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EXAMINATION OF THE CUSTOMS UNION BETWEEN THE EUROPEAN COMMUNITIES AND TURKEY

Note on the meeting of 23 October 1996

Chairman: H.E. Mr Miguel J. Berthet (Uruguay)

1. The Committee on Regional Trade Agreements took up the examination of the goods aspect of the European Communities-Turkey Customs Union under Agenda Item B(ix) of its Seventh Session. The examination was conducted on the basis of the Standard Format for Information on Regional Trade Agreements and accordingly followed its layout.

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A. General Statements

2. The Chairman welcomed delegates and said that today's meeting had been convened to examine the Customs Union Agreement ("Agreement") between Turkey and the European Community ("EC"), which went into force on 1 January 1996. By way of background, he said that the parties in a communication (WT/REG/22/N/1) dated 22 December 1995 formally notified their Agreement to the WTO. The text of the Agreement was circulated thereafter to Members as WT/REG22/N/1/Add.1, together with a Decision of the EC-Turkey Association Council on temporary exceptions to Turkey's application of the Common Customs Tariff in respect of third countries. He recalled that the terms of reference for the examination of the EC-Turkey Customs Union, as agreed by the Council for Trade in Goods were as follows (WT/REG22/4): "to examine in light of the relevant provisions of the GATT 1994, the Customs Union between Turkey and the European Community, and to submit a report to the Council for Trade in Goods." He then referred to the Understanding which was also adopted by the Council: "It is understood that the statement read out by the Chairman of the Council for Trade in Goods, under Item 7 of the Agenda of its meeting on 20 February [1995], as contained in document 3/1 applies, *mutatis mutandis*, to this Working Party."

3. The Chairman stated that the parties had provided the Secretariat with information and data to enable it to compute the general incidence of duties as required under Article XXIV:5(a), and for purposes of facilitating negotiations under Article XXIV:6 of GATT 1994. Some important information was, however, still missing but would be provided as soon as possible. He recalled that Turkey and the European Coal and Steel Community had notified their Agreement in August 1996 (document (WT/REG22/N/1/Add.1). This Agreement went into force on 1 August 1996, and the text was contained in document WT/REG22/1/Add.1. Finally, he observed that the parties had submitted information on their Agreement in accordance with the Standard Format for Information on Regional Trade Agreements (WT/REG/25/5).

4. The representative of Turkey said that the parties were committed to transparency and the multilateral rules enshrined in Article XXIV of GATT 1994. Turkey saw its membership of the Customs Union as complementary to its participation in the multilateral trading system, as embodied in the WTO. The Agreement was consistent with the terms of Article XXIV, as the parties had eliminated all duties and other restrictive regulations of commerce, with respect to substantially all trade between them, and were applying substantially the same duties and other regulations of commerce to the trade of territories not included in the Union. The Customs Union covered trade in all products, with the exception of EURATOM and ECSC products. ECSC products were presently covered by a free-trade agreement, which reflected the nature of the European Communities' own arrangement for these products, and would be incorporated in the Customs Union in 2002, the year when the EC's own temporary regime for these products came to an end. Given the extent of coverage, the Agreement could be said to have complied with the terms of Article XXIV:8(a)(i) of GATT 1994.

5. Turning to agriculture, the Turkish representative said that it was clear from the additional Protocol and the Agreement establishing the Customs Union that it was the intention of the parties to have free movement of agricultural products within the customs territory. It was envisaged that Turkey would, after a transition period, adapt its agricultural policy in line with the Common Agricultural Policy of the EC. During the transitional period, the parties had committed themselves to improving market access on a mutually advantageous basis. Already 91 per cent of Turkish agricultural exports was receiving preferential treatment in the market of the EC. Out of this figure, 71 per cent received duty-free treatment. Negotiations were currently underway between the parties to further liberalize trade in this sector. A principal goal of the negotiations was to accord the same level of treatment that Turkish exports received in the EC market to EC agricultural exports to the Turkish market. With respect to processed agricultural products, he said that Turkey had agreed to adopt the EC classification, and would

accordingly differentiate between the agricultural and industrial components of duties applied on these products. The industrial component of the customs duties had been eliminated in intra-Customs Union trade, and a uniform rate was being applied to the trade of third countries. With respect to the agricultural component, the parties continued to maintain and apply their own duties to the trade of third parties. The establishment of this system had reduced the level of protection by 50 per cent, thus conferring a substantial benefit on third countries. Stressing that the Agreement was consistent with Article XXIV:8(a)(i) of GATT 1994, he said that agriculture accounted for only 10 per cent of the total trade between the parties, and that only a tiny proportion (1 per cent) of exports of third countries to Turkey would attract for a period of five years import duties in excess of the Common Customs Tariff (CET).

6. The representative of Turkey stated that the Agreement was consistent with the terms of Article XXIV:5 of GATT 1994, which provided that participants of a Customs Union should not impose on the trade of third countries higher duties or more restrictive regulations of commerce after the formation of the Customs Union. Turkey had been applying the CET of the EC since the completion of the Customs Union on 31 December 1995, the CET of the European Communities, which generally speaking had a much lower incidence than Turkish rates previously in force. Before applying the CET, the average Turkish tariff was around 18 per cent. Now, it had come down to 5.6 per cent in line with the CET, and was projected to fall further to 3.5 per cent after the implementation of the Uruguay Round Commitments. Notwithstanding the average reduction in Turkish tariffs, it was committed to holding negotiations with any Member which had a claim under Article XXIV:6 of GATT 1994.

