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## **Harmonization of the Polish Customs Law with the European Union Customs Regulations**

### **Introduction**

Poland has passed through many fundamental changes during the last decade. We started with the changes, which resulted in the breakdown of the Soviet Union and the end of the Cold War. These events have profoundly altered the existing geopolitical order, marking the end of the old models for the international balance of power. The process of European integration has also gathered pace sharply.

In the end of the eighties Poland begun its new internal and international economic policy. The former sociopolitical and economic order exhausted its possibilities. The new situation has required the reconstruction of our life.

The first step in this direction was made in the end of 1988. Polish Parliament accepted the new economic law. According to it Poles have the rights to develop their private economic activity, including international trade. It was the starting point for breaking down the former monopolistic, state, centrally planned economy.

The big step for the opening of the Polish market for international competition took place in 1989. That year Polish Parliament accepted the new Customs Law.

In international economic relations, when the collapse of the CMEA (Council for Mutual Economic Assistance) was evident and when our traditional trade partners were in very difficult situation, with stagnation and high inflation, we have started to develop commercial partnership with the countries of the European Community.

The final aim of those activities should be our membership in European Community. One of the most important fields on this way is the Customs Law. The approximation of the Polish Customs Law and practices to the EU's

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standards and procedures is one of the fundamental conditions for the accession to this economic integration group.

During the last decade we have passed through some stages of the approximation our customs legislation and practice to this part of *acquis communautaire*. It is possible to indicate the following periods:

- from PHARE to Europe Agreement (1989-1991)
- from European Agreement to White Book of EU (1991-1995)
- from White Book to NPPM (1995 – 1998)
- from NPPM to adaptation *acquis communautaire* (1998 – 2002)

Let us try to analyze each of these periods from customs legislation point of view and its harmonization with European Communities norm and standards.

### **1. Beginnings: from PHARE to Europe Agreement (1989-1991)**

After the velvet revolution in 1989 Poland has opened the new history in trade and political contacts with the EU's countries. That year was connected with the preferential status base given to us by our western partners.

The first special program for supporting the changes in Poland and Hungary was adopted by G-24 countries in 1989. It was the starting point for PHARE (*Poland and Hungary: Assistance for Reconstructing their Economies*) special assistance EU's program.

During the next two years Poland has tried to broad its relations with EU and other, particularly EFTA, countries. We aspired to conclude an agreement with the EU and an agreement on free trade with EFTA countries. We were successful. In the end of 1991 (December 16 of 1991) was concluded, so called, "*Europe Agreement establishing an association between the Republic of Poland, of the one part, and the European Communities and their member states, of the other part*". It was the end of the first period of the new relations between Poland and European Communities.

This "Agreement" forms the legal framework for the Poland – EU association. Its objective is to provide an appropriate framework for Poland gradual integration with the Community. Similar Europe Agreements have been concluded also with Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Romania, Slovakia and Slovenia.

The Association Agreement's objective is to establish a free-trade area by 2002 liberalizing trade in industrial products and providing a basis for economic cooperation in a large number of sectors. The Association Council also provides a forum for discussion at ministerial level of the progress made in preparing for accession.

The Agreement covers the main areas in which the Community law is to be adopted. It is being used to help Poland draw up schedules for incorporating the

*acquis* and transposing the Community's legal rules into our national law system prior to accession.

The Agreement underlines the one of the most important problems for future full membership in the European Union – it should be the approximation of the Polish law to the EU's regulations. It contains in the Chapter III exactly entitled "*Approximation of laws*". It is necessary to quote here, at least two articles, from this part.

Art. 68 states: "*The Contracting Parties recognize that the major preconditions for Poland's economic integration into the Community is the approximation of that country's existing and future legislation is compatible with Community legislation*" and

Art. 69: "*The approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, protection of health and life of humans, animals and plants, consumer protection, indirect taxation, technical rules and standards, transport and the environment.*"

The Title III of this Agreement is devoted to the "*Free Movement of Goods*". This part of European Agreement indicates the aims, legal norms and standards and implementation measures for cooperation between Poland and European Communities.

