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Information document

## **CUSTOMS CODE COMMITTEE**

**Subject: EU enlargement in 2007**

**Transitional customs measures of the Act of Accession**

Delegations will find attached an information document. This document has been created by the Commission services in order to provide useful information on the EU enlargement in 2007 for customs administrations, economic operators and other interested parties. The information given mainly concerns transitional customs measures. In addition, the Annexes contain information on specific agricultural products, VAT and excise duties.

Please note that this information document is of indicative character. Application of the customs law is the responsibility of the national authorities under the control of national courts and in the last resort of the Court of Justice. Further information may become necessary if preventive measures are adopted to avoid disturbances of the market.

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## I. SUMMARY

The purpose of this document is to inform economic operators and customs administrations in the old and new Member States about the consequences of the enlargement of the Community with respect to customs legislation. This will also help to ensure equal treatment of economic operators throughout the Community.

Without prejudice to separate transitional measures that may be or have been adopted for agricultural goods under Article 41 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded<sup>1</sup> (hereinafter referred to as Act of Accession) (see Annexes 1 and 2) the basic principle of the enlargement as enshrined in the transitional measures for Chapter 25 of the EU acquis<sup>2</sup>, is that at the moment of accession, goods which are in free circulation in an acceding or an old Member State will be in free circulation throughout the enlarged Community by virtue of the EC Treaty as amended by the Act of Accession which is an integral part of the Treaty of Accession 2005. This principle will also apply to such goods if they have been placed before accession under a customs procedure (e.g. transit, temporary importation) which is discharged after accession; in such a case, however, the “Community” status of the goods has to be proved in order to avoid the possibility that goods on which no applicable customs duties have been paid benefit unjustifiably from accession.

Annex V No 4 of the Act of Accession (“Customs Union”)<sup>3</sup> allows for certain movements of goods which have begun before accession and are terminated after it to remain subject to the former customs legislation of the acceding Member States. The document describes these exceptions and outlines the collaboration between the customs administrations concerned. Furthermore, certain authorisations and proofs of origin issued according to the former rules of the acceding Member States remain valid for a transitional period.

Annex V No 3 of the Act of Accession covers specific measures with regard to agricultural products. Such measures are not treated in this document.

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<sup>1</sup> OJ L157, 21.06.2005, p. 203

<sup>2</sup> The 31 chapters of the accession negotiations cover the different areas of the EU ‘acquis’, i.e. the detailed laws and rules adopted on the basis of the EU’s founding treaties. The acquis in chapter 25 – Customs Union – includes the Community’s Customs Code and its implementing provisions; the Combined Nomenclature; the Common Customs Tariff including trade preferences, tariff quotas and tariff suspensions, and other customs-related legislation outside the scope of the customs code, as for example the legislation on counterfeit and pirated goods, drug precursors and export of cultural goods.

<sup>3</sup> See [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l\\_157/l\\_15720050621en02680276.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_157/l_15720050621en02680276.pdf)

(OJ L157, 21.06.2005, p. 271)

## II. INTRODUCTION: THE BASIC RULES OF THE ACCESSION

On accession of new Member States to the European Union (EU) the following rule applies in principle: from the time of accession, the original Treaties (i.e. the EC Treaty, the Euratom Treaty and the Treaty on European Union) as well as the legal instruments based on these Treaties (e.g. the Customs Code (CC)) are compulsory for new Member States, i.e. they must apply the so-called *acquis communautaire*. Article 2 of the Act of Accession establishes this principle and at the same time cites the only permissible exception: these Treaties and the legal instruments referring to them apply under the terms of the Act of Accession. This implies the following:

1. The original Treaties are changed by the Act of Accession and are to be applied in their new revised version as from the time of accession (e.g. Art. 10 of the Act of Accession changes Art. 205(2) of the EC Treaty which specifies the weighting of votes for Council decisions with qualified majority).
2. Normal legislative work naturally continues, so that both before and after accession further changes in the law (e.g. amendments to the implementing provisions of the Customs Code) can be enacted according to the procedural rules which apply in each case (cf. Art. 7(2) and 7(3) of the Act of Accession).
3. The Act of Accession provides for some transitional measures in order to facilitate the transition for both goods traffic between old and new Member States and between new Member States, and trade between new Member States and third countries; within the area of customs law nearly all measures apply to the new Member States in the same way (see Annex V No 4 of the Act of Accession).
4. Since at the time of signature of the Treaty of Accession on 25 April 2005 it was naturally not possible to foresee and settle in advance all transition problems, the Act of Accession contains several protective clauses which make it possible to provide for exceptions to the general rules for a limited period in order to avoid disturbances (in particular Articles 36 – 42 of the Act of Accession).
5. Upon accession the new Member States will be integrated into the Community customs territory and therefore Trade Defence Instrument measures (i.e. anti-dumping, anti-subsidy and safeguard measures) applicable in the EC25 will be imposed on third-country imports into their territory. At the same time, such measures imposed by the new Member States before accession will cease to apply.

This document discusses those transitional measures of the Act of Accession addressed under point 3 above; possible protective measures, issued on the basis of the Act of Accession, remain subject to further information if and when they are adopted. The rules described in this document may not apply to agricultural products.

### III. TRANSITIONAL MEASURES VALID IN TRADE WITH NEW MEMBER STATES

Annex V No 4 of the Act of Accession contains the transitional customs measures. The introduction of these measures was based on the following considerations:

1. In the interests of the facilitation of international trade, some transactions which have begun before accession and are terminated thereafter should still be able to be completed according to the old rules.
2. Since such rules create exceptions to the obligation to apply Community law, they are to be strictly interpreted.
3. Authorisations and procedural facilitation cannot be changed by the competent authorities of Member States from one day to the next for all beneficiaries.
4. Some transactions terminated after accession refer to a time before accession (e.g. re-importation of goods which were temporarily exported before accession within the framework of outward processing). Here it appears appropriate to use in certain cases the previous bases of assessment if the law of the acceding countries provided for this.

