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ABSTRACT

As the final stage of EEC-Turkey Association Agreement (Ankara Agreement-1963), the Customs Union between Turkey and the European Union was established on 1 January 1996 with the Decision No. 1/95 of the EC-Turkey Association Council. With the establishment of the CU, Turkey and Turkish industry have got into a reform process. While Turkish governments have fulfilled their obligations for the smooth functioning of the CU, Turkish industry has adapted itself with EU market conditions in order to compete with industries of EU member states. With the CU, the parties have had free access to markets of each other for industrial goods and exportation of Turkey to the EU as well as its importation from the EU have increased dramatically. In Turkey, production and consumption have multiplied, technological developments have been ensured, competitiveness has increased, foreign direct investment has escalated, and economic growth and development has been provided. However, the CU whose provisions were designed as if it would exist for 5 years has caused significant problems which were not taken into account or attached importance before the ACD No. 1/95 was signed.

This study examines certain problems of Turkey within the scope of negotiating free trade agreements with third countries, which is one of the obligations of Turkey in order to align Common Commercial Policy of the EU. Although some of the problems correlated with FTAs have existed since the establishment of the CU, they mainly started to draw attention in recent years after the shift in foreign trade policy of the EU. As a result, unfair competition conditions have occurred for Turkey and smooth functioning of the CU has been disturbed. Within this context, in the study, the reasons of FTA problems of Turkey within the CU will be revealed and their economic results on Turkey will be evaluated. In order to handle these problems, the possible practices of Turkey within the existing legal structure will be assessed and then, alternative solutions to these problems will be discussed under the ongoing or new initiatives.

Key words: Turkey, the European Union, the Customs Union, Free Trade Agreements.

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ABBREVIATIONS AND ACRONYMS

AB	Appellate Body
ACD	Association Council Decision
ACP	African, Caribbean and Pacific
CCP	Common Commercial Policy
CCT	Common Customs Tariff
CEPR	Center for Economic Policy Research
CET	Common External Tariff
CGE	Computable General Equilibrium
CU	EU-Turkey Customs Union
CUJC	Customs Union Joint Committee
EC	European Community
ECSC	European Coal and Steel Community
EEC	European Economic Community
EU	European Union
FDI	Foreign Direct Investment
FSECC	Framework for Strategic Economic and Commercial Cooperation
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Trade in Goods
GPC	Generalised Preferences Committee
GSP	Generalised System of Preferences
GTAP	Global Trade Analysis Project
HLWG	High Level Working Group
IMF	International Monetary Fund
MFN	Most Favoured Nation
NAFTA	North Atlantic Free Trade Agreement
OECD	Organization for Economic Cooperation and Development
PTA	Preferential Trade Agreement
ROO	Rules of Origin
RTA	Regional Trade Agreements

SOWG	Senior Officials Working Group
TFEU	Treaty on Functioning of the European Union
TPC	Trade Policy Committee
TPP	Trans Pacific Partnership
TRIPS	Trade Related Intellectual Properties
TTIP	Transatlantic Trade and Investment Partnership
US	United States
WPGSP	Working Party on Generalised System of Preferences
WTO	World Trade Organization



INTRODUCTION

The European Union is the most successful economic integration that many countries desire to be member of it. Turkey is one of the first countries who applied to the European Economic Community for “associate membership” in 1959 in order not to be excluded by the European powers and to get benefit from being member of an important political and economic structure. Within this context, Turkey-EU relations were initiated with Ankara Agreement signed by Turkey and EEC on 12 September 1963. This agreement, which entered into force on 1 December 1964, aimed at securing Turkey's full membership in the EEC through the establishment in three phases of a customs union which would serve as an instrument to bring about integration between the EEC and Turkey.

On the way leading to the full membership of Turkey to the EU, the Customs Union was established on 1 January 1996 between Turkey and the European Communities with the Association Council Decision No 1/95. The CU was an important stage for the economic integration of Turkey and the EU. Customs duties and quantitative restrictions for industrial goods and processed agricultural goods were eliminated between the parties and common external tariffs were set against third parties. Moreover, Turkey has undertaken obligations on applying Common Commercial Policy of the EU, harmonizing technical regulations and adopting legislation on state aids, competition, and protection of intellectual, industrial and commercial property.

Although it was thought that Turkish industry would not be able to compete with European industry, Turkish producers and exporters made up the difference between them and the European counterparts. Turkish products gained competitiveness in the EU market in a short time. Thanks to the CU, Turkey attracted FDI from third countries who want to take advantage of duty-free access to the EU market by jumping over the common external tariff of the CU and from EU member states who want to benefit from low cost and quality labour in Turkey. As a result, FDI has provided technology transfer to Turkey and created jobs.

However, apart from its benefits, the asymmetric structure of the CU has created certain problems for Turkey in trade matters. Some of these problems are related with FTA negotiations with third countries. Turkey, in order to harmonize its commercial policy with that of the EU, has to negotiate FTAs on mutually advantageous basis with third countries with which the EU has an FTA as well as align autonomous regimes of the EU.

However, Turkey does not have a voice in decision making process of CCP of the EU and thus in determining the scope, process and partners of the FTA negotiations. Also, Turkish

experts cannot participate in important trade related EU committees. The EU specifies the countries with whom it will initiate FTA negotiations and determines the scope and the timetable of the agreement without taking into account the opinions or decisions of Turkey.

Besides, Turkey has difficulties to bring these third countries to the table in order to initiate FTA negotiations with Turkey because third parties already have free access to Turkish market for industrial goods via the EU. While Turkey opens its market to EU FTA partners unilaterally, Turkish exporters do not have the same trade opportunities with those of the EU exporters in third markets. As a result, these problems create unfair competition conditions and harm smooth functioning of the CU.

In the first chapter of the study, the legal structure, GATT⁴⁷ and WTO Agreements, which permit countries to establish customs unions and free trade areas with an exception to most favoured nation clause which is one of the main principles of international trade law will be assessed. Within this scope, the foundation of the EU and the establishment of EU-Turkey CU will be explained. Afterwards, the developments in the global trade system and the EU strategies to adapt itself to these developments will be discussed.

In the second chapter, the reasons of the FTA problems of Turkey within the CU will be scrutinized and the economic results of these problems on Turkey will be explained. Then, Transatlantic Trade and Investment Partnership (TTIP) negotiations between the EU and the United States (US) and its effects on Turkey will be examined as the case study in order to demonstrate the results of asymmetric structure of the CU within FTA negotiations.

In the third chapter, solutions to the FTA problems of Turkey will be discussed detailly within the scope of existing legal structure. Also, new and ongoing initiatives will be examined as alternative and permanent solutions.

CHAPTER I

TOWARDS REGIONALISM

1.1. RISE OF REGIONALISM: CUSTOMS UNIONS AND FREE TRADE AREAS

After the World War II, the initiative in order to establish International Trade Organization under Havana Charter failed when the US did not ratify the charter although it had signed it. Fortunately, as of 1 January 1948, the GATT 1947 remained temporarily in force until its provisions became part of the GATT 1994 which has regulated trade in goods globally as a component of the WTO Agreements. On 1 January 1995, as a result of Uruguay Round, which lasted from 1986 to 1994, WTO Agreements were adopted and World Trade Organization was established. Whereas GATT 1947 deals with trade in goods, the WTO Agreements cover trade in goods, trade in services and trade related intellectual property rights. WTO, with its 164 members as of 29 July 2016, has been the main institution which develops integrated and durable multilateral trading system and protects basic principles of the system.

One of the main principles of this system, most-favoured nation clause which prohibits discrimination among WTO members is stated in Article I of GATT, Article II of GATS and Article IV of TRIPS Agreements. According to Article I.1 of GATT¹, WTO members which provide any advantage or favour to any product of a country shall accord the same advantage or privilege to the like products of other WTO Members. Article II of GATS² states that each Member shall accord to services or service suppliers of any other country no less favourable treatment than those of any other country.

However, there is an exception to MFN principle in Article XXIV of GATT and Article V of GATS which permit WTO members to form a customs union or a free trade area on trade in goods or trade in services. Besides, the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (Enabling Clause)

¹ Article 1.1 of GATT: “with respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”

² Article II of GATS: “with respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.”

allows derogations to the MFN treatment in favour of developing countries. It enables developed members to give differential and more favorable treatment to developing countries. Also, it permits developing countries to form preferential arrangements in trade in goods. Enabling clause has continued to be applied as part of GATT 1994 under the WTO. There are slight differences between GATT and GATS for the MFN exception to form a customs union or a free trade area. In this chapter, MFN exception in GATT will be focused in order to demonstrate the legal structure in international trade.

Article XXIV of GATT only provides MFN exception under certain conditions. According to Article XXIV (4) of GATT, customs union or free trade area can not raise barriers to the trade of third parties. That means, duties or other regulations of commerce imposed to third parties after the formation of a union can not be higher or more restrictive than duties or regulations of commerce imposed prior to the formation of this union.

Besides, Article XXIV (8) of GATT states that a customs union or a free trade area shall eliminate duties and other regulations of commerce on “substantially all the trade” between the constituent territories. However, in WTO Agreements, there is no definition for the substantiality stated in this provision and WTO members have never reached an agreement on the interpretation of the term of “substantially”. Within this scope, the Appellate Body, in Turkey-Textiles case, addressed the definition that ‘substantially all the trade’ is not the same as *all* the trade, it is something considerably more than merely *some* of the trade. This statement of the AB did not create a certain definition for the substantiality, either.

On the other hand, in its FTAs, the EU has sought tariff free trade to be established on 90% of the total bilateral trade flows. However, the EU is also showing some flexibilities towards accepting a lower threshold for substantiality especially for developing countries. It also excludes some sensitive agricultural products from the scope of FTA negotiations as long as it keeps within the %90 threshold as it did so in Trade Development and Co-operation Agreement (TDCA) with South Africa. (Woolcock, 2007)

WTO used the term regional trade agreements to refer to free trade areas, customs unions, economic integration agreements, and preferential trade agreements between developing countries. RTAs are the foundation of different forms of economic integration. RTAs include agreements that are bilateral as well as those that are not regional in a geographic sense. Balassa, in his book, the Theory of Economic Integration, classified economic integration forms in increasing order of integration. These are free trade areas, customs unions, common markets, economic unions and complete economic integrations.

In a free trade area, tariffs and quantitative restrictions between the participating countries are abolished, but each country retains its own tariffs against third parties. Customs unions, in addition to eliminating tariffs and quantitative restrictions among members, include common external tariff to third parties. Common markets are higher form of integration which abolish not only trade restrictions on goods and services but also restrictions on factor movements which are labour and capital. Economic Unions, in addition to combining the suppression of restrictions on commodity and factor policies, has a common external trade policy in order to provide unilateral trade policy without disparities. Complete economic integrations presuppose the unification of monetary, fiscal, and social policies and require the setting-up of a supranational authority whose decisions are binding on the member states. There are also preferential trade arrangements which are defined by WTO as unilateral trade preferences such as Generalized System of Preferences as well as other non-reciprocal preferential schemes granted with a waiver by the General Council.

The exception to MFN for customs unions and free trade areas (in this study, the term “regional trade areas” (RTAs) which have reciprocity between two or more trade partners will be used to refer both of these terms) is greatly used by countries who want to benefit from the advantages of RTAs compared to multilateral trade system. RTAs are preferred by countries in order to improve the cooperation among certain countries and develop their economic and political relations.

For economic purposes, countries form RTAs to benefit from tariff concessions and trade advantages of partner countries reciprocally. Larger markets which are formed with RTAs provide economies of scale for contracting parties. Thus, the parties cooperate with each other against competitive pressure of some countries in multilateral trade system. On the other hand, political purposes of RTAs are increasing collaboration in political issues as an outcome of economic cooperation among parties, providing regional security and taking joint action in international institutions to increase their negotiation power.

Within this scope, on February 1996, the WTO General Council established the Committee on Regional Trade Agreements so as to examine individual regional agreements and to consider the implications of the agreements for the multilateral trading system and the relationship between the agreements.

The number of RTAs has been increasing since the early 1990s. As of 1 July 2016, 635 notifications of RTAs (counting goods, services and accessions separately) had been received by the GATT/WTO. Of these, 423 were in force. These WTO figures correspond to 460

physical RTAs (counting goods, services and accessions together), of which 267 are currently in force.³ On the other hand, EU Customs Union, Mercosur, SACU, Andean Community and Euroasian CU are among the examples of customs unions in international trade system.

Before, RTAs were generally between developed and developing countries. However, recently, the number of develop-to-develop bilateral agreements have increased e.g. the EU-Japan, the EU-US, the EU-Canada, the US-Japan under TPP because these countries want to include WTO-plus⁴ and WTO-extra⁵ issues, on which they couldn't achieve an outcome in multilateral system, in their deep and comprehensive RTAs.

The rapid increase in the number of RTAs has also been causing some problems for certain countries. Since FTAs are operating based on rules of origin, there have been several rules which producers have to meet before they export to abroad. Jagdish Bhagwati used the term, spaghetti bowl effect, in his 1995 paper U.S. Trade Policy: The Infatuation with Free Trade Agreements, in order to show the the complexity of rules of origin occurred as a result of proliferation of FTAs. The situation is more complex among Asian countries because most of them have FTAs with each other. They re-export intermediary goods to another for final assembly. However, it seems that Asian countries are successful at enabling specialization and improving global supply chains. Therefore, they are satisfied themselves in their full noodle bowl as it was referred by the Economist.⁶

1.1.1. Foundation of the EU

After the World War II, in order to protect peace in Europe, increase cooperation in economical issues and raise employment, six European countries, Belgium, Netherlands, Luxembourg, Germany, France and Italy, founded European Coal and Steel Community with Treaty of Paris on 18 April 1951. Then, these six countries founded European Economic Communities on 1 January 1958 with Rome Treaty in order to attain economic integration with the final aim of ensuring political integration.

One of the main aims of the EEC so as to enable economic integration in Europe was founding a common market, based on a customs union, which aims to abolish obstacles before freedom of movement for goods, services, persons and capital. Therefore, customs duties and quantitative restrictions on the import and export of goods were eliminated. Common external

³ https://www.wto.org/english/tratop_e/region_e/region_e.htm

⁴ **WTO-plus:** Obligations relating to policy areas that are already subject to some form of commitment in the WTO agreements. However, they provide further obligations for the parties.

⁵ **WTO-extra:** Obligations in an area that is 'qualitatively new', relating to a policy instrument that has not previously been regulated by the WTO.

⁶ <http://www.economist.com/node/14384384>

tariffs towards third countries and common commercial policy within the EEC were established on 1 July 1968 based on Article 9 of Rome Treaty.

The Customs Union of EEC was founded as an exception to MFN rule under Article XXIV of GATT 1947 which was signed by four of six countries who founded the EEC. It was compatible with Article XXIV because it aimed to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers within the scope of Article 110 of the Rome Treaty.