In the Title VI: "*Economic Co-operation*" there is the special article devoted to the customs matters. Exactly it is Article 91 entitled "*Customs*". It states:

"1. *The aim of co-operation shall be to guarantee compliance with all the provisions scheduled for adoption in connection with trade and to achieve the approximation of Poland's customs system to that of Community, thus helping to ease the steps towards liberalization planned under this Agreement.*

2. *Co-operation shall include the following in particular:*

*the exchange of information;*

*the organization of seminars and placements;*

*the development of cross-frontier infrastructure between the Parties;*

*the introduction of the single administrative document and of an interconnection between the transit systems of the Community and Poland;*

*the simplification of inspections and formalities in of the carriage of goods.*

*Technical assistance shall be provided where appropriate.*

3. *Without prejudice to further co-operation provided for in this Agreement, and in particular Article 94 (Drugs – CW), the mutual assistance between administrative authorities of the Contracting Parties in customs matters shall*

take place in accordance with the provisions of Protocol No 6.”(On mutual assistance in customs matters).

Another articles are devoted to the specific problems related to the customs norms, regulations and procedures.

In Article 7 we have the *free trade area problems – tariffs reduction and adaptation of the combined nomenclature*;

Art. 11 – *abolition of fiscal duties*;

Art. 12 – *abolition “... any charges having an effect equivalent to customs duties on imports”*;

Art. 13 – *abolition “... any customs duties on exports and charges having equivalent effect and quantitative restrictions (it means – quotas and ceilings)*;

Art. 30 – *anti-dumping procedures according to the GATT’s Agreement on Application of its Art. VI*;

Art. 34 – *Protocol No 4 – Rules of Origin*.

It was very big aim and challenge for Poland. Despite the fact that Europe Agreement gave us 10 years for approximation the Community customs legislation, we started immediately with practical implementation of the some indicated above purposes.

## **2. From the Europe Agreement to the EU’s White Paper (1992-1995)**

Poland has started with the practical implementation of some EU’s customs matters already during the negotiations process.

1. In August of 1991 our country introduced into Polish foreign practice the new, based on the EU’s commodities in international trade nomenclature, *Combined Nomenclature*. It fulfills the requirements of the European Agreement’s Art.7. It takes 8 digits (as in HS system). In April 1994, when Polish accession application came into force in EU countries, that nomenclature was extended to 9 digits as the PCN – *Polish Combined Nomenclature*. It fulfils all EU’s CN standards.

2. Immediately after the signing the European Agreement, Poland put into force, on the autonomic base, another requirement indicated in this treaty (Art.91). Since the January 1 of 1992 in Polish foreign trade and customs practice was introduced into force the principal EU’s and EFTA’s documentary form – *Single Administrative Document – SAD*.

3. We have adopted the *Protocol No 4 – Rules of Origin* in our practice. It means that all documentary requirements (*EUR-1 and EUR-2*, other documentation and regulation related to that question) came into force in Polish customs and foreign trade practice and procedures. It was amended in the future (1998) by specific *pan-European cumulating of the rules of origin*.

4. We started with the fulfilling of the requirements of the Art. 91 related to the *Protocol No 6*. In that period (1992-1995) were concluded some agreements on mutual co-operation between Polish Customs Administration and its foreign partners. We can indicate here the agreements with *Great Britain, Germany or Denmark*.

5. According to the Art. 94 in Polish Customs Service was established a special (particularly anti-drug and anti-corruption) customs law enforcement division – *General Customs Inspectorate and special Regional Intelligence Liaison Office for Central and Eastern Europe – RILO* (December 15, 1992).

6. December 10, 1992 (came into force in November 15, 1993) have been concluded "*A Free Trade Agreement with EFTA countries*";

7. In January of 1993 the Government announced, a *Program of Measures for Adapting the Polish Economy and Legal System to the Requirements of the Europe Agreement*. This Program provided a basis for adjustment activities in subsequent years.

In that, I can say revolutionary, period of changes of the Polish customs law and regulations, practice and procedures, were connected with the growing of the Polish foreign trade turnover. We have reached almost 70% of total our imports and export in contacts with EU countries. Step by step we became closer to the EU's customs standards and procedures.

