COUNCIL OF THE EUROPEAN UNION

Brussels, 14 July 2003

11425/03

NT 17
UD 72

COVER NOTE

from :	Council Secretariat
to :	Central and Southeast Europe Working Party
Subject :	TURKEY: - Customs Union Action Plan

Please find attached the Commission Services' Action Plan for the EC-Turkey Customs Union (Version officially transmitted to Turkey).

EUROPEAN COMMISSION
Directorate-General Enlargement

Directorate C - Bulgaria, Cyprus, Malta, Romania, Turkey
Turkey Team

Brussels, June 2003
Turkey Team/SD D(2003) st11425.en03.doc

An Action Plan for the EC-Turkey Customs Union

INTRODUCTION

The Copenhagen European Council[1] decided that the Turkey-EC Customs Union (CU) would be extended and deepened. Deepening means improving the functioning and implementation of Decision No. 1/95, and widening refers to the extension of the CU to the fields which are currently not covered by the Decision.

With a view to exploring the means to this end, and to bringing solutions to certain technical issues faced, exploratory meetings have taken place mission in Turkey on 4-5 March 2003. At the talks, both sides confirmed the need for progress, and expressed readiness to work towards the aim of agreeing on an Action Plan.

At the 111th Turkey-EC Association Committee[2], the Work Programme for 2003 was adopted. On the Customs Union, the Work Programme reiterated the conclusions of the Copenhagen European Council, and indicated, in a non-exhaustive manner, possible areas of action. It also stated that the issues for which technical level discussions cannot yield progress would be referred to the Association Council for political decision and guidance.

Turkey presented its first proposal for such an Action Plan at the Association Council of 15 April 2003. The present document is the Commission's contribution to the process, based on Turkey's initial proposal.

[1] The Copenhagen European Council was held on 13/12/2002.
[2] The 111th Turkey-EC Association Committee was held on 13/03/2003.

The Plan may be further developed, through the agreement of both sides, to include other areas. The actions and meetings foreseen in the enclosed Plan do not in any sense preclude the taking up of these issues at any other Turkey-EU platform with a view to their solution.

At each meeting of the Customs Union Joint Committee, both sides may undertake to review the implementation of the Action Plan, include other areas in the Plan, if any, and finalise any amendments thereto which may become necessary during the course of implementation.

1. WIDENING THE CUSTOMS UNION

1.1. Services, Right of Establishment

Provisions of Decision 1/95

The Customs Union does not cover services and establishment. There is merely a mention (Article 14) in the Ankara Agreement that the two sides agree to be guided by the Treaty of Rome's provisions "for the purpose of abolishing restrictions on the freedom to provide services between them". The Additional Protocol (Article 41(2)) introduces a standstill clause for both parties on introducing "any new restrictions on the freedom of establishment and the freedom to provide services". This article also calls on the Association Council to determine the timetable and rules for the progressive abolition of restrictions.

State of Play

- Negotiations started in April 2000 and we have so far held 3 rounds of negotiations

Last round of negotiations took place in Ankara in December 2001.

The Commission welcomes the positive approach taken on this important issue by Turkey at the March 2003 Association Committee.

Concerning comments made on the timing in the April 2003 Association Council, Turkey is reminded that the last foreseen round of negotiations was cancelled upon Turkish request. Furthermore, the Commission is making every effort to accommodate Turkey's requests in the new draft.

Proposal for action

The Commission foresees that a new round of talks on services should be focussed on areas of mutual interest where both sides can expect to make significant progress. It will be important therefore to concentrate on the "achievable" in order to make rapid progress.

The Commission will be shortly sending Turkey a revised text together with an invitation to resume negotiations. The Commission's objective is to wrap up the agreement by the end of January 2004.

1.2. Public Procurement

Provisions of decision 1/95

Article 48 of Decision 1/95 states that "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." In a further 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 (GPA).` Neither the negotiations have started (see below) nor has Turkey acceded to the GPA.

State of Play

Last round of negotiations took place in Ankara in December 2001. It focused on changes to be introduced to the draft Law on Government Procurement (at that moment before the Parliament) and trying to make it compliant with the acquis communautaire.

The EC called for a new round in July 2002 to make progress on the bilateral agreement itself in parallel to additional improvements to the Law.

The Law entered into force in January 2003 with important gaps in relation to the EC Directives (too high thresholds, domestic preferences, insufficient remedy procedures, etc).

The new government has announced further amendments but in the contrary sense, thus reinforcing domestic preferences and excluding more sectors and entities from the scope of the current law.

Proposals

The EC is ready to hold a new round of negotiations and discuss Turkish plans for alignment of the procurement law and state of drafting secondary legislation. The EC has a revised draft text, jointly with the proposals on services, under preparation.

The Commission expects to be able to forward this draft to Turkey very soon - together with an invitation to resume negotiations. Our objective is to wrap up the agreement by the end of January 2004.

The Commission, however, also emphasises the importance it attaches to the full implementation of this public procurement law and urges Turkey to rapidly address a number of its provisions through secondary legislation. The Commission welcomes the positive response of Turkey at the March 2003 Association Committee to resolve quickly the deficiencies in the law.

2. DEEPENING THE CUSTOMS UNION,

2.1. Free circulation of products

2.1.1.Existing technical barriers to trade: technical regulation of products

Provisions of decision 1/95

According to Article 8 of Decision 1/95:

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.

State of play

A number of existing regulations prevent actual free circulation of products. In particular the lack of alignment with the acquis and incomplete application of the provisions of Decision 2/97 of the Association Council Decision is at the origin of unnecessary testing and different labelling requirements.

