

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

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

The Republic of Turkey (hereinafter referred to as "Turkey") and the Republic of Macedonia (hereinafter referred to as "Macedonia");

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 Turkey and the European Economic Community and the Co-operation Agreement between the European Communities and Macedonia;

Having regard to the experience gained from the co-operation developed between the Parties to this Agreement (hereinafter referred to as "the Parties") as well as between them and their main trading partners;

Declaring their readiness to undertake activities with a view of promoting harmonious development of their trade as well as of expanding and diversifying their mutual co-operation in the fields of joint interest, including fields not covered by 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 of the Parties in the continual reinforcement of the multilateral trading system and considering the provisions and instruments of GATT/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 trade between the Parties in accordance with the provisions of these instruments, in particular those concerning the establishment of free trade areas;

HAVE DECIDED, in pursuance of these objectives, to conclude the following Agreement (hereinafter referred to as "this Agreement").

Article 1. Objectives

1. Turkey and Macedonia, by taking into account the Turkey's obligations arising from its Customs Union with the EU and the development of the Co-operation Agreement between Macedonia and the EU, shall gradually liberalise trade in a transitional period lasting a maximum of ten years starting from the entry into force of this Agreement in accordance with the provisions of this Agreement and in conformity with those 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 the economic cooperation and raise the living standard of the population of the two countries;

(b) to gradually eliminate difficulties and restrictions on trade in goods, including also the agricultural products;

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

Article 2. Basic Duties

1. For commercial exchanges covered by this Agreement, the Customs Tariffs of the Parties shall be applied to the classification of goods for imports into them.

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

3. If after entry into force of this Agreement, any tariff reduction is applied on an erga omnes basis, in particular, reductions resulting from the tariff agreement concluded as a result of the GATT Uruguay Round or accession of Macedonia to the WTO and Turkey-EC Customs Union or reductions applied by Macedonia to the products originating in the EC, such reduced duties shall replace the basic duties referred to in paragraph 2 as from that date when such reductions are applied.

4. The Parties shall mutually exchange their basic duties.

Chapter I. Industrial Products

Article 3 . Scope

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

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

1. No new customs duty on imports or charge 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 applicable in Macedonia to products originating in Turkey shall be abolished in accordance with Annex II to this Agreement.

3. Subject to special provisions laid down in Annex III to this Agreement, products originating in Macedonia shall be imported in Turkey free of customs duties or charges having equivalent effect.

4. Any changes in Turkish and Macedonian commitments to the European Communities in this regard shall be referred to the Joint Committee.

Article 5. Customs Duties of a Fiscal Nature

The provisions of Article 4 shall also apply to customs duties of a fiscal nature, except the charge for the customs record keeping applied by Macedonia.

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

1. No new customs duty on exports or charge 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. No new quantitative restriction on imports or measure having equivalent effect shall be introduced nor shall those existing be made more restrictive in trade between the Parties from the date of entry into force of this Agreement.

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 with the exception of textile products which are covered by the Memorandum of Understanding between the Government of Macedonia and the Government of Turkey signed on 27 October 1997.

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

1. No new quantitative restriction on exports or measure having equivalent effect shall be introduced nor shall those existing be made more restrictive in trade between the Parties from the date of entry into force of this Agreement.

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

Article 9. Technical Regulations

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 request of the other Party, shall provide information on particular individual cases of standards, technical regulations and related measures.
3. The Parties shall aim to reduce 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, Processed Agricultural and Fish Products

Article 10 . Scope

1. The provisions of this Chapter shall apply to agricultural, processed agricultural and fish products originating in the Parties.
2. The term "agricultural products" means for the purpose of this Agreement the products falling within Chapters 1 to 24 of the Harmonized Commodity Description and Coding System and the products listed in Annex I.

Chapter 11. Exchange of Concessions

1. The Parties to this Agreement shall mutually allocate concessions set forth in Protocol 1 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 between the Parties; the high sensitivity of agricultural products; the rules of their respective agricultural policy, the Parties shall examine in the Joint Committee the possibilities for mutual allocation of future concessions.
3. In pursuance of this objective, Protocol 1 providing for measures to facilitate trade in agricultural products has been concluded between the Parties.

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 on trade between them. The Parties shall apply their sanitary measures within the spirit of the provisions of the GATT and the other relevant WTO agreements.

Chapter III. Right of Establishment and Supply of Services

Article 13.

1. The Parties to this Agreement recognize the growing importance of certain areas, such as 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 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 and Services.
2. The Parties will discuss in the Joint Committee this cooperation with the aim of developing and deepening of their relations governed in this Article.

Chapter IV. Common Provisions

Article 14. Internal Taxation

1. The Parties to this Agreement 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 one of the Parties may not benefit from repayment of internal taxes in excess of the amount of direct or indirect taxes imposed on them.

Article 15. Trade Relations Governed by other Agreements

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 16. 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 per cent 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 per cent of total imports of industrial products from the other Party as defined in Article 4, 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 17. Dumping

If a Party finds that dumping, within the meaning of Article VI of General Agreement on Tariffs and Trade is taking place in trade relations governed by this Agreement, it may take appropriate measures against that practice in accordance with Article VI of the GATT and the rules established by agreements related to that Article, under the conditions and in accordance with the procedures laid down in Article 21 of this Agreement.