However, these principles apply only insofar as they are given in Annex V No 4 of the Act of Accession expressly in relation to individual customs procedures or other regulations of Community customs law; in all other cases, the EC Treaty and the customs legislation based on it are also to be applied in new Member States from time of accession. In particular the principle of free circulation (Art. 24 of the EC Treaty) will apply insofar as goods which were in free circulation in a new Member State as of the date of accession throughout the enlarged Community customs territory.

#### 1. *Proof of Community status (trade within the enlarged Community)*

- (a) Proof of preferential origin properly issued or made out prior to accession under one of the Europe Agreements with the new Member States or the equivalent agreements between the new Member States shall be accepted as evidence of status (not as evidence of origin) in the enlarged Community after accession, if
- the goods are, on the date of accession, in temporary storage, in a free zone or free warehouse, under transit, customs warehousing, inward processing (suspension system), processing under customs control, temporary importation or outward processing, or have been declared and released for export and are in transport within the enlarged Community, and
  - a prohibition of drawback of, or exemption from customs duties on non-originating materials used in the manufacture of these products applies (= Europe Agreements and not Association Agreements).

This means that if the proof of preferential origin concerning the above-mentioned goods is submitted to the customs authorities after accession the goods are free of customs duties and other customs measures when declared for release for free circulation (Annex V No 4 of the Act of Accession, paragraph 1(a)). It should be noted that the consequence is not the application of a preferential rate of duty but that there are no customs duties to be applied on the basis of proof of Community status.

- (b) Goods which, on the date of accession, are in temporary storage or in a free zone or free warehouse, under transit, customs warehousing, inward processing (suspension

system), processing under customs control, temporary importation or outward processing, or have been declared and released for export and are in transport within the enlarged Community, are treated as Community goods in the enlarged Community, if on the basis for example of the payment of the customs duties applicable in the customs territory concerned one of the following proofs of Community status is presented:

- a T2L or T2LF document or an equivalent commercial document (Art. 315 – 317b of the Implementing Provisions of the Customs Code (CCIP)),
- a TIR or ATA carnet with the mention “T2L” or “T2LF” (Art. 319 CCIP),
- the registration plates and particulars of motorised road vehicles registered in a Member State (Art. 320 CCIP),
- the code number and ownership mark of goods wagons belonging to a railway company of a Member State (Art. 321 CCIP),
- packaging which can be identified as belonging to a person established in a Member State (Art. 322 CCIP),
- passenger-accompanied baggage where the Community status of the goods is declared and there is no doubt as to the truthfulness of the declaration (Art. 323 CCIP),
- the Administrative Accompanying Document for excise goods (Reg. [EEC] No 2719/92),
- a T2M form for products of sea-fishing and other products taken from the sea by boats (Art. 325 CCIP),
- the postal label stipulated in Art. 462a and Annex 42b CCIP,
- the form for Community goods in control type I free zones and in free warehouses (Art. 812 and Annex 109 CCIP),
- a T5 control copy (Art. 314c (g) in conjunction with Art. 843 CCIP).

In this context the term “Community goods” covers also goods

- wholly obtained in the territory of a new Member State under the conditions stipulated in Art. 23 CC and not incorporating goods imported from other countries or territories;
- imported from countries or territories other than the new Member State concerned, and released for free circulation in that Member State;
- obtained or produced in the country concerned, either from goods referred to in the second indent above alone or from goods referred to in the first and second indent above.

This means that if the proof of Community status concerning the above-mentioned goods is submitted to the customs authorities after accession, the goods are free of customs duties and other customs measures when declared for release for free circulation (Annex V No 4 of the Act of Accession, paragraphs 1(b) and 2).

- (c) Goods which are covered by an ATA carnet issued before the date of accession in a present Member States or in a new Member State are also free of customs duties and

other customs measures when declared for release for free circulation (Annex V No 4 1(c))

Requests for subsequent verification of proof of preferential origin issued under one of the Europe Agreements referred to in paragraphs 1(a) of Annex V No 4 of the Act of Accession shall be accepted by the customs authorities of the present and new Member States for a period of three years after the issue of the proof of origin concerned and may be made by those authorities for a period of three years after acceptance of the proof of origin in support of a declaration for release for free circulation (Annex V No 4 of the Act of Accession, paragraph 3).

**2. Proof of preferential origin (trade with third countries, including Turkey, in the framework of the preferential agreements on agriculture, coal and steel products)**

- (a) Proof of preferential origin issued by third countries (i.e. not by the old or new Member States) under a preferential agreement concluded by the new Member States with those countries or based on autonomous legislation of the new Member States shall be accepted in the respective new Member States, if
- the acquisition of such origin entitles to preferential tariff treatment on the basis of the preferential tariff measures contained in agreements or arrangements which the Community has concluded with or adopted in respect of third countries or groups of countries (i.e. that the proof of preferential origin issued by third countries can be accepted only if the EU 25 would also accept this proof);
  - the proof of origin and the transport documents were issued before the date of accession; and
  - the proof of origin is submitted to the customs authorities by 1 May 2007.

Where goods were declared for release for free circulation in a new Member State before 1 January 2007, under preferential arrangements in force in that new Member State at that time, proof of origin issued retrospectively may be accepted in that Member State provided that this proof is submitted to the customs authorities by 1 May 2007 (Annex V No 4 of the Act of Accession, paragraph 4).

