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– CROATIA –**

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Subject : EUROPEAN UNION COMMON POSITION
Chapter 29: Customs Union

EUROPEAN UNION COMMON POSITION

(Revision of CONF-HR 17/06)

Chapter 29: Customs Union

This position of the European Union is based on its general position for the Accession Conference with Croatia (CONF-HR 2/05), and is subject to the negotiating principles endorsed by the Accession Conference (CONF-HR 5/05), in particular:

- any view expressed by either party on a chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements – even partial agreements – reached during the course of the negotiations on chapters to be examined successively may not be considered as final until an overall agreement has been established;

as well as to the requirements set out in points 13, 16 and 26 of the Negotiating Framework.

The EU underlines the importance for Croatia of compliance with the Stabilisation and Association Agreement as well as the Accession Partnership, which constitute basic elements of the pre-accession strategy.

The EU encourages Croatia to continue the process of alignment on the *acquis* and its effective implementation and enforcement, and in general develop, already before accession, policies and instruments as close as possible to those of the EU. In particular, the EU encourages Croatia to ensure that all the measures necessary to implement the security aspects of the EU Customs Code are put in place by the time of accession.

The EU notes that Croatia, in its positions CONF-HR 6/06 and 28/08, accepts the *acquis* under Chapter 29 as in force on 1 September 2008, and declares that it will be ready to implement it by the date of its accession to the European Union.

Customs legislation

The EU welcomes the adoption of the Acts on Changes and Amendments to the Customs Act in January 2007 and May 2008, providing alignment on transit procedures, duty relief, invalidation of customs declarations, re-payment of customs duty, non-preferential rules of origin, guarantee for transit procedures, and other customs procedures. The EU also notes the adoption of other legislative acts, which brought further alignment on the *acquis* in the fields of counterfeiting, cultural goods, drug precursors and tariffs. These meet the requirements set in the first closing benchmark as set out in the EU Common Position CONF-HR 17/06.

The EU takes note of the good progress achieved and encourages Croatia to continue harmonising its customs legislation until accession, as the EU Customs Code will be automatically in force in Croatia as from the date of accession.

The EU takes note of Croatia's commitment to apply the full EU *acquis* in Chapter 29 at all its borders and to take appropriate steps with a view to abolishing or amending, as appropriate, any provision in the relevant bilateral agreements that may not be compatible with the EU *acquis*, as from the date of accession.

The EU invites Croatia to keep it regularly informed of the developments and steps undertaken as regards further alignment of its customs legislation on the EU *acquis*.

Administrative and operational capacity

Administrative organisation

The EU takes note of the progress made by the Croatian Customs in strengthening its capacity to effectively implement and enforce the customs legislation.

Croatia adopted a comprehensive Business Strategy for the Customs in May 2007 and its Business Change Management Plan in July 2007, and has been consistently implementing them since.

The EU welcomes the adoption of the Code of Ethics for the employees of the Ministry of Finance and Customs Administration, and the establishment of the Board of Ethics. The EU notes the strengthening of the central Department for Internal Supervision and Control, and the organisational role attributed to it, to ensure the consistent and coherent application of customs law in all customs offices. The EU invites Croatia to continue strengthening this department and to put in place the necessary procedures and controls so as to guarantee that procedures are correctly and consistently applied across all its customs offices.

Croatia has rolled out a new IT-based integrated risk analysis system, including the relevant procedure to ensure its effective functioning. The EU notes that the system has been deployed to all customs offices and adequate procedures have been put in place for its effective functioning, including feedback mechanisms and clear lines of responsibilities. The EU encourages Croatia to continue strengthening its risk-analysis procedures and systems, in order to ensure effective and efficient controls at its offices. These measures meet the requirements set in the second closing benchmark as set out in the EU Common Position CONF-HR 17/06.

The EU underlines that Croatia must pay attention to the proper management and control of the high number of free zones in the country.

The EU invites Croatia to continue reinforcing its administrative capacity to effectively implement and enforce the EU *acquis* in this chapter.

The EU invites Croatia to keep it regularly informed of the developments and steps undertaken as regards further strengthening of its administrative capacity in the customs area.

Computerisation

The EU takes note of the adoption and the regular updating of the Croatian Customs IT Strategy, including the Interoperability Implementation Strategy (IIS).

