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THE UNIQUE NATURE OF MODERNIZING THE CUSTOMS UNION²

It is no secret that Turkey-EU relations are becoming more transactional in nature, despite the fact that neither of the parties is willing to put a formal end to the dormant accession process. Currently both parties—which do not have a clear strategy vis-a-vis each other—are satisfied by this “realist” framework with almost no strings attached. The basic constituents of such a relationship seem to be the continuation of the refugee deal, cooperation on anti-terrorism, energy, and security.

Apart from the refugee deal, the modernization of the Customs Union stands as the most viable component of a transactional relationship. The existing 1995 Customs Union is outdated and needs to be revised.

Facilitated by the current Customs Union, the economies of Turkey and the EU have become quite integrated. Turkey was the EU’s fifth largest trading partner in 2017,³ while the EU is Turkey’s largest.⁴ The EU remains Turkey’s most important economic partner in terms of trade, foreign investment, and tourism. The fragility of the economic situation in Turkey—namely a declining growth rate, a large and structural current account deficit, heavy reliance on short-term capital inflows, declining foreign direct

¹ <http://www.tepav.org.tr/en/ekibimiz/s/1139/Nilgun+Arisan+Eralp>

² [This evaluation note was published in Turkish Policy on September 28, 2018](#)

³ EU Commission, “Client and Supplier Countries of the EU28 in Merchandise Trade (value %),” 16 April 2018, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122530.04.2018.pdf

⁴ World Integrated Trade Solution (WITS), “Turkey Trade at a Glance: Most Recent Values,” The World Bank, <https://wits.worldbank.org/CountrySnapshot/en/TUR>

investment, and a private sector with large foreign currency liabilities—makes the EU indispensable for Turkey. On the other hand, clearly, an essential part of Turkey’s appeal for the EU is its economic potential. According to a recent survey by the European Council on Foreign Relations (ECFR), economic relations are the most important aspect of Turkey-EU relations and trade provides an important reason for maintaining the alliance.⁵ Finally, the European Commission expressed its support for the modernization of the Customs Union since the inception of the idea.⁶

The Unique Nature of Modernizing the Customs Union

The initial motive of revamping the EU-Turkey Customs Union was technical and economic, but this has since been complicated by the politics behind Turkey-EU tensions. Currently, an updated agreement is either regarded as a panacea that could take Turkey-EU relations out of a deep crisis or suspension which is thought of as a punishment for Turkey’s drift from EU norms and values. The decisions of the General Affairs Council last June indicate that the EU, countries led by Germany, do not want to initiate this process as long as Turkey continues to drift away from EU norms and values.

Talks to modernize the Customs Union began in 2014 with the initiative of the European Commission, based on an evaluation report by the World Bank.⁷ In December 2016, the Commission adopted a recommendation to open negotiations in view of the extension and modernization of the EU-Turkey Customs Union. This recommendation has been forwarded to the Council where it has been under consideration ever since.

The main aim was to bring the Customs Union up to date with global economic and commercial developments and to increase growth rates. This meant extending the Customs Union to trade in services, public procurement, and agricultural products and having a functioning, independent dispute settlement mechanism.

Improving the asymmetric structure of the Customs Union, especially in the case of common external policy, was the other main goal. At present, Turkey is obliged to follow EU decisions according to the prevailing framework and align itself to EU acquis without having a say in neither the decision making nor the “decision shaping” process. This asymmetry is especially felt when the EU concludes free trade agreements (FTAs) with third parties which Turkey is expected to follow.

⁵ Aslı Aydıntaşbaş, “The Discreet Charm of Hypocrisy: An EU-Turkey Power Audit,” European Council on Foreign Relations, 23 March 2018.

⁶ EU Commission, “Commission proposes to modernise the Customs Union with Turkey,” Press Release, 21 December 2016, http://europa.eu/rapid/press-release_IP-16-4468_en.htm

⁷ The World Bank, “Evaluation of the EU-Turkey Customs Union,” Report No. 85830-TR, 28 March 2014.

Different Motives for the Modernized Customs Union

Although in principle all sides agree on the need to reform the Customs Union, Turkey did not welcome the initiative of the Commission at the beginning. Turkey's main motive was to use it as an instrument of being a part of Transatlantic Trade and Investment Partnership (TTIP), which was considered to be very important at that time, but has yet to be negotiated and finalized.

