

**NEGOTIATING POSITION OF ICELAND**

**Chapter 29**  
**Customs Union**

**I. Summary of the negotiating position**

1. Iceland accepts the *acquis communautaire* with respect to Chapter 29 on the Customs Union as of May 15<sup>th</sup> 2012, subject to the reservations brought forward in interlinked chapters as iterated in Section IV.
2. Iceland will have implemented in full any outstanding EU *acquis* and established the necessary institutional framework and IT systems by the date of accession.
3. This chapter is not relevant under the EEA Agreement.

**II. The Legislative Framework**

The Icelandic customs legislative framework, which has been in force since January 1<sup>st</sup> 2006, during which period it has undergone some amendments, is largely in line with the *acquis*. However, some gaps exist, particularly in the fields of customs rules and procedures with economic impact and security aspects. The process of aligning the Icelandic customs legislation and practice with the EU *acquis*, based on the gap analysis, will be prepared and implemented at the latest by the date of accession.

A legislative task force (Legislative TF) under the responsibility of the Ministry of Finance has already been established. Its role is to draft the necessary legislation for the alignment of the *acquis*. These will include key areas of EU Customs Code, such as general customs rules, customs tariff, rules of origin, procedures with economic impact, security measures and abolition of customs fees.

The task force shall also set forth a detailed time and action plan which includes the necessary actions and measures that Iceland plans to undertake in this respect, in several phases. The task force has been fully operational since the beginning of June 2012 and shall deliver its final report to the Minister of Finance for approval before the end of June 2013. A draft report should be available in January 2013.

**a) General customs rules and procedures**

Fundamental acts of the Icelandic customs legislation are the Customs Act No 88/2005, Regulation No 630/2008, on preferential customs treatment of various types, and Regulation No 1100/2006, on the custody and customs clearance of goods. The Administrative Procedure Act No 37/1993 is also applicable. Relevant are also the Value Added Tax Act No 50/1988 and the General Commodity Tax Act No 97/1987.

The Legislative TF will include the following subjects in the required time and action plan:

A complete review of the Customs legislative framework for closer alignment with EU standards will be done. An integral part of this is alignment of definitions and concepts contained in the EU Customs Code and preparation of instructions or guidelines regarding the powers and obligations of the Icelandic Directorate of Customs staff, especially as regards Customs penalties and appeals procedures.

The rules concerning incurrence, recovery, deferral, repayment and extinguishment of debt will be aligned with the EU *acquis*.

Iceland does not use the data elements as required and defined for customs declarations in the implementing provisions of the EU Customs Code. This will be amended.

All fees for customs services which are incompatible with the EU *acquis*, will be abolished.

**b) Customs valuation**

Iceland applies the provisions of Article VII of the GATT and the Agreement on implementation of Article VII of GATT, in its customs legislation. The transaction value is the basis for valuation. In the case of imports, the cost of transport, handling and insurance to the port of importation is taken into account for establishing the value in customs, even if these costs were not actually paid. In case of doubts on value, Customs may require further information from the trader, and may apply alternative methods of valuation according to the hierarchy established by Art VII of the Agreement. Special rules are set out for valuation of vehicles, for which alternative sources of valuation (price lists for similar cars) are allowed to determine a reference value to be compared with the actual transaction value.

Icelandic rules on customs valuation are in accordance with the WTO Valuation Agreement and thus very similar to the rules of the EU.

The Legislative TF will include the following subjects in the required time and action plan:

The use of reference prices for the valuation of second hand vehicles has to be aligned with the EU *acquis*.

The declaration and the simplified procedures for low value consignments will be adopted.

Provisions related to transport costs, which were not actually paid, being included in the customs value need alignment.

**c) Customs classification and tariff**

Iceland uses an 8-digit structure of the customs tariff (HS2008). The Icelandic and EU tariffs are identical at the level of the Harmonized System (first 6 digits of any tariff code); the last two digits (7, 8) are different. The tariff is published on the Customs webpage and is accessible to the public.

