

CHAPTER VII

FREE MOVEMENT OF GOODS:INTERNAL TRADE

A-ESTABLISHMENT OF THE CUSTOMS UNION

The EEC Treaty lays down foundations for the Community becoming a Customs Union. Article 9 numerates the elements necessary to achieve a Customs Union, article 13 provides that customs duties on imports between member states must be abolished whilst Article 95 prohibits internal taxation on imports having an equivalent effect to customs duties.

Goods benefiting from the right to free movement are the products originating from the member states as well as products coming from non-member countries which become goods in free circulation when the customs formalities have been complied with and the appropriate duties or charges having equivalent effect have been levied in the state of entry¹.

Subject to transitional provisions for any new member state the principles of the customs union are fully operational as directly applicable rules imposing specific obligations upon the member states as well as individuals. The only exceptions are the derogations justified according to Article 36 of the EEC Treaty.

In a technical sense the customs union is achieved by the elimination of customs duties and charges having equivalent effect and the removal of quantitative restrictions and measures having equivalent effect. In addition the various obstacles to trade which have not been listed in the Treaty but form part of national practices must also be removed.

B-ELIMINATION OF CUSTOMS DUTIES AND EQUIVALENT CHARGES²

The Treaty provisions have a direct effect imposing a duty upon the member states to adjust their laws and practices and safeguarding the rights of importers³.

Whilst the meaning of customs duties appears clear, the concept of equivalent charges has given rise to a volume of case law. Such charges were defined as "duties whatever their description or technique, imposed unilaterally, which apply specifically to a product imported by a member state but not to a similar national product and which, by altering the price, have the same effect upon the free movement of goods as a customs duty"⁴. Neither the level and designation of the charge, nor its objective i.e. whether to benefit the state or whether to protect the competing national product matters, but what does matter is the fact that the charge is imposed on goods crossing the frontier of a state⁵.

However charges for services rendered, such as for example charges for port facilities, are legitimate⁶ but not so charges for checks forming part of administrative procedure for the protection of hygiene and public health⁷.

C-ELIMINATION OF QUANTITATIVE RESTRICTIONS AND MEASURES HAVING EQUIVALENT EFFECT⁸

The duty to abolish import quotas and to refrain from imposing bans on imports even only temporary⁹ is quite clear and the plea of necessity will not provide a defence.

However the concept of measures having equivalent effect has generated a substantial volume of case law.

Such measures were described as "all trading rules enacted by member states which are capable of hindering directly or indirectly, actually or potentially, intra-Community trade"¹⁰. This broad formula seems capable of neutralising any devices designed to defeat the system.

D- DEROGATIONS UNDER ARTICLE 36

Article 36 permits the member states to derogate from their obligations on specific grounds which have to be proved and which cannot constitute "a means of arbitrary discrimination or a disguised restriction on trade". These grounds include public morality¹¹; public policy¹²; public security¹³; the protection of health¹⁴; and of life of humans, animals or plants¹⁵, the protection of national treasures possessing artistic or

archeological values¹⁶; or the protection of industrial and commercial property¹⁷. Attempts to extend the derogations to include the protection of the environment¹⁸ and of consumers¹⁹ have failed.

E-DEROGATIONS UNDER ARTICLE 115

By virtue of Article 115 (1) the Commission may authorise member states experiencing economic difficulties or deflection of trade caused by excessive imports from non-Community countries to adopt measures to rectify the position. By Decision 80/4²⁰ the Commission established a system of intra-Community surveillance which replaces the unilateral action by a member state facing such problems.

F-NATIONAL SECURITY SAFEGUARDS

Article 224 allows for the derogation in the event of serious disturbances affecting the maintenance of law and order, in the event of war, or in order to carry out obligations for the purpose of maintaining peace and international security.

G-REMOVAL OF PHYSICAL BARRIERS TO TRADE

The physical barriers consist of the national frontiers and of the apparatus of frontier controls. They constitute a visible obstacle to free trade but it is argued that their total removal would promote drug smuggling, terrorism, illegal immigration and international frauds. However a strong common market should relegate these fears to the realm of domestic policing.