The EU takes note of the successful completion of the twinning projects related to interconnectivity preparations for the New Computerised Transit System (NCTS) and the Integrated Tariff Management System (ITMS). The EU also takes note of the substantial progress made in the IT development of the above systems, as well as in the preparations for the Common Communication System and Common System Interface (CCN/CSI). The EU takes note of the capacity of the Croatian Customs to make consistent progress in its IT projects. The progress made so far meets the requirements set in the third closing benchmark as set out in the EU Common Position CONF-HR 17/06.

The EU encourages Croatia to continue its preparations in this area, in order to ensure that all relevant systems are in place and able to exchange information with the EU and other Member States as from the day of accession.

The EU invites Croatia to keep it regularly informed of the developments and steps undertaken as regards further development of the accession-mandatory IT systems in the customs area.

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The EU recalls that it considers it necessary to include provisions on the following items in the Accession Treaty with Croatia (text annexed):

- a provision ensuring continued validity after accession of proof of origin issued before accession in the framework of preferential agreements concluded by the applicant State with third countries. Such a measure is necessary in order to respect the legitimate expectations of operators;
- provisions concerning customs warehousing, inward processing, outward processing, processing under customs control and temporary importation. Such provisions are necessary in order to specify the conditions under which these procedures shall be discharged;
- provisions concerning remission, recovery and repayment of duties. Such provisions are necessary for the proper management of resources.

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In view of all the above considerations, the EU notes that, at this stage, this chapter does not require further negotiations.

Monitoring of progress in the alignment on and implementation of the *acquis* will continue throughout the negotiations. The EU underlines that it will devote particular attention to monitoring all specific issues mentioned above with a view to ensuring Croatia's administrative capacity to implement an effective customs policy. A final assessment of the conformity of Croatia's legislation with the *acquis* and of its implementation capacity can be made only at a later stage of the negotiations. In addition to all the information the EU may require for the negotiations in this chapter and which is to be provided to the Conference, the EU invites Croatia to regularly provide detailed written information to the Stabilisation and Association Council on progress in the implementation of the *acquis*.

In view of all the above considerations, the EU will, if necessary, return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new *acquis* between 1 September 2008 and the conclusion of the negotiations.

Annex

(on provisions ensuring continued validity after accession of proof of origin issued before accession, concerning customs warehousing, inward processing, outward processing, processing under customs control, temporary importation and authorised economic operators, and concerning remission, recovery and repayment of duties)

Council Regulation (EEC) No 2913/92 of 12 October 1992 (OJ L 302, 19.10.1992), as last amended, and Commission Regulation (EEC) No 2454/93 of 2 July 1993 (OJ L 253, 11.10.1993), as last amended, and protocols of origin included in preferential agreements concluded by the Community:

Regulation (EEC) No 2913/92 and Regulation (EEC) No 2454/93 shall apply to Croatia subject to the following specific provisions:

PROOF OF COMMUNITY STATUS (TRADE WITHIN THE ENLARGED COMMUNITY)

1. Notwithstanding Article 20 of Regulation (EEC) No 2913/92, goods which on the date of accession are in temporary storage or under one of the customs treatments and procedures referred to in Article 4(15)(b) and (16)(b) to (g) of that Regulation in the enlarged Community, or which are in transport after having been the subject of export formalities within the enlarged Community, shall be free of customs duties and other customs measures when declared for release for free circulation within the enlarged Community on condition that one of the following is presented:
 - (a) proof of preferential origin properly issued or made out prior to the date of accession under the Stabilisation and Association Agreement¹;
 - (b) any of the means of proof of Community status referred to in Article 314c of Regulation (EEC) No 2454/93;
 - (c) an ATA carnet issued before the date of accession in a present Member State or in Croatia.

¹ OJ L 26, 28.1.2005.

2. For the purpose of issuing the proofs referred to in paragraph 1(b) above, with reference to the situation at the date of accession and in addition to the provisions of Article 4(7) of Regulation (EEC) No 2913/92, "Community goods" shall mean goods:
- wholly obtained in the territory of Croatia under conditions identical to those of Article 23 of Regulation (EEC) No 2913/92 and not incorporating goods imported from other countries or territories; or
 - imported from countries or territories other than Croatia, and released for free circulation in that country; or
 - obtained or produced in Croatia, either from goods referred to in the second indent of this paragraph alone or from goods referred to in the first and second indent of this paragraph.
3. For the purpose of verifying the proofs referred to in paragraph 1(a) above, the provisions concerning the definition of the concept of "originating products" and methods of administrative cooperation under the Stabilisation and Association Agreement shall apply. Requests for subsequent verification of those proofs shall be accepted by the competent customs authorities of the present Member States and of Croatia 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.