The Customs Tariff includes over 8,000 lines at the eight-digit HS level. Some 70% of all tariff lines are duty free and around 90% have duty rates below 15%. The average MFN applied tariff is 18.3% for agricultural products compared to 2.5% for other goods, representing 5.9% overall. Rates of duty are expressed either in ad valorem or specific duty or as a combination of an ad valorem and specific duty. Approximately 95% of duties are expressed as ad valorem rates, while compound rates apply only to some agricultural products.

The Directorate of Customs can issue binding classification decisions, which are – to a certain extent – similar with the EU binding tariff information (BTI). For classification, the Customs officers have access to a range of information sources and explanatory notes published by the WCO; the EU database (TARIC) and BTI database; US database of customs rulings; and information provided in the framework of Nordic Cooperation.

Iceland applies tariff suspensions and tariff quotas. Tariff suspensions can be temporary (e.g. seasonal suspensions for vegetables and meat) or permanent (e.g. for stimulating production in various economic sectors). Tariff quotas are auctioned by the Ministry of Fisheries and Agriculture and attributed to the highest bidder if demand exceeds supply.

The Legislative TF will include the following subjects in the required time and action plan:

Iceland works towards full alignment with the Common Customs Tariff (CCT), the Online customs tariff database (TARIC), the Tariff Quotas and Surveillance system (TQS) and other sub-systems within the Integrated Tariff Management

system (ITMS). The Icelandic legal environment will be adapted to definitions and categories regarding these systems. Iceland has to apply the *acquis* in the customs tariff areas, including the allocation system (from bidding system to first come first served) and use of licences (from manual to e-licences) from the first date of accession.

Differences existing between the Icelandic classification rulings and the EU system of BTIs concerning the issuing time, validity, public character, the lack of implementing provisions for classification rulings and the possibility to issue classification rulings at the request of non-residents, will be aligned to the EU *acquis*.

Adaptations of the Icelandic customs tariff in line with the Combined Nomenclature will be done.

However, reservations are made regarding the potential negative effects from the application of the common customs tariff. This is further elaborated in Section IV below, as well as in Chapter 30 on External Relations, Chapter 11 on Agriculture and Rural Development and reiterated in Chapter 13 on Fisheries.

#### **d) Rules of origin**

The rules on preferential origin are based on the provisions in the relevant individual FTA. Iceland is a partner of the Pan-Euro-Mediterranean zone and applies Pan-Euro-Med origin protocol in FTAs with other countries of the zone.

Iceland has no provisions at national level on non-preferential rules of origin.

Iceland grants Generalized System of Preferences (GSP) to a list of 50 countries. The rules of origin in the GSP system are very similar to the Pan-Euro-Med origin protocol except that cumulation of origin is not applied.

EU membership entails that Iceland's free trade agreements will be replaced by the preferential agreements of the EU. For information on FTAs concluded by Iceland, reference is made to Chapter 30 on External relations.

The Legislative TF will include the following subjects in the required time and action plan:

Icelandic legislation contains provisions allowing the Customs authorities to issue binding origin information (BOI) upon request from an applicant. Implementing rules will be set on issuing BOI's to allow the application in practice of this possibility

Iceland will apply EU rules on preferential origin and implement the respective international agreements.

**e) Duty relief and suspensions**

Duty relief is regulated in the Customs Act No 88/2005 and Regulation No 630/2008 on Various Customs Privileges. Provisions are similar to those of the EU concerning personal luggage; education; scientific and cultural material; goods for charities; decorations or awards; presents received in international relations; fuel and lubricants for means of transport under temporary importation; promotional goods and goods imported temporarily for exhibitions and fairs.

However, customs suspensions are a segment of the customs system of Iceland in which certain gaps with the EU *acquis* exist. The Customs Act allows for certain suspensions (goods onboard vessels, empty packaging used in export, certain suspensions for industrial and horticultural products, new investments and duty-free import of alcohol and tobacco for personal use) which are not allowed under the *acquis*. The most important gap is on duty-free purchase of alcohol and tobacco for personal use, both when travelling to and from third countries and within EU. This issue is elaborated further in Chapter 16 on Taxation.

