

II

(Acts whose publication is not obligatory)

COUNCIL

DECISION No 1/95 OF THE EC-TURKEY ASSOCIATION COUNCIL

of 22 December 1995

on implementing the final phase of the Customs Union

(96/142/EC)

THE EC—TURKEY ASSOCIATION COUNCIL,

HAS DECIDED AS FOLLOWS:

Having regard to the Agreement establishing an Association between the European Economic Community and Turkey, hereinafter referred to as the 'Ankara Agreement',

Considering that the objectives set out by the Ankara Agreement, and in particular by its Article 28, which established the Association between Turkey and the Community maintain their significance at this time of great political and economic transformation on the European scene;

Recalling its resolution of 8 November 1993 in which it reaffirmed the will of the Parties to enter into the Customs Union according to the calendar and modalities set out in the Ankara Agreement and its Additional Protocol;

Considering that the Association relations as provided for in Article 5 of the Ankara Agreement are entering into their final phase based on the Customs Union, which will complete the transitional phase through the fulfilment by the two parties of their reciprocal obligations and which leads to the elaboration of the modalities for the effective functioning of the Customs Union within the framework of the Ankara Agreement and Additional Protocol;

Considering that the Customs Union represents an important qualitative step, in political and economic terms, within the Association relations between the Parties;

Having met in Brussels on 6 March 1995,

Article 1

Without prejudice to the provisions of the Ankara Agreement, its Additional and Supplementary Protocols, the Association Council hereby lays down the rules for implementing the final phase of the Customs Union, laid down in Articles 2 and 5 of the abovementioned Agreement.

CHAPTER I

FREE MOVEMENT OF GOODS AND COMMERCIAL
POLICY

Article 2

This Chapter shall apply to products other than agricultural products as defined in Article 11 of the Association Agreement. The special provisions relating to agricultural products are set out in Chapter II of this Decision.

Article 3

1. This Chapter shall apply to goods:
 - produced in the Community or Turkey, including those wholly or partially obtained or produced from products coming from third countries which are in free circulation in the Community or in Turkey,

— coming from third countries and in free circulation in the Community or in Turkey.

2. Products from third countries shall be considered to be in free circulation in the Community or in Turkey if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in the Community or in Turkey, and if they have not benefited from a total or partial reimbursement of such duties or charges.

3. The customs territory of the Customs Union shall comprise:

- the customs territory of the Community as defined in Article 3 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾,
- the customs territory of Turkey.

4. This Chapter shall also apply to goods obtained or produced in the Community or in Turkey, in the manufacture of which products coming from third countries and not in free circulation either in the Community or in Turkey were used.

These provisions shall, however, apply to those goods only if the import formalities have been complied with and any customs duties or charges having equivalent effect payable on third-country products used in their manufacture have been levied in the exporting State.

5. If the exporting State does not apply the provisions of the second subparagraph of paragraph 4, the goods referred to in the first subparagraph of paragraph 4 shall not be considered to be in free circulation and the importing State shall therefore apply the customs legislation applying to goods from third countries.

6. The Customs Cooperation Committee set up by Decision No 2/69 of the Association Council shall determine the methods of administrative cooperation to be used in implementing paragraphs 1, 2 and 4.

SECTION I

Elimination of customs duties and charges having equivalent effect

Article 4

Import or export customs duties and charges having equivalent effect shall be wholly abolished between the Community and Turkey on the date of entry into force of this Decision. The Community and Turkey shall refrain from introducing any new customs duties on imports or exports or any charges having equivalent effect from that

date. These provisions shall also apply to customs duties of a fiscal nature.

SECTION II

Elimination of quantitative restrictions or measures having equivalent effect

Article 5

Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between the Parties.

Article 6

Quantitative restrictions on exports and all measures having equivalent effect shall be prohibited between the Parties.

