commission has been required to carry out an *ex ante* evaluation or an IA to respect legal obligations<sup>3</sup> or Commission rules<sup>4</sup>. This is because PTAs entail a reduction in revenue for the EU budget (revenue foregone) and are major policy proposals having economic impacts both inside and outside the EU (see more details in **Annex II**).

### 10

In 1999 the Commission '*decided to integrate sustainable development into trade negotiations by developing a new assessment tool called trade SIA*'<sup>5</sup>.

### 11

After the trade negotiations have officially started but prior to the signature of PTAs, the Commission outsources SIAs, which are studies conducted by external consultants used as a policy tool for an *ex ante* assessment of the economic, social and environmental implications of a trade negotiation.

### 12

Interim and *ex post* evaluations assess the actual impacts of the PTAs as a result of their implementation. In the Court's view they should be carried out in respect of all PTAs with significant economic, social and environmental impact ideally after 3 years from their entry into force. These allow policymakers, stakeholders and European taxpayers to assess whether PTAs are actually meeting their policy objectives.

- 2 COM(2002) 276 final of 5 June 2002.
- 3 Pursuant to Article 21, under the heading 'Principle of sound financial management', of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities in force from 1.1.2003 (OJ L 357, 31.12.2002, p. 1). However, since 22 August 2006 this article only requires *ex ante* evaluations in respect of 'programmes or activities occasioning budget expenditure'.
- 4 COM(2002) 276 final, applicable from 2003, and COM(2005) 12 final of 26 January 2005, on the strategic objectives 2005–09.
- 5 Preface by Peter Mandelson, former European Commissioner for Trade, to the handbook on trade SIA.

Introduction

13

In its communication on 'Trade, growth and world affairs, trade policy as a core component of the EU's 2020 strategy'<sup>6</sup>, the Commission stated that *ex post* evaluations would be carried out to monitor the impacts of existing PTAs on a more systematic basis (see more details in **Annex III**).

14

Revenue foregone is the revenue that the EU forfeits due to the tariff preferences granted to beneficiary/partner countries under PTAs. An *ex ante* and *ex post* evaluation of this revenue foregone allows the Commission to improve the financial management of the EU budget by providing the budgetary authority with an accurate yearly forecast of customs duties collection and calculation of the budgetary costs associated with the PTAs.

Supervision and controls on PTAs

15

The customs authorities of the Member States, the authorities of the beneficiary/partner countries and the Commission should jointly manage PTAs and cooperate to ensure that the conditions required to benefit from the preferential treatment are met. The protection of the EU's financial interests by preventing losses to the EU budget due to the import of goods under PTAs not entitled to preferential tariff treatment is the responsibility of those three groups of authorities.

16

Certifying and verifying the preferential status of products is crucial and requires detailed checks on the origin of the goods and effective administrative cooperation with exporting countries.

17

Rules of origin are used to ascertain that products originate in a particular country entitled to benefit from preferences and thus meet the criteria for the trade preference<sup>7</sup>. These rules have three components:

- (a) an *origin*<sup>8</sup> component (which categorises products according to where they are produced);
- (b) a *consignment standard* (which ensures that the products are not subjected to manipulation by requiring direct transport between the country of origin and the EU or by directly establishing the so-called non-manipulation principle); and
- (c) a *documentary standard* (adequate documentation needs to be provided as to the origin of the product).

6 COM(2010) 612 final of 9 November 2010.

7 Each agreement contains a list of working or processing procedures to be performed on non-originating materials so that the manufactured product can obtain originating status.

8 EU rules of origin are based on process criteria: to have the preferential origin of a country, goods must be wholly obtained (e.g. grown, mined) there or, where this is not the case, have undergone sufficient processing there.

18

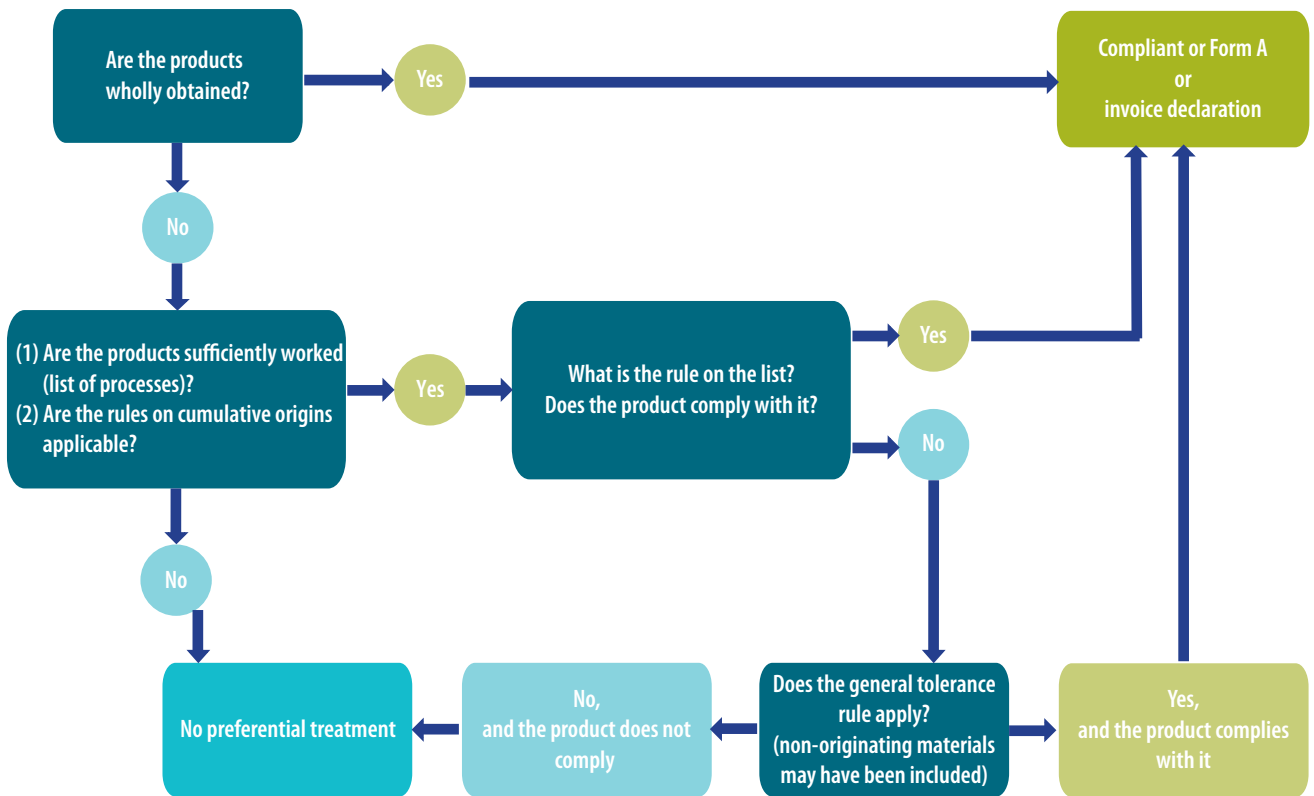
An example of the procedure for determining whether products are eligible for preferential treatment is shown in **Chart 1**.

19

Administrative cooperation between the authorities of the Member States, beneficiary/partner countries and the Commission is used to confirm the authenticity of the proofs of origin and status of the products exported. The granting or refusal of the tariff preference requested by the importer will depend in most cases upon the results of this procedure. **Chart 2** shows the flowchart of controls on preferential trade.

Chart 1

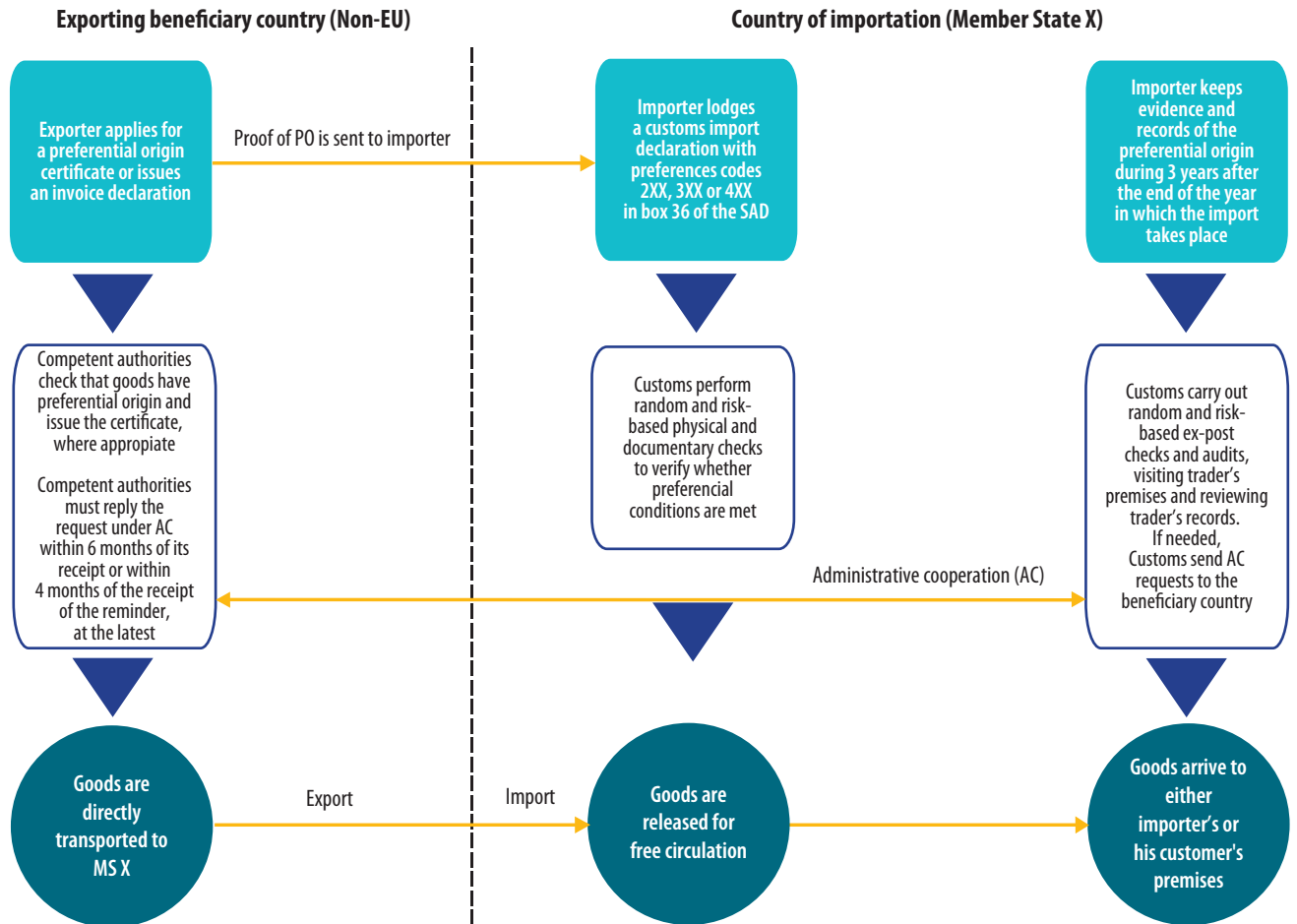
**Procedure to determine whether products are eligible for preferential tariff treatment under GSP**



Source: European Court of Auditors.

Chart 2

Flowchart of controls on PTAs



Source: European Court of Auditors.



# Audit scope and approach

## 20

The objective of the Court's audit was to evaluate whether the Commission has appropriately assessed the economic effects of PTAs<sup>9</sup> and whether the controls thereon ensure that imports cannot unduly benefit from a preferential tariff, resulting in the loss of EU revenue.

## Assessment of the economic effects of PTAs

## 21

The Court examined the *ex ante* and *ex post* evaluations carried out by, or on behalf of, the Commission of the economic effects foreseen or realised. To this end the Court analysed the documentation available at the Commission in respect of a sample of 44 PTAs<sup>10</sup>, notably any IA reports, SIA studies, *ex post* evaluations and the arrangements for future monitoring. An overview of these PTAs is provided in **Annexes II and III**.

## 22

The requirements defined by the IA and SIA guidelines, the reports of the Impact Assessment Board, the activity statements and annual activity reports of the Commission and its relevant communications on trade matters were taken into consideration to assess the quality of such evaluations.

Particular attention was paid to how the Commission ensured the robustness of data sources used in these evaluations and also to the Commission's follow-up of previous findings and recommendations of the Court concerning IAs<sup>11</sup> and of the European Economic and Social Committee concerning SIAs<sup>12</sup>. The Court also verified whether *ex post* evaluations show that the PTAs are delivering their intended benefits.

## Supervision and controls on PTAs

## 23

The Court examined the effectiveness of the supervision arrangements and of the controls performed on PTAs by the competent authorities in five Member States<sup>13</sup>, which represented two thirds of the total value of imports under PTAs benefiting from preferential tariff measures in 2011, carrying out the testing described in **Annex IV**. The audit covered the control strategy and risk management, the functioning of administrative cooperation arrangements and the procedures for the recovery of any traditional own resources (TOR) due.

- 9 Due attention was paid to the analysis of the social and environmental impacts of unilateral PTAs and EPAs, which have a strong sustainable development content.
- 10 Of these, 39 represent all PTAs in force at the time of the audit work and five not yet in force at that time.
- 11 European Court of Auditors' Special Report No 3/2010 'Impact assessments in the EU institutions: do they support decision-making?' (<http://eca.europa.eu>)
- 12 Opinions of the European Economic and Social Committee No 818/2011 on SIAs and EU trade policy and No 1612/2011 on the role of civil society in the free trade agreement between the EU and India (<http://www.eesc.europa.eu>).
- 13 Germany, Spain, France, Italy and the United Kingdom, which were the five Member States that imported the most under PTAs in 2010.