On the other hand certain circumstances for granting suspensions, existing in the *acquis* are not present in the Icelandic legislation.

The Legislative TF will include the following subjects in the required time and action plan:

Iceland commits to aligning its procedures for granting suspensions.

**f) Security aspects of the customs code**

Iceland is part of the World Customs Organization's Framework of Standards of Security and Facilitation since 2005 and participates in several international initiatives related to security (e.g. Regional Intelligence Liaison Office Western Europe, EUROPOL and Nordic Cooperation). With regard to operational capacity, Icelandic Customs is already endowed with adequate inspection equipment and regularly uses risk selection criteria in its work.

As for security procedures for incoming and outgoing shipments, Icelandic Customs rely mostly on the analysis of data in the cargo manifests or passenger lists. According to the legislation, traders or transporters have a general obligation to provide Customs with

information related to security. Since 2004, Iceland has implemented a cargo security system which includes the possibility for operators to become certified secure cargo handlers. Reference is made to the section III on Institutional framework (sub-sections b and c).

The Legislative TF will include the following subjects in the required time and action plan:

Iceland commits to gradually align its legislation to provide for entry and exit summary declarations, Authorised Economic Operators and uniform IT-based risk selection criteria.

**g) Intellectual property rights**

Legislation on intellectual property rights is largely adopted through the EEA Agreement. Reference is made to Chapter 7 on Intellectual property rights and to Chapter 1 on Free movement of goods. Legislation on customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, is largely adopted through the Customs Act No 88/2005, the General Penal Code No 19/1940 and Working Rules issued by the Directorate of Customs. Customs intervention can be set in motion *ex officio* or upon application of the rights holder providing information that goods suspected of infringing intellectual property rights are being imported to Iceland. Subject to the provision by the rights holder of adequate evidence that he/she is the holder of right protected in this country, that importation of the goods would cause infringement of such right and that a description of the goods is given, Customs is authorized to suspend clearance of goods for a period not exceeding 10 working days, while the rights holder seeks provisional measures from the competent authorities, and following that, initiates judicial procedures. The mentioned time limit may be extended for another 10 days when special circumstances apply. The applicant is required to deposit security instruments for possible compensatory damages until a valid court judgment is made.

The Legislative TF will include the following subjects in the required time and action plan:

The Icelandic IPR legislation will be fully adapted to the EU *acquis*.

Legislation on intellectual property will be made applicable to export, transit and other suspensive procedures.

The system of guarantees/securities will be put into place.

Legislation will be changed in order to make it possible for the rights holder to be informed by customs of the names and addresses of the consignee, the consignor, the customs broker or the holder of the goods and the origin and provenance of goods suspected of infringing an intellectual property right. This includes time limits for intervention.

Amendments will be made regarding rights holders possibility to request long term surveillance on IPR infringing goods.

#### **h) Cultural goods**

The legal basis in this field is Act No 105/2001 on the export and return of cultural objects, together with Customs Act No 88/2005. Iceland is a member of some international conventions adopted under the aegis of UNESCO protecting cultural goods and heritage (the Convention for the Protection of the World's Cultural and National Heritage; and the Convention on the Protection of Cultural Property in the Event of Armed Conflict).

Administratively, the Museum Council of Iceland is the competent authority for issuing export licences for cultural goods. The forms (application, licence) are similar with the ones used in the EU; the licences are transmitted electronically to Customs, which is responsible for export controls. The export of cultural goods without licence is prohibited and such objects that have been unlawfully removed from another country have to be returned to their origin. When Customs discover illegal exports or imports of cultural goods, or have reasonable grounds for suspecting it, goods are seized temporarily and investigations are carried out.

The Legislative TF will include the following subjects in the required time and action plan:

Iceland will be in alignment with EU legislation in this field as from January 1<sup>st</sup> 2013, when Act No 57/2011 on the Return of Cultural Goods to Other Countries will enter into force.

A reference to the Combined Nomenclature has to be made in national legislation. Furthermore, export procedure and the layout of the export licence need to be regulated, as well as the technical parameters for licenses for exportation and removal of cultural goods.