Article 7

The provisions of Articles 5 and 6 shall not preclude 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. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

Article 8

1. Within five years from the date of entry into force of this Decision, Turkey shall incorporate into its internal legal order the Community instruments relating to the removal of technical barriers to trade.

2. The list of these instruments and the conditions and detailed arrangements governing their implementation by Turkey shall be laid down by decision of the Association Council within a period of one year from the date of entry into force of this Decision.

3. This provision shall not preclude the application by Turkey, with effect from the date of entry into force of this Decision, of Community instruments deemed to be of particular importance.

4. The Parties stress the importance of effective cooperation between them in the fields of standardization, metrology and calibration, quality, accreditation, testing and certification.

Article 9

When Turkey has put into force the provisions of the Community instrument or instruments necessary for the

⁽¹⁾ OJ No L 302, 19. 10. 1992, p. 1. Regulation as amended by the 1994 Act of Accession.

elimination of technical barriers to trade in a particular product, trade in that product between the Parties shall take place in accordance with the conditions laid down by those instruments, without prejudice to the application of the provisions of this Decision.

Article 10

1. With effect from the date of entry into force of this Decision, and during the period required for the application by Turkey of the instruments referred to in Article 9, Turkey shall refrain from impeding the placing on the market or taking into service on its territory of products from the Community the conformity of which with the Community Directives defining the requirements to be met by such products has been attested to, in accordance with the conditions and the procedures laid down in those Directives.

2. By way of derogation from paragraph 1, if Turkey finds that a product, the conformity of which with the Community Directives has been attested to in accordance with paragraph 1, and which is used in accordance with its intended purpose, fails to satisfy one of the requirements referred to in Article 7, it may take all appropriate measures, in accordance with the conditions and procedures provided for in paragraph 3, to withdraw the product in question from the market, or to prohibit or restrict its being placed on the market or taken into service.

3. (a) If Turkey is considering taking a measure under paragraph 2, it shall, forthwith, notify the Community through the Customs Union Joint Committee and shall provide all relevant information.

(b) The Parties shall immediately enter into consultations within the Customs Union Joint Committee to find a mutually acceptable solution.

(c) Turkey may not take a measure mentioned in paragraph 2 until one month has elapsed after the date of notification provided for in paragraph 3 (a) unless the consultation procedure under paragraph 3 (b) has been concluded before the expiry of the time limit. When exceptional circumstances requiring immediate action render prior examination impossible, Turkey may apply forthwith the measure strictly necessary to remedy the situation.

(d) Turkey shall forthwith inform the Customs Union Joint Committee of the measure it has taken and shall provide all relevant information.

(e) The Community may at any time request the Customs Union Joint Committee to review such measure.

4. The provisions of paragraphs 1 and 2 shall apply, *mutatis mutandis*, to foodstuffs.

Article 11

During the period required for the application by Turkey of the instruments referred to in Article 9, the Community will accept the results of the procedures applied in Turkey for assessing the conformity of industrial products with the requirements of Community law, provided that those procedures are in conformity with the requirements in force in the Community, and on the understanding that, in the motor vehicles sector, Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers ⁽¹⁾ shall apply in Turkey.

SECTION III

Commercial policy

Article 12

1. From the date of entry into force of this Decision, Turkey shall, in relation to countries which are not members of the Community, apply provisions and implementing measures which are substantially similar to those of the Community's commercial policy set out in the following Regulations:

— Council Regulation (EC) No 3285/94 ⁽²⁾ (common rules for imports),

— Council Regulation (EC) No 519/94 ⁽³⁾ (common rules for imports from certain third countries),

— Council Regulation (EC) No 520/94 ⁽⁴⁾ (Community procedure for administering quantitative quotas (implementing provisions: Commission Regulation (EC) No 738/94 ⁽⁵⁾),

— Council Regulations (EC) No 3283/94 ⁽⁶⁾ and (EC) No 3284/94 ⁽⁷⁾ (protection against dumped and subsidized imports),

⁽¹⁾ OJ No L 42, 23. 2. 1970, p. 1. Directive as last amended by Directive 92/53/EEC (OJ No L 225, 18. 8. 1992, p. 1).

