II

(Acts whose publication is not obligatory)

COUNCIL

DECISION No 1/1999 OF THE ASSOCIATION COUNCIL

between the European Communities and their Member States, of the one part, and the Republic of Lithuania, of the other part

of 27 January 1999

amending Protocol 3 to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Lithuania, of the other part

(1999/138/EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Lithuania, of the other part [1], signed in Brussels on 12 June 1995, and in particular Article 38 of Protocol 3 [2] thereof,

Whereas the definition of the term 'originating products' in Protocol 3 needs to be amended to ensure the proper operation of the extended system of cumulation which permits the use of materials originating in the European Community, Poland, Hungary, the Czech Republic, the Slovak Republic, Bulgaria, Romania, Latvia, Lithuania, Estonia, Slovenia, the European Economic Area (hereinafter referred to as the EEA), Iceland, Norway and Switzerland;

Whereas it would seem advisable to maintain in operation until 31 December 2000 the system of flat rate charges provided for in Article 15 of Protocol 3 in connection with the prohibition of drawback and exemption from customs duty;

Whereas, in view of the particular arrangements on industrial products obtaining between the Community and Turkey, it would also be appropriate to extend the cumulation system to such products originating in Turkey;

Whereas to facilitate trade and simplify administrative tasks it is desirable to amend the wording of Articles 3, 4 and 12 of Protocol 3;

Whereas, to take account of changes in processing techniques and shortages of certain raw materials, some corrections must be made to the list of working and processing requirements which non-originating materials have to fulfil to qualify for originating status,

HAS DECIDED AS FOLLOWS:

Article 1

Protocol 3 concerning the definition of the concept of 'originating products' and methods of administrative cooperation is hereby amended as follows:

1. Article 1(i) shall be replaced by:

'(i) "added value" shall be taken to be the ex-works price minus the customs value of each of the materials incorporated which originate in the other

[1] OJ L 51, 20. 2. 1998, p. 3.
[2] Protocol 3 was replaced by Association Council Decision No 3/98 (not yet published in the Official Journal).

countries referred to in Articles 3 and 4 or, where the customs value is not known or cannot be ascertained, the first price verifiably paid for the products in the Community or Lithuania.'

2. Articles 3 and 4 shall be replaced by the following:

'Article 3

Cumulation in the European Community

1. Without prejudice to the provisions of Article 2(1), products shall be considered as originating in the Community if such products are obtained there, incorporating materials originating in the Community, Bulgaria, Poland, Hungary, the Czech Republic, the Slovak Republic, Romania, Lithuania, Latvia, Estonia, Slovenia, Iceland, Norway, Switzerland (including Liechtenstein (*)) or Turkey (**) in accordance with the provisions of the Protocol on rules of origin annexed to the Agreements between the Community and each of these countries, provided that the working or processing carried out in the Community goes beyond that referred to in Article 7 of this Protocol. It shall not be necessary that such materials have undergone sufficient working or processing.

2. Where the working or processing carried out in the Community does not go beyond the operations referred to in Article 7, the product obtained shall be considered as originating in the Community only where the value added there is greater than the value of the materials used originating in any one of the other countries referred to in paragraph 1. If this is not so, the product obtained shall be considered as originating in the country which accounts for the highest value of originating materials used in the manufacture in the Community.

3. Products, originating in one of the countries referred to in paragraph 1, which do not undergo any working or processing in the Community, retain their origin if exported into one of these countries.

4. The cumulation provided for in this Article may only be applied to materials and products which have acquired originating status by an application of rules of origin identical to those given in this Protocol.

The Community shall provide Lithuania, through the Commission of the European Communities, with details of the Agreements and their corresponding rules of origin, which are applied with the other countries referred to in paragraph 1. The Commission of the European Communities shall publish in the *Official Journal of the European Communities* (C series) the date on which the cumulation, provided for in this Article may be applied by those countries listed in paragraph 1 which have fulfilled the necessary requirements.

Article 4

Cumulation in Lithuania

1. Without prejudice to the provision of Article 2(2), products shall be considered as originating in Lithuania if such products are obtained there, incorporating materials originating in the Community, Bulgaria, Poland, Hungary, the Czech Republic, the Slovak Republic, Romania, Lithuania, Latvia, Estonia, Slovenia, Iceland, Norway, Switzerland (including Liechtenstein (*)) or Turkey (**) in accordance with the provisions of the Protocol on rules of origin annexed to the Agreements between Lithuania and each of these countries, provided that the working or processing carried out in Lithuania goes beyond that referred to in Article 7 of this Protocol. It shall not be necessary that such materials have undergone sufficient working or processing.

