

# Turkey-EU Customs Union: Its Modernization and Potential for Turkey-EU Relations

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**ABSTRACT** *The customs union is still one of the most concrete outcomes of Turkey's gradual integration to the EU. However, due to changes in world trade, EU trade policy and Turkey-EU relations, the customs union is in need of a comprehensive revision and update. This commentary aims to analyze the current working and need for upgrading of the customs union within the overall scope of Turkey and EU relations. It is argued that the customs union is not only about the bilateral trade relationship, and its modernization could bring a breath of fresh air to Turkey-EU relations and reignite the process of Turkey's gradual integration into the EU.*

## Introduction

Turkey is at the same time a candidate and negotiating country to join the EU and an associate partner of the Union. Sometimes these multifaceted relations may confuse the observer since different strands of the relationship run in parallel and with direct and indirect effects on each other. For example, the visa liberalization process is closely related to the migration and refugee issue-area. The visa liberalization process could only be started upon the signature of the Turkey-EU Readmission Agreement on December 16, 2013. The visa issue is also indirectly related to the customs union

since it presents an extra burden for business people who would like to travel to the Schengen area for business purposes. The customs union is not only about the bilateral trade relationship since it, directly and indirectly, triggers Turkey's alignment to the EU *acquis*, rules governing the economic infrastructure, production norms and standards. The customs union between Turkey and the EU, having served multiple functions in Turkey's integration to the EU until now, is in clear need of an upgrade and overhaul. It has to be adapted to the new realities of world trade, EU trade policy and Turkey-EU relations. This process, which is denoted as a "modernization of the customs

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union” cannot be initiated due to political conditionality applied by the EU. Turkey is expected to take measures in order to realign the political situation in the country with the EU’s Copenhagen criteria, including improvements with respect to rule of law, freedom of expression, political rights and related freedoms. The modernization of the customs union, if it could be started, could also induce an improvement in Turkey with respect to reigniting fundamental reforms and in turn accelerate Turkey’s compliance with the membership criteria in the above-mentioned areas. This process is in the interests of both Turkey and the EU since it would work to correct the imperfections in the functioning of the customs union and expand the bilateral trade relationship to include new sectors of the economy, such as agriculture, services and public procurement. In this way, the modernization of the Turkey-EU customs union would act as a trigger that would place the relationship on a new footing and fa-

cilitate Turkey’s integration to the EU Internal Market.

The customs union between Turkey and the EU dating back to December 31, 1995, is actually based upon the Association relationship between Turkey and the European Economic Community (EEC). The Ankara Agreement of 1963 established an Association between the parties, the last phase of which was based upon a customs union to be gradually built by consecutive steps. Additional Protocol of 1970 determined the timing and conditions of the transition phase leading to the customs union by gradually lifting customs duties and quantitative barriers in the trade of industrial goods between the parties and Turkey’s alignment to the EU’s Common Commercial Policy (CCP) and Common External Tariff (CET).<sup>1</sup> While the EC of the time abolished all customs duties levied on goods imported from Turkey with the exception of such goods as textiles and oil products above a certain quota,<sup>2</sup> Turkey would abolish customs duties on EC industrial products over a period of 12 and 22 years respectively from the date of entry into force of the Additional Protocol.

The transition to the customs union was finally accomplished upon the Association Council Decision numbered 1/95 of March 6, 1995, and has been in operation since concerning industrial products and the industrial component of processed agricultural products. While it fully liberalized trade between Turkey and EU countries, it also involved the equalization

of Turkey's tariffs implemented to goods from third countries as well as harmonization of external trade policy, and related policies such as competition, consumer protection, intellectual property protection etc.

At the time it entered into force, the customs union could be considered as a Plan B, i.e. the second best option for the improvement of Turkey and EU relations. The best scenario would be Turkey's membership and hence becoming a party to the customs union by way of accession to the EU and its institutions. The customs union included mechanisms for consultation and notification with regard to trade policy measures and resolution of disputes between the Parties. However, such mechanisms included in the Association Agreement and the customs union decision later proved to be quite ineffective. Turkey's voluntary application of the common external tariff (CET) and alignment with the CCP began to be questioned as Turkey's membership prospect waned.