### 24

The Court assessed the Commission's prior evaluation and *ex post* monitoring function in the beneficiary/partner countries, its role in the administrative cooperation arrangements, its inspections of Member States' customs authorities, the review of origin investigations carried out by OLAF and the waiver of duty collection applications, and the adequacy of the legislative framework in force in order to ensure the completeness of revenue collection.

### 25

The Commission's supervisory and control activities on PTAs were assessed against the legal provisions in force, the relevant mission statements, activity statements and the Commission's communications on rules of origin and PTAs. Attention was paid to the Commission's follow-up of previous findings and recommendations of the Court concerning PTAs<sup>14</sup>.

14 European Court of Auditors' Annual Report concerning the financial year 2003, Chapter 3, paragraph 3(30) (OJ C 293, 30.11.2004, p. 1).

## Despite improvements over time the Commission has not appropriately assessed all the economic effects of PTAs

### 26

The economic effects of PTAs should be appropriately assessed by the Commission both *ex ante* and *ex post* (see paragraphs 7 to 14).

## The Commission did not always carry out an assessment of all the economic effects of PTAs

### Impact assessments or *ex ante* evaluations

### 27

IAs or *ex ante* evaluations were not prepared for seven of the 13 PTAs where there was either a legal requirement or a formal commitment to do so (see further details in **Annex II**).

### 28

In the six IAs reviewed by the Court, the impact of the different policy proposals on the revenue of the EU was only estimated<sup>15</sup> in the case of the GSP<sup>16</sup>.

## Sustainability impact assessments

### 29

SIAs were not prepared for five of the 28 PTAs where there was a commitment to do so (see further details in **Annex II**). The revenue foregone has not been estimated in any of the SIAs reviewed by the Court.

## Interim and/or *ex post* evaluations

### 30

Even though an interim and/or *ex post* evaluation should have been carried out in respect of 27 PTAs in force, pursuant to the Commission's commitment in this regard and the principle of sound financial management and public accountability, this has not been done in 16 of them<sup>17</sup> (see more details in **Annex III**).

### 31

Out of the 27 PTAs reviewed by the Court where it considers an *ex post* evaluation should have been conducted, the revenue foregone was only estimated in respect of the GSP. The Commission's statistical report on the GSP<sup>18</sup> shows, over the period 2006–09, the impact on the EU budget to be 8,6 billion euro, representing nearly 14 % of the customs duties collected in that period. The Commission did not explain how this amount was calculated.

- 15 The IA (SEC(2011) 536 final) concerning the GSP that entered into force on 1 January 2014 estimates that, in the preferred option, when compared to the baseline scenario, the combined impact of exports from certain former beneficiaries becoming subject to higher duties, and the increased exports from third countries already subject to duties, imply that tariff revenue would increase in the short run in the order of 2 billion euro (see Annex 6.4, Table 6-4), which would add to current tariff revenues of around 19 billion euro.
- 16 Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ L 303, 31.10.2012, p. 1).
- 17 PTAs with Turkey, the EEA, Switzerland, the former Yugoslav republic of Macedonia, Croatia, Albania, Montenegro, Bosnia and Herzegovina, Serbia, Lebanon, the occupied Palestinian territory, Syria, Cariforum (Caribbean countries), the Pacific states, overseas countries and territories and Moldova.
- 18 COM(2011) 272 final of 17 May 2011.

## Observations

**The assessments carried out in most cases contained inaccuracies and were not fully useful or comprehensive, but there have been improvements**

### Impact assessments or *ex ante* evaluations

#### 32

According to the Commission's IA guidelines<sup>19</sup>, the impacts should be quantified and monetised where possible and be based on robust methods and reliable data.

#### 33

In order to provide quality support for IAs, an Impact Assessment Board was set up in the Commission at the end of 2006. In addition, the internal audit capability of the Commission's Directorate-General for Trade conducted an audit of IAs and SIAs in 2007.

#### 34

The Court analysed the six IAs<sup>20</sup> carried out in respect of PTAs among the 13 for which the Court considers an IA was required (see further details in **Annex II**) and found the following weaknesses.

### Weaknesses concerning the robustness of the quantification of the impacts in the IAs

#### 35

Of the six IAs reviewed, only the one concerning the GSP Regulation No 978/2012, contained a comprehensive analysis of the economic effects in the beneficiary countries based on robust data sources.

#### 36

The economic impacts of the PTA with the Republic of Korea shown in its IA<sup>21</sup> are based on a study carried out by external consultants<sup>22</sup>. This study uses the Computable General Equilibrium (CGE) model and the Global Trade Analysis Project (GTAP) database as source data, whose inherent limitations and weaknesses are set out in paragraphs 44 to 46 below.

#### 37

Of the six IAs examined, two IA reports concerning the GSP were produced after the Impact Assessment Board started operations in 2007; they were duly submitted to the board for quality review. Recommendations made by the latter to improve the quality of those draft reports were largely taken into account by the Commission and did not require a resubmission.

19 European Commission impact assessment guidelines of 15.1.2009 (SEC(2009) 92) and the earlier impact assessment guidelines of 15.6.2005 (SEC(2005) 791).

20 IAs concerning central America, the Andean Community, the Republic of Korea, India, Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007 (OJ L 211, 6.8.2008, p. 1) and Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ L 303, 31.10.2012, p. 1).

21 Commission Staff Working Document, accompanying document to the recommendation for a Council decision authorising the Commission to negotiate a free trade agreement with the Republic of Korea on behalf of the EC and its Member States, impact assessment of 27.11.2006 ((SEC(2006) 1562).

22 Copenhagen Economics and Prof. J. F. Francois, 'Economic impact of a potential FTA between the EU and South Korea', March 2007.

**Weaknesses concerning the usefulness and completeness of the IAs**

**38**

The objectives of the GSP are to contribute to combating global poverty, promote sustainable development and ensure a better safeguard for the EU’s financial and economic interests<sup>23</sup>. However, the IA concerning the scheme of GSP beginning on 1 January 2014<sup>24</sup> has only covered the GSP general objective of promoting sustainable development and good governance in respect of 10 out of the 85 potential beneficiary countries<sup>25</sup>. The need to ratify and effectively implement international conventions on human and labour rights, the environment and good governance has only been considered for these 10 countries and not in respect of other beneficiary countries (see **Box 1**).

**39**

Identifying core monitoring indicators in order to prepare *ex post* evaluations of what has been achieved is a key procedural step of the IA process<sup>26</sup>.

**40**

Arrangements for monitoring were included in all six IAs examined by the Court. However, in four of them<sup>27</sup> the Commission did not specify the timing, scope and indicators to assess the effectiveness of the preferred option and who would be responsible for carrying it out.

- 23 COM(2004) 461 final of 7 July 2004. See also the roadmap ([http://ec.europa.eu/governance/impact/planned\\_ia/docs/88\\_trade\\_gsp\\_regulation\\_en.pdf](http://ec.europa.eu/governance/impact/planned_ia/docs/88_trade_gsp_regulation_en.pdf)) and SEC(2011) 536 final of 10 May 2011 (this refers to the GSP regulation, Regulation (EU) No 978/2012).
- 24 SEC(2011) 536 final.
- 25 See Annex 6 of SEC(2011) 536 final.
- 26 COM(2002) 276 final and IA guidelines.
- 27 IAs concerning central America, the Andean Community, the Republic of Korea and India.

**Box 1**

**Example of importance of ratifying and effectively implementing international conventions on human and labour rights, the environment and good governance**

On 24 April 2013, an eight-storey building in Bangladesh housing several garment factories (the Rana Plaza) collapsed and led to the death of 1 129 workers. This accident has increased public concern that EU trade with developing countries should not only ensure a cheap supply of clothing to EU firms and consumers but also that they are manufactured under labour conditions in accordance with international standards, such as International Labour Organisation (ILO) core labour standards. On 8 July 2013, the Commission, together with the Government of Bangladesh and the ILO, launched a joint initiative (‘Compact’) for improving labour, health and safety conditions for workers in Bangladeshi garment factories.

## 41

The need for such monitoring actions has been highlighted by the European Economic and Social Committee in respect of the PTA between the EU and India. The European Economic and Social Committee<sup>28</sup> recommended *'the immediate undertaking of new studies that expressly take into account the true impact of the FTA on the EU and Indian civil society (in particular Mode 4, SMEs, labour rights, women, consumer protection, the informal economy, agriculture poverty and the impact on the accessibility of basic products such as live-saving medicines)'*.

## 42

The IA concerning the scheme of GSP beginning on 1 January 2014 shows that one of the GSP objectives<sup>29</sup> is to ensure a better safeguard for the EU's financial and economic interests. Despite the fact that most of the fraud investigations carried out by OLAF in the field of PTAs concern GSP beneficiary countries, the Commission indicators to monitor the effectiveness do not provide any link to fraud and customs duties evasion. Therefore, the stakeholders have no possibility to check the vulnerability of GSP to fraud and to measure any improvements in the fight against fraud and customs duties evasion.

## Sustainability impact assessments

## 43

The Court analysed 10 SIAs<sup>30</sup> and found the weaknesses described below.

## Weaknesses concerning the robustness of the quantification of the impacts in SIAs

## 44

In the SIAs external consultants apply the Computable General Equilibrium (CGE) model, based on the Global Trade Analysis Project (GTAP) database. This is a model widely used by international organisations. The model, however, suffers from some limitations (see **Annex V**).

## 45

The Court found that the GTAP uses old data<sup>31</sup> which are insufficiently verified for consistency and reliability. Its use may therefore lead to wrong conclusions in the SIAs. The Commission has limited assurance on the consistency of the statistical framework between the different regions and between EU Member States and beneficiary/partner countries.

28 Opinion No 1612/2011 of the European Economic and Social Committee.

29 Pursuant to SEC(2011) 536 final.

30 SIAs concerning PTAs with Chile, six EPAs with ACP countries, Central America, Andean Community, Euro-Mediterranean FTAs with nine countries, the Republic of Korea, Mercosur countries, India and Canada, and the DCFTA with Morocco.

31 For the purposes of the CGE model, social accounting matrices are compiled for each region but in the most recent versions of the GTAP the use of technical coefficients and structures of commodities for final and intermediate uses are based on supply and use tables at current prices for the reference year 2000, although Eurostat (the Commission's statistics department) currently has data available for the years 2007, 2008 and 2009.

## Observations

### 46

Eurostat and the national statistical institutes are best placed to provide an opinion on the quality of the data for Member States but DG Trade has not requested the opinion of the former on the quality of the data used in the GTAP. The Court, in its Special Report No 3/2010<sup>32</sup>, found that internal sources such as Eurostat are not actively used to determine the availability of Member State specific data and to provide such data (for example in cooperation with national statistics offices).

### Weaknesses concerning the usefulness and completeness of the SIAs

### 47

The timeliness of an SIA is very important in order to ensure that it is useful for negotiators. However in one case, the PTA with Chile was already signed before the SIA had been finalised.

### 48

IAs and SIAs analyse the impacts of PTAs in the agricultural sector. However, the impact of the common agricultural policy on the local economies of the partner countries has been assessed only in the regional trade SIA with the Caribbean countries, whereas negative impacts have been cited in international organisations' reports (ILO<sup>33</sup>, FAO<sup>34</sup>), especially in respect of economic partnership agreements (EPAs)<sup>35</sup>.

### 49

Furthermore, the SIA concerning EPAs of 2007 does not address points dealt within other SIAs, such as the impact on public health of an intellectual property rights chapter because restrictions on access to generic medicines may negatively affect governments' ability to improve public health conditions. This puts into question the completeness of the analysis carried out because the Commission has nevertheless introduced appropriate safeguards measures in that sense in the text of the agreement<sup>36</sup>.

### Interim and/or *ex post* evaluation

### 50

The Court analysed all the *ex post* evaluations carried out by the end of 2012<sup>37</sup> concerning PTAs and found the following.

### The quantification of impacts in some interim and/or *ex post* evaluations

### 51

The Court found that comprehensive, quantitative and evidenced-based analysis of the economic outcomes was carried out in the *ex post* evaluation of the PTA with Chile and in the mid-term evaluation of the EU's GSP. Both evaluations use, together with econometric estimates, CGE simulations (see paragraphs 44 to 46 and **Annex III**).

32 See paragraph 70 of Special Report No 3/2010.

33 ILO, *Trade and employment from myths to facts*, 2011.

34 FAO, *The agricultural dimension of the ACP–EU Economic Partnership Agreements*, 2006.

35 PTAs creating an FTA between the EU and the ACP countries.

36 Pursuant to Article 139(2) of the EPA between the Cariforum states, of the one part, and the European Community and its Member States, of the other part, 'The EC Party and the Signatory Cariforum States agree that the principles set out in Article 8 of the TRIPS Agreement apply to this Section. The Parties also agree that an adequate and effective enforcement of intellectual property rights should take account of the development needs of the Cariforum States, provide a balance of rights and obligations between rights holders and users and allow the EC Party and the Signatory Cariforum States to protect public health and nutrition. Nothing in this Agreement shall be construed as to impair the capacity of the Parties and the Signatory Cariforum States to promote access to medicines'.

37 The mid-term evaluation of the EU's GSP, the report on the economic integration in the Euro-Mediterranean Area, the evaluation of the economic impact of the trade pillar of the EU–Chile association agreement and the *ex post* assessment of six EU FTAs.



## Observations

### Weaknesses concerning the completeness of the interim and/or *ex post* evaluations

#### 52

The *ex post* evaluation of six PTAs<sup>38</sup> limits the analysis of economic impacts to trade flows and places emphasis on their effects in the partner countries. The Commission has not conducted any sectoral analysis and the trade flows are not broken down further below the agricultural and industrial product level.

#### 53

The *ex post* evaluation report for the Euro-Mediterranean countries<sup>39</sup> contains a thorough analysis of the economic outcomes of trade liberalisation. However, the added value of the PTA to the baseline scenario in the EU was not set out. No cost-benefit analysis has been made and no arrangement for future *ex post* evaluation is included.

