BUSINESSEUROPE

UPDATED POSITION PAPER

12 April 2010

5TH DRAFT OF THE MODERNIZED COMMUNITY CUSTOMS CODE – IMPLEMENTING PROVISIONS (MCCC-IP)
(REV 1.3 FROM 6TH OF JANUARY 2010)

Note: This document is an update of the 27 November 2009 position paper.

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 i.e. departure from inward office of exchange, 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. The proposed changes to customs valuation would raise import duties and negatively affect all businesses, and in particular small and medium-sized enterprises.

Finally, a properly functioning Internal Market requires an efficient market surveillance system. To have the right balance between pre-market control measures and post-market measures, Member States must fulfil their responsibility to ensure proper market surveillance.

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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 (e.g. pharmaceuticals), 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.

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 i.e. departure from inward office of exchange, notifications, presentations and temporary storage) in ports and airports due to the forthcoming ECS and ICS.

BUSINESSEUROPE would like to draw the attention to the fact that a properly functioning Internal Market requires an efficient market surveillance system. To have the right balance between pre-market control measures and post-market measures, Member States must fulfil their responsibility to ensure proper market surveillance. The aim of this is both to ensure compliance with EU legislation and to ensure a level playing field for manufacturers. Customs authorities have already instigated a change in their role to become more focused on security and safety. Special attention should be given to the fact that the increasing number of imported products necessitates efficient involvement of customs authorities in market surveillance activities.

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 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).

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. 123-02 (Description of the benefits)

In oder to have an better overview of the benefits of an AEO, BUSINESSEUROPE would appreciate to have them listed in the article. This would facilitate convincing the senior management of an economic operator over the necessity of being an AEO.

This being said, at this stage, however, BUSINESSEUROPE does not see real benefits for an economic operator to be an AEO, due to the high costs and workload involved in the application process. In order to make the AEO more attractive, BUSINESSEUROPE therefore calls for granting the possibility of a comprehensive guarantee waiver or reduced guarantee for an AEO. In addition, waivers from pre-departure and pre arrival declarations, should be given to most trusted operators, as already mentioned in a so-called “Non-Paper” from DG Traxud (author: Michael Lux), published in 2004. Another benefit should be the exemption of export licence for the internal transfer of dual use products between AEO global firm and its subsidiaries.

Art. 123-04 (Identification of the customs authority to which the applications have to be sent)

BUSINESSEUROPE calls for having the possibility to use one global authorization for one company group. This would reflect better the global business environment, in which companies operate today, which is characterized by:

- global supply chains;
- the possibility that access to the companies’ group’s system can be given from everywhere;
- companies within one group use the same IT-system;
- companies within one group normally have identical organizations, structures and processes.

BUSINESSEUROPE does not understand to have a need to check the same information in different countries and from different customs authorities, as this will only result in higher costs and workload for all participants. Therefore BUSINESSEUROPE requests to introduce the possibility of a global authorization for a group.

Art. 123-19 (Validity of the AEO Certificate)

The regulation under no. 3 to the effect that the AEO certificate should be accepted in all EU-countries has been deleted. BUSINESSEUROPE assumes that this has been done due to the fact that the acceptance of the AEO status in the Member States of the EU is set out in Article 13(3) of the MCC. Otherwise, this deletion would stands in contradiction to the Community idea and the Single Market. Moreover, the value of the AEO certificate is weakened vis-à-vis third countries.

If it is the intention to increase security and customs compliance, some benefits need to be provided to the participant. Additional layers of bureaucracy in terms of having to satisfy different requirements for each country add unnecessary costs and administrative burden to the process. Mutual recognition is absolutely necessary to implement this program successfully

Art. 124-01-01 (Acceptance of the application)

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 15 days to three months.

Art. 124-01-02 (Exceptions)

The current draft of the MCC-IP provides that the right to be heard, introduced by Article 16(4) of the MCC, shall not be available for decisions referred to in Article 20(1) of the code. This exclusion of the right to be heard pertains to BOI and BTI. It should be taken into account that also BOI and BTI can be adverse decisions for economic operators. A right to be heard should also be available in these cases in order to avoid costly and time-consuming court appeals. BUSINESSEUROPE thus calls for deletion of the second subparagraph of this article.