7. The representative of Turkey observed that the definition of the Customs Union had evolved beyond the classical concept in line with developments in the process of European integration as well as with the rules governing international trade. Turkey's adaptation to the EC's common commercial and competition policies was, therefore, of great importance to the proper functioning of the Customs Union. These rules had on the whole benefitted third countries, although some countries claimed to have been disadvantaged by Turkish adoption of the EC's rules relating to the trade in clothing and textiles. The adoption of the EC's rules by Turkey was necessary to achieve the free movement of these products between the two parts of the Customs Union. Any other rule would have undermined the operation of the Customs Union. It should be borne in mind that the restrictions in the textiles and clothing sector were temporary, and would cease to apply on 1 January 2005, as foreseen in the Agreement on Textiles and Clothing. He stressed that within the transitional period, efforts would be made to reduce the level of protection, which had been reduced from 37 per cent to around 9 per cent in 1996, and was projected to progressively fall further with the implementation of the Uruguay Round commitments. It was thus reasonable to conclude that third countries would enjoy much better access to the Turkish market in the post-Customs Union period than before.

8. The representative of Turkey continued by saying that his country was determined to align its external trade policy with the EC's preferential trade regime within a period of five years. To that end, a free trade agreement had been signed with Israel, and another initialled with Hungary. Negotiations with the Czech and Slovak Republics and Romania were continuing, and it was hoped they would be extended in due course to countries such as Poland and those having trade agreements with the EU. He reiterated that Turkey was committed to the WTO and would notify the agreements that it would conclude as soon as they were ratified. He stated that Turkey had adopted the following EC legislation: the Council Regulation on Common Rules in Exports and the Council Decision on Officially Supported Export Credits. The harmonization of Turkish laws and regulations with those of the EC would simplify the legal framework for third countries and reduce their transaction costs. Addressing intellectual property rights, he said that Turkey had adopted a significant proportion of the EC "acquis communautaire", particularly with respect to industrial designs, geographical indications, trade marks, etc. Since this legislation was applied on an *erga omnes* basis, third countries would also benefit from the improved

protection afforded to intellectual property rights. The adoption by Turkey of new disciplines in areas such as competition standards, state aids, etc., would eventually improve market access conditions for third countries. It was hoped that the parties would cease to apply measures such as anti-dumping and countervailing measures to their trade in the not-too-distant future. To that end, work had just been concluded on developing a system of state aids compatible with WTO rules and consistent with the system in force in the EC. The "Decision on State Aid in Exports" which had just entered into force limited the scope of state aid to research and development, protection of the environment, market research, training activities, exhibitions and promotion activities abroad, export refunds on agricultural products and other subsidies compatible with Turkey's obligations under international agreements, in particular the WTO Agreement. For the proper functioning of the Customs Union, Turkey had adapted its industrial standards and technical legislation to those of the EC. The objective of the Turkish "Regime on Standardization in Foreign Trade" was to regulate standardization and conformity assessment, ensuring transparency and efficiency, having regard to WTO rules in this area.

9. The Turkish representative concluded by saying that the Customs Union Agreement with the EC constituted the most important step for the modernization of the Turkish economy and its integration into the world trading system. Since the obligations assumed by Turkey under the Agreement paralleled those assumed under the WTO Agreement, it was his conviction that meeting those obligations would invariably facilitate and accelerate Turkey's implementation of the WTO provisions. Turkey was confident that its Agreement with the EC satisfied the provisions of Article XXIV, and invited the Committee to reach the same conclusion.

10. The representative of the European Communities observed that the parties to the Agreement had completed the Standard Format; it was his wish that it would shed light on the mechanics of the Agreement, which to all intents and purposes was consistent with the provisions of Article XXIV. The Ankara Agreements, which were signed in September 1963, should be seen as a package with three main components: the first was Decision No. 1/95 of the EC-Turkey's Association Council, which established free trade for all products with the exception of products falling under the European Coal and Steel Community. The second was Council Decision No. 2/95, which established a transitional regime for certain sensitive products. After the end of the transitional period, there would be free circulation of all products within the Customs Union. The third component was the free-trade agreement between Turkey and the European Coal and Steel Community (ECSC), which was notified to the WTO on 31 July 1996. He reiterated that the ECSC was due to be wound up in 2002, and after that date it was expected that Council Decision 1/95 would provide the relevant framework for all trade in goods. He stressed that the Customs Union between the parties would not significantly alter trade flows between them, as barriers to their trade had been progressively dismantled since the signing of the Ankara Agreements, which made provision for the gradual establishment of a Customs Union.

11. The representative of the European Communities stated that the Agreement was consistent with the rules of the WTO. The role of the Committee was to determine whether or not an agreement was in conformity with the established rules. While the economic effects of the Agreement could be a helpful insight, the Committee should not deviate from the test which had been employed in the past to determine the consistency of an agreement. It could not be disputed that the Agreement would lower the general incidence of duties and other regulations of commerce. He pointed out that the adoption by Turkey of the common customs tariff for nearly all industrial goods would lead to a substantial decrease in Turkish import protection. It was estimated that the overall weighted decrease would be in order of 35 per cent of duty actually collected. The quotas which had been introduced to replace high customs duties in the textiles field would also lead to significant liberalization. On the whole, Turkish and EC quotas for textiles amounted to nearly 93,000 tonnes. Provision was made for an additional 16,700 tonnes of imports to the Turkish-EC market, over and above average imports between the period 1992-1994. He reiterated the conformity of the Agreement with the provisions of Article XXIV. There was ample

evidence to prove that the test in Article XXIV:5 had been satisfied by the parties, as the Agreement had resulted in a substantial liberalization of the Turkish market; the general incidence of duties and other restrictive regulations of commerce had come down following the entering into force of the Agreement. It should be borne in mind that apart from tariff reductions, Turkey had also made substantial commitments in the fields of intellectual property, competition and standards. The qualitative nature of the trade liberalization should be taken into account by the Committee in its examination of the Agreement.