### The interim evaluation of the GSP shows that the policy has not yet delivered all its intended benefits

#### 54

Regarding the GSP objective to contribute to combating global poverty and promote sustainable development, the interim evaluation shows mixed results. On the one hand, it provides positive evidence that:

- (a) the EU is offering improved preferential access to those countries with a greater developmental need;

- (b) the econometric evidence suggests that, in aggregate, preferences do impact positively on trade as well as on investment; and

- (c) there is evidence that exporters in least developed countries do benefit from the preference margins and that the profit is not simply appropriated by the importers.

#### 55

On the other hand, the Commission considers that GSP should help developing economies increase their industrial exports<sup>40</sup> and that providing preferences in industrial products would help boost such exports and contribute to diversification through the development of a broader industrial base. However, the interim evaluation of the GSP shows that it has not been effective in increasing diversification<sup>41</sup>, and that there is no clear evidence of an increase in economic growth<sup>42</sup> or sustainable development<sup>43</sup> in developing countries.

38 South Africa, Mexico, Morocco, Tunisia, Chile and Jordan.

39 Lebanon, the occupied Palestinian territory and Syria were outside the scope of the evaluation.

40 SEC(2011) 536 final.

41 According to paragraph 7(1) of the mid-term evaluation of the EU's GSP, 'There is no evidence that the GSP schemes have led to any export diversification and a move into new export products on the part of the beneficiary countries.'

42 Paragraph 7(1) of the mid-term evaluation of the EU's GSP states that 'The evidence on the extent to which preference margins are associated with indicators of development are extremely mixed, and no clear picture emerges which would suggest that the preferences are particularly well targeted to those countries which are most in need/vulnerable ... it is quite possible that the GSP regime has been an important factor for given countries in their development. The point is, however, that in aggregate, there is no strong evidence that this is the case.'

43 Paragraph 7(1) of the mid-term evaluation of the EU's GSP introduces the following caveat: 'While there is some evidence that the GSP+ scheme may have a positive impact on the ratification of given conventions, the evidence that there is actual active implementation of the relevant conventions (especially with regard to labour standards) is much weaker'.



### Customs controls applied by the authorities of the selected Member States are weak

#### 56

The controls performed by the competent authorities (Member States, beneficiary/partner countries and the Commission) as well as the management of the administrative cooperation should ensure the correct implementation of PTAs, thereby protecting legitimate economic and financial interests.

#### 57

The Court reviewed the overall control strategy applied to PTAs by customs authorities in five Member States (see paragraph 23). An appropriate control strategy is one based on effective risk analysis including a random element to introduce a degree of uncertainty.

### Weaknesses in control strategy and risk management

#### 58

The effectiveness of control arrangements was tested using two random samples. A statistical<sup>44</sup> sample of 60 time-barred<sup>45</sup> imports of 2009 under PTAs was selected in each selected Member State. The purpose of this sample was twofold:

- (a) to verify whether the imports complied with all the conditions required to benefit from preferential tariff measures, and whether customs controls were capable of detecting cases of non-fulfilment of such conditions and recovering the customs debt incurred before the latter became time-barred; and
- (b) to extrapolate the amount of the definitive losses to the EU budget when the customs debt was not recovered in time to prevent time-barring.

#### 59

The Court found weaknesses in the control strategy and risk management in Germany, France and the United Kingdom leading to potential losses to the EU budget.

44 A monetary unit sample (MUS), based on the customs value of the goods. Materiality was set at 5 % and the confidence level at 95 %.

45 Pursuant to Article 221(3) of the Community Customs Code (CCC), communication to the debtor shall not take place after the expiry of a period of 3 years from the date on which the customs debt was incurred. Thus amounts due become time-barred after this period has elapsed.

## Observations

### 60

In Germany weaknesses were found concerning the risk management system for PTAs: manual intervention is required in order to assess the results of the risk profiles and this is time-consuming, complex and burdensome; only one new local risk profile<sup>46</sup> was introduced in the system in 2011 and 2012; and the selection of importers for post-clearance audits does not sufficiently take into account the specific risk of time-barring in PTAs<sup>47</sup>.

### 61

In France, preferential origin is taken into account in combination with other criteria. However, preferential origin is not a priority in the risk management system.

### 62

In the United Kingdom, the customs authorities accept copies of the movement and origin certificates when they perform documentary checks on imports under PTAs. Only originals can fully provide assurance of the authenticity of these certificates. In addition the frequency of documentary checks on imports under the simplified declaration procedure<sup>48</sup> and the local clearance procedure<sup>49</sup> was very low<sup>50</sup>. Regarding post-clearance audits PTAs have not been selected as an audit theme.

### 63

These weaknesses were confirmed by the amount of revenue potentially lost in these three Member States. By extrapolating the errors found in its sample of 2009, the Court has estimated the amount of duties at stake in these Member States because of time-barring to be 655 million euro<sup>51</sup>. This represents around 6 % of the gross amount of import duties collected in the five selected Member States that year.

### 64

In the absence of the necessary supporting evidence, the goods are not entitled to preferential tariff treatment. The errors found include the absence of the origin or movement certificates, the absence of the evidence of the direct transport, cases of certificates not signed or not stamped by the competent authorities of the beneficiary/partner country or showing a stamp that does not correspond to the authentic stamp communicated to the Commission by the authorities of the latter, and certificates not matching with the supporting documents of the import. These errors occurred in 10 % of the cases in Germany, 11 % in France and 38 % in the United Kingdom.

### 65

The second statistical sample of 30 imports under PTAs of 2011 was checked by the Court in each of the five Member States to determine:

- (a) whether the imports were entitled to preferential tariff measures and if not,
- (b) whether customs had started the post-clearance verification of non-compliant cases using administrative cooperation.

46 A combination of risk criteria and control areas (e.g. type of goods, countries of origin) which indicates the existence of risk and leads to a proposal to carry out a control measure.

47 The period of up to 10 months that beneficiary/partner countries have to reply to the administrative cooperation requests should be taken into account in order to avoid time-barring.

48 A simplified procedure whereby a trader presents goods to customs and lodges either a simplified declaration form or a commercial document (e.g. an invoice) instead of a detailed standard declaration.

49 A simplified procedure whereby a trader receives the goods directly at his/her premises (or the designated place) and usually the customs declaration is lodged and the goods are released by means of an entry in the trader's own records.

50 No such declarations relating to imports under PTAs were selected by the risk management system for an *ex post* documentary check in 2009 or 2010, whereas in 2011 and 2012, the percentage of such declarations selected for a documentary check was, respectively, 0,0209 % and 0,0289 %.

51 Made up of 167 million euro in respect of Germany, 176 million euro in respect of France and 312 million euro in respect of the United Kingdom.

## Observations

### 66

The results of this sample showed control weaknesses in Germany, Spain and the United Kingdom. The errors found were similar to those found in the sample of 2009: the absence of the origin or movement certificates, cases of certificates showing a stamp or issued by a customs office that do not correspond to those communicated to the Commission by the authorities of the beneficiary/partner countries, and certificates not matching with the supporting documents of the importation. These errors occurred in 7 % of the cases in Germany, 7 % in Spain and 23 % in the United Kingdom.

### 67

However, errors in the 2011 sample will not be time-barred until 2014 and up to that time the customs authorities of Member States can send the movement and origin certificates to the beneficiary/partner countries to be verified under administrative cooperation arrangements. Any resulting debt can still be recovered, and therefore the Court did not extrapolate the errors found.

### **Weaknesses in the management of the administrative cooperation by the authorities of the selected Member States**

### 68

Administrative cooperation requests are sent by Member States' authorities to beneficiary/partner countries in cases of reasonable doubt about the preferential treatment or on a random basis. In the first case, if there is no reply or satisfactory response within ten months, the preferential tariff treatment should be refused and a recovery initiated<sup>52</sup>. In the case of random requests, the preferential tariff treatment is maintained if no reply from beneficiary/partner countries is received.

### 69

Administrative cooperation arrangements were tested via an additional sample of 30 requests sent in 2011 by each selected Member State to beneficiary/partner countries. Thus, the Court tested whether:

- (a) once the initial deadline to reply (usually six months) had expired, a reminder was sent to the beneficiary/partner country;
- (b) if there had been no reply or no satisfactory response received within the further deadline of four months, a recovery action had been initiated.

### 70

The Court found shortcomings in the management of administrative cooperation in Spain, France and Italy.

### 71

In Spain, 11 requests were sent by the Spanish customs to the Philippines and the letters were returned undelivered. No action either to find any other way of contacting the competent authorities of the beneficiary country or to start the post-clearance recovery of the debt was taken by the Spanish customs.

52 Provided that all the conditions set in the relevant provisions and case-law, notably in the judgment of the Court of 9 March 2006 in Case C-293/04 *Beemsterboer* [2006] ECR I-2284, are complied with.

## Observations

### 72

In Italy, the customs authorities did not start a post-clearance recovery by February 2013, even though the preferential treatment had been denied by the beneficiary country in its reply in respect of four administrative cooperation requests. In 10 other cases the post-clearance recovery proceedings were delayed.

### 73

The French customs authorities do not start post-clearance recovery when the beneficiary/partner countries send late replies to random administrative cooperation requests. Even in cases where these late replies confirm that the movement certificates or certificates of origin are indeed either invalid or not authentic no recovery action is taken by the French customs authorities (see paragraph 68).

### Member States' risk management systems do not always include MA communications

### 74

Whenever OLAF becomes aware of operations which constitute, or appear to constitute, breaches of PTA provisions, it issues mutual assistance (MA) communications to Member States. In order to prevent losses to the EU budget, the latter should introduce this information into their risk management systems.

### 75

The Court reviewed a sample of 30 imports covered by MA communications issued by OLAF in each of the five selected Member States. It found that Germany, Spain and France did not introduce the relevant information into their risk management systems.

### Errors in recovery procedures in three of the selected Member States

### 76

The Court checked whether selected Member States reacted promptly to OLAF reports. These reports summarise the results of the origin investigations and may lead Member States to identify imports that may not be entitled to preferential tariff treatment and to proceed to the recovery of the customs debt. Member States' customs authorities should start this recovery action within 3 months<sup>53</sup>. Any delay could lead to the customs debt becoming time-barred.

### 77

The Court found two cases, in Spain and the United Kingdom, amounting to over 2 million euro, which had become time-barred due to the late reaction of the Member States' customs authorities to OLAF reports. In another case, French customs authorities did not launch a recovery procedure after their Spanish counterparts notified them of the invalidity of a movement certificate.

53 A period of 3 months from the sending of the letter by the Commission in order to notify the debtor of the import duties legally due has been quoted by the Court of Justice in its judgment of 1 July 2010 in Case C- 442/08, European Commission v Federal Republic of Germany, paragraphs 47, 59 and 81.

### 78

In order to ensure the uniform application of EU law, customs law confers on the Commission the power of decision in regard to REM-REC applications<sup>54</sup>. The judgment of the Court of Justice of 20 November 2008 in Case C-375/07, Heuschen and Schrouff, rules that ‘a national court, ... ruling on an appeal against a notice for recovery of import duties, must therefore, when it becomes aware in the course of the proceedings before it that the matter has been referred to the Commission ... avoid giving decisions which would conflict with a decision contemplated by the Commission ... That means that the referring court, which may not substitute its own determination for that of the Commission, can stay proceedings pending the Commission’s decision.’

### 79

Pursuant to this judgment, a national court should not rule on cases pending decision at the Commission. However, the Court found a case in Spain where a national court did not suspend proceedings even though this case had been submitted to the Commission for decision. The ensuing loss to the EU budget amounted to over 600 000 euro.

### 80

Thus, there is the risk that importers refer the matter simultaneously to both layers and choose the most favourable, thereby undermining the usefulness and effectiveness of the REM-REC system.

### There are weaknesses in the Commission’s supervision of Member States and beneficiary/partner countries in respect of PTAs

### 81

The Court reviewed the Commission’s monitoring and inspection activity intended to ensure the reliable and consistent implementation of PTAs in Member States and beneficiary/partner countries and found the following weaknesses.

### The Commission has carried out few prior evaluations and no monitoring visits to countries benefiting from preferential treatment

### 82

The Commission should evaluate the continuing capacity of the country benefiting from preferential treatment (or group of countries) to administer the arrangement and the related rules and procedures on a risk basis<sup>55</sup>. The Court found that prior evaluation has taken place only in respect of a limited number of partner countries.

54 Request for remission/repayment and waiver of *ex post* recovery pursuant to Articles 871 and 905 of the Customs Code Implementing Provisions (CCIP).

55 Pursuant to paragraph 3(2) of COM(2005) 100 final of 16 March 2005.

### 83

According to the relevant Commission communication<sup>56</sup> monitoring visits to the countries benefiting from preferential treatment should take place. The Commission has not conducted any such monitoring visits to check the correct implementation of the scheme.

### 84

This could lead to significant financial consequences as the absence of a monitoring visit can justify importers' claims for the repayment or remission of the customs debt recovered *ex post* when it transpires that the goods were not eligible for preferential treatment<sup>57</sup>.

### 85

In addition, the Commission communication provides for a periodical reporting system by beneficiary countries on their management and control of preferential origin. The Court verified whether such a system has been set up in GSP countries and found that this was not the case.

### 86

The Court also reviewed the Commission's inspection activity in the area of PTAs and found that it usually deals with preferential origin matters during its TOR inspections in Member States, including the control strategy thereon. TOR inspections cannot be carried out in beneficiary/partner countries.

## The Commission has taken steps to ensure the smooth working of the administrative cooperation arrangements, but problems remain

### 87

In the field of administrative cooperation the Commission has strived to ensure that there is a seamless and streamlined communication of the necessary information under administrative cooperation between the Member States, the beneficiary countries and itself.

### 88

However, the Member States selected informed the Court that they encountered difficulties with countries such as the Philippines, India, Indonesia, Malaysia, Vietnam, the Dominican Republic and the United Arab Emirates concerning late replies to administrative cooperation requests and poor quality of the replies.