Article 18. Emergency Action on Imports of Particular Products

Where any product is being imported into either of the Parties in such increased quantities and under such conditions as to cause, or threaten to cause:

- (a) serious injury to domestic producers or disturbances on the market of like or directly competitive products;
 - (b) serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region,
- the Party concerned may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 21.

Article 19. 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 21 of this Agreement. The measures shall be non-discriminatory and be eliminated when conditions no longer justify their maintenance.

Article 20 . 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 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.

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

Article 21. Procedure for the Application of Safeguard Measures

1. Before initiating the procedure for the application of safeguard measures set out in this Article, the Parties shall endeavour to solve any differences between themselves through direct consultations, and shall inform the other Party thereof.

2. In the cases specified in Articles 17, 18, 19, 24 and 32 a Party which is considering to resort to safeguard 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 one month 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 safeguard measures it considers necessary to remedy the situation.

4. The safeguard 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 safeguard 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 17, 18, 19, 24 and 32, 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 to this Agreement shall take place within the Joint Committee.

Article 22. Rules of Origin and Cooperation between the Customs Administrations

Protocol 2 lays down the rules of origin and methods of administrative cooperation.

Article 23. Payments

Any settlement and payment arising from trade of goods, services and rights to non material goods between both states shall be made in convertible currency, in accordance with the respective legislation of the Parties.

Article 24. Rules of Competition Concerning Undertakings, State Aid

1. The following are incompatible with the proper functioning of this Agreement, in so far as they 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 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 favoring 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. For the purpose of applying the provisions of paragraph 1 of this Article, the Parties will take the measures in conformity with the procedures and under the conditions laid down in their respective Agreements with the European Communities. In case of any change in those procedures and/or conditions these changes will be applicable between the Parties.

4. If the Parties consider 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 3 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.

5. 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.

6. Notwithstanding any provisions to the contrary adopted in conformity with paragraph 3 of this Article, the Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

Article 25. 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 Article VIII 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, of a time schedule of their removal.

Article 26. Intellectual, Industrial and Commercial Property

1. The Parties shall provide suitable and effective protection of intellectual, industrial and commercial property rights in line with the highest international standards. 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, industrial and commercial property rights, either Party may request urgent consultations to find mutually satisfactory solutions.

Article 27. Public Procurement

1. The Parties consider the opening up of the award of public contracts on the basis of non-discrimination and reciprocity, to be a desirable objective.

2. As of the entry into force of this Agreement, both Parties shall grant each other's companies access to contract award procedures a treatment no less favorable than that accorded to companies of any other country.

Article 28. 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 29, take decisions in the cases provided for in this Agreement. On other matters the Joint Committee may make recommendations.

Article 29. 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 act by common agreement.

3. If a representative in the Joint Committee of a Party to this Agreement has accepted a decision subject to the fulfilment of constitutional requirements the decision shall enter into force, if no later date is contained therein, on the day the lifting of the reservation is notified.

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 Chairman and his/her term of office.

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

Article 30. Security Exceptions

Nothing in this Agreement shall prevent a Party 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 31. 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; the protection of national treasures possessing artistic, historic or archaeological value; the protection of intellectual, industrial and commercial property. Such prohibitions or restrictions must not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

Article 32. Fulfillment of Obligations

1. The Parties shall take all necessary measures to ensure the achievement of the objectives of this Agreement and the fulfilment 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 21 of this Agreement.

Article 33. Evolutionary Clause

1. Where either Party considers that it would be useful 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

t o 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 will be subject to ratification or approval by the Parties to this Agreement in accordance with their internal legal procedures.

Article 34. Amendments

Amendments to this Agreement, including to its Annexes and Protocols, shall enter into force on the date of receipt of the last notification, via diplomatic channels, confirming that all internal legal procedures required by either Party for their entry into force have been concluded.

Article 35. Protocols and Annexes

Protocols and Annexes and Record of Understanding 1 and 2 to this Agreement shall form an integral part thereof. The Joint Committee may decide to amend the Protocols and Annexes in accordance with the internal legislation of the Parties.

Article 36. Validity and Termination

1. This Agreement is concluded for an unlimited period.

2. Each party may denounce this Agreement by means of a written notification

to the other Party. This Agreement shall cease to apply after six months from the date of receipt of the written notification by the other Party.

Article 37. Entry Into Force

This Agreement shall enter into force on the first day of the second month, from the last notification, via diplomatic channels between the Parties, on entry into force of this Agreement in accordance with the internal legislation of the Parties.

RECORD OF UNDERSTANDING - I

Notwithstanding the Articles 7 and 8 of this Agreement, Turkey and Macedonia, by taking into account the state of a transitional economy in Macedonia, have agreed that Macedonia may continue to implement the existing protective measures on exports and imports in a period foreseen by Macedonia.

RECORD OF UNDERSTANDING - II

Trade in textile products falling within Chapters 50 to 63 of the Harmonized Commodity and Coding System between Turkey and Macedonia shall continue to be regulated by the Memorandum of Understanding between the Government of Turkey and the Government of Macedonia concerning trade in textiles and clothing products signed on 27 October 1997.

This Memorandum of Understanding will become null and void when the European Union abolishes the arrangements on trade in textile products with Macedonia.

DONE at Ankara, this 7th day of September 1999, in duplicate copies, in the Macedonian, Turkish and English languages, all texts being equally authentic. In case of any divergence in the interpretation of this Agreement, the English text shall prevail.