12. In summing up, the EC representative said that the arrangements under the Customs Union agreement and the free-trade agreement in coal and steel products satisfied the obligation that duties and other regulations of commerce should be eliminated with respect to substantially all trade between the parties. The parties also applied substantially the same duties and other regulations of commerce to the trade of third countries. There would be almost no barrier to the trade between the parties at the end of the transitional period. The transitional periods were short, and covered only specific issues. The parties had a clear timetable for their removal as required under Article XXIV:7(b). It was his delegation's view that the decision which had to be made under this provision was whether the Agreement was likely to result in the formation of a Customs Union within the period contemplated by the Parties. There was no doubt that the agreements were designed to facilitate trade between the Parties, and not to raise barriers to the trade of third countries. In fact, they had brought down barriers to trade from which third countries would benefit. He reminded delegations that negotiations under Article XXIV:6 were still going on.

13. The representative of the United States said that his delegation was in support of the Agreement. However, it was imperative that all regional trade agreements complied with the multilateral rules. Some agreements recently concluded by the EC including the one with Turkey raised questions as to their compatibility with Article XXIV of GATT 1994. The exclusion of agriculture from most of these agreements left much to be desired. The reasoning by the EC that Article XXIV required new member countries to adopt certain restrictive and discriminatory arrangements so as to ensure the smooth functioning of the Customs Union was dubious, as it was not applied across the board. The selectivity of this reasoning confirmed that it was being used as a disguised restriction to the trade of third countries. In textiles, Turkey was required to adopt quotas, but in other areas it was exempted. Regional trade agreements should have the objective of strengthening, rather than weakening the multilateral trading system.

14. The representative of India said that his delegation was particularly concerned about the introduction of quantitative restrictions and surveillance measures on imports of textiles and clothing products by Turkey. He requested Turkey to provide full details of the measures and any relevant information. It was his delegation's understanding that Article XXIV did not require a country joining a Customs Union to introduce quantitative restrictions which were being applied by the Customs Union. It could therefore be argued that the quantitative restrictions introduced in the textiles and clothing sector by Turkey was an infringement of the provisions of Article XXIV.

15. The representative of Hong Kong said that the examination had highlighted some systemic issues which needed to be considered by the Committee. He agreed with the delegate from India that the quantitative restrictions introduced in the textiles and clothing sector was an infringement of the provisions of Article XXIV.

16. The representative of Switzerland welcomed the efforts by Turkey and the EC to deepen their relations. The Agreement would not only increase trade between them, but also provide opportunities for third countries. It was imperative that all trade agreements comply with the multilateral rules.

17. The representative of Thailand said that, while his country had in the past borne the brunt of most discriminatory practices of regional trading arrangements, it nevertheless supported the creation of such arrangements provided they respected the letter and spirit of the multilateral rules. It should be borne in mind that Article XXIV was an exception to the cardinal M.F.N. principle, and as such it should be restrictively construed. It was imperative that Members wishing to form RTAs comply with all the relevant multilateral rules including Article XXIV:6, which required the parties to RTAs to enter into compensation negotiations under Article XXVIII. A unilateral withdrawal of concessions under Article II of GATT 1994 would thus constitute a breach of the multilateral rules. Similarly, the imposition of quantitative restrictions by new members of a Customs Union violated the provisions of GATT 1994, as this could not be justified under Article XXIV. His delegation would welcome further information on the restrictive measures being implemented Turkey.

18. The representative of Japan said that his delegation had taken note of the assertions of the Parties that the Agreement had considerably lowered the general incidence of duties and other regulations of commerce. However, there were certain issues that his delegation wanted to address including the one relating to the introduction of quantitative restrictions in the textiles and clothing sector. His delegation agreed with the statements made by India, Hong Kong, Thailand and the United States.

19. The representative of Norway stressed the primacy of WTO rules on regionalism; it was important that they were observed by all Members wishing to form RTAs. His delegation welcomed the deepening of relations between the EC and Turkey and was confident that the agreement would benefit third countries as well.

20. The representative of Australia said that his delegation had three preliminary concerns, namely the introduction of quantitative restrictions in the textiles and clothing sector; the general incidence of duties and other regulations of commerce after the formation of the Customs Union; and whether there had been any changes in the agricultural policies of the Parties after the implementation of the Agreement, especially as regards export subsidies.

21. The representative of the European Communities said that the Committee needed to operate within its terms of reference and examine agreements on the basis of the relevant multilateral rules. It would be erroneous to say that regional trade agreements were "tolerated" in the WTO. They were, on the contrary, desirable as they had the potential for expanding world trade. He was also of the view that the second sentence of Article XXIV:4 did not mandate the Committee to inquire whether trade diversion or creation had taken place. It recognized the limitations of trade policy, as there could be no guarantee that a regional trade agreement would definitely lead to an expansion in trade. The underlying economic forces should be there: the best trade policy could do was to provide the framework for the expansion of commercial activity. He reiterated his earlier statement that the Agreement would benefit third countries, as the general incidence of duties and other regulations of commerce had been lowered. He rebutted suggestions that some agreements concluded by the EC did not truly create free trade. He said that the test in Article XXIV did not require complete free-trade in all sectors of economic activity. It would be wrong to use the process of examination to change the rules. If Members wanted a change in the test, they should resort to the correct procedures. He stated that the Working Party Report on the accession of Spain and Portugal made it clear that the term "regulations of commerce" included quantitative restrictions. Turning to textiles, he argued that Article XXIV allowed Customs Unions to maintain restrictive measures, provided those measures were not more restrictive than those in force before the establishment of the Customs Union. Thus, issue could not be taken at the imposition of quantitative restrictions by the EC, which would be phased out in any case after the transitional period. Citing Article 2:4 of the Agreement on Textiles and Clothing (ATC), he said that Article XXIV was a relevant provision within the meaning of Article 2:4 of the ATC, and that the introduction of quantitative restrictions was justified. He agreed with the representative of Hong Kong that this issue was a systemic one for consideration by the Committee. He suggested that the Committee discuss the relationship between Article XXIV of GATT 1994 and other agreements of the WTO.