### 89

The Commission regularly asks Member States for statistics concerning the administrative cooperation requests sent to beneficiary/partner countries. This information is the starting point to plan the monitoring activity and to select the countries that need particular attention. However, the quality of the information provided by Member States was poor because it was not possible to distinguish between requests sent on a random basis and those sent in case of reasonable doubt (see paragraph 68).

56 See footnote 55.

57 In its judgment in Case C-204/07P, the Court of Justice found that where, in a particular case, the Commission has not made full use of the supervising and monitoring rights and powers which it has under the association agreement with a view to ensuring the proper implementation thereof, its failure to fulfil obligations constitutes a special situation for the purposes of Article 239 of the Community Customs Code, which justified the repayment or remittance of import duty levied on the basis of irregular or inauthentic certificates.

### **OLAF's origin investigations are essential but there are weaknesses in their financial follow-up**

#### **90**

In addition to issuing MA communications to Member States to alert them of suspicious imports related to the circumvention of the origin condition, OLAF carries out origin investigations in beneficiary/partner countries to ascertain, in cooperation with the competent authorities, whether goods imported into the EU were indeed eligible for preferential tariff measures. In order to verify the effectiveness of OLAF's role in the protection of the financial interests of the EU concerning PTAs, the Court reviewed a sample of 10 preferential origin investigations. It found that, except for one investigation<sup>58</sup>, OLAF was successful in demonstrating that the imported goods were not eligible for preferential tariff measures.

#### **91**

The performance indicators currently used by OLAF to assess the effectiveness and the efficiency of its investigations (e.g. number of cases opened triggering an investigation, number of investigations leading to a recommendation) do not provide a link between the case, the amount of TOR at stake and the amount actually recovered.

#### **92**

The Court found cases of time-barring in the financial follow-up of OLAF investigations because of the lack of timely recovery by Member States<sup>59</sup> or where the actual recovery rate of the amount of evaded duties estimated by OLAF in its report could not be established<sup>60</sup>.

### **Insufficient use of preventive and reactive measures to protect the financial interests of the EU**

#### **93**

The Court reviewed other Commission activities to protect the financial interests of the EU by preventing ineligible goods from being imported under preferential tariff measures, and recovering the TOR due if this is not the case.

#### **94**

Member States have not always adopted appropriate measures upon receipt of an MA communication, such as the provision of a guarantee for the imports under investigation.

58 Concerning imports of surimi declared as originating in Thailand.

59 Spain and the United Kingdom, see paragraph 77.

60 The United Kingdom.



## 95

The absence of such measures has led Member States to declare amounts as irrecoverable when the importer becomes insolvent and ceases economic activities (see **Box 2**).

## 96

Precautionary and safeguard measures should be used in the event of insufficient control or the failure to provide cooperation, including assistance in investigations against fraud. These measures include notices to importers<sup>61</sup>, suspension of preferences<sup>62</sup> where foreseen and possible financial responsibility of the country at fault<sup>63</sup>.

## 97

Member States have to communicate to the Commission<sup>64</sup> the amount of TOR repaid/remitted or post-clearance recoveries waived due to administrative errors committed by beneficiary/partner countries' authorities. For the period 2007–12, the amount of TOR lost in this way was more than 5 million euro. This represents a definitive loss to the EU budget.

## 98

In order to tackle this situation, the Commission has introduced the MAE clause in all PTAs that have been negotiated since 2006. This is a positive step in the protection of the financial interests of the EU.

## 99

Other examples of insufficient use of preventive and reactive measures can be found in **Box 3**.

## The legal provisions of the PTAs do not contain sufficient safeguards to protect the financial interests of the EU

### Complexity of cumulation rules

## 100

Cumulation allows products originating in country A to be further processed or added to products originating in country B, as if they had originated in country B. The resulting product would have the origin of country B. The working or processing carried out in each beneficiary/partner country on originating products does not have to be 'sufficient working or processing' as set out in the standard origin rules<sup>65</sup>.

61 Pursuant to Article 220(2) (b) of the CCC *in fine*, importers cannot plead good faith in their applications for waiver of subsequent entry in the accounts if the Commission has published a notice in the *Official Journal of the European Union* stating that there are grounds for doubt concerning the proper application of the preferential arrangements by the beneficiary country.

62 The so-called anti-fraud clause.

63 The so-called management of administrative errors (MAE) clause. Typically, this reads as follows: 'In case of error by the competent authorities in the proper management of the preferential system at export, and in particular in the application of the provisions of the protocol to the present agreement concerning the definition of originating products and methods of AC, where this error leads to consequences in terms of customs duties, the contracting party facing such consequences may request the (institutional body under the agreement) to examine the possibilities of adopting all appropriate measures with a view to resolving the situation'.

64 Pursuant to Articles 871 and 905 of the CCIP (REM-REC cases); Articles 870(1), and 904a(1) of the CCIP (listing cases notified to DG Budget); and Articles 870(2) and 904a(2) of the CCIP (listing cases notified to DG Taxation and Customs Union).

65 Typically to add a certain percentage of the final value of the exported goods.

### Box 2

## Example of customs duties not collected because of the absence of preventive and reactive measures adopted by Member States

In 2007, Polish customs proceeded to collect the customs duties owed for the importation of garlic from Turkey covered by false movement certificates. The recovery was unsuccessful because of the insolvency of the importer. An amount of 0,4 million euro was declared irrecoverable and lost to the EU budget in 2012.

This situation would have been prevented with the provision of a guarantee.



**101**

Beneficiary/partner countries request the application of cumulation during trade negotiations so that their exports can fully benefit from the PTA, especially when they lack adequate industrial infrastructure to carry out the processing required by the standard rules of origin.

**102**

Cumulation rules are very complex and require the authorities in the beneficiary/partner countries to have a high degree of expertise and command of these complex rules. Indeed, several OLAF investigations<sup>66</sup> have revealed the lack of administrative capacity of certain beneficiary countries to understand the complexity of the GSP cumulation rules.

66 E. g: OLAF tuna investigations in Seychelles, Colombia, El Salvador, Ecuador and Thailand; investigation in Curaçao concerning imports of raw cane sugar declared as originating in the Netherlands Antilles; investigation in Cambodia concerning the export of bicycles to the EU under the GSP scheme.

**Box 3**

### The Court found insufficient use of preventive and reactive measures by the Commission to counter fraud and to protect the financial interests of the EU

- (a) A notice to importers concerning imports of tuna from Thailand was published by DG Taxation and Customs Union two years after OLAF's request to do so. In addition, according to OLAF *'consideration may be given to propose suspension of the preferential regime applicable to processed tuna products ... declared as originating in Thailand'*. No such suspension was proposed by the Commission.
- (b) The Commission did not publish in either Slovak or Hungarian a notice to importers concerning imports of sugar products from Croatia<sup>67</sup>. Had this notice been published in those languages, the importer would not have been able to invoke good faith<sup>68</sup>, one of the reasons for the non-recovery of 1 million euro<sup>69</sup>.
- (c) The Commission has not taken any action following publication of the notice to importers concerning imports of tuna from El Salvador<sup>70</sup>. This was despite a communication<sup>71</sup> requiring it to follow up the post-clearance verification of the origin of the imported tuna. As a result of this follow-up, the Commission should decide whether to propose to withdraw the tariff preferences.
- (d) The anti-fraud clause has not been included in the PTA with the Republic of Korea. OLAF has issued several MA communications<sup>72</sup> concerning misdescription of origin of imports from this country.

67 Croatia joined the European Union on 1 July 2013.

68 Pursuant to the fifth paragraph of Article 220(2)(b) of the CCC.

69 Commission Decision of 21 October 2010 finding that it is justified to waive post-clearance entry in the accounts of import duties in a particular case (REC 03/2010).

70 OJ C 132, 21.5.2010, p. 15.

71 OJ C 348, 5.12.2000, p. 4.

72 Inter alia MA 2007/002, MA 2007/022, MA 2007/047 and AMA 2010/027.

## 103

Furthermore, cumulation should be between countries having identical rules of origin in order to prevent circumvention. However, in the current GSP the existing cumulation possibilities between countries in the same regional group is maintained despite the differentiation in rules of origin in some cases between the least developed countries and other beneficiary countries.

### Replacing certificates of origin and movement certificates with self-certification

## 104

The Court stated in its Annual Report of 2003 that increased use of self-certification by means of invoice declaration to certify origin would present advantages from the own resources point of view. This is because under the current provisions the importers cannot claim the repayment/remission or the waiver of post clearance recovery due to administrative errors<sup>73</sup> on the part of beneficiary/partner countries' authorities when an invoice declaration or another form of self-certification is used. This would considerably reduce traders' litigation concerning PTAs.

## 105

However, the use of certificates of origin and movement certificates is still widespread.

### Limited legal powers to counter fraud

## 106

The possibilities to counter fraud are limited in the case of reciprocal PTAs. In order to recover the duties related to OLAF's findings, the authorities of the partner country in which the irregularities have been discovered must accept them and declare the invalidity of the unduly issued certificates (see **Box 4**).

73 Pursuant to Articles 220(2)(b) and 236(1) of the CCC.

#### Box 4

### 'Mexican' garlic?

A consignment of garlic imported into Spain in March 2012 and declared as originating in Mexico was found to originate in China by the results of a laboratory test requested by OLAF on a sample of this consignment. Spanish customs could not proceed to the post-clearance recovery of the evaded customs duties applicable to the imports of garlic from China because the Mexican authorities confirmed in August 2013 the validity of the certificates of origin in their reply to the administrative cooperation request sent by the Spanish customs.

Other cases of imports of garlic, declared as originating in Mexico but where there is evidence that they originate in China, are currently occurring in other Member States (e.g. the United Kingdom) but the Commission has asked Member States not to suspend or reject preferential treatment without requesting verification of the relevant proofs of origin from the Mexican authorities.

## 107

The Court has found that the Commission has not appropriately assessed all the economic effects of PTAs and that the completeness of revenue collection is not ensured. However, the use of the impact assessment tool has increased and there has been progress in the quality of the analysis conducted.

### Assessment of the economic effects of PTAs

## 108

The Commission has not always carried out *ex ante* and *ex post* evaluations to assess the economic effects of the PTAs. Policymakers, stakeholders and European taxpayers are therefore insufficiently informed of the main advantages and disadvantages of the different trade policy options and of whether the implemented policy delivered its intended results. Evaluation of the revenue foregone has only been carried out for the GSP. The Commission does not have information on the revenue foregone in each budget year as a result of the PTAs in force or a forecast of revenue that will be foregone (see paragraphs 26 to 31).

## 109

The Court found weaknesses concerning the robustness of the quantification of the impacts and its source data in both *ex ante* and *ex post* evaluations. Moreover, the usefulness and completeness of the analysis carried out in both IAs and SIAs has been limited. These shortcomings may affect the quality of the information available to negotiators and policymakers (see paragraphs 32 to 53).

### Attainment of objectives of GSP

## 110

The interim evaluation of the GSP shows that the policy is not delivering all its intended benefits (see paragraphs 54 and 55).

### Recommendations 1 to 4

In order to improve the assessment of the economic effects of PTAs and the sound financial management of PTAs the Commission should:

- (1) unless duly justified, carry out an IA and an SIA for each PTA, providing an in-depth, comprehensive and quantified analysis of the expected economic effects, including an estimate of revenue foregone;
- (2) involve Eurostat routinely in the quality assessment of the statistical data sources used in SIAs, and ensure the timeliness of the analysis carried out for negotiators;
- (3) carry out interim and *ex post* evaluations in order to assess the extent to which PTAs with a significant impact meet their policy objectives and how their performance can be improved in key economic sectors, including an estimate of revenue foregone; and
- (4) monitor the scheme of GSP beginning on 1 January 2014 to make sure that it better meets its policy objectives to contribute to combating global poverty and promoting sustainable development.

## Conclusions and recommendations

### Customs controls applied by the authorities of the selected Member States

#### 111

Revenue collection is put at risk because there are weaknesses in customs controls of PTAs in the selected Member States, leading to potential losses to the EU budget estimated at 655 million euro in 2009. This represents around 6 % of the gross amount of import duties collected in the five selected Member States that year (see paragraphs 56 to 73, and paragraphs 76 to 77).

#### 112

Member States' risk management systems do not always include MA communications, which prevents Member States from ensuring an equivalent level of protection of the financial interests of the EU (see paragraphs 74 and 75).

### Commission's supervision of Member States and beneficiary/partner countries

#### 113

The REM-REC system has weaknesses because national authorities and the Commission can take diverging decisions on the same matter (see paragraphs 78 to 80).

#### 114

The capacity of the countries benefiting from preferential treatment to administer the arrangements has rarely been evaluated by the Commission. In addition, no monitoring visits have been made. The Commission therefore has no assurance that these countries are able to ensure that only eligible goods are exported under PTAs (see paragraphs 81 to 86).

#### 115

The Commission has taken steps to ensure the smooth working of the administrative cooperation arrangements in beneficiary/partner countries, but problems remain (see paragraphs 87 to 89).

#### 116

In some cases the financial follow-up of OLAF's investigations has not been effective and has resulted in amounts due being lost because they became time-barred (see paragraphs 90 to 92).

#### 117

There has been insufficient use of reactive measures to protect the financial interests of the EU (see paragraphs 93 to 99).

### Legal provisions

#### 118

The complexity of cumulation rules hampers their implementation by beneficiary/partner countries (see paragraphs 100 to 103).

## Conclusions and recommendations

### 119

Although certificates of origin and movement certificates are prone to litigation, their use is still widespread, which makes the *ex post* collection of customs duties cumbersome (see paragraphs 104 and 105).

### 120

The EU's position in reciprocal PTAs does not adequately protect its financial interests (see paragraph 106).