Art. 124-3-02 (Procedure for obtaining decisions 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 to handle and would create unacceptable competitive disadvantages. Although members of the Commission pointed out during the working sessions in March 2010 that binding list rules should only apply for imports, BUSINESSEUROPE still sees that implementation of such rules goes far beyond what is necessary to provide legal certainty; clear rules may only be necessary in case of anti-dumping, in order to clarify Article 25 of the current IPCC. For all other products, the status quo as outlined above is absolutely sufficient. Additionally, if rules for certain (not all) products shall be implemented, the MCCIP must clarify that those rules pertain only to imports, as outlined by members of the Commission.

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 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 (Certificate issued in a Member State)

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" is based on incorrect assumptions and a lack of experience with the actual import practices of the trading community.

This being said, impacts should not be underestimated. It is worth noting that the deletion of the first sale rule would increase the customs debt inside the entire EU by 250 million Euros.

International harmonization is no purpose in itself. The point that some countries have introduced the "last sale rule" is not reason enough for other countries to follow this

example without any binding legal basis. In this case, China is a particularly bad example.

Therefore BUSINESSEUROPE requests retention of the current "first sale rule". BUSINESSEUROPE will provide any required assistance necessary to set up rules that may help increase legal certainty by defining which circumstances are acceptable to prove a sale prior to the "last sale" has already been a "sale for export to the community".

Art. 230-11 (Royalties and licence fees)

- **General remarks regarding customs valuation**

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.

The waiving of the additional requirements for the addition of license fees to the customs value laid down in Art. 160 on the one hand, and the extension of the scope of those cases where royalties are considered a condition of sale on the other leads to a situation where license fees generally have to be added to the customs value.

Irrespective of the fact that considerable problems are bound to arise in practical implementation – if this is feasible at all – we think that this stands in contradiction to the fundamental principle of customs law, namely taxation of imports.

- **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 3b), or
- when the good may not be produced or sold without the royalty being paid (paragraph 3c).

Paragraph 3b 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 3c) 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 3c.

Art. 230-13 (Transport 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. The customs security initiative always pointed out that additional burdens for the economic operators arising due to the customs security initiative need in exchange to be balanced by introduction of other benefits. Therefore, BUSINESSEUROPE refuses this amendment and asks for maintenance of the CIF value for transportation.

Art. 321-02 (Cases where no guarantee is to be 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 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".

This practice must not be changed by other rules in the MCCC-IP.

Furthermore, BUSINESSEUROPE requests that
- a change to the prior entry declaration be possible at any time without any consequences in terms of customs debt;
- rules applicable under the NCTS be applicable also in future (i.e. general description of goods is possible; no obligatory stating of commodity codes).

Art. 410-04 (Exemption from an entry summary declaration)

Further exemptions should be allowed, e.g. for nominal values (not only 22,- EUR), or for particularly trustworthy individuals.

Art. 421-01 (Notification of arrival of avessel or aircraft)

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. 521-2-ff (Centralised 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 planning is 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. The central customs clearance only constitutes a real simplification in practice in case that adequate arrangements are created in the area of taxes and statistics. BUSINESSEUROPE calls upon the Commission to push for this.

- **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. 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. 525-2-03 (Entry in the records and access to the system under self assessment)

Para. 2 stipulates that the entry in the accounts is equivalent to the acceptance of the customs declaration. This provision is very much welcomed, as it constitutes an indispensable simplification. It must be ensured that this provision is kept up in future versions.

Art. 532-03 (Form of the release)

The provision related to the local clearance procedure contained in the present regulations under Article 266 para. 2 to the effect that the entry in the accounts in participant's accounting department is regarded as release, was still set forth under the general regulations concerning release (Art. 532-03 para. 3) in the previous versions. This regulation has been "abolished" in the version of 6 January 2010.

Nevertheless, also in future it is possible that the entry in the accounts is equal like release, if this simplification is stated in the authorization. This is based on Art. 521-3-03. Para.3, which regulates the release under the local clearance procedure, states, among other items, that the entry in the accounts is regarded as release. This should be expressed even more clearly in the regulation text ("Release through entry in the accounts"), in order to exclude different interpretations.