As from 1 January 1993 the whole control of infrastructure at the national frontiers ought to be removed. There will be no frontier posts and no customs officers²¹. However this will not prevent the member states from carrying out spot checks anywhere in their territories though the crossing of the frontier by itself shall not justify controls. To deal with some sensitive issues the Community issued directives to harmonize the conditions of trade in animals, various food products and plants. There is in place a monitoring arrangement based on the abolition of veterinary²², zoological and animal welfare controls at frontiers. There also will be a Veterinary and Plant Health Inspection Office²³. The control arrangements are backed up by co-operation between the national authorities.

Customs formalities in internal trade have also been abolished²⁴ subject to specific provisions arising from the external trade. The duty-free allowances for travellers will also disappear²⁵ on 1 January 1993 except in the case of special arrangements for airports and ports which will continue until 1 July 1999. Frontier controls on the possession of weapons will also cease but the acquisition of such articles will be subject to common rules based on a Community list of authorised weapons. Individual travellers may bring accompanying pets without frontier control but member states retain their right to check animal health in their territories.

The abolition of internal frontiers entails a uniform and consistent management of the external frontiers of the Community including the application of Article 115 of the EEC Treaty and the control of trade in sensitive products, i.e. products capable of a dual civil and military use and certain technologies falling into the same category.

There is also a problem of trade in objects of cultural nature which may fall into the category of national treasures. There is, at present, Regulation 3911/92 to harmonize export controls and a proposal to introduce a system for the return of cultural objects removed unlawfully to another member state. Whilst the necessary instruments to abolish the economic frontiers between member states are being put in place there still remain the problems of implementation and enforcement. In the meantime co-operation between national authorities is being ensured through uniform training and computerized links.

H-REMOVAL OF TECHNICAL BARRIERS TO TRADE

The removal of technical barriers involves extensive legislation laying down uniform Community standards. At first the Community adopted a one-dimensional approach laying down rules for individual products (e.g. motor cars) but this proved to be a slow and cumbersome process. The new approach is multi-dimensional based on two principles: Selective harmonization and mutual recognition.

Thus a distinction is made between what is essential to harmonize and what may be left to mutual recognition of national standards. Therefore Community legislation is to be restricted to those sectors in which it is essential to create a uniform market (e.g. pharmaceuticals), i.e. to establish minimum health and safety regulations and thus enable manufacturers, who conform to these standards, to have equal access to the markets of all member states. The principle of mutual recognition, on the other hand, is based on the Cassis de Dijon formula²⁶ which means that the member states

must accept each other's products which may be different in some details but which, essentially, correspond to the same demand.

Member states who wish to lay down their own national product standards are obliged to notify the Commission ²⁷ in advance of any newly proposed regulations. The Commission is able to prevent the implementation of such proposals until it has been proved that they will not create any new barriers to intra-Community trade.

The standardization policy is backed up by a policy on certification and verification controlled by the Commission.

I-REMOVAL OF FISCAL BARRIERS TO TRADE

Article 95 prohibits discriminatory taxes upon imported goods. Such taxes are equivalent to customs duties. The rule is directly applicable and states in breach are subject to enforcement proceedings under article 169 of the Treaty.

Whether or not a tax is discriminatory depends not only on the rate charged but also on a comparison of the products involved. In this respect article 95 lays down a double test: Whether there is equality of fiscal treatment between similar imported and domestic products and also whether the internal taxation protects competing domestic products²⁸. Moreover not only the rate of direct and indirect internal taxation on domestic and imported products but also the basis of assessment and rules for levying the tax must be taken into consideration²⁹.

The removal of fiscal barriers to trade implies approximation of indirect tax within the Community. The tax system is currently subject to reform within the Community. It shall be dealt within the context of the Community Tax Policy.