- (b) Authorisations for “approved exporters” granted in the framework of agreements concluded with third countries (i.e. not within the enlarged Community) by Bulgaria and Romania may be maintained, provided that
- such a provision is also provided for in the agreements concluded prior to the date of accession by those third countries with the EU 25 (which means that the relevant Community agreements with these countries also provide for this facilitation); and
  - the approved exporters apply the Community rules of origin from the time of accession.

However the above-mentioned authorisations for “approved exporters” must be replaced by new authorisations issued in accordance with Community legislation by 1 January 2008 as the ‘old’ authorisations will not be valid anymore as from 1 January 2008 (Annex V No 4 of the Act of Accession, paragraph 5).



- (c) Requests for subsequent verification of proof of origin issued under the preferential agreements and arrangements referred to in paragraph 4 of Annex V No 4 of the Act of Accession shall be accepted by the customs authorities of the present and new Member States for a period of three years after the issue of the proof of origin concerned and may be made by those authorities for a period of three years after acceptance of the proof of origin in support of a declaration for release for free circulation (Annex V No 4 of the Act of Accession, paragraph 6).
- (d) Without prejudice to the application of any measure deriving from the common commercial policy, proof of origin issued retrospectively by third countries in the framework of preferential agreements concluded by the Community with those countries shall be accepted in the new Member States for the release for free circulation of goods which on the date of accession are either en route or in temporary storage, in a customs warehouse or in a free zone in one of these third countries or in that new Member State, provided that the new Member State where the release for free circulation takes place had no free trade agreement in force with the third country, for the products concerned, at the moment when the transport documents were issued, and provided that:
- the acquisition of such origin entitles to preferential tariff treatment on the basis of the preferential tariff measures contained in agreements or arrangements which the Community has concluded with, or adopted in respect of third countries or groups of countries, as referred to in Article 20(3)(d) and (e) of Regulation (EEC) No 2913/92; and
  - the transport documents were issued no later than the day before the date of accession; and
  - the proof of origin issued retrospectively is submitted to the customs authorities within four months from the date of accession.
- (Annex V No 4 of the Act of Accession, paragraph 7)
- (e) For the purpose of verifying the proofs referred to in point (d), the provisions concerning the definition of the concept of 'originating products' and methods of administrative cooperation of the relevant agreements or arrangements shall apply.
- (Annex V No 4 of the Act of Accession, paragraph 8)

### ***3. Proof of status under the provisions on free circulation for industrial products within the EC-Turkey Customs Union***

#### ***3.1. Proof of status resulting from the submission of proofs of preferential origin issued either in Turkey or in a new Member State in the context of their former preferential trade agreement***

- (a) Proofs of origin properly issued by either Turkey or a new Member State in the framework of preferential trade agreements applied between them and allowing with the Community a cumulation of origin based on identical rules of origin and a prohibition of any drawback or suspension from customs duties on the goods concerned, shall be accepted in the respective countries as a proof of status under the provisions on free circulation for industrial products, laid down in Decision No 1/95 of the EC-Turkey Association Council (1), provided that:
- the proof of origin and the transport documents were issued no later than the day before the date of accession; and

- the proof of origin is submitted to the customs authorities within the period of four months from the date of accession.

Where goods were declared for release for free circulation in either Turkey or a new Member State, prior to the date of accession, in the framework of preferential trade agreements mentioned above, proof of origin issued retrospectively under those agreements may also be accepted provided that it is submitted to the customs authorities within the period of four months from the date of accession.

(Annex V No 4 of the Act of Accession, paragraph 9)

- (b) For the purpose of verifying the proofs referred to in point (a), the provisions concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation of the relevant preferential agreements shall apply. Requests for subsequent verification of those proofs shall be accepted by the competent customs authorities of the present Member States and of the new Member States for a period of three years after the issue of the proof of origin concerned and may be made by those authorities for a period of three years after acceptance of the proof of origin in support of a declaration for release for free circulation.

(Annex V No 4 of the Act of Accession, paragraph 10)

### 3.2. Proof of status resulting from the submission in a new Member State of A.TR movement certificates issued in Turkey

- (a) Without prejudice to the application of any measure deriving from the common commercial policy, an A.TR movement certificate issued under the provisions on free circulation for industrial products, laid down in Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995, shall be accepted in the new Member States for the release for free circulation of goods which on the date of accession are either in transport after having been the subject of export formalities within the Community or Turkey or are in temporary storage or under a customs procedure referred to in Article 4(16)(b) to (h) of Regulation (EEC) No 2913/92 in Turkey or in that new Member State, provided that:

- no proof of origin as referred to in point 3.1 (a) is submitted for the goods concerned; and
- the goods comply with the conditions for the implementation of the provisions on free circulation for industrial products; and
- the transport documents were issued no later than the day before the date of accession; and
- the A.TR movement certificate is submitted to the customs authorities within four months from the date of accession.

(Annex V No 4 of the Act of Accession, paragraph 11)

- (b) For the purpose of verifying the A.TR movement certificates referred to in point (a) above, the provisions concerning the issue of A.TR movement certificates and methods of administrative cooperation under Decision No 1/2006 of the EC-Turkey Customs Cooperation Committee<sup>4</sup> shall apply.