Afterwards, in 1986 Single European Act was signed by the EEC member states and on 1 January 1993, Single Market was completed with the four freedoms of goods, services, persons and capital. Then, the European Union was founded on 1 November 1993 with Maastricht Treaty. The EU had some reform processes with Amsterdam, Nice and Lisbon Treaties. Since Rome Treaty, not only number of member states has risen from six to twenty eight with enlargement processes, but also the issues which the EU deals with broadened and deepened in order to improve competitiveness of the EU and to meet the requirements of the Union.

The EU acts only within the limits of the competences that EU member states have conferred upon the EU in the Treaties to attain the objectives provided therein. However, competences not conferred upon the EU in the Treaties still remain with the EU member states. These competences are divided into 3 main categories: exclusive competences, shared competences and supporting competences. According to Article 3 of the TFEU, exclusive competences are the areas in which the EU alone is able to legislate and adopt binding acts. EU countries are able to do so themselves only if empowered by the EU to implement these acts. Customs union, competition rules, common commercial policy, conclusion of certain international agreements are among the areas which the EU has exclusive competence.

Common Commercial Policy of the EU is regulated under Article 206 and 207 of the TFEU based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.

Thanks to CCP, EU member states have benefitted from the free movement of goods in EU market, thus they prevented trade deflection occurring as a result of different customs duties

or procedures in a customs union. Moreover, CCP provides common measures against unfair competition in the internal market. Also, it enables coordination in trade policies of member states in abroad, thus they do not distort competition in foreign markets and protect their investors and exporters. Furthermore, the EU institutions on behalf of member states negotiate trade agreements with third countries. It also uses the power of acting together with member states before the international trade system. Within this context, the EU has been representing its member states in WTO, negotiating FTAs with third countries and providing unilateral concessions to certain countries under Generalized System of Preferences.

1.1.2. EU-Turkey Customs Union

EU-Turkey relations began with Ankara Agreement signed in 1963 in order establish an association between the parties. In the Ankara Agreement, three stages were designated for integration of Turkey to the EU economy towards accession of Turkey to the EU. The preparatory stage lasted 9 years between 1964 and 1973. In this stage, Turkey would strengthen its economy with aid from the EU so as to fulfil the obligations which it will undertake during the transitional and final stages. Within this context, the EU unilaterally provided tariff quotas for some products and financial aid as loans to Turkey.

The transition stage which began when the Additional Protocol got into force in 1973 lasted 22 years until 1995. The protocol aims to align the economic policies of Turkey and the EU more closely in order to ensure the proper functioning of the Association and establish progressively a customs union between the parties. Additional Protocol also includes provisions which aim free movement of goods, services, labor and capital between the parties.

As it was prospected in the Article 5 of Association Agreement the final stage of the association regime between the EU and Turkey started on 1 January 1996 with the establishment of the CU with ACD No. 1/95. CU has been a stage which prepares Turkish economy for further integration and in the end for full membership to the EU. The EU-Turkey CU was an exception to MFN clause specified under Article XXIV of GATT and it was notified to the WTO on 22 December 2015.⁷

With the CU, which covers industrial goods and industrial components of processed agricultural goods, customs duties, quantitative restrictions and charges with equivalent effect on these goods were reciprocally eliminated between the parties. Actually, the EU, when the Additional Protocol got into force, had already opened its market duty-free for Turkish

⁷ <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=118>

industrial goods with some product exclusions, while Turkey progressively reduced its customs duties in the transition period.

The CU did not bring about a significant liberalisation for exports of Turkey to the EU. However, the CU became a momentum for Turkey to adapt itself to an economic integration and prepare itself to the EU membership. Within the scope of Turkey's obligation to harmonize CCP of the EU, Turkey has aligned common customs tariff of the EU under Article 13.1 of the ACD No. 1/95. With regard to Article 13.2 of the Decision, Turkey also has obligation to adjust its customs tariff according to changes in CCT of the EU. Therefore, average customs duties of Turkey imposed to third countries decreased from %16 to %4,8.

The parties also eliminated the need for rules of origin, thus foreign goods entered into customs zone would be in free circulation. Furthermore, Turkey aligned rules of origin of the EU used by the EU in its bilateral agreements or non-reciprocal trade arrangements so as to ensure free movement of goods. Apart from the CU, the EU and Turkey gave concessions to each other on agricultural goods within the scope of the ACD No. 1/98. Besides, trade in coal and steel products is regulated with Free Trade Agreement signed in 1996 between the European Coal and Steel Community and Turkey.

Moreover, with respect to Article 16 of ACD No 1/95, Turkey has aligned preferential customs regime of the EU which covers autonomous regimes and preferential agreements with third countries. On the other hand, the EU-Turkey CU is not an ordinary customs union. It aims not only to eliminate barriers between the parties but also to regulate harmonization of technical regulations of the EU and of legislation on state aids, competition and intellectual and industrial property. Within this context, in order to ensure free movement of goods in EU market and increase its competitiveness in international trade, Turkey has entered into a reform process in its legislation and industry.

Turkey has been harmonizing its technical legislation with that of the EU so as to provide free movement of the goods. This includes technical regulations, standards and conformity assessment procedures as well as effective cooperation between the parties in the fields of standardization, calibration, quality, accreditation, testing and certification. The CU has also provided a significant impetus for trade facilitation and customs reform in Turkey. Moreover, Turkey has been aligning the EU legislation on competition and intellectual property. Subsidies through state resources in any form whatsoever which distort or threaten to distort competition have been banned. Moreover, a special competition authority has been set up to regulate competition rules in Turkey. Finally, an institutional structure to monitor legal

integration and to settle disputes was developed so as to avoid problems resulting from divergent interpretation of legislation although this structure is not functioning well.

The studies on the customs union theory were for the first time examined by Jacob Viner in his book, *The Customs Union Issue*, in 1950. Viner aimed to analyse whether customs unions provide more liberalism or more protectionism for trade with regard to production effects. Within this context, he found out that customs unions have static effects such as “trade creation” effect when the trade among customs union members increase and “trade diversion” effect when the trade between the members and third countries decreases. According to Viner, trade creation effect increase the welfare of the society in customs unions, but trade diversion causes less efficient allocation of resources because the members prefer goods produced less efficiently than the goods produced in third countries as a result of imposed external tariff. Within this context, Viner stated that when a customs union is established, if trade creation effect suppresses trade diversion effect, world welfare will increase. If not, the world welfare will decrease.

The analysis of Viner is based on variations in allocation of resources and on production effect. Also, he uses fix production costs, fix terms of trade and perfect inelasticity of demand in his analysis. Since these assumptions are far from the reality, his analysis has been criticized many times. On the contrary to Viner, Prof. James Meade indicated that production costs can not always be fixed, therefore he included consumption effects to his analysis. Besides, he explained that as a result of a customs union, relative prices of goods will change and there will be substitution among goods. Therefore, consumption preferences in customs union member states will change over time. The studies of Viner and Meade have formed the foundation of customs union theory and guided other studies. (Aynagöz, 2003)

Within this context, in spite of the the impracticability of estimating trade diversion and trade creation in the EU-Turkey CU without a detailed and comprehensive analysis, escalation in trade figures can be calculated. After the CU got into force, the trade between the EU and Turkey increased from 37 billion dollars in 1996 to 142,7 billion dollars in 2015, which means trade volume increased 286 per cent in 20 years. While Turkey’s export to the EU increased from 12,6 billion dollars in 1996 to 64 billion dollars in 2015, its imports from the EU increased from 24,3 billion dollars in 1996 to 78,7 billion dollars in 2015. However, the share of Turkey’s trade with the EU in total trade has declined particularly after 2007 from %56,6 to %44,5 in 2015.⁸ The reasons of this decline can be recent economic crisis in the EU, Turkey’s market

⁸ www.tuik.gov.tr

diversification in rest of the world and rising of impacts of emerging markets such as China, India, Brazil, Russia and Korea in international trade.

On the other hand, Turkey has always been one of the major trade partners of the EU. In 2015, Turkey has been the 4th export market with the share of %4,4 in EU exports and 7th import market of the EU with the share of %3,5 in EU imports. In 2002, Turkey was 7th export market and 8th import market of the EU.⁹ This shows that Turkey's importance among EU's export markets have escalated. As a result, trade figures in Annex 1 show that CU has been beneficiary for rise of bilateral trade between the EU and Turkey even though the share of trade volume between the EU and Turkey in Turkey's total trade has decreased recently.

In addition, CU have had dynamic effects on Turkey. Thanks to the CU, predictability in the economic policies of Turkey has increased and thus FDI from the EU countries as well as from rest of the world to Turkey has risen substantially. Turkey has attracted the EU firms with the commitment of regulatory harmonization, duty free market access to the EU countries and highly skilled labor with lower wages. The EU as a largest foreign investor in Turkey has provided %71 of Turkey's FDI between 2011 and 2015.¹⁰ Thus, it provided deeper integration in production networks especially in automobile and textile sector between Turkish and European firms. This has helped to raise the quality and sophistication of Turkish products which are exported not only to the EU but also to other countries. Meanwhile, FDI of third countries especially of Gulf countries and the US who want to export industrial goods from Turkey to the EU market duty free has also increased.

The CU has been a catalyst for Turkey's integration both with the EU and the world. Turkish producers have imported raw materials and intermediary goods from EU countries for their industries with less import tariffs. Also, Turkish exporters have reached to EU market duty free. Thus, Turkey's manufacturing sector has developed and its competitiveness has increased. Turkey has attracted more FDI from the EU and rest of the world. Consumers could be able to reach goods with cheaper prices thanks to competition. Production, consumption and foreign trade have increased. Turkish producers and exporters have integrated into global value chains and Turkey has benefited from economies of scale. Moreover, Turkey and the EU have acted together in international institutions in order to strenghten their bargaining power. As a result, the CU has been beneficial for Turkey by providing its economic growth and increasing its competitiveness in the world market.

⁹ <http://ec.europa.eu/eurostat/data/database>

¹⁰ www.tcmb.gov.tr

1.1.3. Rise of bilateralism for the EU

After the establishment of WTO in 1995, the first and the last round of trade negotiations among the WTO members, the Doha Round, started in 2001 in order to achieve major reform of the international trading system through the introduction of lower trade barriers and revised trade rules. The Round is also known as the Doha Development Agenda whose fundamental objective is improving the trading prospects of developing countries. The work programme of the Round covers about 20 areas of trade and includes controversial issues such as agriculture, services, investment, intellectual property rights and public procurement etc. However, during the negotiations, “single undertaking” rule had been used and no single issue was agreed until every issue was agreed.

While developed countries such as the EU do not give concessions in some sensitive issues such as agricultural subsidies, developing countries have been persistent to gain privileges in agriculture before they give concessions in other trade related issues; namely Singapore issues, i.e. trade and investment, trade and competition and transparency in public procurement. While these three issues were dropped from the Doha Agenda, the fourth Singapore issue, trade facilitation, was accepted by WTO members with consensus at the 9th Ministerial Conference in Bali in December 2003 under “early harvest” understanding, which aims to tackle some issues first before the completion of the Round.

Deceleration of the pace of talks in Doha negotiations, the competitive pressure of China in the global trade, protective trade policies of emerging countries, the desire of not falling behind the US which started to negotiate bilateral agreements with Latin American and Middle Eastern countries after 2002 and the aim of neutralizing the trade diversion which is in favour of the US forced the EU to shift its policy in international trade and to head towards bilateralism without giving up its commitments on multilateral negotiations.

Within this context, in 2006, the EU set its Global Europe Strategy to adapt the tools of EU trade policy to new challenges in the global economic order. It aimed to ensure Europe remain open to the world and other markets open to EU trade. With this aim, the EU preferred FTAs to build on existing international trade rules by going further and faster in promoting openness and intergration, by tackling issues which are not ready for multilateral discussion such as investment, public procurement, competition, other regulatory issues and IPR. FTAs have been seen as the best tools to ensure greater openness and fair trading rules in other markets as well as a step to achieve these rules in multilateral trading system.

Moreover, in 2007, the EU Commission published a communication named *Global Europe: A Stronger Partnership to Deliver Market Access for European Exporters* which focuses on the new generation FTAs to encourage progressive and enforceable liberalization, market opening and approximation of standards and norms between the EU and its trading partners. Economic, social and political understandings of EU partners have been effective for design of EU's bilateral agreements. The key economic criteria for new FTA partners was market potential and the level of protection with tariffs and non-tariff barriers against EU exportation.

Within this context, including the period before 2006, the EU has concluded several types of bilateral agreements. The EU has not used a model FTA for its negotiations. All agreements are negotiated and named differently according to EU's economic, political and security policies as well as the scopes of agreements such as Association Agreements (AAs) with the states in Eastern Europe, Western Balkans and Mediterranean; New Generation FTA with South Korea; Partnership and Cooperation Agreements (PCAs) with Russia and the New Independent States of Eastern Europe, the Southern Caucasus and Central Asia; Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific (ACP) countries; and Deep and Comprehensive Free Trade Agreements (DCFTAs) with Ukraine, Georgia and Moldova.

The EU has also sought to promote region-to-region agreements to progress towards integration in the partner region. Moreover, economic growth in Asia and FTAs among Asian countries as well as the pressure of EU exporters and investors forced the EU to strengthen its presence in this region. Within this context, especially emerging economies such as China, India, ASEAN countries¹¹, Korea, Mercosur¹², Andean community¹³ and Gulf Co-operation Council¹⁴ became the main target of the EU for market access and stronger engagement.

As it is demonstrated in Annex 2, the number of the EU RTAs in force is 35 and 21 of them were signed after 1 January 2006. In addition to this, the EU is now negotiating several FTAs, most of which are deep and comprehensive agreements such as EU-Canada FTA (CETA), EU-Japan FTA, EU-India FTA and TTIP between the EU and the US. As long as the number of EU FTA partners has increased, its other bilateral partners such as Turkey have undergone preference erosion. While Turkey was one of a few countries who has duty free

¹¹ Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam.

¹² Brazil, Argentina, Uruguay, Paraguay, Venezuela.

¹³ Ecuador, Colombia, Peru, Bolivia.

¹⁴ Bahrain, Qatar, Kuwait, Oman, Saudi Arabia, the United Arab Emirates.

access to the EU market for industrial goods, nowadays, there are several countries who have this privilege. In fact, some of those countries have bilateral agreements with the EU more comprehensive than the EU-Turkey CU. These agreements liberalize market access for agricultural goods, services, investment, public procurement, etc. in addition to industrial goods.

Negotiating FTAs with several countries has been beneficial for the EU economically, socially and politically. FTAs have fostered freer trade flows for goods and services and created stronger ties with EU's trading partners. Domestic firms could access to cheaper inputs and EU exporters could access to third country markets duty free. EU exporters obtained market share or protected it in foreign markets. Thus, EU producers and exporters gained competitive advantage in comparison with those of other countries. FTAs have helped for introduction of new technologies and building up innovation. Thanks to the FTAs, EU firms could invest in their FTA partners and export to the EU and to the world from these countries with low cost. Also, the EU has attracted FDIs into its member states due to its FTAs with several countries and its duty-free market access opportunities to these markets. Besides, the EU has obtained concessions for intellectual property, investment, government procurement and etc. which are important issues for the EU firms. As a result, free trade has contributed to higher GDP growth and job creation for the EU countries. Alongside the EU, these benefits of FTAs can be assumed for other countries who have several FTAs.

