BUSINESSEUROPE

POSITION PAPER

27 November 2009

3RD DRAFT OF THE MODERNIZED COMMUNITY CUSTOMS CODE – IMPLEMENTING PROVISIONS (MCCC-IP)

Executive Summary

BUSINESSEUROPE welcomes the modernization of the Community Customs Code and the related implementation provisions which rightly go in the direction of simplification of customs regulations (e.g. centralized customs clearing, improvements related to border-crossing approvals or legal provisions pertaining to customs debt). However, the related security provisions must be neither excessive nor obstacles to border-crossing trade for European companies, but strike a proper balance between security and the freedom of trade.

In particular a higher degree of simplifications and consistency must be envisaged for the so-called "Authorized Economic Operator" (AEO). The requirements expected for the AEO are disproportionate to the legally protected advantages presently offered in exchange. The instrument of "self-assessment" gives the opportunity to guarantee far-reaching simplifications that even exceed currently existing arrangements. Its use should ensure major practical simplifications for reliable participants, e.g. AEO.

BUSINESSEUROPE is very concerned by the rapidly increasing multiplication of declarations (EMF, notifications, presentations and temporary storage) in ports and airports due to the forthcoming ECS (Export Control System) and ICS (Import Control System).

BUSINESSEUROPE does support the uniform interpretation of customs law, but does not support the approach of directly discussing questions of procedure in "explanations" or "guidelines". Companies need clear-cut and binding regulations, "law-making through the back door" with the use of "explaining" documents would not provide sufficient legal certainty.

More clarity is necessary about the term "established" (Art. 122-01), particularly as companies today have to work with a group of legal entities in all the member states. Moreover, in case of a bilateral agreement, the Community Customs Code (Art. 64 para. 3) contains an exemption from the request to be established in the Community in order to make a customs declaration. BUSINESSEUROPE calls for maintaining this good customary practice.

BUSINESSEUROPE urges the Commission to keep the current "first sale for export" rule which ensures that the first sale value is used for calculating duties on goods that are sold through complex supply chains. As this possibility is covered by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, published by the WTO, BUSINESSEUROPE is concerned leaving international standards. In addition, the proposed changes to customs valuation would raise import duties and negatively affect all businesses, and in particular small and medium-sized enterprises.

THE CONFEDERATION OF EUROPEAN BUSINESS a.i.s.b.l.

AV. DE CORTENBERGH 168
BE-1000 BRUSSELS
BELGIUM
VAT BE 863 418 279

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: MAIN@BUSINESSEUROPE.EU
WWW.BUSINESSEUROPE.EU

BUSINESSEUROPE

20 November 2009

3RD DRAFT OF THE MODERNIZED COMMUNITY CUSTOMS CODE – IMPLEMENTING PROVISIONS (MCCC-IP)

I. Preliminary Remarks

BUSINESSEUROPE welcomes the modernization of the Community Customs Code and the related implementation provisions in principle. Security provisions are essential but they must be in conformity with the objective of promoting growth and employment in the Community. In particular the envisaged individual preliminary declarations will make border-crossing trade for European companies substantially more bureaucratic. Therefore, it is imperative to introduce effective simplifications within the framework of the Customs Code Implementing Provisions and, thus, to reinstate a proper balance between the security and the freedom of trade. The revised MCC-IP must be coherent with the principles of modernized trade facilitation and Global Europe: simplification, dematerialization, reactivity, SMEs' approach. The implementing provisions must also consider the specific cases of global enterprises (including SMEs with EU subsidiaries) with several business units or entities: all the facilitating procedures (single centralized authorization, AEO, etc.) should be given to one legal entity on behalf of all its subsidiaries. This single legal entity will be fully responsible for all the others. Only in this way the European legislators will fulfil their task of making a contribution towards strengthening of the competitiveness of the European economy.

Especially a higher degree of simplifications and consistency must be envisaged for the so-called "Authorized Economic Operator" (AEO). At this stage, for every legal entity within a group of companies it is necessary to file a request which means that it leads to a different validity for each "AEO licence". The requirements expected for the AEO do not bear any relationship to the presently legally protected advantages. In this case many of the existing simplifications, especially the global declaration established for imports and exports, must be retained within the framework of the revised MCCC-IP for participants who have proven to be reliable.