2. Where the working or processing carried out in Lithuania does not go beyond the operations referred to in Article 7, the product obtained shall be considered as originating in Lithuania only where the value added there is greater than the value of the materials used originating in any one of the other countries referred to in paragraph 1. If this is not so, the product obtained shall be considered as originating in the country which accounts for the highest value of originating materials used in the manufacture in Lithuania.

3. Products, originating in one of the countries referred to in paragraph 1, which do not undergo any working or processing in Lithuania, retain their origin if exported into one of these countries.

4. The cumulation provided for in this Article may only be applied to materials and products which have acquired originating status by an application of rules of origin identical to those given in this Protocol.

Lithuania shall provide the Community, through the Commission of the European Communities, with details of the Agreements and their corresponding rules of origin, which are applied with the other countries referred to in paragraph 1. The Commission of the European Communities shall publish in the *Official Journal of the European Communities* (C series) the date on which the cumulation, provided for in this Article, may be applied by those countries listed in paragraph 1 which have fulfilled the necessary requirements.

(*) The Principality of Liechtenstein has a customs union with Switzerland, and is a contracting party to the Agreement on the European Economic Area.

(**) Cumulation as provided for in this Article does not apply to materials originating in Turkey which are mentioned in the list at Annex V to this Protocol.'

3. Article 12 shall be replaced by the following:

'Article 12

Principle of territoriality

1. Except as provided for in Article 2(1)(c), Articles 3 and 4 and paragraph 3 of this Article, the conditions for acquiring originating status set out in Title II must continue to be fulfilled at all times in the Community or Lithuania.

2. Except as provided for in Articles 3 and 4, where originating goods exported from the Community or Lithuania to another country return, they must be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that:

(a) the returning goods are the same as those that were exported

and

(b) they have not undergone any operation beyond that necessary to preserve them in good condition while in that country or while being exported.

3. The acquisition of originating status in accordance with the conditions set out in Title II shall not be affected by working or processing done outside the Community or Lithuania on materials exported from the Community or Lithuania and subsequently reimported there, provided:

(a) the said materials are wholly obtained in the Community or Lithuania or have undergone working or processing beyond the insufficient operations listed in Article 7 prior to being exported

and

(b) it can be demonstrated to the satisfaction of the customs authorities that:

(i) the reimported goods have been obtained by working or processing the exported materials

and

(ii) the total added value acquired outside the Community or Lithuania by applying the provisions of this Article does not exceed 10 % of the ex-works price of the end product for which originating status is claimed.

4. For the purposes of paragraph 3, the conditions for acquiring originating status set out in Title II shall not apply to working or processing done outside the Community or Lithuania. But where, in the list in Annex II, a rule setting a maximum value for all the non-originating materials incorporated is applied in determining the originating status of the end product, the total value of the non-originating materials incorporated in the territory of the party concerned, taken together with the total added value acquired outside the Community or Lithuania by applying the provisions of this Article, shall not exceed the stated percentage.

5. For the purposes of applying the provisions of paragraphs 3 and 4, "total added value" shall be taken to mean all costs arising outside the Community or Lithuania, including the value of the materials incorporated there.

6. The provisions of paragraphs 3 and 4 shall not apply to products which do not fulfil the conditions set out in the list in Annex II or which can be considered sufficiently worked or processed only if the general values fixed in Article 6(2) are applied.

7. The provisions of paragraphs 3 and 4 shall not apply to products coming under chapters 50 to 63 of the harmonised system.

8. Any working or processing of the kind covered by the provisions of this Article and done outside the Community or Lithuania shall be done under the outward processing arrangements, or similar arrangements.'

4. In Articles 13, 14, 15, 17, 21, 27, 30 and 32, the phrase 'referred to in Article 4' shall be replaced by 'referred to in Articles 3 and 4'.

5. In the last paragraph of Article 15(6), the date '31 December 1998' shall be replaced by '31 December 2000'.

6. In Article 26(1), the terms 'C2/CP3' shall be replaced by 'CN22/CN23'.

7. In Annex I, note 5.2:

(a) between the indents:

'— artificial man-made filaments'

and

'— synthetic man-made staple fibres of polypropylene'

the following shall be inserted:

'— current conducting filaments';

(b) the fifth example ('A carpet with tufts ... are met.') shall be deleted.