J-PUBLIC PROCUREMENT AND PUBLIC WORKS CONTRACTS

Purchasing by governments and other public bodies represents about 15 % of the Community GDP and, therefore, it is relevant to the operation of the common market in goods. This sector is subject to some rudimentary rules laid down in directives which, however, exclude at present procurements of defence and military material and contracts affecting public transport, water and energy sectors.

Legislation relating to public works contracts³⁰; and procurement contracts³¹ aim to open up the market by making sure that firms established in the Community have a fair chance in offering their services. The rules affect, therefore, publicity and advertising and purport to eliminate discrimination on the ground of nationality with regard to public supply contracts above 200,000 ECU and public works contracts above 5 Million ECU.

Like all other Community measures, legislation in this field has to be implemented by the member states. However the White Paper has recorded dissatisfaction with the progress in this field and promised more legislation especially to cover the hitherto exempted areas as well as a vigorous enforcement of member states' duties.

Aspiring to the membership of the Community, Turkey must review her public procurement and public contracts system.

K-STATE MONOPOLIES

In accordance with article 37 of the EEC Treaty state monopolies of a commercial character must be progressively adjusted in order to eliminate discrimination in the conditions under which goods are procured and marketed between nationals of member states. Thus not all state monopolies are incompatible with the common market but those of a "commercial character" are, and they have to be eliminated. Should a member state fail to carry out its obligation or re-establish a monopoly (e.g. in respect of tobacco products or alcoholic drinks) it would face an enforcement action³².

L-HARMONIZATION OF CUSTOMS AND RELATED LAW

In order to complete the harmonization process and close the existing gaps the Commission is currently working on a uniform Customs Code which will provide comprehensive compendium of substantive and procedural rules³³. Since customs rules are applied and enforced by the national authorities there is also an urgent need of harmonizing administrative and penal sanctions which differ from country to country. This may, in turn, revive the Draft Treaty on Common Penal Rules proposed in 1971³⁴. However, pending harmonization in this field, the member states have to observe the Community principle of proportionality which means that national repressive measures must not be disproportional to the gravity of the offence³⁵. The adjustment of administrative and penal sanctions in the field of customs law is thus

an obligation which a country aspiring to admission to the Community must take on board³⁶.

The position in Turkey is as follows³⁷:

M-TECHNICAL BARRIERS TO TRADE AND STANDARDIZATION

In Turkey regulations are issued by the relevant Ministries which govern the recommendations of the Turkish Standards Institute. Two kinds of standards are laid down by the institute:

- Obligatory standards
- Voluntary standards

Obligatory standards define the characteristics concerning health and safety of products. They come into force by the approval of the relevant Ministry. The producers are under legal obligation to arrange their product in conformity with these standards. The obligatory standards are published in the Official Gazette.

Voluntary standards are recommended in consideration of the main needs of the country. However their application is left to the choice of the producer.

The Turkish Standards Institute is a member of the European Committee on Standardisation (CEN). Most standards of the Institute are transposed from ISO standards and prepared in parallel with CEN standards. Due to the accession of Turkey to CEN recently, the Institute is obliged to withdraw any standards incompatible with the relevant CEN standard.

Testing and certification of exported and imported products is based on bilateral agreements made between Turkey and other countries. Conformity of imported products and their certification of conformity to the Turkish standards are subject to regulation.

N-TURKISH LEGISLATION CONCERNING THE NEW APPROACH DIRECTIVES Mutual Exchange Of Information On Standards And Technical Regulations

According to article 2e of TSE Regulation of 22 November 1960, standards are to be published. Similar studies carried in other countries are to be followed. Connection and Cooperation with international organizations are to be established.

Article provides for the supply of information from archives of national and international standards to the interested parties.

The regulation in general aims to provide information concerning standards to the parties who are in need of such information.

The Turkish Standards Institute has set up an Institution which is to become an information centre for more efficient service in this field. There exists no Turkish regulation which is not in conformity with the relevant EC directive.

Toys

General Health Regulation 1593 of 24.4.1930 ³⁸.

