

**EUROPEAN UNION COMMON POSITION
(Replaces doc. 20392/01 CONF-BG 29/01)**

Subject : Chapter 25: Customs Union

This position of the European Union is based on its general position for the Accession Conference with Bulgaria (CONF-BG 2/00), and is subject to the negotiating principles endorsed by the Conference (CONF-BG 14/00), 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 – 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".

The EU underlines the importance for Bulgaria of compliance with the Europe Agreement as well as the Accession Partnership, which constitute basic elements of the enhanced pre-accession strategy. The EU encourages Bulgaria to continue the alignment of its policies with the *acquis* and its effective implementation.

The EU notes that Bulgaria, in its positions (CONF-BG 56/00, 2/01 and 70/01), accepts the *acquis* under chapter 25 as in force on 31 December 2000, and declares that it will be able to implement it by accession. In this context, the EU notes that Bulgaria considers 1 January 2007 as the reference date for its accession to the European Union. The EU also takes note of the additional information provided by Bulgaria (CONF-BG 70/01 and 31/02 + ADD 1-2).

The EU takes note of the timetable for legislative alignment with the customs *acquis*, as provided by Bulgaria (CONF-BG 70/01 and 31/02), and encourages Bulgaria to take the necessary steps in order to ensure that the respective deadlines are met. In this context, the EU notes that a decree of the Council of Ministers, introducing the rules of procedure for administering duty suspension policy and managing tariff quotas, will be adopted by the end of 2002. The EU also notes that the amendments to the Community Customs Code included in Regulation (EC) 955/1999 and Regulation (EC) 2700/2000 will be transposed into Bulgarian legislation during the second half of 2002, and that full alignment with the *acquis* on cultural goods will be achieved by the adoption of the Act on Museums, Galleries and Protection and Distribution of Cultural Goods by 30 September 2002, and by the adoption of an Ordinance of the Council of Ministers by 30 October 2002. The EU further notes Bulgaria's statement that, by the end of 2002, its legislation will be fully aligned with Regulation (EC) 1334/2000 on the control of exports of dual-use goods and technology. The EU underlines the importance of alignment with any subsequent amendments to this Regulation and underlines that it will closely monitor progress in this crucial area.

The EU takes note of the information provided by Bulgaria concerning the measures taken or planned to strengthen the operational and administrative capacities of the Bulgarian Customs Administration (BCA), including in the area of staff training. In this context, the EU considers that the adoption of a Business Strategy for the National Customs up to 2006, including its budgetary elements, is a positive step in the pre-accession phase. The EU urges Bulgaria to ensure the necessary coherence between all activities in the customs area, including technical assistance projects, both from EU and national budget sources. Furthermore, the EU invites Bulgaria to take the necessary measures to ensure the timely execution of the different stages of implementation of the Business Strategy, and to continue to keep the EU regularly informed of progress made.

The EU also notes the information provided by Bulgaria on the budgetary allocation for the customs sector. The EU invites Bulgaria to continue its efforts to ensure sufficient financial resources for the implementation of the Business Strategy and other related actions aimed at improving the functioning of the Bulgarian customs administration. In this context, the EU also invites Bulgaria to keep it regularly informed of the steps undertaken to ensure that adequate budgetary provisions are made in the framework of its national budget on a yearly basis with a view, in particular, to meeting the Business Strategy deadlines.

The EU notes the information provided by Bulgaria concerning the priorities as defined in its Strategy for Development and Implementation of the Bulgarian Integrated Customs Information System (BICIS), and in particular regarding the development of a WAN communication infrastructure, and of TARIC and NCTS systems. The EU underlines the essential nature of the interconnection of customs applications between the Community and Bulgaria, in order for the Customs Union to function correctly upon accession. In this regard, the BICIS is a positive step in preparation for accession. The EU therefore invites Bulgaria to continue with the implementation of its information technology (IT) strategy. The EU stresses that Bulgaria will need to pay particular attention to the development of IT systems allowing for the exchange of computerised data between the EU and Bulgaria. In this respect, the EU emphasises that fully functioning EU-compatible IT systems should be put in place at least one year before accession in order to allow a sufficient period of time for test requirements, and to ensure their full interconnection with the EU customs IT systems.

The EU invites Bulgaria to continue its efforts to ensure sufficient financial resources for the implementation of the Bulgarian Integrated Customs Information System and requests Bulgaria to continue to keep the EU regularly informed on progress made. The EU also invites Bulgaria to increase the availability of human and financial resources within the Bulgarian Customs Administration (BCA) in the IT area.

The EU takes note of the information provided by Bulgaria on its efforts to improve efficiency at the border and to develop cooperation both with neighbouring countries and with other border-related bodies, including the Border Police. The EU invites Bulgaria to continue its efforts to implement the Strategy for Rationalisation of the Bulgarian Customs Administration's Border Operations, and to conclude and implement the Memorandum of Understanding between the Customs Agency and the Ministry of Justice. In this context, the EU requests Bulgaria to keep it regularly informed of the steps undertaken to strengthen its infrastructure and control capacities, in particular at the future external borders of the EU, and on the extension of the investigation and intelligence-gathering powers of customs officers.