### **3. From the EU's White Paper to the National Program of Preparation for Membership in the European Union – NPPM (1995-1998)**

The Essen Meeting of the European Council (December 1994) and Cannes Summit of the European Council in June 1995 embarked upon a pre-accession strategy to prepare the countries, which had signed an association agreement with the European Union for membership.

The European Commission's *White Paper Regarding Integration of the Associate Members of Central and Eastern Europe with the Internal Market of the European Union* adopted during the Cannes Summit of the European Council in June, 1995 was of special significance to the adjustment customs law and procedures in Poland.

After this event Polish customs service (administration) has made a big progress on the way to approximation our customs procedures to the EU's norm and standards. We can indicate the acceptance and introduction in force in full scope, since July 1 of 1996, the two very important EU-EFTA Conventions on:

- Simplification of the customs procedures (*SAD Convention*) and
- Common and Community Transit Convention (*Community Transit Convention*),

- Simultaneously in that year Poland became a full member of WTO and GATT since July 1 of 1995,
- During that time Poland made the big efforts for the adaptation EU's customs legislation. The most important legal act took place on January 9, 1997. That day the Polish Parliament has accepted the principal Polish customs law – Customs Code. This act, prepared on the EU's Customs Code and Regulations, with the implementation provisions became into force in January 1, 1998.

The European Commission's *White Paper Regarding Integration of the Associate Members of Central and Eastern Europe with the Internal Market of the European Union* of 1995 was special significance to the adjustment our law at all. It has served as the basis for the Polish special strategic integration plans and programs. It is necessary to mention here:

- National *Strategy for Integration* of May 27, 1997 adopted by the Resolution of Polish Parliament;
- Schedules of Measures Adapting the Polish Legal System to the European Commission's *White Paper Regarding Integration with the Internal Market of the European Union* approved by the Council of Ministers of July 15, 1997;
- *National Program of Preparation for Membership in the European Union (NPPM)* of June 23, 1998.

The Council of Ministers accepted the NPPM obliged the President of the Committee for European Integration to monitor the National Program and to present to the Government an updated version of the document, taking into account the conclusions stemming from the screening of Polish law in the process of accession negotiations.

#### **4. From the NPPM to the finalization of the Polish adaptation of the EU's customs law and regulations (1999-2002)**

The National Program of Preparation for Membership in the European Union (NPPM) is a document that sets the direction of adjustment measures and lays down a schedule for their implementation in 1998-2002 within the context of Poland's accession to the EU. Its content is based on the following basic elements:

1. previous fulfillment of the provisions of the Europe Agreement and
2. the recent state of Poland's preparation for membership in the EU,
3. the European Commission's Opinion on the Polish application for membership,
4. the EU's document concerning Accession Partnership, and the Regular Reports from the Commission on Poland's Progress Towards Accession.

In this – NPPM – document Polish Government states:

*“One of the most important priorities of the Government is to adjust system of Polish customs to EU standards. In view of future membership in the European Union modernization of this system is to allow for:*

- full harmonization of customs regulations; and*
- the best possible standard of administrative and operational capacity of customs services.*

*Polish accession to the European Union will necessitates accepting community customs legislation, abolition of customs on the Polish–EU Member States borders, assuring effective EU external border protection and control, and implementation of effective computer systems compatible with EU standards improving work of customs administration efficiency.*

*In 1998, actions were undertaken to provide for further harmonization of Polish customs regulations with EU laws, and for strengthening of the infrastructure of customs services. The screening of Poland's customs regulations at the end of 1998 confirmed their considerable harmonization with *acquis communautaire*.”*

Poland's other obligations resulting from screening arrangements have been included in the modified version of the NPPM (e.g. *gradual liquidation of handling fees collected by customs administration, adoption of a Convention on customs activities concerning POOL containers, adoption of annexes to the Istanbul Convention* (Temporary Admission - CW), etc.

