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Information document

CUSTOMS CODE COMMITTEE

Subject: EU enlargement in 2004

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 2004 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 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 acquis¹, 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 2003. 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 IV No 5 of the Act of Accession (“Customs Union (transitional measures and procedures)”) ² 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.

Articles 37 – 42 of the Act of Accession allow the adoption of other transitional measures as well as safeguard measures (see Annexes 1 and 2).

Annex IV No 4 of the Act of Accession covers specific measures with regard to agricultural products. Such measures are not treated in this document.

¹ 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.

² see http://europa.eu.int/comm/enlargement/negotiations/treaty_of_accession_2003/treaty_accession_13.htm or http://europa.eu.int/eur-lex/en/archive/2003/1_23620030923en.html (OJ L 236, 23.9.2003, p.33 in particular pages 799 to 801)

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*. Art. 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. 12 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. Law deriving from the Treaties is to be used in the revised version as amended by the Act of Accession (e.g. Annex II No 19 of the Act of Accession changes Art. 3 of the Customs Code so that the area of the new Member States also belongs to the Community's customs territory). 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. 8 and 9 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 all new Member States in the same way (see Annex IV No 5 of the Act of Accession).
4. Since at the time of signature of the Treaty of Accession on 16 April 2003 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 37 – 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 EC15 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 FOR ALL NEW MEMBER STATES

Annex IV No 5 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 IV No 5 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 issued 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 entered for free circulation (Annex IV No 5 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 Community status. It should also be noted that this excludes the use of EUR.1 certificates issued under the Association Agreements with Cyprus and Malta because these

Agreements do not contain a 'no-drawback rule'. As there is no prohibition of drawback of, or exemption from, customs duties, EUR.1 certificates are not a guarantee that duties on non-originating materials have been paid in Cyprus or Malta. However, goods from Cyprus and Malta are free of customs duties and other customs measures when entered for free circulation provided that their Community status is proven in accordance with point (b) below.

(b) For 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, Community treatment is applied 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 entered for free circulation (Annex IV No 5 of the Act of Accession, paragraphs 1(b) and 2).

2. Proof of preferential origin (trade with third countries)

(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 autonomous legislation of the new Member States shall be accepted in the respective new Member States, if

- the acquisition of such origin confers 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 15 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 September 2004 .

Where goods were declared for importation in a new Member State before 1 May 2004, 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 September 2004 (Annex IV No 5 of the Act of Accession, paragraph 3).

(b) Authorisations for “approved exporters” granted in the framework of agreements concluded with third countries (i.e. not within the enlarged Community) by the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia 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 EU15 (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 May 2005 as the ‘old’ authorisations will not be valid anymore as from 1 May 2005 (Annex IV No 5 of the Act of Accession, paragraph 4).

- (c) Requests for subsequent verification of proof of origin issued under the preferential agreements and arrangements referred to in paragraphs 3 and 4 of Annex IV No 5 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 of free circulation (Annex IV No 5 of the Act of Accession, paragraph 5).
- (d) Where proof of origin and/or the transport documents were issued before 1 May 2004 and where customs formalities are necessary in respect of trade of goods between the new and the old Member States or between the new Member States themselves, the provisions of the Protocols concerning the definition of the concept of “originating products” and methods of administrative co-operation of the relevant Agreements shall apply (Annex IV No 5 of the Act of Accession, paragraph 6). *(Note: This paragraph relates to subsequent verification of proof of origin and should logically have been inserted before paragraph 3 of Annex IV No 5 because situations in the enlarged Community are considered. Trade with third countries is not involved.)*

With regard to trade between Turkey and the new Member States the provisions under paragraphs (a) to (c) shall apply *mutatis mutandis* to A.TR movement certificates.

IV. CUSTOMS WAREHOUSING, FREE ZONES, 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 May 2004, on the other hand, can continue to operate.

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 IV No 5 of the Act of Accession, paragraph 7).

V. 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 IV No 5 of the Act of Accession, paragraph 12). However, as of the date of accession the authorisation holder must respect Community legislation except where the exceptions described below apply.

By virtue of Art. 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 CC).

The following special provisions apply to the discharge of the inward processing procedure in a new Member State after accession (Annex IV No 5 of the Act of Accession, paragraph 8):

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.