#### Recommendations 5 to 13

In order to improve protection of the EU's financial interests the Commission should:

- (5) create EU risk profiles on PTAs so that Member States have a common approach to risk analysis in order to reduce losses to the EU budget;
- (6) verify that Member States improve the effectiveness of their risk management systems and control strategy to reduce losses to the EU budget;
- (7) encourage Member States to adopt appropriate precautionary measures upon receipt of an MA communication;
- (8) evaluate and carry out monitoring visits on a risk basis to countries benefiting from preferential treatment, notably regarding the rules of origin and cumulation;
- (9) require the Member States to improve the quality of the information provided by them concerning administrative cooperation;
- (10) follow up those countries benefiting from preferential treatment where problems concerning administrative cooperation exist;
- (11) improve the financial follow-up of the OLAF investigations in order to prevent losses to the EU budget due to time-barring;
- (12) reinforce the EU's position in reciprocal PTAs and make more use of precautionary and safeguard measures, including them in all future trade agreements; and
- (13) promote the replacement of origin and movement certificates with exporters' self-certification.

This Report was adopted by Chamber IV, headed by Mr Louis GALEA, Member of the Court of Auditors, in Luxembourg at its meeting of 18 March 2014.

*For the Court of Auditors*



Vítor Manuel da SILVA CALDEIRA  
*President*

## Statistical data on PTAs in 2011

## List of Member States which imported the most under PTAs in 2011

Member State	Value of imports (billion euro)	Percentage
Germany	55	23 %
France	30	12 %
Italy	29	12 %
United Kingdom	27	11 %
Netherlands	22	9 %
Spain	19	8 %
Belgium	12	5 %
Sweden	7	3 %
Austria	7	3 %
Poland	5	2 %
Others	30	12 %
<b>Total</b>	<b>243</b>	<b>100 %</b>

## List of beneficiary/partner countries which exported the most under PTAs in 2011

Beneficiary/partner	Value of exports (billion euro)	Percentage
Switzerland	38	16 %
Turkey	37	15 %
India	18	8 %
Norway	13	6 %
Bangladesh	8	3 %
Russia	7	3 %
Tunisia	7	3 %
South Africa	6	3 %
Morocco	6	3 %
Thailand	6	2 %
Others	97	38 %
<b>Total</b>	<b>243</b>	<b>100 %</b>

Source: Comext.

## Overview of the Commission's *ex ante* evaluations on PTAs

### Standards

**Ex ante evaluations:** Pursuant to Article 21, under the heading 'Principle of sound financial management', of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, 'all proposals for programmes or activities occasioning expenditure or a reduction in revenue for the budget shall be subject to an *ex ante* evaluation'. This provision was in force from 1 January 2003 until 21 August 2006.

**Impact assessments (IAs):** In 2003, the Commission introduced a requirement to conduct integrated IAs of all its most important policy initiatives: 'IA will be applied to the major initiatives presented by the Commission in its Annual policy strategy or its work programme, be they either regulatory proposals or other proposals having an economic, social and environmental impact ... such as negotiating guidelines for international agreements that have an economic, social or environmental impact<sup>1</sup>'. Since 2005, 'IA, including on competitiveness, before initiatives are launched and throughout the legislative process, **must become second nature**<sup>2</sup>'.

'IAs are necessary for the most important Commission initiatives and those which will have the most far-reaching impacts. This will be the case for all legislative proposals of the Commission's Legislative Work Programme (CLWP) and for non-CLWP legislative proposals which have clearly identifiable economic, social and environmental impacts and for non-legislative initiatives which define future policies<sup>3</sup>'.

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1 COM(2002) 276 final.

2 COM(2005) 12 final.

3 SEC(2009) 92 — IA guidelines.



PTAs with	Cases in which an IA or <i>ex ante</i> evaluation was required	
	IA / <i>Ex ante</i> evaluation report	Adequacy of this evaluation
Montenegro	No <i>ex ante</i> evaluation	N/A
Bosnia and Herzegovina	No <i>ex ante</i> evaluation	N/A
Serbia	No <i>ex ante</i> evaluation	N/A
Central America	IA	X
Andean Community	IA	X
Republic of Korea	IA	X
India	IA	X
Canada	No IA	N/A
Morocco (deep and comprehensive free trade agreement)	No IA	N/A
GSP Regulation (EC) No 980/2005	No <i>ex ante</i> evaluation	N/A
GSP Regulation (EC) No 732/2008	IA	X
GSP Regulation (EU) No 978/2012	IA	√
Moldova	No IA	N/A

Legend:

N/A = Not applicable

√ = Adequate

X = Overall inadequate

In the following PTAs an IA or *ex ante* evaluation was not required:

Andorra, Turkey, San Marino, Faeroe Islands, European Economic Area (Iceland, Liechtenstein and Norway), Switzerland, the former Yugoslav republic of Macedonia, Croatia, Albania, Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the occupied Palestinian territory, Syria, Tunisia, Chile, Mexico, South Africa, Mercosur, Cariforum states, Ivory Coast, Cameroon, ESA (Comoros, Madagascar, Mauritius, Seychelles, Zambia and Zimbabwe), SADC (Botswana, Lesotho, Mozambique and Swaziland), Pacific states, market access regulation with ACP states, overseas countries and territories, Ceuta and Melilla.

## Standard

**Sustainability Impact Assessment (SIAs):** In 1999 the European Commission ‘decided to integrate sustainable development into trade negotiations by developing a new assessment tool called trade SIA<sup>4</sup>’.

PTAs with	Cases in which a SIA was required:	
	SIA	Adequacy of this evaluation
Croatia	No SIA	N/A
Albania	No SIA	N/A
Montenegro	No SIA	N/A
Bosnia and Herzegovina	No SIA	N/A
Serbia	No SIA	N/A
Algeria	SIA <sup>5</sup>	X
Egypt	SIA	X
Israel	SIA	X
Jordan	SIA	X
Lebanon	SIA	X
Morocco	SIA	X
Occupied Palestinian territory	SIA	X
Syria	SIA	X
Tunisia	SIA	X
Central America	SIA	√

Legend:

N/A = Not applicable

√ = Adequate

X = Overall inadequate

4 Preface by Peter Mandelson, former European Commissioner for Trade, to the Commission’s handbook on trade sia.

5 The SIA on the Euro-Mediterranean free trade area concerns PTAs with Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the occupied Palestinian territory, Syria and Tunisia.

PTAs with	Cases in which a SIA was required:	
	SIA	Adequacy of this evaluation
Chile	SIA	X
Andean Community	SIA	X
Republic of Korea	SIA	√
India	SIA	X
Canada	SIA	√
Morocco DCFTA	SIA	X
Mercosur	SIA	X
Cariforum states	SIA <sup>6</sup>	X
Ivory Coast	SIA	X
Cameroon	SIA	X
ESA Comoros, Madagascar, Mauritius, Seychelles, Zambia, Zimbabwe	SIA	X
SADC Botswana, Lesotho, Mozambique, Swaziland	SIA	X
Pacific states Papua New Guinea, Fiji	SIA	X

Legend:

N/A = Not applicable

√ = Adequate

X = Overall inadequate

In the following PTAs an SIA was not required:

Andorra, Turkey, San Marino, Faeroe Islands, European Economic Area (Iceland, Liechtenstein and Norway), Switzerland, the former Yugoslav republic of Macedonia, Mexico, South Africa, market access regulation with ACP states, overseas countries and territories, GSP Regulation (EC) No 980/2005, GSP Regulation (EC) No 732/2008, GSP Regulation (EU) No 978/2012, unilateral PTA with Moldova and Ceuta and Melilla.

6 The SIA on the economic partnership agreements with ACP countries concerns EPAs with Cariforum states, Ivory Coast, Cameroon, ESA (Comoros, Madagascar, Mauritius, Seychelles, Zambia, Zimbabwe), SADC (Botswana, Lesotho, Mozambique, Swaziland) and Pacific states (Papua New Guinea, Fiji).

## Overview of the Commission's interim and/or *ex post* evaluations on PTAs

### Standard

In the Court's view, interim and *ex post* evaluations should be carried out in respect of all PTAs with significant economic, social and environmental impacts after 3 years from their entry into force. These would allow policy-makers, stakeholders and European taxpayers to assess whether PTAs are actually meeting their policy objectives in accordance with the principles of sound financial management and public accountability.

In its communication on 'Trade, growth and world affairs, trade policy as a core component of the EU's 2020 strategy'<sup>1</sup>, the Commission stated that *ex post* evaluations would be carried out to monitor the impacts of existing PTAs on a more systematic basis.

PTAs with:	Cases in which an interim and/or <i>ex post</i> evaluation (EPE) is required	
	Interim and/or <i>ex post</i> evaluation	Adequacy of this evaluation
Turkey	No EPE	N/A
European Economic Area (Iceland, Liechtenstein, Norway)	No EPE	N/A
Switzerland	No EPE	N/A
Former Yugoslav republic of Macedonia	No EPE	N/A
Croatia	No EPE	N/A
Albania	No EPE	N/A

<sup>1</sup> COM(2010) 612.

PTAs with:	Cases in which an interim and/or <i>ex post</i> evaluation (EPE) is required	
	Interim and/or <i>ex post</i> evaluation	Adequacy of this evaluation
Montenegro	No EPE	N/A
Bosnia and Herzegovina	No EPE	N/A
Serbia	No EPE	N/A
Algeria	EPE <sup>2</sup>	X
Egypt	EPE	X
Israel	EPE	X
Jordan	EPE	X
Lebanon	No EPE	N/A
Morocco	EPE	X
Occupied Palestinian territory	No EPE	N/A
Syria	No EPE	N/A
Tunisia	EPE	X
Chile	EPE	√
Mexico	EPE of six FTAs	X
South Africa	EPE of six FTAs	X
Cariforum states	No EPE	N/A
Pacific states (Papua New Guinea, Fiji)	No EPE	N/A
Overseas countries and territories	No EPE	N/A
GSP Regulation (EC) No 980/2005	Interim evaluation	√
GSP Regulation (EC) No 732/2008	Interim evaluation	√
Moldova	No EPE	N/A

Legend:

N/A = Not applicable

√ = Adequate

X = Overall inadequate

In the following PTAs an *ex post* evaluation was not required:

Andorra, San Marino, Faeroe Islands, central America, Andean Community, Republic of Korea, India, Canada, Morocco (deep and comprehensive free trade agreement), Mercosur, Ivory Coast, Cameroon, ESA (Comoros, Madagascar, Mauritius, Seychelles, Zambia and Zimbabwe), SADC (Botswana, Lesotho, Mozambique and Swaziland), market access regulation with ACP states, GSP Regulation (EU) No 978/2012 and Ceuta and Melilla.

2 The *ex post* evaluation on the Euro-Mediterranean free trade area concerns PTAs with Algeria, Egypt, Israel, Jordan, Morocco and Tunisia.

### Audit approach in selected member states

The auditors reviewed national instructions and procedures, risk management and risk profiles, *ex ante* and *ex post* controls and administrative cooperation. The Court reviewed the overall control strategy applied to PTAs by customs authorities in five Member States. The value of their imports under PTAs represented more than two thirds of the total imports benefiting from preferential tariff measures.

Customs controls in the five selected Member States were evaluated by testing the following random samples.

- (a) 60 imports under PTAs carried out in the time-barred period of 2009, in order to check whether the goods were actually entitled to preferential tariff measures and also the preventive, deterrent and corrective measures adopted by the customs authorities to ensure this entitlement and to collect the duties due when this was not the case. An extrapolation of the underpayments detected in the sample was carried out in order to estimate the amount of TOR potentially lost to the EU budget.
- (b) 30 imports under PTAs in 2011, in order to check whether the goods were actually entitled to preferential tariff measures and also the preventive, deterrent and corrective measures adopted by the customs authorities to ensure this entitlement and to collect the duties due when this was not the case.
- (c) 30 imports in 2009 subject to an MA communication in order to check whether Member States had consistently introduced automated risk profiles in their risk management systems.
- (d) 30 requests sent in 2011 by Member States to beneficiary /partner countries under administrative cooperation in order to test the timely collection of the customs duties due in cases where the goods were not entitled to preferential tariff measures.

## Limitations of the CGE model

### 1

According to the European Economic and Social Committee<sup>1</sup> 'the results of modelling presented in SIAs are ... without any real informative value for negotiators or stakeholders, since they do not indicate significant or sufficiently targeted impacts. As a result of the absence or shortage of reliable statistics in the informal sector, the SIA does not take sufficient account of the possible impact on this sector'.

### 2

Both the Commission and the external consultants have also highlighted the inherent limitations of the CGE model:

- (a) the CGE model can only be used for simulation purposes and not for forecasting<sup>2</sup> and its simulation of long-run effects is tenuous<sup>3</sup>;
- (b) its somewhat tautological construction, i.e. all results are implicitly linked to the assumptions and calibration made<sup>4</sup>;
- (c) commodities are grouped within a broad category so that it is impossible to usefully determine the impact on specific products within a broad category, e.g. medium-quality wheat in the context of the estimated impact on 'wheat'<sup>5</sup>;
- (d) diverse countries such as Russia, Norway, Switzerland and Turkey are combined into a single grouping, limiting the useful interpretation that can be made from the CGE estimates for this group<sup>6</sup>;
- (e) the formal modelling's inability to account for the impact of investment liberalisation and measures that facilitate the movement of professionals<sup>7</sup>; and
- (f) the CGE model results are not well suited for social impact assessments due to their lack of disaggregated information at the household level<sup>8</sup>.

1 Paragraph 2(6) of Opinion No 818/2011 of the European Economic and Social Committee.

2 Paragraph 11(5) of Annex 8 to Commission IA guidelines.

3 According to Commission services' position paper on the SIA for the FTA between the EU and the Republic of India of March 2010, '*the long-run effects are among the most tenuous parts of CGE modelling because the capital accumulation process inevitably relies on basic assumptions and ignores the dynamic effects of enhanced integration and competition*'.

4 Paragraph 11(5) of Annex 8 to Commission IA guidelines.

5 EU-Canada SIA final report briefing document, June 2011.

6 idem.

7 idem.