22. The representative of Hong Kong said that Article XXIV:4 recognized that there would be instances where barriers to the trade of third countries might be increased in the process of the formation of a Customs Union or a free-trade area. It was his view that Article XXIV:8 did not provide legal cover for the adoption of measures which were otherwise inconsistent with the provisions of GATT 1994. He recalled that during the Working Party examination of the accession of Portugal and Spain to the EC, the EC admitted that Article XXIV did not provide a waiver from the provisions of the GATT.

23. The representative of Thailand disagreed with the view expressed by the EC that Article XXIV permitted Customs Unions to adopt quantitative restrictions to restrict trade of third countries. He said that a distinction needed to be drawn between "restrictive regulations of commerce" as contained in Article XXIV:8(a) and (b) and other "regulations of commerce" as set forth in Article XXIV:5(a). A proper reading of Article XXIV would prove that it did not provide legal cover for the adoption of quantitative restrictions.

24. The representative of the European Communities agreed with the representative of Thailand that a distinction ought to be drawn between the phrases "restrictive regulations of commerce" and "regulations of commerce". The context in which the former was used referred to intra Customs Union trade, while the latter referred to trade with third countries. He, however, disagreed with his analysis that Article XXIV did not provide the legal cover for the adoption of quantitative restrictions.

B. Section I: Background Information of the Agreement

I.1 Membership and Dates of Signature, Ratification and Entry Into Force

25. The representative of the United States requested the Parties to furnish the Committee with up-to-date information including 1995 key trade data for Turkey and for the EC-15, if possible. Without such data, it was difficult to assess the impact of the Agreement on third countries.

26. The representative of Hong Kong regretted that, while the Agreement under review went into force on 31 December 1995, it was not until mid-February of the following year that the WTO was notified of the Agreement.

27. The representative of the European Communities said that the Parties would provide information which would be user-friendly and shorten the length of the Committee's debates. It would enable delegations to easily compare the customs duties applicable before and after the implementation of the Agreement. Delegations would discover that there had been a considerable reduction in the general incidence of protection across the range of traded goods, including textiles and clothing products. Addressing the issue raised by the representative United States, he said that detailed trade data for 1996 was not available, but on the basis of on available data covering 1990-1996, EC-15 imports from Turkey amounted to 1.77 per cent of its total imports in 1995 and 1.69 per cent in 1996. The difference was very small. Based on data for the period 1992-1994, 93.4 per cent of Turkish imports (excluding agricultural products) from EC-15 attracted no duties. The figure would rise to 95.5 per cent when the transitional regime under Council Decision 2/95 and the restrictions imposed on processed agricultural products were abolished. Correspondingly, EC-15 imports from Turkey (excluding agriculture) would amount to 86 per cent at the end of the five-year period. Based on average 1992-1994 imports, there had been a 35 per cent decrease in duties actually collected by the Turkish authorities. Addressing the transparency issue, he said that it might be impracticable for Parties to a RTA to notify their agreement before its implementation. The representative of Japan requested the EC to make available in writing the data they referred to in their statement.

1.2 *Type of Agreement*

28. The representative of the United States sought clarification of the length of the transitional period, and wondered whether it was in conformity with the provisions of Article XXIV, which gave an indicative period of ten years within which all transitional measures should have been phased out. In response, the representative of Turkey said that, whereas the original Association Agreement, signed in 1964, provided for the establishment of a Customs Union, it did not lay down any specific time-table, given the vastly differing economic conditions in the EEC and Turkey. However, it contained provisions aimed at reducing the discrepancies in the economies of the Parties. The Additional Protocol of 1970, which went into force in 1973, gave an indicative period for the establishment of the Customs Union. The transitional period of twenty-two years was therefore not very long. In any event, the ten-year rule mentioned by the representative of the United States was only adopted during the Uruguay Round. It was important to focus on the elements of the Customs Union rather than the transitional period.

1.3 *Scope of the Agreement*

29. The representative of Australia wondered how Turkey would adjust its higher tariffs for certain products to the CET: was it to be in regular stages (similar reductions) over a period of five years? He also wondered whether additional products could be added to this list of exceptions. The representative of Turkey responded that her country had no intention of expanding the list. She pointed out that products not subject to the CET covered only 1.4 per cent of their entire tariff lines. Out of 18,132 products covered by the Customs Union, only 256 products were on an eight-digit basis. It was the intention of Turkey to gradually align them to the CET within a period of five years.