The process of modernizing the Customs Union has the potential to strike a delicate balance that is being sought nowadays, given the dormant accession negotiations. Some also think that it might also prevent political dissonance from slipping into outright conflict.⁸ Currently, the motives behind modernizing the Customs Union go well beyond economic and commercial interests. Whereas cooperation in areas like energy, migration, and security (counter-terrorism) are purely transactional in nature, the initiative to upgrade the Customs Union embodies the spirit of a rules-based framework with a potentially transformative impact for Turkey as well as for Turkey-EU relations more broadly.⁹ Through such a rules-based functional relationship, the EU might have (or is expected to have) a leveraging transformative power through which it could support the segment of Turkish society that increasingly attributes a normative role to the EU.¹⁰

On the contrary, there are some members of the European Parliament and some member states led by Germany that view maintaining the status quo of the Customs Union/its suspension as a way to punish the political leadership in Ankara for backsliding on EU values and norms. This argument includes imposing political conditions on Turkey before the Council even issues a mandate to the European Commission to begin negotiations. Those who adopt this viewpoint might go as far as downgrading the Customs Union to a free trade area, although there is weak economic rationale behind this proposal. A free trade agreement would necessitate rules of origin, which needs to be negotiated from scratch. Whereas, the modernization of the Customs Union is more likely to be completed within a reasonable period of time.¹¹

⁸ Nathalie Tocci, "Beyond the Storm in EU-Turkey Relations," FEUTURE Voices, no. 4 January 2018, http://www.feuture.uni-koeln.de/sites/feuture/user_upload/pdf_tocci_feuture.pdf

⁹ Sinan Ülgen, "Trade as Turkey's Anchor," Carnegie Europe, 13 December 2017.

¹⁰ Senem Aydın Düzgit, "Foreign policy and identity change: Analysing perceptions of Europe among the Turkish public," SAGE Publications, 21 November 2017.

¹¹ Samuel Doveri Vesterbye and Sait Akman, "A Modernised EU-Turkey Customs Union: Experts Interviews and Analysis," European Neighbourhood Council, 2017.

The Political and Economic Benefits of the Customs Union and Expectations from the Modernizing Process

The initial EU-Turkey Customs Union that was completed in 1996 has been beneficial to Turkey not only in terms of increasing trade and competitiveness and transforming the Turkish industry via investments in technology, but it has provided the legal and institutional infrastructure of a rules-based free market economy. In this sense, the original Customs Union contributed significantly to the economic reform program of the early 2000s in Turkey that brought economic success to the country.

However, recently there has been a serious backsliding in these reforms. The institutional rules-based economic governance has been weakened. The independence and competence of regulatory institutions have been legally and effectively undermined. Instead of rules-based governance, exercise of discretionary power has become the rule. This also has coincided with the country's loss of faith in the EU accession process.

According to empirical impact assessment studies¹² prepared by parties both in the EU and Turkey, the modernization of the Customs Union would bring numerous economic benefits to both parties. The impact assessment of the EU projected expected gains to reach 5.4 billion euros or about 0.01 percent of GDP for the EU and 12.5 billion euros or 1.44 percent of GDP for Turkey.

What is expected beyond economic benefits are improvements in the rule of law which would initially be observed in Turkey's economic sphere. However, there is a low probability of this spilling over into the political domain. A reformed Customs Union is expected to deeply transform Turkey's political economy in key sectors such as services, procurement, state aid, and trade dispute settlement. It is also anticipated to bring transparency, competitiveness, and respect for universal law, at least regarding economic transactions.

¹² European Commission, "Commission Staff Working Document, Impact Assessment, accompanying the document :Recommendation for a Council Decision authorising the opening of negotiations with Turkey on an Agreement on the extension of the scope of the bilateral preferential trade relationship and on the modernisation of the Customs Union,"

http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155238.pdf

Concerns Regarding Different Approaches to the Modernizing Process

Currently, there are competing arguments to an EU-Turkey Customs Union revamp. The first approach regards the modernization of the Customs Union as a panacea for Turkey-EU relations and expects that this process would have a transformative power over Turkey.¹³ This approach belongs to democratic and reform-minded people in Turkey and those in the EU who believe that forestalling this initiative would hinder economic and political engagement with Turkey and discourage domestic reforms in Ankara. This group wants the negotiations to start and they want the EU to send the ball to Turkey's court.

Although this approach is definitely more ethical and beneficial, there are some concerns surrounding it:

- Will modernizing the Customs Union fulfill the expectations of the EU as a transformative power?
- Even if the process would have a positive impact on economic governance and rule of law in the economic sphere in Turkey, can these be extended to the political sphere?
- Will the Turkish administration be willing to accomplish the reforms regarding transparency in the areas of state-aid, public procurement, and the re-establishment of the independence of regulatory authorities? Will the Turkish administration recognize the jurisdiction of an independent international dispute settlement?