In addition new legislation keeps on being adopted in Turkey which is not entirely aligned with the acquis, nor with the principles of Decisions 1/95 and 2/97.

Therefore, on one hand the existing impediments should be removed, and in the other hand new difficulties should be prevented.

Proposal for action.

The Commission and Turkey agree to remove existing barriers to trade. To this end parties should analyse the current legislative provisions, compare them with the acquis and with the provisions of Decision 1/95. In particular the following actual or potential sources of difficulties will be taken into consideration.

- Testing and certification requirements: define which controls are allowed, when the EC tests should be accepted, and when controls are legal, what is the appropriate methodology.
- Legal metrology: legal provisions, TSE infrastructure and capacity.
- Labelling requirements.

This analysis should result in proposals for solutions. In particular concerning the removal of regulation found to be in contradiction with Decision 1/95, Decision 2/97 and on the improvement of the legal metrology infrastructure. **Deadline: September 2003.**

A technical meeting to be held possibly before the summer break, to compare respective opinions. The improved exchange of technical information will support the solution of these difficulties.

Concerning in particular new legislation, Turkey should avoid introducing new provisions diverging from the acquis, with a particular reference to the legislation in areas listed in Decision 2/97, and to non harmonised areas (see below specific points). To this end, mutual information/consultation procedure should be agreed. In particular Turkey could consult the Commission before publishing new legislation to ensure that it is in line with the acquis.

Proposal for action

- The Commission and Turkey agree to increase the respect of the provisions of Decision 1/95 concerning exchange of information regarding new legislation (articles 54 and 55 of Decision 1/95).
- The Commission proposes to set up a **working group** on technical regulation of products under the Customs Union Joint Committee (draft Terms of Reference of this Group are attached).
- **Access to Circa**: The Commission runs the CIRCA database, containing documents and legislation under preparation concerning technical regulation of products. As a matter of principle, access to this database could be granted to Turkish experts under the condition that Turkey fulfils the requirements of Directive 95/46 on protection of personal data. The modalities may be agreed before **September 2003.**

2.1.2. Adaptation of Decision 2/97

Provisions of decision 1/95

The list of acts referred to in Article 8 (2) of Decision 1/95 referring to the instruments for the removal of barriers to trade is contained in annex II of Decision 2/97 of the EC-Turkey Association Council of 4 June 1997 (0J L 191 of 21/7/1997).

State of play

Between 1997 and present time, the legal acts contained in Decision 2/97 may have been amended, codified or even repealed. This causes uncertainty as regards the acts that Turkey should adopt to remain aligned with the relevant legislation

At present and in the future, the acquis in the area covered by the Decision keeps evolving. The Commission and Turkey should agree on a simple and efficient manner to update regularly this Association Council Decision.

Proposal for action

Past evolution. The Commission will list the developments of acts constituting an evolution of those listed in Decision 2/97, which are binding for Turkey. The Association Council will adopt this list.

Update of Decision 2/97. Turkey will be informed regularly of the development of the acquis, and the Commission will table a proposal on the means to update regularly Decision 2/97 in the future.

2.1.3. Non Harmonised Areas

Provisions of Decision 1/95

Article 5

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

Article 6

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

Article 7

The provisions of Articles 5 and 6 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties

These articles correspond mutatis mutandis to Articles 28 and 30 of the EC Treaty.

State of play

Trade of products in non harmonised areas is frequently rendered difficult. The Commission and Turkey should agree on the means to mirror the application of Articles 28 and 30 of the Treaty to comply with Articles 5 and 7 of Decision 1/95.

Turkish experts were invited at a TAIEX seminar in March 2003. Therefore the acquis has been illustrated in detail. A meeting is proposed to take place as soon as possible to discuss bilaterally the effective implementation of the relevant provisions.

Proposal for action

- The means to implement effective free circulation of products in non harmonised areas should be discussed and an agreement reached **before the end of 2004**.
- Until this date, Turkey is invited to compare its legislation with articles 5 and 7 of Decision 1/95, at the light of the jurisprudence of the Court of Justice.
- The Commission will keep providing technical assistance to Turkey to implement the principle of mutual recognition.
- In order to implement effectively articles 5 and 7 of Decision 1/95, Turkey should adopt measures implementing Directive 3052/95 establishing a procedure for the exchange of information on national measures derogating from the principle of free movement of goods within the Community, and Regulation 339/93 on checks for conformity with the rules on products safety in the case of products imported from third Countries.
- Also, Turkey is requested to inform the Commission of the national measures taken to implement Directive 93/7/CEE on cultural goods.

2.1.4. Free zones

Provisions of decision 1/95

Article 28 provides the obligation for Turkey to adopt legislation based on the Community Customs Code and its Implementing Provisions and also some other customs-relevant Community legislation.

State of play

Customs provisions are well aligned with the acquis and would allow the correct functioning of the CU. However, certain provisions of the Turkish commercial legislation are hampering the effective implementation of customs legislation in several cases as for example the free zones. Despite the fact that Article 28(1) does not explicitly mention free zones, Turkish customs have adopted provisions on free zones that are based on the relevant Community customs legislation. The Turkish Customs Code correctly considers free zones as being part of the Turkish customs territory whilst for commercial, investments and tax purposes, free zones are considered as being outside the customs territory. This hinders full implementation of correctly aligned customs legislation in Turkey and leads to unfair competition due to fiscal advantages for firms established in Turkish free zones.