30. The representative of the United States said that the exclusion of steel from the coverage of the agreement injured third party rights. It was not enough that there was free-trade in steel between the Parties. While the EC had argued on numerous occasions that Article XXIV required it to have a single market, it had demonstrated its preparedness to ignore the letter and spirit of Article XXIV whenever it was in its interest to do so. The selective interpretation of Article XXIV undermined its effectiveness. In response, the representative of the European Communities said that this issue had been effectively covered by his Turkish colleague in his introductory statement. He said that the Agreement did not exclude any important sector from its coverage. The free-trade agreement in steel should be seen as a transitional arrangement, which would be phased out gradually well before 2004 when the European Communities was required to abolish the remaining restrictions on steel as part of the obligations it undertook during the Uruguay Round. After the transitional period, there would be a single market and the external tariff would be adjusted in accordance with the undertakings which were given during the Uruguay Round. Turkey would not be in a position to maintain restrictions, as products in free circulation in the EC would be entitled to free entry into the Turkish market. The argument that third party rights would be injured could thus not be sustained.

31. The representative of Switzerland inquired whether the Parties to the Agreement intended to submit a common list of concessions. In responding, the representative of Turkey said that, whereas it was true that the Parties had separate schedules of concessions under the WTO, Turkey was applying the CET in its trade with third countries.

C. **Section II: Trade Provisions**

II.1 *Import Restrictions*

32. The representative of Australia wanted to know the proportion of Turkey's tariff lines which were affected by the CET. It would be helpful if Turkey could provide information on which tariff lines were changed in order to be in conformity with the CET, as well as information on the percentage

of non-preferential imports which were affected by the alignment of Turkish tariff rates to the CET. He also requested information on items which were now subject to tariff quotas instead of tariffs. Lastly, he wanted to know whether there had been any adjustments in EC tariff quotas to take account of Turkish imports, and if so, the basis upon which the tariff quota volumes had been determined.

33. The representative of Turkey said that a document would be distributed to delegations showing protection rates from 1993-1996. Information on a tariff line basis would also be submitted to delegations. About 98 per cent of Turkish tariff lines were higher than the CET. With the implementation of the Agreement, the average protective rate had dropped to the level of the CET, which was 5.6 per cent. Turkey had always preferred high tariffication as a means to protect its industries from foreign competition. In 1995, the average protection rate against EC and third country exports was 14 and 19 per cent, respectively.

34. The representative of Australia referred to Article 17 of the Agreement and requested the Parties to provide information on the affected products. He sought clarification of the scope of Article 18 of the Agreement, particularly how the agricultural component was to be established in accordance with Article 19. His delegation was interested in knowing which of the items listed in Annex 1 were subject to this agricultural component. In response, the representative of the European Communities said that the treatment of processed agricultural products in the Agreement was not unreasonable; almost all the preferential agreements concluded by the EC had a similar provision. The advantage of this policy was its flexibility: on the one hand, it allowed for the rapid liberalization of the restrictions pertaining to processing aspect while on the other hand, it permitted a different regime to govern the agricultural component.

35. The representative of Turkey referred to the annexes to document WT/REG/22/1 and said that the Agreement required Turkey to adjust its external trade policy in line with that of the EC. That required it to adopt the rules relating to processed agricultural products. Processed agricultural products were products which contained mixed sugar and cereals. It was for this reason that their protection rates should reflect the basic elements that they contained, namely industrial components and agricultural components. The former was not subject to any *ad-valorem* duty within the customs union, while the latter was. Each Party maintained different rates in their trade with third countries, as far as the latter was involved. Turkey had reduced its protection rate on agricultural components from third countries by 50 per cent.

36. The representative of the United States sought clarification of the scope of Article 8 of the Agreement, particularly the criteria for determining which important instruments of the EC that Turkey should adopt. He also sought clarification of the scope of Article 9 of the Agreement, which referred to conditions under which trade would take place after the adoption of certain measures by Turkey. In response, the representative of the European Communities referred to Article 10 of the Agreement, and said that the whole issue revolved around technical barriers to trade.

Section II.3 *Rules of Origin*

37. The representative of the United States referred to Articles 17 through to 23 of the Agreement, and requested more information on the rules governing processed agricultural products. He was doubtful if the distinction could be properly made. The latitude given to Turkey to maintain restrictions on some products and to phase them out gradually was not in conformity with the terms of Article XXIV. He requested the Parties to explain how these provisions would work in practice, especially in terms of their effect on third countries and on intra-trade between the Parties.

38. The representative of the European Communities said that Article XXIV:8(a)(ii) required the Parties to have substantially the same regulations of commerce. The Parties had eliminated duties and other restrictive regulations of commerce on substantially all trade between them, including in the

agricultural sector, although a few barriers remained which were, however, due to be eliminated after the transitional period. The Parties had committed themselves to mutually improving market access for each other's agricultural products. It was hoped that a deal would be reached about better market access by the end of the year. He pointed out that 91 per cent of Turkish agricultural exports enjoyed preferential treatment in the EC. Out of this, 71 per cent entered the EC duty-free. After the end of the negotiations, he hoped that the EC exports to the Turkish market would receive the same level of preferential treatment. Given that agriculture constituted only 9 per cent of the two-way trade between the Parties, and that there was a genuine commitment to further liberalize this sector, it could be said that the Agreement was consistent with the provisions of Article XXIV. The multilateral rules did not require parties to a RTA to abolish all barriers to trade. The key word was "substantial"; you could not interpret it to mean "all". Given the extent of liberalization under the Agreement, it was clear that the Customs Union satisfied the test laid down in Article XXIV:8 of GATT 1994. The agricultural sector was on its way to meeting the test in its own right.

Section II:5 *Safeguards*

39. The representative of Hong Kong inquired whether the common application of commercial policy measures by a customs union required new members to automatically adopt measures imposed by the customs union against the trade of third countries. He also wanted to know whether there existed a difference in the degree of harmonization or common application of commercial instruments such as safeguards, anti-dumping and countervailing measures in the Customs Union.