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<sup>4</sup> Annex V No 4 of the Act of Accession, paragraph 12 refers to Decision 1/2001; however this Decision has been replaced by Decision No 1/2006 of 26 July 2006 (OJ L 265 of 26.9.2006, p. 18)

(Annex V No 4 of the Act of Accession, paragraph 12)

#### **IV. CUSTOMS PROCEDURES**

##### ***1. End or discharge of customs procedures which have begun before accession***

Temporary storage, transit, customs warehousing, inward processing, processing under customs control, temporary importation, outward processing and export procedures begun and not terminated before accession must be discharged under the conditions of Community legislation irrespective of whether these procedures were established with respect to a third country or between an old and a new Member State or between two new Member States. Thus if an acceding country establishes, for example, an external transit procedure with an old Member State on 31.12.2006, this must be ended in any case. The same applies to a dispatch in the opposite direction. Where the end or discharge gives rise to a customs debt, the import duties to be paid shall be that in force at the time when the customs debt is incurred in accordance with the Common Customs Tariff and the amount paid shall be considered as own resources of the Community (Annex V No 4 of the Act of Accession, paragraph 13).

In order to avoid goods, which are on the date of accession under one of the above-mentioned procedures, being subject to customs duties or other customs measures when declared for release for free circulation, the operator may submit to the customs authorities proof of the preferential origin (where this is equivalent to status i.e. Europe Agreements) of the goods. If, for instance, preferential goods originating in Romania are brought into Hungary before accession within the framework of temporary importation and the goods are declared for release for free circulation after the date of accession, no customs duty is to be levied if an EUR. 1 movement certificate is presented according to the rules of the Europe Agreement with Romania as evidence of Community status, i.e. not as evidence of origin (see above III. Point 1(a)). If the declarant submits a T2L document instead of an EUR. 1 certificate to the customs authorities no customs duty is to be levied either (see above III. Point 1(b)).

It is important to underline that the Community status due to the accession or the preferential origin (in case of trade with third countries) must be proven formally (see above III. Points 1 and 2). If no formal proof can be furnished by the operator, the goods are deemed to be 'non-Community goods' and 'non-preferential goods' respectively, and are subject to customs duties and other customs measures in accordance with Community law (including the special rules of the Act of Accession).

In order to avoid goods which have been in free circulation in the Community of Twenty-Five being charged with import duties in the new Member States, it should be considered whether or not the goods may be declared as returned goods (see case 15 below). If relief from import duties may be granted for the goods in accordance with the provisions on returned goods, this could be an alternative to exemption from import duties based on the Act of Accession.

##### **2. Specific provisions for certain customs procedures**

###### **(a) CUSTOMS WAREHOUSING**

The following special provisions apply to the discharge of the customs warehousing procedure in a new Member State after accession: Where the amount of a customs debt is determined on the basis of the nature of the import goods, their customs value and quantity at the time they were placed under the procedure (see Art. 112 (3) CC), and where the relevant declaration was accepted prior to the date of accession, these elements shall result from the legislation applicable in that Member State before the date of accession. Nevertheless, the duty rates to be applied are those of the Common Customs Tariff at the time the customs debt is incurred, and such customs duties are own resources of the Community (Annex V No 4 of the Act of Accession, paragraphs 13 and 14).

**(b) INWARD PROCESSING**

Inward processing authorisations issued in a new Member State before accession may remain valid until the end of validity stipulated therein or one year after the date of accession, whichever is the earlier (Annex V No 4 of the Act of Accession, paragraph 18). However, as of the date of accession the authorisation holder must respect Community legislation except where the exceptions described below apply.

By virtue of Article 2 of the Act of Accession authorisations are no longer needed for trade between the old and the new Member States as well as for trade between the new Member States. Nevertheless, customs procedures started and not discharged before the date of accession have to be terminated after accession.

According to Articles 23 and 24 of the EC Treaty a customs debt cannot arise for goods which have attained Community status by virtue of accession. This concerns both goods originating in the old or the new Member States and goods imported from third countries which have been released for free circulation in the old or the new Member States before accession (see also Art. 4 No 7 CC).

The following special provisions apply to the discharge of the inward processing procedure in a new Member State after accession (Annex V No 4 of the Act of Accession, paragraph 15):

Where the amount of a customs debt is determined on the basis of the nature of the import goods, their tariff classification (including duty rate), customs value, origin, and quantity at the time they were placed under the procedure (see Art. 121 CC), and where the declaration placing the goods under the procedure was accepted prior to the date of accession, these elements shall result from the legislation applicable in that Member State before the date of accession. Nevertheless, such customs duties are own resources of the Community.

Compensatory interest must be paid in accordance with Art. 519 CCIP from the date of accession in order to offset the advantage accruing from the deferment of the date the duty is paid.

If a declaration for inward processing was accepted under a drawback system, the drawback shall be effected under the conditions of Community legislation, by and at the expense of the new Member State, where the customs debt in respect of which the drawback is requested was incurred before the date of accession. The duty refunded is, of course, that paid before accession.

**(c) TEMPORARY IMPORTATION**

The following special provisions apply to the discharge of the temporary importation procedure in a new Member State after accession (Annex V No 4 of the Act of Accession, paragraph 16):

Where the amount of a customs debt is determined on the basis of the nature of the import goods, their tariff classification (including duty rate), customs value, origin, and quantity at the time they were placed under the procedure (see Art. 144(1), first sentence CC), and where the declaration placing the goods under the procedure was accepted prior to the date of accession, these elements shall result from the legislation applicable in that Member State before the date of accession. Nevertheless, such customs duties are own resources of the Community.

Compensatory interest must be paid in accordance with Art. 519 CCIP from the date of accession in order to offset the advantage accruing from the deferment of the date the duty is paid.

