FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF TURKEY AND THE REPUBLIC OF SERBIA

PREAMBLE

The Republic of Turkey and the Republic of Serbia (hereinafter referred to as "the Parties" or "Turkey" and "Serbia" where appropriate),

DESIROUS to develop and strengthen friendly relations, especially in the fields of economic co-operation and trade, with an aim to contribute to the progress of economic co-operation and to increase the scope of mutual trade exchange,

CONFIRMING their intention to participate actively in the process of economic integration in Europe and in the Mediterranean basin expressing their preparedness to co-operate in seeking ways and means to strengthen this process,

TAKING INTO CONSIDERATION the "Agreement Establishing an Association between the Republic of Turkey and the European Economic Community" and the "Stabilisation and Association Agreement between the European Communities and their Member States and the Republic of Serbia",

HAVING regard to the experience gained from the co-operation developed between the Parties as well as between them and their main trading partners,

DECLARING their readiness to undertake activities with a view to promoting harmonious development of their trade as well as to expanding and diversifying their mutual co-operation in the fields of joint interest, including fields not covered by this Free Trade Agreement (hereinafter referred to as "this Agreement"), thus creating a framework and supportive environment based on equality, non discrimination, and a balance of rights and obligations,

REFERRING to the mutual interest in the continual reinforcement of the multilateral trading system and considering that the provisions and instruments of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as "GATT 1994") and the World Trade Organization (hereinafter referred to as "WTO") constitute a basis for their foreign trade policy,

RESOLVED to lay down for this purpose provisions aimed at the progressive abolition of the obstacles to the mutual trade in accordance with the provisions of these instruments, in particular those concerning the establishment of free trade areas,

CONSIDERING the commitment of the Parties to free trade, in compliance with the rights and obligations arising out of the membership of the WTO,

CONVINCED that this Agreement will create a new climate for economic relations between them and, above all, for the development of trade and investment, factors crucial to economic restructuring and modernisation,

HAVE DECIDED, in pursuance of these objectives, to conclude this Agreement.

Article 1. Objectives

1. The Parties, by taking into account Turkey's obligations arising from the Customs Union with the EU and the Stabilisation and Association Agreement between Serbia and the EU shall gradually establish a free trade area on substantially all their trade between them in a transitional period lasting a maximum of six years starting from the entry into force of this Agreement in accordance with the provisions of this Agreement and in conformity with Article XXIV of the GATT 1994 and the other multilateral agreements on trade in goods annexed to the Agreement establishing the WTO.

2. The objectives of this Agreement are:

a) to increase and enhance the economic cooperation between the Parties and raise the living standard of the population of the two countries,

b) to gradually eliminate difficulties and restrictions on trade in goods,

c) to promote, through the expansion of reciprocal trade, the harmonious development of the economic relations between the Parties,

d) to provide fair conditions of competition in trade between the Parties,

e) to contribute by the removal of barriers to trade, to the harmonious development and expansion of world trade,

f) to create conditions for further encouragement of investments particularly for the development of joint investments in both countries,

g) to promote trade and cooperation between the Parties in third country markets.

Article 2. Basic Duties

1. In trade between the Parties covered by this Agreement, the Parties shall apply their respective Customs Tariffs on the classification of goods for imports into them.

2. For the purpose of this Agreement customs duties and charges having equivalent effect to customs duties include any duties or charges of any kind imposed in connection with the importation or exportation of a good, including any form of surtax or surcharge in connection with such importation or exportation, but do not include any:

a) charges equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article II of the GATT 1994;

b) anti-dumping or countervailing measures;

c) fees or charges commensurate with the costs of services rendered.

3. For each product the basic duty to which successive reductions set out in this Agreement shall be the actually applied erga omnes duty that was in force in the Parties on the date of entry into force of this Agreement.

4. If, after the entry into force of this Agreement, any tariff reduction is applied on an erga omnes basis, in particular tariff reductions resulting:

a) from the tariff negotiations in the WTO or, b) in the event of the accession of Serbia to the WTO or, c) from subsequent reductions after the accession of Serbia to the WTO, such reduced duties shall replace the basic duty referred to in paragraph 3 of this Article as from the date when such reductions are applied.