8. Annex II shall be amended as follows:

(a) the following shall be inserted between the entries for HS heading Nos 2202 and 2208:

'HS heading No	Description of product	Working or processing carried out on non-originating materials that confers originating status		
(1)	(2)	(3)	or	(4)
2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher; ethyl alcohol and other spirits, denatured, of any strength	Manufacture: — using materials not classified in heading Nos 2207 or 2208'		

(b) the entry for chapter 57 shall be replaced by:

'Chapter 57	Carpets and other textile floor coverings:		
	— Of needleloom felt	Manufacture from (1): — Natural fibres or — Chemical materials or textile pulp However: — Polypropylene filament of heading No 5402, — Polypropylene fibres of heading Nos 5503 or 5506 — Polypropylene filament tow of heading No 5501, of which the denomination in all cases of a single filament or fibre is less than 9 decitex, may be used provided their value does not exceed 40 % of the ex-works price of the product — Jute fabric may be used as backing	
	— Of other felt	Manufacture from (1): — Natural fibres not carded or combed or otherwise processed for spinning or — Chemical materials or textile pulp	
	— Other	Manufacture from (1): — Coir or jute yarn (a) — Synthetic or artificial filament yarn — Natural fibres, or — Man-made staple fibres not carded or combed or otherwise processed for spinning — Jute fabric may be used as backing	

(1) For special conditions relating to products made of a mixture of textile materials, see Introductory Note 5.
(a) The use of jute yarn is authorised from 1 July 2000.'

(c) the entry for HS heading No 7006 shall be replaced by:

'7006	Glass of heading Nos 7003, 7004 or 7005, bent, edgeworked, engraved, drilled, enamelled or otherwise worked, but not framed or fitted with other materials:		
	— Glass plate substrate coated with dielectric thin film, semi-conductor grade, in accordance with SEMII standards (1)	Manufacture from non-coated glass plate substrate of heading No 7006	
	— Other	Manufacture from materials of heading No 7001	

(1) SEMII — Semiconductor Equipment and Materials Institute Incorporated.'

(d) the rule for HS heading No 7601 shall be replaced by:

'7601	Unwrought aluminium	Manufacture in which: — All the materials used are classified within a heading other than that of the product and — The value of all the materials used does not exceed 50 % of the ex-works price of the product or Manufacture by thermal or electrolytic treatment from unalloyed aluminium or waste and scrap of aluminium'	

9. the following Annex shall be added:

'ANNEX V

List of products originating in Turkey to which the provisions of Articles 3 and 4 do not apply, listed in the order of HS chapters and headings

Chapter 1	
Chapter 2	
Chapter 3	
0401 to 0402	
ex 0403	Buttermilk, curdled milk and cream, yoghurt, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter
0404 to 0410	
0504	
0511	
Chapter 6	
0701 to 0709	

ex 0710	Vegetables, except sweetcorn of heading No 0710 40 00 (uncooked or cooked by steaming or boiling in water), frozen
ex 0711	Vegetables, except sweetcorn of heading No 0711 90 30, provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption
0712 to 0714	
Chapter 8	
ex Chapter 9	Coffee, tea and spices, excluding maté of heading No 0903
Chapter 10	
Chapter 11	
Chapter 12	
ex 1302	Pectic substances, pectinates and pectates
1501 to 1514	
ex 1515	Other fixed vegetable fats and oils (excluding jojoba oil and its fractions) and their fractions, whether or not refined, but not chemically modified
ex 1516	Animal or vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared, excluding hydrogenated castor oil known as "opalwax"
ex 1517 and ex 1518	Margarines; imitation lard and other prepared edible fats
ex 1522	Residues resulting from the treatment of fatty substances or animal or vegetable waxes, excluding degras
Chapter 16	
1701	
ex 1702	Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel excluding that of heading Nos 1702 11 00, 1702 30 51, 1702 30 59, 1702 50 00 and 1702 90 10
1703	
1801 and 1802	
ex 1902	Pasta, stuffed, containing more than 20 % by weight of fish, crustaceans, molluscs or other aquatic invertebrates, sausages and the like or meat and meat offal of any kind, including fats of all kinds
ex 2001	Cucumbers and gherkins, onions, mango chutney, fruit of the genus *Capsicum* other than sweet peppers or pimentos, mushrooms and olives, prepared or preserved by vinegar or acetic acid
2002 and 2003	
ex 2004	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading No 2006, excluding potatoes in the form of flour, meal or flakes, and sweetcorn
ex 2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading No 2006, excluding potatoes in the form of flour, meal or flakes, and sweetcorn
2006 and 2007	
ex 2008	Fruits, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, excluding peanut butter, palm hearts, maize, yams, sweet potatoes and similar edible parts of plants containing 5 % or more by weight of starch, vine leaves, hop shoots and other similar edible parts of plants
2009	

ex 2106	Flavoured and coloured sugar, syrups
2204	
2206	
ex 2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher obtained from agricultural produce listed here
ex 2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol obtained from agricultural produce listed here'
2209	
Chapter 23	
2401	
4501	
5301 and 5302	

Article 2

This Decision shall enter into force on the day of its adoption.

It shall apply as from 1 January 1999.

Done at Brussels, 27 January 1999.

For the Association Council

The President

A. SAUDARGAS