**(d) OUTWARD PROCESSING**

Outward processing authorisations issued in a new Member State before accession may remain valid until the end of validity stipulated therein or one year after the date of accession, whichever is the earlier (Annex V No 4 of the Act of Accession, paragraph 18). However, as of the date of accession the holder of the authorisation must respect Community legislation.

Where a procedure begun before the date of accession and is discharged after accession, the Community provisions (including the Common Customs Tariff) apply also in the new Member States. Calculation of duty relief on the basis of the processing costs (Art. 153 second subparagraph 2 CC in conjunction with Article 591 CCIP) of goods which are not originating in the Community of 25, in a new Member State or in Turkey and which have been released for free circulation before accession at a zero duty rate with the sole objective to benefit from partial relief under Article 591 CCIP is not permitted, except for imports of a non-commercial nature (Annex V No 4 of the Act of Accession, paragraph 17).

**(e) PROCESSING UNDER CUSTOMS CONTROL**

Authorisations for processing under customs control issued in a new Member State before accession may remain valid until the end of validity stipulated therein or one year after the date of accession, whichever is the earlier (Annex V No 4 of the Act of Accession, paragraph 18). However, as of the date of accession the holder of the authorisation must respect Community legislation.

Where a procedure begun before the date of accession and is discharged after accession, the Community provisions apply without exception also in the new Member States (Annex V No 4 of the Act of Accession, paragraph 13).

## **(f) FREE ZONES AND FREE WAREHOUSES**

No transitional rules exist with regard to free zones and free warehouses. This means that the provisions of the Customs Code and its Implementing Provisions must be respected in the new Member States as of the day of accession and that any authorisations and legal provisions which do not apply under Community conditions would be invalid on that date. Free zones or free warehouses established in accordance with conditions identical to those in force in the Community on 1 January 2007, on the other hand, can continue to operate.

## **V. OTHER PROVISIONS**

### **(a) Validity of authorisation**

Authorisations which have been granted before the date of accession for the use of inward processing, processing under customs control and outward processing are valid until the end of their validity or one year after the date of accession, whichever is the earlier (Annex V No 4 of the Act of Accession, paragraph 18).

### **(b) Post-entry in the accounts, post-clearance recovery, repayment and remission**

(Annex V No 4 of the Act of Accession, paragraphs 19 and 20)

From the date of accession, entry in the accounts (including post-clearance recovery), repayment and remission of import duties are to be made in accordance with the Customs Code (Art. 201 - 242 CC).

However, where the customs debt was incurred before the date of accession, recovery, repayment or remission is to be made in accordance with the regulations which applied in the new Member State before accession.

Since this involves correction of an error which arose before accession, the amount to be recovered, repaid or remitted is the amount established according to national law under the conditions in force before accession. This also means that all other applicable provisions of national law in relation to recovery, repayment or remission (e.g. time limit for recovery) in force before accession apply.

### **(c) Binding tariff or origin information**

The Act of Accession contains no transitional measures with regard to binding tariff or origin information.

This means:

- for the new Member States that such information granted on the basis of national law before the accession ceases to have a legally binding character as of the day of accession; starting from that day new Member States can issue binding information on the basis of Art. 12 CC which is valid throughout the enlarged Community;
- for the old Member States that their binding information becomes applicable in the new Member States as of the day of accession. However, where components or labour from

new Member States are used in the production of goods for which binding origin information has been issued, it is appropriate to amend such origin information as of the date of accession.

## **VI. SOME PRACTICAL EXAMPLES**

For information, some examples are given below.

### ***1. Issue and validity of an authorisation***

Authorisations which have been granted before the date of accession for the use of inward processing, processing under customs control and outward processing shall be valid until the end of their validity or one year after the date of accession, whichever is the earlier. However, as of the date of accession the holder of these authorisations must respect Community legislation.

Example: An authorisation for the use of processing under customs control (PCC) issued on 1 March 2006 with a duration of 3 years (period of validity) in an acceding country must be revoked or amended with effect from 1 January 2008. However, the authorisation must be revoked (see Article 9 CC) with effect from 1 January 2007 if the authorisation covers PCC of meat of bovine animals, fresh, chilled or frozen because the Customs Code Committee has concluded in November 2005 that the economic conditions are not fulfilled in this particular case. The revocation does not affect import goods which have been placed under PCC before the date of accession (see Article 4 CCIP).

Authorisations concerning customs warehousing, temporary importation, end-use and free zones and free warehouses, which are valid on or after the date of accession, must be in line with Community law as of 1 January 2007 in any case.

## 2. *Applicable time for collection and bases of assessment of customs duties*

All customs procedures begun before accession and not yet completed on the date of accession must be terminated according to Community law. Annex V No 4 of the Act of Accession gives some exceptions to this rule. These involve the tariff classification, (and duty rate), quantity, customs value and origin of the goods and, in the case of outward processing, the method of determining the customs debt. The rules concerning the customs debt do not, of course, apply to such goods for which Community status or preferential status has been proved, because such goods are free of customs duties (see above III. 1 and 2). Some practical cases are treated below:

*Case 1:* Import goods are placed before the date of accession under the **customs warehousing procedure** in Bulgaria under rules corresponding to Art. 112 (3) CC. These goods are declared for release for free circulation on 1 August 2007. The goods are subject to 3% conventional rate of duty according to the Common Customs Tariff. Neither a proof of preferential origin properly issued prior to the date of accession nor a proof of Community status of the goods has been furnished.

*Solution:* Import duties are due. The amount of customs debt is determined on the taxation elements (nature of the import goods, the customs value and the quantity of the import goods) in accordance with the Bulgarian legislation applicable before the date of accession. The duties of the Common Customs Tariff apply.