In the same way, several business sectors are subjected to very strict security regulations, for example in cases of sensitive products, high-risk installations or for transportation. As ISO standards are already referred to in the Modernized Community Customs Code, it would be advisable for all these security regulations to be known to the Customs authorities, which will facilitate the attribution of the AEO status.

Moreover, the instrument of "self-assessment" offers the opportunity to guarantee far-reaching simplifications, which even go beyond existing arrangements. The present draft leaves open just how far simplifications of this type can go. BUSINESSEUROPE requests that the opportunities opened up here are used to ensure major practical simplifications for reliable participants. Relieving the burden on administrative authorities at this point will enable strengthened and specific security measures at really critical points.

When legal safety and legitimate expectations are concerned, the text under review could be significantly improved as following: regarding the due trial principle a denial of a request (under article 214-2) should be subject to recourse and a time limit; by using the group concept in order to grant the benefit of any facilitation (like AEO) or binding information to all members of the company.

Regarding the security issues, albeit supporting the European policy to secure movement of goods and supply chains, BUSINESSEUROPE is very concerned by the rapidly increasing multiplication of declarations (EMF, notifications, presentations and temporary storage) in ports and airports due to the forthcoming ECS and ICS.

BUSINESSEUROPE may wish to submit further, supplementing comments since this appears necessary due to the necessary completion of the draft regulation.

II. General comments

As already in the Customs Code, the first two versions of the implementing provisions on the Modernized Community Customs Code contain a welcome approach in the direction of simplification of customs regulations (e.g. centralized customs clearing, improvements related to border-crossing approvals or legal provisions pertaining to customs debt).

At this juncture, part of the arrangements provided for in the MCCC-IP, for instance such as arrangements related to "Data exchange and retention of data" (Art. 121-01 und 121-02), are still missing. Also for other areas such as customs procedures with economic significance and customs value, the provisions are still incomplete. BUSINESSEUROPE expects that these arrangements will be added in one of the next versions.

BUSINESSEUROPE does not support the approach of directly discussing questions of procedure in "explanations" or "guidelines". The participants applying the law – in other words the business community as well as public agencies – would thus be confronted with an unacceptable legal uncertainty since such documents do not constitute legal instruments. The legislator must enact clear-cut and binding regulations or should refrain from issuing regulations altogether. "Law-making through the back door" with the use of "explaining" documents, which have not been passed by the legislative bodies, but nevertheless demand external effectiveness, is rejected as this does not constitute legal certainty.

More clarity is necessary about the term "established" (Art. 122-01), particularly as companies today have to work with a group of legal entities in all the member states . With the current wording it remains unclear if a company from a third country with a VAT number from a Member State can be accepted as "established" and is therefore entitled to issue a customs declaration.

In case of a bilateral agreement, the Community Customs Code (Art. 64 para. 3) contains an exemption from the request to be established in the Community in order

to make a customs declaration. For years this has been a customary practice, resulting in an efficient procedure, accepted by the member states as well as by third countries. BUSINESSEUROPE is concerned that this customary practice might not be applied in future, as neither the MCCC nor its Implementing Provisions contain such a provision. This would lead to unnecessarily burdensome and time-consuming procedures for companies. Therefore BUSINESSEUROPE calls for maintaining this provision.

III. Comments on the Individual Provisions

- **Art. 121-01 (Provisions of information)**

In compliance with the EC Directive on VAT for data exchange, the e-procedures and their archiving on electronic invoicing must also be accepted at customs level.

- **Art. 122-01 (Customs representation)**

The term "established" needs to be clarified in order to provide legal certainty for companies.

- **Art. 124-02 (Decisions based on provisions of customs law)**

BUSINESSEUROPE expressly welcomes the revision to the effect that prior to the issuance of a negative decision the customs authorities must inform the participants about their reasons and have to grant the opportunity to offer comments. However, the response period should be extended from one month to three months.

- **Art. 124-3-01 (Decision relating to binding information)**

As suggested in the preliminary remarks, the requests for binding information (origin, tariff) must be valid for the same products for all subsidiaries of a same entity whatever their size, in order to avoid differences in the classification by the customs administration of each subsidiary. Meanwhile, BUSINESSEUROPE requests that binding information, for the same good, should not be attached to a moral entity. BUSINESSEUROPE also calls for effective codification at European level of the binding information between the 27 Member States, regardless where the request originates.

