

## EU-Turkey Customs Union

On the 31<sup>st</sup> January 1996, the Customs Union between the EU and Turkey came into effect, thereby creating the closest economic relationship between the EU and a non-member country. The Customs Union has brought fundamental changes in Turkey's trade and competition legislation and policies and created new opportunities and challenges for the Turkish economy. The decision of the Turkey-EU Association Council to establish a Customs Union between Turkey and the EC was one of the most important developments affecting Turkish economy as a whole, since the liberalisation measures taken in the 1980s.

The Customs Union is one of the cornerstones of Turkey's relationship of association with the EC, which dates back to 1960s. The framework of the Customs Union was drawn with the Ankara Agreement of 1963 and details were laid down by the Additional Protocol which entered into force in 1973. The Ankara Agreement envisaged a progressive model of integration with Turkey, namely the establishment of a Customs Union composed of three phases; the "preparatory phase", the "transition phase" and the "completion phase".

With the decision signed during the Turkey-EC Association Council meeting held on the 6<sup>th</sup> March 1995, Turkey completed the transitional phase in its integration with the EC as foreseen in the Ankara Agreement and in additional protocols. After a transitory stage of 22 years, during which essential measures were put into force towards trade liberalization and greater reliance on market forces, parties decided that conditions had been fulfilled for the establishment of the Customs Union which came into effect as of the 31<sup>st</sup> December 1995.

The Customs Union covers only the industrial and (industrial content of) the processed agricultural products. Traditional agricultural goods remain outside the scope of the Customs Union.

With the entry into force of the Customs Union, Turkey has eliminated all customs duties and charges having equivalent effect, as well as quantitative restrictions applied on imports of industrial products from the Community. For products imported into Turkey from third countries, Turkey started to apply the Common Customs Tariff (CCT) of the Community.

The content and the provisions of the Decision No: 1/95 of Turkey-EC Association Council in a number of areas goes beyond the minimum requirements of a customs union. Through this process, Turkey had to adopt a number of legal and administrative measures which are in fact part of the *acquis communautaire*.

As far as the implementation procedures are concerned, the Decision supplements the partnership's existing "legal framework". In addition to the classical components of a customs union, i.e. tariff reductions and harmonization with the CCT, the decision also contains other principles and arrangements which aim at developing the partnership beyond the envisaged fields, parallel to the broad and dynamic evolution of the European Union itself. In this framework, the obligations of the Parties arising from the Decision mainly cover the following areas.

### Free Movement of Goods

Turkey has abolished all existing customs duties and measures having equivalent effect on the industrial products imported from the EU and brought the quantitative restrictions applied to third countries in line with the Community legislation. Additionally, except the sensitive products for which a 5 year transitory period was envisaged with Decision 2/97, Turkey started to apply the CCT of the Community to third countries.

Furthermore, with regard to processed agricultural products which are laid down in the Annex 1 of Decision No: 1/95, the industrial and agricultural components of those products were determined. Thus the industrial components have been immediately abolished for some of these products while it has been foreseen to abolish the others within a period of five years.

On the other hand, in order to ensure the free movement of goods, the technical barriers (which are commonly referred to as procedures related to "standards") must be eliminated as much as possible. For this purpose, the Decision at issue also embodies two essential elements.

- Firstly, it is agreed that Turkey would adopt the Community mechanisms, more specifically the *acquis communautaire* related to standardization, measuring, calibration, quality, accreditation, testing and certification within five years from the Decision's entry into force. The list of the legislation that has to be adopted was specified in the Association Council Decision No: 2/95.
- Secondly, during this process, if Turkey fulfils the required harmonization measures with respect to a certain good or group of goods, the technical barriers to that particular good(s) have to be abolished without having to wait for the end of this transition period.

### Common Trade Policy

Upon the entry into force of the Decision, Turkey agreed to adopt the preferential and autonomous trade regime applicable to third countries within a period of five years from the entry into force of the Decision (Art. 16). This includes also the signing of bilateral trade agreements (also known as Free Trade Agreements: FTAs) that the Community concludes with third countries.