*Case 2:* Import goods originating in Japan are placed before the date of accession under the **customs warehousing procedure** in Germany. These goods are removed unlawfully from customs supervision on 1 August 2007. The warehousekeeper submits a T2L document (issued retroactively in accordance with Article 314c (3) CCIP) because the goods were in free circulation in Romania before the date of accession.

*Solution:* No import duties are due because proof of Community status is furnished (see Art. 23 - 25 EC-Treaty<sup>5</sup>).

*Case 3:* Import goods originating in Japan are placed before the date of accession under the **inward processing suspension system** in Bulgaria. The compensating products, which

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<sup>5</sup> “Article 23

1. The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

2. The provisions of Article 25 and of Chapter 2 of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

Article 24

Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

Article 25

Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.”



are obtained from the import goods, are declared for release for free circulation on 1 March 2007. The declarant submits a T2L document (issued retroactively in accordance with Article 314c (3) CCIP) to the customs authorities because the goods were in free circulation in France before they have been placed under the inward processing procedure in Bulgaria.

*Solution:* No import duties are due because proof of the Community status of the goods is furnished.

*Case 4:* Goods are placed under the **inward processing suspension system** in Romania before the date of accession. A customs debt is incurred for these goods after the date of accession. On the date of their placement under this procedure the goods would have been subject to an **anti-dumping duty** in the EC25, not however in Romania.

*Solution:* Insofar as Art. 121 CC applies, antidumping duties must not be paid because EC25 import duties (including anti-dumping duties) do not affect goods which have been placed under the inward processing suspension system in the new Member States before 1 January 2007. However, the import duties applicable in Romania at the time of placing the goods under the procedure are due and also compensatory interest must be paid under the conditions of Community legislation from the date of accession.

*Case 5:* Goods are placed under the **inward processing suspension system** in Italy before the date of accession. A customs debt is incurred in Bulgaria for the goods after the accession. On the date of their placement under this procedure the goods would be subject to an **anti-dumping duty** in the EC25.

*Solution:* Insofar as Art. 121 CC applies, the import duties (including anti-dumping duties) to be paid are those which are applicable in the Member State in which the goods were placed under the procedure. Furthermore, compensatory interest on the import duties is due.

*Case 6:* Goods from the USA are placed under **temporary importation** with total relief from import duties in Romania before 1 January 2007. The period for discharge is 1 December 2007. The goods are transferred after the date of accession to Italy where the goods are exhibited until 1 February 2008.

*Solution:* A customs debt is incurred because a new customs-approved treatment or use is not assigned to the goods by 1 December 2007. The Romanian import duties are due. Nevertheless, such customs duties are own resources of the Community.

*Case 7:* Goods from Bulgaria are placed under **temporary importation with partial relief from import duties** in Finland before 1 January 2007. The goods are declared for free circulation in Finland on 1 February 2007. The declarant submits a T2L document for the goods from Bulgaria.

*Solution:* Import duties must be paid in accordance with Article 143 CC in conjunction with Article 201(1)(b) CC with regard to the period from the entry of goods under temporary importation until 1 January 2007. A further customs debt is not incurred in case of release for free circulation.

*Case 8:* Goods from Hungary (in free circulation) are placed under temporary importation with an **ATA carnet** in Romania before the date of accession. These goods are declared for release for free circulation in Hungary on 15 January 2007.

*Solution:* The goods are free of customs duties and other customs measures in accordance with Point 1(c) of Annex V No 4 of the Act of Accession. A copy of the re-importation voucher should be forwarded to the following coordinating office:

National Customs Authority

Customs Transit Service

13 Matei Millo st,

1 District, Bucharest

ROMANIA.

Thereby the Romanian customs is informed that the temporary importation procedure has been discharged.

*Case 8 a:* Goods from Greece (in free circulation) are placed under temporary importation with an **ATA carnet** in Bulgaria before the date of accession. These goods are declared for free circulation in Greece on 15 January 2007.

*Solution:* The goods are free of customs duties and other customs measures in accordance with Point 1(c) of Annex V No 4 of the Act of Accession. A copy of the re-importation voucher should be forwarded to the following coordinating office:

MINISTRY OF FINANCE  
NATIONAL CUSTOMS AGENCY  
CENTRAL CUSTOMS DIRECTORATE  
47 G. S. RAKOVSKI STR  
1202 SOFIA  
BULGARIA

Thereby the Bulgarian customs is informed that the temporary importation procedure has been discharged.

*Case 8b:* Goods from Bulgaria (in free circulation) are placed under temporary importation with an **ATA carnet** in Greece before the date of accession. These goods are declared for free circulation in Bulgaria on 15 January 2007.

*Solution:* The goods are free of customs duties and other customs measures in accordance with Point 1(c) of Annex V No 4 of the Act of Accession. A copy of the re-importation voucher should be forwarded to the following coordinating office:

MINISTRY OF ECONOMY AND FINANCE,

GENERAL DIRECTORATE OF CUSTOMS AND EXCISE,  
ATTICA CUSTOMS DISTRICT,  
CUSTOMS PROCEDURE DEPARTMENT,  
AG. NIKOLAOS SQUARE,  
P.C. 18510, PIRAEUS.

Thereby the Greek customs is informed that the temporary importation procedure has been discharged.

Case 8c: Goods from Romania (in free circulation) are placed under temporary importation with an **ATA carnet** in Hungary before the date of accession. These goods are declared for free circulation in Romania on 15 January 2007.