- **Art. 221-01 (Non-preferential origin; Rules)**

BUSINESSEUROPE rejects an expansion of the existing product-specific origin rules to additional, or even to all products. The arrangement in place to the effect that the last major step of transforming and processing is decisive for the non-preferential origin has in the past proved to be fully sufficient. In the area of non-preferential origin, the introduction of additional origin rules would result in administrative burden for the involved enterprises, which are almost impossible and would create unacceptable competitive disadvantages. One exception is semi-conductors with the criterion of silicium diffusion.

According to EC customs, there is no legal obligation to indicate the non-preferential origin of a material in case of intra-community shipments, i.e. a customer has no legal

possibility to require from an intra-community supplier an indication of non-preferential origin if the latter refuses to confirm the origin. Taking into account national and international export control measures and the growing number of free-trade agreements the correct indication of origin is crucial.

The MCCC-IP should stipulate that a purchaser may oblige on request a seller to indicate the origin also for intra-community shipments. In order to comply with export control measures (sanctions, embargos, US regulations) and to ensure the correct identification of a non-preferential origin of a good, exporting companies in the EU need to be informed by their supplier about the non-preferential origin of the good. The corresponding wording in the MCCC-IP should be chosen in such a way, that the declaration of non-preferential origin is mandatory only if it is requested by the exporter. Such a formulation would therefore exclude the declaration of non-preferential origin for goods which are not intended to be exported outside the EU.

- **General Remarks on the Legal Regulations Pertaining to Preferences (separate bookkeeping)**

The inclusion of separate bookkeeping for primary materials with and without origin status would be extremely welcome and helpful for European suppliers of primary materials shipped to APS countries for outward processing (accumulation in the APS with EC-origin goods). Separate bookkeeping should be allowed at least on the export side. However, in most cases the origin protocols on bilateral preferential agreements provide in most cases for the separate bookkeeping.

- **General Comments on the Customs Value (e.g. deduction of costs)**

The current draft does not contain any arrangements as far as the deduction of costs is concerned (presently Art. 33 Customs Code). The present draft lacks the condition that an amount can only be considered an addition if it is not already included in the customs value.

In the past, the use of a special document could be waived under certain circumstances, such as, for example, if the value was less than EUR 10,000. These arrangements have not been considered, at least up to now, although they constitute a reasonable simplification for all participants. BUSINESSEUROPE requests that the status quo be maintained.

Regarding the evaluation of the rate of exchange, the current proposal for a weekly rate is definitely incompatible with a modern corporate internal management. Only an annual conventional rate should be accepted by custom authorities if this rate is the company rate.

- **Art. 221-2-03 (Proof of origin)**

In line with the announcement in the Community e-customs programme, BUSINESSEUROPE requests the dematerialization of all documents required for customs clearance, especially certificates of origin. This comprehensive dematerialization will reduce formalities costs and improve the competitiveness of European industries.

- **Art. 230-02 (Customs value; first sale rule)**

Contrary to the current regulation (Article 147 of the CCC-IP), the use of the "first sale rule" will not be possible anymore in the future regulation (Article 230-02 of the MCCC-IP). The cancellation of this provision will lead to a higher customs value of the good at the moment it is imported into the EU and, accordingly, to an increased duty base on which tariffs are applied. This change in policy will create a significant disadvantage for importers into the European Union. The introduction of this proposed policy change could not be worse in the current very difficult economic situation. A change in this policy could even be considered by other countries and jurisdictions as a protectionist measure. In the current economic environment, protectionist measures are condemned by trading partners as most countries agree that such measures will ultimately prolong the economic crisis. A similar policy change was attempted by the Customs Authorities in the United States but has since then been halted due to the very persuasive arguments and impact studies submitted to the Authorities by the importers.

BUSINESSEUROPE assumes that the Commission is currently reviewing its policy on "first sale for export" due to the recent work of the World Customs Organization Technical Committee on Customs Valuation. BUSINESSEUROPE has reviewed the results of this study and has serious concerns on the outcome. In our view the assessment of the "first sale rules" was based on incorrect assumptions and a lack of experience with the actual import practices of the trading community.

Therefore BUSINESSEUROPE requests retention of the current "first sale rule".

