

# WORLD TRADE ORGANIZATION

**WT/REG22/5**  
30 October 1996

(96-4512)

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**Committee on Regional Trade Agreements**

Original: English

## CUSTOMS UNION BETWEEN TURKEY AND THE EUROPEAN COMMUNITY

### Communication from the Parties to the Customs Union

Turkey and the European Communities have the honour to attach information concerning the final phase of the Customs Union in line with the Guidelines prepared by the Chairman of the Committee on Regional Trade Agreements, for examination by the Committee on 8 November 1996.

The final phase of the Customs Union entered into force on 1 January 1996, following Decision 1/95 of the EC-Turkey Association Council of 22 December 1995. It was notified to the WTO on 22 December 1995. The text of the Decision was circulated to WTO Members on 13 February 1996 (WT/REG22/2).

## **I. Background Information on the Agreement**

### **1. Membership and dates of signature, ratification and entry into force**

Decision 1/95 of the Turkey-EC Association Council (notified to the WTO on 22 December 1995: WT/REG22/1) (hereinafter “Decision”) on Customs Union was adopted on 6 March 1995 and entered into force on 31 December 1995. It sets out the modalities for the final or implementation stage of the Customs Union, first envisaged in the 1963 Ankara Agreement (see 1965: BISD 13, pp. 59-64).

### **2. Type of agreement**

Customs Union

#### **Background**

The Turkey-EEC Association Agreement, namely the Ankara Agreement, was signed on 12 September 1963 and following its ratification by the Parties, entered into force on 1 December 1964. It established an Association between the EEC and Turkey in accordance with Article 238 of the Treaty of Rome, and envisaged three progressive stages for Turkey to achieve Association with the EC: preparatory, transitional and final.

The preparatory stage of five years, for which provision was made in the Ankara Agreement, was extended to eight years. Following this, an Additional Protocol laying down the terms and conditions for the implementation of the transitional stage, was signed on 23 November 1970 and entered into force on 1 January 1973, although its commercial provisions were being implemented as of 1 September 1971 (see 1972: BISD 19, pp.102-109; L/4086, adopted 21 October 1974).<sup>1</sup>

As an executive arrangement for the implementation of the Ankara Agreement, the Additional Protocol foresaw the establishment of the Customs Union between Turkey and the EC by the end of 1995.

In accordance with the provisions of this Protocol, during the transitional stage the Parties eliminated on a reciprocal basis a range of customs duties and charges having equivalent effect, as well as quantitative restrictions applied on bilateral trade; Turkey aligned its tariffs applied to imports from third countries with the Common Customs Tariff of the EC, and for the proper functioning of the Customs Union, Turkey enacted legislation compatible with the EU's Common Commercial and Competition Policies.

### **3. Scope**

The Customs Union established by these agreements, when taken together with the Free Trade Agreement between Turkey and the European Coal and Steel Community (ECSC), provides the framework for future trade relations between Turkey and the Community in conformity with Article XXIV of the GATT 1994.

The Customs Union covers trade in all products with the exception of goods covered by EURATOM and the European Coal and Steel Community Treaties. In respect of the European Coal and Steel Community (ECSC) products, a Free Trade Agreement between Turkey and the ECSC entered

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<sup>1</sup>The Ankara Agreement was distributed to the CONTRACTING PARTIES of the GATT 1947 in document L/2155/Add.1 (25 February 1964); the Additional Protocol was likewise circulated in document L/3554 (8 September 1971).

into force on 1 August 1996, following the signature of the Agreement on 25 July 1996 (notified to the WTO on 31 July 1996: WT/REG22/1/Add.1).

With the entry into force of the Customs Union, elimination of the customs duties and other restrictive regulations of commerce on industrial and certain agricultural products meets the requirement of Article XXIV in respect of the principle of “covering substantially all the trade”.

In order to ensure the proper functioning of the Customs Union, the Ankara Agreement, the Additional Protocol and the Decision also contain provisions, inter alia, on state aid, state monopolies, competition, intellectual property rights and services.

Decision 2/95 of the Turkey-EC Association Council on temporary exceptions to Turkey's application of the Common Customs Tariff on a limited number of products in respect of third countries (WT/REG22/2), envisages that Turkey shall align its customs tariff applied to these products in regular stages over a period of five years (by the year 2001) with the Common Customs Tariff.