⁽²⁾ OJ No L 349, 31. 12. 1994, p. 53.

⁽³⁾ OJ No L 67, 10. 3. 1994, p. 89. Regulation as last amended by Regulation (EC) No 839/95 (OJ No L 85, 19. 4. 1995, p. 9).

⁽⁴⁾ OJ No L 66, 10. 3. 1994, p. 1.

⁽⁵⁾ OJ No L 87, 31. 3. 1994, p. 47. Regulation as last amended by Regulation (EC) No 1150/95 (OJ No L 116, 23. 5. 1995, p. 3).

⁽⁶⁾ OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).

⁽⁷⁾ OJ No L 349, 31. 12. 1994, p. 22. Regulation as last amended by Regulation (EC) No 1252/95 (OJ No L 122, 2. 6. 1995, p. 2).

- Council Regulation (EC) No 3286/94 ⁽¹⁾ (Community procedures in the field of the common commercial policy),
- Council Regulation (EEC) No 2603/69 ⁽²⁾ (establishing common rules for exports),
- Council Decision 93/112/EEC ⁽³⁾ (officially supported export credits),
- Council Regulation (EC) No 3036/94 ⁽⁴⁾ (outward processing arrangements for textiles and clothing),
- Council Regulation (EC) No 3030/93 ⁽⁵⁾ (textile imports under common rules),
- Council Regulation (EC) No 517/94 ⁽⁶⁾ (textile imports under autonomous arrangements),
- Council Regulation (EC) No 3951/92 ⁽⁷⁾ (textile imports from Taiwan).

2. In conformity with the requirements of Article XXIV of the GATT Turkey will apply as from the entry into force of this Decision, substantially the same commercial policy as the Community in the textile sector including the agreements or arrangements on trade in textile and clothing. The Community will make available to Turkey the cooperation necessary for this objective to be reached.

3. Until Turkey has concluded these arrangements, the present system of certificates of origin for the exports of textile and clothing from Turkey into the Community will remain in force and such products not originating from Turkey will remain subject to the application of the Communities commercial policy in relation to the third countries in question.

4. The provisions of this Decision shall not constitute a hindrance to the implementation by the Community and Japan of their Arrangement relating to trade in motor vehicles, mentioned in the Annex to the Agreement on safeguards attached to the Agreement setting up the World Trade Organization.

Before the entry into force of this Decision, Turkey and the Community will define the modalities of cooperation

⁽¹⁾ OJ No L 349, 31. 12. 1994, p. 71. Regulation as last amended by Regulation (EC) No 356/95 (OJ No L 41, 23. 2. 1995, p. 3).

⁽²⁾ OJ No L 324, 27. 12. 1969, p. 25. Regulation as last amended by Regulation (EC) No 3918/91 (OJ No L 372, 31. 12. 1991, p. 31).

⁽³⁾ OJ No L 44, 22. 2. 1993, p. 1.

⁽⁴⁾ OJ No L 322, 15. 12. 1994, p. 1.

⁽⁵⁾ OJ No L 275, 8. 11. 1993, p. 1. Regulation as last amended by Regulation (EC) No 1616/95 (OJ No L 154, 5. 7. 1995, p. 3).

⁽⁶⁾ OJ No L 67, 10. 3. 1994, p. 1. Regulation as last amended by Regulation (EC) No 1325/95 (OJ No L 128, 13. 6. 1995, p. 1).

⁽⁷⁾ OJ No L 405, 31. 12. 1992, p. 6. Regulation as last amended by Regulation (EC) No 3312/94 (OJ No L 350, 31. 12. 1994, p. 3).

in order to prevent the circumvention of the said Arrangement.