The EU has been negotiating FTAs with third countries parallel to multilateral negotiations in WTO system. However, as long as the EU acquires what it aims in the bilateral negotiations, its contribution to multilateral negotiations in WTO rounds will be less than its real potential. The tendency towards bilateralism in international trade can be seen in general figures. 139 RTAs among 267 got into force after 1 January 2006 and the rate will increase due to the state of affairs in the international trade.¹⁵

¹⁵ <http://rtais.wto.org/ui/PublicPreDefRepByEIF.aspx>

CHAPTER II

ASYMMETRY OF THE CUSTOMS UNION

2.1. REASONS OF THE ASYMMETRY

The legal structure of the EU-Turkey CU is based on ACD No. 1/95 which established the CU in 1996 as a final stage of association towards full membership to the EU. Within the Article 16.1 of this Decision, Turkey has some unilateral obligations to harmonize Common Commercial Policy of the EU. In addition to aligning common external tariffs of the EU, Turkey had to align preferential customs regime of the EU within five years as from the date of the entry into force of the Decision.

Within this context, Turkey aligned autonomous regimes of the EU and negotiated preferential agreements on mutually advantageous basis with third countries specified in Annex 10 of the Decision. Moreover, with regard to Article 16.2, in these negotiations and autonomous regimes, Turkey also had to comply with the same rules of origin which the EU had used in its preferences. Furthermore, according to Article 14.2 of the Decision, Turkey is not allowed to apply a customs tariff which is lower than the common customs tariff for any product.

Besides, in Article 54.1, it states that in areas of direct relevance to the operations of the CU, Turkish legislation shall be harmonized as far as possible with Community legislation. In Article 54.2, it explains the areas of direct relevance to the operation of the CU as commercial policy and agreements with third countries comprising a commercial dimension for industrial products, legislation on the abolition of technical barriers to trade in industrial products, competition and industrial and intellectual property law and customs legislation.

Although Turkey was obliged to align the preferential regime within five years after the entry into force of the Decision, it has had to meet with new challenges after this five years because the EU has been negotiating new FTAs with new third countries. Although the language of the provisions in the Decision is static, its effects, in reality, are dynamic. The problem in here is that the CU which is the final stage of the association to the EU was set as if it would exist for five years. In Article 28 of Ankara Agreement, it is stated that as soon as the operation of Ankara Agreement has advanced far enough to justify envisaging full acceptance by Turkey of the obligations arising out of the Treaty establishing the European Community, the contracting parties shall examine the possibility of the accession of Turkey to the Community. However, Turkey could not advance far enough for the accession negotiations for the full membership to the EU soon after this five years. Therefore, over time, the asymmetric structure of the CU showed itself egregiously.

One of the problems of Turkey occurred as a result of this asymmetric structure is negotiating FTAs with third countries which is the main theme of this study. There are three discrepancies which form this asymmetry. One of them is the absence of Turkey in consultation and decision making mechanism of the EU on trade related issues. The second one is Turkey's absence in EU committees relating to trade issues. The third one is lack of a mechanism which will ensure third parties initiate FTA negotiations with Turkey.

2.1.1. Participating Consultation and Decision Making Mechanism

Although the commercial policies of the EU have direct effects on Turkey's foreign and domestic trade, Turkey can not participate in consultation and decision making mechanism of the EU with regard to trade issues. Asymmetries in Turkey's being part of this mechanism in the issues relating to the CU stem from the design of the ACD No. 1/95 with the initial expectation that it would be a transitional arrangement on the way to Turkey's move towards full EU membership. Actually, the formal provisions in the Decision were designed to allow Turkey to participate in decision shaping, not decision making. In addition, those provisions which were outlined in Articles 54-60 of ACD No 1/95 on institutional cooperation and decision shaping have not been properly implemented, therefore this has increased the risk of non-compliance. These provisions will be discussed in Chapter 3 under solutions to the problems of Turkey.

Turkey does not have a voice when the EU determines its policies or strategies on trade related issues which directly have results on Turkey's commercial policies. These policies affect not only Turkey's foreign trade policies but also its internal trade in domestic market. For example, within the scope of FTA issues, Turkey cannot contribute to the decisions of the EU while the EU is specifying the countries with which it projects to negotiate FTAs. Only the EU member states and third countries determine the scope and timetable of these FTAs without taking into account Turkey's priorities. EU does not comply with the requirements of the customs union understanding. Turkey abruptly finds itself in an obligatory situation to negotiate an FTA with a third country designated by the EU. Actually, Turkey is playing the game according to the rules established by the EU.

2.1.2. Participating EU Committees

Another issue relating to FTA problem of Turkey is that while Turkey has the obligation to align itself with the CCP of the EU in areas covered by the CU, it cannot participate in all of the EU's committees which collaborates with the Commission in order to determine trade

policy of the EU. Meanwhile, Turkey can take part in 140 EU committees; however, it has observer status in these committees and is not allowed to vote.

Most importantly, Turkey cannot attend the meetings of Trade Policy Committee (TPC) which was founded with Article 207 of the TFEU as a special committee appointed by the European Council and; advises and assists the Commission in negotiating agreements with third countries or in international organisations in the area of the common commercial policy, of the Working Party on Generalised System of Preferences (WPGSP) which is subordinate body of the Council, and of the Generalised Preferences Committee (GPC) which recommends and assists the Commission to determine the countries that will have unilateral tariff concessions under EU's GSP Regime and to specify the scope of these concessions. These EU committees are directly related with CCP of the EU and affects Turkey's foreign trade policies.

Turkey, with regard to Article 16 of the ACD 1/95, has substantially aligned its import regime and rules of origin taking into account GSP regime of the EU. In Turkey's Progress Report 2015¹⁶, alignment of Turkey's GSP-related rules of origin with that of the EU was also approved by the EU, emphasizing the need of further alignment regarding product and geographical coverage. However, the EU argues that Turkey shall completely align its GSP Regime with that of the EU in order to be able to participate in GPC. On the other hand, in spite of Turkey's all initiatives so as to participate in the TPC, Turkey's requests have always been declined by the EU with the reason that only the EU member states can join the meetings of the committees operating under the Council.

Turkey's being out of these committees and working parties and being enforced to obey to the rules which are only taken by its CU partner without taking into account the priorities and sensibilities of Turkey does not comply with the CU understanding. CU necessitates common policies which will affect the trade between the partners and with third countries. Turkey has different industrial structure and sensitive products in its own market. Concessions given to certain countries on some products may affect Turkish producers more negatively than they affect European producers. Therefore, Turkey should have opportunities to issue opinions on decisions related to trade policies in order to protect its own producers/exporters. Turkey's being out of the mechanism that designates trade policies of Turkey especially on preferential regime creates unfair competition against Turkey. On the other hand, Turkey is not only a partner of the CU, it is association member of the EU with regard to Ankara Agreement. Hence,

¹⁶ http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_turkey.pdf

Turkey should have privileges in the CU relationship between the EU and Turkey when it needs to exchange information on trade issues.

2.1.3. Negotiating FTAs with Third Parties

The other problem of Turkey with regard to FTAs is that third countries which already started negotiations or signed FTAs with the EU are reluctant to negotiate an FTA with Turkey. Article 16 of the ACD No 1/95 clearly says that Turkey shall align preferential regime of the EU considering the fact that Article XXIV(8) of GATT requires members of a customs union to apply substantially the same duties or other regulations of commerce to the trade of territories not included in the union. When Turkey signed the ACD No 1/95, it accepted to negotiate FTAs with EU's FTA partners listed in Annex 10 on mutually advantageous basis. When the Decision was signed, it would be impossible to enforce EU's existing FTA partners to admit Turkey directly as an FTA partner without negotiating a new FTA. The parties did not add any provision which indicates that Turkey would automatically be party to the EU's existing FTAs.

Then, the EU has signed several FTAs with third countries. At the present time, Turkey has difficulties to persuade these third countries to negotiate FTAs with Turkey because these countries have some economic, administrative or political reasons not to start negotiations with Turkey. One of the most important reasons of abstaining from signing FTA with Turkey is that countries who already have an FTA with the EU do not want to sign an FTA with Turkey because they can export their industrial goods to Turkey via the EU without customs duties thanks to absence of rules of origin and free movement of goods in the CU. However, Turkey cannot export its industrial goods without customs tariffs to these countries if third parties refrain from negotiating an FTA with Turkey.

Within the existing situation, Turkey needs the assistance of the EU in persuading EU FTA partners to initiate FTA negotiations with Turkey. Although Turkey has been recurrently mentioning the problem in CUJC meetings, the EU has not found any permanent solution to this problem. In some FTAs, the EU attached "Turkey Clause" in order to demonstrate its request from its partners to negotiate FTA with Turkey so as to ensure smooth functioning of the EU-Turkey CU. However, these clauses did not obligate third countries to negotiate an FTA with Turkey or were out of negotiating mandate.

For example, Turkey clause was used in EU-Algeria FTA but it could not force Algeria to initiate FTA negotiations with Turkey. Although the Commission has been active writing to Algeria urging them to start negotiating FTAs with Turkey, the initiatives have so far been unsuccessful. Since the Turkey Clause is not part of the EU's negotiating mandate, it was

sometimes dropped from the negotiations. For instance, South Africa declined to include the Turkey Clause in its negotiations with the EU. Therefore, there is a need of permanent and mutually acceptable solution for Turkey's problem to bring third parties to the FTA negotiation table. (Worldbank, 2014)

In ACD No 1/95, there is no definite answer to the question why the parties formed the provision stating that Turkey would negotiate agreements on mutually advantageous basis with third parties but not including Turkey into existing FTAs of the EU or proposing to negotiate new FTAs jointly. The reason of negotiating parallel FTAs instead of docking Turkey into existing EU FTAs might be correlated with the duration of the CU because it was established for five years and EU's new FTAs were not taken into account. In that time, the parties might have thought that FTAs would not be that important in international trade system and new FTA negotiations would not create trouble for the parties. Even if the EU negotiated new FTAs, in this period Turkey would already become member of the EU and be party to these FTAs, but things did not go as planned during the signature of the ACD No 1/95.

The other reason might be that the EU did not want to negotiate FTAs together with Turkey because Turkey, alongside its member states, would be a burden for the EU in the negotiations. Another reason for Turkey to negotiate separately its own FTAs might be that Turkey wanted to be independent in its own FTA negotiations. Also, even if Turkey became part of the EU FTAs, it would have to negotiate new FTA with the same countries in other areas out of the scope of EU-Turkey CU. EU-Turkey CU only covers industrial goods and processed agricultural goods so Turkey can be party to an EU FTA within this scope. Therefore, Turkey would have to negotiate a new FTA for other areas such as agricultural goods, services and investment. If Turkey had lost its leverage for industrial goods, he would also lose its trade-off power for other areas in an FTA negotiation.

2.2. RESULTS OF THE ASSYMETRY

The assymetric structure of the EU-Turkey CU has been causing problematic results for Turkey within the scope of FTA negotiations since the establishment of the CU in 1996. However, the FTA problems of Turkey became apparent in recent years with rise of bilateralism. The slow down in Doha Round negotiations and thus changes in EU's foreign trade policy based on its Global Europe strategy in 2006 increased the importance of these problems for Turkey. As much as the number of EU FTAs has increased and their scope has broadened, Turkey has had more difficulties to follow it in order to align its preferential trade regime.

On the other hand, Turkey faces preference erosion in the EU market as the new EU FTA partners such as Korea, Chile, Colombia and Ukraine who are also in competition with Turkey in international trade market have had duty free market access to the EU market. Furthermore, Turkey will lose its FDIs when countries such as Japan, Canada and the US have FTA with the EU because they will not need the privileges for EU market access which Turkey has had thanks to the CU.

So far, Turkey has signed FTAs with 34 countries, 11 of which were repealed due to the accession of these countries to the EU. Currently, Turkey has 18 FTAs in force; namely, EFTA, Israel, Macedonia, Bosnia-Herzegovina, Palestine, Tunisia, Morocco, Syria¹⁷, Egypt, Albania, Georgia, Montenegro, Serbia, Chile, Jordan, Mauritius, South Korea and Malaysia. Additionally, the FTAs signed with Lebanon, Kosovo, Moldova, Faroe Islands and Singapore will be in effect after the completion of internal ratification procedures. Besides, the FTA negotiations with Ghana were concluded and the agreement was initialled.

Within the scope of the Agreement on Trade in Goods between Turkey and the Republic of Korea, which was entered into force on 1 May 2013, the Parties signed an Agreement on Trade in Services and an Agreement on Investments on 26 February 2015. These agreements will enter into force once the internal ratification procedures are completed by both countries.

Meanwhile, there are 13 countries/country blocs that Turkey has started FTA negotiations; namely Ukraine, Colombia, Ecuador, Peru, Mexico, Japan, Dem. Rep of Congo, Cameroon, Chad, Seychelles, Gulf Cooperation Council¹⁸, Libya and MERCOSUR. Additionally, Turkey has started the negotiations for the revision of its FTA with EFTA with an aim to update and deepen the scope of it. Moreover, Turkey has launched initiatives to start negotiations with 10 countries/country blocs, which are the USA, Canada, Thailand, India, Indonesia, Vietnam, Central American Countries, other ACP Countries, Algeria, and South Africa.

As it is stated in Annex 2, there is a great difference in the number of FTAs of the EU and of Turkey. Currently, while the EU has signed FTAs with 39 countries, Turkey has signed FTAs with just 23 countries. Even if Turkey has an FTA with EU FTA partners, there is difference between the dates of entry into force of EU FTAs and of Turkey's FTAs with the same partners. Therefore, although Turkey could sign FTA with these third countries, there was a time lag between EU's and Turkey's FTAs which still caused the same problems in that gap.

¹⁷ The FTA between Turkey and Syria was suspended on 6 December 2011.

¹⁸ The Gulf Cooperation Council suspended its all FTA negotiations.

Moreover, there are great number of countries which the EU has started FTA negotiations, but Turkey could not initiate FTA negotiations although it had launched several initiatives to start the negotiations. Previously, Mexico, South Africa and Algeria were three countries with which Turkey could not initiate FTA negotiations. However, recently, the number of countries which is in the same situation has increased dramatically. According to the latest state of affairs, in the near future, this number will increase more. The countries with which the EU has FTA but Turkey does not are also indicated in Annex 2.

On the other hand, Turkey cannot negotiate its own FTAs separately with third countries with which the EU does not have FTA negotiations because it can not diverge from the CCP of the EU. However, so far, Turkey had signed FTAs with Syria¹⁹ and Georgia with the permission of the EU before the EU started FTA negotiations with these countries. Turkey could have negotiated FTAs with Russia, Azerbaijan and Iran but it cannot start negotiations with these countries without EU's consent or before the EU begins FTA negotiations with them.