The EU notes the information provided by Bulgaria on the protection of intellectual property rights and invites Bulgaria to keep it regularly informed of all new implementing provisions on border control measures. In this context, the EU underlines the importance of effectively combatting counterfeiting. The EU also welcomes the information provided by Bulgaria on the use of risk analysis methods, and invites Bulgaria to take all necessary measures to implement as soon as possible a computerised system of risk analysis using national, regional and local risk profiles.

The EU notes the information provided by Bulgaria on the enhancement of post clearance control and invites Bulgaria to ensure that all necessary administrative and legal measures are taken according to the time schedule contained in CONF-BG 70/01 and 31/02.

The EU takes note of the information provided by Bulgaria concerning staff policy, as well as conditions of employment and professional integrity issues. In this context, the EU encourages Bulgaria to fully implement its plan for further aligning the staff policy of the customs administration with EU standards and practice, in particular to ensure stable conditions of employment. The EU underlines the need for Bulgaria to continue its efforts to strengthen customs ethics and to combat fraud and corruption, so that substantive improvements are achieved well before accession. The EU also underlines that customs tasks linked to state authority, involving professional secrecy and, more generally, independence from the decision-making bodies, must be performed by civil servants only.

The EU notes the information provided by Bulgaria regarding the establishment of a Customs Consultative Committee, and the upgrading of the technical capacities of its customs laboratories, and invites Bulgaria to keep it regularly informed of progress in these areas.

The EU takes note of the information provided by Bulgaria on the harmonisation of its customs legislation with the *acquis* on free zones (CONF-BG 2/01).

The EU takes note of the information provided by Bulgaria on the future collection and control of EU own resources and the management of the Common Agricultural Policy by the customs authorities, and invites Bulgaria to keep it regularly informed of the steps undertaken to implement its commitments in this area.

Finally, the EU recalls that it considers it necessary to include provisions on the following items in the Accession Treaty with Bulgaria (texts annexed) :

- a provision ensuring continued validity after accession of evidence 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 legal confidence of the operators;
- provisions concerning customs warehousing, inward 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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The EU notes that, at this stage, this chapter does not require further negotiation. Monitoring of progress in the adoption and implementation of the *acquis* will continue throughout the negotiations and until accession, including on the basis of peer reviews, in particular as regards the proper functioning of the Bulgarian customs services, as well as the fight against corruption, including within the customs services, and counterfeiting. In this respect, the EU draws Bulgaria's attention to the fact that the Bulgarian customs service requires urgent, thorough and continued restructuring to improve professionalism in an efficient, transparent and trustworthy way, as well as to ensure the institutional capacity for border management of the customs territory of the Community and the efficient implementation of the Community's customs legislation. The implementation of the intermediate stages of the Business Strategy for the National Customs and the Strategy for Development and Implementation of the Bulgarian Integrated Customs Information System will be considered key indicators for the assessment of progress in this field. A final assessment of the conformity of Bulgaria's legislation and policies with the *acquis* and its implementation can only be made at a later stage of the negotiations. The EU stresses that progress in negotiations must go in hand with progress in incorporating the *acquis* into legislation and actually implementing and enforcing it. Particular consideration needs to be given to the links with other negotiating chapters, notably Free Movement of Goods, Taxation, Cooperation in the Fields of Justice and Home Affairs, External Relations, and Common Foreign and Security Policy. In addition to all the information the EU may require for the negotiations on this chapter and which is to be provided to the Conference, the EU invites Bulgaria to provide regularly detailed, written information to the Association Council on progress in the adoption and implementation of the *acquis*, in particular regarding the preparation and evolution of its customs policy and legislation, and on the operation of its services.

The EU will keep under close review throughout the negotiations developments affecting the conditions under which agreements have been reached in this chapter.

In view of the above considerations, the EU may return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new *acquis* between 1 January 2001 and the conclusion of the negotiations.

Council Regulation (EEC) No 2913/92 of 12 October 1992 (OJ No L 302 of 19.10.1992), as last amended by European Parliament and Council Regulation (EC) No 2700/2000 of 16.11.2000 (OJ No L 311 of 12.12.2000) and Commission Regulation (EEC) No 2454/93 of 2 July 1993 (OJ No L 253 of 11.10.93), as last amended by Commission Regulation (EEC) No 2787/2000 of 15.12.2000 (OJ No L 330 of 27.12.2000), and protocols of origin included in preferential agreements concluded by the Community:

Without prejudice to the following provisions, this Community Legislation shall be applicable to the new Member States as from the date of accession.