Moreover, in the medium term the Polish customs administration will be reformed so as to secure the implementation of the *acquis* in the field of customs. In order to improve the efficiency of customs control system, integrated computer systems are to be introduced, and the customs infrastructure is to be developed (as recommended by the European Commission in its *Regular Report '98*).

According to these recommendations in November 1999 the new “Development Strategy for the Polish Customs to 2002” was accepted by Polish Government and included into the new version of the NPPM.

The “Development Strategy...” is divided into two parts.

The first one is devoted to the 9 principal strategic aims that should be reached in the few years. Among others there are included necessary organization and management changes in the Polish customs administration, means of the realization planned aims, the financial sources and, what is the new in Polish practice, it shows not only positive sides of the process but also threats for realization.

The second part of the “Development Strategy...” is an Annex with some tables and data related to the detailed problems, means, schedule, responsibilities and control indicators.

It is the first document of this kind in the Polish Customs Administration. The most important, from the point of view of this presentation, parts of the "Development strategy..." are connected with:

- *adaptation, in full scope, the EU's customs regulation – including TARIC and the Community system of relieves from customs duty,*
- *the practical application of the EU's customs standards and procedures of clearance of goods in exports, imports and transit (analysis of risk methods, computerization, etc.),*
- *the strengthening efforts for combat against fraud and corruption.*

In this field the very important for our business community is the following aim: *"The cancellation of the bureaucratic barriers in the foreign turnover by growing of the effectiveness of the customs procedures and the co operation between customs administration and business community"*.

In the realization of that aims Poland accepted some new legal and organizational solutions. It is necessary to underline the following:

1. *Customs Code and implementation provisions are fully in force;*
2. *The Act on Customs Service (Administration) was accepted;*
3. *In the field of the Rules of Origin the pan-European system of cumulating is fully applied in the Polish trade and customs practices;*
4. *Certain customs fees were abolished;*
5. *Some facilitation in customs procedures was adopted;*
6. *The Binding Tariff information is a standard in Polish customs and foreign trade practice;*
7. *The Customs' Development Strategy to 2002 has been prepared, accepted as an important part of the NPPM and was gradually implemented into practice;*
8. *The Polish Parliament has accepted the new amendments to the Customs Code and implemented into practice.*

Commission of the European Union, in its last Regular Report of 2000 on Poland's Progress Towards Accession (8 of November 2000) underlined:

*"Regarding further adoption of the EC Customs Code and its implementing provisions, Poland made some progress. Poland has introduced a regulation in order to abolish all customs fees with effect from end of 2001. In the interim, some fees have been eliminated, whereas others are still being applied in contradiction to Poland's obligations under the Europe Agreement. The lack of transparency that on occasion surrounds the application of the customs code in specific cases is also the source of some concern; this is particularly the case as regards the reclassification of products.*

*Regarding the pan-European system of origin, Poland has agreed to the amendments to the system that will come into force in January 2001. Some steps have been undertaken to increase the use of simplified customs procedures.*

*Although an increase of authorizations for simplified procedures has recently been achieved, the total number of companies which enjoy this privilege, around 700, remains small.*" (Source: "2000 Regular Report from the Commission on Poland's progress towards accession")

The EU's Commission concerns were heard and some additional efforts for the approximation of the Customs legislation to the EU's standards took place in Poland in that year. Particularly it is related to the drafts of new legislation and amendments into customs regulation. Polish Parliament accepted in the end of 2000 the Istanbul Convention annexes as well as Kyoto Convention annexes; the amendments to the Customs Code, etc. And of course the adaptation and introduction into force gradually realization of the "The Development Strategy..."

## **Conclusions**

Many of the shortcomings identified in 2000, regrettably remain valid today. Important efforts still required transposing and applying EU customs legislation, including the implementing regulations. Particular attention should be paid to implementing the pre-accession development/business strategy and to improving staff training. Greater efforts are also required on computerization, and on the simplification of customs procedures. Further efforts should be made to combat fraud and corruption.