So far, Turkey have lost several market access opportunities by staying behind the EU's FTA number and by not being able to initiate negotiations with some countries. The main ones which have been subject to criticism to date were Algeria, South Africa and Mexico. In 2014, average of applied MFN tariffs of these countries for all goods are 18,8 per cent (Algeria), 7,6 per cent (South Africa), and 7,5 per cent (Mexico). In these markets, Turkish firms have lost their competitiveness to European firms who have duty free market access. If Turkish firms lose their market share to EU firms due to this reason, this can be defined as an example of trade diversion as a result of asymmetric structure of the CU.

In 2013, Turkey's import from South Africa was 1.479 million US dollars, exports to South Africa was \$620 million US dollars, which means trade deficit for Turkey was 859 million US dollars. On the other hand, in 2013, Turkey imported 1.000 million US dollars worth of products from Mexico and exported 239 million US dollars worth of products to Mexico, which means trade deficit for Turkey was 761 million US dollars. Turkey has trade surplus against Algeria. Its export to Algeria is 2.003 million US dollars and import from Algeria is 714 million US dollars.²⁰ However, trade potential between the parties might be more than these figures because of Algeria's high population and growing market.

While Turkey has had to align preferential customs regime of the EU, it has fallen behind the EU with regard to EU FTA policies which are changeable and difficult to follow by

¹⁹ Bilateral EU-Syria relations are governed by the Cooperation Agreement signed in 1977. However, it was not an agreement like an FTA or an association agreement signed with Mediterranean countries.

²⁰ www.trademap.org

Turkey. Since Turkey does not have any impact on EU FTA policies, which directly affects Turkey's FTA policies, it could not determine the partner countries and the scope of the FTAs. Therefore, Turkey has had difficulties to persuade EU FTA partners, which were already agreed upon by the EU, to negotiate parallel FTAs with Turkey. If Turkey got involved in the process in which the EU determines its foreign trade policy, Turkey would choose the countries with whom it could easily initiate FTA negotiations and the scope and timetable of FTA negotiations.

In addition, Turkey has had to negotiate FTAs with some countries with whom Turkey has trade deficit e.g. South Korea, Japan, Canada, India and to open its market to these countries. These countries also have bargaining power in the negotiations because of their economic development. Turkey might lose its domestic market share to these countries' exporters especially in some sensitive sectors such as motor vehicles and textiles. However, since Turkey has to align the common external tariff of the EU and in order not to fall behind the EU exporters in foreign markets, it attempts to negotiate FTAs with these countries. As a result of these discrepancies, Turkey has crucial problems effecting its foreign trade and economic growth in a negative way.

One of the problems occurring when Turkey does not have an FTA with EU FTA partner is trade deflection. The EU and Turkey has a customs union and they use CET for industrial goods. They also use the same rules of origin in the CU. There is free movement of goods after the goods get into the customs territory of the CU. Within this context, in order to provide smooth functioning of the CU, Turkey aligns preferential trade regime of the EU. However, when Turkey can not initiate and conclude FTA negotiations with an EU FTA partner, the goods which have the origin of this partner country can be exported to Turkey through the EU with less or without customs duties. There are two outcomes of trade deflection for Turkey. The first one is opening the market unilaterally to third countries. The second one is losing customs duties revenue.

When Turkey does not have FTA with an EU FTA partner, Turkey does not have free market access to this country, however this country can reach Turkey's market freely because its products can pass through the EU market and achieve Turkish market thanks to free movement of goods in the CU. When Turkey opens its market unilaterally to EU FTA partners, its industry will lose its share in domestic market without having access to these partners' market reciprocally. Importation will increase to Turkey from these countries, but Turkish exporters will face with barriers when they want to export to these countries.

According to the World Bank study, Evolution of the EU-Turkey Customs Union, “simulations using a Computable General Equilibrium model reveal that Turkey’s real income would increase as a result of finalizing noncompliant FTAs. For those EU FTA partners that have not concluded an FTA²¹ with Turkey, while imports of industrial goods from these sources trans-shipped via the EU mostly enter duty-free, Turkey’s industrial exports to these destinations still face tariffs. Simulations were run assuming the ten economies²² identified in the Global Trade Analysis Project (GTAP) database that currently do not have an FTA for industrial goods with Turkey concluded an FTA and so Turkey could export duty-free to these markets. According to the figures, the highest income gains for Turkey would be obtained from concluding FTAs with Mexico (US\$111 million), South Africa (US\$115 million) and Colombia (US\$41million).”²³

Besides, if the products of EU FTA partners are exported to Turkey duty-free via the EU, Turkey will lose its customs duties revenue. Turkey’s average applied MFN tariff for non-agricultural goods was 5,4 per cent in 2014.²⁴ Although this number seems low, Turkey also has high MFN tariffs for some goods such as footwear, textile, and motor vehicles. Therefore, the EU, instead of Turkey, will gain these customs revenues.

Martin Richardson argued internal trade deflection for free trade areas within the scope of customs duties revenue in his article, Tariff Revenue Competition in a Free Trade Area. In FTAs, there is free trade between the parties and each party has the right to designate its own external tariff to third countries. According to Richardson, “it has long been recognised in the literature that, if parties of an FTA have different tariffs against third countries on some homogeneous good, restrictions on re-exporting will be required to maintain any differences in domestic prices that might otherwise be eroded through trade deflection. Rules of origin are effective in preventing trade deflection; however, the presumption in the literature has been that external tariff differences between members then imply differences in domestic prices, for both

²¹ There are unresolved FTAs for Mexico, South Africa, Colombia, Algeria, Peru, Panama, Costa Rica, Dominican Republic, Guatemala, El Salvador, Honduras, Jamaica, Trinidad and Tobago, Nicaragua, Papua New Guinea, Haiti, St. Lucia, Bahamas, Antigua and Barbuda, Guyana, Suriname, Barbados, Belize, Seychelles, St. Vincent and the Grenadines, St. Kitts and Nevis, Dominica and Grenada. Ten different simulations were run – one for each country - under the assumption that all outstanding FTAs would not be concluded jointly.

²² Mexico, South Africa, Colombia, Peru, Panama, Costa Rica, Guatemala, El Salvador, Honduras, Nicaragua.

²³ Algeria is an important market for Turkish exports but is not included in version 8 of the GTAP database. However, a partial equilibrium analysis carried out by the Ministry of Economy in Turkey showed that Turkey’s exports could have been approximately US\$450 million higher in 2010 reaching US\$1.9 billion, if an FTA between the two countries had entered into force at the same time as the FTA between EU and Algeria and if all customs duties had been instantly eliminated.

²⁴ <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=TR>

producers and consumers. Even when trade deflection and consumer arbitrage are prevented, internal free trade implies that prices at which producers can sell are equated across parties of an FTA, regardless of external tariff differences. This is because all intra-FTA production of a good can be sold anywhere within the FTA duty-free. This producer price equalisation leads to a new source of competition between member countries in the setting of external tariffs.”

Richardson explains its argument by giving an example with an FTA in which some good is imported by both parties and total intra-FTA production of the good is less than consumption in either party at all relevant prices. “If one party, country A, were to levy a slightly higher tariff on the good than the other party, country B, then, ignoring any transport costs, all of B’s production would be sold in A at the higher price: the world price plus A’s tariff. All of B’s consumption would then be imported from outside of the FTA, thus it raises tariff revenue for the government of B. If A were to reduce its tariff to slightly below that of B then the roles would reverse and the government in A would pick up tariff revenue on all consumption in A. Thus, there is some conflict within an FTA over tariff revenues from trade with third parties. This competition implies lower external tariffs in the FTA than would otherwise prevail. In fact, this example leads to either zero tariffs or to the non-existence of equilibrium.”

In sum, Richardson argues that even if external tariffs are different in FTAs and there are rules of origin to prevent trade deflection, producer prices will be equalised and there will be internal trade deflection. Thus, the party which has lower tariff will get the tariff revenue. Although Richardson’s example for FTAs is a bit different from an assumption for a customs union, it is much easier to explain the tariff revenue effect of trade deflection for customs union. Turkey also has the same problem in its CU with the EU. In fact, the EU-Turkey CU is working as if it is an FTA with different external tariffs against certain third countries. Further, it is easier to witness trade deflection in this situation because it does not have rules of origin which will prevent such behaviour.

The other problem occurring when Turkey does not have an FTA with EU FTA partner is unfair competition. Europe and Turkey have similar industrial structure and they produce similar industrial goods. European exporters and Turkish exporters are rivals in global trade market. However, in certain markets, with which the EU has FTA but Turkey does not, Turkish exporters have to face with trade barriers while European exporters do not or Turkish exporters can enter these markets later than the EU exporters. It is not possible for Turkish exporters to compete with European exporters when they export similar goods to these markets. They have

to spend more effort to catch up with the European exporters and not to lose their market share in third countries.

2.2.1. Transatlantic Trade and Investment Partnership

FTA problems of Turkey reached a peak in February 2013 after the EU and the US announced their decision to initiate Transatlantic Trade and Investment Partnership negotiations because the countries with which Turkey has not been able to start negotiations are not large economies as the US and the agreements are not that extensive. TTIP is going to cover ambitious WTO-plus and WTO-extra issues in addition to trade in goods and services e.g. public procurement, investment, competition, intellectual property rights, state owned enterprises, TBT-plus, SPS-plus, environment and labour policies and etc.

The current level of tariffs between the US and the EU is already minimal and while the negotiations will aim to remove these remaining tariffs, the parties will also stand to ensure development of a common regulatory framework which aims to harmonize technical regulations and standards or to provide mutual recognition. The rules constituted under the TTIP might be an inspiration for multilateral trade system because the parties which account for about half of the entire world GDP and nearly a third of the world trade flows are together influential enough to achieve this aim.

The main reasons of negotiating TTIP are stuck of the negotiations in multilateral platform, need of structural reforms to trigger economic growth and job creation as well as the desire of the US and the EU to prevent the rise of emerging economies such as China, India and Brazil in international trade arena. Within this context, the negotiations started in July 2013 and the 14th TTIP Negotiation Round was concluded on 15 July 2016.

TTIP negotiations have crucial significance for Turkey because of its customs union partnership with the EU and its EU membership goal. Due to its obligations, Turkey has to align common commercial policy of the EU and negotiate an FTA with the US on mutually advantageous basis or take part in TTIP. If Turkey negotiates an FTA with the US, it will cover the subjects similar to areas in TTIP.

On the other hand, TTIP is important for Turkey because of its economic relations with the US under “Model Partnership”. The concept of “Model Partnership” reflects the advanced level that Turkey and the U.S. have reached in the relationship. In order to expand economic and commercial relations between the US and Turkey and to promote greater bilateral

investment and stronger business climate in certain areas, the parties established the Framework for Strategic Economic and Commercial Cooperation.

Within this context, Turkish government with help of lobbying of business people has actively made an effort before the EU member states and the EU Commission as well as the US Government so as to get involved in TTIP negotiations. However, Turkey could not succeed in taking part in the negotiations. Then, Turkey endeavoured to be included in the final agreement on TTIP on the grounds of the CU and the EU membership process, but this choice seems unlikely to happen. Besides, in this choice, Turkey has to accept all the terms of the agreement without being party to the negotiations.

The other alternative for Turkey's inclusion into TTIP is incorporating a "docking clause" to TTIP, which will permit Turkey to accede to the agreement after the fact. In this option, Turkey will have to accept the negotiations conducted between the EU and the US. However, it might demand transition periods for demanding terms of the agreement or for its sensitive sectors because Turkey does not have similar economic structure with TTIP partners. Although Turkey has more justification because of the CU, if Mexico and Canada who are NAFTA members force TTIP partners in order join to TTIP with a docking clause, Turkey might have an opportunity to be part of TTIP. Besides, Turkey needs to require Congressional as well as EU approval for the accession to TTIP, however it seems unlikely for Turkey to be accepted to participate in TTIP under docking clause for now.

Another and possible option which can be followed by Turkey is negotiating and signing a parallel FTA to TTIP with the US. A possible US-Turkey FTA can expand economic relations between the parties and deepen the relations of two countries. However, Turkey might not be ready to negotiate an FTA with a vast scope as TTIP. Within this context, the US and Turkey established a High Level Committee in 2013, with the ultimate objective of continuing to deepen the economic relations and liberalize trade as well as examine the impact that TTIP could have on Turkey, under the Framework for Strategic Economic and Commercial Cooperation, which is an initiative launched by the parties in 2009 in order to strengthen the economic component of bilateral relations,. This Committee might reach an outcome that the parties should conduct negotiations for an FTA as High Level Working Group (HLWG) on Jobs and Growth recommended for the TTIP.

Meanwhile, the EU did not consult to Turkey, who is directly affected from the EU foreign trade policies, before it started to TTIP negotiations with the US. As other countries, Turkey was able to get information about TTIP after the final report of HLWG on Jobs and

Growth was announced to the public on February 2013. However, now, Turkey is regularly informed by the Commission about the negotiations right after each negotiation round.

If TTIP negotiations are concluded soon and an agreement is signed between the US and the EU, Turkey has to be part of this agreement or sign a new FTA with the US. If Turkey stays out of this trade agreement, it will undergo the same FTA problems again, but this time, against the most important actor in the world trade. The US products will enter into Turkish market via the EU market, Turkey will unilaterally open its market to the US, Turkish exporters will lose their competitiveness against the EU exporters in the US market because they will not compete in equal conditions, Turkey will lose its customs duty revenues, current trade deficit of Turkey against the US will expand and the US direct investment will prefer EU member states instead of Turkey.

In the impact assessments, which were projected in order to demonstrate the effects of TTIP on its parties and some third parties such as Turkey, there are some trade figures about effect of TTIP although it is not possible to reach an exact result. However, there is an outcome showing that the trade between the US and the EU will expand and there will be welfare gain for the parties. Moreover, it is explicit that third parties who have close trade relations with one of TTIP partners will have welfare loss when they stay out of TTIP.

According to the study of Centre for Economic Policy Research, with an ambitious TTIP, EU exports to the US would go up by 28%, equivalent to an additional €187 billion worth of exports of EU goods and services. The EU imports from the US would also increase by €159 billion. Moreover, it would increase the size of the EU economy around €119 billion (or 0.5% of GDP) and of the US by €95 billion (or 0.4% of GDP). The report also states optimistically that liberalising trade between the EU and the US would have a positive impact on worldwide trade and incomes, increasing global income by almost €100 billion. However, this study calculates the impact of TTIP on countries regionally, not individually.

Another study conducted by the Ifo Institute takes into account trade diversion that results from TTIP to the disadvantage of third countries. According to the study, countries with which either the EU or the United States already enjoy free trade agreements are the main losers. With a comprehensive FTA which lowers non-tariff barriers significantly, Turkey's potential loss, as a member of the CU, will be around 2.5 percent. This would amount roughly to a \$20 billion USD loss of income based on Turkey's GDP in 2012, an amount roughly equal to its current trade with the U.S.

