Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union

THE EC-TURKEY ASSOCIATION COUNCIL,

Having regard to the Agreement establishing the 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 Article28, 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 8November1993 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 ArticleS 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, with the Association relations between the Parties;

Having met in Brussels on 6 March 1995,

HAS DECIDED AS FOLLOWS:

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 Article11 of the Association Agreement. The special provisions relating to agricultural products are set out in Chapterll 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 Article3 of the Council Regulation (EEC) No.2913/92 of 12October1992 establishing the Community Customs Code;

- 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.

There 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 paragraph4, the goods referred to in the first subparagraph of paragraph4 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 Articles5 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 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 Article9, 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 paragraph1, if Turkey finds that a product, the conformity of which with the Community Directives has been attested to in accordance with paragraph1, and which is used in accordance with its intended purpose, fails to satisfy one of the requirements referred to in Article7, it may take all appropriate measures, in accordance with the conditions and procedures provided for in paragraph3, 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 paragraph2, 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 paragraph2 until one month has elapsed after the date of notification provided for in paragraph3(a) unless the consultation procedure under paragraph3(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 measures 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! and 2 shall apply, mutatis mutandis, to foodstuffs.

Article 11.

During the period required for the application of Turkey of the instruments referred to in Article9, 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 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 (common rules for imports);

- Council Regulation (EC) No. 519/94 (common rules for imports from certain third countries);

- Council Regulation (EC) No. 520/94 (Community procedure for administering quantitative quotas) (implementing provisions: Commission Regulation (EC) No.738/94)

- Council Regulations (EC) No. 3283/94and (EC) No. 3284/94 (protection against dumped and subsidized imports);

- Council Regulation (EC) No. 3286/94 (Community procedures in the field of the common commercial policy);

- Council Regulation (EEC) No. 2603/69 (establishing common rules for exports);

- Council Decision 93/112/EEC (officially supported export credits);

- Council Regulation (EC) No. 3036/94 (outward processing arrangements for textiles and clothing);

- Council Regulation (EC) No. 3030/93 (textile imports under common rules);

- Council Regulation (EC) No. 517/94 (textile imports under autonomous arrangements);

- Council Regulation (EEC) No. 3951/92 (textile imports from Taiwan).

2. In conformity with the requirements of ArticleXXIV 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 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 paragraphs1 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 paragraph1, 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 Article13 and in accordance with Article19 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 paragraph1 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 paragraph1, 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 tariff 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. Processes 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 Article13, 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 Article19.

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 paragraph3.

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 Annex4.

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 Annex6/Table1 and Annex 6 / Table2.

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 are referred to in Article20(3), for imports into the Community, shall be reduced proportionately.

2. Where the reductions referred to in paragraph 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 paragraphs1 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 disturoances 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 paragraph2 and on the measures which Turkey intends to take in the agricultural field pursuant to paragraph1.

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- July1993 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;

(e) release for free circulation;

(f) suspensive arrangements and customs procedures with economic impact;

(g) movement of goods;

(h) customs debt;

(i) right of appeal.

2. Turkey shall take the measures necessary to implement, on the date of entry into force of this Decision, provisions based on:

(a) Council Regulation (EEC) No. 3842/86 of 1 December 1986 laying down measures to prohibit the release for free circulation of counterfeit goods and Commission Regulation (EEC) No. 3077/87 of 14 October 1987 laying down the implementing measures thereof;

(b) Council Regulation (EEC) No. 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duties and Commission Regulations (EEC) No. 2287/83, No.- 2288/83, 2289/83 and No.2290/83 of 29 July 1983 laying down the implementing measures thereof;

(c) Council Regulation (EEC) No. 616/78 on proof of origin for certain textile products falling within Chapter 51 or Chapters 53 to 62 of the Common Customs Tariff and imported into the Community, and on conditions for the acceptance of such proof.