**i) Cash control at the borders**

Cash controls are based on provisions in the Customs Act No 88/2005 and Act No 64/2006 on Money laundering and the financing of terrorism. Iceland is a party of the International Convention for the suppression of the financing of terrorism and is also a member of the Financial Action Task Force (FATF). Certain rules on capital controls, which were introduced as a response to the financial crisis, have also affected cash controls at the borders. The Icelandic Parliament has decided to maintain the rules on capital controls until the end of 2013.

Similar to the EU, Iceland applies a ceiling of €10000 (or equivalent in other currencies) for the declaration of cash at the border. Customs can seize any undeclared amount of cash found in excess of €15,000 if there is a suspicion of possible criminal acts associated with the money. Despite an elementary legal framework existing in Iceland, further effort is needed in regard to Iceland's alignment with EU legislation. This concerns among other things the implementation of regulation (EC) No 1889/2005.

The Legislative TF will include the following subjects in the required time and action plan:

EU definition of the limits for seizure of cash and the procedure to be followed after the seizure of undeclared cash will be implemented.

**j) Drug precursors**

The Icelandic legal base in this field is the Act on narcotics and psychotropic substances No 65/1974, and the Regulation on narcotic drugs and psychotropic substances and other controlled substances No 233/2001. Iceland has been a party to the Single Convention on Narcotic Drugs since 1974, the Convention on Psychotropic Substances since 1974 and to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances since 1997. Also, Iceland implements Regulations (EC) No 273/2004, No 1277/2005 and No 111/2005 on drug precursors, according to its EEA obligations.

The provisions on control of drug precursors are fully aligned with the relevant provisions of the *acquis*. Commission Regulation (EC) No 1277/2005 was transposed into Icelandic law on 6<sup>th</sup> October 2010, thereby transposing Regulations (EC) No 273/2004 and No 111/2005 in Iceland as foreseen in EEA agreement. Some fine tuning in the legal environment may still be necessary and will be included in the time and action plan for the alignment of the *acquis* as needed.

### **k) Procedures with economic impact**

The rules applicable to inward and outward processing are significantly different from the ones provided by the *acquis* (including authorisations, the system of suspensions/drawback for inward processing, limitations on the type of goods which can be declared under these procedures). Icelandic legislation does not provide for processing under customs supervision. The rules applicable to warehousing are different from those provided by the EU Customs Code (including different types of warehousing, declaration and movement of goods under warehouse regime).

The Legislative TF will include the following subjects in the required time and action plan:

The respective areas of customs legislation which are an integral part of the *acquis* and Iceland needs to implement are the following: Verification of economic conditions in the inward processing procedure, the list of goods for processing under customs control, ATA carnet in postal traffic, the provisions relating to the free zones type II and free warehouses, as well as other relevant subjects which need alignment.

### **l) Mutual administrative assistance and international customs co-operation**

The ratification process of the Revised Kyoto Convention is ongoing.

The Legislative TF will include the following subjects in the required time and action plan:

All agreements that Iceland has concluded with third countries on mutual customs administrative co-operation will be carefully analysed, and if necessary, their amending will be initiated in order to harmonize them with the *acquis*.

Iceland will sign and ratify the TIR Convention, the Convention on the Harmonization of Frontier Control of Goods, and set up a Coordination Unit for handling requests (as per Article 5 of Naples II Convention).

## **III. Institutional framework**

### **a) Administrative and operational capacity**

The Directorate of Customs is under the auspices of the Ministry of Finance. The Director General is responsible for the operation of the Directorate and reports directly to the Minister.

The operations of the Directorate are divided into two core divisions: Customs Division and Collection Division, as well as two support divisions: Administrative Division and Human Resources Division. In addition to this, there is the office of Internal Audit and the Office of the Director General.

The Directorate serves the whole of Iceland in one customs district. The Customs Division is based on three core departments (Procedures and Facilitation Department, Enforcement and Compliance Department, and Audit Department) and four support departments (Legal Department, Investigation Department, Risk Analysis, and Strategic Development Department).