According to the study of World Bank, a GTAP CGE simulation, which removes all tariffs on bilateral trade between the EU and US, but continues to impose restrictions on Turkey in the US market and maintains tariffs on US goods in Turkish market as well as assumes no trade deflection via the EU, suggests a welfare loss of US\$130 million of which US\$120 million derives from a deterioration in Turkey's terms of trade as Turkey faces increased competition in both the EU and US markets. In the simulation, if Turkey also eliminates its import tariffs on US manufactures or US trade is deflected via the EU and enters duty-free to Turkey, then the welfare loss increases to US\$160 million. However, if Turkey and the EU were able to conclude an FTA with the US, then Turkey experiences a welfare gain of US\$130 million. In the event of Turkey concluding an FTA with the US, but the EU failing to do so, Turkey's welfare would increase by US\$260 million.

This simulation only includes elimination of tariffs between parties. When regulatory reforms are taken into account under a deep and comprehensive agreement, the potential losses would be much larger than US\$160 million if Turkey were out of TTIP. However, if Turkey is able to agree an FTA with the US and align its existing regulations to those prevailing in the EU and US in areas covered by the TTIP, Turkey would certainly gain from this alignment because it would increase its efficiency in related sectors and increase market access to the US market. Consequently, Turkey has a strong incentive to conclude a bilateral agreement with the US even if it comes true later than the conclusion of TTIP negotiations.

Pursuant to the study of Central Bank of the Republic of Turkey based on Global Trade Analysis Project database and a general equilibrium model, if Turkey is included in TTIP rather than excluded from it, Turkey could gain 35 billion dollars. With regard to the study, in the first scenario, if all customs duties including charges having equivalent effect to customs duties and quotas between the EU and the US are eliminated, GDP growth in the EU and the US will be %0,009 and %0,004, respectively. In this scenario, if Turkey is excluded from TTIP, GDP of Turkey will decrease %0,132 and if Turkey is included into TTIP, its GDP will increase %0,460.

In the second scenario, if non-tariff barriers are decreased %5 in trade in services and %2 in other sectors, including elimination of all customs duties, GDP growth in the EU and the US will be %0,092 and %0,105, respectively. If Turkey stays out of TTIP, its GDP will decrease %0.359 and increase %2,046. According to third scenario, in which including full liberalization of customs duties non-tariff barriers are decreased %5 in all sectors, the EU and the US will have %0,151 and %0,185 GDP growth respectively. If Turkey is not included in the TTIP, it will lose %0,561 of its GDP, but if it is included in TTIP its GDP will grow %4,001.

Turkey's exclusion from TTIP or its not having an FTA with the US will be detrimental not only for Turkey's economic development but also for the democratisation process and development of the region. Turkey will miss the chance of having a momentum of economic development just as it caught after the establishment of the CU and of making its internal progress in certain issues covered in TTIP such as services, investment, public procurement and competition, etc.

Trade volume between the US and Turkey was 17.5 billion dollars in 2015²⁵. FDI stock of the US in Turkey between 2002 and 2015 was 10.8 billion dollars²⁶. Turkey with its huge market could contribute to job creation and economic growth of the US. Turkey could also be a door for American investors to the Middle East and neighbour countries. As a result, if Turkey can take part in TTIP or have parallel FTA with the US, it will be a win-win situation for the parties.

²⁵ www.trademap.org

²⁶ www.tcmb.gov.tr

CHAPTER III

ALTERNATIVE SOLUTIONS TO THE ASYMMETRY OF THE CUSTOMS UNION

FTA problems of Turkey occurring as a result of the asymmetric structure of the CU is legally based on the provisions of ACD No. 1/95. The Decision was designed according to the conditions of those years. However, it has been more than 20 years since it was signed and now it does not fulfil the requirements of the Parties, especially of Turkey. The Decision itself has some practices in its provisions in order to prevent discrepancies which may occur, however they are considered as outmoded and insufficient to find permanent solutions to the problems. Therefore, the parties are in search of alternative solutions to the problems. In this chapter of the study, the possible solutions under existing legal structure will be argued and then, alternative or ongoing processes to solve the FTA problems of Turkey will be discussed.

3.1. SOLUTIONS UNDER EXISTING LEGAL STRUCTURE

The EU-Turkey CU is legally established with the signature of ACD No. 1/95 as a final stage of the association regime between the EU and Turkey founded with Association Agreement in 1963. The EU member states and Turkey is member of the WTO and the CU was founded as an exception to MFN rule of GATT. Therefore, the parties, in addition to their individual liabilities to the WTO Agreements, must also meet the obligations of having a customs union established under WTO rules.

The ACD No. 1/95 is a vast decision which covers several issues and includes certain tools in order to find solutions if a problem occurs in the functioning of the CU. Within Article 52, it also created the EC-Turkey Customs Union Joint Committee, pursuant to Article 24 of the Association Agreement, to carry out exchange of views and information, formulate recommendations to the Association Council and deliver opinions with a view to ensuring the proper functioning of the CU. The parties can consult within the Committee on any point relating to the implementation of the Decision which gives rise to a difficulty for either of them.

Within this context, CUJC convened 33 times in order to exchange their views on several controversial issues and to eliminate difficulties arising within the CU. Although the FTA problem of Turkey has been put on the agenda several times and certain alternatives were offered by Turkey to solve the problem, the parties couldn't agree on an effective and permanent solution in the Committee. Within this scope, the rights of Turkey in the existing legal structure which can solve some issues within the FTA problems of Turkey are argued below.

3.1.1. Using CUJC Effectively to Solve FTA Problems

With regard to Article 55.1 of ACD No. 1/95, wherever a new legislation is drawn up by the EU Commission in an area of direct relevance to the operation of the CU and the Commission consults experts from EU member states, it shall also informally consult Turkish experts. According to Article 55.3, the parties shall at the request of either of them, consult each other again within the CUJC.

Agreements with third countries on commercial issues are in an area of direct relevance to the operation of the CU. Every completed FTA means a change in customs legislation of the EU and a liability on Turkey which should be undertaken. Every FTA has a separate importance for Turkey. Therefore, Turkey should be able to use consultation mechanism in the CUJC in order to affect FTA policies of the EU. Turkey should submit its opinions on the possible FTA partners, the scope of the FTAs and their timetables. Turkey should also state the possible outcomes if Turkey is not able to sign FTA with a partner of the EU.

Moreover, Article 56.2 of the ACD No. 1/95 indicates that if there is a problem for Turkey in adopting a legislation in an area of direct relevance to the functioning of the CU which is defined in Article 54.2 as, among others, commercial policy and agreements with third countries comprising a commercial dimension for industrial products, the CUJC shall make every effort to find a mutually acceptable solution maintaining the proper functioning of the CU. Turkey should use its rights in the existing legal structure and apply to the CUJC to find a permanent solution, under any circumstances, for the smooth functioning of the CU. Unsatisfactory answers or solutions to Turkey's problems should not be accepted.

Besides, according to Article 53.4, the CUJC may decide to establish any subcommittee or working party to assist it in carrying out its duties. Within this context, a subcommittee can be established in order to examine the FTA problems of Turkey and to bring solution offers to the CUJC on these problems. A detailed report on this issue can clearly show the problem to the both parties in the CUJC and the Association Council.

3.1.2. Taking Necessary Protection Measures

Turkey can take necessary protection measures against impairment of free movement of goods or trade deflections in the CU. According to Article 16.3 of the ACD No. 1/95, if Turkey maintains a tariff policy different from that of the EU, goods imported from third countries into the EU and released for free circulation with preferential treatment by reason of their country of origin or of exportation shall be subject to the payment of a compensatory levy

if they are imported into Turkey. However, the provision temporarily offers this right to Turkey for five years as from the date of entry into force of the Decision as if the alignment of the preferential customs regime of the EU was limited within five years. However, CU did not end in five years and it still lasts with its FTA problems which need a solution.

In Article 58.1 of the ACD No. 1/95, by referring Article 56.2, it states that if a mutually acceptable solution to the problem of Turkey in adopting a legislation in an area of direct relevance to the functioning of the CU, which is defined in Article 54.2, among others, as agreements with third countries comprising a commercial dimension for industrial products, cannot be found by the CUJC and if either party considers that discrepancies in the legislation in question may affect the free movement of goods, deflect trade or create economic problems on its territory, it may refer the matter to the CUJC which, if necessary, shall recommend appropriate ways of avoiding any injury which may result.

Article 58.2 states that if discrepancies between the EU and Turkish legislation in an area of direct relevance to the functioning of the CU cause or threaten to cause impairment of the free movement of goods or deflections of trade and the affected party considers that immediate action is required, it may itself take the necessary protection measures and notify the CUJC thereof; the CUJC may decide whether to amend or abolish these measures. Priority should be given to measures which least disturb the functioning of the CU.

The ACD wants to protect smooth functioning of the CU. Therefore, it enables Turkey to take necessary measures against trade deflection when immediate action is required. It does not specify the measures which Turkey can apply, however, it requests from Turkey to take necessary measures which will be the least disruptive for free trade in the CU. Turkey can use origin controls to protect its market from sudden harmful effects of trade deflection (Gürlel, 2010). For example, for imports of cars from Mexico, Turkey has introduced a protection measure based on rules of origin to reduce trade deflection but use of such measures can not be a permanent solution for the elimination of FTA problems and undermines the key advantages of the CU which are free movement of goods and the elimination of costly origin requirements.

Measures against trade deflection were already indicated in Additional Protocol. Article 5.1 of the Protocol states that if either Contracting Party considers that differences arising from the application to imports of customs duties, quantitative restrictions or any measures having equivalent effect, or from any other measure of commercial policy, threaten to deflect trade or to cause economic difficulties in its territory, it may bring the matter before the Council of

Association, which shall, if necessary, recommend appropriate methods for avoiding any harm liable to result therefrom.

Article 5.2 of the Protocol states that where deflections occur or economic difficulties arise and the Party concerned considers that they call for immediate action, that Party may itself take the necessary protective measures, and shall notify the Council of Association thereof without delay; the Council of Association may decide whether the Party concerned shall amend or abolish those measures.

The Additional Protocol also enables Turkey to take necessary protective measures when trade deflection occurs as a result of differences arising from the application of the customs regime. Therefore, if Turkey has difficulty to align preferential customs regime of the EU and any appropriate methods for avoiding any harm liable to results are not recommended by the EU-Turkey Association Council, which is the responsible organ to attain the objectives of the association regime between the EU and Turkey, Turkey has the right to take the necessary protective measures against trade deflections.

3.1.3. Using Safeguard Measures

Turkey can use safeguard measures to protect its certain sectors from serious disturbances. Article 63 of the ACD refers to the Additional Protocol that the Parties confirm the validity of the mechanism and modalities of safeguard measures provided for in Article 60 of the Protocol. According to Article 60 of the Additional Protocol, if serious disturbances occur in a sector of the Turkish economy or prejudice its external financial stability, or if difficulties arise which adversely affect the economic situation in a region of Turkey, Turkey may take the necessary protective measures. Turkey shall immediately notify the Council of Association of those measures and of the rules for their application. In the choice of measures, preference shall be given to those which will least disturb the functioning of the Association. These measures shall not exceed what is strictly necessary to remedy the difficulties that have arisen.

As a member of the WTO, if Turkey wants to apply safeguard measure to certain products, it must follow the rules of the WTO Agreements because WTO rules are above the provisions of Additional Protocol or of ACD No 1/95. Pursuant to Article XIX of GATT and Article 2.1 of the Safeguard Measures Agreement of the WTO, a Member, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under GATT, may apply a safeguard measure to a product when that Member has determined that such product is being imported into its territory in such increased quantities, absolute or

relative to domestic production, under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products.

The provisions in Additional Protocol does not include several requirements to apply a safeguard measure. Serious disturbances on a sector or on external financial stability or difficulties which have adverse effect on economic situation is enough to initiate safeguard measures. However, the conditions to apply a safeguard measure within the WTO rules are so strict. There is need of such increased quantities of importation of a product, unforeseen development or effect of the obligations under GATT, serious injury or threat of serious injury to the domestic industry which produce like or directly competitive products and a causal link between the increased importation and the serious injury to the domestic industry.

According to Article 2.2 of Safeguard Measures Agreement, Safeguard measures shall be applied to a product being imported irrespective of its source. That means, there is no exception to MFN rule for safeguard measures. If Turkey applies safeguard measure to a product imported from EU FTA partner as a result of trade deflection, it has to apply it to products imported from all countries. Therefore, Turkey has to follow the WTO rules for the application of safeguard measures. Within this context, Turkey has initiated 21 safeguard measures between 1995 and 2015.²⁷ Safeguard measures might be a solution to protect domestic market against trade deflection, however this is only one part of the FTA problem. Turkey still needs solutions to eliminate its problems on market access to EU FTA partners.

3.1.4. Being Part of Decision Making Mechanism

Turkey should be part of decision making mechanism of the EU within the scope of the CU. Although Turkey can not take its place in decision making mechanism of the EU, under the existing structure, it can participate in decision shaping and consultation mechanism of the EU on trade related issues. Actually, the provisions of ACD No 1/95 were designed for Turkey's participation in decision shaping mechanism of EU's common commercial policies. However, those provisions on decision shaping and consultation mechanism have not been implemented properly.

In Article 55 of ACD No. 1/95, it clearly states that wherever new legislation is drawn up by the EU Commission in an area of direct relevance to the operation of the CU and the Commission consults experts from EU member states, it shall also informally consult Turkish experts. Although designating third countries to negotiate an FTA and specifying its scope is

²⁷ https://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm#statistics

not formally equal to drawing up a legislation, its results bring about new legislation which directly affects Turkey's trade policies. For example, as a result of the FTA negotiations, the EU will draw up new tariff concessions and will have to reflect these concessions to its customs legislation. In other words, negotiating FTAs with third countries is another way of drawing up a new legislation.

However, the Commission does not consult informally to Turkish experts with which countries the EU will initiate FTA negotiations and what will be the scope of the FTAs as it was indicated in Article 55 of ACD No 1/95. In fact, Turkey has been getting information from the EU at the same time with third countries after the EU determines its FTA policies relating to the countries with which the EU plans to negotiate FTA in the near future and the scope of the FTAs. For example, Turkey found out that the EU and the US would initiate TTIP negotiations when final report of the HLWG on Jobs and Growth was published.

Although Turkey has been demanding from the EU to find a solution to this problem, participating in decision making mechanism of the EU in trade related issues, in the agendas of CUJC meetings repeatedly, so far no fruitful outcome has been reached by the parties. Actually, the EU and Turkey can exchange information about foreign trade policy on CUJC meetings which took place three times a year. Additionally, the EU can share information with Turkey via Permanent Delegation of Turkey to the EU and demand comments of Turkey on EU trade policies. Consequently, more effective consultation and decision making mechanism would facilitate the compliance of Turkey to the EU FTA policies.

Within this scope, the best way is that the EU and Turkey should reach a common position on determining FTA partners and the scope of the agreement before they start negotiations. The EU should give importance to sensibilities and priorities of Turkey during its negotiations because Turkey has to align CET of the EU. During the negotiations, the parties should brief each other about their progress. Moreover, in order to provide cooperation and collaboration in FTA negotiations, parties should establish a working group under the CUJC. Thus, this working group which only deals with issues related to preferential regime can work efficiently and effectively under the existing mechanism.