- **Art. 230-11 (Royalties and licence fees)**

General remarks regarding customs valuation
The Former Art. 29 and 32 of the European Customs Code (ECC) have been replaced by current Articles 40 to 43. The new Code provides a significant change in the method as it reinforces the European Commission's powers and consequently harms the economic operators' legal safety. Former Art. 32 provided a limitative list of elements which could be added to the customs value subject to certain conditions which were detailed in the IPCC. Royalties were mentioned by former Art. 32-1.c of the ECC, together with the main conditions of taxation detailed by Art. 157 to 162 of the IPCC. The current article 43 provides no detail about the elements which may be added to the customs value and entitles the Commission to take decisions in this respect. Under article 184-2 and decision 1999/468, the Commission shall use a specific and complex procedure.

Taxation of royalties
On burden of proof, in case the calculation method of the royalty derives from the price of the imported product, the buyer must prove that the royalty is not related to the imported product. BUSINESSEUROPE believes that when custom authorities question the declared value, they should adduce evidence that the declared value is incorrect. The importer should not be asked to provide "negative evidence".

Regarding "condition of sale", the current version of this provision introduces two new options where condition of sale shall be regarded as met (this paragraph is the equivalent of the current version of Art. 160 of the IPCC):

- when the royalty payment is performed to satisfy an obligation of the seller (paragraph b), or
- when the good may not be produced or sold without the royalty being paid (paragraph c).

Paragraph b is rather vague: should the obligation of the seller be explicit and could it be an implied obligation? What would happen if both the buyer and the seller may appear as debtor of the obligation? What if it is not the buyer who pays the royalty and the payment can be regarded as satisfying an obligation of the seller? BUSINESSEUROPE believes that the royalty must be paid for by the buyer; therefore, this paragraph should be removed.

The second option (paragraph c) is even more critical and therefore it is necessary to clarify what "sale" or "contract" are meant in the current version of IPCC and this draft MCCC-IP version. BUSINESSEUROPE believes the condition of sale should be analyzed in the scope of the sale for export, not in the scope of another transaction. The condition of sale shall be imposed by the vendor or, to the acceptable extent, by a party "related" to the vendor. In practice, when the sale contract (if any) does not mention the royalty payment, customs would typically seek another contract to "discover" an "implied condition of sale" (cf. commentary 3 and 11 of the Customs Code Committee). This provision is made so that customs will no longer have to justify such research. In most licence agreements, a licensor will not allow the product under license to be manufactured if the licensee does not pay the royalty. When the vendor or a related person is no longer involved, it will have the consequence that the provision does not relate anymore to a "condition of sale" but to a "condition of manufacturing".

BUSINESSEUROPE believes that this provision is not in compliance with Art. 8 of the Agreement as it is not related to a "condition of sale". For all these reasons, BUSINESSEUROPE suggests removal of this second paragraph c.

- **Art. 230-13 (Customs Value – Transportation costs)**

The customs security initiatives have resulted in a substantial increase of transportation costs, e.g. through the introduction of security fees at airports and seaports, or the use of special container seals. The additional costs created by the obligations imposed by the customs authorities presently are additionally subject to the payment of duties since they are treated as additions. It cannot be seen just why the business community, which is anyway burdened with additional costs due to the security initiative, should bear these costs in the form of an addition, and thus absorb a double increase of the customs value. Therefore, BUSINESSEUROPE refuses this amendment and asks for maintenance of the CIF value for transportation.

- **Art. 321-01 (Cases in which no guaranty for transportation methods is required)**

In the past the guarantee was waived for transportation methods, such as for rail transportation (by certain railroad companies) or also for transports through pipelines. This is no longer planned. BUSINESSEUROPE requests the retention of these waivers and calls for similar treatment for other transporter that fulfil the same requirements.

- **General Remarks regarding the arrival of goods**

a) Is the 4-digit provision sufficient?
Based on arrangements envisaged for the ocean shipment of containers, the carrier shall submit the summary declaration to the entry customs office in the European Union 24 hours prior to loading at the port of departure. Based on annex 30A, a clear description or the entry of the first four digits of the Combined Nomenclature (CN) are sufficient.

b) Binding force of data
In practice, companies are over and again confronted with varying national tariff standpoints. Examples from the textile/dressing material area:

- dressing gauze 3005 5208
- abdominal bandages 3005 6307

In the past, some national administrations adopted the standpoint that "with the exception of stating the MRN **no cross-checking of contents** of the preliminary security declaration with the customs declaration was **planned**, since it was not stipulated by European law". BUSINESSEUROPE requests that this statement continues to remain valid.