In the field of import and export legislation and CCT, the legislative harmonization has been achieved to a large extent following the entry into force of Decision No: 1/95, except the sensitive products. Furthermore, by 2001, the relief on these products was concluded.

So far, Turkey has concluded FTAs with 32 countries, 11 of which were repealed due to the accession of these countries to the EU. Thus currently, Turkey has 17 FTAs in force with EFTA, Israel, Macedonia, Bosnia-Herzegovina, Palestine, Tunisia, Morocco, Syria, Egypt, Albania, Georgia, Montenegro, Serbia, Chile, Jordan, Mauritius, and South Korea. But the FTA signed with Syria was suspended in December 2011. In addition, the FTAs signed with Lebanon, Kosovo, Malaysia and Moldova are under ratification process. Furthermore, FTA negotiations with Ghana and Faroe Islands are concluded and these FTAs are expected soon to be signed.

Meanwhile, there are 13 countries/country blocs with whom Turkey has started FTA negotiations; they are as follows: Peru, Ukraine, Colombia, Ecuador, Mexico, Japan, Singapore, Dem. Rep of Congo, Cameroon, Seychelles, Gulf Cooperation Council, Libya, MERCOSUR. Moreover, Turkey has launched initiatives to start negotiations with countries such as the USA, Canada, India, Indonesia and South Africa.

As mentioned above, according to Article 16 of the DAC No: 1/95, Turkey has to adopt the common trade common policy of the EU which includes signing FTAs with third countries with which the EU signed an FTA. However, third countries show sometimes reluctance to conclude a similar agreement with Turkey. Thanks to the agreement signed with the EU, the goods of these countries can enter without customs to Turkish market while they continue to impose high tariffs on Turkish goods. As a result, this leads Turkey not only to fail to fulfil its obligation stemming from Article 16 but also to suffer from traffic diversion. At this point, Turkey wants the EU to insert a provision obliging a third state to sign a similar agreement, into the FTAs or not to let the FTAs enter into force until that third state signs a similar agreement with Turkey.

On the other hand, having regard that the Customs Union is comprised by 28 (the EU) + one (Turkey) members, and since Turkey is directly affected by the FTAs as well as, Turkey should take part as an equal partner during all phases of the negotiation process. But so far, the consultation mechanism as foreseen in the Ankara Agreement is not working effectively.

Lastly, in terms of the autonomous trade regime, Turkey has been criticized to fail to fully adopt the Generalized System of Preferences of the EU by the Commission in the progress reports

### **Technical Legislation**

To ensure the free movement of goods, the technical barriers had to be eliminated. For this purpose, the Decision at issue also contains important provisions.

Firstly, it is agreed that Turkey would adopt the Community mechanisms, more specifically the *acquis communautaire* related to standardization, measuring, calibration, quality, accreditation, testing and certification within five years following the entry into force of the Decision. The list of the legislation that has to be adopted was specified by the Association Council Decision No: 2/97. Taking the developing dynamic structure of the technical legislation of the EU into consideration, there has been efforts to update this decision.

The technical legislation basically includes new approach and old approach directives. In the old approach, the technical qualities of the products are defined in detail whereas the new approach directives define the "essential requirements", e.g., protection of health and safety, which goods must meet when they are placed on the market. The "New Approach", defined in a Council Resolution of May 1985, represents an innovative way of technical harmonization. There it introduces a clear separation of responsibilities between the EC legislator and the European standards bodies CEN, CENELEC and ETSI in the legal framework allowing for the free movement of goods.

The European standards bodies have the task of drawing up the corresponding technical specifications meeting the essential requirements of the directives, compliance with which will provide a presumption of conformity with the essential requirements. Such specifications are referred to as "harmonized standards". "Harmonized standards" are European standards, adopted by CEN, CENELEC or ETSI, following a mandate issued by the European Commission after consultation of Member States. They are developed through an open and transparent process, built on consensus between all interested parties. Most of the new approach directives require CE (*Conformité Européenne*) marking. CE is not a quality or standardization symbol but a security symbol showing that the product satisfies the minimum security conditions and ensuring the product to freely circulate within the Union. Turkey has fully implemented many of the European CE marking directives. This means that all products that

are deemed to fall within the EU directives would need to conform to the directives in order to be sold in Turkey.