3. The Customs Cooperation Committee shall lay down the appropriate measures to implement paragraphs 1 and 2.

Article 29.

Mutual assistance on customs matters between the administrative authorities of the Parties shall be governed by the provisions of Annex 7, which on the Community side, covers those matters falling under the Community competence.

Article 30.

The Customs Cooperation Committee shall elaborate the appropriate provisions on mutual assistance on the recovery of debts, before the entry into force of this Decision.

Chapter IV. APPROXIMATION OF LAWS

Section I. Protection of Intellectual, Industrial and Commercial Property

Article 31.

1. The Parties confirm the importance they attach to ensuring adequate and effective protection and enforcement of intellectual, industrial and commercial property rights.

2. The Parties recognize that the Customs Union can function properly only if equivalent levels of effective protection of intellectual property rights are provided in both constituent parts of the customs Union. Accordingly, they undertake to meet the obligations set out in Annex8.

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, insofar 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 object 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 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 substantial part of the products in question.

Article 33.

1. Any abuse by one or more undertakings of a dominant position in the territories of the Community and/or of Turkey as a whole or in a substantial part thereof shall be prohibited as incompatible with the proper functioning of the Customs Union, insofar 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, insofar 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, insofar 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 Article43(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 Articles 32, 33 or 34, and

- is not adequately dealt with under the implementing rules referred to in Article37, or

- in the absence of such rules, and if such practices 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 with 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 paragraph1, 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 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 and amount of ECU12 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 EC, 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 resolved within thirty 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 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 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 Article90, 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 time-table laid down by the Association Council and 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 anti-competitive 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 anti-competitive 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 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 anti-competitive 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 anti-competitive activities, or precludes the notifying Party from undertaking enforcement action with respect to such anti-competitive activities.

Section III. Trade Defence Instruments

Article 44.

1. The Association Council shall review upon the request of either Party the principle of application of trade defence instruments other than safeguard by one Party in its relations with the other. During any such review, the Association Council may decide to suspend the application of these instruments provided that Turkey has implemented competition, state aids control and other relevant parts of the acquis communautaire which are related to the internal market and ensured their effective enforcement, so providing a guarantee against unfair competition comparable to that existing inside the internal market.

2. The modalities of implementation of anti-dumping measures set out in Article47 of the Additional Protocol remain in force.

Article 45.

By derogation from the provisions of Sectionll of Chapter V, the consultation and decision- making procedures referred to in that section shall not apply to trade defence measures taken by either Party.

In the framework of the application of trade policy measures towards third countries, the Parties shall endeavour, through exchange of information and consultation, to seek possibilities for co-ordinating their action when the circumstances and international obligations of both Parties allow.

Article 46.

By derogation from the principle of the free movement of goods laid down in Chapterl where one Party has taken or is taking anti-dumping measures or other measures pursuant to trade policy instruments as referred to in Article44 in its relations with the other Party or with third countries, that Party may make imports of the products concerned from the territory of the other Party subject to the application of those measures. In such cases it shall inform the Customs Union Joint Committee accordingly.

Article 47.

When completing the formalities involved in importing products of a type covered by trade policy measures, provided for in the preceding Articles, the authorities of the importing State shall ask the importer to indicate the origin of the products concerned on the customs declaration.

Additional supporting evidence may be requested where absolutely necessary because of serious and well-founded doubts in order to verify the true origin of the product in question.

Section IV. Government Procurement

Article 48.

As soon as possible after the date of entry into force of this Decision, the Association Council will set a date for the initiation of negotiations aiming at the mutual opening of the Parties ' respective government procurement markets.

The Association Council will review progress in this area annually.

Section V. Direct Taxation

Article 49.

No provision of this Decision shall have the effect:

- of extending the fiscal advantages granted by either Party in any international agreement or arrangement by which it is bound;

- of preventing the adoption or application by either Party of any measure aimed at preventing the avoidance or evasion of taxes;

- of opposing the right of either Party to apply the relevant provisions of its tax legislation to taxpayers whose position as regards place of residence is not identical.