Article 183 (3) of the regulation aims to protect the health and safety of children. Toys are included in the group of products that are subject to inspection.

Regulation 8236³⁹ concerning foodstuffs provides that the material, the paint and the printings of toys must not be composed of substances dangerous to health.

Relevant Turkish standards:

TS 5217 Safety rules concerning toys made for children⁴⁰.

TS 5218 Safety rules concerning toys made for children⁴¹.

TS 5219 Toys for children⁴².

TS 2329 Toys for children

The standards of packaging run in parallel with EC standards.

Paint, printing, material concerning toys are dealt with like foodstuffs although a relevant article does not exist.

Pressure Vessels

The relevant standard is TS 1519 dated 14.1.1985. The decision taken by the Ministry of Industry and Trade places the standard among obligatory ones as from February 1, 1986..

The content of the tube, materials used in its production, properties of its production, its tolerance, its pressure properties, experiments and its presentation to the market, are included in the standard.

At the stage of sales, products covered by standard TS 1519 must bear to TSE mark. Similar products which are imported must also conform to this standard.

Regulation 1705 concerns products for exportation and the additional Regulation 3018 concerns imported products.

Regulation 3143 of the Ministry of Industry and Trade includes pressure vessels.

Certification And Testing

According to the Turkish legislation the Turkish Standards Institute is authorized to carry out certification of products. The Institute is the sole authority to accredit laboratories, unlike in EC. The treatment of ISO 9000 standards in EC legislation which are international standards issued to the production and services of private companies need to be compared with relevant Turkish legislation. Where ISO 9000 standards are concerned, the Institute again has the sole authority to accredit companies and give these standards to their products and services .

When producers are given a certificate of conformity to ISO 9000 standards all their present and future products are assumed to fit these standards and are allowed to bear TSE and TSEK marks on their labels as being in conformity with Turkish standards.

In the Commission proposal, for certification and testing of products in the EC, a modular approach is taken for the various sets of alternatives to be followed by the producers⁴⁴. The proposal includes certification of conformity to the approved type of products concerned where product type is designed before the production. In Turkish legislation no provision can be found for an obligation to obtain certification of conformity to the approved type.

Electromagnetic Compatibility

The standards in this field are voluntary and are not published in the Turkish Official Gazette.

The aim of the standards in this field is to define the permissible electromagnetic disturbance and immunity levels caused by electronic apparatus and the measurement methods in this field. They include:

TS 4007 Lighting Devices, Lamp, Fluorescent.

TS 4008 Electronic Home Devices, Portable Devices and Similar Devices.

TS 3327 Radio Frequency Devices Used in Industry, Science, Medical Sciences, (Excluding Surgical Diametric Devices)

There is as yet no Turkish Legislation concerning information technologies and transmitters.

Machine Safety

Machine safety is governed by the following regulations:

- 1) Regulation 3146 of the Ministry of Labour and Social Security of 9.1.1985⁴⁵.
- 2) Regulation of Health of Workers and Security at Work⁴⁶.
- 3) Regulation No.5734 concerning Health of workers and safety of workers at work lays-down the duties of the institutions concerned.
- 4) Regulation for machine shields which aims at the prevention of accidents at work⁴⁷.

5) International Labour Agreement signed by Turkey on 23 May 1967 (No.872) which approves certain devices that are found safe for usage at work.

TS 3840 General Security Rules against work accidents with machines.

TS 3841 General Security concerning machines used in the cutting of trees.

Harmonization with EC standards is necessary for the future additional standards that will be prepared by Turkish Standards Institute.

Personal Protective Equipment

Personal Protective Equipment is prescribed by the following:

TS 2429 Safety helmet

TS 3344 Protective clothes against heat and fire.

TS 3546 Boots used in industry operating under low heat

TS 3667 Steel Helmet.

TS 3547 Boots used in industry-Antistatic

TS 3883 Surgical Gloves.

