

9 March 2007

Screening report

Turkey

Chapter 29 – Customs union

Date of screening meetings:

Explanatory meeting: 31 January – 1 February 2006

Bilateral meeting: 13-14 March 2006

I. CHAPTER CONTENT

The customs union *acquis* consists almost exclusively of legislation which is directly binding on the Member States. It includes the EU Customs Code and its implementing provisions, the combined nomenclature, common customs tariff and provisions on tariff classification, customs duty relief, duty suspensions and certain tariff quotas, and other provisions such as those on customs control of counterfeit and pirated goods, drugs precursors, export of cultural goods as well as on mutual administrative assistance in customs matters and transit. Member States must ensure that the necessary implementing and enforcement capacities, including links to the relevant EU computerised customs systems, are in place. The customs services must also ensure adequate capacities to implement and enforce special rules laid down in related areas of the *acquis* such as external trade.

The *acquis* consists mainly of a number of instruments ensuring the functioning of the customs union and the effective protection and control of its external borders. Without the Community's Customs Union, the European Union's common commercial and development policy, its common agricultural market and an effective co-ordination of economic and monetary policies would not be possible.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Turkey and the discussions at the screening meeting. Turkey indicated that it can accept the *acquis* regarding customs union. Turkey indicated that it does not expect any difficulties to implement the *acquis* by accession.

II.a. Customs legislation

General customs rules and procedures

The customs rules that shall apply to goods and means of transport entering into and exiting from the customs territory of the Republic of Turkey have been determined by Customs Law No 4458 of 27 October 1999. The Implementing Regulation of Customs Law (IRCL) contains detailed provisions for the implementation of the Customs Law.

According to Article 2 of the Turkish Customs Law, the customs territory of the Republic of Turkey comprises the territory of the Republic of Turkey, including the territorial waters, the inland maritime waters and the airspace. However, according to Article 6 of the Free Zones Law No 3218, free zones are regarded as being outside the customs territory.

Articles 36 to 50 of Customs Law contain the provisions applicable to goods brought into the customs territory, from the time of their entry to the time of their being assigned customs-approved treatment or use. These provisions cover customs supervision, presentation of goods to customs, summary declaration, unloading of goods presented to customs, obligation to assign a customs-approved treatment or use to goods presented to customs, as well as temporary storage of goods.

The Customs Law contains also provisions on:

- "Customs-approved treatment or use of goods", which covers: (a) the placing of goods under a customs procedure, (b) their entry into a free zone, (c) their re-exportation from the customs territory of Turkey, (d) their destruction, (e) their abandonment to the Exchequer.

- "Customs procedures", which are (a) release for free circulation; (b) transit, (c) customs warehousing, (d) inward processing, (e) processing under customs control, (f) temporary admission, (g) outward processing, (h) exportation.

Release for free circulation of the goods that came to the customs territory of Turkey shall entail the application of trade policy measures, the completion of the other formalities laid down in respect of the importation of goods and the charging of any duties legally due.

The goods to be exported from the customs territory of Turkey and the relevant export declaration shall be lodged at the authorized customs office. Declarations are made on the single administrative document, in use since 1996.

Work is ongoing within Turkish Parliament to further align the Turkish Law with the Community *acquis*, but no timeframe was given during the screening meeting as regards the completion of this work.

Mutual administrative assistance

The main instrument, which lays down the provisions on mutual administrative assistance between Turkey and the Member States, is Annex 7 of Decision 1/95 of the EC-Turkey Association Council. Since the completion of the customs union in 1996, administrative assistance is carried out in accordance with this annex. Furthermore, Turkey has concluded bilateral agreements with 12 Member States: UK, Estonia, Poland, Greece, the Czech Republic, Lithuania, Slovakia, Spain, Italy, Latvia, Belgium, the Netherlands. Exchange of information under Annex 7 of Decision 1/95 of the EC-Turkey Association Council or under the bilateral agreements is carried out on request or spontaneously. Inquiries, investigations or special surveillance are conducted and findings are shared with the other parties accordingly.