40. The representative of the European Communities said that a customs union was predicated upon the elimination of trade barriers so as to permit the free circulation of goods within the constituent territories. If members did not have a uniform policy towards third countries, goods prohibited in one member country pursuant to a safeguard measure could well find their way into that same country *via* other member states. This legitimate concern had prompted the Parties to adopt the same measures towards third countries. Any measures adopted by the Customs Union would be WTO-consistent. While he was aware that a regime had been put in place, no measures had been implemented by the Parties, reflecting the careful approach with which the Parties were approaching this particular issue. The Parties recognized the sensitivity of this issue for WTO Members and were conscious about the need to address this issue on a careful and a case-by-case basis, bearing in mind the overarching rules of the WTO. It would not be appropriate to describe the regime as automatic for the reasons given above. The adoption of common rules on standards, competition policy and state aids should be seen in the same light; they were intended to ensure that the commitment to free circulation of goods between the Parties was not undercut by any forces. Turkey's acceptance of these new disciplines was to be welcomed, as few countries at the same level of development had implemented such wide-ranging reforms. He reiterated that the reforms would not only benefit Turkey but its trading partners as well. He said that after the transitional period, the Parties would harmonize their legislation and cease to apply commercial defence instruments in their relationship with each other. They would formulate and apply common rules in their trading relations with third countries.

41. The representative of Japan said his delegation's view on this matter: the automatic extension of anti-dumping duties, countervailing and safeguard measures, without taking into account the actual market conditions of the countries concerned was inconsistent with WTO rules, and could not be justified under Article XXIV of GATT 1994. He said that his delegation had taken note of the explanations provided by the EC regarding the ambitions of the Parties to form a coherent and harmonized trade defence regime in the years to come against third countries. He was encouraged that the Parties had not, as yet, applied any safeguard measure against the exports of a third country. He asked if the Parties could explain the phrase "substantially similar", appearing under the section on safeguards in document WT/REG22/5. He further sought clarification of the anti-dumping policy of the Parties.

42. The representative of Hong Kong said it was his understanding that the Agreement would require Turkey to adopt safeguard measures when similar measures were in force in the EC, and that any measures adopted by the Parties would be consistent with the WTO Agreement on Safeguards. He wondered whether the Parties would carry out separate investigations before the adoption of any such measures. He asked the Turkish delegate if he could provide information on whether there had been any amendment to their laws on safeguards, anti-dumping and countervailing measures since the implementation of the Agreement. If so, had the modifications been notified to the respective WTO committees? The debate regarding the extent of harmonization of trade policy instruments was a question of critical importance given the proliferation of regional trade Agreements. A fundamental conflict existed which needed to be addressed: on the one hand the commitment to free circulation of goods between the Parties, but on the other hand, the reluctance or inability of the Parties to fully harmonize or integrate their commercial policy instruments. The fact that the Parties maintained different policy instruments or trade regimes raised the distinct possibility of conflict. How they were going to solve this problem was of interest to WTO Members. He referred to the point made by the Japanese delegate about the enlargement of the EC, and said that the extension of anti-dumping duties without further investigations was not justified under WTO rules. He hoped that the EC and other Members would not follow that precedent.

43. The representative of Korea agreed with the views of Japan and Hong Kong and said that the rules of the WTO required Parties to a RTA to adopt substantially the same regulations of commerce in their trading relations with third countries, and also to eliminate duties and other restrictive regulations including safeguard and anti-dumping measures on trade between them. Notwithstanding the Parties' intention to harmonize their legislation in the future, it would appear that they did not meet the test set out in Article XXIV. His delegation was concerned about the automatic extension of anti-dumping measures to acceding countries, and that a distinction should be made to measures in place at the time of the establishment of the Customs Union, and measures which were freshly introduced after the formation of the Customs Union. Protective measures could only be adopted after investigations had been conducted in accordance with WTO rules. The automatic extension of duties without any investigations appeared to conflict with WTO rules. His delegation would not have any reservations, if the Parties were to follow the correct procedure.

44. The representative of the United States shared the concerns raised by the representative of Korea. Referring to Article 44 of the Agreement, which seemed to exempt Turkey from trade defence measures, he asked whether the exemption provided was automatic, and which were the EC measures which Turkey would be expected to implement. He sought clarification of the scope of Article 45 of the Agreement which provided for coordination between the Parties in the adoption of protective measures against third countries.

45. The representative of the European Communities reaffirmed that the Agreement had no provisions on the common application of anti-dumping and countervailing measures. He thought it fit to draw a distinction between putting in place similar mechanisms for dealing with particular cases, and taking what might be called joint action, in any particular case. He said that the phrase "putting in place similar measures" had a peculiar meaning, as it referred to the legislative instruments providing the mechanisms. Referring to the question posed by the Japanese delegate, he said that the phrase "substantially similar" meant a mechanism which was intended to deliver a result consistent with the results, which might be expected to be delivered by the EC machinery. It was the Parties' intention to harmonize and later integrate their policies. With regard to safeguards, he said that the Agreement provided for the harmonization of measures. He reaffirmed that no safeguard measures currently in place in the EC had been extended to Turkey. Turning to the enlargement of the EC, he said that the extension of the "anti-dumping and safeguard boundary" was for properly justified reasons. He reminded delegations about the level of economic integration among the Parties, and the existence of a coherent and fully-enforced competition policy framework within the EC, which was extended to the new members on their accession. He reiterated the Parties' commitment to gradually harmonize their competition laws

and other relevant legislation, and abolish the right of each party to take commercial defence measures against the other. Commenting on the Korean statement, he said that the observation that Articles VI and XIX of GATT 1994 were not expressly listed as recognized exceptions in Article XXIV:8 was correct. Both Turkey and the EC administered separate regimes *vis-a-vis* third countries. He maintained that the relevant test under Article XXIV:8 was whether the Parties had committed themselves to the removal of commercial defence measures in their trade, which the Parties had done. Their Agreement could therefore be considered as consistent with the provisions of Article XXIV. Responding to the question posed by the representative of the United States, he said that the Parties were expected to coordinate their trade defence instruments through the Association Council, which was the joint decision-making body charged with the review of the application of such measures by one Party against the other.