PROOF OF PREFERENTIAL ORIGIN (TRADE WITH THIRD COUNTRIES, INCLUDING TURKEY, IN THE FRAMEWORK OF THE PREFERENTIAL AGREEMENTS ON AGRICULTURE, COAL AND STEEL PRODUCTS)

4. Without prejudice to the application of any measure deriving from the common commercial policy, proof of origin properly issued by third countries or made out in the framework of preferential agreements concluded by the Community with those countries shall be accepted in Croatia, provided that:

- (a) 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 those third countries or groups of countries, as referred to in Article 20(3)(d) and (e) of Regulation (EEC) No 2913/92; and
- (b) the proof of origin and the transport documents were issued or made out no later than the day before the date of accession; and
- (c) 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 Croatia prior to the date of accession, proof of origin issued or made out retrospectively under preferential agreements or arrangements in force in the Community at the date of the release for free circulation may also be accepted in Croatia, provided that it is submitted to the customs authorities within the period of four months from the date of accession.

5. Croatia is authorised to retain the authorisations with which the status of "approved exporters" has been granted in the framework of agreements concluded with third countries, provided that:

- (a) such a provision is also provided for in the agreements concluded prior to the date of accession by those third countries with the Community; and
- (b) the approved exporters apply the rules of origin provided for in those agreements.

These authorisations shall be replaced by Croatia, no later than one year after the date of accession, by new authorisations issued under the conditions of Community legislation.

6. For the purpose of verifying the proofs referred to in paragraph 4, the provisions concerning the definition of the concept of "originating products" and methods of administrative cooperation of the relevant agreements or arrangements shall apply. Requests for subsequent verification of those proofs shall be accepted by the competent customs authorities of the present Member States and of Croatia 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.
7. 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 Croatia for the release for free circulation of goods which on the date of accession are either in transport or in temporary storage, in a customs warehouse or in a free zone in one of these third countries or in Croatia, provided that Croatia 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:
 - (a) 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, as referred to in Article 20(3)(d) and (e) of Regulation (EEC) No 2913/92; and
 - (b) the transport documents were issued no later than the day before the date of accession; and
 - (c) the proof of origin issued retrospectively is submitted to the customs authorities within four months of the date of accession.

8. For the purpose of verifying the proofs referred to in paragraph 7, the provisions concerning the definition of the concept of "originating products" and methods of administrative cooperation of the relevant agreements or arrangements shall apply.

PROOF OF STATUS UNDER THE PROVISIONS ON FREE CIRCULATION FOR INDUSTRIAL PRODUCTS WITHIN THE EC-TURKEY CUSTOMS UNION

9. Proofs of origin properly issued by either Turkey or Croatia 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 Council², provided that:
- (a) the proof of origin and the transport documents were issued no later than the day before the date of accession; and
 - (b) 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 Croatia, 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.

² Decision No 1/95 of the EC-Turkey Association Council of 22.12.1995 on implementing the final phase of the Customs Union (OJ L 35, 13.2.1996, p. 1). Decision as last amended by Decision No 2/99 of the EC-Turkey Association Council (OJ L 72, 18.3.1999, p. 36).

10. For the purpose of verifying the proofs referred to in paragraph 9, 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 Croatia 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.

11. 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 Croatia 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 (g) of Regulation (EEC) No 2913/92 in Turkey or in Croatia, provided that:
 - (a) no proof of origin as referred to in paragraph 9 is submitted for the goods concerned;
and
 - (b) the goods comply with the conditions for the implementation of the provisions on free circulation for industrial products; and
 - (c) the transport documents were issued no later than the day before the date of accession;
and
 - (d) the A.TR movement certificate is submitted to the customs authorities within four months of the date of accession.

12. For the purpose of verifying the A.TR movement certificates referred to in paragraph 11 above, the provisions concerning the issue of A.TR movement certificates and methods of administrative cooperation under Decision No 1/2001 of the EC-Turkey Customs Cooperation Committee³ shall apply.