TS 4057 Clothes providing limited protection against dangerous chemical liquids

TS 5142 Fire and heat resisting clothes

TS 5557 Protective material for eyes for working personnel

TS 5558 Protective material for eyes concerning military personnel

TS 5559 Protective material for eyes against lasers

TS 6048 Protective material in X Ray equipment

TS 6604 Medical masks

TS 6859 Eye protective material for welders

TS 6860 Protective masks for welders

TS 7973 General safety rules concerning protective gloves

TS 7304 Life Jackets

TS 7305 Protective gloves against mechanical effects

TS 7306 Protective gloves for welders

Regulation 3143 of the Ministry of Industry and Trade puts in practice the obligatory standards and obligates it to check for the conformity to these standards.

Regulation 1705 concerns the inspection of the quality of products and services in export trade.

By regulation 132 the Turkish Standards Institute is to cooperate with other national and international standards institutions and disseminate information to the interested parties.

Regulation 6/7677 provides for inspection of obligatory standards but there is at present no legislation laid down for equipment⁴⁸.

O-OTHER SECTORS:

Pharmaceuticals

There is no Turkish legislation for high technology medicinal products.

For the testing of medicines there exists a decision of the Ministry of Health concerning the information to be given by the producers in order to obtain a commercial licence for the marketing of their products. The Turkish legislation merely includes rules concerning the information to be given by the producer, while on the other hand, the legislation does not include methodologies to be followed in these tests as in EC legislation.

Where pricing of medicines is concerned, Turkish legislation does not include;

- the procedures for testing medicines in a national health system,
- the principles for the fixing of prices.

Motor Vehicles

Type Approval

The type approval is governed by Regulation concerning production and repair of vehicles⁴⁹ covers the production and repairs of motor vehicles and motorway traffic regulations. The Regulation concerning the production and repairs of motor vehicles requires two documents for approval namely the "introductory declaration" and a

regulations. The Regulation concerning the production and repairs of motor vehicles requires two documents for approval namely the "introductory declaration" and a "document of conformity". The former includes general characteristics of the vehicles their weight, dimensions, motor, axes, suspensions, steering systems, brakes, electric systems. The latter includes similar items. Additionally an applicability form is filled at the checking stations. The motorway traffic regulations deal with the safety on highways. The regulation also identifies the institutions which decide on the conditions of inspection concerning production, repair and the conformity of the production quality document to the technical regulation.

Some differences exist between Turkish legislation and EC legislation on type approval of motor vehicles. The forms that pass under the names of introductory declaration and conformity documents in Turkish legislation and under the name "Introductory Model Form" and EC Type Approval Document differ in the EEC in certain respects. The limited change form which is to be filled by the checking stations using "type approval" document under Turkish legislation, is filled by the producer under EC legislation under the name "type approval document". According to Turkish legislation the certificate of conformity does not exist for the parts of the vehicles. No rules exist under Turkish legislation for procedures concerning recognition and mutual responsibility among countries as regards type approval documents.

There is no legislation concerning the safety of sidecars.

For the precautions to be taken against air pollution caused by gases given out by motor vehicles, the Turkish legislation includes:

- regulation concerning the production and repairs of vehicles.
- regulation concerning the protection of the quality of air⁵⁰.
- regulation for the emission limit values for the gas polluters of motor vehicles (in preparation).
- TS 5648 Type Approval tests of motor vehicles emitting polluting gases by their oil and by their diesel motors.

Turkish legislation does not include the quantity of gas used as a sample in the testing of motor capacities, emission rates of polluters, criteria for tests concerning unleaded petrol and negative or positive numbers for the testing of vehicles. There are differences between Turkish and EC legislation as regards the rates of polluting factors in motor vehicles.

P-FOODSTUFFS

Labelling, Advertising And Presentation

TS 4331 concerning General Rules for Packaging aim to inform the consumer by providing principles in labelling of packages of foodstuffs at the distribution stage in internal and external markets. The standard also concerns information on internal packages. The information must include:

- Name, address or commercial address or brand of the producer or distributor,
- Name, category, type, class of the product,
- Net quantity,
- Number of serial or lot,
- Date of production,
- Name of the materials and additives and if obliged by the relevant standard, their quantity,

Last date of use if declaration of such information is made obligatory by the relevant standard.