Tansu Çiller, Turkish Prime Minister of the time, promised full membership for her country in three years as the customs union was entering into force. Hence the customs union was not seen as an end in itself but as a station before reaching the final destination, which was full membership. Turkey was finally able to open membership negotiations with the EU on October 3, 2005, only to be partially suspended by the Council's decision in 2006. Ironically, those chapters that were considered by the Council

to be linked with the customs union<sup>3</sup> were decided not to be opened while none of the chapters were to be provisionally closed until Turkey complied with the EU's demand to open its ports and airports to ships and planes originating from Southern Cyprus.<sup>4</sup>

## **Background and Preparations for the Modernization Process**

As the customs union relationship continued without sufficient progress in accession negotiations and the prospect of membership dimmed, problems in the functioning of the customs union became more noticeable. Turkish officials voiced concerns over the benefits of the customs union. As early as 2002, the then Minister of State responsible for trade, Kürşad Tüzmen, answered a question on the customs union by noting that: "Had we signed a free trade agreement instead of a customs union, maybe it would have been more beneficial."<sup>5</sup>

The Transatlantic Trade and Investment Partnership (TTIP) talks that started between the EU and the U.S. in June 2013 further fuelled a sense of urgency in Turkish policy circles and the business community. A free trade area that would ensue from such a partnership would open up the Turkish market to American goods that would be able to enter via the EU, without giving a reciprocal advantage to Turkish goods in the American market. Several solutions were debated such as a "docking" that would make it possible for countries

(L-R) EU President Tusk, Turkish President Erdogan and European Commission President Juncker attend a joint news conference with the Bulgarian Prime Minister Borisov in Varna on March 26, 2018.

DIMITAR DILKOFF / AFP / Getty Images



like Turkey which has special trade relations with either of the parties to accede to the Agreement once it is finalized.<sup>6</sup> Then former Minister of Economics, Zafer Çağlayan, voiced critical opinions on the customs union and drew attention to its shortcomings. He said “if the EU will not take the customs union process a step forward then we should make a Free Trade Agreement with the EU instead of customs union.”<sup>7</sup> Deputy Prime Minister of the time, Ali Babacan, however, stressed the importance of the customs union and the difficulty of withdrawing from it: “It’s not that easy to say we’re angry and we’re out. He who rises in fury reaps damage from his fall. We always have to think strategically.”<sup>8</sup>

The “Positive Agenda” launched by Commissioner Füle in 2012 also included enhanced cooperation in

trade<sup>9</sup> which would imply preparations for an upgrade of the customs union. As the Association Agreement already embodied targets for an enhanced relationship in areas of services, agricultural trade, free movement of capital and workers, the aim of revitalizing the relations could be based upon this framework. However, the positive agenda did not produce noticeable results due to the difficulties in revamping the relations. While the EU was still recuperating from the financial crisis as the “Fiscal Compact”<sup>10</sup> entered into force, Turkey was embroiled in its internal problems and reacting to disturbances in the region, notably the Syrian crisis.

A report commissioned by the European Commission and prepared by the World Bank acted as a groundbreaking document that proved to fa-

cilitate the process by putting forward proposals for an upgrading of the customs union that both sides found to be feasible.<sup>11</sup> Minister of the Economy, Nihat Zeybekçi, had discussed the matter with EU counterparts and reached an agreement to renegotiate the customs union no later than June of that year.<sup>12</sup> The report indicated the possibility of a compromise between Turkey and the EU on the revision of the customs union with a view to correcting its malfunctioning, providing solutions to complaints by both sides and expanding its scope. While the report noted that the customs union benefited both parties in terms of increased trade, FDI flows to Turkey, increase in competitiveness and alignment with the EU *acquis*, it also noted that the benefits from the customs union were eroding due to changes in international trade and “design flaws”<sup>13</sup> in the customs union. The report also recommended the expansion of the customs union to agriculture and services sectors and predicted that it would stimulate further bilateral commercial ties between Turkey and the EU.