- **Art. 411-01 (Waiver of the submission of the preliminary import notification)**

Further exemptions should be allowed, e.g. for nominal values, or for particularly trustworthy individuals.

- **Art. 421-1-04 (Change of Routes)**

The envisaged arrangements for changes of the transportation route and, thus, the change of the entry customs office, are not feasible in practice. The question arises as to why the new entry customs office cannot inform the previously planned entry customs office about the change. A justification to the effect that this was not possible due to missing technical date processing link-ups would not be acceptable from the viewpoint of BUSINESSEUROPE. Lacking implementations and incompatible data processing systems at administrative agencies must not be at the expense of the participants. The IT-supported customs declaration must guarantee the same amount of IT-competence (user + structure) both at the administrative agencies and the business participants.

- **Art. 523-2-04 (Supplementary declaration)**

The incomplete customs declaration must be replaced or completed by standard or global declarations.

- **Art. 525-1-01 (Simplification of Classification)**

Based on Art. 525-1-01 it should be possible that in case of a shipment with several commodity numbers, the commodity number that contains the highest duties can under certain circumstances be used for the entire shipment.

- **Art. 525-2-01 (Self assessment)**

For BUSINESSEUROPE, the question arises how far the simplifications in this respect will go. For instance, it would be welcomed if this regulation would allow the continued application of global notification in its present form. Moreover, BUSINESSEUROPE recommends also regulating in the import area that the entry of the customs procedure becomes imperative only with the submission of the supplementing declaration, which is made at the end of a defined period. In the event of an erroneous declaration which triggers a payment of duties, no cancellation or a refund of the duties would be required. Both the concerned party and the customs authorities would save the effort associated with the refund or the cancellation. This would be an important step in the direction of a modernization of the customs code. BUSINESSEUROPE requests far-reaching simplifications for reliable participants.

- **Art. 521-2-ff (Central Customs Clearance)**

The possibility of future central customs declaration provided for in Art. 521, which also comprises inclusion of other member states, is a positive novelty. It is in particular necessary that this is possible in single approvals, not only in member states on a trans-national basis but also on a national basis. As an example, imports via ARA-ports could directly be declared in Germany for a customs procedure, making a shipment procedure superfluous. However, it remains decisive that respective arrangements be created also in the area of statistics and taxes. While in the area of statistics respective plannings are already under way (statistics are linked to the customs declaration), in the tax area not enough emphasis is being placed on finding arrangements corresponding to the customs arrangements. Only if adequate arrangements are created in the area of taxes and statistics the central customs clearance does constitute a real simplification in practice.

- **Art. 521-3-01 through Art. 521-3-04 (Local Clearance Procedure for Imports)**

BUSINESSEUROPE criticizes the tendency to have as a rule that in the case of imports also under the local clearance procedure a “notification” is in principle requested from the participant. The arrangements specify that the participant must make available all data of the customs declaration in the form established in the authorization and within the period stipulated there to the customs authority in charge of the import clearance. The possibility of clearance through entry in the accounts at the company, as is presently the case in some member states, will at least be called into question in the future (presently the possibility is explicitly outlined in Art. 266 CCC-

IP). The removal of this simplification is associated with substantial organizational changes in the import clearance process. Presently, a manufacturing company can use the goods directly after the plant-level entry in the accounts. In future, it would have to be ensured that disposal of the goods is possible only after the official customs clearance has been obtained. An arrangement should be introduced, at least for the reliable business participant, which secures the status quo. In this context, we would also like to refer to the possibilities of "self-assessment" and our related comments.

- **General Remarks on "Outward Processing" (Prerequisites)**

Within the framework of outward processing, also the added value method for the payment of duties can be applied in addition to the difference method for the payment of duties. The added value method is increasingly being applied by the business community. In the apparel industry, as an example, it becomes more and more the standard method. However, the prerequisites for the application of the value-added method are formulated too stringently. The prerequisites set forth in the present Art. 591 CCC-IP for the temporary exportation of goods provide for a "zero"-customs rate arrangement. This arrangement should be rescinded, or supplemented, in such a way that no preferential customs rates, or customs deferment, fall under the "zero customs rate".