46. The representative of Turkey said that following the implementation of the Agreement, her country had amended and implemented a number of laws and regulations with a view to bringing its commercial framework in line with the common commercial policy of the EC. Common rules had been adopted on a number of subjects including imports from certain third countries, surveillance and safeguard measures, official support export credits and textile imports. She recalled that Turkey was in the process of concluding preferential trade Agreements with countries which had such arrangements with the EC. The overall objective was to align Turkey's commercial policy with that of the EC. Turkey had laws regulating competition and state aids, and also laws protecting industrial and commercial policy rights. It was a signatory to many international conventions and had implemented laws to protect the consumer. Turkey had adopted about 90 per cent of EC's regulations covering a broad range of subjects.

47. The representative of Hong Kong said that his delegation would welcome receiving written responses to its questions raised in relation to the notification of changes in Turkish laws and regulations following the implementation of the Agreement. He did not fully grasp the statement by the EC that Turkey's safeguard mechanism was expected to deliver the same results as the EC's system. The way it was put suggested that the measure would be imposed regardless of the outcome of investigations in the Turkish market. He was under the impression that the EC would invoke safeguards measures only when investigations conducted in its market warranted the adoption of such measures. Turkey would similarly be able to impose measures only when investigations conducted in its own market justified that response. If the whole of the Customs Union perceived that there was a threat, then they could, as a unit, take action based on the evidence.

48. The representative of the European Communities agreed with the statement made by Hong Kong; he affirmed that measures would be taken by the Parties only after separate market investigations. His earlier comment related to different nature of the Turkish administrative system from that of the EC. He emphasized that the Parties had common obligations by virtue of the WTO disciplines in this area. These obligations, coupled with those assumed pursuant to the Association Agreement between the Parties, constituted the external framework in force in the territories of the two Parties.

II:7 *Subsidies and state aid*

49. The representative of the United States referred to Article 34 of the Agreement and wondered what constituted an "important project of common European interest" within the meaning of that Article, and whether they were any existing guidelines. In response, the representative of the European Communities said that no rules existed for determining which projects qualified for aid. This was to be determined on a case-by-case basis taking into account all the necessary elements. The provisions of Article 34 mirrored closely the existing internal arrangements within the EC. This was one more example of Turkey assuming disciplines intended to ensure the efficient functioning of the Customs Union.

II:8 *Sector-specific Provisions - intra-trade*

50. The representative of Australia referred to Article 24 of the Agreement and inquired when the Parties would eliminate the remaining barriers to agricultural trade. WTO Members had an interest in knowing when the transitional measures would be completely phased out considering that it had taken over thirty years to establish the Customs Union. He also asked whether, under Article 25 of the Agreement, Turkey was required to adopt the Common Agricultural Policy (CAP) of the EC, particularly the provisions relating to the export subsidy and domestic support measures. If so, would the measures of Turkey and the EC be aggregated?

51. The representative of the United States said that there was no free trade in agricultural products between the EC and Turkey. Furthermore, it was clear that Turkey would adopt the EC's CAP in its trading relations with third countries in due course. He wondered when the remaining barriers to agricultural trade would be eliminated in order to have free trade in all agricultural products. He inquired whether Turkey would adopt the EC's discriminatory trade legislation in this area, particularly the Hormone Directive?

52. The representative of the European Communities said that free trade in agricultural products was the ultimate objective of the Parties. He noted that a substantial proportion of agricultural trade had been liberalized. He reminded delegates of the statistics provided by the Parties and said that they were on the way to meeting this goal. Regarding the length of the transitional period, he said that the Parties were committed to phasing out the transitional measures as quickly as possible; negotiations were well under way and were expected to be concluded by the end of the year. He expected the ensuing Agreement to further liberalize trade in agricultural products to the benefit of both Parties and third countries. He emphasized that the Agreement met the "substantial all trade" test set out in Article XXIV. He disagreed with the United States' view that the test did not only require a quantitative analysis, and suggested that the Committee consider the systemic implications of the test. He maintained, however, that the Agreement was consistent with Article XXIV of GATT 1994, and that the Parties had gone further in their liberalization efforts than was currently required by WTO rules. Turning to address the question on Article 25, he pointed out that Turkey would only adopt CAP measures which would facilitate free-trade in agricultural products between the Parties.

53. The representative of Australia said that the representative of the EC had not given any time-frame on the length of the transitional period, nor answered his question on whether the EC and Turkey planned to aggregate their export subsidy and domestic support measures.

54. The representative of Hong Kong agreed with the representative of the EC that the Committee needed to examine afresh the "substantial all trade" test, as it was a core element of Article XXIV. He regretted that after so many years, Members had not been able to clearly delineate the scope of this test.

55. The representative of the United States said that the "substantial all trade" test had not been met by the Parties. It was widely recognized that for a RTA to be consistent with the provisions of Article XXIV no major sector of economic activity had to be excluded. Provision for future compliance when the Agreement had been in force for a long period of time did not comply with the letter and spirit of Article XXIV.