5. The reduced duties to be applied by the Parties calculated, as set out in this Agreement shall be rounded to whole numbers using common arithmetical principles. Therefore, all figures which have less than 50 (included) after the decimal point shall be rounded down to the nearest whole number and all figures, which have more than 50 after the decimal point shall be rounded up to the nearest whole number.

6. Turkey and Serbia shall communicate to each other their respective basic duties and any changes thereof.

Chapter I. INDUSTRIAL PRODUCTS

Article 3. Scope

The provisions of this Chapter shall apply to products originating in the Parties falling within Chapters 25 to 97 of Harmonized Commodity Description and Coding System with the exception of the products listed in Annex I of this Agreement.

Article 4. Customs Duties on Imports and Charges Having Equivalent Effect

1. No new customs duties on imports or charges having equivalent effect shall be introduced in trade between the Parties from the date of entry into force of this Agreement.

2. Customs duties on imports into Turkey of goods originating in Serbia shall be abolished upon the entry into force of this Agreement.

3. Customs duties on imports into Serbia of goods originating in Turkey other than those listed in List A, List B and List C of Annex II shall be abolished upon the entry into force of this Agreement.

4. Customs duties on imports into Serbia of goods originating in Turkey, which are listed in List A, List B and List C of Annex II shall be progressively abolished in accordance with the timetable laid down thereof.

5. Turkey and Serbia shall abolish in trade between themselves any charges having equivalent effect to customs duties on imports upon the entry into force of this Agreement.

Article 5. Fiscal Duties

The provisions concerning the abolition of customs duties on imports shall also apply to duties of a fiscal nature.

Article 6. Customs Duties on Exports and Charges Having Equivalent Effect

1. From the date of the entry into force of this Agreement no new customs duties on exports or charges having equivalent effect shall be introduced in trade between the Parties.

2. All customs duties on exports and any charges having equivalent effect shall be abolished between the Parties upon entry into force of this Agreement.

Article 7. Quantitative Restrictions on Imports and Measures Having Equivalent Effect

1. From the date of the entry into force of this Agreement no new quantitative restrictions on imports or measures having equivalent effect shall be introduced in trade between the Parties.

2. All quantitative restrictions on imports and measures having equivalent effect shall be abolished between the Parties upon the date of entry into force of this Agreement.

Article 8. Quantitative Restrictions on Exports and Measures Having Equivalent Effect

1. From the date of the entry into force of this Agreement no new quantitative restrictions on exports or measures having equivalent effect shall be introduced in trade between the Parties.

2. All quantitative restrictions on exports and measures having equivalent effect shall be abolished between the Parties upon the date of entry into force of this Agreement.

Article 9. Technical Barriers to Trade

1. The rights and obligations of the Parties relating to standards or technical regulations and related measures shall be governed by the WTO Agreement on Technical Barriers to Trade.

2. Each Party, upon a request from the other Party, shall provide information on particular individual cases of standards, technical regulations and applied measures.

3. The Parties shall endeavour to eliminate technical barriers to trade. To this end, the Parties will enter where appropriate into negotiations for the conclusion of the agreements for the mutual recognition in the field of conformity assessment, in the spirit of the recommendations of the WTO Agreement on Technical Barriers to Trade.

Chapter II. AGRICULTURAL AND FISHERY PRODUCTS

Article 10. Scope

1. The provisions of this Chapter shall apply to agricultural and fishery products originating in the territory of each Party.

2. The term "agricultural and fishery products" (hereinafter referred to as agricultural products) means, for the purpose of this Agreement, the products falling within Chapters 01 to 24 of the Harmonized Commodity Description and Coding System and the products listed in Annex I of this Agreement.

Article 11. Exchange of Concessions

1. The Parties to this Agreement shall mutually allocate concessions set forth in Protocol I in accordance with the provisions of this Chapter.