3.1.5. Participating in EU Committees

Turkey has difficulties to take part in EU committees assisting to the Commission on issues related to trade policies. Even if Turkey participates in some committees, it does not have right to vote. The EU committees publish their own rules of procedures within the scope of "the

Standard Rules of Procedure for Committees” published by the Commission (2011/C 206/06)²⁸. According to Article 7.1²⁹ of these rules, when a third country is specified in the rules of procedure, its representatives can attend the meetings of the committee with an invitation within the scope of the legal act. Also, pursuant to Article 7.4³⁰ of these rules, representatives of this third party shall not be present at and shall not participate in voting of the committee.

However, in the existing legal structure between the EU and Turkey, ACD No 1/95, Turkey should already have right to join EU committees except the committees operating under the Council such as TPC and WPGSP. In Article 60 of the ACD No 1/95, it is stated that Turkish experts shall be involved in the work of a number of technical committees which assist the EU Commission in the exercise of its executive powers in areas of direct relevance to the functioning of the CU to ensure its proper functioning. Therefore, while a committee is preparing its rules of procedures, it should take into account the Article 60 of the Decision and include Turkey among third parties considering the relations within the CU. However, the provisions of ACD No 1/95 does not refer to committees and working parties operating under the Council.

In addition to this, EU demands from Turkey full alignment of relevant EU acquis, however ensuring full alignment can be possible and reasonable if Turkey joins the meetings of the relevant committee and follow the developments in EU trade policies. Moreover, the ACD No 1/95, which constituted the legal basis of the CU, does not have any provision related to full alignment of Turkish legislation to the EU legislation as a requirement to take part in the EU Committees. The EU unilaterally presupposes this requirement for Turkey for the participation to EU Committees. However, EU technical committees are the most important opportunities for Turkey in order to follow the progress in the EU legislation. If Turkey does not join the meetings of these committees, it can not align the EU legislation timely and properly.

²⁸ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2011.206.01.0011.01.ENG&toc=OJ:C:2011:206:TOC

²⁹ Article 7.1: “The representatives of [specify the third country or organisation in question] shall be invited to attend the meetings of the committee, in accordance with [specify the legal act, such as an agreement made by the Union, an Association Council decision or other basic act that provides for the presence of these observers]”.

³⁰ Article 7.4: Representatives of third parties and experts referred to in paragraphs 1, 2 and 3 shall not be present at and shall not participate in voting of the committee.

On the other hand, there is a similar article (Article 100)³¹ in the Agreement on the European Economic Area which constitutes the legal basis for the participation of EEA countries in certain committees and working groups assisting the Commission in areas related to the agreement. Therefore, EU committees include EEA partners among third parties when they prepare their rules of procedures so the representatives of EEA countries are able to join to the EU committees without voting right. On the other hand, even EEA countries which align EU acquis simultaneously do not have right to join the committee meetings such as TPC operating under the Council.

Moreover, in ACD No 1/95, there is already a list in Annex 9 which specify the committees in which Turkey can participate³². Although aforementioned two committees, TPC and GPC, are not specified in this list, the list is not exhaustive. The committees in which Turkey can participate have been extended by the Association Council with the recommendation of the CUJC as the need has arisen. For example, ACD No 6/95 and ACD No 2/99 added Textiles Committee and Technical Regulations Committee, respectively, to the list.³³ Therefore, it is contingent upon the parties to add other committees related to functioning of the CU to the list in Annex 9.

As a consequence, Turkey should participate in all committees related to foreign trade policy operating under the Commission and present its opinion on trade policies. For example, Turkey might be able to persuade the Commission to initiate FTA negotiations with certain countries or to cancel tariff concessions given for certain products to some GSP countries. However, in this existing legal structure, Turkey is not able to join the meetings of the committees or working parties operating under the Council because only member states can participate in these meetings.

3.2. REVISION OF THE ACD NO. 1/95 - UPDATE OF THE CUSTOMS UNION

The EU-Turkey CU has increasingly been unresponsive to changing dynamics of global trade integration. Also, Turkey has become a high growth, diversified, emerging economy which is increasingly looking for new markets to exploit. Therefore, some elements of the CU

³¹ Article 100: The EC Commission shall ensure experts of the EFTA States as wide a participation as possible according to the areas concerned, in the preparatory stage of draft measures to be submitted subsequently to the committees which assist the EC Commission in the exercise of its executive powers. In this regard, when drawing up draft measures the EC Commission shall refer to experts of the EFTA States on the same basis as it refers to experts of the EC Member States.

In the cases where the Council of the European Communities is seized in accordance with the procedure applicable to the type of committee involved, the EC Commission shall transmit to the Council of the European Communities the views of the experts of the EFTA States

³² Committee on Nomenclature, Customs Code Committee, Committee on External Trade Statistics.

³³ http://www.ab.gov.tr/files/_files/okk_eng.pdf

which were once minor irritants started to become a burden on Turkey. Moreover, over the past decade there has been a proliferation of FTAs globally which are increasingly covering areas of deep integration such as services, government procurement, and provisions on minimum environmental and labor standards. Therefore, there has been need of a change to make the CU work well for both parties and to benefit from the changing global trading environment.

Within this context, the other alternative and permanent solution for FTA problem of Turkey is revision of the existing legal structure. With certain changes in the ACD No. 1/95, Turkey can strengthen its legal position on FTA issues. Within this context, the EU and Turkey have already started the process for update of the CU.

The EU Commissioner for Trade and the Turkish Minister of Economy met on 28 February 2014 and decided to set up a Senior Officials Working Group to explore the possibilities to resolve current concerns relating to the structure and the functioning of the CU as well as to further deepen and widen bilateral preferential trade relations. Technical negotiations in SOWG were concluded on 27 April 2015 and the Report of the SOWG on the Update of the Customs Union was published in that date.

Senior officials in the working group discussed extensively how to improve the functioning of the existing trade instruments and which areas could be further covered in the CU. Within this context, the SOWG considered that the enhancement of the bilateral trade relations should be done as a package. With this regard, SOWG agreed on the implementation and amendment of certain provisions in order to improve the functioning of the CU, notably, but not limited to following issues:

- Develop a legally binding provision that should enable Turkey to benefit simultaneously from the FTAs concluded by the EU with third countries
- Improve joint decision making mechanism to bring about the proper functioning of the CU, including consultation mechanisms, in particular on legislation that may impact on the functioning of the CU
- Participation by Turkey to EU committees and specialised agencies relevant to the CU
- Improve dispute settlement mechanism under modalities to be defined by both parties
- Communication by the Commission to Turkey of the new acquis that Turkey has to incorporate in its domestic legislation

- Communication by Turkey of the acquis incorporated in its domestic legislation
- Improve the framework for the implementation of TBT commitments
- Improve the framework for the implementation of the existing IPR commitments
- Better customs cooperation to improve the free movement of goods
- Review the effective implementation of certain provisions that pointed to a future rendez-vous on trade defence instruments.
- Add certain areas to be covered in the enhancement of bilateral relations
 - services, including issues such as mutual recognition of qualifications to achieve the objectives set out in the Association Agreement in this area. Negotiations would go beyond what both sides are negotiating in TISA. The Commission notes that, for Turkey, road transportation is considered an integral and essential part of the package and that the resolution of road transport quota restrictions faced by Turkey is urgent.
 - public procurement
 - further bilateral concessions in agricultural products, together with strong SPS provisions and enhanced cooperation on Geographical Indications.

Update of the CU will integrate Turkey to the single market of the EU. Turkey will harmonize EU policies in several subjects such as services, public procurement and agricultural products. Turkey will be ready for the closing of some chapters in the accession negotiations. Thus, it will pave the way for the EU membership when the political environment has favourable conditions. Moreover, after the harmonization of these issues, Turkey can use them as leverage in its own negotiations. With the benefits of the update of the CU, Turkey can reach the level of liberalization similar to that of developed countries, thus Turkey might have capability to negotiate an FTA with the US in proper conditions or to participate in TTIP after the negotiations are concluded.

Meanwhile, during the negotiations, the European Commission financed a study regarding the “Evaluation of the EU-Turkey Customs Union” which was conducted by the World Bank and published on 28 March 2014. The study handles the issue from different perspectives of both sides. It discusses in detail the advantages and disadvantages of the CU. With this regard, the study also puts forward that because of the asymmetry in the CU, Turkey

has difficulties to negotiate parallel FTAs with third countries and it cannot participate in decision and consultation mechanism of the EU. If the parties resolve systemic problems in the CU, there will be an increase in the benefits of the CU.

Among other issues discussed during the update of the CU, in order to solve FTA problem of Turkey, which is the main theme of this study, the parties can make the following amendments in three issues which are discussed below detailly.

3.2.1. Solving the Problem of FTA Negotiations

Turkey has difficulties to take advantage of FTAs because, within the existing structure, Turkey is not able to persuade some third parties to negotiate FTAs parallel to their EU FTAs. Update of the CU is crucial in order to find a solution to this problem of Turkey. Within the scope of the CU, alternative solutions to this problem are discussed below.

3.2.1.1 Joint Negotiations

One of the solutions to eliminate this problem is that Turkey and the EU can have single joint FTA negotiations with third countries. For now, Turkey can not take part in the FTA negotiations of the EU. With a joint negotiation, Turkey could participate in FTA negotiations with the Commission within the scope of the CU, namely market access for industrial goods. Turkey will have right to reflect its own necessities in the negotiations. In addition to this, Turkey should take part not only in the negotiations but also in the preparation stage of them. If an impact assessment is conducted, Turkey should be included into the assessment. During negotiations, Turkey's requests in tariff reductions, sensitive sectors and concession modalities should be completely taken into account. Negotiations conducted and concluded jointly with common market access arrangements can ensure the integrity of the common commercial policy and elimination of any possibility for trade deflection.

The missing part of joint negotiations is that Turkey would need to negotiate market access for agricultural goods or services separately again with these third parties because Turkey will only participate in negotiations on market access for industrial goods because of the scope of the CU. The EU and Turkey have a separate preferential trade regime for agricultural products under the ACD No. 1/98 and an FTA signed in 1996 for coal and steel products. Therefore, Turkey needs to negotiate FTAs separately for agricultural goods and coal and steel products as well as for services, investment and other issues which are covered under new generation FTAs. In this case, Turkey might have difficulty to persuade third parties to

negotiate FTAs for other issues because these countries will already have market access for industrial goods and they might not want to open their market for other areas.

On the other hand, it is difficult to persuade the EU to accept joint negotiations because the EU does not want Turkey as a burden on it during the negotiations. While it is hard for the Commission to negotiate an FTA for 28 member states, Turkey will also demand several things for its sensitive products or significant industries. In this situation, the EU will have difficulty to request concessions from third parties on trade related other issues such as investment, public procurement and intellectual property. As a result, even if Turkey admits to have joint negotiations with the EU, the EU might not appreciate this offer.

Moreover, the EU and Turkey have different priorities in the FTA negotiations. The parties might want to protect their own sensitive sectors during the negotiations or they might want to use some sectors in trade off with other subject areas. In this case, the parties in the same side might have discussions between each other and this affects the negotiation process.

3.2.1.2. Docking Clause

Another solution to FTA problem of Turkey is adding a “docking clause” to EU FTAs. Thus, Turkey can be party to EU FTAs after the negotiations are concluded. In this way, Turkey does not need to persuade third countries to initiate FTA negotiations with Turkey. As long as the EU stipulates determinedly before the negotiations that Turkey will be party to its FTAs, third countries might not make it trouble. This solution can prevent deflection of trade in the Custom Union. Turkey does not open its market unilaterally to third parties as well as it does not lose its customs duties revenue to the EU member states. In addition, Turkey can have market access to these countries reciprocally.

However, again, Turkey will be able to join the FTAs only within the scope of the CU. Then, it will need to negotiate a new FTA with these third parties for other areas as if it needs to do it in the option of joint negotiation. On the other hand, Turkey will have to accept the outcome what the EU and third parties attain as a result of negotiations. With this regard, Turkey should add reservations for its sensitive products and disadvantaged areas or add transition periods for them before it attaches itself to an FTA.

In addition to this, if, during the update of the CU, Turkey includes agricultural goods, services, investment and public procurement to the scope of the CU, Turkey should also offer to be part of these issues in EU FTAs. However, Turkey should approach these issues attentively if it accepts to be part of these issues in the EU FTAs because these are new issues

for FTA negotiations and Turkey has different priorities in these issues than the EU has. Therefore, Turkey should also request impact analysis from the EU for these issues and obtain some flexibilities such as exceptions and transition periods before it becomes part of these FTAs.

3.2.1.3. Adding a Declaration to EU FTAs

A similar solution for Turkey might be being directly part of the EU FTAs with a declaration without participating in the negotiations. The EU uses this method in its FTAs for Andorra and San Marino, who are also part of the EU Customs Union. For example, in the EU-Korea FTA, there were two joint declarations concerning the principality of Andorra and of San Marino.

According to Joint Declaration concerning the Principality of Andorra, "products originating in the Principality of Andorra falling within Chapters 25 to 97 of the HS shall be accepted by Korea as originating in the EU Party within the meaning of this Agreement." Turkey can also use this method and find solutions to some of its problems, but most of the problems which are the same with those in the "docking clause" solution will continue to exist.

3.2.1.4. Negotiating Parallel FTAs

Another solution to eliminate Turkey's problem is negotiating parallel FTAs with third countries to EU FTAs. For this, Turkey needs to attach a "Turkey clause" to EU's FTAs. This clause should be binding for third countries, thus they can be forced to negotiate FTA with Turkey. "Turkey clause" was used successfully in EU's some FTAs such as EU-Korea FTA and EU-Albania Stabilization and Association Agreement.

In the EU-Korea FTA, it was stated, by the parties as "Joint Declaration on Turkey".³⁴ In the Joint Declaration, while the EU explains the situation that Turkey has obligations to align preferential customs regime of the EU and to negotiate agreements on mutually advantageous basis with EU FTA partners, it only invites Korea to enter into negotiations with Turkey. Although it is obligatory for smooth functioning of the CU, the EU does not compel its partner to negotiate an FTA with Turkey. Besides, in the Declaration, Korea does not promise to enter into negotiations with Turkey. It lays down the result of a joint feasibility study on a possible

³⁴ "The Community recalls that according to the Customs Union in force between the Community and Turkey, the latter has the obligations in relation to countries which are not members of the Community to align itself on the Common Customs Tariff and, progressively, with the preferential customs regime of the Community, taking the necessary measures and negotiating agreements on mutually advantageous basis with the countries concerned. Consequently, the Community had invited Korea to enter into negotiations with Turkey as soon as possible. Korea informs that Korea will enter into negotiations with Turkey based on the result of a joint feasibility study on an agreement establishing a free trade area between Korea and Turkey."

FTA as a condition for negotiations. In addition to this, there is no projection or timetable specified for FTA negotiations between Turkey and Korea.