The question of other than customs legislation hindering correct implementation of customs legislation is a general problem and not limited to free zones. The same problem occurs also in the framework of preferential agreements that form not part of the Customs Union but where obligations provided for by origin protocols cannot be fully complied with (for example role of chambers of commerce/customs as regards EUR. 1 movement certificates).

Proposal for action

Turkey should align the relevant non customs legislation in order to allow for an effective application of the correct customs provision.

2.2. Solution of trade disputes

2.2.1. Market Access for pharmaceutical products

Provisions of Decision 1/95

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.

Decision 2/97 of the Association Council established this list. Article 1 of Decision 2/97 states the following.

1. Annex II to this Decision contains the list of Community instruments relating to the removal of technical barriers to trade.

2. The instruments referred to in the said Annex II shall be incorporated into the internal legal order of Turkey as follows:

(a) an instrument corresponding to an EEC or EC Regulation shall as such be made part of the internal legal order;

(b) an instrument corresponding to an EEC or EC Directive shall leave to the Turkish authorities the choice of form and methods of implementation.

The instruments referred to in Annex II shall be subject to the horizontal adaptations set out in Annex I, save for any provisions to the contrary set out in Annex II.

Section XIII of Annex II is dedicated to pharmaceuticals (attached to this document).
Moreover, according to article 54 of Decision 1/95:

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

2. Areas of direct relevance to the operation of the Customs Union shall be(…) industrial and intellectual property law (…) .

It appears clearly that Turkey's International commitments (WTO provisions such as the TRIPS agreement, Article 28 EC, decisions No 1/95 and 2/97 of the EC-Turkey Association Council etc) prescribe that Turkey removes all technical barriers to trade concerning the sector of medicinal products for human use and implements relevant IPR legislation.

State of play

To date, Turkey has not complied with these obligations and notably not incorporated the EU instruments relating to the removal of technical barriers despite the fact that they should have been incorporated by the end of 2000.

Three main topics need to be addressed: Intellectual Property Rights to secure not only confidentiality but also protection of data over a fixed period of time, marketing authorisation to ensure that the procedure for granting an authorisation is completed within a limited period of time (210 days), and pricing and reimbursement to ensure non discrimination between local products and imported goods. Each of these topics should be addressed with the utmost transparency.

Proposal for Action

Turkey will set out how it intends to fulfil its obligations in regard to this sector, in the form of a roadmap. This roadmap including firm deadlines should be presented not later than **July 2003.**

In this respect, the following steps are the most urgent priorities, taking into consideration the relevant provisions of Directives 2001/83 and 89/105.

- Intellectual Property Rights

– Secure the confidentiality of an originator's proprietary submitted to authorities as part of the local registration process, Turkey's Pharmaceutical Marketing Authority shall refrain, with immediate effect (i.e. **July 2003**), from "disclosing" such proprietary data to competitors.

– Introduce legislative provisions providing for the protection of the data submitted as part of the dossier for market authorisation submitted of medicinal products for a period of 6 to 10 years. Before **December 2003**.

- Marketing authorisation

– Take all appropriate measures to ensure that the procedure for granting an authorisation to place a medicinal product on the market is completed within 210 days of the submission of a valid application, before **December 2003.**

- Pricing and reimbursement

– Regarding the sale and distribution of pharmaceuticals, a copy of the letter revising the letter instructing pharmacists to favour local products against imported products, should be provided before **September 2003.**

– Revise the margin system for pharmaceuticals so that the same rates are granted for manufacturers, distributors and pharmacists for both imported and locally produced products, before **September 2003.**

– Ensure that the national system for determining prices and reimbursement of medicinal products, is fully transparent and independent of the national marketing approval process. A decision on pricing should be taken within a 90 days following the receipt of the application to set the price of the medicines, and 90-day deadline should also apply to the decision on reimbursement (max. 180 days for the whole process). Before **December 2003**.

– Such a pricing and reimbursement system should moreover apply equally to all products irrespective of origin. **Before December 2003**

– The Commission will continue to provide technical assistance**.**

– Before the completion of Turkey's roadmap, convene a meeting with the participation of industry representatives from both sides to discuss the matter comprehensively.

2.2. Import licence

Provisions of Decision 1/95

Articles 5 and 6 of Decision 1/95 foresee that all quantitative restrictions on imports and exports and all measures having equivalent effect shall be prohibited between the Parties.

State of play

Turkey submits the import of certain products, normally under free circulation, to an import licence. This licence is not granted on an automatic basis. One of the criteria for refusing the licence is the date of production for certain products. Concerning the specific case of used cars, the Commission agrees that Turkey has the right to apply import licences to second hand cars, for a certain period of time.

Turkey justifies this with a unilateral interpretation of the Declaration on article 5 annexed to Decision 1/95. The licensing requirements for goods under the regime covered by Decision 1/95 is a breach of this Decision.

The Commission asks Turkey to remove any restriction or limitation to the free movement of goods, unless justified under article 7 of Decision 1/95.

The matter could not be solved at the Customs Union Joint Committee, nor at the Association Council in 2002 and 2003. The Parties should agree on the means to reach a final and undisputed interpretation at latest **before the end of 2003**.

Proposal for action.

Turkey should remove without delay import licence requirements. As an alternative, Commission will request to Turkey to agree on solving the matter accordingly with articles 61 and 62 of Decision 1/95, or with other legal dispute settlement mechanisms.