VI. 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 IV No 5 of the Act of Accession, paragraph 12). 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 IV No 5 of the Act of Accession, paragraph 9).

VII. TEMPORARY IMPORTATION

The following special provisions apply to the discharge of the temporary importation procedure in a new Member State after accession (Annex IV No 5 of the Act of Accession, paragraph 10):

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.

VIII. 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 IV No 5 of the Act of Accession, paragraph 12). 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 15 or a new Member State and which have been released for free circulation before accession at a zero duty rate is not permitted, except for imports of a non-commercial nature (Annex IV No 5 of the Act of Accession, paragraph 11).

IX. ENTRY IN THE ACCOUNTS, POST-CLEARANCE RECOVERY, REPAYMENT AND REMISSION

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, the recovery and/or correction is also 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, duty imposed according to national law is to be refunded or recovered (Annex IV No 5 of the Act of Accession, paragraphs 13 and 14). This also means that all other applicable provisions of national law in relation to recovery (e.g. time limit for recovery) apply.

X. 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.

XI. SOME PRACTICAL EXAMPLES

For information, some examples are given below, based on an accession date of 1.5.2004.

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 1.3.2003 with a duration of 3 years (period of validity) in an acceding country must be revoked or amended with effect from 1 May 2005. However the authorisation must be revoked (see Article 9 CC) with effect from 1 May 2004 if the authorisation covers PCC of ethyl alcohol originating in Brazil into ethyl acetate because the Customs Code Committee has decided in November 2003 that the economic conditions are not fulfilled in this particular case. The revocation does not effect 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 May 2004 in any case.

2. Discharge of customs procedures which have begun before accession

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. Thus if an acceding country establishes, for example, an external transit procedure with an old Member State on 30.04.2004, this must be terminated in any case. The same applies to a dispatch in the opposite direction.

In order to avoid goods, which are on the date of accession under a customs procedure, being subject to customs duties or other customs measures when entered 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. "When entered for free circulation" implies that a customs declaration is required. If, for instance, preferential goods originating in Poland are brought into Germany before accession within the framework of temporary importation and the goods are declared 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 Poland 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 Fifteen 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.

3. 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 IV No 5 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. Points 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 Poland under rules corresponding to Art. 112 (3) CC. These goods are declared for release for free circulation on 1 August 2006. 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 Polish 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 2006. The warehousekeeper submits a T2L document (issued retroactively in accordance with Article 314c (3) CCIP) because the goods were in free circulation in Hungary before the date of accession.

Solution: No import duties are due because proof of Community status is furnished (see Art. 23 - 25 EC-Treaty³).

Case 3: Import goods originating in Japan are placed before the date of accession under the **inward processing suspension system** in the Czech Republic. The compensating products, which are obtained from the import goods, are declared for release for free circulation on 1 July 2004. The declarant submits a T2 L 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 the Czech Republic.

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 Slovakia before the date of accession. A customs debt is incurred for these goods after the date of

³ “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.”

accession. On the date of their placement under this procedure the goods would have been subject to an **anti-dumping duty** in the EC15, not however in Slovakia.

Solution: Insofar as Art. 121 CC applies, antidumping duties must not be paid because EC15 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 May 2004. However, the import duties applicable in Slovakia 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 Slovenia 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 EC15.

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 Slovenia before 1 May 2004. The period for discharge is 1 December 2004. The goods are transferred after the date of accession to Italy where the goods are exhibited until 1 February 2005.

Solution: A customs debt is incurred because a new customs-approved treatment or use is not assigned to the goods by 1 December 2004. The Slovenian import duties are due. Nevertheless, such customs duties are own resources of the Community.

Case 7: Goods from Estonia are placed under **temporary importation with partial relief from import duties** in Finland before 1 May 2004. The goods are declared for free circulation in Finland on 1 June 2004. The declarant submits a T2 L document for the goods from Estonia.

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 May 2004. A further customs debt does not incur in case of release for free circulation.

Case 8: Goods from Germany are placed under temporary importation with an **ATA carnet** in Poland before the date of accession. These goods are declared for free circulation in Germany on 15 May 2004.

