

ASSOCIATION AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES, OF THE ONE PART, AND THE REPUBLIC OF TURKEY, OF THE OTHER PART

DECISION NO 1/95 OF THE EC-TURKEY ASSOCIATION COUNCIL OF 22 DECEMBER 1995 ON IMPLEMENTING THE FINAL PHASE OF THE CUSTOMS UNION (CE-TR 106/1/95) ¹⁰²

CHAPTER IV – APPROXIMATION OF LAWS

[...]

SECTION II—COMPETITION

A – COMPETITION RULES OF THE CUSTOMS UNION

Article 32

1. The following shall be prohibited as incompatible with the proper functioning of the Customs Union, in so far as they may affect trade between the Community and Turkey: all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their objective or effect the prevention, restriction or distortion of competition, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production markets, technical development or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall automatically be void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices;

102 OJ L 35, 13.2.1996, p. 1.

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 33

1. Any abuse by one of more undertakings of a dominant position in the territories of the Community and/or Turkey as a whole or in a substantial part thereof shall be prohibited as incompatible with the proper functioning of the Customs Union, in so far as it may affect trade between the Community and Turkey.

2. Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 34

1. Any aid granted by Member States of the Community or by Turkey through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Community and Turkey, be incompatible with the proper functioning of the Customs Union.

2. The following shall be compatible with the functioning of the Customs Union:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
- (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division;

(d) for a period of five years from the entry into force of this Decision, aid to promote economic development of Turkey's less-developed regions, provided that such aid does not adversely affect trading conditions between the Community and Turkey to an extent contrary to the common interest.

3. The following may be considered to be compatible with the functioning of the Customs Union:

(a) in conformity with Article 43(2) of the Additional Protocol, aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State of the Community or of Turkey;

(c) for a period of five years after the entry into force of this Decision, in conformity with Article 43(2) of the Additional Protocol, aids aiming at accomplishing structural adjustment necessitated by the establishment of the Customs Union. The Association Council shall review the application of that clause after the aforesaid period;

(d) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions between the Community and Turkey to an extent contrary to the common interest;

(e) aid to promote culture and heritage conservation where such aid does not adversely affect trading conditions between the Community and Turkey to an extent contrary to the common interest;

(f) such other categories of aid as may be specified by the Association Council.

Article 35

Any practices contrary to Articles 32, 33 and 34 shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European Community and its secondary legislation.

Article 36

The Parties shall exchange information, taking into account the limitations imposed by the requirements of professional and business secrecy.

Article 37

1. The Association Council shall, within two years following the entry into force of the Customs Union, adopt by decision the necessary rules for the implementation of Articles 32, 33 and 34 and related parts of Article 35. These rules shall be based upon those already existing in the Community and shall *inter alia* specify the role of each competition authority.

2. Until these rules are adopted:

- (a) the authorities of the Community or Turkey shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in accordance with Articles 32 and 33;
- (b) the provisions of the GATT Subsidies Code shall be applied as the rules for the implementation of Article 34.

Article 38

1. If the Community or Turkey considers that a particular practice is incompatible with the terms of Article 32, 33 or 34, and:

- is not adequately dealt with under the implementing rules referred to in Article 37, or
- in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interest of the other Party or material injury to its domestic industry,

it may take appropriate measures after consultation within the Joint Customs Union Committee or after 45 working days following referral for such consultation. Priority shall be given to such measures that will least disturb the functioning of the Customs Union.

2. In the case of practices incompatible with Article 34, such appropriate measures may, where the General Agreement on Tariffs and Trade applies thereto, only be adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

B – APPROXIMATION OF LEGISLATION

Article 39

1. With a view to achieving the economic integration sought by the Customs Union, Turkey shall ensure that its legislation in the field of competition rules is made compatible with that of the European Community, and is applied effectively.