In EU-Albania SAA, Turkey clause is stated under Article 15.³⁵ In this Article, the EU forces Albania to enter into FTA negotiations with Turkey for trade in goods and services as soon as possible and conclude it before the end of the transitional period which is ten years starting from the entry into force of the EU-Albania SAA. The EU and Albania also aim to establish a free trade area in this transitional period. However, there is no certainty when this free trade area between the EU and Albania will be established and when Turkey and Albania will conclude their FTA negotiations within this ten-year-period. In this situation, it is possible that the EU-Albania SAA gets into force before Turkey and Albania conclude their FTAs. Although the EU attached “Turkey clause” to the EU-Albania SAA, Turkey will still have the same FTA problems until it concludes its FTA with Albania.

In summary, if Turkey chooses using “Turkey clause” in EU FTAs as a solution for its FTA problems, it should be cautious about the language of the clause. Taking into account the importance of the language, Turkey also sent a text to the Commission. Within this context, firstly, “Turkey clause” should be binding for third parties. Thus, EU FTA partners will have to initiate FTA negotiations with Turkey, too. For example, in the EU’s negotiations with Algeria in 2005, Turkey clause was used but it could not force Algeria to start FTA negotiations with Turkey. Secondly, there should be a timetable for negotiations and Turkey and the EU should start and conclude negotiations with third countries at the same time. That means, the EU should not initiate or conclude negotiations with third parties before Turkey does so. Lastly, the clause should include a precaution against malfunction of negotiations because Turkey may have troubles to conclude negotiations with third countries. In this situation, Turkish products should be assumed as the EU products until the negotiations are concluded between Turkey and third parties. (World Bank, 2014) Another option as a precautionary measure might be adding provisions which impose compensatory levies or protection measures against products of third parties in order to prevent trade deflection. However, this choice only protects Turkish domestic market, it does not enable Turkish exporters to be competitive in international trade market.

³⁵ “Albania shall start negotiations with Turkey with a view to concluding, on a mutually advantageous basis, an Agreement establishing a free trade area between the two Parties in accordance with Article XXIV of the GATT as well as liberalising the establishment and supply of services between them at a level equivalent to this Agreement in accordance with Article V of the GATS. These negotiations shall be opened as soon as possible, with a view to concluding such an Agreement before the end of the transitional period referred to in Article 16.1.”

3.2.2. Participating in Decision Making Mechanism

Turkey's being out of decision making mechanism of the EU on trade related issues is another deficiency in the CU which brings about Turkey's FTA problems. When the Agreement was designed, it was expected that it would be a transitional arrangement towards Turkey's full EU membership. The provisions of the ACD No. 1/95 were constituted to allow Turkey to participate in decision shaping, not decision making. However, those provisions on institutional cooperation and decision shaping have not been properly implemented and used which increases the risk of non-compliance. Therefore, there is a need to make the CU regime work in a more balanced way to maximize the benefits of the CU for both parties to prevent similar issues arising if the CU were to be widened to cover new areas such as services and public procurement.

Within this context, to maximize the benefits of the existing or a widened CU, asymmetries in decision making should be corrected. Therefore, parties should develop an improved consultation and information sharing mechanism or a joint decision making mechanism to bring about the proper functioning of the CU.

Consultation and information sharing mechanism which means decision shaping mechanism already exists in the present legal structure even though it does not function correctly. Update of the CU can make the functioning of the current arrangement work better. The EU might consult to Turkey when it gets a decision on trade related issues and inform Turkey with regard to its foreign trade policies. However, it does not solve the problems of Turkey if the EU always gets its own way after it consults Turkey on trade related issues.

If the EU continues to take the decisions on its own, Turkey should demand more initiative and want to take part in decision making mechanism of the EU because it is the only way to affect EU's decisions on external trade which also has direct impact on Turkey. The EU might not want to include Turkey into this mechanism because it does not desire to give equal or more power, e.g. voting or vetoing a decision, to a third party than its own member states in its own mechanism. However, during the update of the CU this alternative should be taken into account because if Turkey stays out of decision making mechanism it will still have to implement the policies which the EU has taken and still FTA problems of Turkey will continue. Actually, participating in decision making mechanism of the EU which directly affects the foreign trade policies of Turkey must not be privilege for a sovereign country, it should be a definite right.

3.2.3. Participating in EU Committees

Turkey's being out of EU committees relating to CCP of the EU is another issue relating to FTA problem of Turkey which should be resolved during the update of the CU. Turkey participates in 140 EU committees. In these committees, Turkey has observer status and does not have voting right. However, in some committees such as Customs Code Committee and Economic Tariff Questions Group, Turkey is able to declare its views on related issues and member states may take them into account.

On the other hand, there are some committees which Turkey cannot attend such as TPC and WPGSP which are subordinate bodies of the Council and GPC under the Commission, all of which recommend and assist the Commission to designate certain external trade policies of the EU.

Within this context, firstly, during the update of the CU, Turkey should force the EU to have a seat in the aforesaid committees operating under the Commission and the Council which are important for foreign trade policies of the EU. When Turkey is out of these committees, it cannot get information about the EU policies on CCP until it is announced by the EU. Even though Turkey does not have voting power in committees under the Council since it is not EU member state, it can be present in relevant meetings with observer status and exchange information on trade policies. Full alignment of the EU legislation correlated with these committees should not be precondition for Turkey because Turkey needs to follow the developments in the legislation in order to align it. With this regard, the parties should update Annex 9 of the ACD No. 1/95 which lists the EU committees which Turkish experts can join and after that this update should be automatic without any decision of partners when new committees within the scope of trade policy are founded.

Secondly, Turkey should consolidate its place in EU committees in which Turkey has already been participating. If Turkey can actualize it, it should have voting right in these committees in order to shape the decisions because these committees are important organs which form EU external trade policies. Having only observer status in these committees will only ensure slight advantages for Turkey when compared with having voting right. In fact, it should be incontestable right of Turkey to have voting right in these committees for the decisions which have direct effect on its own trade policies within the CU as long as Turkey aligns the relevant legislation of these committees. Furthermore, according to the study of World Bank, Evaluation of the EU-Turkey Customs Union, "Friends of Turkey" working

groups could be established under these committees to which Turkey could be invited and kept informed of the various issues.

3.3. TURKEY'S MEMBERSHIP TO THE EU

3.3.1. EU-Turkey Relations

Turkey and the EU relations began with the signature of the Agreement Creating an Association between the Republic of Turkey and the European Economic Community (Ankara Agreement) on 12 September 1963. Ankara Agreement got into force on 1 December 1964, envisaging the progressive establishment of a CU which would bring the Parties closer together in economic and trade matters and secure Turkey's full membership to the EU. In the meantime, under the First Financial Protocol which covered the period 1963-1970, the EU provided Turkey with loans worth 175 million ECU. The EU also granted trade concessions to Turkey under the form of tariff quotas, however, it did not become as effective as expected. Yet, the EU's share in Turkish imports rose from 29% in 1963 to 42% in 1972. The Ankara Agreement envisaged not only free circulation of goods, but also of natural persons, services and capital between the parties; however, factor movements except goods have not been accomplished yet.

Then, the parties signed the Additional Protocol on 13 November 1970 in order to set out how the CU would be established. It provided that the EU would abolish tariff and quantitative barriers to its imports except petroleum and textile products from Turkey upon the entry into force of the Protocol on 1 January 1973, whereas Turkey would do the same in accordance with a timetable containing two calendars set for 12 and 22 years. The Additional Protocol also envisaged the free circulation of natural persons between the Parties in the next 12 to 22 years. If the Additional Protocol had been implemented in full, the free circulation of goods and services and the harmonisation of Turkish legislation with that of the EEC in a multitude of areas would have been achieved at the end of the 22 year timetable.

1980s started with liberalization movements in Turkish economy. An economical program based on the suggestions of IMF, World Bank and OECD was prepared in order to reconstruct internal and external economic structure. Turkey met with free market economy. Import substituting industrialization was left and export-based economy was brought into Turkey. However, liberalization movements drew reaction in some parts of the society and internal disorder appeared. Then, on 12 September 1980, a coup d'état occurred and the EU-Turkey relations deteriorated because of the oppressive attitude of the military government to the society with respect to fundamental rights and freedoms.

With democratic elections in 1983, the relations got better and in 1987, Turkey applied for full membership on the basis of the EEC Treaty's Article 237 which gave any European country the right to do so. Turkey's request for accession was not filed under the relevant provisions of the Ankara Agreement. It was conducted under the provisions of the Treaty of Rome. The Commission's Opinion for Turkey's accession which was endorsed by the Council on 5 February 1990 underlined Turkey's eligibility for membership, yet it deferred the in-depth analysis of Turkey's application until the emergence of a more favourable environment. Moreover, the EU was going to complete its Single Market and was not considering any further enlargement including Turkey's accession.

Although this application could not attain its basic objective, it revived Turkey-EU relations. Within this context, the parties signed the ACD No. 1/95 on 6 March 1995 in order to complete the CU between the EU and Turkey in industrial and processed agricultural goods by 31 December 1995. With the entry into force of the CU, Turkey abolished all duties and equivalent charges on imports of industrial goods from the EU. Moreover, Turkey has been harmonising its tariffs and equivalent charges on the importation of industrial goods from third countries with the EU's CET and progressively adapting itself to the EU's commercial policy and preferential trade arrangements with specific third countries. Furthermore, Turkey has been harmonizing its technical legislation, competition rules and intellectual property rights with those of the EU.

In addition to the CU, Turkey was keen on maintaining Turkey-EU relations with the aim of providing full membership to the EU. Within this context, Turkey attached particular importance to the EU's enlargement process at the end of 1990s. At the Association Council of 29 April 1997, the EU reconfirmed Turkey's eligibility for membership and asked the Commission to prepare recommendations to deepen Turkey-EU relations. However, it claimed that the development of EU-Turkey relations depends on the issues relating to Greece, Cyprus, democracy, rule of law and human rights.

The Commission also excluded Turkey from the enlargement process in its report "Agenda 2000: For a Stronger and Wider Union" which was disclosed on 16 July 1997. Although the report conceded that the CU was functioning satisfactorily and that it had demonstrated Turkey's ability to adapt to the EU norms in many areas, it repeated the same political arguments against Turkey such as lack of democracy, rule of law and human rights and economic arguments such as inflation, public spending deficits and currency depreciation and made no reference to Turkey's full membership objective. As a result, while the

Commission confirmed Turkey's eligibility for membership, it excluded it from the enlargement process contradictorily.

On 12-13 December 1997, at the Luxembourg Summit of the European Council based on the contents of the "Agenda 2000" the EU took a decision for the enlargement of the EU to the Eastern Europe countries. Although Turkey's eligibility was reconfirmed, it was out of this enlargement process. In the Summit, the Commission was asked to submit suitable proposals to enhance Turkey-EU relations. Turkey was invited to the European Conference, with a number of preconditions such as solving Cyprus problem and respecting human rights. However, Turkey criticized the EU's attitude, EU's not honouring its commitments and including other issues outside the contractual context of the bilateral relations, and did not join to the Conference.

On 10-11 December 1999, Helsinki Summit was held and in the summit Turkey was officially recognised without any precondition as a candidate state. Thus, Turkey, like other candidate states, would participate in Community programs and meetings open to other candidate countries and agencies. Helsinki Summit started a new era for the EU-Turkey relations. The Council approved the Accession Partnership on 8 March 2001 which was prepared by the Commission for the first time (others were in 2003, 2006 and 2008). Accession Partnership is a road map for candidate countries. It includes measures which should be taken by the candidate country with regard to political and economical criteria and within alignment to EU acquis for the EU membership.

In response to this document, Turkey announced its first National Program on 19 March 2001 (others were in 2003 and 2008) to fulfil the requirements on the adoption of the EU acquis and meet political and economic criteria. Within the scope of National Program, Turkey adopted numerous reform measures in order to open accession negotiations which depends on the fulfilment of the Copenhagen political and economic criteria. Apart from these documents, since the grant of candidate status to Turkey, the Commission has annually been preparing Regular Progress Reports in order to review the alignment of Turkey to the EU acquis.

On 12-13 December 2002, in Copenhagen Summit, it was stated that the negotiations will be opened if it is decided that Turkey meets the Copenhagen criteria. Then, at the Brussels Summit on 16-17 December 2004, the Council took note that Turkey sufficiently fulfilled the political criteria and decided to open accession negotiations with Turkey on 3 October 2005 with the adoption of the Negotiation Framework. This document consists of three fundamental elements on which the negotiations will carry out.

1- Fulfilling the Copenhagen political criteria with no exceptions and assimilating and speeding up the political reforms,

2- Undertaking and applying the EU acquis,

3- Establishing and strengthening the dialogue with civil society and in this regard undertake a communication strategy aimed at both the European and the Turkish public.³⁶

In the accession process, within 35 chapters, 16 chapters were opened and one chapter was provisionally closed. 8 chapters were suspended by the Council Decision of 11 December 2006 due to the opening benchmark of Additional Protocol which extended the Ankara Agreement to the new Member States that acceded to the EU in 2004 because Turkey, with an official declaration, stated that by signing the Additional Protocol, it did not recognize the “Republic of Cyprus” by any means. Furthermore, 6 chapters have been blocked by Southern Cyprus unilaterally. (Annex 3)

Although it was the commitment of the EU to carry out the negotiations on chapters only on the basis of the relevant acquis, the technical negotiation process has been slowed down for political reasons. Within this context, parallel to negotiations but not as an alternative to them, the parties pronounced “Positive Agenda” in 2012 in order to keep the accession process of Turkey alive and put it properly back on track after a period of stagnation. Furthermore, in order to accelerate the dynamics of Turkey-EU relations and boost the reform process, Turkey announced its New European Union Strategy on September 2014. Afterwards, European Union Communication Strategy was published by Turkey on October 2014 so as to demonstrate an accurate picture of Turkey and to increase domestic and external support for Turkey’s EU accession process. Moreover, Turkey showed its determination for the membership by preparing National Action Plan for EU Accession with two phases covering 2014-2015 and 2016-2019 period in order to lay down concretely the steps that Turkey will take in the forthcoming period with regard to alignment with the EU acquis both in terms of legislative and administrative measures.

At present, the EU-Turkey relations are not thriving because of two reasons. The first one is Turkey’s suspension of Readmission Agreement, which would get into force on 1 June 2016, due to the fact that the EU suggested unacceptable preconditions for visa-free travel for Turkish nationals in the Schengen zone against return of immigrants to the EU. The second one is EU’s criticism over Turkish Government’s implementations after the failed coup d’état in

³⁶ <http://www.ab.gov.tr/?p=37&l=2>

Turkey. Nowadays, it does not seem that the EU-Turkey relations will get better. However, Turkey has been technically ready during the negotiation process for the membership and only political wishes of both sides will be the determiner for the membership.