Relevant data and information needed for Article XXIV:6 discussion and negotiations has been submitted (WT/REG22/3 of 26 July 1996). Summary data on intra- and extra-trade may be supplied as required. In so far as there is a general lowering of Turkish tariff rates it can be considered that the impact is trade creating. This can be derived from the data submitted for Article XXIV:6 discussion and negotiations (WT/REG22/3 of 26 July 1996).

## **II. Trade Provisions**

### **1. Import restrictions**

As of 1 January 1996, Turkey has begun to apply the Community's Common Customs Tariff on the products subject to Customs Union except for products listed in Decision 2/95 of the Turkey-EC Association Council and basic agricultural products. Moreover, under Article 5 of the Decision, prohibition of all quantitative restrictions on imports and measures having equivalent effect between the Parties is envisaged.

As for processed agricultural products, the Parties have agreed to differentiate between the agricultural and industrial components of the duties applied on these products, along the lines of the EC model. In this respect, the industrial component of the customs duties has been eliminated in intra-trade and the same industrial component has been applied towards third countries. The Parties have applied their own agricultural components both in their bilateral trade and in their trade with third countries.

Free circulation of basic agricultural products (Annex II of the Treaty of Rome) between Turkey and the Community will become possible to the extent that Turkey approximates its agricultural policy to the Common Agricultural Policy of the Community.

The relevant data and information needed for Article XXIV:6 discussion and negotiations has been submitted to the WTO (WT/REG22/3 of 26 July 1996). However, given the general decrease in Turkish rates down to the level of those of the EU, it is unlikely that there will be requests by WTO Members for Article XXIV:6 negotiations. So far this has proved to be the case.

## **2. Export restrictions**

Export restrictions and measures having equivalent effect have been prohibited on trade between the Parties (Article 6).

However, WTO consistent export restrictions are applied on an *erga omnes* basis.

## **3. Rules of origin**

For intra-trade, the Customs Union operates on the principle of free circulation of goods covered by the Customs Union, obviating the need for rules of origin. With respect to imports from third countries, Turkey has been applying the same rules of origin as the EC since January 1, 1996.

## **4. Standards**

In accordance with Article 8(1) of the Decision (WT/REG22/1), and in the interest of the proper functioning of the Customs Union, Turkey shall incorporate into its legislation the Community instruments relating to the removal of technical barriers to trade within five years from the entry into force of that Decision. In this respect, the Parties will have common legislation as well as common standards for both intra-trade and imports from third countries. Furthermore, the Parties stress the importance of effective cooperation between them in the fields of standardization, metrology and calibration, quality, accreditation, testing and certification. Article 8(1) also covers foodstuffs and spirits.

In respect of agricultural products, Turkey will adopt the sanitary and phytosanitary provisions applicable under the Common Agricultural Policy, in accordance with Article 25 of the Decision.

## **5. Safeguards**

Article 63 of the Decision refers to Article 60 of the Additional Protocol (Annex I) which permits the application of safeguard measures between the Parties in the case of balance of payment difficulties and regional or development matters. There is no specific safeguard provision related to agriculture.

In order to ensure the common application of commercial policy measures against third countries, Turkey shall apply provisions and implementing measures, including safeguard measures, which are substantially similar those of the Community's Commercial Policy.

In line with its commitments to the implementation of the Customs Union, Turkey has adopted similar legislation to that of the Community in the textile sector including the agreements and arrangements on trade in these products.

## **6. Anti-dumping and countervailing measures**

The list of products on which anti-dumping and countervailing measures are still in force between the Parties is presented in Annex II.

Article 44 of the Decision states that the suspension of anti-dumping and countervailing instruments between the Parties is conditional on Turkey's implementation and effective enforcement of the Community's legislation on competition, state aid and other relevant parts of the *acquis communautaire* which are related to the EC internal market.

In the interim, and in accordance with Article 47 of the Additional Protocol (Annex III) if the Council of Association finds, on application by a Party, that dumping is being practised in trade between the Community and Turkey, it shall address recommendations to the person or persons with whom such practices originate for the purpose of putting an end to them.

Regarding the common application of such measures against third countries, the Decision has no provisions.

## **7. Subsidies and state aid**

According to Article 34 of the Decision, any aid granted by the Parties through state resources in any form that would distort or threaten to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the functioning of the Customs Union.

The following are compatible with the functioning of the Customs Union: aid having social character; aid to compensate the damage caused by natural disasters; for a period of 5 years from the entry into force of the Decision, aid to promote economic development of Turkey's less developed regions.