Indirect taxation

Article 50.

1. Neither Party shall, directly or indirectly, impose on the products of the other Party any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Neither Party shall impose on the products of the other Party an internal taxation of such a nature as to afford indirect protection to other products.

2. Products exported to the territory of either of the parties shall not qualify for refunds of internal indirect taxation which exceed the indirect taxation directly or indirectly imposed on those products.

3. The Parties shall repeal any provisions existing at the date of the entry into force of this Decision which conflict with the above rules.

Article 51.

The Association Council may recommend the Parties to take measures to approximate laws, regulations or administrative provisions in respect of fields which are not covered by this Decision but have a direct bearing on the functioning of the Association, and of fields covered by this Decision but for which no specific procedure is laid down therein .

Chapter V. INSTITUTIONAL PROVISIONS

Section I. The EC-Turkey Customs Union Joint Committee

Article 52.

1. In accordance with Article24 of the Association Agreement, an EC-Turkey Customs Union Joint Committee is hereby established. The Committee shall carry out exchange of views and information, formulate recommendations to the Association Council and deliver opinions with a view to ensuring the proper functioning of the Customs Union.

2. The Parties shall consult with the Committee on any point relating to the implementation of this Decision which gives rise to a difficulty for either of them.

3. The Customs Union Joint Committee shall adopt its rules of procedure.

Article 53.

1. The Customs Union Joint Committee shall consist of representatives of the Parties.

2. The office of Chairman of the Customs Union Joint Committee shall be held alternatively, for a period of six months, by the representative of the Community, i.e. the European Commission, and the representative of Turkey.

3. In order to carry out its duties, the Customs Union Joint Committee shall meet, as a general rule, at least once a month. It shall also meet on the initiative of its Chairman or at the request of one of the Parties in accordance with its rules of

procedure.

4. The Customs Union Joint Committee may decide to establish any subcommittee or working party to assist in it carrying out its duties. The Customs Union Joint Committee shall lay down the composition and rules of operation of such subcommittees or working parties in its rules of procedure. Their duties shall be determined by the Customs Union Joint Committee in each individual case.

Section II. Consultation and Decision Procedures

Article 54.

1. In areas of direct relevance to the operation of the Customs Union, and without prejudice to the other obligations deriving from Chapters! to IV Turkish legislation shall be harmonized as far as possible with Community legislation.

2. Areas of direct relevance to the operation of the Customs Union shall be commercial policy and agreements with third countries comprising a commercial dimension for industrial products, legislation on the abolition of technical barriers to trade in industrial products, competition and industrial and intellectual property law and customs legislation.

The Association Council may decide to extend the list of areas where harmonization is to be achieved in the light of the Association's progress.

3. The procedural rules provided for in Articles55 to 60 shall apply for the purposes of this Article.

Article 55.

1. Wherever new legislation is drawn up by the Commission of the European Communities in an area of direct relevance to the operation of the Customs Union and the Commission of the European Communities consults experts from Member States of the Community, it shall also informally consult Turkish experts.

2. When transmitting its proposal to the Council of the European Union, the Commission of the European Communities shall send copies thereof to Turkey.

3. During the phase preceding the decision of the Council of the European Union, the Parties shall, at the request of either of them, consult each other again within the Customs Union Joint Committee.

4. The Parties shall cooperate in good faith during the information and consultation phase with a view to facilitating, at the end of the process, the decision most appropriate for the proper functioning of the Customs Union.

Article 56.

1. Where it adopts legislation in an area of direct relevance to the functioning of the Customs Union as defined in Article 54(2), the Community shall immediately inform Turkey thereof within the Customs Union Joint Committee to allow Turkey to adopt corresponding legislation which will ensure the proper functioning of the Customs Union.