In terms of harmonization in administrative structure, in 1993, the Turkish Standards Institute (TSI), which has the sole authority and responsibility for preparing and publishing Turkish standards for all types of materials, products and services in Turkey, started to adopt and harmonize its standards with those of the EU. The aim is to harmonize Turkey's legislation on a wide range of technical regulations with the EU. Since 1993, more than 90 percent of EU standards have been adopted as Turkish standards. To bring standardization procedures in conformity with the EU norms and to prevent Turkish imports from possible technical barriers, Turkish Accreditation Council (TURKAK) which is in charge of accrediting the conformity assessment institutions was established in 1999.

#### **Intellectual and Industrial Property Rights**

Bearing in mind that the Customs Union could not function properly unless intellectual property are protected at an equal level by both parties, harmonization of Turkish legislation to the *acquis communautaire* and to certain international agreements, as well as to the TRIP Agreement has been envisaged.

Legislation on copyright and related rights, patents, trademarks, counterfeit goods, protection of geographical indications and industrial designs should be implemented, without prejudice to Turkey's status as a developing country in the WTO.

Turkey has introduced significant changes to its industrial property regime since 1994, before the completion of the Customs Union. Within this framework, Turkish Patent Institute (TPI) was established in 1994 and the sections of harmonization of intellectual property rights that had to be completed before the Custom Union's entry into force were fulfilled in 1995 by the coordinated efforts of the TPI. Hence the "Law on Intellectual and Artistic Rights" has been amended and brought into line with the *acquis*. Moreover, Turkey became a party to the related international conventions and adopted legislative amendments for trademarks, patent rights and protection of industrial designs and geographical indications. In addition to these, Turkey became a signatory to a number of important international conventions governing intellectual property rights such as the TRIP Agreement. These reforms have given Turkey an extensive legal framework for the protection of intellectual and industrial property rights.

#### **Competition**

The Decision 1/95 of Turkey-EU Association Council concerned obliges Turkey to harmonize its legislation on competition rules with that of the EU. Within the first year following the entry into force of the Custom Union, all of the EU's block exemption directives and the related principles in case law had to be adopted. Furthermore, all agreements, decisions and concerted practices between undertakings that could distort or limit competition, as well as any abuse of dominant position had to be prohibited, insofar as they would affect trade between the parties.

The first step in this field was the adoption of Act No: 4054 on the Protection of Competition in 1994 prior to the establishment of the Customs Union. The key provisions of Turkey's competition law are based on EU competition law. To implement the Competition Law, the government established in 1995 an independent Competition Authority and Competition Board which became operational in 1997.

Within the scope of harmonization in this field, state aids are of vital importance as they distort or threaten to distort competition by favoring certain undertakings or the production of certain goods are incompatible with the proper functioning of the Customs Union. In accordance with this basic principle, Turkey has undertaken to carry out the necessary legislative amendments. However Turkey still needs to increase efforts in this area. It was stated in Turkey 2014 Progress Report prepared by the European Commission that Turkey has made no progress lately in the field of state aid. Legislation implementing the State Aid Law is required to make state aid control effective, but has again been postponed. A number of aid schemes continue to breach the customs union. Furthermore, the Commission wants Turkey to set up an independent state aid monitoring authority.

#### **Public Procurement**

In the field of monopolies, within the first year following the entry into force of the Customs Union, Turkey had to uphold the principles embodied in the EU legislation and case laws concerning public undertakings or undertakings to which special or exclusive rights have been granted. Furthermore, within two years following the entry into force of the Decision No: 1/95 of Turkey-EC Association Council, state monopolies of a commercial character had to be adjusted progressively, so as to ensure that no discrimination exists between nationals of member states and of Turkey.