Based on this regulation, a manufacturing business can presently dispose of the goods directly following the plant-level recording. A discontinuance of this regulation would mean that the manufacturing operations and the supply of components for assembly

would have to be restructured in such a way that the goods may be released only after the customs clearance has been obtained.
Considering today's import processes, this is not possible for SMEs, or only with a substantial effort in the case of large corporations. These processes are tailored to ensure that the goods can be delivered "just in time" so that the supply capacities, peculiarities of the carriers and the utilization of the production capacities determine the economic efficiency. Delays due to a need for single clearance would jeopardize the entire process and create substantial disadvantages for the EU-business community.

BUSINESSEUROPE requests that, at least for trustworthy participants, a simplification is conceded in such a way that **"**the entry in the accounting records of the participant equals the release of the goods". This must be included within the framework of the local clearance procedure, or be regulated under self-assessment.

However, it must not be linked to a participant's IT system. In practice, the on-line connection of the customs authority to the diversely designed IT systems of the different participants is not possible. As a consequence, this has not been requested by national authorities in the past. Therefore, the meaning of "access" should be interpreted as giving the customs authority the opportunity to get physical access to the participant and to control data on site.

Art. 710-07 (Economic conditions)

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 (Periods within which the applicant has to be informed)

This article has been deleted in the current version of 6 January 2010 and will be determined in Title I of the MCCC-IP. The previous draft provided for a time limit also in the area of the SEA within which the approval has to be granted. This amounted to 90 days which is positive 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.

Art. 710-16 (Bill of discharge)

In this case, a settlement for special use (in the MCCC for final use) is in future demanded in principle which is 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 compared to the past where no formal settlement was necessary but only the proof that the goods have been used accordingly. The new provision make the procedure inefficient, therefore BUSINESSEUROPE requests the maintenance of the status quo.

Art. 710-18 (Equivalent goods)

BUSINESSEUROPE recommends to modify art. 710-18 on several points:

Para. 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, etc. BUSINESSEUROPE asks especially for retention of the proposed phrase *"where it is impossible (...) to identify at all times each type of goods, accounting segregation shall be carried out ...".*

The benefit of Inward Processing Relief (IPR) is to discharge entries of third components. Hereby the use of community components to discharge these entries has no impact on the overall issue as no company is requesting IPR for community goods. Meanwhile, in order to discharge IPR entries it often happens that, it is necessary to use community goods to accelerate the discharge in compliance with the deadlines imposed by the authorization. Differentiation for accounting purposes is not relevant compared with the regime.

Para. 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 as it is difficult to have the appropriate information from the person in charge of production;
- weakening 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 (Alternative proof)

The proof of proper handling of the shipment procedure can presently be furnished through the following alternative forms of proof, which includes among others:

- a certificate issuedby the customs authorities of the destination member state and accepted by the customs authorities of one member state, which contains information on the identification of the goods concerned and 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 photocopy, of this customs paper which contains information on the identification of the goods concerned.

However, copies and photocopies 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. In practice such certifications cannot be obtained.

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

BUSINESSEUROPE requests that these provisions are 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 additional effort which 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 (Specific deadlines for lodging an export declaration, a re-export notification or an exist summary declaration)
(Note: Art. 810-02 in previous version)

The periods have been shortened, especially since the "loading" activity on the mode of transportation is decisive. In other words, companies now have to declare at an earlier date.

- Sea:

As far as the periods are concerned, reference is generally made to the loading onto the ship (previously "leaving the port", except for containers).

- Air:

30 minutes prior to loading on the airplane (previously 30 minutes prior to departure).

- Rail and inland waters traffic:

One hour prior to loading on the border-crossing mode of transportation (previously two hours prior to departure from the outgoing customs office).

- Road:

One hour prior to loading on the border-crossing mode of transportation (previously one hour prior to to departure from the outgoing customs office).

Instead of the time of arrival at the border, the loading on the mode of transportation is now decisive for road, air, railroad and inland waterway transportation. The proposed changes would require a virtually impossible complete revision of logistics workflows.