Regulation Concerning Foodstuffs

Regulation 8236⁵¹ aims to inform the consumer by labelling the packages of foodstuffs and their presentation in the market. The information on the label must include the firm's name and address, registered brand, if any, mark and number of the standard, name, class and category of the product, its net weight, date of production, name of the additives if any, lot serial, code number, last date of use, if made obligatory by the relevant standard.

Labelling rules exist also under Turkish legislation but are not as detailed as in the corresponding EC directives. The grouping in the annexes of EC directives concerning the naming of certain ingredients is not applied generally in Turkish legislation. Rules concerning the labelling of foodstuffs presented in open markets do not exist in Turkish legislation.

Principles concerning the declaration of date of minimum durability or last date of use differ between Turkish legislation and EC legislation. Under Turkish legislation

declaration of such information is obligatory only if it is made mandatory in the relevant standard. However under EC legislation such declaration is obligatory for all foodstuffs. In addition EC legislation brings out a distinction between certain types of products in this group. For products biologically degradable the last date of use instead of the date of minimum durability is prescribed.

Additives

Regulation⁵² concerning additives in foodstuffs includes general and specific conditions. Additives are classified according to their purpose. The lists include the name, class, EC number of the additive, the foodstuff it is to include, the maximum quantity that can be added and some specific conditions regarding the usage of the additives. Where an import licence must be obtained from the relevant Ministry, the imported foodstuff must be in conformity with the regulation.

The general rules include health criteria, information that must be put on the label, rules on how changes concerning these additives can be made, the prohibition of the use of any additive which is not on the list and the conditions under which more than one additive can be used for the same purpose.

Rules concerning labelling include naming of the aromatic material with the classification, prohibiting the declaration of any function irrelevant to the purpose of the additive, obligation to put the necessary information on the labels to warn the consumer against risks concerning health and technical rules including the proportions in which certain additives can be used in certain foodstuffs.

The classification of additives in Turkish legislation according to the purpose of usage differs from the classification in European legislation. While Turkish legislation includes aromatic materials, starters, solvents as additives, the EC legislation does not define them so.

Some of the classifications seen in EC legislation is not included in Turkish legislation.

While Turkish legislation obliges certification, of the conformity of additives to the international specifications, it does not include the methodology for sampling and anal

ysis. Additives concerning emulsifiers, stabilizers, gel agents, are included in the Turkish regulation for additives. Regulations concerning the extraction solvents do not exist in Turkish legislation.

The Turkish legislation is also applicable to aromatic materials and their labelling. In case of importation, the products concerned must conform to international specifications. Additionally permission must be obtained from the relevant Ministry. While the classification in Turkish legislation is made according to natural and synthetic materials, in EC legislation classification is made according to the raw material and process of production. Rules concerning the materials, raw materials to be used in the production of aromatic materials, production methods and usage does not exist in Turkish legislation. There is no reference to purity criterion on their sampling and analysis for inspection in Turkish legislation.

Preservatives are also included in Turkish regulation concerning additives. In the lists given by Turkish legislation some of the preservatives are included in EC but not in Turkish legislation. Certification of conformity to international specifications in preservatives is demanded. However no reference is made to testing and sampling methods.

Inspection Of Foodstuffs

Inspection rules are included in the General Health Regulation. Materials used in the production and storage of foodstuffs are subject to the control of the Ministry of Health. Within the domain of municipalities, inspections are carried out by the personnel of the municipality while in other areas they are carried out by the personnel of the Ministry of Health. The regulation concerns certain characteristics of foodstuffs and the conditions under which those characteristics can be changed. The regulation includes the Turkish Standards Institute, Ministry of Industry and Trade, Treasury, Ministry of Agriculture, Forestry and Rural Affairs, Ministry of Health and the municipalities as the relevant institutions in the matter.