And again, in the end we have to quote the critical EU's Commission position towards Polish customs:

*"A wide range of problems remains to be resolved. The most visible among those is probably the continuous problem of long waiting times at borders, which Poland, being a transit country of considerable importance on the West-East-axes of Europe, has to tackle.*

*Regarding human resources, implementing provisions to the new Law on Customs Service, which establishes a particular status for customs officials, are being applied. Staff training schemes has been developed. Corruption continues to be a serious problem."*

There has been done, in reality, a big progress in approximation of the Polish Customs law, standards and procedures with EU's Customs Law, standards and procedures. Although considerable efforts have been made in the judiciary, the effectiveness of law enforcement bodies including Customs police. However, these priorities still need to be more fully dealt with gradually adopting the *acquis communautaire* with regard to the free movement of goods.

There were the reasons for the very big step in our negotiations with EU. In the end of March 2001, Polish and EU's negotiators agreed and concluded that the area of Customs Union has been provisionally closed.

In the last some month Poland concentrated its political and administrative energies on domestic reforms and, as a result, has progressed significantly in the process of legislative transposition. But, contrary to the EU's Commission position, in my opinion, one of the most advanced on this way is the Polish Customs law.

The further progress on the way of the harmonization of the Polish Customs law with EU's Customs Regulations depends not only on Polish side but also on EU side. We have to co-operate in this field for mutual benefits, it should be not one way but two-direction street.

### **Annexes:**

#### **A. Poland's Negotiation Position in the Area of Customs Union**

##### **Synthesis**

As a definition of the time-frame for the process of harmonization and implementation of the Community law, the Government of Poland has adopted 31 December 2002 as the date on which Poland will be prepared for accession to the European Union.

Poland accepts and will implement the *acquis* in full, raises no negotiation problems and does not request transition periods or derogations in the area of 'Customs Union'.

Poland declares that by the end of 2001 it will achieve full preparedness of Polish customs services to enforce the Community customs legislation as efficiently as customs administrations of the Member States.

As a future member of the European Union Poland is fully aware of the role-played by its customs services in the control over the common customs border of the European Union. Therefore Poland has already undertaken actions aimed at attaining full harmonization of customs regulations even before Poland's official accession to the EU and at securing full capacity of the Polish customs administration to protect economic, cultural and social interests and safety of both Poland and other partners –European Union Member States.

##### **Specific issues**

Having analyzed the results of the bilateral screening of the *acquis* in the area of 'Customs Union' on 12 October 1998, the Polish Government came to the conclusion that full harmonization of the Polish law with the Community law will be achieved even before Poland's accession to the European Union.

The legal foundations of EU regulations in the area of 'Customs Union' are set out in the provisions of the Treaty establishing the European Community (Title 1, Chapter I 'Customs Union').

Basic regulations of the Community customs legislation are contained in the Customs Code and executive acts connected therewith, acts concerning the Harmonized Tariff Nomenclature as well as tariffs, tariff quotas and ceilings, rules of origin, transit, duty exemptions, fighting trade in counterfeit and pirate goods, international co-operation and mutual assistance in customs-related issues, international obligations (customs conventions).

At present the Polish legislation is generally compliant with the *acquis* in the area of 'Customs Union'.

The full harmonization will be achieved through:

- amendments to the Customs Code and executive acts connected therewith, aiming at the achievement of full compliance with the Community law by the end of 2001,
- adoption by the end of 1999 of all not yet adopted annexes to the Convention on temporary customs clearance of goods (the Istanbul Convention) and the Convention on customs clearance of pool containers used in international transport. Poland wishes to confirm its will to join – simultaneously with the EU – the Convention on harmonization and simplification of customs procedures (the Kyoto Convention), which is currently being modified by the World Customs Organization,
- Harmonization of legal acts related to duty exemptions. The existing major differences in the area of duty exemptions between Poland and the European Union will be gradually removed until Poland has achieved full conformity with the *acquis* by the end of 2001. On the other hand Poland expects to be kept informed on developments in the Commission work on the new Community system of duty exemptions, which will facilitate the harmonization process.