Concerning imported cars, Turkey is requested to provide the rationale for maintaining the licensing regime, and what is the envisaged timeframe for easing or lifting this limitation.

2.2.3. Market access for alcoholic beverages

Provisions of Decision 1/95

Turkey undertook to implement most of the EU's Single Market legislation, leading to the free movement of products, including alcoholic beverages between the EU and Turkey.

In addition, Article 42 of Decision 1/95 foresees that Turkey shall progressively adjust, in accordance with the conditions and the time-table laid down by the Association Council any State monopolies of a commercial character so as to ensure that, by the end of the second year following the entry into force of this Decision, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and of Turkey

State of play

These commitments have not been fulfilled. There are still a number of restrictions to the free movement of goods including inter alia, unnecessarily burdensome import requirements, a high volume threshold for free importation, a ban on bulk imports and discriminatory treatment against imported products. These result in limitations to access to the market for foreign producers and protection for domestic products.

The primary legislation concerning alcoholic beverages is Law No.4250 dated 1942 which was amended in 2001 by Law No.4619. By Law No. 4733 of January 2002, the regulatory functions of the state monopoly TEKEL were transferred to a new authority, the Tobacco and Alcoholic Beverages Market Regulatory Authority (TAPDK).

The TAPDK published a decree to implement the primary legislation (i.e. Law No. 4250 as amended by Law No. 4619) on 6 June 2003.

Proposal for action

The Commission and Turkey should agree on a deadline for the liberalisation of the market of alcoholic beverages and the removal of all actual or potential barriers to imports and discrimination against imported products. In particular Turkey should limit the regulation of alcoholic beverage imports to the strictest minimum.

The following intermediary steps should be taken.

- The TAPDK should immediately start the processing of import files under the implementing decree, giving as liberal an interpretation as possible to those provisions which are incompatible with Turkey's Customs Union and multi-lateral commitments.
- Complete staffing and technical infrastructure of TAPDK by July 2003.
- Commission supplies information on the Community acquis. In particular, the Commission should provide a list of important legislation, having an impact on market access for alcoholic beverages, to be harmonised with the acquis in the short term. The list should be provided by

September 2003. The necessary legislation should be adopted by 31 March 2004. The identification of important legislation by the Commission services does not absolve Turkey from its deadlines for adoption of legislation under the Customs Union.

- Import licences which may introduce barriers to trade are prohibited under Articles 5 to 7 of the Customs Union Decision, steps should be taken to remove the requirement to obtain authorisation to import from two separate bodies (i.e. the Ministry of Agriculture which issues the import permit and the TAPDK which will issue the Certificate of Compliance) by June 2004 and any licensing requirements for importation should be limited to an absolute minimum.
- Turkey to accredit the laboratories in the alcoholic beverages sector. **TO be discussed.**
- The Commission revises the scope of the current project on food control laboratories. **TO be discussed.**
- Legal certainty with regard to the removal of all restrictions to the free movement of goods and discrimination against imports, may only be achievable through appropriate amendment of the primary legislation, closely followed by consequent amendments to the implementing decree. This aspect should be monitored in the light of application of the implementation decree.
- The Commission would support the process of liberalisation through technical assistance.

2.3. Common commercial Policy

2.3.1. Increase support to Turkey for negotiations with third Countries.

Provisions of decision 1/95

Following article 12 and 16 of Decision 1/95, 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. And, with a view to harmonising its commercial policy with that of the Community, Turkey shall align itself progressively with the preferential customs regime of the Community. This alignment concerns both the autonomous regimes and preferential agreements with third countries. To this end, Turkey has to take the necessary measures and negotiate agreements on mutually advantageous basis with the countries concerned.

State of play

It is recalled that when the EU concludes a preferential agreement with a third country, goods imported from this country into the EU can enter and circulate freely in Turkey by virtue of the CU.

However, very often the third country does not want to enter into a preferential agreement with Turkey. Accordingly, Turkey cannot benefit from preferential access to the third country, while goods from this country enter Turkish territory with preferential access.

The Commission recognises this imbalance problem and is addressing it.

Proposals for action

The Commission will seek to include, in all future negotiations with third countries, a "Turkey clause" in the agreement. The "Turkey clause" requests the third country to enter into negotiations and conclude a FTA with Turkey as soon as possible. The text of the recent Vietnam textile and clothing agreement illustrates this point, in that Vietnam is obliged to extend the treatment provided to textile and clothing products originating in the European Communities to textile and clothing products originating from Turkey. The Commission is of course insisting on "Turkey clauses" in negotiations with Gulf Co-operation Council, Mercosur, Albania and Syria.

Trade Commissioner Lamy has written to all the Mediterranean partners encouraging them to come to the negotiating table with Turkey in order to enter into a FTA and the need to advance with the Barcelona Process.

The Commission will also seek, for instance, that Turkey clauses are contained in all future actions such as those concerning Wider Europe - i.e. should the EU negotiate FTAs with the new neighbouring countries after the likely enlargement of 10 more countries in June 2004.

The Commission is also ready to provide further political support to advance negotiations between Turkey "and third countries which have an FTA with the EU, should this also be agreeable to the latter. It could, for instance, recall at the opening of the negotiations the need to address the imbalance currently faced by Turkey in its relationship with Third countries and, in the pertinent discussions, the EU's commitment to achieve the objectives of the Barcelona process, i.e. the establishment of a Mediterranean free trade zone by 2010.

2.3.2. Enhancing information flows on EU common commercial policy

Provisions of Decision 1/95

The Customs Union Joint Committee (CUJC) was set up by Decision 1/95 as the official forum for the exchange of views and information with a view to ensuring the proper functioning of the Customs Union.