In cases of risk and fraud samples can be taken and tested in public laboratories under the annual programmes prepared by the Ministry of Agriculture, Forestry and Rural Affairs. Inspections of foodstuffs, unlike in EC legislation, are carried out by different institutions instead of a single authority. Under Turkish legislation concurrence is not attained among standardization of education programmes for inspectors,

sampling quality standards of laboratories in order to bring them up to an equal quality level.

Other Matters Concerning Foodstuffs

Turkish legislation is in harmony with EC legislation when the labelling of alcoholic drinks is concerned.

Sampling and testing methods are prepared by the Turkish Standards Institute and put into practice by the relevant Ministry where international standards like ISO are applied. Additionally, in the sampling of foodstuffs, standards of the Commission's Codex Alimentarius is applied. However some rules are not in conformity with the EC directives since the sufficiency rates concerning legislation, the way they can be reiterated or recreated is not explained as done in the internationally accepted methods.

In the Turkish legislation there is no provision for the reviewing of existing methods relevant to technical development for cases in which interpretation of the results differ and a uniform practice is necessary.

Where materials in contact with foodstuffs are concerned, it is obligatory under Turkish legislation, for the product to be marked that it is for use with food. No regulation under Turkish legislation exists for regenerated cellulose film, ceramics, metals, wood, board, paraffin wax, micro crystalline wax and textile products.

Q-PHYSICAL BARRIERS TO TRADE

Simplification Of The Transit Operations

Transit operations are governed by,

- Customs rules,
- TIR Agreement,
- Customs Regulation,

According to the customs rules no taxes, or charges can be imposed on products under transit, vehicles and travellers except the amount equivalent to the costs of the checks made.

According to the TIR agreement no taxes concerning imported products or products to be exported can be demanded in respect of products in transit.

Among the countries which have signed the agreement concerning free transit of products, no taxes or charges can be imposed on the goods in transit if the goods originate from the signatory countries. On the other hand, in respect of goods that originate from a non signatory country, goods that are permitted for importation can be under free transit.

However the transit of certain products are prohibited or subject to restrictions. These include,

- products likely to jeopardise internal and external security,
- public health,
- health of animals and plants,
- products whose transit is prohibited by international agreements,
- war materilas,
- products whose transit purposes are not stated clearly on their bill of lading and the transit note.

According to the decisions relating to the external trading regime and the protection of the value of Turkish Currency, the freedom of transit can be removed or restored by the Cabinet.

The transportation of products and travellers can be carried out in conformity with bilateral or multi-lateral agreements. The regulation concerning the security of international carriage covers the conditions of the stay of the vehicles during their transit. In cases of suspicion or where time allowed for transit has been exceeded without appropriate reasons, the products concerned can be inspected.

Financial guarantees and certain certificates are demanded from vehicles that unload their products in Turkey during the transit.

Under ordinary transit, excluding transit by railway, a transit declaration is demanded at the customs posts. Goods are checked and sealed for simplification of the exit procedures. Also certain charges and taxes are taken. Within this secondary category of transit, the rules concerning customs formalities differ from the EC legislation.

Elimination Of Customs Formalities And Establishment Of Common Borders Under "TIR" Agreement

Parallel to the rules under EC legislation, trucks entering Turkey are subject to document any control under the customs regulation in force. The procedures are to be simplified as much as possible.

However for transit vehicles the procedures are applied in the following phases:

- operations are carried out by the Ministry of Finance and Customs.
- Customs operations are carried out at the points of entrance, destination and exit.
- The products in transit and registered in TIR certificate can be controlled periodically and in case of a product which has not left the territory, within a maximum of one year the relevant Ministry warns the guarantor if the product still has not left the territory within six months, the duties are charged to the guarantor,
- According to the regulation concerning the protection of the value of Turkish Currency the necessary exchange operations have to be declared.

Elimination Of Postal Fees:

According to the "Transit Regime" which is included in the legislation concerning customs duties, as far as postal fees are concerned, no payment can be imposed on products in transit except the amount equivalent to the costs of the necessary checks. Turkish legislation is in harmony with EC legislation.