A Senior Official Working Group on the Update of the EU-Turkey customs union and Trade Relations (SOWG) had been set up on February 28, 2014 in order to prepare an initial framework for the actual negotiations on the modernization of the customs union. The SOWG met several times and produced its report on April 27, 2015, basically setting out the framework for the modernization of the customs union within the framework of three strands: revision of the cus-

## The Syrian refugee crisis that brought Turkey and the EU closer together with the aim of controlling irregular migration over the Aegean led to the adoption of a joint action plan

toms union decision with a view to solving problems and design flaws, expanding it by the inclusion of additional sectors, i.e. services, agriculture and public procurement and modernizing the customs union by way of an improved institutional structure.<sup>14</sup>

Minister Zeybekçi and Member of the Commission responsible for trade, Cecilia Malmström met on May 12, 2015 and expressed that they agreed to start the process of modernization of the customs union by first tackling internal procedures with a view to acquiring a negotiation mandate. The Syrian refugee crisis that brought Turkey and the EU closer together with the aim of controlling irregular migration over the Aegean led to the adoption of a joint action plan dated November 29, 2015 and the EU-Turkey Statement of March 18, 2016. Both documents were focused on the migration issue while they also referred to other prevalent topics in Turkey-EU relations, one of them being the customs union. Point 10 of the joint action plan noted that formal negotiations on the upgrading of the customs union could start by the end of 2016. The Turkey-EU state-

## Both international trade and EU trade policy took a new turn after the Doha Round of multilateral trade negotiations

ment of March 18 also included a reference to the customs union: "The EU and Turkey welcomed the on-going work on the upgrading of the customs union."<sup>15</sup> Hence modernization of the customs union was viewed as a vital part of any attempt to revitalize, or in the Commission's terminology re-energize, Turkey and EU relations.

On the EU side, the Commission had already started preparations for the negotiation mandate by commissioning an economic impact analysis report on the issue. The report was published on December 21, 2016, together with a communication to the Council and the Parliament asking for a mandate to start formal negotiations with Turkey.<sup>16</sup> Turkey's Ministry of the Economy also commissioned an impact analysis on the possible effects of the modernization process, which produced positive predictions and published a press release summarizing the findings of the report.<sup>17</sup> Both reports produced positive forecasts for the effects of the modernization process.

The European Commission's impact assessment report worked on the basis of three different scenarios for the future of Turkey-EU trade relations:

(i) no policy change –meaning preservation of the customs union as it was, (ii) customs union modernization and free-trade agreement (FTA) in additional areas –including services, agriculture and public procurement, (iii) a deep and comprehensive free trade area.<sup>18</sup>

The report concluded that based on the model implemented for the analysis, option B which would be customs union modernization and FTA in additional areas would produce the most beneficial results for Turkey and the EU. While this model was expected to generate a change in real GDP of about 0.01 percent in the EU, this change would be more significant in Turkey: 1.44 percent. The EU was also expected to experience an economic welfare increase of 5.4 billion Euros while Turkey was expected to see its economic welfare rise by 12.5 billion Euros. In terms of bilateral export gains, the EU was forecasted to increase its exports to the Turkish market by 27.1 billion Euros and Turkey would increase its exports to the EU by 5.0 billion Euros. Regarding the expected impact on individual sectors, the report concluded that for the EU the results would be positive for all the 31 sectors covered by the study. For Turkey, the report notes that the largest increases in exports to the EU would take place in the other industrial goods, textiles and footwear sectors. In terms of changes in value added across agricultural sectors, meat products, processed food, vegetables, fruits, beverages and tobacco are expected to experience increases while cereals, dairy products

and rice sectors are expected to undergo a significant decrease.<sup>19</sup>

The Ministry of Economy's study was based on four scenarios: (i) resolution of structural problems of the customs union, 50 percent liberalization in trade of agricultural products, reciprocal opening of services and public procurement markets, (ii) full liberalization of trade in agricultural products and resolution of the FTA problem so that Turkey would be able to sign more FTAs with important trade partners, (iii) transforming the customs union to a Free Trade Area by signing an FTA between Turkey and the EU including only industrial goods, (iv) transforming the customs union into a Free Trade Area involving industrial and agricultural goods, services and public procurement sectors by signing a deep and comprehensive FTA.<sup>20</sup>

The impact analysis concluded that the second option would produce the most favorable results by increasing Turkey's GDP by 1.9 percent, increasing Turkey's overall exports by 15 percent and exports to the EU by 24 percent and raising consumer well-being by decreasing consumer prices by 1.5 percent and increasing household consumption by 1.6 percent.