Solution: In principle the goods are duty-free, provided that their Community status is formally proven (see above III. Point (1)(a) and (b)). However, the exportation counterfoil certified by customs authorities is not a formal proof of Community status because this type of proof is not mentioned in Point 1 of Annex IV No 5 of the Act of Accession. Therefore, the goods which are covered by an ATA carnet should be declared for free

circulation as returned goods on the basis of the ATA carnet. The goods can be accepted as returned goods, provided that the conditions stipulated in the second indent of Article 848(1) CCIP are fulfilled. A copy of the re-importation voucher should be forwarded to the customs office which is indicated in box H.(e) of the re-exportation voucher. Thereby the Polish customs office of entry is informed that the temporary importation procedure has been discharged.

Case 9: Goods are temporarily exported under the **outward processing procedure** from Austria on 15 April 2004 into Hungary. The temporary export goods are under **inward processing** on the date of accession in Hungary. The compensating products are placed under the external transit procedure on 30 May 2004 and on the same day the products are declared for free circulation in Austria.

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 good) has been proven (see above III. Point 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 May 2004 or after that date, because the Europe Agreement establishing an association between EU 15 and Hungary 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 Estonia on 15 April 2004 and declared 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. Point 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 May 2004. The holder of authorisation wants to transfer the goods on 1 June 2004 to another authorisation holder who is established in Latvia. Is this transfer to Latvia 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 Germany before the date of accession. Goods are exported under exportation procedure from Germany to the Czech Republic before the date of accession. Goods are presented at the Czech customs office of destination with T2 document and have status of goods in temporary storage. A customs declaration for free circulation is accepted by the customs authorities on 30 April 2004. Goods are released for free circulation on 3 May 2004.

Solution: Annex IV No 5 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 30 April at the moment when the customs declaration for free circulation was accepted) and therefore the goods are

subject to Czech import duties. The import duties paid are own resources of the Czech Republic.

Case 13: Company "A", established in Belgium starts an export transport on 29 April 2004 from Belgium to Poland under coverage of an EU1 export declaration up to an EU-customs office of exit at the German-Polish border. However the goods arrive at the former German-Polish border on 3 May 2004.

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 IV No 5, paragraph 1 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 Poland 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 Polish VAT law.

Case 14: Company "A", established in Belgium, wants to export its Community goods to "B", a customer in Warsaw, Poland. The goods are placed under the **internal transit procedure** on 27 April 2004. The customs office of destination is in Warsaw. The goods arrive there via road transport on 3 May 2004.

Solution: The goods are under the internal transit procedure on 1 May 2004. 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 Poland in order to benefit from Community status. However, due to the fact that the goods are placed under the internal transit procedure (common transit 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 Poland as specified under Article 28p(5) of the 6th Directive so that the Polish 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 Germany before the date of accession. Subsequently, the goods are exported under the export procedure from Germany to the Czech Republic and leave the customs territory of the Community (of Fifteen) before the date of accession. The goods are placed under the customs warehousing procedure in the Czech Republic and are subsequently declared for release for free circulation as **returned goods** on 1 August 2004. The declarant presents an **INF 3** for the goods. This information sheet was issued by the German customs authorities before 1 May 2004.

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.

XII. SPECIAL CUSTOMS ARRANGEMENTS IN RELATION TO INDIVIDUAL ACCESSION COUNTRIES

Special arrangements in relation to individual accession countries for intra-Community trade and goods from third countries are given below. According to the internal market principle embodied in Art. 14 EC-Treaty, these deviations from free circulation of goods and/or the uniform external trade system may not be misused to carry out controls at internal frontiers.

1. Cyprus

Protocol No 3 on the Sovereign Base Areas (SBA) of the UK in Cyprus amends in its Annex Art. 3 (2) CC in that under the heading 'Cyprus' the SBA are considered to be part of the customs territory of the Community. Nevertheless, the UK is responsible for the application of Community customs legislation and customs controls within the SBA (Art. 7 (1) Protocol No 3). Only a part of the Community customs acquis is applied in the SBA, i.e. (Art. 2 Protocol No 3)

- the Customs Code and its implementing provisions,
- Regulation 2658/87 (Combined Nomenclature),
- Regulation 918/83 (Duty reliefs, insofar Art. 135 is amended in that imports for the use of UK forces or civilian staff or for their messes and canteens are duty-free),
- Regulation 3677/90 and Directive 92/109/EEC (precursors),
- Regulation 3911/92 (cultural goods),
- Regulation 3295/94 and implementing Regulation 1367/95 (counterfeit goods),
- Regulation 1334/2000 (dual-use items).