- A. 1. Without prejudice to the application of any measure deriving from the common commercial policy, evidences of origin properly issued by third countries in the framework of preferential agreements concluded by Bulgaria with those countries or in the framework of unilateral national legislation of the new Member States shall be accepted in the respective new Member States, provided that:
- the evidence of origin and the transport documents have been issued the day before accession at the latest;
 - the evidence of origin is submitted to the customs authorities four months after accession at the latest.
2. The new Member States are authorised to retain the authorisations with which the status of "approved exporters" had been granted in the framework of agreements concluded with third countries, provided that:
- such a provision is also provided for in the agreements concluded by those third countries with the Union as at present constituted;
 - the approved exporters apply the Community rules of origin.
- These authorisations shall be replaced, one year after accession at the latest, by new authorisations issued under the conditions of Community legislation.
3. Requests for subsequent verification of evidences of origin referred to in paragraphs 1 and 2 shall be accepted by the competent customs authorities of the Union as at present constituted and those of the new Member States for a period of three years after issuing of the evidence of origin concerned.

4. Where the evidence of origin and/or the transport documents have been issued before accession, and where customs formalities are necessary in respect of trade of goods between the new Member States and the Union as at present constituted or between the new Member States themselves, the provisions of Title V of Protocol 4 of the Europe Agreement apply.

B. Articles 98 to 113 of Council Regulation (EEC) 2913/92 and 503 to 548 of Commission Regulation (EEC) 2454/93 regarding customs warehousing:

The procedure shall be discharged under the conditions of Community legislation. Where the discharge gives rise to a customs debt, the amount paid shall be considered as own resources of the Community. Where the amount of a customs debt is determined on the basis of the nature of the import goods, the value for customs purposes and the quantity of the import goods at the time of acceptance of the declaration of their placing under customs warehousing and where this declaration was accepted before accession, these elements are those resulting from the legislation applicable before accession in the new Member State concerned.

C. Articles 114 to 129 of Council Regulation (EEC) 2913/92 and 549 to 649 of Commission Regulation (EEC) 2454/93 regarding inward processing:

1. The procedure shall be discharged under the conditions of Community legislation. Where the discharge gives rise to a customs debt, the amount paid shall be considered as own resources of the Community. Where the amount of a customs debt is determined on the basis of the tariff classification, quantity, value for customs purposes and origin of the import goods, at the time of acceptance of the declaration of their placing under inward processing and where this declaration was accepted before accession, these elements are those resulting from the legislation applicable before accession in the new Member State concerned.

In order to maintain, where the discharge gives rise to a customs debt, the equity between the holder of an authorisation established in the Union as at present constituted and those in the new Member States, compensatory interest shall be paid on the import duties due under the conditions of Community legislation from the date of accession.

2. If the declaration for inward processing has been accepted under a drawback system, the drawback is done under the conditions of Community legislation, by and at the expense of the new Member State where the customs debt in respect of which drawback is requested was incurred before the date of accession.

- D. Articles 130 to 136 of Council Regulation (EEC) 2913/92 and 650 to 669 of Commission Regulation (EEC) 2454/93 regarding processing under customs control:

The procedure shall be discharged under the conditions of Community legislation. Where the discharge gives rise to a customs debt, the amount paid shall be considered as own resources of the Community.

- E. Articles 137 to 144 of Council Regulation (EEC) 2913/92 and 670 to 747 of Commission Regulation (EEC) 2454/93 regarding temporary importation:

The procedure shall be discharged under the conditions of Community legislation. Where the discharge gives rise to a customs debt, the amount paid shall be considered as own resources of the Community. Where the amount of a customs debt is determined on the basis of the tariff classification, quantity, value for customs purposes and origin of the import goods at the time of acceptance of the declaration of their placing under temporary importation and where this declaration was accepted before accession, these elements are those resulting from the legislation applicable before accession in the new Member State concerned.

In order to maintain, where the discharge gives rise to a customs debt, the equity between the holder of an authorisation established in the Union as at present constituted and those in the new Member States, compensatory interest shall be paid on the import duties due under the conditions of Community legislation from the date of accession.

- F. Articles 201 to 232 of Council Regulation (EEC) 2913/92 and 868 to 876 bis of Commission Regulation (EEC) 2454/93 regarding entry in the accounts and post-clearance recovery:

The recovery is done under the conditions of the Community legislation. However, where the customs debt was incurred before the date of accession, the recovery is done under the conditions in force in the new Member State concerned, by it and in its own favour.

- G. Articles 235 to 242 of Council Regulation (EEC) 2913/92 and 877 to 912 of Commission Regulation (EEC) 2454/93 regarding repayment and remission of duty:

The repayment and remission of duties are done under the conditions of the Community legislation. However, where the duties whose repayment or remission is requested relate to a customs debt which was incurred before the date of accession, the repayment and remission of duties are done under the conditions in force in the new Member State concerned, by it and at its own expense.