Although the numerical projections regarding changes in GDP or export volume were variable, both studies concluded that the most favorable option would be achieved when the customs union is revised and made to work more effectively by resolving its structural problems, including

agriculture, services and public procurement into the remit of the bilateral trade framework between Turkey and the EU. While the EU recommended the opening of negotiations for the process to begin, political differences between Turkey and the EU, tensions with EU member states and Turkey's unsatisfactory record in the fulfillment of such membership criteria as rule of law, independence of the judiciary, freedom of expression and freedom of the media, blocked the process to go forward. The EU's tying of political conditionality to the opening of formal negotiations on the upgrading of the customs union may be viewed as a natural extension of its external and enlargement policies. However, from another perspective, the negotiations themselves can be leverage for the EU to induce positive change in Turkey towards EU norms and values.

## **Turkey-EU Customs Union: Problems and Prospects**

The customs union relationship based on Decision 1/95 of the Association Council provided for an upsurge in Turkey-EU trade relations, increase in FDI flows, harmonization of EU legislation especially with regard to Single Market issues, and Turkey's integration into European value chains.<sup>21</sup> However, as the relationship progressed it also accumulated problems in its functioning. In addition, both international trade and EU trade policy took a new turn after the Doha Round of multilateral trade negotiations. Significant trade play-

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ers such as the EU aimed to diversify and expand their trade relations and opportunities for privileged access to foreign markets by way of deep and comprehensive free trade deal.<sup>22</sup>

The TTIP was an example of how far such agreements could go. Although the TTIP was suspended by the Trump Administration and the possibility of a Euro-Atlantic free trade area was put on hold, the EU continued to negotiate and implement such agreements notably the EU-Canada Comprehensive Economic and Trade Agreement (CETA) that provisionally entered into force on September 21, 2017, Deep and Comprehensive Free Trade Agreement with Ukraine that has provisionally been applied since January 1, 2016 and Economic Partnership Agreement with Japan the negotiations of which were concluded on December 8, 2017.<sup>23</sup> The increase in the number of such agreements and their conclusion with leading trade actors served to magnify the problems in the customs union.

Turkey as a customs union partner was directly influenced by the EU's FTA's. According to Article 3 of the customs union decision:

Products from third countries shall be considered to be in free circulation in the Community or in Turkey if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in the Community or in Turkey, and if they have not benefited from a total or partial reimbursement of such duties or charges.<sup>24</sup>

Hence an industrial good entering the EU from a country with which the EU had signed an FTA –let's call it Country X– can enter the EU customs territory free of tariffs and to Turkey due to the customs union. While Country X enjoys privileged access to the EU customs territory due to the conditions of the FTA, meaning tariff-free trade, Turkey will not be able to derive the same advantage while exporting to the territory of country X since it is not a party to the FTA between the EU and Country X. Turkey will have to negotiate a separate FTA with Country X to be able to enjoy advantages of free trade which will lead to a considerable time gap between the signing and entry into force of the FTA with the EU. In the case of some actual countries such as Algeria and South Africa, countries may not feel the need to sign separate deals with Turkey also owing to the fact that they already enjoy customs-free access to the Turkish market via the EU. The EU

includes a “Turkey clause”<sup>25</sup> in trade agreements it signs with third countries expressing the need to sign an FTA with Turkey as a customs union partner of the EU. However such a clause does not have a binding effect on the third country.

When Country X is a country with which Turkey has negligible trade links, the signing of an FTA with the EU but not with Turkey does not constitute a significant irritant. However when the country in question is a major trade player such as South Korea or Japan then it becomes an urgent issue to be resolved. Turkey’s expectation regarding a resolution of this issue is that negotiations for an FTA with the EU and Turkey will start, continue in parallel and enter into force at the same time.<sup>26</sup>

Other related issues that create problems in the customs union are the asymmetric relation regarding trade policy. Turkey is to align its external trade policy to that of the EU and adopt the CET.<sup>27</sup> Articles 54 to 60 of the customs union decision concern “consultation and decision procedures” and allow for informal consultation of experts in Turkey when the Commission engages in drafting of new legislation in areas of direct relevance to the customs union, consultation within the customs union Joint Committee and informing the Commission when Turkey prepares to adopt new legislation in a directly related area, involvement of Turkish experts in drafting of measures and “in the work of a number of technical committees which assist the Com-

mission of the European Communities in the exercise of its executive powers in areas of direct relevance to the functioning of the customs union...”<sup>28</sup> Despite quite detailed provisions regarding the ways to involve Turkish experts in the making of legislation relevant to the customs union, the informal and non-binding nature of such mechanisms, the emergence of tensions and bottlenecks in the overall framework of Turkey-EU relations that hampered an atmosphere of trust and willful cooperation prevented the practical value of such measures. It would be irrational to expect Turkey’s full participation into trade policymaking as long as it is not a member of the EU. However, consultation and notification mechanisms can be improved with a view to having a more effective, timely and purposeful procedure at hand for mitigating the asymmetrical nature of the customs union as much as possible.