Cultural goods

Article 63 of the Turkish Constitution states the State shall ensure the conservation of the historical, cultural and natural assets and wealth, and shall take supportive and promotive measures towards that end. Article 32 of the Law No 2863 of 23 July 1983 sets out the rules and procedures for only temporary exportation of goods subject to exhibition and the Ministry of Culture and Tourism is the competent authority in this respect. Cultural goods falling under Article 4 of the Implementing Regulation on the movable cultural goods having ethnographical value cannot be exported, while other goods can be exported on the basis of an official permit (expert's report) delivered by State museums.

Cash control at the borders

Importing money into Turkey does not require any declaration. When exporting money out of Turkey, a declaration needs to be made for all amounts exceeding \$5,000 or equivalent (see also chapter 4 – free movement of capital). Currency exceeding \$5,000 or equivalent can be exported if it had been declared when entering into Turkey (as regards non-residents) or if evidence is provided that this currency has been bought from banks and/or financial intermediaries in the framework of invisible transactions (as regards residents).

As regards the cash control intelligence, audits on irregularities are done at an *ad hoc* basis. In 2005, the customs authorities forwarded 82 cases to the financial crimes investigation Board. Turkey's law does not provide for a clear distinction between administrative penalties and criminal procedures.

Customs status of goods / transit

Article 3 of the Customs Law contains provisions on the customs status of the goods, which means that goods have or have not been released for free circulation in the customs territory of Turkey. Article 78 of the Customs Law contains provisions according to which goods lose their status of goods released for free circulation when i) the declaration for release for free circulation is invalidated or ii) import duties are remitted or reimbursed.

Transit is provided for under Articles 84-92 of the Customs Law and covers movement of goods that are not in free circulation and movement of export goods (i.e. when export formalities are completed in an inland customs office).

Turkey is signatory of several international Conventions covering transit (International transport of goods by road – TIR Carnet, Temporary importation – ATA Carnet, NATO goods – Form 302, Universal Postal Convention – however not implemented for transit procedures). Turkey presented in May 1995 its application to become member of the Convention on common transit and work is ongoing to fulfil the conditions required by this Convention.

In the field of computerisation, the Common Transit Program in BILGE is used in a pilot project at national level between two customs offices. NCTS (new computerised transit system) development is planned under the EU-funded project included in the Phare 2006 programme.

Procedures with economic impact

As defined by Article 79 of the Customs Law, there are five customs procedures with economic impact: customs warehousing, inward processing, processing under customs control, temporary importation and outward processing. The placement of goods under such procedure takes place on the basis of a prior authorization, the provision of a guarantee and the establishment of identification measures.

In contrast to EU *acquis*, free zones are regarded as being outside the customs territory of Turkey, according to Article 6 of the Free Zones Law No 3218. Turkey expressed its intention to discuss this issue during the negotiations.

Security aspects of the Customs Code

The amendments brought to the Community Customs Code are not yet in force in the Community. Turkey is developing a module on risk analysis within the computerised system (GÜMSIS project), but no timeframe has been mentioned during the screening meeting.

Work is ongoing to introduce in the Customs Law new provisions on authorized economic operators (i.e. reliable traders who may benefit from facilitation and simplification measures), but no timeframe was given during the screening meeting as regards the completion of this work.

Turkey became in June 2005 a Party to the Framework of standards of security and facilitation of the World Customs Organisation.

Counterfeit

Provisions on the protection of intellectual property rights are contained in the Customs Law and in the implementing regulation. These provisions concern counterfeit and pirated goods, as well as goods to produce them (such as moulds and matrices). Customs may intervene *ex officio* or upon request from the right holder.

Turkey has harmonized its laws with the relevant WTO provisions and has transposed Regulation 3295/94 (including the May 2002 amendments). Turkey is working on the transposition of Regulation 1383/03.

Turkey plans to set-up (no timing was given) a database containing relevant information about the right holders, as well as the characteristics of original goods, which will make easier a comparison between genuine products and suspicious goods presented to customs. This system will also contain risk criteria for targeting goods to be controlled.

Drug precursors

Turkey has transposed the relevant *acquis* (both the Regulations for trade with third countries and the Regulation for intra-Community trade) and has signed an agreement in this field with the European Community. Turkey uses the UN list of chemicals subject to control.

The Ministry of Health is the main authority which gives permission for manufacturing, importation and exportation, transportation, possession or purchase and sale of precursors.

Customs valuation

Turkey applies the rules of the World Trade Organisation since 1994, as well as the customs valuation rules contained in the *acquis*, as required by the EC-Turkey customs union.