In addition, aid to promote the economic development of areas where the standard of living is abnormally low, aids aiming at accomplishing structural adjustment necessitated by the establishment of the Customs Union for a period of 5 years after the entry into force of the Decision, aid to promote the execution of an important project of common European interest and aid to promote culture and heritage conservation may be considered to be compatible with the functioning of the Customs Union.

Against the improper practices of a Party, Article 38 of the Decision establishes the right of the other Party to take appropriate measures.

## **8. Sector-specific provisions**

### **Intra-trade**

#### Agriculture

The Decision envisages an additional period for the achievement of free movement of agricultural products between the Parties, on account of the different policies and trade regimes pursued by each. The adoption of the Common Agricultural Policy measures of the EC by Turkey was determined as a prerequisite condition for the establishment of free movement of such products. In the interim, a preferential tariff regime has been implemented between the Parties. Until the free circulation of agricultural products is achieved, the implementation of the preferential regime is subject to proof of origin.

The list of agricultural products (including fisheries) which are not subject to free circulation for the time being is presented in Annex IV.

#### Trade-Related Aspects of Intellectual Property Rights (TRIPs)

The protection of intellectual, industrial and commercial property is addressed in Article 31 and Annex 8 of Decision 1/95. The Parties recognize that the Customs Union can only function properly if equivalent levels of effective protection of intellectual property rights are provided in both Parties. In that respect, Turkey undertakes to implement the TRIPs Agreement no later than three years after

the entry into force of the Decisions, and to adopt domestic legislation equivalent to the legislation existing in the EC or its Member States.

### **Imports From Third Parties**

#### Textiles and Clothing

In accordance with the provisions of Article XXIV of GATT 1994, the Parties agreed to apply the same commercial policy measures towards third countries in the textile sector.

In this framework, Turkey has introduced quantitative restrictions and surveillance measures parallel with the practices of the EC and will similarly align itself with EC liberalization.

### **9. Other**

Annex 7 on Mutual Assistance between Administrative Authorities in Customs Matters of Decision 1/95 makes provision for collaboration between the administrations of the Parties. Customs valuation is determined in accordance with the Agreement on implementation of Article VII of GATT 1994. Therefore, the provisions applied to valuation are harmonized.

Finally, intra-trade treatment of products from free zones established in the Parties is non-discriminatory. The provisions applicable to goods for release into free circulation in the Parties are also valid for goods placed in free zones.

## **III. General Provisions of the Agreement**

### **1. Exceptions and Reservations**

All customs duties and charges having equivalent effect as well as quantitative restrictions applied to products covered by the Customs Union between Turkey and the EC were eliminated with Decision 1/95. This, however, will not preclude prohibitions or restrictions on imports, exports or goods in transit 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. The prohibitions or restrictions will not be applied in a manner that would constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties (Article 7).

### **2. Accession**

There is no provision in the Decision allowing other countries to accede to the Customs Union.

### **3. Dispute Settlement Procedures**

The dispute settlement mechanism established in Article 25 of the Ankara Agreement remains in force. In addition to this mechanism, Decision 1/95 foresees that if the Association Council fails to settle a dispute relating to the scope or duration of protection measures and safeguard measures taken, within six months of the date on which this procedure was initiated, either party may refer the dispute to arbitration under the procedures laid down in Article 60 of this Decision. The arbitration awards are binding on the Parties.

The dispute settlement mechanism between Parties does not impinge on ways of dealing with disputes with third parties through other multilateral or plurilateral agreements. The Parties to the Customs Union consider that disputes arising from the implementation of the Customs Union are a matter for both Turkey and the EC jointly.

#### **4. Relation with Other Trade Agreements**

Turkey, in line with its obligation to align itself progressively to the preferential customs regime of the EC consisting of both the autonomous regimes and preferential agreements with third countries, will take the necessary measures and negotiate agreements on a mutually advantageous basis with third countries within five years from the date of entry into force of Decision 1/95.

The autonomous regimes of the EC are the Generalized System of Preferences, the regime for goods originating in the occupied territories, the regime for goods originating in Ceuta or Melilla, the regime for goods originating in the Republics of Bosnia-Herzegovina and Croatia, and the territory of former Yugoslav Republic of Macedonia.