State of play

The Commission is making every effort to ensure that there is an excellent information flow between the EU and Turkey and again this forms part of the Commission's efforts to further deepen trade relationship. While full participation in committee 133 cannot be granted to Turkey, Turkey plays a role in the Textiles Committee.

Proposals for action

The Commission would like to step up its bilateral contact on trade policy. At the last Customs Union Joint Committee in December last year, Turkey commented that it was very satisfied with both the format and content of the "Information meetings on Trade policy vis-à-vis Third countries" between the EU and Turkey. The informal nature of the Information meetings allows for very effective information flow that would perhaps not be so forthcoming in a formal setting. It should also be underlined that in these Information meetings, the Commission gives Turkey information on all planned measures (not just finalised) whether multilateral (DDA developments) or bilateral (e.g. the respective state of play of negotiations with Third countries).

Regular subjects of discussion include: WTO, Doha Development Agenda, ongoing bilateral Trade negotiations of both parties, assessment of the Euro-Mediterranean Agreements, new EU mandates, Enlargement implications for Turkey, Economic Partnership Agreements with ACP countries, GSP, TDI issues and state of play of Turkey's negotiations/implementation of agreements with 3rd countries.

The Commission would like to step up the frequency of these meetings. Indeed, it is proposing to organise at least four such meetings each year in order to address all the issues regarding EU common commercial policy vis-à-vis third countries in a very fast and flexible way.

It is important to note that with regard to the WTO, Turkey is regularly informed via the EU Delegation in Geneva and receives the information at the same time as all other candidate countries.

2.3.3. Adoption of the GSP regime

Provisions of Decision 1/95

Article 16 states the following.

1. With a view to harmonising 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.

Turkey has proposed a method of alignment based on products rather than on Countries. The Commission agreed on the method proposed, and both parties decided to continue discussion. In order to implement art 16, the Commission and Turkey should negotiate as rapidly as possible the terms of reference of that alignment (cfr. EU proposal of an MoU, tabled at the 13th Customs Union Joint Committee).

Proposals for action

Convene a technical meeting in **June 2003** (after the first one organised in the beginning of 2003) in order to:

- discuss the modalities to improve alignment, on the basis of the products based approach as proposed by Turkey. Turkey should also present the progress made in the field of the implementation of the first step of the introduction of the EC GSP.

- agree on the means to allow Turkey to implement the EC GSP in two steps (for the end of 2004 the latest), each steps representing 50% of the EC GSP expressed in customs revenue loss, on the basis of the Memorandum of Understanding proposed by the Commission in 2002.

2.3.4. Trade defence instruments

Provisions of decision 1/95

Article 44 of Decision 1/95 states that the Association Council shall review upon the request of either Party the principle of application of trade defence instruments other than safeguard between the Parties. During such review the Association Council may decide to suspend the application of these instruments provided that Turkey has implemented competition, State aid control and other relevant parts of the acquis communautaire which are related to the internal market and ensured their effective enforcement, providing a guarantee against unfair competition comparable to that existing inside the internal market.

State of Play

Since 1997, Turkey has enjoyed a similar preferential treatment in the framework of Trade Defence Instruments investigations as the other candidate countries. In brief, the regime includes a preferential information and consultation framework designed to involve Turkey more closely in anti-dumping proceedings. In particular the consultations already foreseen in this regime are designed to facilitate the emergence of constructive solutions between the parties (in the form of price undertakings).

According to art 44, the Association Council may decide to suspend the application of anti-dumping and anti-subsidy provided that Turkey has implemented competition, state aid control and other relevant parts of the acquis communautaire which are related to the internal market. Turkey has requested clearer indications from the Commission with regard to the conditions to be met to fulfil the provisions of Article 44 of Decision 1/95.

Proposals for action

In the field of trade defence the following specific actions are envisaged by the Commission.

To respond to Turkish request, and given that the process of adoption and implementation of the *acquis* by Turkey will gather pace, it is appropriate to follow even more closely Turkish progress in this context in particular in light of the provisions of Article 44 of Decision 1/95. From the 31 chapters of negotiation, the Commission will shortly complete a list of *acquis* areas which are the minimum necessary to provide a guarantee against unfair competition comparable to that existing inside the internal market. **This list will be handed to Turkey shortly.**

Therefore, reviews of Turkish progress[1] will henceforth be undertaken by the Commission at regular intervals. In line with the provisions of Article 44, such reviews will cover three areas: competition, state aid and the selected acquis domains mentioned above.

When Turkey has adopted and implemented competition, state aid control and the short-list of *acquis* areas related to the internal market, the procedure regarding the suspension of the anti-dumping and anti-subsidy instruments, foreseen in article 44 of Decision 1/95, will be followed.

As integration progresses it would be logical that Turkish companies subject to anti-dumping measures diminish or cease dumping and that companies request that such measures be reviewed. The Commission will therefore pay specific attention to duly substantiated review requests lodged by Turkish companies. Furthermore the Commission expresses its willingness to exceptionally initiate *ex officio* reviews in cases where, although the statutory time period of the first year of the application of measures has not lapsed, there is sufficient evidence substantiating such action.

- The Commission undertakes to establish close co-operation with Turkey, in order to avoid that the effectiveness of anti-dumping or countervailing measures adopted by either party is undermined by imports via the other party. Indeed, if the collection of the trade defence duties in force cannot be properly managed, the imposition of measures would be meaningless for both parties. Experience shows that such a collaboration would be valuable for both parties.