Customs classification and tariff

Classification of goods is made on the basis of the harmonised system and the combined nomenclature, to which national digits and statistical codes are added. Classification may take place prior to the importation (binding tariff information), upon declaration (on the single administrative document) or after import (in case of post-clearance verification).

The full TARIC (integrated Community tariff) application cannot be implemented before accession, but the computerised Turkish system (BILGE) integrates tariff measures to be implemented in Turkey. An EU-funded project is ongoing for the development of ITMS (integrated tariff management system).

Tariff derogations include autonomous suspensions (negotiated with the Member States within the relevant Working Group) and autonomous tariff quotas (decided at national level after authorization from the European Commission).

Duty relief

Provisions on duty relief are contained in Article 167 of the Turkish Customs Law and are based on Regulation 918/83, although not fully in line with the latter.

Rules of origin

Non-preferential rules of origin are contained in Articles 17-21 of the Turkish Customs Law and Articles 23-33 of IRCL.

Preferential rules of origin are contained in free trade agreements to which Turkey is party and in autonomous arrangements granted by Turkey since 2001 in the general system of preferences. In reply to a question from the Commission, Turkey stated that all EC certificates of origin and other customs documents were accepted by the Turkish authorities.

Binding origin information is issued by the customs authorities upon request of the applicant, according to Article 9 of the Turkish Customs Law and Article 11 of IRCL.

Customs union and international customs cooperation

Turkey is member of a number of international conventions, such as the revised Kyoto Convention, the Convention on Harmonised System, the Istanbul Convention (with the same reservations as the Community), the Convention on international transport of goods by road – TIR, the Convention on the harmonisation of frontier control of goods, and the Convention on temporary importation of private and commercial road vehicles.

Turkey has concluded customs cooperation agreements with 43 countries and negotiations are in progress with 26 more countries.

Turkey stated that the EC-Turkey customs union had been extended in order to include the ten new Member States that joined the EU in May 2004.

II.b. Administrative and operational capacity

Administrative organisation

Turkish Customs is organised under the Prime Ministry. A State Minister is responsible for customs. Under-secretary is the Head of Turkish Customs. Within the Under-secretariat, there are 4 main units, 4 consultative and supervisory units and 5 supporting units. About 1200 officers work at the central level of Turkish Customs.

There are 18 regional directorates and 143 customs offices. About 6700 officers work at the regional level.

Customs offices are situated at 20 land border gates, 7 railway border gates, 27 international airports, 42 seaports, 8 free zones and 39 inland customs offices.

Turkish Customs works in cooperation with a series of other enforcement bodies, such as the Ministry of Interior, the Under-Secretariat for Foreign Trade and the Ministry of Health.

Computerisation

Turkey has a comprehensive computer system, BILGE, in place for customs control and trade facilitation. Work is ongoing to develop this system into a web-based technology, but no timeframe was given during the screening meeting as regards the completion of this work.

By the end of 2005, 71 customs offices and 16 regional directorates were automated and 99.5% of all customs procedures were carried out electronically. IT infrastructures of the remaining 54 customs offices have been completed and Turkey is planning to start BILGE applications at these customs offices by mid-2006. After that, all customs transactions are going to be carried out electronically.

Traders can submit their declarations through kiosks located in 71 customs offices, or via Internet, or from their own offices through EDI (Electronic Data Interchange) messages.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall, there is a considerable level of alignment of the Turkish Customs Law on the *acquis* in the field of the customs union. The level of administrative capacity is globally satisfactory. This process is facilitated by the fact that since the establishment of the EC-Turkey customs union in 1996, Turkey has already adopted and enforced much of the *acquis* in this area. However, as long as restrictions on free movement of goods carried by vessels and airplanes registered in Cyprus or where the last port of call was Cyprus remain, Turkey will not be in a position to fully implement the *acquis* relating to the EC-Turkey customs union.

Some discrepancies have been identified, but during the screening meeting the Turkish authorities did not present plans on how they intend to address the shortcomings.

III.a. Customs legislation

General customs rules and procedures

General rules and procedures are largely aligned on the *acquis*, due to the provisions of the EC-Turkey customs union.

Mutual administrative assistance

As Regulation 515/97 is about mutual assistance between Member States, it will be applicable upon accession only, but Turkey has already acquired experience in this field, notably through the implementation of Annex 7 of Decision 1/95 of the EC/Turkey Association Council.