*Solution:* The goods are free of customs duties and other customs measures in accordance with Point 1(c) of Annex V No 4 of the Act of Accession. A copy of the re-importation voucher should be forwarded to the following coordinating office:

Vám- és Pénzügyőrség Közép-magyarországi Regionális Parancsnoksága  
Budapest  
Pf.29  
H-1581.

Thereby the Hungarian customs is informed that the temporary importation procedure has been discharged.

*Case 9:* Goods are temporarily exported under the **outward processing procedure** from Hungary on 15 December 2006 into Romania. The temporary export goods are under **inward processing** on the date of accession in Romania. The compensating products are placed under the external transit procedure on 31 January 2007 and on the same day the products are declared for release for free circulation in Hungary.

*Solution:* The T1 document has to contain the indication “IP/S goods” in accordance with Article 549 CCIP and the import duties may be calculated in accordance with Article 121 CC. The information sheet INF 1 may be used for providing information on the duty amount. If the Community status of the goods used in the processing operations (e.g. of the temporary export goods) has been proven (see above III. 1(b)) these goods are not subject to import duties. Due to the Enlargement of the EU it is not possible to discharge the outward processing procedure and, assuming that the compensating products have acquired preferential origin, it is not permitted to issue an EUR. 1 movement certificate either on 1 January 2007 or after that date, because the Europe Agreement establishing an association between the EU25 and Romania is not valid anymore. An EUR. 1 certificate may be issued prior to accession only. In that case the ‘no-drawback rule’ must be taken into account (see Article 216 CC).

*Case 10:* Goods are exported from Bulgaria on 15 December 2006 and declared for release for free circulation as returned goods in Belgium after the date of accession.

*Solution:* If formal proof can be furnished by the operator that the goods have Community status they are not subject to import duties (see above III. 1(a) and (b)). Article 848 CCIP is not applicable in this case.

*Case 11:* Goods are placed under the **end-use provisions** in Denmark before 1 January 2007. The holder of authorisation wants to transfer the goods on 1 February 2007 to another authorisation holder who is established in Bulgaria. Is this transfer to Bulgaria permitted?

*Solution:* Yes, a transfer is possible in accordance with Article 296 CCIP. The goods may be assigned to the prescribed end-use in the enlarged Community.

*Case 12:* Goods originating in Japan are released for free circulation in Greece before the date of accession. The goods are exported under the exportation procedure from Greece to Bulgaria before the date of accession. The goods are presented at the Bulgarian customs office and have the status of goods in temporary storage. A customs declaration for **release for free circulation** is accepted by the customs authorities on 31 December 2006. The goods are released for free circulation on 3 January 2007.

*Solution:* Annex V No 4 of the Act of Accession is not applicable in this case because the customs debt is incurred before the date of accession (i.e. on 31 December at the moment when the customs declaration for free circulation was accepted) and therefore the goods are subject to Bulgarian import duties. The import duties paid are own resources of the Bulgaria.

*Case 13:* Company "A", established in Belgium starts an export transport on 30 December 2006 from Belgium to Bulgaria under cover of an EU1 export declaration to an EU customs office of exit at the Greek-Bulgarian border. However the goods arrive at the former Greek-Bulgarian border on 3 January 2007.

*Solution:* The goods are on the date of accession in transport within the enlarged Community after having been subject of export formalities. Therefore the case is covered by the transitional customs measures of the Act of Accession. The provisions stipulated in Article 796(1) CCIP are superseded by the transitional customs measures laid down in Annex V No 4 of the Act of Accession. This means that the EU1 export declaration needs not be invalidated in accordance with Article 796(1) CCIP. However, this means also in order to benefit from Community status that the goods must be declared for release for free circulation in Bulgaria and the goods are subject to import duties unless it is formally proven that the goods have Community status. Normally, VAT must be paid in accordance the Bulgarian VAT law.

*Case 14:* Company "A", established in Belgium, wants to export its Community goods, via a common transit country, to "B", a customer in Bucharest, Romania. The goods are placed under the **internal transit procedure** on 27 December 2006. The customs office of destination is in Bucharest. The goods arrive there via road transport on 3 January 2007.

*Solution:* The goods are under the internal transit procedure on 1 January 2007. This procedure must be ended (discharged) in accordance with Articles 92 and 163(3) CC. Furthermore the goods must be declared for release for free circulation in Romania in

order to benefit from Community status. However, due to the fact that the goods are placed under the internal transit procedure (T2) it is not necessary to present an additional proof of Community status. With regard to VAT it should be noted the transaction of company "B" is considered as an import in Romania as specified under Article 28p(5) of the 6th VAT Directive so that the Romanian VAT is to be paid. It is not necessary to invalidate the export declaration.

Case 15: Goods originating in Japan are released for free circulation in Hungary before the date of accession. Subsequently, the goods are exported under the export procedure from Hungary to Romania and leave the customs territory of the Community (of Twenty-five) before the date of accession. The goods are placed under the customs warehousing procedure in Romania and are subsequently declared for release for free circulation as **returned goods** on 1 April 2007. The declarant presents an **INF 3** for the goods. This information sheet was issued by the Hungarian customs authorities before 1 January 2007.

*Solution:* The goods may be accepted as returned goods because they have been exported from the customs territory of the Community, returned to that (enlarged) territory and declared for release for free circulation within a period of three years. This means that relief from import duties may be granted in accordance with Articles 185 to 187 CC and Articles 844 to 856 CCIP.

## **VII. CONCLUSIONS**

In view of the complexity of accession, it is important that economic operators and customs officials promptly and comprehensively inform themselves as to the consequences. This document is a contribution to conveying the necessary information. It is of indicative character. Application of the customs law is the responsibility of the national authorities under the control of national courts and in the last resort of the Court of Justice. Further information may become necessary if preventive measures are adopted to avoid disturbances of the market.