With respect to harmonization, the Public Procurement Act entered into force in 1<sup>st</sup> of January 2003 and a legally and administratively independent Public Procurement Authority in charge of monitoring public procurements and deciding on complaints related to procurements started to operate in 2002.

However, it has been stated in the progress reports prepared by the Commission that further legislative alignment needs to be pursued especially in public procurement. Although institutions and administrative capacity are in place, public procurement policy coordination and possible external influence on public tenders are issues of concern for European authorities. In the reports, it is emphasized that Turkey needs to repeal derogations and restrictive elements that are not in line with the *acquis*.

### **Customs**

Within the framework of the Customs Union, among Turkey's obligations are the modernization and restructuring of customs administration. In this context, the project on modernization of customs that started in 1998 can be deemed as not only an automation but also a modernization project; which aims at reorganizing the customs administration and developing and implementing IT systems for customs procedures to ensure customs controls to be held more effectively as well as modification of customs legislation and procedures to bring them in line with the *acquis*.

The Decision No: 1/95 of Turkey-EC Association Council has also foreseen that Turkey adopts the customs legislation of the Community. In this context, with the entry into force of the Customs Code's (No: 4458) on the 5<sup>th</sup> February 2000, Turkey fulfilled its obligations in this field and brought its legislation in line with the Community Customs Code regarding the issues such as origin of goods, customs value, entering to and leaving the customs territory of Turkey.

### **Institutional Cooperation**

The Decision No: 1/95 of Turkey-EC Association Council has also brought three important arrangements related to institutional cooperation between the parties.

- A Customs Union Joint Committee has been established with the purpose of exchanging views and information, formulating recommendations to the Association Council and ensuring the proper functioning of the Customs Union.
- A mutual consultation procedure has been established in order to adopt new legislation or amending existing legislation, in areas of direct relevance to the operation of the Customs Union.
- Turkish experts are given the opportunity to participate into the work of certain commissions and technical committees in areas of direct relevance to the functioning of the Customs Union. (See Association Institutions)

In addition, Customs Cooperation Committee and several subcommittees have also been set up to improve the institutional cooperation between the parties. On the other hand, technical committees are of vital importance within the functioning of the Customs Union. However, Turkey could join only some of these technical committees such as Nomenclature, Customs Code, External Trade Statistics and Textiles Committees as an observer, i.e. without having the right to vote. Furthermore, Turkish experts do not have the right to join the Committee 133 which has an important role on determining the trade policies of the Union, since it is not a member of the EU. Moreover, the envisaged mutual consultation mechanism has not functioned effectively.

### **Modernisation Process**

Turkey-EU Customs Union that had been prepared within the perspective of full membership has been in force more than the foreseen time. It has a number of deficiencies in today's conditions. Compared to the Customs Union with Turkey, the EU has been conducting more comprehensive commercial relations with the third countries through the FTA's that were concluded during the last years and composed of a range of areas including agriculture, services, investments and public procurement. In order to eliminate the current asymmetry in Turkey's commercial relations with the EU and accommodate to the dynamics of global trade, it is necessary for the Turkey-EU Customs Union to be modernised and deepened.

Within this context, following the completion of technical negotiations conducted with European Commission on 27 April 2015, the report that specifies the framework of negotiations was released to the public. During the joint statement on 12 May 2015, European Commissioner for Trade Cecilia Malmström and Turkey's Minister of Economy indicated that the negotiations for the modernisation of Turkey-EU Customs Union are going to begin.

Prior to these developments, the report entitled "[Evaluation of the EU-Turkey Customs Union](#)" that had been prepared by the World Bank upon the request of European Commission was published on 28 March 2014. Taking Turkey's concerns on transportation quotas, visas and FTA's into account, it has been suggested that the Customs Union should be extended in a way to include agriculture, services and public procurement. Similarly, European Commission prepared an [impact assessment](#) regarding the modernisation of the Turkey-EU Customs Union and released it to the public on 21 December 2016.