The Directorate works from twelve premises around the country. The majority of the employees work from the Directorate's headquarters in Reykjavík.

#### **b) Alignment of the administrative organization**

Iceland is an island surrounded by the North-Atlantic Ocean without land borders. If Iceland joins the EU, these natural boundaries will not only constitute the state outer borders, but also the external frontiers of the European Union.

Iceland is well aware of the responsibility that this change will bring and will upon accession have in place the necessary administrative requirements in order to provide for a uniform and effective application of the customs *acquis*. A proactive and visible approach will be developed, in regard to the protection of society and a client-based approach and further co-operation and facilitation with trade and the general public. This approach will be achieved by updating the Business Strategy and by adopting a multi-annual strategic operational plan and by introducing an independent management system to monitor Customs activity. A comprehensive investment policy will be prepared and included in the overall Customs Business Strategy. The drafting of the Business Strategy has started and will be finalized towards the end of the year 2012. An important part of the Business Strategy will be a detailed time and action plan.

These administrative capacities will be strengthened by the adoption of a Training plan, in accordance with the requirements made by the European Union, in order to facilitate the successful and uniform application of the *acquis* in the customs field.

Furthermore, Iceland will ensure the correct and transparent calculation, collection, revision and control of the national and European Union revenue. In order to fulfil this obligation, Iceland will implement a revenue collection system compatible with EU payment methods, as well as review the guarantee systems for revenue protection.

The function of the Internal Audit Officer will be strengthened as regards Strategy on Internal Auditing, guidelines, rulebooks and internal training in this field.

Iceland will continue to build up a qualified and motivated pool of trainers, field staff and experts.

Iceland will develop an Investigation and Enforcement strategy in order to enhance the co-operation and the communication between the intelligence and the investigation department. Guidelines will be drafted in order to regulate the communication and co-operation mechanisms between the investigation and enforcement function and the relevant units.

A comprehensive assessment will be engaged regarding the future procedure in respect to Customs Laboratories. A decision will be made in relation to the possible establishment of a specific Customs Laboratory run by Customs or if the operation of such an entity could be outsourced, partly or in full, to existing Icelandic laboratories or through a contract with a Customs laboratory within the EU.

Iceland will establish a dedicated Risk Management Unit focusing on the flow of all goods, but to this date the main focus has been on high risk goods.

Iceland will implement the procedures and tools used in the EU for security and registration/authorisation of economic operators (ex. RIF, EOS). Iceland will put in place procedures for pre-arrival and pre-departure documentation. Also procedures relating to AEO, EORI and Entry summary declaration. The charging of fees will also be aligned to the EU model.

The Ministry of Finance will bring forward necessary legislative changes concerning customs surveillance and customs control at the internal borders of the European Union to ensure the implementation of Article 36 of the *Treaty on the Functioning of the European Union* concerning prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property.

A draft of Code of Ethics, based on the provisions of the Arusha Declaration, exists at the Directorate of Customs since 2010 and was revised in 2011. Amendments have been made to include references to all the relevant disciplinary measures applicable to cases of misconduct, which are contained in the Penal Code and in the Civil Servant Law. The Directorate of Customs will be

strengthened in order to facilitate the monitoring and development of the Code of Ethics.

A formalised PR Strategy will be developed, drafted and adopted by the Directorate of Customs and a Customs-related PR training programme will be designed, preferably in co-operation with other EU member State Customs Administrations. Also study visits will be organised in co-operation with European Commission's Taxation and Customs Union Directorate-General.

### **c) Computerisation**

The computerisation of the customs system started in 1987 and currently the Directorate of Customs has a set of IT systems that cover all the main business processes. An average of 97% of all customs declarations is electronically submitted and the use of IT is extensive. IT systems are capable of ensuring the management of customs procedures. The customs IT system is connected to shipping companies, traders and government departments for seamless electronic exchange. All officers are connected to the central IT system and manage processes directly through the system. Duties are collected and reimbursed electronically, through the direct link to the state revenue accounting system.