- **General Remarks regarding Bonded Warehouse (Equivalence in the Bonded Warehouse Procedure)**

Especially against the background of the consolidation of provisions of customs law into a method of non-levying of duties, it can no longer be understood that the possibilities of the retroactive approval of customs procedures with economic significance pursuant to Art. 508 MCCC-IP and the simplified reporting to customs via a customs declaration under the normal procedure pursuant to art. 497 MCCC-IP are not applicable to the bonded warehouse. Both arrangements should, by analogy to the other customs procedures with economic significance, also be allowed for the bonded warehouse procedure. The modernization of the customs code should also be used in order to discontinue the old-fashioned identification principle as far as possible.

The equivalence principle should, in principle, also be applicable to the bonded warehouse procedure. A joint storage of Community and non-Community goods is possible in the bonded warehouse if and when the goods bear the same 8-digit CN-Code, as well as having the same trade quality and the same technical features (Art. 534 Abs. 2 CCC-IP). This constitutes equivalence in principle which presupposes, however, that Community and non-Community goods are stored together. This qualified equivalence principle should generally be possible, even if various storage facilities are involved.

Example:
A company obtained approval for a bonded warehouse with storage points located at Frankfurt and Hamburg. Mixed storage is allowed. The US goods are stored at the storage point at Hamburg. The same goods being Community goods are stored at the storage point located at Frankfurt. A shipment is planned to be made to a customer domiciled at Bremen. In order to supply Community goods to him, the shipment would have to be made ex Frankfurt which would not make sense from a logical standpoint.

A solution in this respect could be that Community goods are withdrawn at Hamburg for booking purposes, in other words the equivalence principle is applied on a trans-storage facility basis.

- **Art. 710-07 (Economic Prerequisites for the AV)**

Art. 710-07, para. 1, letter a) I) of the MCCC-IP sets forth as in the past that the economic prerequisites are deemed to be met if and when the goods are not listed in annex 73. This corresponds to the present legal situation. BUSINESSEUROPE requests to ensure that also in future this will not be changed.

- **Art. 710-09 (Time limits for Granting Approvals for the SEA and the "Centralized Customs Clearance")**

The draft now provides for a time limit also in the area of the SEA within which the approval has to be granted. This amounts to 90 days which is welcomed in principle. However, the time limit should be reduced especially under the aspect that nowadays the companies have to react relatively quickly to restructurings and changes in the conduct of their business.

The inclusion of arrangements for the "Centralized Customs Clearance" into the MCCC-IP (Art. 106) is equally seen positively. The introduced time limit arrangement is to be welcomed in principle also in this case even though a reduction should be made for the reasons stated above (time limit maximum 102 days).

- **Art. 710-16 (Settlement within the framework of inward processing and special use)**

In this case, a settlement for the special use (in the MCCC for final use) is in future demanded in principle based on the present settlement for inward processing and the processing prior to customs clearance except when the customs authorities do not deem this necessary.

This means an increased administrative effort for the procedure, making it inefficient (in the past it was only necessary to proof that the goods have been used accordingly but no formal settlement). BUSINESSEUROPE accordingly requests maintenance of the status quo.

- **Art. 710-17a (usual storage handling)**

The usual forms of storage handling are presently explicitly outlined in annex 72 of the CCC-IP. In future, these usual forms of handling are contained in general terms in the new art. 710-17a of MCCC-IP and can be understood in such a way that it comprises all usual forms of handling which in the opinion of the customs authorities do not increase the risk of deception/fraud. ["*Customs authorities shall prohibit usual forms of handling if, in their opinion, the operation is likely to increase the risk of fraud* (Art. 710-17a MCC-IP)"]. This constitutes a substantial legal uncertainty. Therefore, the related facts should again be listed in an annex as is presently the case.

- **Art. 710-18 (Equivalent goods)**

BUSINESSEUROPE recommends to modify the Article 710-18 on several points:

Paragraph 3 should be amended and simplified as the ability to store the community and non-Community goods is only possible for specific industrial sectors. It creates discrimination with other sectors that deal with liquids, powders and so on. BUSINESSEUROPE asks especially for inclusion of the following phrase "*where it is impossible (...) to identify all times each type of goods, accounting segregation shall be carried out ...*"

The benefit of IPR is to discharge entries of third components; the use of community components to discharge these entries has no impact in the overall issue. No company is requesting IPR for community goods. Meanwhile, it often happens that to discharge IPR entries, there is a need to use community goods to accelerate the discharge to be in compliance with the deadlines imposed by the authorization. Differentiation for accounting purposes is not relevant compared with the regime.