8 EU-Andean trade sustainability impact assessment, final report, October 2009.

## Executive summary

The economic gains associated with trade liberalisation are well known and thoroughly documented by the entire economic literature available. For instance, it has been shown that finalising all ongoing negotiations (Doha Round and bilateral agreements) would lead to an increase of EU GDP of more than 1 % than it would be otherwise. Consumers are expected to benefit from access to a wider variety of goods and services. Finally, there are more than 36 million jobs in Europe that depend, directly or indirectly, on our ability to trade with the rest of the world<sup>1</sup>.

Moreover, the GSP scheme is effectively the EU's development-through-trade arm; firstly, through the 'everything but arms' (EBA) scheme it provides duty-free and quota-free access to the EU market on all products (except weapons) to the 50 poorest countries in the world; secondly, through the additional benefits under the GSP+ sub-scheme, it incentivises developing countries to pursue sustainable development objectives.

### III (a)

Since 1999 all major multilateral and bilateral trade negotiations have been accompanied by a sustainability impact assessment (SIA). In addition, since 2010, with one exception<sup>2</sup>, all important trade negotiations have been also preceded by an impact assessment (IA).

All its trade arrangements have been able to draw on high-quality analysis of economic and other impacts. In doing this, the Commission has always strived to meet the applicable standards, which have evolved over time.

The Commission has used different modelling techniques, mainly (but not exclusively) General Equilibrium (CGE) modelling, and drawn on data from Global Trade Analysis Project (GTAP) database<sup>3</sup>. To date, these are the best available tools that allow us to quantify best the economic impact of trade policy changes.

### III (b)

The General system of preferences (GSP) is a unilateral scheme which seeks to address, through tariff reductions, long-standing economic, social and other structural needs in developing countries. While the Commission accepts the observation, the GSP is only one of the elements contributing to the full delivery of intended benefits.

The new GSP regulation, which entered into force on 1 January 2014, has made substantial reforms with a view to better targeting the countries most in need.

### III (c)

The Court's main findings relate to individual errors comprising missing documents or evidence which should have been retained by the importers.

### III (d)

With regard to monitoring visits, the Commission is acting within the framework of the existing legal basis and in line with the respective provisions of the reciprocal trade arrangements, as approved by the Council and the Member States and, as appropriate, the European Parliament.

1 'Trade, growth and world affairs — Trade policy as a core component of the EU's 2020 strategy'.

2 In 2011 the Foreign Affairs Council and the European Council responded to the Arab Spring by calling for the launch of negotiations with Morocco, Tunisia, Egypt and Jordan. This political decision made conducting an IA redundant and would have introduced excessive delay in the launch of the negotiation process.

3 The use of the GTAP database in CGE modelling is widely accepted worldwide by virtually all similar international organisations such as the WTO, World Bank, OECD, UN, IMF and the US government.



## Reply of the Commission

While the legal basis for carrying out monitoring visits to beneficiary countries has been in place only since 1 January 2011, even before then the Commission ensured a number of monitoring actions and provision of explanations *vis-a-vis* beneficiary countries as a part of administrative cooperation, notably in the GSP context.

Nevertheless, a Commission action plan on monitoring of preferential rules of origin has been elaborated, under which visits to a beneficiary country are one of the suggested activities. The action plan will cover both unilateral arrangements such as GSP and bilateral agreements with partner countries.

### III (e)

The Commission takes note of the Court's finding.

Since 2001 the Commission has proposed that all EU preferential trade regimes, whether autonomous or conventional, include the possibility of temporary withdrawal of preferences in the event of particular problems with the management of the preferences and/or other significant breaches of customs legislation or non-cooperation. The Commission considers that these safeguards have proved to be sufficient and will continue to propose their inclusion in all future preferential trade arrangements.

The Commission notes that in just one PTA with South Korea, the safeguard provisions eventually agreed do not include the possibility of temporary withdrawal of preferences, even if those provisions contain an obligatory consultation mechanism. The Commission confirmed the exceptional nature of the compromise wording of the safeguard provisions agreed with South Korea at the time of the Council decision on the signature of the agreement<sup>4</sup>.

4 OJ L 127, 14.5.2011, p. 4.

### IV (a)

The Commission accepts the Court's recommendation with regard to carrying out an IA and SIA for PTAs, and to duly justify situations where this may not be possible. It will do so, in accordance with the existing IA guidelines and SIA handbook and has estimated the revenue foregone in its most recent impact assessment for Japan and the United States.

The Commission already carries out IAs and SIAs in line with both commitments made and best practice. Since 1999 all major multilateral and bilateral trade negotiations have been accompanied by an SIA, and since 2010 (with one exception, see Commission reply to paragraph III(a)), all important trade negotiations have also been preceded by an impact assessment.

### IV (b)

With regards to the timeliness of analysis, the Commission is committed to launch SIAs no later than 6 months after the start of negotiations to ensure they can usefully feed into the negotiating and approval process.

Eurostat is now systematically invited to be a member of the steering groups monitoring SIAs.

The Commission is seeking to intensify cooperation on the quality of statistical data sources within an ongoing update of the service-level agreement between DG Trade and Eurostat.

### IV (d)

The Commission accepts the Court's recommendation for PTAs with significant economic, social and environmental impact.

It reflects the commitments already taken by the Commission to carry out *ex post* evaluations on PTAs with significant economic, social and environmental impact on a more systematic basis to help monitor the impacts of EU trade agreements<sup>5</sup>.

5 COM(2010) 612 'Trade, growth and world affairs'.

### V (a)

The Commission will further evaluate in which particular cases such risk profiles are useful and how they should be implemented in the area of rules of origin under PTAs.

### V (b)

In the course of its inspections in recent years, the Commission has placed a special focus on the effectiveness of the Member States' risk management systems and control strategies. It has produced thematic reports on its inspections of customs control strategy (2009), local clearance (2011) and transit (2012) and has presented these reports to the Member States in the Advisory Committee on Own Resources and in the Customs Policy Group. It will continue to verify that Member States improve the effectiveness of their risk management systems and control strategies.

### V (c)

The Commission will continue to encourage Member States to take all appropriate precautionary measures upon receipt of MA communications.

### V (d)

The evaluation of the capacity of a beneficiary country is an integral part of the negotiation process with each partner. It is not, however, reflected in a formal evaluation report. The Commission will include an assessment of this capacity in the formal scoping exercises that precede new negotiations.

Generally, the negotiations provide the appropriate framework for the Commission to assess the capacity of the authorities of the partner countries to administer properly the agreement.

### V (e)

The Commission will raise this issue with Member States (during monitoring) with a view to improving the quality of the information the Member States provide concerning administrative cooperation. The reporting procedure will also be simplified.

### V (f)

The Commission notes that financial recovery is the responsibility of the Member States.

OLAF will continue to provide Member States' competent authorities with all necessary information to facilitate their recovery actions.

New provisions introduced in Regulation 883/2013 on OLAF investigations<sup>6</sup> require Member States to provide OLAF with information on actions they have taken following OLAF recommendations, inter alia on recovery of amounts due. This strengthens the monitoring of recovery action by Member States and further improves the financial follow-up of OLAF investigations.

The Commission systematically follows up all identified cases of Member States' financial liability resulting from delays in recovery procedures. It will continue to do so.

### V (g)

Since 2001, the Commission has proposed that all EU preferential trade regimes, whether autonomous or conventional, include the possibility of temporary withdrawal of preferences in the event of particular problems with the management of the preferences and/or other significant breaches of customs legislation or non-cooperation. The Commission considers that these safeguards have proved to be sufficient and will continue to propose their inclusion in all future preferential trade arrangements.

At the end of 2013, the possibility of temporary withdrawal of preferences was already included in four autonomous arrangements (including GSP) covering almost 200 countries and preferential agreements with more than 30 countries.

<sup>6</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L 248, 18.9.2013.

Currently the Commission is negotiating the inclusion of provisions for the temporary withdrawal of preferences in PTAs with a number of partners, including Japan, Vietnam, Morocco, Thailand and Canada.

The Commission will continue to propose inclusion of the MAE clause in all future trade agreements where no self-certification is agreed.

### V (h)

The Commission will continue promoting the replacement of origin and movement certificates with exporters' self-certification.

## Introduction

### 07

The Court is right to highlight IAs and SIAs. However, it does not give credit to tools such as feasibility studies and other economic analysis, which in the past have also been an important element in decision-making on some of the agreements included in the Court's sample.

### 08

While the system of IAs was introduced in 2002, its scope has gradually evolved and PTAs with significant impact were not included fully in its scope until 2009.

### 09

The Commission has a different interpretation concerning the legal obligation to carry out *ex ante* evaluations for PTAs between 2002 and 2006.

The requirement to conduct impact assessments has gradually been introduced since 2003.

Since 2005, IAs have been required for all initiatives set out in the CLWP and since 2009 for the most important Commission initiatives and those with the most far-reaching impact.

### 10

The commitment to conduct SIAs was made in 1999 by the trade commissioner and became established practice for trade negotiations under subsequent trade commissioners.

### 12

The Commission agrees on the importance of evaluations for all PTAs with significant impacts.

When evaluating a trade agreement, a sufficient amount of time needs to have passed to allow reliable conclusions to be drawn from the available data.

Trade agreements often foresee a gradual phasing in of reciprocal commitments over five to seven years<sup>7</sup>. The timing of an evaluation should take account of the period over which the impacts are felt. For this reason the Commission considers that an evaluation only 3 years after an agreement is in force, as suggested by the Court, is normally too early.

### 14

The Commission does not consider that an *ex ante* and an *ex post* evaluation of revenue foregone would provide budgetary authorities with a sufficiently accurate yearly forecast of custom duties collection to improve financial management of the EU budget.

PTAs form part of the legislative structure on the basis of which customs duties due are collected and made available to the EU budget. Therefore revenue cannot be considered foregone once a PTA is in place, nor are there budgetary costs. For its budget forecasts on TOR, the Commission needs to primarily rely on macroeconomic methods. However, the method is currently under revision and the Commission will examine to what extent other elements, such as the impact of new PTAs, can be taken into account.

<sup>7</sup> See also COM 2013 (686) 'Strengthening the foundations of Smart regulation — improving evaluation'.

An estimate of revenue foregone has been included in IAs carried out since 2011. However, such an *ex ante* calculation can only give an estimate of the likely reduction of own resources in the form of customs duties, based on the most likely scenarios arising from the final agreement. As to the economic effects, it should be noted that while PTAs lower duty rates they also entail benefits from increased trade flows that may even result in an increase in the amount of customs duties collected.

## Audit scope and approach

### 21

The Court's conclusion is based on the analysis of a period during which the Commission impact assessment system was progressively established and the systematic evaluation of policies still to be developed. Therefore, a number of agreements within the sample could not have been subject to either an IA or an SIA given the moment of their proposal and/or entry into force.

### 22

IA working methods were established progressively in the Commission with guidelines introduced in 2005 and revised in 2009. Current more rigorous standards should not be used to assess earlier IAs, when the systems was evolving. In order to build on the experience of the first 5 years, SIA guidelines were introduced through the publication by the Commission services of the SIA handbook in 2006.

## Observations

### 26

The Commission agrees with the importance of appropriately assessing both *ex ante* and *ex post* the economic and other effects of PTAs. It believes this to be the case since 1999.

### 27

The Commission considers that IAs or *ex ante* evaluations need not have been prepared for the seven PTAs identified by the Court. In most of the cases an IA or *ex ante* evaluation would have been of little added value and represented a disproportionate use of resources, for example because political choices had already been made at the highest level to pursue an agreement or the measures envisaged had more limited effects or were transitional in nature.

### 28

The Commission has estimated the revenue foregone in all IAs relating to trade agreements produced since 2010.

### 29

The Commission does not consider that there was a commitment to carry out SIAs for the five agreements identified by the Court. The commitment to conduct SIAs during a trade negotiation was originally made in 1999 by the trade commissioner and related to those negotiations which are led by the commissioner for trade. The generalised use of SIAs for negotiations led by other commissioners on behalf of the Commission has never been subject to a College decision, which is the reason for the absence of an SIA in the five cases.

### 30

Since 2010, the Commission has been strengthening its system of evaluating legislation and policies and is committed to conduct evaluations on a more systematic basis. Priorities need to be set in pursuing a programme of evaluations, with first priority given to the 'evaluate first' principle, i.e. evaluating before an initiative is revised; to those initiatives with the most significant impact; and, finally, in terms of the scarce resources available.

In line with its commitment to carry out *ex post* evaluations on a more systematic basis, the Commission carried out in 2012 an *ex post* evaluation of the trade pillar of the EU–Chile association agreement and launched in 2013 an *ex post* evaluation of the implementation of the EU–Mexico free trade agreement and a comprehensive review of the Cariforum–EU EPA. Another two *ex post* evaluations (of the autonomous trade preferences for Moldova and for western Balkan countries) are planned in 2014.

### 31

The evaluation of the impact on the EU budget in the GSP statistical report for 2006–09 followed the Commission’s standard approach<sup>8</sup>.

As the calculation was done *ex post*, the loss of revenue was calculated on the basis of the real statistics, i.e. GSP preferential trade in the period 2006–09.

### 34

Considerable effort has gone into producing high-quality impact assessments using the best available modelling. Moreover, the Commission notes that the Court’s analysis is based on IAs done several years ago, at a time when impact assessment methodologies were still under development. Only one of the five IAs in support of a trade agreement analysed by the Court was carried out under the latest IA guidelines. As a consequence, the Court fails to acknowledge the substantial evolution in IAs in support of PTAs since 2010.

<sup>8</sup> The revenue foregone expresses the difference between the MFN duties that would be payable for all GSP trade in the absence of the GSP scheme AND the duties actually paid, i.e. (total of most favoured nation duty calculated on GSP preferential trade) – (total of preferential duty calculated on GSP preferential trade).