In the absence of such modalities, the Community reserves the right to take, in respect of imports into its territory, any measure rendered necessary by the application of the said Arrangement.

SECTION IV

Common Customs Tariff and preferential tariff policies

Article 13

1. Upon the date of entry into force of this Decision, Turkey shall, in relation to countries which are not members of the Community, align itself on the Common Customs Tariff.

2. Turkey shall adjust its customs tariff whenever necessary to take account of changes in the Common Customs Tariff.

3. The Customs Cooperation Committee shall determine what measures are appropriate to implement paragraphs 1 and 2.

Article 14

1. Turkey shall be informed of any decisions taken by the Community to amend the Common Customs Tariff, to suspend or reintroduce duties and any decision concerning tariff quotas or ceilings in sufficient time for it simultaneously to align the Turkish customs tariff on the Common Customs Tariff. Prior consultations shall be held within the Customs Union Joint Committee for this purpose.

2. Where the Turkish customs tariff cannot be aligned simultaneously on the Common Customs Tariff, the Customs Union Joint Committee may decide to grant a period of time for this to be undertaken. Under no circumstances may the Customs Union Joint Committee authorize Turkey to apply a customs tariff which is lower than the Common Customs Tariff for any product.

3. If Turkey wishes to suspend on temporary basis or resume duties other than as envisaged in paragraph 1, Turkey will make a prompt notification to the Community. Consultations on the abovementioned decisions will be held in the Joint Customs Union Committee.

Article 15

By way of derogation from Article 13 and in accordance with Article 19 of the Additional Protocol, Turkey may retain until 1 January 2001 customs duties higher than the Common Customs Tariff in respect of third countries for products agreed by the Association Council.

Article 16

1. With a view to harmonizing its commercial policy with that of the Community, Turkey shall align itself progressively with the preferential customs regime of the Community within five years as from the date of entry into force of this Decision. This alignment will concern both the autonomous regimes and preferential agreements with third countries. To this end, Turkey will take the necessary measures and negotiate agreements on mutually advantageous basis with the countries concerned. The Association Council shall periodically review the progress made.

2. In each of the cases referred to in paragraph 1 the granting of these tariff preferences shall be conditional on compliance with provisions relating to the origin of products identical to those governing the granting of such preferences by the Community.

3. (a) Where, during the period referred to in paragraph 1, Turkey maintains a tariff policy different from that of the Community, goods imported from third countries into the Community and released for free circulation with preferential treatment by reason of their country of origin or of exportation shall be subject to the payment of a compensatory levy if they are imported into Turkey, in the following circumstances:

- they have been imported from countries to which the same preferential tariff treatment is not granted by Turkey, and
- they can be identified as imported from these countries, and
- the duty to be paid in Turkey is at least five percentage points higher than that applicable in the Community, and
- an important distortion of traffic related to these goods has been observed.

(b) The Customs Union Joint Committee shall establish the list of the goods to which the compensatory levy applies, as well as the amount of this levy.

*SECTION V***Processed agricultural products not covered by Annex II to the Treaty establishing the European Community***Article 17*

The provisions of this Section apply to goods listed in Annex 1.

Article 18

Notwithstanding Article 13, Turkey may apply on imports from third countries of goods listed in Annex 1 an agricultural component. The agricultural component shall be established in accordance with Article 19.

Article 19

1. The agricultural component applicable to goods imported into Turkey shall be obtained by adding together the quantities of basic agricultural products considered to have been used for the manufacture of the goods in question multiplied by the basic amount corresponding to each of these basic agricultural products as defined in paragraph 3.

2. (a) The basic agricultural products to be taken into account are listed in Annex 2.

(b) The quantities of basic agricultural products to be taken into account are set out in Annex 3.

(c) In the case of goods classified under the nomenclature codes for which reference is made in Annex 3 to Annex 4, the amounts of the agricultural component to be taken into account are set out in Annex 4.