Example:
In the area of road transportation, the proposed changes are unworkable, especially for general cargo consignments. This is due to the fact that only after loading of the truck the goods that will be exported can be declared with certainty, with invoice and delivery note being issued as a basis for notified data

However, according to a statement made by the Commission in the February 2010 meeting of the Trade Contact Group, this interpretation is apparently a misunderstanding. BUSINESSEUROPE therefore calls for retention of the status quo as provided for in the previous draft of the MCCC-IP and asks the Commission to give the relevant clarification and confirmation.

Art. 810-02 (Exemptions from the deadlines referred to in Article 810-01) (Note: Art. 810-01 in previous version)

In the previous versions, exemption concerning preliminary notice had been specified, i.e. cases for which no preliminary notice is required. In the current version, the article refers to exemptions from the time limits set forth in article 810-01. BUSINESSEUROPE questions whether this changed was made erroneously and if the actual exemption refers to the preliminary notice
BUSINESSEUROPE underlines that more general exemptions, not only referring to deadlines, should apply. In particular, there should be the possibility to completely waive the preliminary notice for trustworthy exporters.

Art. 810-04 (International Agreements)

BUSINESSEUROPE calls for reintroduction of these provisions which have been deleted in the current revised version of the MCCC-IP. International agreements constitute an important exemption criteria which simplifies trade in goods between the parties to the agreements.

Art. 820-02 (Customs office at which the export declaration must be lodged)

Under procedural law pertaining to the customs code, anybody who did business with a foreign party, as well as anybody who had the power of disposal over the goods at time of shipment, could act as exporter. In case of a legal transaction with a party domiciled in a third country, only the party doing the transaction can act as exporter in the current version of the MCCC-IP.

This may under certain circumstances trigger taxation problems. For instance, in the event of serial transactions, a company is forced to do a transaction from another EU-country if its primary supplier, from which the goods are directly exported, is domiciled in another EU-country (registration for tax purposes etc.). By keeping the possibility of power of disposal, it would allow, as a rule, to interpret the matter in such a way that the supplier acts as exporter.

BUSINESSEUROPE therefore calls for reinstatement of the status quo (meaning "OR-option").

Art. 820-05 (Retrospective lodgement of an export declaration)

This regulation allows the submission of a subsequent export declaration in certain circumstances. Upon export only the entry in the accounts is made by company accounting, which is simultaneously considered as the surrender of goods for export. Export data is reported on a monthly basis. In such case an advance notification is also not required (ref. Clause 810-02 letter r) (also ref. notes in Clause Art. 810-02).

Problem:
The person involved must provide the customs office with all data required for control. This actually corresponds with Clause 285a CCIP, but also includes the following restrictive provisions:

- the complete export process must be performed via a single EU country.
- in case the customs office of export and customs office of exit differ, the information for controls must be provided to both customs offices.

The envisaged simplification only makes sense if data is provided to customs offices in a non transaction related approach, e.g. in the form of a goods catalogue.

Art. 820-12 (Subsequent proof of exit, invalidation of the export declaration)

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.

- **General remarks concerning guarantees**

The present regulations in connection with the provision of guaranties in the area of inward processing and End Use provide for the possibility of waiving guaranties under these processes. Therefore, as a rule no guaranty is requested for these processes.

BUSINESSEUROPE calls for retention of this rule in future, as the provision of guaranties for these processes would constitute a substantial burden for business.

The current provisions foresee that guarantees are discharged as soon as a customs debt is extinguished or can no longer arise. This may be problematic especially for terminal operators within the procedure of temporary storage; if goods are moved from temporary storage into inward processing and then moved on into customs warehouse, the customs debt may still arise, and the guarantee from temporary storage may not be discharged. BUSINESSEUROPE thus calls for clarification that guarantees shall be discharged upon movement of the goods into another customs or special procedure, as the customs debt to be incurred is then covered by another guarantee and can no longer arise within the preceding procedure.

Also, it should be ensured that guarantees need only be provided once for clearly subsequent procedures, e.g. authorized consignor. In this case, goods presented to customs authorities but not yet subject to an accepted customs declaration are deemed to be placed under temporary storage – the guarantee for this procedure should then be deemed to be covered by guarantees for subsequent customs procedures in line with Article 56(4) of the MCC.

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