It should be stressed that these points are additional to the normal actions undertaken by the TDI service, such as technical assistance and seminars. Such events are organised upon request from Turkey and could take place either in Brussels or in Turkey. They aim at increasing the understanding of the EU TDI legislation and how it works in practice.

[1] In practical terms, such examination will draw on the reports and conclusions by various Commission services.

2.4. Deepening trade relations

2.4.1. Concessions in Processed agricultural products

Turkey asked the Commission to review and extend the concession on Processed agricultural products (PAPs). The Commission agrees on the principle. Trade in PAPs is influenced by trade of purely agricultural products currently not covered by the Customs Union.

A first meeting has taken place in April 2003, and the Commission and Turkey should reach an agreement possibly **before the end of 2003 or in the course of 2004**.

3. Other areas

3.1. Agreement on the application of competition rules

Provision of Decision 1/95

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.

State of Play

A draft agreement was submitted to Turkey in order to have it signed at the Association in 2002. However Turkey preferred to postpone the signature. The document could not be submitted formally at the Association Council in 2003.

Proposal for action

EU and Turkey should sign the Agreement, in particular with reference to the establishment of a State aid monitoring Authority.

3.2. Improved dialogue on matters relating to the functioning of the Customs Union

Provisions of Decision 1/95

Articles 54 to 57 of Decision 1/95 foresee mutual information and consultation both informal and formal, at different stages of the legislative process. The insufficient compliance with these requirements has led Turkey to adopt legislation not in line with the acquis. Also, the Commission adopted legislation that falls within the scope of the customs Union without informing Turkey as foreseen.

State of play

A better application of the provisions of articles 54 to 57 of Decision 1/95 would lead to shorter lead periods in the adoption of the acquis by Turkey, and to the adoption of new legislation more aligned with the acquis.

Proposal for action

Therefore, parties agree to implement effectively the provisions of articles 54 to 57. In addition, exchanges of information and opinions on Common Commercial policy would keep on being exchanged in the ad hoc meeting discussed under paragraph 2.3.2 of the present action plan. Discussions on technical regulation of products would take place in the Working group referred to in paragraph 2.1.1.

3.3. Working groups/ Committees.

Provisions of Decision 1/95

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 Annex 9. 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.

ANNEX 9

List of committees referred to in Article 60 includes: Committee on Nomenclature, Customs Code Committee, Committee on External Trade Statistics, the Textiles Committee set up by Regulations (EEC) No 3030/93 and (EC) No 517/94[1] and the 'Technical Regulations` part of the Committee set up by Directive 83/189/EEC[2] (amended by Directive 98/34) .

State of Play

Turkish experts already participate in a number of working groups and committees, but Turkey requested the Commission to increase this participation. The principle behind the participation of Candidate Countries to these Committees is that the Country has taken over the acquis in that sector.

Proposal for action

- Turkey will provide a list of committees in which it would like to be involved.
- The Commission will enquire on the status of committees in these areas (active, dormant or discontinued).
- On the basis of these findings, the Commission and Turkey may discuss, on a case by case basis the modalities for participation of Turkish experts in certain committees.

Other means for increased involvement of Turkish experts will be envisaged jointly by the Commission and Turkey.

[1] Decision No 6/95 of the EC-Turkey Association Council of 22 December 1995 on extending the list of committees referred to in Annex 9 to Decision No 1/95 of the EC- Turkey Association Council, in *Official Journal L 035 , 13/02/1996 p. 0050 - 0050*

[2] [2] Decision No 2/1999 of the EC-Turkey Association Council of 8 March 1999 concerning the extension of the list of committees referred to in Annex 9 to Decision No 1/95 on implementing the final phase of the Customs Union, in *Official Journal L 072 , 18/03/1999 p. 0036 - 0036*

Annex 1

EC - Turkey Customs Union Joint Committee
Working group on Technical Regulation of products
Terms of Reference
DRAFT

1. Composition and Chairmanship

The working group shall be composed of representatives of the European Commission and representatives of the Government of Turkey. It shall be chaired jointly by the two parties

2. Role

The working group shall work under the authority of the Customs Union Joint Committee, to which it shall report after each meeting. The working group does not have any decision-making power.

3. Subject matter

The working group shall discuss issues relating to the technical regulation of products and it shall assess progress as regards its implementation by Turkey and its effects on the functioning of the Customs Union. The working group shall establish whether Turkey applies correctly, after having put into force the provisions of the Community instrument or instruments necessary for the elimination of technical barriers to trade in a particular product, and inform the Customs Union Joint Committee of any shortcomings. It shall, as appropriate, recommend measures to overcome the shortcomings.

4. Secretariat

An official of the European Commission and an official of the Government of Turkey shall act jointly as permanent Secretaries of the working group.

All communications concerning the working group shall be forwarded to the Secretaries.

5. Meetings

The working group shall meet whenever circumstances require. A meeting may be convened on the basis of a request from either party, channelled through the Secretary in charge, who will pass the request onto the other party. Upon receipt of a request for a working group meeting, the Secretary of the other party shall reply within 15 working days. In cases of particular urgency, working groups may be convened at shorter notice subject to the agreement of both parties. All requests to convene meetings should be in writing.

Each meeting of the working group shall be held at a time and place agreed by both parties. The meetings shall be convened by the Secretary in charge in agreement with the Chairperson. Before each meeting, the Chairperson will be informed of the intended composition of the delegation of each party.