2. Taking into account the role of agriculture in their respective economies, the development of trade in agricultural products, the high sensitivity of agricultural products and the rules of their respective agricultural policies, the Parties shall examine in the Joint Committee the possibilities of granting further concessions to each other in trade in agricultural products.

Article 12. Sanitary and Phytosanitary Measures

The Parties shall not apply their regulations in sanitary and phytosanitary matters as an arbitrary or unjustifiable discrimination or a disguised restriction of trade between them. The Parties shall apply these measures within the spirit of the provisions of the GATT 1994 and the WTO Agreement on Application of Sanitary and Phytosanitary Measures.

Article 13. Specific Safeguards

Notwithstanding other provisions of this Agreement, and in particular Article 22, given the particular sensitivity of the agricultural products, if imports of products originating in a Party, which are the subject of concessions granted under this Agreement, cause serious disturbance to the markets or to their domestic regulatory mechanisms, in the other Party, both Parties shall enter into

consultations immediately to find an appropriate solution. Pending such solution, the Party concerned may take the measures it deems necessary in accordance with the relevant WTO rules.

Chapter III. SERVICES AND INVESTMENTS

Article 14.

1. The Parties to this Agreement recognize the growing importance of services and investments. In their efforts to gradually develop and broaden their co- operation, in particular in the context of the European integration, they will co-operate with the aim of further promoting investments and achieving a progressive liberalization and mutual opening of their markets for investments and trade in services, taking into account relevant provisions of the General Agreement on Trade in Services (GATS).

2. The Parties will discuss in the Joint Committee this co-operation with the aim of developing and deepening of their relations in conformity with this Article.

Chapter IV. COMMON PROVISIONS

Article 15. Internal Taxation

1. The Parties shall refrain from any measure or practice of an internal fiscal nature establishing, whether directly or indirectly, discrimination between the products of one Party and like products originating in the other Party.

2. Products exported to the territory of one of the Parties may not benefit from repayment of internal indirect taxation which exceed amount of the indirect taxation imposed on those products.

Article 16. Customs Unions, Free Trade Areas and Cross-Border Arrangements

1. This Agreement shall not prevent the maintenance or establishment of customs unions, free trade areas or arrangements for cross-border trade of the Parties with third countries to the extent that these do not negatively affect the trade regime and in particular the provisions concerning rules of origin provided for by this Agreement.

2. Exchange of information shall take place, upon request of either Party, within the Joint Committee concerning agreements establishing such customs unions or free trade areas.

Article 17. Structural Adjustment

1. Exceptional measures of limited duration which derogate from the provisions of Article 4 may be taken by the Parties in the form of increased customs duties.

2. These measures may only concern infant industries, or certain sectors undergoing restructuring or facing serious difficulties, particularly where these difficulties produce important social problems.

3. Customs duties on imports applicable in the Parties to products originating in the other Party introduced by these measures may not exceed 25% ad valorem and shall maintain an element of preference for products originating in the other Party. The total value of imports of the products which are subject to these measures may not exceed 15 % of total imports of industrial products from the other Party as defined in Article 3 of this Agreement, during the last year for which statistics are available.

4. These measures shall be applied for a period not exceeding five years unless a longer duration is authorized by the Joint Committee. They shall cease to apply at the latest on the expiry of the transitional period.

5. No such measures can be introduced in respect of a product if more than three years have elapsed since the elimination of all duties and quantitative restrictions or charges or measures having an equivalent effect concerning that product.

6. The Parties shall inform the Joint Committee of any exceptional measures they intend to take and, at the request of either Party, consultations shall be held in the Joint Committee on such measures and the sectors to which they apply before they are applied. When taking such measures the Parties shall provide the Joint Committee with a schedule for the elimination of the customs duties introduced under this Article. This schedule shall provide for a phasing out of these duties starting at the latest two years after their introduction, at equal rates. The Joint Committee may decide on a different schedule.