Cultural goods

There is a high degree of alignment. However, the Turkish legislation does not reflect the facilitations provided for in the Community legislation by the possibility to grant specific and general open licences¹, as per Regulation 1526/98. Also, the Turkish legislation includes a total ban on final export of cultural goods, which is not in line with the above-mentioned Regulation.

Cash control at the borders

The following discrepancies between the Turkish law and the EU *acquis* have been identified:

- Importing money into Turkey does not require any declaration. This provision is different from Regulation 1889/2005, which requires a declaration for all amounts exceeding €10,000 in order to prevent money laundering.
- Export of cash from Turkey requires declaration for amounts higher than \$5,000, whereas the EU *acquis* require such declaration only for amounts exceeding €10,000.
- As regards the cash control intelligence, Turkey's law differs from the *acquis*, since in the Community all declarations are forwarded, while in Turkey audits on irregularities are done at an ad hoc basis.

Customs status of goods / transit

¹ See Articles 10 to 15 of Commission Regulation no. 752/93 of 30 March 1993 (O.J. L 77 p. 24) as last amended by Commission Regulation no. 656/2004 of 7 April 2004 (O.J. L 104, p. 50).

The following discrepancies between Turkish law and the EU *acquis* have been identified:

- a transit procedure is used to cover goods at export from an inland post to the post of exit;
- goods in free circulation lose their status when leaving the customs territory, as no evidence such as T2L documents or INF information sheets is in use;
- in certain cases, customs officers shall accompany the goods, which is not provided for in the Community Customs Code;
- the guarantee system is not in line with the *acquis*.

Procedures with economic impact

Regards procedures with economic impact, the overall alignment with the EU *acquis* is high, except for a major discrepancy in the field of free zones (Special Economic Zones – SEZ), which are considered as being outside Turkey's customs territory.

A few other differences have also been identified:

- for inward processing, there is also relief in indirect taxation, which is not the case in the Community;
- in Turkey, simplified procedures for inward processing are not applicable to goods falling under HS Chapters 01 to 04, whereas such exclusion does not exist in the Community;
- inward processing and processing under customs control in free zones are allowed in the Community Customs Code, but not in the Turkish Customs Law;
- in Turkey, the scope of exclusion from partial relief in temporary importation is narrower than in the Community, as partial relief may not be granted for textile and clothing products;
- Category II free zones or free warehouses are provided for in the Community Customs Code, but not in the Turkish Customs Law.

Security aspects of the Customs Code

No assessment can be made at this stage, since the implementing provisions in question are not yet adopted in the Community.

Counterfeit

The Turkish law is not aligned on the EU *acquis* currently in force. The main differences are the following:

- transshipment is not covered in the Turkish Customs Law, but well in EC Regulation 1383/03;
- the request for application as stakeholder is subject to a fee, whereas in the EU *acquis* this is free of charge;
- certain rights (e.g. supplementary protection certificates) are not covered in the Turkish Customs Law, but well in EC Regulation 1383/03;
- postal parcels for non-commercial use are not covered in the Turkish Customs Law, but well in EC Regulation 1383/03;
- fees are applied in Turkey to cover cost of seizure, whereas no fee or guarantee is applicable in the Community.

Drug precursors

The legislative alignment is almost completed. However, Turkey should use the same annexes as the Community legislation, in which scheduled substances are divided into three categories.

Customs valuation

The overall alignment with the EU *acquis* is high, as Turkey has been implementing WTO rules, on which the *acquis* is based.

However, as some elements to be added to customs value after importation are different in Turkey than in the Community, Turkey is currently re-writing its corporate law in order to deal with the issue of transfer pricing.

Customs classification and tariff

The alignment is high as far as classification is concerned. Turkey has to work further on the transposition into its legislation of the classification regulations adopted by the European Commission, since not more than 27 such regulations (out of more than 300) have been transposed so far.

Some definitions related to the customs tariff and tariff classification may be different.

There is an important difference as regards the management of tariff quotas, as the Turkish legislation provides for the delivery of licenses prior to the actual arrival of the goods in Turkey, whereas in the Community the "first come first serve" principle is applied after arrival of the goods.