2. Where there is a problem for Turkey in adopting the corresponding legislation, the Customs Union Joint Committee shall make every effort to find a mutually acceptable solution maintaining the proper functioning of the Customs Union.

Article 57.

1. The principle of harmonization defined in Article 54 shall not affect Turkey's right, without prejudice to its obligations deriving from Chapters! to IV to amend legislation in areas of direct relevance to the functioning of the Customs Union provided the Customs Union Joint Committee has concluded that the amended legislation does not affect the proper functioning of the Customs Union or that the procedures referred to in the paragraphs2 to 4 of this Article have been accomplished.

2. Where Turkey is contemplating new legislation in an area of direct relevance to the functioning of the Customs Union, it shall informally seek the views of the Commission of the European Communities on the proposed legislation in question so that the Turkish legislator may take his decision in full knowledge of the consequences for the functioning of the Customs Union.

The Parties shall cooperate in good faith with a view to facilitating, at the end of the process, the decision most appropriate for the proper functioning of the Customs Union.

3. Once the proposed legislation has reached a sufficiently advanced stage of drafting, consultations shall be held within the Customs Union Joint Committee.

4. Where Turkey adopts legislation in an area of direct relevance to the functioning of the Customs Union, it shall forthwith inform the Community within the Customs Union Joint Committee.

If Turkey's adoption of such legislation is likely to disrupt the proper functioning of the Customs Union, the Customs Union Joint Committee shall endeavour to find a mutually acceptable solution.

Article 58.

1. If, at the end of the consultations undertaken under the procedure provided for in Article56(2) or Article57(4), a mutually acceptable solution cannot be found by the Customs Union Joint Committee and if either Party considers that discrepancies in the legislation in question may affect the free movement of goods, deflect trade or create economic problems on its territory, it may refer the matter to the Customs Union Joint Committee which, if necessary, shall recommend appropriate ways of avoiding any injury which may result.

The same procedure will be followed if differences in the implementation of legislations in an area of direct relevance to the functioning of the Custom Union, cause or threaten to cause impairment of the free movement of goods, deflections of trade or economic problems.

2. If discrepancies between Community and Turkish legislation or differences in their implementation in an area of direct relevance to the functioning of the Customs Union, cause or threaten to cause impairment of the free movement of goods or deflections of trade and the affected Party considers that immediate action is required, it may itself take the necessary protection measures and notify the Customs Union Joint Committee thereof; the latter may decide whether to amend or abolish these measures. Priority should be given to measures which least disturb the functioning of the Customs Union.

Article 59.

In areas of direct relevance to the proper functioning of the Customs Union, the Commission of the European Communities shall ensure Turkish experts are involved as far as possible in the preparation of draft measures to be submitted subsequently to the committees which assist the Commission of the European Communities in the exercise of its executive powers. In this regard, when drafting proposals, the Commission of the European Communities shall consult experts from Turkey on the same basis as it consults experts from the Member States of the Community. Where the matter referred to the Council of the European Union is in accordance with the procedure applying to the type of committee concerned, the Commission of the European Communities shall transmit to the Council of the European Union the views of the Turkish experts.

Article 60.

Turkish experts shall be involved in the work of a number of technical committees which assist the Commission of the European Communities in the exercise of its executive powers in areas of direct relevance to the functioning of the Customs Union where this is required to ensure the proper functioning of the Customs Union. The procedure for such participation shall be decided by the Association Council before the entry into force of this Decision. The list of Committees is contained in Annex9. If it appears to the Parties that such an involvement should be extended to other Committees, the Customs Union Joint Committee may address the necessary recommendations to the Association Council for decisions.

Section III. Settlement of Disputes

Article 61.

Without prejudice to paragraphs to 3 of Article 25 of the Ankara Agreement, if the Association Council fails to settle a dispute relating to the scope or duration of protection measures taken in accordance with Article 58(2), safeguard measures taken in accordance with Article 63 or rebalancing measures taken in accordance with Article 64, within six months of the date on which this procedure was initiated, either Party may refer the dispute to arbitration under the procedures laid down in Article 62. The arbitration award shall be binding on the Parties to the dispute.