Article 18. Dumping and Subsidies

1. If one of the Parties finds that dumping and/or subsidisation is taking place in trade with the other Party, that Party may take appropriate measures against this practice in accordance with the WTO Agreement on Implementation of Article VI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures and its own related internal legislation.

2. None of the provisions in this Agreement prevent either Party from taking trade defence action in accordance with paragraph 1 of this Article.

Article 19. General Safeguards

Where any product is being imported into either of the Parties in such increased quantities, each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguard Measures. This Agreement does not confer any additional rights or obligations on the Parties with regard to safeguard measures.

Article 20. Re-export and Serious Shortage

Where compliance with the provisions of Articles 6 and 8 leads to:

a) re-export towards a third country against which the exporting Party to this Agreement maintains for the product concerned quantitative export restrictions, export duties or measures or charges having equivalent effect; or

b) a serious shortage, or threat thereof, of a product essential to the exporting Party;

and where the situations referred to above give rise or are likely to give rise to major difficulties for the exporting Party, that Party may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 22 of this Agreement. The measures shall be non-discriminatory and shall be eliminated when conditions no longer justify their maintenance.

Article 21. State Monopolies

1. The Parties shall progressively adjust any state monopoly of a commercial character so as to ensure that by the end of the third year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed will exist between nationals of the Parties in accordance with the WTO rules.

2. The Joint Committee shall be informed about the measures adopted to implement this objective.

Article 22. Notifications and Consultations Procedure for the Application of Measures

1. Before initiating the procedure for the application of any measures set out in Articles 13, 20, 25 and 33 of this Agreement, the Parties to this Agreement shall endeavor to solve any differences between themselves through direct consultations, and shall inform the other Party thereof.

2. A Party which is considering to resorting to measures shall promptly notify the Joint Committee thereof. The Party concerned shall provide the Joint Committee with all relevant information and give it the assistance required to examine the case. Consultations between the Parties shall take place without delay in the Joint Committee with a view to finding a commonly acceptable solution.

3. If, within 30 working days of the matter being referred to the Joint Committee, the Party in question fails to put an end to the practice objected to or to the difficulties notified and in the absence of a decision by the Joint Committee in the matter, the concerned Party may adopt the measures it considers necessary to remedy the situation.

4. The measures taken shall be notified immediately to the Joint Committee. They shall be restricted, with regard to their extent and to their duration, to what is strictly necessary in order to rectify the situation, giving rise to their application and shall not be in excess of the damage caused by the practice or the difficulty in question. Priority shall be given to such measures that will least disturb the functioning of this Agreement.

5. The measures taken shall be the subject of regular consultations within the Joint Committee with a view to their relaxation, or abolition when conditions no longer justify their maintenance.

6. Where exceptional circumstances requiring immediate action make prior examination impossible, the Party concerned may, in the cases of Articles 13, 20, 25 and 33 of this Agreement apply forthwith the precautionary measures strictly necessary to remedy the situation. The measures shall be notified without delay to the Joint Committee and consultations between the Parties shall take place within the Joint Committee.

Article 23. Rules of Origin and Cooperation between the Customs Administrations

Protocol II lays down the rules of origin and related methods of administrative co-operation.

Article 24. Payments

1. The Parties undertake to authorise, in freely convertible currency, in accordance with the provisions of Article VII of the Articles of the Agreement of the International Monetary Fund, any payments and transfers on the current account of balance of payments between Turkey and Serbia.

2. Payments in freely convertible currencies relating to commercial transactions within the framework of this Agreement between the Parties and the transfer of such payments to the territory of the Party where the creditor resides, shall be free from any restrictions.

3. The Parties shall refrain from exchange or administrative restrictions other than existing in the current legislation of the Parties on the grant repayment or acceptance of short and medium term credits related to commercial transactions in which a resident of a Party participates.

4. Notwithstanding the provisions of paragraph 3, any measures concerning current payments connected with the movement of goods shall be in conformity with the conditions laid down under Article VIII of the Articles of the Agreement of the International Monetary Fund.

