

# COMMISSION DECISION OF 29 FEBRUARY 1996 ON THE CONCLUSION OF AN AGREEMENT BETWEEN THE EUROPEAN COAL AND STEEL COMMUNITY AND THE REPUBLIC OF TURKEY ON TRADE IN PRODUCTS COVERED BY THE TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY<sup>103</sup>

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[...]

## COMPETITION, CONCENTRATIONS AND STATE AIDS

### *Article 7*

1. The following shall be incompatible with the proper functioning of this Agreement, in so far as they may affect trade between the Community and Turkey:

- (i) all agreements of cooperative or concentrative nature between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;
- (ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Turkey as a whole or in a substantial part thereof;
- (iii) public aid in any form whatsoever except derogations allowed pursuant to the ECSC Treaty.

2. Any practices contrary to paragraph 1 (i), (ii) and (iii) shall be assessed on the basis of the relevant criteria arising from the application of the rules of Articles 65 and 66 of the Treaty establishing the European Coal and Steel Community (and, where relevant, Article 85 of the Treaty establishing the European Community) and the rules on State aid in the ECSC sector, together with its secondary legislation.

3. Turkey shall notify the Community in sufficient time of any public aid proposed to be granted in the ECSC steel sector. The Community shall have the right to raise objections against any such aid which would have been deemed unlawful under Community law had it been granted by a Member State. If Turkey does not agree with the Community's opinion, and if the case is not resolved within 30 days, the Community and Turkey shall each have the right to refer the case to arbitration.

4. Each Party shall ensure transparency in the area of public aid by a full and continuous exchange of information to the other Party, including amount, intensity and purpose of any proposed aid.

5. The ECSC/Turkey Joint Committee shall, within two years from the entry into force of this Agreement adopt the necessary rules for the implementation of paragraphs 1 to

4. These rules shall be based on those already existing in the Community and shall, *inter alia*, specify the role of the respective competition or State aid authorities.

6. If the Community or Turkey considers that a particular practice is incompatible with the terms of paragraph 1 to 4, and - is not adequately dealt with under the rules adopted pursuant to paragraph 5, or - in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to its domestic industry, or a substantial part thereof, it may take appropriate action following consultation of the ECSC/Turkey Joint Committee or after 45 days of the referral for such consultations. Priority shall be given to measures which least disturb the functioning of this Agreement. In the case of practices incompatible with paragraph 1 (iii) such appropriate measures may, where the Agreement establishing the World Trade Organization applies thereto, only be adopted in conformity with the procedures and under the conditions laid down by the World Trade Organization and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

7. Turkey shall have the right to raise objections and seize the ECSC/Turkey Joint Committee in respect of aid granted by a Member State which it deems to be unlawful under Community law. If the case is not resolved within three months the ECSC/Turkey Joint Committee may decide to refer it to the Court of Justice of the European Communities.

### **Article 8**

1. The Parties recognize that during five years after the entry into force of this Agreement, and by way of derogation from Article 7, paragraph 1 (iii), Turkey may, exceptionally, as regards the products covered by this Agreement, grant public aid on a case-by-case basis for restructuring or conversion purposes, provided that:

- transparency is ensured by a full and continuous exchange of information concerning the implementation of the restructuring programme including amount, intensity and purpose of the aid and a detailed restructuring plan;
- the restructuring programme is linked to rationalizing not involving an overall increase in capacity for hot-rolled products;
- the aid leads to viability determined according to the usual viability criteria implying modernization with the sole aim to improve efficiency of the benefiting firms under normal market conditions at the end of the restructuring period;
- the amount of aid granted is not out of proportion to its objectives and is strictly limited, in amount and intensity, to what is absolutely necessary to restore viability;
- Turkey notifies the Community in sufficient time of any aid proposed to be granted under this Article. The Community shall have the right to raise reasoned objections in respect of any such aid which does not comply with the criteria set out above.

2. If, during a period equal to the derogation for subsidies pursuant to paragraph 1 above and given the particular sensitivity of steel market, imports of specific steel prod-

ucts originating in one Party cause or threaten to cause serious injury to domestic producers of like products or serious disturbances to the steel markets of the other Party, both Parties shall enter into consultation immediately to find an appropriate solution. Pending such a solution and notwithstanding other provisions of the Agreement and in particular when exceptional circumstances require immediate action, the importing Party may adopt forthwith quantitative or other solutions strictly necessary to deal with the situation, in accordance with its international and multilateral obligations. Such action may include quantitative restrictions limited to one or more regions that are affected by imports of the steel products in question.

**Article 9**

The Parties shall exchange information, taking into account the limitations imposed by the requirements of professional and business secrecy.