### 35

Of the six IAs reviewed by the Court, four were conducted in 2006/07, when the methodology to analyse the impact of trade agreements was still under development. All IAs conducted since 2010 contain a comprehensive analysis of the economic effects in the beneficiary countries.

### 36

The Commission assesses economic impacts, by using state-of-the-art economic modelling and datasets, keeping pace with most recent developments in the theoretical and empirical literature regarding the effects of free trade agreements.

### 38

The GSP scheme consists of a general arrangement and two special arrangements. The general arrangement is granted to all those developing countries which share a developing need and are in a similar stage of economic development without the need to ratify or implement any international conventions.

The EU’s GSP+ sub-scheme has been designed to include additional incentives for vulnerable countries willing to take extra steps towards sustainable development and good governance, leaving the choice to those countries of whether to seek the additional benefits or not. This approach, endorsed by Council and Parliament, represents a policy choice. The need to ratify and effectively implement international conventions on human and labour rights, the environment and good governance has, therefore, been considered for these 10 countries and not in respect of other beneficiary countries of the general arrangement.

### Box 1

Bangladesh is a good example of where GSP benefits have significantly contributed to the development of the country, a least developed country (LDC), leading to growth, poverty reduction and increased employment opportunities, in particular for women. The availability of GSP benefits creates the political space for the EU to influence developments in human and labour rights as shown by the Rana Plaza event. In addition, the Commission has closely followed the International Labour Organisation (ILO) work in the country aimed at improving working conditions. It is doubtful if Bangladesh would have accepted the conditions imposed by the compact had it not been a GSP beneficiary.

### 40

The Commission acknowledges that in the light of experience it has tightened the requirement for monitoring and evaluation to be more effectively addressed in IAs. This has reflected the gradual evolution of the IA system.

In all the IAs carried out since 2010 in the area of trade, clear and quantifiable indicators have been identified complying with the 2009 IA guidelines. The IAB positive opinions on these IAs confirm this.

### 41

An in-depth study of the nature outlined in the EESC recommendations in the Indian context would be unlikely to produce reliable findings, as a majority of the vulnerable sectors of society are in the informal economy where quantitative data is not easily available.

However, the results of the SIA for the India FTA are relevant in the context of the EESC recommendations. The SIA concluded that an FTA with India (in all scenarios analysed) should lead to significant increases in real wages of both skilled and unskilled workers as well as to moderate pro-poor effects. In addition, negotiators have regular consultations with civil society, allowing the issues mentioned in the EESC recommendations to be discussed.

### 42

The IA did not identify fraud or customs evasion as a salient shortcoming of the previously applied GSP scheme. Therefore, there was no major adaptation of the anti-fraud provisions in the reformed scheme.

On the other hand, the IA highlighted that the safeguard mechanisms within the GSP scheme (where imports may cause or threaten to cause serious difficulty to EU producers) were not operational and could allow preferential imports to harm the financial and economic interests of EU industry. Options were identified to remedy them and, as a result, the new GSP, in force since 1 January 2014, strengthened them.

By November 2017, the Commission must submit a report to the European Parliament and to the Council on the application of the GSP regulation. For the purpose of the report, the Commission will assess fraud and customs duty evasion issues and, where appropriate, will consider measures to address them.

### 44

The Commission agrees that, as in any modelling, there are limitations but considers that CGE is the best instrument available. All modelling frameworks have shortcomings, but CGE models are best equipped to quantify the economic impact of PTAs. The objectives are to quantify the impact of trade policy changes, *ceteris paribus*, based on the most robust and relevant methodological approaches available in the economics profession for trade policy analysis. Such economic analyses are not based on 'the' CGE model but on different CGE models that are adapted to best suit the policy question at hand in each IA and SIA.

### 45

The GTAP database is built on the most reliable international data sources (including Eurostat data for EU countries), and it undergoes constant scrutiny by the different stakeholders (World Bank, OECD, IMF, WTO, United Nations, FAO). Most economic data used in the GTAP database (such as trade flows, protection patterns, GDP, final consumption) are updated to the latest year available. In this case, outdated data refers only to technical coefficients of the EU supply and use tables (SUTs). The Eurostat raw data shows that the change in the technical coefficients in EU SUT tables is minimal for the period 2000–09.

The Commission, as part of the GTAP consortium, will seek to ensure that GTAP uses updated EU use and supply and input–output tables when available and that in the metadata of GTAP it is stated, country by country, what the sources are and which year of data is used.

As shown by the January 2014 report by the Joint Research Centre (JRC) of the European Commission, updating EU technical coefficients to the most recent year available only marginally changed the simulated impact of the EU–South Korea FTA.

### 46

As the source of most EU data in the GTAP database is Eurostat or national statistical offices in the first place, the involvement of Eurostat in a secondary quality assessment of the GTAP data might be superfluous.

### 47

The Commission agrees that the timeliness of an SIA is very important in order to ensure that it is useful for negotiators. The Commission services are committed to launch SIAs no later than 6 months after the start of the negotiation to ensure reports feed into the negotiations. Out of the 18 SIAs conducted since 1999, the Chile SIA was the only SIA where the final report was only delivered after the initialling of the association agreement.

### 48

IAs and SIAs analyse the likely impact of the trade agreement itself on the relevant sectors, taking into account the existence of all the relevant EU policies. In doing so, they may (as for the Caribbean countries) or may not explicitly mention the common agricultural policy (CAP).

### 49

The Commission recognises that the SIA concerning the EPAs does not have the same level of coverage and depth as more recent SIAs. In part this reflected the very broad geographical and thematic coverage of this specific SIA — more than 75 countries. No SIA could have given full coverage of all possible issues for all potential signatories.

### 52

The study was an econometric assessment of the impact of six PTAs on trade. Its stated objective was to analyse if the agreements have had a measurable and statistically significant impact on EU exports and imports. It was not intended to have a broader scope or to be a fully fledged *ex post* evaluation. The Commission has subsequently conducted full *ex post* evaluations for two of the countries concerned (Mexico and Chile).

### 53

Whilst the *ex post* evaluation report for the Euromed countries did not contain any arrangements for future evaluation, the Commission can confirm that such an *ex post* evaluation is likely to be carried out once ongoing negotiations are out of the way and agreements fully implemented.

### 55

Following the interim evaluation of the GSP, substantive changes were made to the scheme, which entered into force on 1 January 2014, to address the shortcomings identified in the interim evaluation of the scheme.



For example, the number of GSP beneficiaries was substantially reduced so as to focus benefits to the countries most in need (from over 170 to around 90 countries). Moreover, export opportunities for poorer countries have been increased through the elimination of benefits for very competitive sectors from certain countries, such as textiles from China and India.

### 61

The Commission considers that the inclusion of origin in combination with other risk elements is even more effective because it is more closely targeted.

### 62

The errors found by the Court in import declarations in which preference was claimed under simplified procedures were low (three). The UK has undertaken to review its control strategy for preferential origin. However, while PTAs has not been selected as an audit theme in the UK, this does not mean that origin controls have not been carried out in the context of other post-clearance audits. The issues raised by the Court will be followed up by the Commission.

### 63

The Court's extrapolation is made on the basis of individual errors that comprise missing documents or evidence that should have been retained by the importers at the time of the Court's audit. However, these errors do not automatically substantiate that the imported goods were not of the preferential origin declared at the time of importation. In its follow-up of the individual errors detected by the Court, the Commission will give the Member States in question the possibility to prove that the documents and evidence of origin were available at the time of clearance and that they can still be supplied. Only where evidence is not supplied is there likely to be amounts of TOR due from the Member States if they result from their administrative errors.

The Commission further notes that the non-extrapolated potential loss reported by the Court to the three Member States in relation to the individual errors detected, amounted to 1 million euro, of which 91 % concerns one Member State.

### 64

Some of the missing documents or evidence may yet be supplied as a result of the Commission's follow-up of the ECA's findings. Therefore the end result may well show substantially lower rates. In addition, the Commission inspections of simplified procedures in 21 Member States did not show high error rates in the sample of origin declarations checked and the financial impact of the errors was low.

The results of the examination of originals of origin documents carried out by the Commission in its inspections in the UK are not in line with the findings of the Court.

### 66

The errors found by the Court mainly comprise missing supporting documents or evidence. Where the origin certificates show a stamp or are issued by an office not communicated to the Commission by the authorities of the beneficiary/partner countries they may be sent for verification to those authorities.

Also in relation to paragraph 64 above, the Commission points out that nowadays almost all the supporting documents are held by the importers and should be kept by them at the customs authorities' disposal in accordance with Article 77 of the EU Customs Code. There cannot be a 100% check of documents and the checks need to be carried out on the basis of risk analysis as stipulated in Article 13 of the EU Customs Code.



### 67

The errors identified by the Court will be followed up by the Commission and where amounts of traditional own resources are found to be due, the Member States will be requested to take measures to recover these amounts and pay any interest applicable.

### 71

The 11 requests sent by Spain to the Philippines and returned undelivered have subsequently been sent again to the Philippines to the correct addresses.

### 72

The Commission is following up these post-clearance cases with the Italian authorities. Interest will be charged where applicable.

### 73

The Commission will follow up with the French authorities the cases where post-clearance recovery has not been started following confirmation that the certificates are invalid or not authentic and will request recovery of any amounts of TOR due and the payment of interest, if applicable.

### 74

The Commission considers that the Member States should take account of the information in its overall customs risk and control strategy and, to the extent that the information from the mutual assistance communication impacts the Member State, to take measures to recover amounts of TOR due and prevent future losses.

### 75

In all the cases mentioned the information has been analysed and taken into account by the Member States in their risk assessments. It is for the Member State to decide, following analysis of its trade pattern, whether to enter information from mutual assistance communications in the form of risk profiles into its risk management systems but it is not obliged to do so. France has explained that the creation of a risk profile in the case of the mutual assistance communication notice in question would be ineffective because the information had no impact in France. In the case of Spain, the sample related to operators that were excluded from 'pre-release' control circuits. The Commission had already requested the Spanish authorities to correct this practice. The Commission considers that a risk profile based on the information contained in a mutual assistance communication request need only be established if the information has an impact for the Member State.

### 77

All these recovery cases are being followed up by the Commission with the Member States' authorities, and where amounts of TOR are due as a result of administrative error they will be asked to make available these amounts with interest, if applicable.

The UK has been requested to make available the amount of traditional own resources relating to the MA communications concerned which it has acknowledged has become time-barred because of ineffective internal controls. France has contested this finding and the Commission has requested additional information.

### 78

The Commission underlines that in this case the Member State concerned has already taken appropriate measures to avoid a similar situation occurring in the future.

See the Commission's reply to paragraph 79.

### 79

The Commission has already been informed by the Member State concerned that their customs authorities had high-level exchanges with the national judicial authorities and that they are in the process of amending the national tax law to prevent a similar situation occurring in future.

The Commission will follow up this issue with the Spanish authorities.

### 80

See Commission reply to paragraph 78.

### 82

The evaluation of the capacity of a beneficiary country is an integral part of the negotiation process with each partner, including the scoping exercise. It is not, however, reflected in a formal evaluation report.

Generally, the negotiations provide the appropriate framework for the Commission to assess the capacity of the authorities of the partner countries to administer properly the agreement taking into account, for instance, experiences with existing customs cooperation agreements and other cooperation mechanisms. More detailed prior evaluations have taken place with regard to the SAAs with the Balkan countries.

### 83

A Commission action plan on monitoring of preferential rules of origin has been elaborated, under which visits in a country benefiting from preferential treatment are one of the suggested activities. The action plan will cover both, unilateral arrangements such as GSP and bilateral agreements with partner countries.

### 84

In the Court of Justice judgment mentioned by the Court of Auditors, the fact that the Commission did not make full use of the rights and powers conferred upon it by the association agreement with Turkey refers just to a specific case and therefore cannot lead to a general conclusion.

Articles 220(2)(b) and 239 of the Community Customs Code provide for exceptions to the general principle of recovery of import duties. In those cases, despite the existence of a customs debt and the fact that the conditions for preferential treatment of the goods had not been fulfilled, the applicant (supported by its national authorities when the file is submitted to the Commission for decision) asks for an exception to the principle of recovery or non-remission/repayment of import duties.

The provisions governing these exceptions must be interpreted restrictively and are assessed on a case by case basis.

The exceptions to the principle of recovery require either (a) the existence of an error on the part of the customs authority which could not reasonably have been detected by the person liable acting in good faith and complying with the provisions of the customs declaration or (b) the existence of a special situation in which no negligence or deception can be attributed to the debtor.

### 85

The Commission will carefully consider such a periodical reporting system within its new and enhanced monitoring actions.

### 89

The Commission will look at this issue within the framework of its newly planned monitoring actions, so as to improve the quality of information provided by Member States and to ensure, inter alia, that reporting by Member States more efficiently focuses on anomalies calling for remedial action.

## 90

The Commission welcomes the Court's finding that OLAF was successful in demonstrating that the imported goods were not eligible for preferential tariff measures, except for one investigation.

## 91

The recovery action following OLAF investigations in customs cases is the task of national authorities and it is outside OLAF's control.

Thus the amount actually recovered reflects Member States' and not OLAF's performance and it is not appropriate to use this amount as a performance indicator for OLAF.

OLAF provides Member States' competent authorities with all necessary information to facilitate their recovery actions.

New provisions introduced in Regulation 883/2013 on OLAF investigations<sup>9</sup> require Member States to provide OLAF with information on actions they have taken following OLAF recommendations, inter alia, on recovery of amounts due. This strengthens the monitoring of recovery action by Member States and further improves the financial follow-up of OLAF investigations.

## 92

The Commission systematically follows up all identified cases of Member States' financial liability resulting from delays in recovery procedures. It will follow up the findings of the Court and request the recovery of traditional own resources and the payment of interest where applicable. The amount of duties shown in the OLAF report is the amount recommended for recovery and the actual amount that can be recovered can only be definitively determined when followed up.

9 Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L 248, 18.9.2013.