Article 25. Rules of Competition Concerning Undertakings and State Aid

1. The following are incompatible with the proper implementation of this Agreement, in so far as they may affect trade between the Parties:

a) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

b) abuse by one or more undertakings of a dominant position in the territories of the Parties as a whole or in a substantial part thereof;

c) any state aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Each Party shall ensure transparency in the area of state aid. Upon request by one Party, the other Party shall provide information on particular individual cases of state aid.

3. If any Party considers that a particular practice is incompatible with the terms of the first paragraph of this Article, and:

a) is not adequately dealt with under the implementing rules referred to in paragraph 4 of this Article, or

b) 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, including its services industry,

it may take appropriate measures after consultation within the Joint Committee or after thirty working days following referral for such consultation.

4. In the case of practices incompatible with paragraph 1.c) of this Article, such appropriate measures may, where the WTO/GATT 1994 applies thereto, only be adopted in conformity with the procedures and under the conditions laid down by the WTO/GATT 1994 and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

5. In case of a competition investigation conducted by one Party against the undertakings based in the territory of the other Party, if the investigating party requests for a cooperation in the communication of the official documents relevant to the investigation from the other Party, the requested Party will do its best to ensure the requested communication to be served in a timely manner through its competent governmental institutions.

6. Notwithstanding any provisions to the contrary adopted in conformity with this Article, the Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

Article 26. Balance of Payments Difficulties

Where either Party is in a serious balance of payments difficulties, or under threat thereof, the Party concerned may, in accordance with the conditions laid down within the framework of WTO/GATT 1994 and with Articles VIII and XIV of the Articles of Agreement of International Monetary Fund, adopt restrictive measures, which shall be of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. The Party concerned shall inform the other Party forthwith of their introduction and present to the other Party, as soon as possible a time schedule of their removal.

Article 27. Intellectual and Industrial Property

1. The Parties shall provide suitable and effective protection of intellectual and industrial property rights in line with Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and other international Agreements. This shall encompass effective means of enforcing such rights.

2. Implementation of this Article shall be regularly assessed by the Parties. If difficulties which affect trade arise in connection with intellectual and industrial property rights, either Party may request urgent consultations to find mutually satisfactory solutions.

Article 28. Public Procurement

1. The Parties consider the liberalization of their respective public procurement markets as an objective of this Agreement. The Parties aim at opening up of the award of public contracts on the basis of non-discrimination and reciprocity.

2. The Parties will progressively develop their respective rules, conditions and practices on public procurement with a view to granting suppliers of the other Party access to contract award procedures on their respective public procurement markets not less favourable than that accorded to companies of any country or territory.

3. The Joint Committee shall examine developments related to the achievement of the objectives of this Article and may recommend practical modalities of implementing the provisions of paragraph 2 of this Article so as to ensure free access, transparency and mutual opening of their respective public procurement markets.

4. During the examination referred to in this paragraph 3 of this Article, the Joint Committee may consider, especially in the light of international developments and regulations in this area, the possibility of extending the coverage and/or the degree of the market opening provided for in paragraph 1 of this Article.

5. The Parties shall endeavour to accede to the relevant Agreements negotiated under the auspices of the GATT 1994 and the Marrakesh Agreement, establishing the WTO.

Article 29. Establishment of the Joint Committee

1. A Joint Committee is hereby established in which each Party shall be represented. The Joint Committee shall be responsible for the administration of this Agreement and shall ensure its proper implementation.

2. For the purpose of the proper implementation of this Agreement, the Parties shall exchange information and, at the request of either Party, shall hold consultations within the Joint Committee. The Joint Committee shall keep under review the possibility of further removal of the obstacles to trade between the Parties.

3. The Joint Committee may, in accordance with the provisions of paragraph 3 of Article 30 of this Agreement, take decisions in the cases provided for in this Agreement. On other matters the Joint Committee may make recommendations.

Article 30. Procedures of the Joint Committee

1. For the proper implementation of this Agreement, the Joint Committee shall meet at an appropriate level whenever necessary upon request but at least once a year. Either Party may request a meeting be held.