As far as the VAT treatment is concerned, these SBAs are deemed to be part of the Republic of Cyprus, whereby transactions originating in and intended for these SBAs for VAT purposes are treated as if they originate in or are intended for the Republic of Cyprus (See Part 2 of the Annex of Protocol N°3).

In addition, under Protocol No 10 on Cyprus, while the entire island of Cyprus is part of the Community's territory (Article 299 EC), the application of the acquis is suspended in those areas of the island which are not under the effective control of the Government of the Republic of Cyprus. This implies that for VAT purposes the application of the Sixth VAT Directive (Directive 77/388/EEC of 17 May 1977) is also suspended in those areas of Cyprus and therefore, those areas are treated as a third country. If a comprehensive settlement to the Cyprus problem is not reached by the date of accession, a Council Regulation, (to be adopted on the basis of Art. 2 (1) of Protocol No 10), will define the terms under which the provisions of EU law will apply to the line between those areas defined above and the areas in which the Government of the Republic of Cyprus exercises effective control.

2. Malta

Malta may until the end of the fifth year following the date of accession or until 31 December 2008, whichever is the earlier, open yearly tariff quotas for woven fabrics, denim, and made-up clothing accessories (CN Codes 5112 11 10, 5209 42 00, 5408 22 10, 6217 10 00) which are duty-free (first two years), at one third of the CCT duty rate (third and fourth year) or two thirds of the CCT duty (fifth year). The amounts of the tariff quotas and their purpose (production of men's and boy's outerwear in Malta) are also stipulated. The end-use provisions (Art. 21, 82 CC, Art. 291 – 300 CCIP) apply (Part Four, Title 1 Art. 24, Annex XI Transitional measures for Malta).

3. Hungary

Hungary may until the end of the third year following the date of accession or until 31 December 2007, whichever is the earlier, open a yearly tariff quota for not alloyed aluminium (CN Code 7601 10 00). A duty rate of 2 % or one third of the CCT duty, whichever is the higher, applies during the first year, and a duty rate of 4 % or two thirds of the CCT duty, whichever is the higher, during the second and third year. The amounts of the tariff quotas and their purpose (processing conferring Community origin in Hungary) are also stipulated. The end-use provisions (Art. 21, 82 CC, Art. 291 – 300 CIP) apply (Part Four, Title 1, Art. 24, Annex X Transitional measures for Hungary).

XIII. 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.

It is brought to the attention of the readers that some transitional provisions on origin will also be inserted in the Accession Protocols to be attached to the current agreements between the EU and third countries, with which at least one new Member State has an agreement or with which no new Member States have an agreement prior to accession.

In general it is recommended that operators should carefully consider whether or not goods which have been in free circulation in the EU 15 or in the new Member States before the date of accession have to be under a suspensive regime on 1 May 2004.

Annex 1

Specific transitional measures with regard to certain agricultural products

Extract from

**Commission Regulation (EC) No 1972/2003 of 10 November 2003
on transitional measures to be adopted in respect of trade in agricultural products on
account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania,
Hungary, Malta, Poland, Slovenia and Slovakia (OJ 293, 11.11.2003, p.3 / see
http://europa.eu.int/eur-lex/en/archive/2003/l_29320031111en.html)**

Article 3

Suspensive regime

1. This Article shall apply by way of derogation from Annex IV, Chapter 5, to the Act of Accession and from Articles 20 and 214 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code(8).

2. Products listed in Article 4(5), which before 1 May 2004 have been in free circulation in the Community of Fifteen or in a new Member State and on 1 May 2004 are in temporary storage or under one of the customs treatments or procedures referred to in Article 4(15)(b) and (16)(b) to (g) of Regulation (EEC) No 2913/92 in the enlarged Community, or which are in transport after having been the subject of export formalities within the enlarged Community shall be charged with the *erga omnes* import duty rate applicable on the date of release for free circulation.

The first subparagraph shall not apply to products exported from the Community of Fifteen if the importer gives evidence that no export refund has been sought for the products of the country of export. Upon the importer's request, the exporter shall arrange to obtain an endorsement by the competent authority on the export declaration that an export refund has not been sought for the products of the country of export.