In order to achieve full interoperability and interconnectivity with the EU, the Directorate of Customs will update its systems in several phases. The current system regarding export, import controls and security and risk management will be aligned with EU requirements upon accession. New systems such as the Common Communications Network/Common Systems Interface (CCN/CSI), the New Computerized Transit System (NCTS), the Integrated Tariff Management System (ITMS), the Export Control System (ECS), the Import Control System (ICS) and the Economic Operators System (EOS) will be developed and implemented by the time of accession. The preparation work regarding the NCTS and TARIC (a part of ITMS) has already started. All stages of testing of the IT systems required for interoperability and interconnectivity will be conducted at the latest six months prior to the accession of Iceland to the European Union.

The IT Systems of the Directorate of Customs will be developed in accordance with EU requirements. This development will be business driven, thus the IT systems will be compatible with business processes and developed based on the Business Strategy and EU's best practices. In order to achieve this, the Directorate of Customs will define, publish and approve a multiannual IT strategy based on the overall Customs business strategy. Furthermore, it will implement and use IT governance frameworks and methodologies for software development according to EU and international best practices and standards. In order to manage the

development process the project management and quality assurance techniques will be implemented.

A task force (Computerisation TF) has already started a drafting of the IT strategy which will be finalized and submitted for approval to the Ministry of Finance before the end of 2012.

Administrative capacity in the IT field will be strengthened throughout 2012 with recruitments and training.

#### **IV. Reservations interlinked with other Chapters**

Iceland underlines the unique situation of the country due to its remoteness, insularity, low and sparse population, difficult topography and climate and its economic dependence on a few products. In this respect, reference is made to the General Position of the Government of Iceland presented at the ministerial meeting opening the Intergovernmental Conference on the Accession of Iceland to the European Union on 27 July 2010. These distinctive but permanent characteristics and constraints should be taken into account through appropriate measures, *inter alia* with reference to the provisions of the TFEU, Accession Treaties and relevant secondary legislation, including measures currently applied to regions facing similar territorial and demographic constraints.

There are quite significant variations between the applied external tariffs of Iceland on the one hand and the European Union on the other, *inter alia* reflecting Iceland's limited range of production, its reliance on imported inputs for the industrial sector and the sensitivity of the agricultural sector. Application of the common external tariff following accession would in some instances lead to the levying of import duties in trade with third countries where none have previously existed, both with respect to industrial and agricultural products. The common external tariff would at the same time foreseeably provide reduced tariff protection for agricultural goods produced domestically.

The introduction of customs duties in trade with third countries would have detrimental effects on Iceland's fisheries sector, notably with respect to inputs to its fishing, fish processing and aquaculture industries which are presently imported duty free. These imported inputs include bait for longline fishing, raw material for fish processing and feed material for aquaculture production. Iceland's negotiating position with respect to this issue is elaborated in Chapter 30 on External Relations and reiterated in Chapter 13 on Fisheries.

Iceland's energy-intensive industries, notably the production of aluminium and alloys, would also be negatively affected as all main inputs are not presently subject to duties

upon import. Iceland's negotiating position with respect to this issue is elaborated in Chapter 30 on External Relations.

As will be further elaborated in Iceland's negotiating position in Chapter 11 on Agriculture and Rural Development and is cited in Chapter 30 on External Relations, tariff protection is one of the principal instruments of domestic agriculture policy. Agricultural products are generally subject to considerably higher import duties than other products. While a range of agricultural products can be imported without duty irrespective of origin (e.g. cereals, fruit, sugar, rice, many types of vegetables etc.), tariff protection is afforded to most domestically produced agricultural goods. This applies in particular to milk and dairy products, meat and meat products, eggs, flowers and certain vegetables and processed agricultural products.

Those issues will need to be addressed in Chapters 11 and 30 before the closure of this Chapter and Iceland reserves the right to return to the tariff issue in that context.

## **V. Acceptance of the *Acquis***

Iceland accepts the *acquis communautaire* in Chapter 29 on the Customs Union, as of May 15<sup>th</sup> 2012, subject to the reservations brought forward in interlinked Chapters as iterated above.