If both parties agree, the working group may invite experts to its meetings to provide the specific information so requested.

6. Agenda of the meetings

All requests for items to be included in the working group agenda shall be forwarded to the Secretaries.

A provisional agenda will be drawn up for each meeting. It shall be forwarded by the Secretary in charge to its counterpart not later than seven days before the beginning of the meeting.

The provisional agenda shall include the items in respect of which the Secretaries have received a request for inclusion in the agenda. To take account of urgent matters, these time limits may be shortened provided both parties agree.

The agenda shall be adopted by the working group at the beginning of each meeting.

7. Minutes

Minutes shall be taken for and agreed after each meeting. A copy of the minutes shall be forwarded by the Secretaries of the working group to the Secretary of the Customs Union Joint Committee.

8. Publicity

Unless otherwise decided, the meetings of the working group shall not be public.

Annex 2. List of acts enumerated under Decision 2/97 relating to medicinal products.

XIII. MEDICINAL PRODUCTS

ACTS REFERRED TO:

- 365 L 0065: Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products (OJ No 22, 9. 2. 1965, p. 369/65), as amended by:
- 375 L 0319: Second Council Directive 75/319/EEC of 20 May 1975 on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products (OJ No L 147, 9. 6. 1975, p. 13),
- 383 L 0570: Council Directive 83/570/EEC of 26 October 1983 (OJ No L 332, 28. 11. 1983, p. 1),
- 387 L 0021: Council Directive 87/21/EEC of 22 December 1986 (OJ No L 15, 17. 1. 1987, p. 36),
- 389 L 0341: Council Directive 89/341/EEC of 3 May 1989 (OJ No L 142, 25. 5. 1989, p. 11), as corrected by OJ No L 176, 23. 6. 1989, p. 55,
- 392 L 0073: Council Directive 92/73/EEC of 22 September 1992 (OJ No L 297, 13. 10. 1992, p. 8).
- 375 L 0318: Council Directive 75/318/EEC of 20 May 1975 on the approximation of the laws of the Member States relating to analytical, pharmacotoxicological and clinical standards and protocols in respect of the testing of medicinal products (OJ No L 147, 9. 6. 1975, p. 1), as amended by:
- 383 L 0570: Council Directive 83/570/EEC of 26 October 1983 (OJ No L 332, 28. 11. 1983, p. 1),
- 387 L 0019: Council Directive 87/19/EEC of 22 December 1986 (OJ No L 15, 17. 1. 1987, p. 31),
- 389 L 0341: Council Directive 89/341/EEC of 3 May 1989 (OJ No L 142, 25. 5. 1989, p. 11), as corrected by OJ No L 176, 23. 6. 1989, p. 55,
- 391 L 0507: Commission Directive 91/507/EEC of 19 July 1991 (OJ No L 270, 26. 9. 1991, p. 32).
- 375 L 0319: Second Council Directive 75/319/EEC of 20 May 1975 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products (OJ No L 147, 9. 6. 1975, p. 13), as amended by:

- 378 L 0420: Council Directive 78/420/EEC of 2 May 1978 (OJ No L 123, 11. 5. 1978, p. 26),
- 383 L 0570: Council Directive 83/570/EEC of 26 October 1983 (OJ No L 332, 28. 11. 1983, p. 1),
- 389 L 0341: Council Directive 89/341/EEC of 3 May 1989 (OJ No L 142, 25. 5. 1989, p. 11), as corrected by OJ No L 176, 23. 6. 1989, p. 55,
- 392 L 0073: Council Directive 92/73/EEC of 22 September 1992 (OJ No L 297, 13. 10. 1992, p. 8).
- 378 L 0025: Council Directive 78/25/EEC of 12 December 1977 on the approximation of the laws of the Member States relating to the colouring matters which may be added to medicinal products (OJ No L 11, 14. 1. 1978, p. 18), as amended by:
- 1 72 B: Act concerning the Conditions of Accession and Adjustment to the Treaties - Accession to the European Communities of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ No L 73, 27. 3. 1972),
- 381 L 0464: Council Directive 81/464/EEC of 24 June 1981 (OJ No L 183, 4. 7. 1981, p. 33),
- 1 85 I: Act concerning the Conditions of Accession and Adjustment to the Treaties - Accession to the European Communities of the Kingdom of Spain and the Portuguese Republic (OJ No L 302, 15. 11. 1985).
- 381 L 0851: Council Directive 81/851/EEC of 28 September 1981 on the approximation of the laws of the Member States relating to veterinary medicinal products (OJ No L 317, 6. 11. 1981, p. 1), as amended by:
- 390 L 0676: Council Directive 90/676/EEC of 13 December 1990 (OJ No L 373, 31. 12. 1990, p. 15),
- 392 L 0074: Council Directive 92/74/EEC of 22 September 1992 (OJ No L 297, 13. 10. 1992, p. 12).
- 381 L 0852: Council Directive 81/852/EEC of 28 September 1981 on the approximation of the laws of the Member States relating to analytical, pharmacotoxicological and clinical standards and protocols in respect of the testing of veterinary medicinal products (OJ No L 317, 6. 11. 1981, p. 16), as amended by:
- 387 L 0020: Council Directive 87/20/EEC of 22 December 1986 (OJ No L 15, 17. 1. 1987, p. 34),
- 392 L 0018: Commission Directive 92/18/EEC of 20 March 1992 (OJ No L 97, 10. 4. 1992, p. 1).