NOTES

- 1 EEC Arts.9 and 10
- 2 Arts.9-17
- 3 Case 26/62 Van Gend v Nederlandse Administratie der Belastingen (1963)
ECR 1
- 4 Case 2 and 3/62:EEC Commission v Luxembourg and Belgium (1962)ECR
425 at 432
- 5 Case 2-3/69: Sociaal Fonds voor de Diamantarbeiders v Brachfeld (1969)
ECR 211
- 6 Case 266/81: SIOT v Ministero delle Finanze (1983) ECR 731
- 7 Case 314/82: EC Commission v Belgium (1984) ECR 1543
- 8 Arts.30-35
- 9 Case 231/78: EC Commission v United Kingdom (1979) ECR 1447
- 10 Case 8/74 : Procureur du Roi v Dassonville (1974) ECR 837 at para.5.
- 11 Case 34/79: R v Henn, R v Darby (1979) ECR 3795; Case 121/85: Congate
v H.M. Customs and Excise (1986) 1 CMLR 739
- 12 Case 7/78: R v Thompson (1978) ECR 2247
- 13 Case 95/81: EC Commission v Italy (1982) ECR 2187 at 2204; Case 72/83:
Campus Oil Ltd v The Minister for Industry, Re Security of Oil Supplies (1984)
ECR 2727
- 14 Case 274/87: EC Commission v Germany, Re Quality of Sausage (1989)
2 CMLR 733
- 15 Case 39/73: Rewe-Zentralfinanz GmbH v Direktor der
Handwirtschaftskammer Westfalen-Lippe (1973) ECR 1039
- 16 Case 7/68: Commission v. Italy (1968) ECR 423; Case 18/71: Eunomia di Porro
v. Italian Ministry of Education (1971) ECR 811.
- 17 Case 192/73 Van Zuylen Freres v Hag (1974) ECR 731; Case 199/75:
Terrapin v Terranova (1976) ECR 1039; Case 238/82: Durphar v
Netherlands (1985) 1 CMLR 236
- 18 Case 302/86: Commission v Denmark (1988) ECR 4607
- 19 e.g. Case 179/85 Commission v Germany, Re Use of Champagne-Type

- Bottles (1988) 1CMLR 135; Case 174/84: Commission v Greece, Re Beer Purity Standards (1988) 1CMLR 813
- 20 O.J.1980, L.16/14
 - 21 Regulation 390 /92 (01.1992)
 - 22 Directives 92/5(01 1992); 92/69(01 1992); 92/60(OJ. 1992)
 - 23 Directives 92/33 (OJ 1992) and 92/34 (oj 1992)
 - 24 Regulation 2453/92 (OJ 1992, L249)
 - 25 Directive 92/12(OJ.1992) and Dir. 92/108, OJ 1992.
 - 26 Case 120/78:Rewe-Zentral v Bundesmonopolverwaltung for Branntwein (1979) ECR 649
 - 27 Directive 83/189, O.J.1983, L.109/8
 - 28 Case 27/67:Fink-Frucht v HZA München (1968) ECR 223 at 234; Case 77/69:EC Commission v Belgium (1970) ECR 237
 - 29 Case 74/76:Iannelli v Meroni (1977)ECR 557 at 579
 - 30 Dir. 71/305, (O.J.1971), 185/5; Decision 71/306 (O.J.1971), Dir. 88/295 (O.J.1988, L127) Dir.89/440 (OJ.1989, L210); Dir.89/665 (OJ 1989, L395) L.1851; Dir.72/2877, (O.J. 1972), L.176/12
 - 31 Dir. 77/62, (O.J.1977, L.13/1),Decision 77/63, (O.J.1977 L.13/15); Council Resolutions O.J.1977, C.11/1 and O.J.1977 C.11/3; Council Declaration O.J.1977, C.113; Dir. 80/767, (O.J.1980, L.215/1); Dir.90/531(O.J.1990,L297)
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