3. Products listed in Article 4(5) coming from third countries which are under inward processing referred to in Article 4(16)(d) or temporary admission referred to in Article 4(16)(f) of Regulation (EEC) No 2913/92 in a new Member State on 1 May 2004 and which are released for free circulation on or after that date, shall be charged with the import duty applicable on the date of release for free circulation to products coming from third countries.

Important notes with regard to Article 3(2) of Regulation- No- 1972/2003:

- It is recommended that operators should carefully consider whether or not goods listed in Article 4 paragraph 5 of Regulation 1972/2003 which have been in free circulation in the EU 15 or in the new Member States before the date of accession are under a suspensive regime on 1 May 2004. If such products are put on the market the third

country duty rate (*erga omnes* import duty rate) is applicable even if the goods have been subject to import duties before the date of accession or if the goods are originating in the EU15 or in one of the new Member States. This has particular regard to trade from the new Member States to old Member State and between the new Member States. Goods exported without export refund from the EU15 into one of the new Member are not subject to import duties (see Article 3(2), second subparagraph, of Regulation 1972/2003).

- Returned goods are also covered by Article 3(2) of Regulation 1972/2003.

Example: Goods (CN code 0201 30 00) from Estonia left the Estonian customs territory before the date of accession and are "on the high seas" on 1 May 2004. The goods are declared for free circulation as returned goods in Belgium or in Estonia on 3 May 2004. The goods from Estonia are subject to the third country duty rate even if a T2 L document or a EUR 1 document is submitted to the customs authorities.

- Goods are charged with the third country duty rate (*erga omnes* import duty rate) on the date of their release for free circulation in accordance with Article 3(2) first subparagraph of Regulation 1972/2003. The expression "release for free circulation" covers all cases in which a customs debt is incurred in accordance with Articles 201 to 204 CC. Furthermore the term "*erga omnes* import duty rate" does not include anti-dumping duties, additional duties or countervailing duties.

Note with regard to Article 3(3) of Regulation No 1972/2003:

The term "import duty applicable on the date of release for free circulation" does not include anti-dumping duties, additional duties or countervailing duties.

Annex 2

Specific transitional measures with regard to sugar

Extract from

Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ L 9, 15.1.2004, p.10 / see http://europa.eu.int/eur-lex/en/archive/2004/l_00920040115en.html) ~~For the sugar sector measures similar to the suspensive regime as explained in Annex I will be applied. The respective legal provisions are currently being prepared by the Commission and will be adopted in due time.~~

Article 5

Suspensive regime

1. By way of derogation from Chapter 5 of Annex IV to the Act of Accession and from Articles 20 and 214 of Council Regulation (EEC) No 2913/92 (1), products falling within CN codes 1701, 1702, 1704, 1904, 1905, 2006, 2007, 2009, 2101 12 92, 2101 20 92, 2105 and 2202 except those listed in Article 4(5) of Commission Regulation (EC) No 1972/2003, shall be subjected to the erga omnes import duty rate, including any additional import duty applicable on the date of release for free circulation, provided that:

(a) before 1 May 2004, they have been in free circulation in the Community as constituted on 30 April 2004 or in a new Member State and;

(b) on 1 May 2004, they are:

(i) in temporary storage, or

(ii) under one of the customs treatments or procedures referred to in Article 4(15)(b) and Article 4(16)(b) to (g) of Regulation (EEC) No 2913/92 in the Community, or

(iii) in transport after having been subject to export formalities within the enlarged Community.

This first subparagraph shall not apply to products, with the exception of refined beet C sugar, C isoglucose syrup and C inulin syrup falling within CN codes 1701 99 10, 1701 99 90, 1702 30 10, 1702 40 10, 1702 60 10, 1702 90 30, 1702 60 80 and 1702 90 80 respectively, exported from the Community of Fifteen if the importer gives evidence that no export refund has been sought for the products of the country of export. Upon the importer's request, the exporter shall arrange to obtain an endorsement by the competent authority on the export declaration that an export refund has not been sought for the products of the country of export.