As implied in the latest country report prepared by the European Commission, Turkey’s conformity to the EU’s trade policy declined as Turkey deviated from the CCT, defined as a case of “backsliding” in the area of external relations and noted as an infringement of the customs union.<sup>29</sup> As long as the resolution of problems associated with decision making and FTAs are not resolved, the foundations of the customs union are likely to deteriorate even further.

Another issue that needs to be revised and upgraded is related to dispute settlement mechanism in the cus-



Turkish representatives pose for a family photo during the EU-Turkey High-Level Economic Dialogue in Brussels on December 8, 2017.  
DURSUN AYDEMİR / AA Photo

toms union. The Ankara Agreement that formed the backbone of the customs union referred to dispute settlement within the Association Council. Article 25 stipulated that Turkey and the EEC could submit to the Association Council "any dispute relating to the application or interpretation of this Agreement" and that the Council could adopt a decision with a view to settlement, refer the matter to the Court of Justice of the EC or another court, or finally set up procedures for arbitration or other judicial methods.<sup>30</sup> Article 61 of the customs union decision stipulates conditions for the settlement of disputes including taking the problem to arbitration in matters concerning the adoption of protection, safeguard or rebalancing measures by either party.<sup>31</sup> However, the accumulation of unresolved issues over the years attests to the fact

that dispute settlement is an area that has been vaguely defined and inadequately implemented in the customs union.

Transport quotas constitute another problem associated with the free movement of goods in the customs union. Although transport is regarded as a service and services are not yet included in the customs union, it is an area directly related to the customs union and obstacles in the transport of goods directly affect the volume of trade and can thus be considered as a non-tariff barrier to free movement of goods. Transport quotas implemented by some member states and transit fees applied to Turkish trucks carrying goods to the EU have been resented by Turkish officials and members of the business community as impeding liberalized trade between

Turkey and the EU and therefore violating the customs union.<sup>32</sup>

The matter of transit fees and taxes levied by Hungarian authorities to Turkish trucks were submitted to a preliminary ruling by the European Court of Justice in 2017. The Court ruled that such additional fees and taxes constituted a charge having equivalent effect to a customs duty and hence prohibited under the customs union decision:

Article 4 of Decision No 1/95 of the EC-Turkey Association Council of December 22, 1995, on implementing the final phase of the customs union must be interpreted as meaning that a tax on motor vehicles such as that at issue in the main proceedings, which must be paid by persons operating heavy goods vehicles registered in Turkey and in transit through Hungarian territory, constitutes a charge having equivalent effect to a customs duty within the meaning of that article.<sup>33</sup>

Another case opened in Austria and referred to the Court of Justice for a preliminary ruling concerned transport quotas implemented to Turkish trucks explored the question whether such quotas in view of restricting the volume of trade between the parties can be considered to have an effect equivalent to a non-tariff barrier. The case is not yet finalized.

Visa issue is also another problem area which is not directly part of the customs union but closely linked to its functioning. Visa requirement

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constitutes a barrier to the freedom of movement for Turkish citizens including producers and traders who produce and trade the goods in free circulation in the customs union. Thus, the lack of visa-free travel for business purposes constitutes a setback in the functioning of the customs union. A business person who wishes to travel to the Schengen area for a business meeting will have to receive a letter of invitation from its counterpart which places its negotiation position in jeopardy. Moreover, the request of commercial accounts, bank statements etc. can rightfully be regarded as an infringement of privacy of commercial data. The effort, time and expenditure that go into the visa application process produce a disproportionate burden on the applicant and caused delays in the actual travel arrangements to the Schengen area.<sup>34</sup>