Paragraph 7, which indicates "*the equivalent goods (...) shall become non-community goods*", should be deleted or substantially amended. Indeed, it enforces the management of batches of equivalent goods as if they were third components. It implies that all batches of equivalent goods must be listed in the customs records whereas the benefit of inward processing is to discharge the imported quantities of real third components. In addition, such an article is:

- useless in terms of the benefit of the IPR;
- burdensome (not easy to have the appropriate information from the person in charge of production);
- and weakens legal certainty as it is almost impossible to give evidence that the batches of equivalent goods are solely used in the manufacture of processed goods.

- **Art. 722-25 (Shipment Procedure – Alternative proof for the termination)**

The proof of proper handling of the shipment procedure can presently be furnished through the following alternative forms of proof, among other things:

- a certificate accepted by the customs authorities of one member state of the customs authorities of the destination member state, which contains information on the identification of the goods concerned and which indicates that the goods have been presented to customs at the destination customs point, or to an authorized recipient.
- a customs document accepted by the customs authorities concerning the receipt of a clearance of the goods for customs law purposes in a third country, or a copy, or photo copy, of this customs paper which contains information on the identification of the goods concerned.

However, copies and photo copies of this document must be certified by the agency having provided the original with a customs endorsement, or by an authority of the third country concerned, or one of the member states. This is precisely the problem, as in practice such certifications cannot be obtained.

The provisions of the MCCC-IP (Art. 722-25 MCCC-IP) unfortunately do not provide for simpler forms of proof.

Therefore, these provisions should be expanded by the alternative forms of proof listed within the framework of the retroactive clearance of export procedures (Art. 796ad MCCC-IP). Different electronic custom's import declarations which do not contain any stamps nor signatures should also be accepted as secondary proof. Inter alia, the following should be included:

- Bill of Lading
- Airway Bill
- White certificate of forwarder

- **Art. 796 ad (Export Procedures – retroactive clearance;**

The procedure in case of non-clearance is set forth in Art. 796 ad and the alternative forms of proof are outlined for such cases. The clearance is to take place at the export customs office. In this case; an expansion should be made in such a way that the retroactive clearance may be made also at the outgoing customs office. This may be substantiated as follows:
It can be assumed that, at least at present, a large percentage of the procedures is not properly carried out. The envisaged procedure at the export customs office is associated with a tremendous effort. This additional effort can only be handled with additional personnel.
Experience has shown that the non-completion of the export procedure is generally the mistake of the outgoing customs office, or the border-crossing forwarder. The correction should at least ultimately be possible also at that point. In BUSINESSEUROPE's view it is important to penalise the "real party at fault" and, as a quasi-educational measure, to hold the border-crossing forwarder and the outgoing customs office responsible for the retroactive clearance.

Therefore, BUSINESSEUROPE requests an expansion of this provision to the effect that a retroactive clearance may be made also at the outgoing customs office.

In addition, a clearance should continue to be possible at the export customs office but with the possibility that the retroactive completion of all export transactions of a "legal entity" may be made at the export customs office. This means that all export shipments of *operator A* may be handled by its in-charge *export customs office A* even if these exports are made from different plant locations for which other export customs offices are in charge.

- **Art. 810-01 (Exemptions for Preliminary Export Notifications)**

The exemption rule for goods, for which a verbal customs declaration is possible, is not explicitly stated (up to now Art. 592a, letter g).

- **Art. 821-1-07 (Waiver of the Reciprocal Reference in the Export Procedure and NCTS)**

The reciprocal reference in the accompanying export document to the NCTS-accompanying document and vice versa, which is necessary at present, is no longer included in the first two drafts. This is to be. BUSINESSEUROPE assesses this

positively and requests that, at least as far as the export accompanying document is concerned, also the further drafts do not provide for any reference obligation whatsoever to the NCTS-accompanying document.

- **Art. 821-1-09 (Deletion of the Transaction)**

Under the provisions currently applied, the export transaction was deleted after a period of 90 days (see Art.792b para.2) if, after recording for export, the goods were not exported during this period. It is positive that this time limit has now been extended to 150 days, however the experience of the economic crisis has shown that this is also not enough. Therefore BUSINESSEUROPE requests an extension to 200 days.

*****