2. By way of derogation from Chapter 5 of Annex IV to the Act of Accession and from Articles 20 and 214 of Regulation (EEC) No 2913/92, products falling within CN codes

1701, 1702, 1704, 1904, 1905, 2006, 2007, 2009, 2101 12 92, 2101 20 92, 2105 and 2202 except those listed in Article 4(5) of Regulation (EC) No 1972/2003, coming from third countries shall be subjected to the import duty, including any additional import duty, applicable on the date of release for free circulation, provided that:

(a) they are under inward processing referred to in Article 4(16)(d) or temporary admission referred to in Article 4(16)(f) of Regulation (EEC) No 2913/92 in a new Member State on 1 May 2004;

(b) they are released for free circulation on or after 1 May 2004.

Important notes with regard to Article 5(1) of Regulation No 60/2004:

- It is recommended that operators should carefully consider whether or not goods covered by Article 5(1) of Regulation No 60/2004 which have been in free circulation in the EU 15 or in the new Member States before the date of accession are under a suspensive regime on 1 May 2004. If such products are put on the market the third country duty rate (*erga omnes* import duty rate including any additional import duty) is applicable even if the goods have been subject to import duties before the date of accession or if the goods are originating in the EU15 or in one of the new Member States. This has particular regard to trade from the new Member States to old Member State and between the new Member States. Goods other than refined beet C sugar, C isoglucose syrup and C inulin syrup exported without export refund from the EU15 into one of the new Member are not subject to import duties (see Article 5(1), second subparagraph, of Regulation 60/2004).

- Returned goods are also covered by Article 5(1) of Regulation 60/2004.

Example: Goods (CN code 2101 20 92) from Estonia left the Estonian customs territory before the date of accession and are "on the high seas" on 1 May 2004. The goods are declared for free circulation as returned goods in Belgium or in Estonia on 3 May 2004. The goods from Estonia are subject to the third country duty rate even if a T2 L document or a EUR 1 document is submitted to the customs authorities.

- Goods are charged with the third country duty rate (*erga omnes* import duty rate including any additional import duty) on the date of their release for free circulation in accordance with Article 5(1) first subparagraph of Regulation 60/2004. The expression "release for free circulation" covers all cases in which a customs debt is incurred in accordance with Articles 201 to 204 CC. Furthermore the term "*erga omnes* import duty rate, including any additional import duty, applicable on the date of release for free circulation," does not include anti-dumping duties, additional duties - with the exception of additional duties on sugar products - or countervailing duties.

Note with regard to Article 5(2) of Regulation No 60/2004:

The term "import duty, including any additional import duty, applicable on the date of release for free circulation" does not include anti-dumping duties, additional duties - with the exception of additional duties on sugar products - or countervailing duties.

Annex 3

Transitional measures applicable in the context of the Accession to the EU of the 10 applicant countries in the field of VAT.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
TAX POLICY
VAT and other turnover taxes

Brussels, 14 October 2003

INFORMATION NOTE

Subject: Transitional measures applicable in the context of the Accession to the EU of the 10 applicant countries in the field of VAT.

1. **Article 28p** of the Sixth VAT Directive (Directive 77/388/EEC of 17 May 1977), as modified by Annex II of the Accession Act [paragraph 9(3)(d)] describes the transitional measures applicable in the field of VAT in the framework of the Accession to the EU of 10 Applicant Countries on 1 May 2004.
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 of import duties or under one of the suspensive regimes mentioned under Article 16 of the Sixth VAT Directive (or similar procedures 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 on 1 May 2004.

A first conclusion is that the old rules continue to apply until the goods leave these regimes after 1/5/2004.

3. In principle, once they cease to be covered by this special regime, 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)].

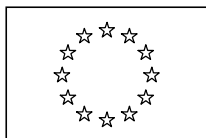
A second conclusion is that these goods will, in principle, be subject to VAT upon importation once they cease to be covered by these regimes after 1/5/2004.

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) are re-exported to the country from which they were exported to the person who exported them or
 - the goods are means of transport and they were acquired or imported before 1 May 2004 under the general conditions of taxation applicable in the country concerned and provided the VAT was not exempted on the basis of exportation or was not refunded.
5. **Nor will there be any VAT due** when the first use of the means of transport took place before 1 May 1996 (see Article 28p (7) as modified by the Accession Act).

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 1/5/2004.

Annex 4

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



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
TAX POLICY

Excise duties and transport, environment and energy taxes

Brussels, 09 October, 2003

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TAXUD/2737/2003

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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

1. 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.

2. 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/EEC⁴ 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.

⁴ on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (25 February 1992)