3. The basic amount corresponding to each basic agricultural product is the amount of the charge applicable on import into Turkey of the agricultural product originating in a non-preferential third country during the reference period applicable to agricultural products. The basic amounts are set out in Annex 5.

Article 20

1. Notwithstanding Article 4, Turkey and the Community may apply agricultural components established in accordance with the provisions below in trade with each other.

2. Such agricultural components, reduced in accordance with Article 22 where applicable, shall only apply to goods listed in Annex 1.

3. The Community shall apply to Turkey the same specific duties that represent the agricultural component applicable to third countries.

4. Turkey shall apply to imports from the Community the agricultural component applied in accordance with Article 19.

Article 21

Notwithstanding the modalities set out in this Decision a derogation regime is foreseen for the goods listed in the Annex 6/Table 1 and Annex 6/Table 2 in which the import charges in Turkey will be reduced in three steps

over a period of three years for the former and one year for the latter. The level of those import charges is set in Annex 6/Table 1 and Annex 6/Table 2.

At the end of the relevant periods the provisions of this Section shall apply fully.

Article 22

1. Where, in trade between the Community and Turkey, the duty applicable to a basic agricultural product is reduced, the agricultural component determined in accordance with Article 20 (4) for imports into Turkey or that referred to in Article 20 (3), for imports into the Community, shall be reduced proportionately.

2. Where the reductions referred to in paragraph 1 are effected within the limits of a quota, a list of goods and quantities to which the reduced agricultural component is applicable shall be drawn up by the Association Council.

3. The provisions of paragraphs 1 and 2 above apply to the import charges referred to in Article 21.

Article 23

If imports of one or more of the products covered by the derogation regime cause or threaten to cause in Turkey serious disturbances which may endanger the objectives of the Customs Union for processed agricultural products, consultations between the Parties shall be held within the Customs Union Joint Committee, with a view to finding a mutually acceptable solution.

If such a solution cannot be found, the Customs Union Joint Committee may recommend appropriate ways of maintaining the proper functioning of the Customs Union without prejudice to the provisions of Article 63.

CHAPTER II

AGRICULTURAL PRODUCTS

Article 24

1. The Association Council hereby reaffirms the Parties' common objective to move towards the free movement of agricultural products between themselves as provided for in Articles 32 to 35 of the Additional Protocol.

2. The Association Council notes that an additional period is required to put in place the conditions necessary to achieve free movement of these products.

Article 25

1. Turkey shall adjust its policy in such a way as to adopt the common agricultural policy measures required to establish freedom of movement of agricultural products. It shall communicate to the Community the decisions taken in that respect.

2. The Community shall take account as far as possible of Turkish agriculture's interests when developing its agricultural policy and shall notify Turkey of the relevant Commission proposals and the decisions taken on the basis of these proposals.

3. Consultations may be held within the Association Council on the proposals and decisions referred to in paragraph 2 and on the measures which Turkey intends to take in the agricultural field pursuant to paragraph 1.

Article 26

The Community and Turkey shall progressively improve, on a mutually advantageous basis, the preferential arrangements which they grant each other for their trade in agricultural products. The Association Council shall regularly examine the improvements made to these preferential arrangements.

Article 27

The Association Council shall adopt the provisions necessary to achieve the free movement of agricultural products between the Community and Turkey once it has established that Turkey has adopted the common agricultural policy measures referred to in Article 25 (1).

CHAPTER III

CUSTOMS PROVISIONS

Article 28

1. On the date of entry into force of this Decision, Turkey shall adopt provisions in the following fields, based on Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and Commission Regulation (EEC) No 2454/93 of 2 July 1993 ⁽¹⁾ laying down the implementing provisions thereof:

- (a) origin of goods;
- (b) customs value of goods;
- (c) introduction of goods into the territory of the Customs Union;
- (d) customs declaration;

⁽¹⁾ OJ No L 253, 11. 10. 1993, p. 1.