The second approach which rejects the initiation of negotiations for the modernization of the Customs Union is observed among some EU Member States, led by Germany. This approach manifested in the meeting of EU General Affairs Council in June of 2018:

The Council notes that Turkey has been moving further away from the European Union. Turkey's accession negotiations have therefore effectively come to a standstill and no further chapters can be considered for opening or closing and no further work towards the modernisation of the EU-Turkey Customs Union is foreseen.¹⁴

They would like to block the initiation of the negotiations for modernizing the Customs Union by not giving a mandate to the European Commission towards this end. It is not easy to understand this approach as the mandate to be given is to negotiate not conclude the modernizing process, and all of the conditionalities can, in principle, be imposed during the

¹³ Sinan Ülgen, "Trade as Turkey's Anchor," Carnegie Europe, 13 December 2017, <http://carnegieeurope.eu/2018/01/23/toward-renewed-eu-turkey-customs-union-event-5796> ; Nathalie Tocci, "Beyond the Storm in EU-Turkey Relations," FEUTURE Voices, no. 4, January 2018, http://www.feuture.uni-koeln.de/sites/feuture/user_upload/pdf_tocci_feuture.pdf

¹⁴ EU General Affairs Council, "Outcome of Proceedings," 26 June 2018, <http://www.consilium.europa.eu/en/meetings/gac/2018/06/26/>

negotiation process and/or at the end of it as the European Parliament has to approve the upgraded Customs Union.

Supporters of this approach argue that Turkey is not seriously invested in the proposed overhaul.

Those who support the counter approach accept this argument but they question why Turkey's so-called bluff is not being called out. Otherwise, the leadership of Turkey would be given an easy exit card from accession negotiations, as well as a narrative of being the victim of the EU, which can be exploited in the domestic Turkish politics.¹⁵ Unfortunately, the Customs Union remains the only instrument for sustaining a collaborative framework between the two parties.

Concluding Remarks

Given the downturn in Turkey-EU relations, a transactional relationship may be the only option to maintain mutual engagement. A radical transformation in the relationship can only be achieved via democratization in Turkey. However, transactional relationships should be based on trust and mutually agreed-upon values—first and foremost the rule of law, and a certain level of rational thinking on the part of both parties. The question remains: “What can the EU do in the face of disregard for basic principles of the rule of law in Turkey today? What actions might make a difference?”¹⁶

The answers being given by proponents of a value-based EU policy who are still interested in contributing to building a democratic and stable Turkey is that the rule of law and human rights in the country should remain part and parcel of these priority actions, or at least a revised set of good governance conditions should be attached to all the cooperation packages with Turkey. In this sense, revamping the Customs Union can at least contribute to the improvement of good governance conditions in Turkey.

However, the politicization of Turkey will continue to affect the course of all technical decisions taken in Europe, as it is currently affecting the process of modernizing the Customs Union. Hence, this initiative is falling victim to the deterioration of the relations between Turkey and the EU and the negative political mood regarding Ankara's political leadership in Europe. This is rather unfortunate because modernizing the Customs Union is one of the only remaining areas in which the EU can gain leverage over Turkey.

¹⁵ Daniel Gros, Faruk Kaymakçı, Kati Piri, Sinan Ülgen, and Marc Pierini, “Toward a Renewed EU–Turkey Customs Union,” Carnegie Endowment Events, 31 January 2018, <https://soundcloud.com/carnegie-endowment/toward-a-renewed-euturkey-customs-union>

¹⁶ European Stability Initiative, “The Chapter Illusion: For honesty and clarity in EU-Turkey relations,” 15 May 2017, <https://www.esiweb.org/pdf/ESI%20-%20The%20Turkey%20chapter%20illusion%20-%2015%20May%202017.pdf>

There is still some hope among the democratic-minded citizens of Turkey that the EU will not continue its current “muddling through” policy but will adhere to one of the targets of its Global Strategy that was published in 2016. This involves increasing the resilience of Turkey, where resilience is defined as “a broader concept, encompassing all individuals and the whole of society.”¹⁷

Improvements in the rule of law will be a significant factor in increasing the resilience of Turkish society. Currently, the only instrument in the hands of EU in this sense seems to be the modernization of the Customs Union. Hence, the EU should change its stance on blocking the modernization process and initiate negotiations which might have a transformative power on Turkey.

¹⁷ EU Commission, “Joint Communication on ‘A Strategic Approach to Resilience in the EU’s External Action,’” Fact Sheet, 7 June 2017, http://europa.eu/rapid/press-release_MEMO-17-1555_en.htm