56. The representative of the European Communities in response to the first question posed by the representative of Australia said that there was no plan for Turkey to adopt the EC's internal arrangement for domestic support and export subsidies. With respect to the second question, he stressed that the Parties had already satisfied the test laid down by Article XXIV, and that any new liberalization measures including the one underway to further liberalize agriculture should be seen as voluntary and not as a legal obligation. He reminded delegations that about 71 per cent of Turkish agricultural exports entered

the EC duty-free. This figure was high and satisfied the test under Article XXIV that all major sectors of economic activity should be liberalized. He finally said that Turkey was not required to implement the Hormones Directive, which was not a discriminatory trade measure, as claimed by the United States.

II:8 *Sector-specific Provisions - imports from third parties*

57. The representative of India reiterated his delegation's view that the quantitative restrictions imposed by Turkey after the implementation of the Agreement with the EC were not in conformity with the provisions of Article XXIV. It was questionable whether a combined reading of Article 2(4) of the Agreement on Textiles and Clothing (ATC) and Article XXIV of GATT 1994 justified the extension of the quantitative restrictions to Turkey. The representative of Hong Kong agreed with this view. The extension of the restrictive measures could not be justified under the provisions of Article XXIV:8 of GATT 1994, which merely defined the constitutive elements of a customs union and a free-trade area. In response, the representatives of both the EC and Turkey argued that the measures which were introduced in the context of Article 2(4) of the ATC were justified under the provisions of the Article XXIV. They insisted that the *lex specialis* rule was not applicable in this particular case, as the relationship between Article 2(4) of the ATC and Article XXIV of GATT 1994 had not been defined.

D. Section III: General Provisions of the Agreement - Exceptions and Reservations

III.3 *Dispute Settlement Procedures*

58. The representatives of Hong Kong and India wondered what the exact relationship was between the dispute settlement provisions of the Agreement and those of the WTO. A reading of the Agreement seemed to suggest that all disputes between the Parties were to be settled bilaterally.

III.4 *Relation With Other Trade Agreements*

59. The representative of Japan requested more information about preferential trading arrangements concluded between Turkey and third countries including Turkish membership of the Economic Cooperation Organization whose members included Pakistan and Iran. The representative of the United States asked whether under Article 16 of the Agreement, Turkey had committed itself to concluding bilateral Agreements with all countries having a similar trading arrangement with the EC. His delegation was concerned about some of these Agreements whose scope was limited by the exclusion of certain important sectors and a number of exceptions to the major rules. His delegation would appreciate receiving regular information from Turkey, including the status of the agreements with Tunisia and Morocco. He queried whether Agreements between these two countries and the European Communities had been notified to the WTO. He sought clarification of Article 16(3) of the Agreement, and asked the rationale for levying compensatory duties. It was doubtful whether the imposition of this levy could be justified under Article XXIV of GATT 1994.

60. The representative of Colombia wondered what the implications would be if Turkey was not able to conclude bilateral arrangements with all countries having a similar trading arrangement with the EC within the five years prescribed by Article 16 of the Agreement. He also wanted to know whether after the five year period, the compensatory levy would be abolished or replaced by another tariff. The representative of the European Communities said that the protection may not be necessary in five years time, as the Parties were expected by that time to have brought their respective preferential trading regimes in line with each other's. He emphasized that to date, no action had been taken by Turkey pursuant to Article 16.

61. The representative of Turkey said that whereas it was true that they had to harmonize their commercial policy with that of the EC within five years, they were intent on achieving that aim within the shortest possible time. It was necessary to reduce the incidence of trade diversion, and to allow greater market access for Turkish products in those countries, which had concluded trade agreements with the EC. To redress this imbalance, Turkey was negotiating a number of trade agreements based on a global symmetric model. In some cases, Turkey had given more concessions to the countries involved; in others the opposite had been true. The imposition of compensatory levy was justified above a certain threshold, as it would have disadvantaged Turkey, which was applying the CET. In practical terms, the exports of most of the countries having preferential trading arrangements with the EC could enter Turkey duty-free given that for most items, the bound rate for the EC was zero. Turkey could impose the compensatory levy only in cases where there were disturbances in its market; if the difference between the CET and applied rate was more than 5 per cent, the levy could be imposed. To date, Turkey had not imposed any such levies. Responding to the Japanese question, she said that Turkey had notified the WTO of its participation in Economic Cooperation Organization. The arrangement was of no important commercial significance; its impact would be limited as it covered only 36 items on a six-digit basis and the preference margin was 10 per cent less than MFN rates on these products. Trade diversion, if any, would be kept to its minimum. Turkey's participation in this Agreement would not affect its trading relations with the EC, as most of these countries were entitled to trade preferences under the EC's GSP.

III.5 *Institutional Framework*

62. The representative of the United States asked whether the Turkish government intended to accede to the Agreement on Government Procurement. Referring to Articles 52 through to 60, he requested clarification of the meaning of the "proper functioning of the customs union"; and "agreements with third countries comprising a commercial dimension for industrial products", as set out in Art 54:2 of the Agreement.

63. The representative of the European Communities said that the term "proper functioning of the customs union" was a broad term which represented the desire of the Parties to achieve the objectives they had committed themselves to. It was meant to ensure that aspects of the Agreement which had been implemented would continue to operate as intended, and that unforeseen events and developments as well as the usual day-to-day questions of commercial policy were handled in such a manner as not to defeat the overall objectives of the Agreement. The Parties had put in place an efficient consultative process which would ensure the realization of their objectives. Turning to Article 54:2, he said that it referred to the industrial dimension of other Agreements with third countries with a potential impact on the functioning of the Customs Union. The list provided in the paragraph was not exhaustive.

64. The Committee took note of the statements made and agreed to continue its examination at a later stage.