Duty relief

There are discrepancies between Turkish law and the EU *acquis*:

- duty exemptions for gifts (€300) and postal packages (€100) are respectively seven and five times higher than the Community's relief;
- as regards the transfer of residence, the person has to stay abroad 24 months (for civil servants, whereas no limits are set for other persons) instead of 12 to benefit from customs relief and cars older than three years do not benefit from duty relief;
- there is no relief for the establishment of a second residence in Turkey;
- for travellers, the maximum quantities of goods are more restrictive than in the Community; some restrictions are in place for cross-border workers, but these rules appear to be difficult to implement;
- there are tax free shops upon arrival in Turkey, which not only are not provided for in the *acquis*, but also should have been dismantled since the completion of the EC-Turkey customs union in 1996.

Rules of origin

As regards non-preferential rules of origin, differences have been identified as follows:

- for the implementation of the concept of "last substantial transformation", Turkey applies a case-by-case approach and does not always use the guidelines or negotiation position within the World Trade Organisation to interpret this concept;

- the list of processing considered as insufficient for establishing the origin covers all types of products in Turkey, whereas only textile products are concerned in the Community;
- different types of certificates are used in the Community, whereas the Turkish law provides for one certificate only;
- Turkey has no provision equivalent to the *acquis* to challenge the origin declared; this need is covered by more general provisions on the control of customs declarations.

As regards preferential rules of origin, Turkey has still to negotiate agreements in order to apply the Euro-Med cumulation. In addition, Turkey should start envisaging to use the system of supplier's declaration also within Turkey as it is used within the Community and not only between Turkey and the Community.

Customs union and international customs cooperation

As regards the agreements that Turkey has concluded with third countries, Turkey should confirm its readiness to bring first pillar provisions contained therein into compliance with the *acquis*, or to denounce them, if they are not compatible with the *acquis*.

Measures have been taken in order to extend the EC-Turkey customs union to the 10 countries that joined the EU in May 2004 and to the 2 countries that joined in January 2007, but access to ports and airports is still restricted for vessels and airplanes registered in Cyprus.

III.b. Administrative and operational capacity

Administrative capacity

From the first day of accession, the Turkish customs administration will have to manage and control Turkey's borders, which will then be external borders of the Union, in the interest of the EU population and trade operators. As there is no Community customs administration in place, the customs *acquis* must be implemented in a homogeneous and harmonised way at any point of the border of the Union. This process should be facilitated by the implementation of common rules within the EC-Turkey customs union for about ten years. Nevertheless, the Turkish Customs Administration should ensure that all the relevant Customs law and regulations are consistently applied in all its offices.

The Turkish customs administration must guarantee that the development and implementation of a revenue collection and management strategy will enable domestic and EU customs revenues to be accurately collected, accounted, disbursed, reported and audited, both nationally and by the EU. This requires Turkey to develop policies, systems, procedures, technologies and instruments compatible with the EU requirements and standards. The roles, responsibilities and links between the central and regional offices must be clearly defined.

The Turkish customs administration will be requested to have in place all necessary facilities to develop straightforward and efficient customs control operations at ports, airports and land borders, and inland, capable of facilitating a flow of legitimate passengers and trade while ensuring collection of national and EU revenue and the social protection of national and EU citizens.

Computerisation

Accession to the EU requires that the level of computerisation complies with the requirements of the *acquis* and that IT systems used by the customs administrations are inter-connected with EU systems, via a common secured gateway CCN/CSI.

As regards transit procedures, Turkey will have to ensure that its national transit IT system is compatible and inter-connected with the NCTS (new computerised transit system) in place in all Member States and the other contracting parties to the Convention on common transit. Work has started in this area.

With regards to tariff, Turkey will be required to inter-connect its systems with several EU IT systems, which guarantee the correct application of the EU external tariff and of the EU trade policy measures. Turkey has planned projects to develop a fully automated TARIC-compatible IT system.

A project is currently being implemented which contains in particular a component on information technology, under which a gap analysis has been carried out. Turkey has therefore the knowledge of the areas where further efforts should be devoted regarding the harmonisation of customs IT systems with EU requirements.

Turkey at present does not have IT systems inter-connected to the required EU IT systems. Turkey has to develop a coherent strategy to develop EU-compatible IT systems, and needs to further develop its IT systems in order to allow the exchange of computerised data between the EU and the Turkish customs administration upon accession.