In general it is recommended that operators should carefully consider whether or not goods which have been in free circulation in the EU 25 or in the new Member States before the date of accession have to be under a suspensive regime on 1 January 2007.

## Annex 1

### Transitional measures applicable in the context of the Accession to the EU of Bulgaria and Romania in the field of VAT.



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Indirect Taxation and Tax administration  
**VAT and other turnover taxes**

Brussels, 20 October 2006

#### INFORMATION NOTE

**Subject: Transitional measures applicable in the context of the Accession to the EU of Bulgaria and Romania in the field of VAT.**

1. **Article 28p** of the Sixth VAT Directive (Directive 77/388/EEC of 17 May 1977), as modified by Directive XXX/2006/EC, describes the transitional measures applicable in the field of VAT in the framework of the Accession to the EU of Bulgaria and Romania on 1 January 2007.
2. This **Article deals with goods** that:
  - (a) entered the Community or one of the new Member States before accession and at that time were placed under a temporary admission procedure with full exemption from import duties or under one of the suspensive regimes mentioned under Article 16(1)(B)(a) to (d) of the Sixth VAT Directive (or similar regimes in the Acceding Countries) **OR**
  - (b) Community goods that were placed, before the date of accession, under the common transit procedure or under another customs transit procedure
- **AND** that have not left this regime before 1 January 2007.

**A first conclusion is that the old rules continue to apply until the goods leave these regimes after 1/1/2007.**

3. In principle, once they cease to be covered by one of these special regimes, the goods will be **subject to an importation**, with VAT to be paid in the country where the goods are when they cease to be covered by these regimes [Article 28p(4)].

**A second conclusion is that these goods will, in principle, be subject to VAT upon importation once they cease to be covered by these regimes after 1/1/2007.**

4. Nevertheless, there shall be **no chargeable event** (no VAT upon importation) when
  - the goods are exported outside the enlarged Community; or
  - the goods (other than means of transport), that were placed under a temporary admission procedure, are redispached or transported to the country from which they were exported to the person who exported them; or
  - the goods, that were placed under a temporary admission procedure, are means of transport and they were acquired or imported before 1 January 2007 under the general conditions of taxation applicable in the country concerned and provided they have not been subject to any exemption from VAT or refund of VAT, on the basis of their exportation.
  
5. **Nor will there be any VAT due** when the first use of the means of transport took place before 1 January 1999 (see Article 28p (7) as modified by Directive XXX/2006/EC).

**A third conclusion is that in certain cases and under certain conditions (see points 4 and 5 mentioned above) these goods will NOT be subject to VAT once they cease to be covered by these regimes after 1/1/2007.**

## Annex 2

### Transitional customs measures of the Act of Accession - Link with excise procedures

**Note:** The procedures described in this Annex which applied for the enlargement that took place in May 2004 apply *mutatis mutandis* to the accession of Bulgaria and Romania on 1 January 2007.



**EUROPEAN COMMISSION**

DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
TAX POLICY

**Excise duties and transport, environment and energy taxes**

Brussels, 09 October, 2003

**CED nr 447**

**TAXUD/2737/2003**

*POETRY: TAXUD/2003/01657/00/00/TRA*

**WORKING PAPER**

**FOR OFFICIAL USE ONLY**

### **EXCISE COMMITTEE**

**Information to the Member States**

**Enlargement of the EU – 1 May 2004  
Transitional customs measures of the Act of Accession  
Link with excise procedures**

**Meeting of 12, 13 and 14 November 2003**



## INTRODUCTION

As an annex to the present working paper, the delegations will find a working paper prepared by the Customs Directorate of DG TAXUD concerning transitional customs measures of the Act of Accession that will apply on the occasion of EU enlargement on 1 May 2004. This working paper was discussed at the meeting of the Customs Code Committee that took place on 18 September 2003.

## LINK WITH EXCISE PROCEDURES

The transitional customs measures outlined in the attached Annex sets out in Chapter III the basic principles to be applied in the customs area. In particular, it states that "in the interests of the facilitation of international trade, some transactions which have begun before accession and are terminated thereafter, should still be able to be completed according to the old rules". Chapter XI, point 2, further states that "Even where not expressly stated in the Act of Accession, customs procedures begun before accession must be discharged irrespective of whether these procedures were established with respect to a third country or between an old and a new Member State or between two new Member States." The same principles will of course apply to the movement of products subject to excise duty during the transitional phase.

Therefore, movements of products which **commenced and were entered at the customs office of exit from the Community before 1 May 2004**, and are subject to a Community customs procedure as set out in Article 5 of Directive 92/12/EEC<sup>6</sup> on the date of accession, will continue to be subject to that procedure until their discharge in the enlarged Community. Throughout, the excise duty will be suspended by virtue of the customs procedure. Once the products have cleared customs in the Member State of release for free circulation, and assuming the products are to be consigned in duty-suspense to a tax warehouse, the procedures for moving excise products under suspension of excise duty will apply.

**Products dispatched from a Member State for export to a new Member State via the territory of another Member State** but not entered at the customs office of exit before 1 May 2004. Prior to accession, a declaration for export (SAD) will have been made out at the office of exportation, as well as an AAD accompanying the excise products to the customs office of exit from the EU territory. However, the details entered in Boxes 7 and 7a of the AAD will require amendment showing the consignee and delivery address in the new Member State. Established procedures regarding change of consignee, delivery address and notation of Box B of the AAD should be followed.

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<sup>6</sup> on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (25 February 1992)