2. To comply with the obligations of paragraph 1, Turkey shall:

- (a) before the entry into force of the Customs Union, adopt a law which shall prohibit behaviours of undertakings under the conditions laid down in Articles 85 and 86 of the EC Treaty. It shall also ensure that, within one year after the entry into force of the Customs Union, the principles contained in block exemption regulations in force in the Community, as well as in the case-law developed by EC authorities, shall be applied in Turkey. The Community shall inform Turkey as soon as possible of any procedure related to the adoption, abolition, or modification of block exemption

regulations by the EC after the entry into force of the Customs Union. After such information has been given, Turkey shall have one year to adapt its legislation, if necessary;

- (b) before the entry into force of the Customs Union, establish a competition authority which shall apply these rules and principles effectively;
- (c) before the entry into force of this Decision, adapt all its aids granted to the textile and clothing sector to the rules laid down in the relevant Community frameworks and guidelines under Articles 92 and 93 of the EC Treaty. Turkey shall inform the Community of all its aid schemes to this sector as adapted in accordance with these frameworks and guidelines. The Community shall inform Turkey as soon as possible of any procedure related to the adoption, abolition or modification of such frameworks and guidelines by the Community after the entry into force of the Customs Union. After such information has been given, Turkey shall have one year to adapt its legislation;
- (d) within two years after the entry into force of this Decision, adapt all aid schemes other than those granted to the textile and clothing sector to the rules laid down in Community frameworks and guidelines under Articles 92 and 93 of the EC Treaty. The Community shall inform Turkey as soon as possible of any procedure related to the adoption, abolition or modification of such frameworks and guidelines by the Community. After such information has been given, Turkey shall have one year to adapt its legislation;
- (e) within two years after the entry into force of the Customs Union, inform the Community of all aid schemes in force in Turkey as adapted in accordance with point (d). If a new scheme is to be adopted, Turkey shall inform the Community as soon as possible of the content of such scheme;
- (f) notify the Community in advance of any individual aid to be granted to an enterprise or a group of enterprises that would be notifiable under Community frameworks or guidelines had it been granted by a Member State, or of individual aid awards outside of Community frameworks or guidelines above an amount of ECU 12 million and which would have been notified under EC law had it been granted by a Member State.

Regarding individual aids granted by Member States and subject to the analysis by the Commission, on the basis of Article 93 of the EC Treaty, Turkey will be informed on the same basis as the Member States.

3. The Community and Turkey shall communicate to each other all amendments to their laws concerning restrictive practices by undertakings. They shall also inform each other of the cases when these laws have been applied.

4. In relation to information supplied under paragraph 2, points (c), (e) and (f), the Community shall have the right to raise objections against an aid granted by Turkey which it would have deemed unlawful under EC law had it been granted by a Member State. If Turkey does not agree with the Community's opinion, and if the case is not re-

solved within 30 days, the Community and Turkey shall each have the right to refer the case to arbitration.

5. Turkey shall have the right to raise objections and seize the Association Council against an aid granted by a Member State which it deems to be unlawful under EC law. If the case is not resolved by the Association Council within three months, the Association Council may decide to refer the case to the Court of Justice of the European Communities.

Article 40

1. The Community shall inform Turkey as soon as possible of the adoption of any decision under Articles 85, 86 and 92 of the EC Treaty which might affect Turkey's interests.

2. Turkey shall be entitled to ask for information about any specific case decided by the Community under Articles 85, 86 and 92 of the EC Treaty.

Article 41

With regard to public undertakings to which special or exclusive rights have been granted, Turkey shall ensure that, by the end of the first year following the entry into force of the Customs Union, the principles of the Treaty establishing the European Economic Community, notably Article 90, as well as the principles contained in the secondary legislation and the case-law developed on this basis, are upheld.

Article 42

Turkey shall progressively adjust, in accordance with the conditions and the timetable laid down by the Association Council, any State monopolies of a commercial character so as to ensure that, by the end of the second year following the entry into force of this Decision, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and of Turkey.

Article 43

1. If the Community or Turkey believes that anticompetitive activities carried out on the territory of the other Party are adversely affecting its interests or the interests of its undertakings, the first Party may notify the other Party and may request that the other Party's competition authority initiate appropriate enforcement action. The notification shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the notifying Party, and shall include an offer for such further information and other cooperation as the notifying Party is able to provide.

2. Upon receipt of a notification under paragraph 1 and after such other discussion between the Parties as may be appropriate and useful in the circumstances, the competition authority of the notified Party will consider whether or not to initiate enforcement

action, with respect to the anticompetitive activities identified in the notification. The notified Party will advise the notifying Party of its decision. If enforcement action is initiated, the notified Party will advise the notifying Party of its outcome and, to the extent possible, of significant interim developments.

3. Nothing in this Article limits the discretion of the notified Party under its competition laws and enforcement policies as to whether or not to undertake enforcement action with respect to the notified anticompetitive activities, or precludes the notifying Party from undertaking enforcement action with respect to such anticompetitive activities.

[...]