Article 62.

1. If a dispute has been referred to arbitration there shall be three arbitrators.

2. The two parties to the dispute shall each appoint one arbitrator within 30 days.

3. The two arbitrators so designated shall nominate by common agreement one umpire who shall not be a national of either Party. If they cannot agree within two months of their appointment, the umpire shall be chosen by them from seven persons on a list established by the Association Council. The Association Council shall establish and review this list in accordance with its rules of procedure.

4. The arbitration tripunal shall sit in Brussels. Unless the Parties decide otherwise, it shall adopt its rules of procedure. It shall take its decisions by majority.

Section IV. Safeguard Measures

Article 63.

The Parties confirm that the mechanism and modalities of safeguard measures provided for in Article60 of the Additional Protocol remain valid.

Article 64.

1. If a safeguard or protection measure taken by a Party creates an imbalance between the rights and obligations under this Decision, the other Party may take rebalancing measures in respect of that Party. Priority shall be given to such measures as will least disturb the functioning of the Customs Union.

2. The procedures provided for in Article63 shall apply.

Chapter VI. GENERAL AND FINAL PROVISIONS

Entry into force

Article 65.

1. This Decision shall enter into force on 31 December 1995.

2. During the year 1995, progress in the implementation of this Decision shall be examined regularly within the Association Committee, which will report to the Association Council.

3. Before the end of October1995 the two Parties shall consider within the Association Council whether the provisions of this Decision for the proper functioning of the Customs Union are fulfilled.

4. On the basis of the report(s) of the Association Committee, if Turkey on one side or the Community and its Member States on the other side considers that the provisions referred to in paragraph3 have not been met, this Party can notify to the Association Council its decision to ask for a postponement of the date referred to in paragraph1. In such a case this date is deferred to iJuly1996.

5. In this case paragraphs2 to 4 shall apply mutatis mutandis.

6. The Association Council may take other appropriate decisions.

Interpretation

Article 66.

The provisions of this Decision, insofar as they are identical in substance to the corresponding provisions of the Treaty establishing the European Community shall be interpreted for the purposes of their implementation and application to products covered by the Customs Union, in conformity with the relevant decisions of the Court of Justice of the European Communities.

Done at Brussels, 22 December 1995

For the EC-Turkey Council

L. ATIENZA SERNA

Statements

Statement by Turkey on Article 3(4):

Turkey undertakes to ensure that customs duties or charges having equivalent effect levied pursuant to the second paragraph of Article3(4) are not allocated to any specific purpose but accrue to its national budget in the same way as other customs revenue.

Statement by the Community on Article 3(3):

The Community would recall the special status accorded to Mount Athos in accordance with the joint declaration annexed to the Act of Accession of the Hellenic Republic to the European Communities.

Statement by Turkey on Article 5:

Without prejudice to ArticleS of this Decision, Turkey intends to retain the provisions of its import regime decree (OJ No. 22158bis, 31.12.1994) on used motor vehicles whereby subjecting the importation of such products to prior permission; for a certain period following the entry into force of this Decision.

Statement by the Community on textile and clothing on Article 6:

1. Arrangements for trade in textile and clothing products will expire as soon as it is determined that Turkey has effectively implemented the measures for which the adoption is required under this decision, regarding intellectual, industrial and commercial property (Articles2, 3, 4, 5 of Annex 8), competition, including the measures regarding public aid (ChapterlV, Sectionll, Article39(1) and (2)(a), (b) and (c)), and that Turkey has put into operation, according to the multilateral rules presently in force, the measures necessary for the alignment of its commercial policy with that of the Community in the textile sector, in particular the arrangements and agreements referred to in Section lll, Article12(2).