The preferential agreements of the EC include the Europe Agreements with Bulgaria, Hungary, Poland, Romania, the Slovak Republic, the Czech Republic and Slovenia; the Free Trade Agreement with the Faroe Islands; the Association Agreements with Cyprus and Malta; the Free Trade Agreements with Estonia, Latvia and Lithuania; the Agreement with Israel; the Agreements with Algeria, Morocco and Tunisia; the Agreements with Egypt, Jordan, Lebanon and Syria; the Convention with the ACP States; the Free Trade Agreement with Switzerland and Liechtenstein; the Agreement on the European Economic Area (EFTA States).

#### **5. Institutional Framework**

In accordance with Article 24 of the Ankara Agreement, the EC/Turkey Customs Union Joint Committee was established with Decision 1/95 in order to carry out exchange of views and information, formulate recommendations to the Association Council and deliver opinions with a view to ensuring the proper functioning of the Customs Union. The Parties consult within the Committee on any point relating to the implementation of the Decision which gives rise to a difficulty for either of them.

In areas of direct relevance to the operation of the Customs Union, the Parties will inform and consult each other during the preparation of a new legislation and amendment of an existing one.

Furthermore, Turkish experts will be involved in the work of a number of technical committees which assist the European Commission in areas of direct relevance to the functioning of the Customs Union.

ANNEX I

Additional Protocol: Article 60

1. If serious disturbances occur in a sector of the Turkish economy or prejudice its external financial stability, or if difficulties arise which adversely affect the economic situation in a region of Turkey, Turkey may take the necessary protective measures.

The Council of Association shall be notified immediately of those measures and of the rules for their application.

2. If serious disturbances occur in a sector of the economy of the Community or of one or more Member States, or prejudice the external financial stability of one or more Member States, or if difficulties arise which adversely affect the economic situation in a region of the Community, the Community may take or authorize the Member State or States concerned to take the necessary protective measures.

The Council of Association shall be notified immediately of such measures and of the rules for their application.

3. In the choice of measures to be taken in pursuance of paragraphs 1 and 2, preference shall be given to those which will least disturb the functioning of the Association. These measures shall not exceed what is strictly necessary to remedy the difficulties that have arisen.

4. Consultations may take place in the Council of Association on the measures taken in pursuance of paragraphs 1 and 2.



## ANNEX II

Anti-Dumping and Countervailing Measures applied by the  
European Union on Turkish Products

Products	CN Codes (EU)	Measure	Date of Entry into Force	Duty Rates
1. Cotton yarn	5205, 5206	AD duty	27.03.1992	12.1%
2. Polyester fibres (synthetic)	5402.42.00, 5402.33.10.90	AD duty	14.06.1996 (review)	(POY) 6.8% (PTY)15 2%
3. Polyester yarns	5509.21.10.90/ 5509.22.10.90/ 5509.51.00/ 5509.53.00	AD duty	03.04.1992	10.1%
4. Semi finished products of alloy steel	7224.90.09, ex 7224.90.15 (7224.90.15,90)	AD duty	02.07.1992	16%
5. Synthetic textile fibres of polyester	5503.20.00	AD duty	22.10.1992	11.4%
6. Polyester yarns and fibres	5503.20.00/ 5402.42.00/ 5402.33.10.90/ 5402.43.10.90/ 5402.52.10.90/ 5402.62.10.90	Undertakings (CVD)	28.09.1991	

Anti-Dumping Duties applied by Turkey

Product	Turkish CN Codes	Country	Date of Entry into Force	Duty Rates
1. Polyester synthetic staple fibres (not prossed)	5503.20.00.00.00	Italy	08.01.1993	9%
2. Printing and writing papers	4802.52.20.10.00 4802.52.80.10.00	Finland	19.11.1993	5%
3. Benzoic acid	2916.31.00.90.11	Netherlands	01.09.1992	\$0.29/kg.

ANNEX III

Additional Protocol: Article 47

1. If, during the period of twenty-two years, the Council of Association, on application by a Contracting Party, finds that dumping is being practised in trade between the Community and Turkey, it shall address recommendations to the person or persons with whom such practices originate for the purpose of putting an end to them.

2. The injured Party may, after notifying the Council of Association, take suitable protective measures where;

(a) the Council of Association has taken no decision pursuant to paragraph 1 within three months from the making of the application;

(b) despite the issue of recommendations under paragraph 1, the dumping practices continue.

Moreover, where the interests of the injured Party call for immediate action, that Party may, after informing the Council of Association, introduce interim protective measures which may include anti-dumping duties. Such measures shall not remain in force more than three months from the date of the application, or from the date on which the injured Party takes protective measures under (b) of the preceding sub-paragraph.