## 94

The primary function of MA communication is to alert the Member States to identified fraud risks and obtain their cooperation in dealing with them efficiently and effectively. OLAF fully applies the requirements of the existing Regulation 515/97<sup>10</sup> (as amended by Regulation 766/2008<sup>11</sup>). It is the responsibility of the Member States to analyse the risk pertaining to their territory based on the information provided and take all necessary measures in accordance with the provisions of EU customs legislation.

## 95

The amounts declared irrecoverable by Member States do not necessarily constitute final losses to the EU budget as the Commission examines the diligence of the Member States in recovering these amounts under Article 17.2 of Regulation 1150/2000 and holds them responsible where diligence in recovery procedures is not shown.

## Box 2

In accordance with the procedure in Article 17 of Council Regulation 1150/2000, the Commission had already examined this case in 2013.

Poland was subsequently requested to make available these amounts because precautionary measures, as requested by OLAF in its MA communication, had not been taken at the time of import.

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

11 Regulation (EC) No 766/2008 of the European Parliament and of the Council of 9 July 2008 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 218, 13.8.2008, p. 48).

### 96

Since 2001, the Commission has proposed that all EU preferential trade regimes, whether autonomous or conventional, include the possibility of temporary withdrawal of preferences in the event of particular problems with the management of the preferences and/or other significant breaches of customs legislation or non-cooperation. They also include a possibility to issue notices to importers. The Commission will continue to propose the inclusion of these safeguards in all future preferential trade arrangements.

The Commission proposes the inclusion of the MAE clause in all trade agreements where no self-certification is agreed and will continue to do so in all future trade agreements and in those which are renegotiated.

### 97

See reply under paragraph 84. The cases notified to the Commission refer to exceptions to the general principle of recovery of import or export duties and require that the errors of the customs authority could not be detectable by a debtor acting in good faith and complying with the provisions applicable or the existence of a special situation provided that the debtor was not negligent. It is for the decision-making customs authority to assess whether these conditions are met.

### 98

The Commission will continue to propose inclusion of the MAE clause in all trade agreements where no self-certification is agreed.

### Box 3 (b)

The non-publication was related to translation difficulties in the run-up to accession.

### Box 3 (c)

Concerning the follow-up to the notice to importers about imports of tuna from El Salvador, the Commission has meanwhile reacted to the Court's audit finding and sent out a letter with detailed questions to El Salvador.

### Box 3 (d)

See reply to paragraph III (e).

### 102

The OLAF investigations referred to by the Court demonstrating that beneficiary/partner countries lack the expertise to apply these rules relate to the period before the GSP rules of origin reform. Under the reform, GSP regional cumulation rules have been simplified, making them easier for partner countries to manage.

### 103

The Court identifies a particular cumulation challenge, where different rules apply for countries in the same region. The flexibility introduced in the GSP rules was destined to facilitate cumulation of origin between developing countries even in cases where different rules of origin apply. This is particularly important for least developed countries, which are subject to different rules as compared with other GSP beneficiary countries. There are mechanisms in the GSP regulation to prevent circumvention.

### Box 4

EU–Mexico preferential trade relations are governed by an agreement-based preferential system under which requesting subsequent verification of preferential origin by the country of export is mandatory before considering any denial of preference. The Commission is considering the further action that may need to be taken in these cases.

## Conclusions and recommendations

### 108

While the Commission's *ex ante* and *ex post* evaluations to assess the economic and other effects of PTAs have evolved over time, the Commission considers that the policymakers, stakeholders and European taxpayers are today fully informed of the main advantages and disadvantages of the different trade policy options.

Since 1999, all major multilateral and bilateral trade negotiations have been accompanied by an SIA which analysed in detail the expected economic (but also social and environmental) impact of the PTA. Since 2010 (with one exception, see Commission reply to paragraph III(a)), all important trade negotiations have been preceded, before their launch, by an IA assessing the likely economic effects of the PTA, including an evaluation of the revenue likely to be foregone.

### 109

Although the Commission acknowledges that there is room for improvement, it does not fully share the Court's assessment. Considerable effort will continue to go into producing high-quality IAs and SIAs in the future. The Commission notes the Court's choice of a sample which included only one IA conducted under the new IA guidelines issued in 2009. As a consequence, the Court's analysis does not sufficiently acknowledge the substantial progress in IAs in support of PTAs since 2010.

As far as the *ex post* evaluations are concerned, relatively few have been completed, reflecting the long periods for PTAs to be fully in force. However, the Commission is now moving up a gear in this respect.

### 110

A scheme like the GSP is only one tool in addressing developing countries' needs and one should not overestimate its capacity to resolve developing countries' issues. The scheme has — within the framework of WTO law — just been reformed drawing on the interim analysis findings.

## Recommendations 1 to 4

- (1) The Commission accepts the Court's recommendation with regard to carrying out an IA and an SIA for PTAs, and to duly justify situations where this may not be possible. It will do so, in accordance with the existing IA guidelines and SIA handbook, and has estimated the revenue foregone in its most recent impact assessment for Japan and the United States.
- (2) With regards to the timeliness of analysis, the Commission is committed to launching SIAs no later than 6 months after the start of negotiations to ensure they can usefully feed into the negotiating and approval process.

Eurostat is now systematically invited to be a member of the steering groups monitoring SIAs.

The Commission is seeking to intensify cooperation on the quality of statistical data sources within an ongoing update of the service-level agreement between DG Trade and Eurostat.

- (3) The Commission accepts the Court's recommendation for PTAs with significant economic, social and environmental impact.

It reflects the commitments already taken by the Commission to carry out *ex post* evaluations of PTAs with significant economic, social and environmental impact on a more systematic basis to help monitor the impacts of EU trade agreements<sup>12</sup>.

<sup>12</sup> COM(2010) 612, 'Trade, growth and world affairs'.

- (4) The Commission accepts the Court's recommendation.

See reply to paragraph 55 above. Following the interim evaluation of the GSP, substantive changes were made to the scheme to address these shortcomings. As the tariff preferences under the new GSP regulation (Regulation 978/2012) only apply as from 1 January 2014, the Commission will be reviewing the scheme and reporting to the European Parliament and Member States by 2016 on the effects of the scheme and by 2017 on the overall operation of the new regulation.

### 111

The Court's extrapolation is made on the basis of individual errors that comprise missing documents or evidence that should have been retained by the importers at the time of the Court's audit. However, these errors do not automatically substantiate that the imported goods were not of the preferential origin declared at the time of importation. In its follow-up of the individual errors detected by the Court, the Commission will give the Member States in question the possibility to prove that the documents and evidence of origin were available at the time of clearance and that they can still be supplied. Only where evidence is not supplied is there likely to be amounts of TOR due from the Member States if they result from their administrative errors.

The Commission points out that nowadays almost all the supporting documents are held by the importers and should be kept by them at the customs authorities' disposal in accordance with Article 77 of the EU Customs Code. There cannot be a 100 % check of documents and the checks need to be carried out on the basis of risk analysis as stipulated in Article 13 of the EU Customs Code.

The Commission further notes that the non-extrapolated potential loss reported by the Court to the three Member States in relation to the individual errors detected, amounted to 1 million euro, of which 91 % concerns one Member State.

### 112

The information from MA communications does not always lead to the creation of a risk profile as the information may not impact the Member State.

In all the cases mentioned the information has been analysed and taken into account by the Member States in their risk assessments.

### 113

The Court bases its conclusion on the weaknesses of the REM-REC system on one specific case in Spain. The Commission has already been informed by the Member State concerned that its customs authorities had high-level exchanges with the national judicial authorities and that it is in the process of amending the national tax law to prevent a similar situation occurring in future.

The Commission will follow up this issue with the Spanish authorities.

### 114

There are means other than formal evaluation reports to be satisfied about the capacity of the third country to administer properly the PTA. Evaluation takes place during the negotiating process of bilateral agreements.

As regards monitoring, the Commission uses different tools such as notices to importers, providing advice to beneficiary countries, etc., notably in the context of the GSP. A Commission action plan on monitoring of preferential rules of origin has been elaborated, under which visits to a beneficiary country are one of the suggested activities. The action plan will cover both unilateral arrangements such as GSP and bilateral agreements with partner countries.

Furthermore, the Commission also refers to its replies under paragraphs 81 to 86.

### 115

The Commission will follow up cases identified by the Court and address problems in cooperation with Member States and the countries benefiting from preferences both in the context of unilateral arrangements and bilateral agreements.

## Reply of the Commission

### 116

Although the Commission accepts that time-barring poses difficulties for recovery, it recalls that it is the duty of Member States to take the appropriate measures to ensure the timely recovery of import duties to the maximum extent possible.

The Commission systematically follows up all identified cases of Member States' financial liability resulting from delays in recovery procedures. It will follow up the findings of the Court and will request the payment of traditional own resources and of interest where the amounts due are the result of administrative errors.

### 117

See replies to paragraphs 96 and 99.

The Commission will continue to propose inclusion of the MAE clause in all trade agreements where no self-certification is agreed.

### 120

See replies to paragraphs III (d) and (e), V (d) and (g), 82, 83, 96, 99 (d), 106 and 114, and to recommendation 12.

### Recommendations 5 to 13

- (5) The Commission will further evaluate in which particular cases such risk profiles are useful and how they should be implemented in the area of rules of origin under PTAs.
- (6) In the course of its inspections in recent years, the Commission has placed a special focus on the effectiveness of the Member States' risk management systems and control strategies. It has produced thematic reports on its inspections of customs control strategy (2009), local clearance (2011) and transit (2012) and has presented these reports to the Member States in the Advisory Committee on Own Resources, and in the Customs Policy Group. It will continue to verify that Member States improve the effectiveness of their risk management systems and control strategies.

- (7) The Commission will continue to encourage Member States to take all appropriate precautionary measures upon receipt of MA communications.
- (8) The evaluation of capacity of a country benefiting from preferential treatment is an integral part of the negotiation process with each partner. It is not, however, reflected in a formal evaluation report. The Commission will include an assessment of this capacity in the formal scoping exercises that precede new negotiations.

Generally, the negotiations provide the appropriate framework for the Commission to assess the capacity of the authorities of the partner countries to administer properly the agreement.

- (9) The Commission will raise this issue with Member States (during monitoring) with a view to improving the quality of the information the Member States provide concerning administrative cooperation. The reporting procedure will also be simplified.
- (10) The Commission will follow up countries benefiting from preferential treatment in which the audit by the Court revealed that problems concerning administrative cooperation exist. A Commission action plan on monitoring of preferential rules of origin has been elaborated, which suggests different remedial activities.
- (11) The Commission notes that financial recovery is the responsibility of the Member States.

OLAF will continue to provide Member States' competent authorities with all necessary information to facilitate their recovery actions.



New provisions introduced in Regulation 883/2013 on OLAF investigations<sup>13</sup> require Member States to provide OLAF with information on actions they have taken following OLAF recommendations, inter alia, on recovery of amounts due. This strengthens the monitoring of recovery action by Member States and further improves the financial follow-up of OLAF investigations.

The Commission systematically follows up all identified cases of Member States' financial liability resulting from delays in recovery procedures. It will continue to do so.

- (12) Since 2001, the Commission has proposed that all EU preferential trade regimes, whether autonomous or conventional, include the possibility of temporary withdrawal of preferences in the event of particular problems with the management of the preferences and/or other significant breaches of customs legislation or non-cooperation. The Commission considers that these safeguards have proved to be sufficient and will continue to propose their inclusion in all future preferential trade arrangements.

At the end of 2013, the possibility of temporary withdrawal of preferences was already included in four autonomous arrangements (including GSP) covering almost 200 countries, and preferential agreements with more than 30 countries.

Currently the Commission is negotiating the inclusion of provisions for the temporary withdrawal of preferences in PTAs with a number of partners, including Japan, Vietnam, Morocco, Thailand and Canada.

The Commission will continue to propose inclusion of the MAE clause in all future trade agreements where no self-certification is agreed.

- (13) The Commission will continue promoting the replacement of origin and movement certificates with exporters' self-certification.

### Reply to Annex V

#### 1

CGE models are state-of-the-art tools and, as opposed to other available models, they are best suited to measure the economy-wide impact of trade policy changes producing results on a wide range of sectoral socioeconomic indicators (tariff revenues, imports, exports, production prices, wages, CO<sub>2</sub> emissions, etc.). This is of critical importance to negotiators and stakeholders. SIAs complement CGE results with qualitative and sectoral analyses, including on the informal sector, when data allows. So far, data on the informal sector were not sufficiently reliable to be used.

#### 2

- (a) The long-run effects of trade policy changes have been assessed by numerous academics and international organisations and the results are widely used and accepted by governments.
- (b) CGE models are used for simulation purposes, not for forecasts. They are built on strong theoretical foundations while at the same time being based on real economic data which replicate agents' economic behaviour.
- (c) The aggregation of commodities and countries into broader categories is decided based on the specificities of the economies under consideration. If considered useful, CGE results are complemented with partial equilibrium analyses which can differentiate between, for example, different categories of wheat.

<sup>13</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L 248, 18.9.2013.



## Reply of the Commission

- (d) As in the case of commodity aggregation, the aggregation of regions is adapted to the specific situation of each IA/SIA at hand and is done with the objective of focusing on what is considered to be of main interest.
- (e) In recent years, significant progress has been made in these areas. The Commission financed the construction of a global foreign direct investment database, now used in CGE modelling, and as a GTAP board member supports a new global migration database.
- (f) CGE modelling is also complemented by additional quantitative modelling (in particular of social and environmental effects) and more detailed sectoral analyses.



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Preferential trade arrangements (PTAs) are an essential instrument of EU trade policy. Trade brings economic benefits to both the EU and its partner countries and promotes sustainable development and poverty eradication in developing countries. This report evaluates whether PTAs are appropriately managed by both the Commission and Member States. It found that the Commission has not appropriately assessed all the economic effects of PTAs and that the completeness of revenue collection is not ensured because customs controls applied by Member States are weak and there are also deficiencies in the Commission's supervision.



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