In accordance with the provisions of the Accession Partnership and the National Programme for the Preparation to the Accession as well as the suggestions of the European Commission concerning pre-accession strategy for customs administrations of the candidate countries, Poland has undertaken actions aimed at full logistic and technical preparation of customs services for efficient implementation of their tasks in the conditions of the future membership. It will be of particular importance for Poland to develop and implement a computerized system of customs declaration processing as well as to prepare the customs administration for the procedure of transferring dues to the so called EU own resources and for the implementation of functions related to the Common Agricultural Policy. Poland will allocate both own budget resources and available assistance funds to meet these objectives. (*Adopted by the Council of Ministers of the Republic of Poland, 10 December 1998*)

**B. 2000 Regular Report from the Commission on Poland's Progress  
Towards Accession. 8 November 2000**

**Chapter 25: Customs union**

Since the last regular report Poland has, to a large extent, adapted its legislation to the *acquis*. A significant step forward has been the government's adoption of a customs business strategy in October 1999. This sets a framework for preparatory work still to be undertaken to render the customs services fully EC compatible. To date much remains to be done as regards both the implementation of legislation and the reinforcement of the administrative capacity.

Regarding further adoption of the EC Customs Code and its implementing provisions, Poland made some progress. Poland has introduced a regulation in order to abolish all customs fees with effect from end of 2001. In the interim, some fees have been eliminated, whereas others are still being applied in contradiction to Poland's obligations under the Europe Agreement. The lack of transparency, which on occasion surrounds the application of the customs code in specific cases, is also the source of some concern; this is particularly the case as regards the reclassification of products.

Regarding the pan-European system of origin, Poland has agreed to the amendments to the system, which will come into force in January 2001.

Some steps have been undertaken to increase the use of simplified customs procedures. Although an increase of authorizations for simplified procedures has recently been achieved, the total number of companies, which enjoy this privilege, around 700, remains small. No legislative progress has been achieved in areas identified in the 1999 regular report as having seen little progress notably: duty relief, procedures with economic impact, free zones and dual use of goods. Some progress has been made in Poland's accession to international conventions.

As far as the administrative and operational capacity to implement the *acquis* is concerned, some progress can be noted. With the start of the implementation of the business strategy, important efforts have been undertaken in various fields to upgrade the customs services. A wide range of problems remains to be resolved. The most visible among those is probably the continuous problem of long waiting times at borders, which Poland, being a transit country of considerable importance on the West-East-axes of Europe, has to tackle.

Regarding human resources, implementing provisions to the new Law on Customs Service, which establishes a particular status for customs officials, are being applied. Staff training schemes has been developed. Corruption continues to be a serious problem. Positive steps in this regard have been the June agreement between the central board of customs and the office of State

protection on co-operation in fighting customs fraud, and in September the entry into force of the Code of conduct for customs officials.

Efforts have been undertaken to improve the administrative co-operation with other services. The customs strategy for border management has been included into the overall integrated border management strategy and agreements between customs services and the border guard and police have been renewed during the last year.

Actions are also being undertaken to improve the performance of the customs services in tasks relating to the Common Agricultural Policy. Regarding computerization, the integrated customs tariff system, compatible with the TARIC system, is in the final stage of implementation. Polish customs have undertaken considerable efforts to co-operate with the public, especially by institutionalized contacts with haulers and others in the private sector. The implementation of the IT strategy for customs, which was adopted in April 2000, has commenced but has not yet borne fruit.

### ***Overall assessment***

With the entry-into-force of the Polish Customs Code in January 1998 and additional alignment measures since then, Poland has achieved a relatively high level of legislative alignment, whereas its administrative capacity is lagging behind.

Alignment with the *acquis* still has to be completed, in particular as regards duty relief, customs procedures with economic impact, free zones, dual use of goods and clearance fees. These shortcomings, already identified in previous regular reports, should be addressed as soon as possible.

The administrative and operational capacity of the customs services remains an area of concern. Poland should continue and possibly increase its efforts to implement the business strategy, in a timely and efficient manner. In this context, it is of utmost importance that Poland in the forthcoming years provides sufficient budgetary own resources to facilitate this implementation. As regards shortcomings such as corruption and on-going frequent staff changes, particular attention should be paid to guarantee permanent employment, which is independent from political interference, and a stable staff structure in the Polish customs services. (pp.77-79)