3. Where protective measures have been under (a) of the first sub-paragraph of paragraph 2, or under the second sub-paragraph of that paragraph, the Council of Association may, at any time, decide that such protective measures shall be suspended pending the issue of recommendations under paragraph 1.

The Council of Association may recommend the abolition or amendment of protective measures taken under (b) of the first sub-paragraph of paragraph 2.

4. Products which originated in or were in free circulation in one of the Contracting Parties and which have been exported to the other Contracting Party shall, on reimportation, be admitted into the territory of the former Contracting Party free of all customs duties, quantitative restrictions or measures having equivalent effect.

The Council of Association may make any appropriate recommendations for the application of this paragraph; it shall be guided by Community experience in this field.

## ANNEX IV

Agricultural Products  
(Annex II of Rome Treaty)

HS	Description of Products
Chapter 1	Live animals
Chapter 2	Meat and edible meat offal
Chapter 3	Fish, crustaceans and molluscs
Chapter 4	Dairy produce; birds' eggs; natural honey
Chapter 5	
05.04	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof
05.15	Animal products not elsewhere specified or included; dead animals of Chapter 1 or Chapter 3, unfit for human consumption
Chapter 6	Live trees and other plants; bulbs; roots and the like; cut flowers and ornamental foliage
Chapter 7	Edible vegetables and certain roots and tubers
Chapter 8	Edible fruit and nuts; peel of melons or citrus fruit
Chapter 9	Coffee, tea and spices, excluding maté (Heading No. 09.03)
Chapter 10	Cereals
Chapter 11	Products of the milling industry; malt and starches: gluten inulin
Chapter 12	Oil seeds and oleaginous fruit miscellaneous grains, seeds and fruit; industrial and medical plants; straw and fodder
Chapter 13	
ex 13.03	Pectin
Chapter 15	
15.01	Lard and other rendered pig fat: rendered poultry fat
15.02	Unrendered fats of bovine cattle, sheep, goats; tallow (including premier just) produced from those fats
15.03	Lard stearin, oleostearin and tallow stearin; lard oil, oleo-oil and tallow oil, not emulsified or mixed or prepared in any way
15.04	Fats and oil of fish and marine mammals, whether or not refined
15.07	Fixed vegetable oils, fluid or solids, crude, refined or purified
15.12	Animal or vegetable fats and oils, hydrogenated, whether or not refined, but not further prepared
15.13	Margarine, imitation lard and other prepared edible fast
15.17	Residues resulting from the treatment of fatty substances or animal or vegetable waxes
Chapter 16	Preparations of meat, of fish, of crustaceans or molluscs
Chapter 17	
17.01	Beet sugar and cane sugar, solid
17.02	Other sugars; sugar syrups; artificial honey (whether or not mixed with natural honey); caramel
17.03	Molasses, whether or not decolourized
17.05	Flavoured or coloured sugars, syrups and molasses, but not including fruit juices containing added sugar in any proportion

HS	Description of Products
Chapter 18	
18.01	Cocoa beans, whole or broken, raw or roasted
18.02	Cocoa shells, husks, skins and waste
Chapter 20	Preparations of vegetables fruit or other parts of plants
Chapter 22	
22.04	Grape must, in fermentation or with fermentation arrested by the addition of alcohol
22.05	Wine or fresh grapes; grape must with fermentation arrested by the addition of alcohol
22.07	Other fermented beverages (for example, cider, perry and mead)
ex 22.08 ex 22.09	Ethyl alcohol or neutral spirits, whether or not denatured, of any strength, obtained from agricultural products listed in Annex II to the Treaty, excluding liqueurs and other spirituous beverages and compound alcoholic preparations (known as concentrated extracts) for the manufacture of beverages
ex 22.10	Vinegar and substitutes for vinegar
Chapter 23	Residues and waste from the food industries; prepared animal fodder
Chapter 24	
24.01	Unmanufactured tobacco, tobacco refuse
Chapter 45	
45.01	Natural cork, unworked, crushed, granulated or ground; waste cork
Chapter 54	
54.01	Flax, raw or processed but not spun; flax tow and waste (including polled or garnetted rags)
Chapter 57	
57.01	True hemp (Cannabis sativa), raw or processed but not spun; tow and waste of true hemp (including pulled or garnetted rags or ropes)