2. The Joint Committee shall decide by consensus.

3. If a representative in the Joint Committee of a Party to this Agreement has accepted a decision subject to reservation of the fulfilment of internal legal requirements the decision shall enter into force, if no later date is contained therein, on the date of the receipt of the written notification stating that such requirements have been fulfilled.

4. The Joint Committee shall adopt its rules of procedure which shall, inter alia, contain provisions for convening meetings and for the designation of the Chairperson and his/her term of office.

5. The Joint Committee may decide to set up such sub-committees and working groups as it considers necessary to assist it in accomplishing its tasks.

Article 31. Security Exceptions

Nothing in this Agreement shall prevent the Parties from taking any measures, which it considers necessary:

a) to prevent the disclosure of information contrary to its essential security interests;

b) for the protection of its essential security interests or for the implementation of international obligations or national policies:

i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods, materials and services as is carried on directly or indirectly for the purpose of supplying a military establishment; or

ii) relating to the non-proliferation of biological and chemical weapons, nuclear weapons or other nuclear explosive devices; or

iii) in time of war or other serious international tension constituting threat of war.

Article 32. General Exceptions

This Agreement 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 and environment, the protection of domestic treasures possessing artistic, historic or archaeological value; the protection of intellectual, industrial and commercial property, or rules relating to gold or silver or the conservation of exhaustible natural resources, if such measures are made effective in conjunction with restrictions on domestic production or consumption. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

Article 33. Fulfillment of Obligations

1. The Parties shall take all necessary measures to ensure the achievement of the objectives of this Agreement and the fulfillment of their obligations under this Agreement.

2. If either Party considers that the other Party has failed to fulfill an obligation under this Agreement, the Party concerned may take the appropriate measures under the conditions and in accordance with the procedures laid down in Article 22 of this Agreement.

Article 34. Evolutionary Clause

1. Where either Party considers that it would be useful and in the interest of the economies of the Parties to develop the relations established by this Agreement by extending them to fields not covered thereby, it shall submit a reasoned request to the other Party. The Parties may instruct the Joint Committee to examine this request and, where appropriate, to make recommendations to them, particularly with a view to opening negotiations.

2. Agreements resulting from the procedure referred to in paragraph 1 of this Article will be subject to ratification or approval by the Parties to this Agreement in accordance with their national legislation.

Article 35. Amendments

Amendments to this Agreement, as well as to its Annexes and Protocols, shall enter into force on the date of receipt of the latter written notification through diplomatic channels, by which the Parties inform each other that all necessary requirements foreseen by their national legislation for the entry into force of this Agreement, have been fulfilled.

Article 36. Protocols and Annexes

Protocols and Annexes to this Agreement shall form an integral part thereof. The Joint Committee may decide to amend the Protocols and Annexes in accordance with the national legislation of the Parties.

Article 37. Validity and Withdrawal

1. This Agreement is concluded for an unlimited period.

2. Each Party to this Agreement may withdraw from this Agreement by a written notification to the other Party. The termination shall take effect on the first day of the seventh month following the date on which the notification was received by the other Party.

3. The Parties agree that, in case of accession of one of the Parties to this Agreement to the European Union, the Agreement will be terminated on the previous day before the date of the accession to the EU.

Article 38. Entry Into Force

The Parties shall ratify this Agreement in accordance with their own procedures. This Agreement shall enter into force on the first day of the second month, following the date of the receipt of the latter written notification through diplomatic channels, by which the Parties inform each other that all necessary requirements foreseen by their national legislation for the entry into force of this Agreement, have been fulfilled.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised thereto, have signed this Agreement.

DONE at istanbul, on 1st of June, 2009, in two originals, each in the Turkish, Serbian and English languages, all texts being equally authentic. In case of any divergence in the interpretation of this Agreement, the English text shall prevail.

For the Republic of Turkey

Zafer ÇAĞLAYAN

State Minister

For the Republic of Serbia

Mladjan DINKIĆ

Deputy Prime Minister