CUSTOMS PROCEDURES

13. Temporary storage and customs procedures referred to in Article 4(16) (b) to (g) of Regulation (EEC) No 2913/92 which have begun before accession shall be ended or discharged under the conditions of Community legislation.
- Where the end or discharge gives rise to a customs debt, the amount of import duty 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.
14. The procedures governing customs warehousing laid down in Articles 84 to 90 and 98 to 113 of Regulation (EEC) No 2913/92 and Articles 496 to 535 of Regulation (EEC) No 2454/93 shall apply to Croatia subject to the following specific provisions:
- Where the amount of a customs debt is determined on the basis of the nature of the import goods and where the declaration placing the goods under the procedure was accepted prior to the date of accession, the tariff classification, quantity, value for customs purposes and origin of the import goods at the time they were placed under the procedure shall result from the legislation applicable before the date of accession in Croatia.

³ Decision No 1/2001 of the EC-Turkey Customs Cooperation Committee of 28.3.2001 amending Decision No 1/96 laying down detailed rules for the application of Decision No 1/95 of the EC-Turkey Association Council (OJ L 98, 7.4.2001, p. 31). Decision as last amended by Decision No 1/2003 of the EC-Turkey Customs Cooperation Committee (OJ L 28, 4.2.2003, p. 51).

15. The procedures governing inward processing laid down in Articles 84 to 90 and 114 to 129 of Regulation (EEC) No 2913/92 and Articles 496 to 523 and 536 to 550 of Regulation (EEC) No 2454/93 shall apply to Croatia subject to the following specific provisions:

- Where the amount of a customs debt is determined on the basis of the nature of the import goods and where the declaration placing the goods under the procedure was accepted prior to the date of accession, the tariff classification, quantity, value for customs purposes and origin of the import goods at the time they were placed under the procedure shall result from the legislation applicable before the date of accession in Croatia.
- Where the discharge gives rise to a customs debt, in order to maintain equity between the holders of authorisations established in the present Member States and those in Croatia, compensatory interest shall be paid on the import duties due under the conditions of Community legislation from the date of accession.
- If the 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 Croatia, where the customs debt in respect of which the drawback is requested was incurred before the date of accession.

16. The procedures governing temporary importation laid down in Articles 84 to 90 and 137 to 144 of Regulation (EEC) No 2913/92 and Articles 496 to 523 and 553 to 584 of Regulation (EEC) No 2454/93 shall apply to Croatia subject to the following specific provisions:

- Where the amount of a customs debt is determined on the basis of the nature of the import goods and where the declaration placing the goods under the procedure was accepted prior to the date of accession, the tariff classification, quantity, value for customs purposes and origin of the import goods at the time they were placed under the procedure shall result from the legislation applicable before the date of accession in Croatia.
 - Where the discharge gives rise to a customs debt, in order to maintain equity between the holders of authorisations established in the present Member States and those in Croatia, compensatory interest shall be paid on the import duties due under the conditions of Community legislation from the date of accession.
17. The procedures governing outward processing laid down in Articles 84 to 90 and 145 to 160 of Regulation (EEC) No 2913/92 and Articles 496 to 523 and 585 to 592 of Regulation (EEC) No 2454/93 shall apply to Croatia subject to the following specific provisions:
- Article 591, second paragraph, of Regulation (EEC) No 2454/93 shall apply *mutatis mutandis* to temporary export goods which have been exported temporarily before the date of accession from Croatia.

OTHER PROVISIONS

18. Authorisations which have been granted by Croatia before the date of accession for the use of the customs procedures referred to in Article 4(16)(c), (d), (e) and (g) or the status of Authorised Economic Operators referred to in Article 5a(2) of Regulation (EEC) No 2913/92 shall be valid until the end of their validity or one year after the date of accession, whichever is the earlier.

19. The procedures governing incurrence of a customs debt, entry in the accounts and post-clearance recovery laid down in Articles 201 to 232 of Regulation (EEC) No 2913/92 and Articles 859 to 876a of Regulation (EEC) No 2454/93 shall apply to Croatia subject to the following specific provisions:
- Recovery shall be effected under the conditions of Community legislation. However, where the customs debt was incurred before the date of accession, recovery shall be effected under the conditions in force in Croatia before accession, by it and in its own favour.
20. The procedures governing repayment and remission of duty laid down in Articles 235 to 242 of Regulation (EEC) No 2913/92 and Articles 877 to 912 of Regulation (EEC) No 2454/93 shall apply to Croatia subject to the following specific provisions:
- Repayment and remission of duties shall be effected under the conditions of Community legislation. However, where the duties of which repayment or remission is requested relate to a customs debt which was incurred before the date of accession, the repayment and remission of duties shall be effected under the conditions in force in Croatia before accession, by it and at its own expense.