2. The Community will apply the safeguard measures foreseen in Article60 of the Additional Protocol if, though Turkey does not fulfil the conditions mentioned in paragraph1, the present arrangements for trade in textile and clothing products are not extended.

3. The Community insists on effective reciprocity in market access in that sector.

Statement by Turkey on textiles and clothing on Article 6:

1. If despite the fulfilment by Turkey of the measures referred to in the first paragraph of the Community's Statement on the expiration of arrangements for trade in textile and clothing products, an end has not been put to the said arrangements, Turkey will take appropriate rebalancing measures.

2. In reference to paragraph1 of the Community Statement on textiles and clothing on Article6, Turkey understands that the measures related to the conclusion by Turkey of agreements or arrangements with Third Countries in the textile sector signifies that Turkey has taken the necessary steps referred to in Article12(2) for such a conclusion, and that, in the meantime, the measures referred to in Article12(3) remain applicable.

3. Turkey insists on full market access in that sector.

Statement by Turkey on Article 6:

Turkey deems it necessary to be associated with the work of the Textile Committee. Statement by Turkey on Article 8:

Turkey deems it necessary to be associated with the work of the Standards and Technical Regulations Committee with a view to ensuring a level of cooperation commensurate with the aim of harmonization.

Statement by Turkey on Article 8:

Turkey wishes to stress the importance of a comprehensive, quick and as unburdensome as possible assessment of the instruments, procedures and infrastructures concerning the fulfilment by Turkey of the requirements foreseen in the instruments included in the list referred to in Article8(2).

Turkey further stresses the need for the Community to proceed to the technical adaptations necessitated by Turkey's fulfilment of the requirements referred to above.

Joint statement on Article 11:

The Parties agree to engage immediately in discussions at the level of experts on the transportation by Turkey of the acquis communautaire concerning the abolition of technical barriers to trade.

Statement by Turkey on Article 16:

Turkey may seek consultation within the Association Council regarding the obligations that may arise for it as the result of its membership of the Economic Cooperation Organization (E.C.O.).

Statement by Turkey on Article 16:

In relation to Article 16, Turkey states that priority will be given to the following preferential agreements: Bulgaria, Hungary, Poland, Romania, Slovakia, Czech Republic, Israel, Estonia, Latvia and Lithuania, Morocco, Tunisia, Egypt.

Statement by the Community on Annex 8:

For the effective implementation and application of the provisions mentioned in this Annex, the Community is prepared to provide adequate technical assistance to Turkey both before and after entry into force of the Customs Union.

Statement by Turkey on Annex 8, Article 1:

This commitment does not prejudice Turkey's status as a developing country in the World Trade Organization. Statement by the Community on Article 44:

In relation to Article44(2), the Community states that the Commission of the European Communities, without prejudice to the position of the Council of the European Communities, in the exercise of its responsibilities for anti-dumping and safeguard measures, will offer information to Turkey before the initiation of proceedings. To this effect, appropriate modalities of application of Article49 will be set out jointly before the entry into force of this decision. Furthermore the Community will give, on a case by case basis, where appropriate, a clear preference to price undertakings rather than duties in order to conclude anti-dumping cases where injury is found.

Statement by Turkey on Article 48:

Turkey states its intention to enter into negotiations with a view to acceding to the GATT Government Procurement Agreement.

Statement by Turkey on Article 60:

During the year 1995, and as Turkey harmonizes its legislation with that of the Community it will seek from the Association Council a decision to extend its involvement to other committees.

Joint statement on Article 65:

1. Any joint decision by the Community and its Member States to request that the entry into force of the Customs Union be postponed pursuant to Article65(4) of this Decision will be taken on the basis of a proposal from the Commission of the European Communities and using the same decision-making procedure as for the adoption of this Decision.

2. Furthermore, postponement of the entry into force of this Decision shall not affect the contractual obligations entered into by the parties under the terms of the Additional Protocol.