Article 41(1) of the Additional Protocol to the Ankara Agreement, the

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standstill clause, stipulated that the parties should not bring any new restrictions that go farther than the status quo within the scope of freedom of services and establishment.<sup>35</sup> In the Soysal case, the European Court of Justice interpreted this provision to mean that a member state that had not implemented a visa to Turkish nationals entering its territory prior to the entry into force of the Additional Protocol cannot introduce a visa after that date.<sup>36</sup> For member states that acceded to the EU after the entry into force of the Additional Protocol, this date would be the date of entry to the EU since they would then be bound by the EU *acquis*. Germany notified that it would not require a visa for Turkish citizens traveling to the country for 90 days within a 180-day period for the purposes of provision of services.<sup>37</sup> However, in the Demirkan case, which was concerned with the question of whether or not Turkish citizens traveling to the Schengen area for the purpose of not providing but receiving services could be considered within the framework of the freedom of services, the Court ruled differently and concluded that such

a case did not qualify for visa-free travel to the Schengen area.<sup>38</sup>

Turkey's search for visa-free travel to the EU diverted from the legal path to the visa liberalization process after 2013. In parallel with the signing of the Readmission Agreement between Turkey and the EU on December 12, 2013, the visa liberalization roadmap was delivered to Turkey, which included a process of visa liberalization based on Turkey's fulfillment of 72 criteria.<sup>39</sup> The Syrian refugee crisis of 2015 and 2016 also accelerated the visa liberalization process. The Joint Action Plan adopted on November 29, 2015 for cooperation on the refugee issue also incorporated a target date for the lifting of the visa requirement: October 2016, which was then moved to an even earlier date, June 2016, in the Turkey-EU Statement of March 18, 2016. During the following April, several laws including the adoption of a data protection law, adoption of several Council of Europe conventions, preparations for the transition to biometric passports, border control and patrols, and strengthening of the capacity to host migrants were realized.<sup>40</sup> The European Commission recommended lifting the visa requirement for Turkish citizens conditional upon Turkey's fulfillment of the remaining 7 criteria.<sup>41</sup> However, a change in government in Turkey and the July 15 coup attempt derailed Turkey's efforts in this area until February 2018 when Turkish officials handed in a paper to the European Commission elaborating measures intended to be adopted to fulfill the remaining criteria.<sup>42</sup> It is

yet to be seen whether the visa liberalization will take place in the near future, but it is apparent that the visa liberalization will acquire a renewed urgency in parallel with the probable start of negotiations on the liberalization of services between Turkey and the EU.

## **Present Situation and Possible Impact on Turkey-EU Relations**

Following the Commission's request for a mandate to negotiate with Turkey on behalf of the EU on December 21, 2016,<sup>43</sup> a waiting period ensued in which it was up to the Council and European Parliament to deliver their decision on the issue. At the time of writing, negotiations have not yet started. The EU has made the opening of negotiations conditional upon the ending of the state of emergency in Turkey and improvement with regard to democracy, rule of law and fundamental rights. The European Parliament in its Resolution of July 6, 2017, called for the start of negotiations on upgrading the customs union by noting that "strengthening trade relations could bring concrete benefits to citizens in Turkey and the EU."<sup>44</sup> However, several member states in the Council, most notably Germany and Austria stand against starting formal negotiations with Turkey on the customs union. While Austria had made it apparent as early as August of 2016 that it would oppose any new initiatives with Turkey, German Chancellor Angela Merkel also noted that any such move would be opposed before the German elec-

tions in September 2017. Chancellor Merkel notified President Juncker on August 30 that Germany would oppose the opening of formal negotiations on the modernization of the customs union.<sup>45</sup> The Turkish-German journalist Deniz Yücel's imprisonment in Turkey was also a significant factor that worsened relations between Turkey and the EU and contributed to a hardening of Germany's position regarding Turkey.

Considerations about the large scale dismissals during the state of emergency, imprisonment of journalists, academics and civil society activists, retreat in rule of law and independence of the judiciary, limits on fundamental freedoms and the constitutional referendum held in April 2017 that aimed to create an executive presidency that according to the EU would lead to a disproportionate centralization of executive power, led to the emergence of a common understanding in the EU: Turkey was moving away from the EU by infringing the political criteria for membership. The EU had to prevent a further isolation of Turkey and its decoupling from the EU, and yet give a message that such infringement of EU values would not be tolerated. An opening of negotiations on the customs union without the lifting of the state of emergency and an improvement in rule of law and human rights in Turkey would be perceived as jeopardizing the EU's adherence to its norms and values. Moreover, the deterioration of relations between Turkey and individual member states, notably the Netherlands and Germany due

to spats and obstruction of campaign talks in these countries by Turkish politicians prior to the April referendum made it even more difficult and increased the political cost of taking any steps with a view to the start of customs union talks with Turkey.<sup>46</sup> The coalition agreement between the CDU and SPD that could be reached after 5 months of stalemate following the elections in Germany noted that no new chapters would be opened in Turkey's accession negotiations and no progress could be achieved in the visa liberalization process or upgrading of the customs union.<sup>47</sup>