- 386 L 0609: Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes (OJ No L 358, 18. 12. 1986, p. 1).
- Repealed.
- 389 L 0105: Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ No L 40, 11. 2. 1989, p. 8).
- 389 L 0342: Council Directive 89/342/EEC of 3 May 1989 extending the scope of Directives 65/65/EEC and 75/319/EEC and laying down additional provisions for immunological medicinal products consisting of vaccines, toxins or serums and allergens (OJ No L 142, 25. 5. 1989, p. 14).
- 389 L 0343: Council Directive 89/343/EEC of 3 May 1989 extending October the scope of Directives 65/65/EEC and 75/319/EEC and laying down additional provisions for radiopharmaceuticals (OJ No L 142, 25. 5. 1989, p. 14).
- 389 L 0381: Council Directive 89/381/EEC of 14 June 1989 extending the scope of Directive 65/65/EEC and 75/319/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products and laying down special provisions for medicinal products derived from human blood or human plasma (OJ No L 181, 28. 6. 1989, p. 44).
- 390 L 0677: Council Directive 90/677/EEC of 13 December 1990 extending the scope of Directive 81/851/EEC on the approximation of the laws of the Member States relating to veterinary medicinal products and laying down additional provisions for immunological veterinary medicinal products (OJ No L 373, 31. 12. 1990, p. 26).
- 390 R 2377: Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin (OJ No L 224, 18. 8. 1990, p. 1), as amended by:
- 392 R 0675: Commission Regulation (EEC) No 675/92 of 18 March 1992 (OJ No L 73, 19. 3. 1992, p. 8),
- 392 R 0762: Commission Regulation (EEC) No 762/92 of 27 March 1992 (OJ No L 83, 28. 3. 1992, p. 14),
- 392 R 3093: Commission Regulation (EEC) No 3093/92 of 27 October 1992 (OJ No L 311, 28. 10. 1992, p. 18),

- 393 R 0895: Commission Regulation (EEC) No 895/93 of 16 April 1993 (OJ No L 93, 17. 4. 1993, p. 10),
- 393 R 2901: Council Regulation (EEC) No 2901/93 of 18 October 1993 (OJ No L 264, 23. 10. 1993, p. 1),
- 393 R 3425: Commission Regulation (EEC) No 3425/93 of 14 December 1993 (OJ No L 312, 15. 12. 1993, p. 12),
- 393 R 3426: Commission Regulation (EEC) No 3426/93 of 14 December 1993 (OJ No L 312, 15. 12. 1993, p. 15),
- 394 R 0955: Commission Regulation (EC) No 955/94 of 28 April 1994 (OJ No L 108, 29. 4. 1994, p. 8),
- 394 R 1430: Commission Regulation (EC) No 1430/94 of 22 June 1994 (OJ No L 156, 23. 6. 1994, p. 6),
- 394 R 2701: Commission Regulation (EC) No 2701/94 of 7 November 1994 (OJ No L 287, 8. 11. 1994, p. 7),
- 394 R 2703: Commission Regulation (EC) No 2703/94 of 7 November 1994 (OJ No L 287, 8. 11. 1994, p. 19),
- 395 R 1102: Commission Regulation (EC) No 1102/95 of 16 May 1995 (OJ No L 110, 10. 5. 1995, p. 9),
- 395 R 1441: Commission Regulation (EC) No 1441/95 of 26 June 1995 (OJ No L 143, 27. 6. 1995, p. 22),
- 395 R 1442: Commission Regulation (EC) No 1442/95 of 26 June 1995 (OJ No L 143, 27. 6. 1995, p. 26),
- 395 R 1798: Commission Regulation (EC) No 1798/95 of 25 July 1995 (OJ No L 174, 26. 7. 1995, p. 20),
- 395 R 2796: Commission Regulation (EC) No 2796/95 of 4 December 1995 (OJ No L 290, 5. 12. 1995, p. 1),
- 395 R 2804: Commission Regulation (EC) No 2804/95 of 4 December 1995 (OJ No L 291, 6. 12. 1995, p. 8).
- 391 L 0356: Commission Directive 91/356/EEC of 13 June 1991 laying down the principles and guidelines of good manufacturing practice for medicinal products for human use (OJ No L 193, 17. 7. 1991, p. 30).

- 15a. 391 L 0412: Commission Directive 91/412/EEC of 23 July 1991 laying down the principles and guidelines of good manufacturing practice for veterinary medicinal products (OJ No L 228, 17. 8. 1991, p. 70).
- 15b. 392 L 0025: Council Directive 92/25/EEC of 31 March 1992 on the wholesale distribution of medicinal products for human use (OJ No L 113, 30. 4. 1992, p. 1).
- 15c. 392 L 0026: Council Directive 92/26/EEC of 31 March 1992 concerning the classification for the supply of medicinal products for human use (OJ No L 113, 30. 4. 1992, p. 5).
- 15d. 392 L 0027: Council Directive 92/27/EEC of 31 March 1992 on the labelling of medicinal products for human use and on package leaflets (OJ No L 113, 30. 4. 1992, p. 8).
- 15e. 392 L 0028: Council Directive 92/28/EEC of 31 March 1992 on the advertising of medicinal products for human use (OJ No L 113, 30. 4. 1992, p. 13).
- 15f. 392 L 0109: Council Directive 92/109/EEC of 14 December 1992 on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances (OJ No L 370, 19. 12. 1992, p. 76), as amended by: 393 L 0046: Commission Directive 93/46/EEC of 22 June 1993 (OJ No L 159, 1. 7. 1993, p. 134).