The upgrading of the customs union would bring about multiple benefits for Turkey-EU relations by integrating the Turkish economy into the Single Market, stepping up legislative harmonization and accelerating relations towards a common goal. Without a modernization process, it would be more and more difficult to continue the customs union relationship due to the design flaws and problems encountered in its functioning. Hence, a revision and upgrading of the customs union would improve the situation by resolving problems outlined above. In addition to its revision, its expansion to include new sectors such as services, agriculture and public procurement is expected to reap the potential of the Association Agreement and bring further dynamism to the bilateral trade relationship. A successful overhaul and modernization of the customs union also promises to recalibrate Turkey's alignment to the EU *acquis*, and improve adaptation to EU standard and

norms in related policy areas. The 2018 report on Turkey drafted by the European Commission<sup>48</sup> noted backsliding in a number of areas including political criteria such as rule of law, fundamental rights, i.e. freedom of expression, media, association, procedural and property rights, independence of the judiciary, public service and human resources management. However, these were not the only issues where Turkey was experiencing backsliding according to the report. Economic conditions and the business environment, social policy and employment, information society and audio-visual policy and external relations were other topics where backsliding was observed. The increase in the number of areas where Turkey is moving away from the EU norms and policies is alarming for the future of Turkey-EU relations. As Turkey's largest export market, and leading source of foreign direct investment to Turkey and also as a model of governance, preserving and improving relations with the EU remains a priority.

Modernization of the customs union cannot replace the goal of full integration through membership. Accession negotiations provide the best way for a country's integration into the Single Market and harmonization to EU legislation. However, due to the stalemate in the accession negotiations and the breadth of problems encountered in the process, customs union modernization is the only mechanism left in order to keep Turkey and EU relations on a forward path. It may also trigger a process of functional integration whereby liber-

alization of additional sectors of the economy would trigger alignment to EU norms and standards which in turn would facilitate a spill-over process into the political sector in terms of democratic standards, fundamental rights and rule of law. It could also bring about a social learning process which would bring Turkey closer to EU values and facilitate their internalization by public institutions and the Turkish people. In this way, Turkey would be much closer to the prospect of full membership while it would be more difficult for Turkey-skeptics in the EU to reject and try to delay or avert Turkey's membership. The benefits to be reaped from further integration could also increase the likelihood of resolution of such issues as the Cyprus problem since success and benefits of integration would increase the disposition of Turkey, the EU and its member states towards a swift resolution of disputes.

## Conclusion

On June 26, 2018, the General Affairs Council of the EU concluded that no new chapters would be opened or closed in the accession negotiations and "no further work towards the modernization of the EU-Turkey customs union is foreseen." This conclusion was not new and only reflected a consensus arrived by the EU previously as a reaction to Turkey's drift away from EU values. In addition to the employment of political conditionality by the EU to both the accession process and customs union modernization, the present political

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atmosphere in the EU inflicted by the migration crisis, deep divisions between the member states on the fundamental nature of the EU, and rising populism, also hinders a revitalization of Turkey-EU relations. Building a "transactional" relationship with Turkey, which would replace the accession process, is quickly becoming a strategy espoused by the several member states and political circles in the EU. Even in the event of a reversal of Turkey's EU perspective, modernization of the Turkey-EU customs union would remain as a priority. As noted in economic impact analyses, this process promises to bring concrete benefits to both Turkey and the EU, include new sectors into its remit and hence new economic actors and foster Turkey's alignment with the EU internal market. Keeping the customs union as it is would in fact, cause a withering away of the basic tenets of the relationship since it would put into question Turkey's continuing alignment with the EU's Common Customs Tariff. Therefore, whatever forms the Turkey-EU relationship take, the modernization of the bilateral trade relationship is a

must that needs to be urgently tackled in order for the customs union to adapt to changing circumstances. ■

## Endnotes

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