3.3.2. Turkey's membership as a solution to the problems.

Membership of Turkey to the EU can provide several advantages to both sides. While Turkish economy continues to grow and maintain its dynamism, the EU exporters and investors also get benefit from the growth of new sectors in Turkish market. Among multiple benefits of the membership of Turkey to the EU, it can be an incisive solution to the problems of Turkey mentioned in the second chapter of the study. Firstly, if Turkey joins among the Member States of the EU, it will directly be under the supra-national structure of the EU. Therefore, as other Member States, it will assign its competence to the EU in common commercial policy and customs union as stated in Article 3 of TFEU.

With this respect, the problem of Turkey to persuade EU FTA partners to initiate FTA negotiations with Turkey will end automatically. In this situation, Turkey will lose its competence in external trade and some other areas such as competition rules or it will share its competence with the EU in some areas such as internal market, agriculture and fisheries etc. The Commission instead of Member States will be negotiating FTAs with third countries. However, Turkey will get rid of certain problems which occurred when it does not have FTA with EU FTA partners. There will not be trade deflection at least due to the difference in customs duties. Turkey will not lose its customs duty revenues to other EU member states occurring because of trade deflection. Turkey will not be open market unilaterally. In return, it will have market access to third countries.

Membership of Turkey to the EU will also eliminate other important problem of Turkey which is being out of decision making mechanism of the EU with respect to common commercial policies. When Turkey joins to the EU, it will already have its seats in the EU institutions. It will have voting power in these institutions and even veto power in the Council of the EU in certain issues such as EU membership and citizenship. Turkey might lose its competency to the EU in common commercial policies or other issues, but it will have right in the Council to vote against the decisions which are not favour of itself in order not to ensure the qualified majority. For FTA issues, Turkey will have a voice to decide with which countries the EU will negotiate FTAs and what will be the scope of these FTAs.

The other problem of Turkey with regard to FTA issue is Turkey's not participating in technical committees of the EU and not having voting right in the committees which it joined.

The best option to resolve this problem would be membership of Turkey to the EU because Turkish experts could join all the meetings of the TPC and GPC as if other member states do. Furthermore, Turkey could have voting right in these committees and in other committees in which Turkey is observer at present. Thus, Turkey could not only follow the progress in EU foreign trade policies but also affect the results of EU policies which have direct outcomes on Turkey.

On the other hand, Turkey's moving away from its membership goal will weaken its commitments to Western economic institutions and values. This has a cost for the EU because recession in the economic growth and job creation in Turkey will affect EU exporters' performance too. Furthermore, Turkey may become politically less stable and less committed to democracy. This also creates a risk of approachment to state controlled markets, authoritarian or sovereign democracy and greater protectionism over liberal markets, liberal democracy and liberal trade. As a result, unfortunately, the gap between Turkey and the Western understandings gradually widens.

CONCLUSION

Turkey and the EU established the CU on 1 January 1996 with the ACD No. 1/95. The EU and Turkey CU is not an ordinary economic integration. It has additional requirements when compared to a certain customs union. Within this context, the EU-Turkey CU not only requires elimination of customs duties and quantitative restrictions between the parties, but also Turkey's alignment with the preferential customs regime of the EU, including the autonomous regimes and preferential agreements with third countries, with a view to harmonize commercial policy of the EU. Moreover, Turkey has to harmonize technical legislation of the EU so as to abolish technical barriers to trade, competition rules and legislation on state aid. So far, Turkey has made a significant effort in order to fulfil these requirements completely.

The CU provided mutual benefits to both sides. As a result of the establishment of the CU, free movement of goods has been provided and the parties achieved greater economies of scale. Trade volume has increased tremendously since 1996. Although Turkey already had concessions for the access to the EU market since 1971 with the Additional Protocol, the CU created more reactions among the Turkish industrialists. Turkish industry gained competitiveness and has developed itself. Foreign trade statistics also shows that the trade volume between the parties increased from 37 billion dollars in 1996 to 143 billion dollars in 2015.

While the CU brought certain benefits to both parties, because of its asymmetric structure, it also has deficiencies which create problems for Turkey unilaterally. Turkey, in order to align CCP of the EU, has to negotiate FTAs with third countries who initiated FTA negotiations with the EU. However, Turkey has crucial problems in its FTA policy which is connected with EU FTA policies.

The reasons of this asymmetric structure depends on the provisions of the ACD No. 1/95. Unilateral obligations of Turkey and absence of some provisions which can eliminate Turkey's problems are main reasons of this asymmetry. Also, irregular implementation of some provisions of the Decision has increased the impact of the distortion in the CU.

The first problem of Turkey occurring in this asymmetry is that it does not have any influence to affect EU FTA policies which have direct impact on Turkey's FTAs because Turkey can not participate in decision making mechanism of the EU. In fact, consultation and decision shaping mechanism specified in ACD No 1/95 does not work properly. Therefore, the EU determines itself the countries with which it will start negotiations, what will be the scope of FTAs and what will be the timeline for concessions. Then, it expects from Turkey to

negotiate FTAs with these countries in order to harmonize its external commercial policy. In sum, Turkey designates its own foreign trade policy according to the EU's own policies without contributing it in decision making process.

Secondly, Turkey can not participate in some EU committees which give advice to the EU Commission about common commercial policy and preferential regimes of the EU. Also, even if Turkish experts join some technical committees, they can not vote, but can observe the meetings. On the other hand, Turkish experts who can not join the meetings of TPC and GPC are not able to affect EU foreign trade policies. They can't even learn what the EU is planning to do on its external commercial policy. This makes Turkey watch the EU while it is determining common trade policies which have an impact upon Turkey.

Thirdly, Turkey has difficulties to persuade EU FTA partners to negotiate FTAs with Turkey and there is not any binding provision which will force these countries to start FTA negotiations with Turkey. Turkey has to align preferential regime of the EU; however, if it does not have essential tools it is not possible for Turkey to align EU preferential regime properly.

Since Turkey is not able to negotiate FTAs with third countries parallel to EU FTAs, it has certain problems such as trade deflection, customs duties revenue lost and unfair competition conditions. While Turkey opens its market unilaterally to third country exporters via the EU market, Turkish exporters do not have market access to these countries reciprocally. In addition to this unfair competition, Turkey also loses its customs duties revenue because the EU customs get the revenue if there is a customs duty to these third country goods.

The reasons of this asymmetric structure depends on the provisions of the Custom Union Agreement. Unilateral obligations of Turkey and absence of some provisions which can eliminate Turkey's problems are the main reasons of this asymmetry. Also, irregular implementation of some provisions of the ACD No. 1/95 increased the impact of the distortion in the CU.

The problems of Turkey occurring with regard to FTAs can be eliminated mutually or unilaterally with certain solutions. The existing legal structure has possibilities to eliminate some part of these problems. Within the existing structure, if the parties collaborate with each other under the Customs Union Joint Committee, they can solve most of the problems. However, the parties should be in good faith and cooperation. On the other hand, Turkey can unilaterally take some precautions to preserve its market from trade deflection with protection measures and safeguard measures, however it does not provide competitiveness to Turkish exporters in abroad.

The other solution which is also on the agenda now is the update of the CU. Amendments of some provisions in the ACD No. 1/95 and adding some provisions to it can be a reasonable solution for these problems for the near future. If parties agree on a “Turkey clause” which the EU should use in its FTAs with third countries in order to force them to negotiate an FTA with Turkey, one of the most important problem of Turkey will be eliminated. Furthermore, Turkey’s participation to decision making process and technical committees with respect to external trade policies of the EU is ensured with some amendments in the Decision, Turkey will also get rid of other important impediments in front of the smooth functioning of the CU.

The last and permanent solution to overcome the problems of Turkey is membership of Turkey to the EU. After the membership, Turkey will not need to persuade third countries to negotiate a new FTA again because it will already become part of the EU FTAs. Therefore, all the problems correlated with Turkey’s having difficulty to negotiate FTAs with third countries will disappear. Moreover, Turkey will be in the decision making mechanism of the EU as a member and Turkish experts will join technical committee meetings. This time Turkey will be on the table while its FTA policies are determined.

As a result, the EU-Turkey CU has brought multiple advantages to the parties, however it also caused several problems especially for Turkey because of its asymmetric structure which has left Turkey in a difficult situation specifically in FTA issues. In the new era of international trade, the importance of bilateralism and FTAs has been increasing dramatically. The EU also has been following this trend recently. Turkey, because of its obligations within the CU, also has to follow this trend parallel to the EU. Although there are deficiencies in negotiating parallel FTAs with the EU, these problems are not unsolvable with determination of two parties.

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ANNEXES

ANNEX 1

TURKEY'S FOREIGN TRADE AND SHARE OF THE EU																			
(Million \$)																			
	WORLD								European Union (28)								EU Share (%)		
Year	Export	Ch. (%)	Import	Ch. (%)	Balance	Volume	Ex/Im	Vol Ch. (%)	Export	Ch. (%)	Import	Ch. (%)	Balance	Volume	Ex/Im	Vol Ch. (%)	Export	Import	Volume
1996	23.224	-	43.627	-	-20.403	66.851	53,2	-	12.590	-	24.349	-	-11.759	36.939	51,7		54,2	55,8	55,3
1997	26.261	13,1	48.559	11,3	-22.298	74.820	54,1	11,9	13.471	7,0	26.128	7,3	-12.657	39.599	51,6	7,2	51,3	53,8	52,9
1998	26.974	2,7	45.921	-5,4	-18.947	72.895	58,7	-2,6	14.837	10,1	25.297	-3,2	-10.460	40.134	58,7	1,4	55,0	55,1	55,1
1999	26.587	-1,4	40.671	-11,4	-14.084	67.258	65,4	-7,7	15.454	4,2	22.538	-10,9	-7.084	37.992	68,6	-5,3	58,1	55,4	56,5
2000	27.775	4,5	54.503	34,0	-26.728	82.278	51,0	22,3	15.688	1,5	28.552	26,7	-12.864	44.240	54,9	16,4	56,5	52,4	53,8
2001	31.334	12,8	41.399	-24,0	-10.065	72.733	75,7	-11,6	17.576	12,0	19.841	-30,5	-2.265	37.417	88,6	-15,4	56,1	47,9	51,4
2002	36.059	15,1	51.554	24,5	-15.495	87.613	69,9	20,5	20.458	16,4	25.698	29,5	-5.240	46.156	79,6	23,4	56,7	49,8	52,7
2003	47.253	31,0	69.340	34,5	-22.087	116.593	68,1	33,1	27.479	34,3	35.157	36,8	-7.678	62.636	78,2	35,7	58,2	50,7	53,7
2004	63.167	33,7	97.540	40,7	-34.373	160.707	64,8	37,8	36.699	33,6	48.130	36,9	-11.431	84.829	76,2	35,4	58,1	49,3	52,8
2005	73.476	16,3	116.774	19,7	-43.298	190.250	62,9	18,4	41.533	13,2	52.781	9,7	-11.248	94.314	78,7	11,2	56,5	45,2	49,6
2006	85.535	16,4	139.576	19,5	-54.041	225.111	61,3	18,3	48.149	15,9	59.448	12,6	-11.299	107.597	81,0	14,1	56,3	42,6	47,8
2007	107.272	25,4	170.063	21,8	-62.791	277.335	63,1	23,2	60.754	26,2	68.472	15,2	-7.718	129.226	88,7	20,1	56,6	40,3	46,6
2008	132.027	23,1	201.964	18,8	-69.937	333.991	65,4	20,4	63.719	4,9	74.513	8,8	-10.794	138.232	85,5	7,0	48,3	36,9	41,4
2009	102.143	-22,6	140.928	-30,2	-38.785	243.071	72,5	-27,2	47.228	-25,9	56.616	-24,0	-9.388	103.844	83,4	-24,9	46,2	40,2	42,7
2010	113.883	11,5	185.544	31,7	-71.661	299.427	61,4	23,2	52.934	12,1	72.391	27,9	-19.457	125.325	73,1	20,7	46,5	39,0	41,9
2011	134.907	18,5	240.841	29,8	-105.934	375.748	56,0	25,5	62.589	18,2	91.439	26,3	-28.850	154.028	68,4	22,9	46,4	38,0	41,0
2012	152.462	13,0	236.545	-1,8	-84.083	389.007	64,5	3,5	59.398	-5,1	87.657	-4,1	-28.259	147.055	67,8	-4,5	39,0	37,1	37,8
2013	151.803	-0,4	251.661	6,4	-99.858	403.464	60,3	3,7	63.040	6,1	92.458	5,5	-29.418	155.498	68,2	5,7	41,5	36,7	38,5
2014	157.610	3,8	242.177	-3,8	-84.567	399.787	65,1	-0,9	68.514	8,7	88.783	-4,0	-20.269	157.297	77,2	1,2	43,5	36,7	39,3
2015	143.839	-8,7	207.234	-14,4	-63.395	351.073	69,4	-12,2	63.998	-6,6	78.681	-11,4	-14.683	142.679	81,3	-9,3	44,5	38,0	40,6

Source: www.tuik.gov.tr

ANNEX 2

FTAs of EU and of TURKEY			
		EU	TURKEY
	Partner	Date of Entry Into Force	Date of Entry Into Force
1	EFTA	1973	1992
2	Faroe Islands	1997	Ratification Process
3	Palestine	1997	2005
4	Tunisia	1998	2005
5	South Africa	2000	Not Negotiating
6	Morocco	2000	2006
7	Israel	2000	1997
8	Mexico	2000	Negotiations Continue
9	Republic of Macedonia	2001	2000
10	Jordan	2002	2011
11	Chile	2003	2011
12	Lebanon	2003	Ratification Process
13	Egypt	2004	2007
14	Algeria	2005	Not Negotiating
15	Albania	2006	2008
16	Montenegro	2008	2010
17	Bosnia and Herzegovina	2008	2003
18	CARIFORUM States	2008	Not Negotiating
19	Côte d'Ivoire	2009	Not Negotiating

20	Papua New Guinea	2009	Not Negotiating
21	Fiji	2009	Not Negotiating
22	Serbia	2010	2010
23	South Korea	2011	2013
24	Mauritius	2012	2013
25	Seychelles	2012	Negotiations Continue
26	Madagascar	2012	Not Negotiating
27	Zimbabwe	2012	Not Negotiating
28	Colombia	2013	Negotiations Continue
29	Peru	2013	Negotiations Continue
30	Central America	2013	Not Negotiating
31	Ukraine	2014	Negotiations Continue
32	Cameroon	2014	Negotiations Continue
33	Georgia	2014	2008
34	Moldova	2014	Ratification Process
35	Kosovo ³⁷	2016	Ratification Process
36	Syria **	Signature suspended	2007 (suspended)
37	Singapore	Ratification Process	Ratification Process
38	Ecuador	Ratification Process	Negotiations Continue
39	Canada	Ratification Process	Not Negotiating
40	Vietnam	Ratification Process	Not Negotiating
41	Ghana	Initialled	Initialled
42	The Economic Community of West African States (ECOWAS)	Initialled	Not Negotiating

³⁷ http://europa.eu/rapid/press-release_IP-16-1184_en.htm

43	The West African Economic and Monetary Union (WAEMU)	Initialled	Not Negotiating
44	Malaysia	Negotiations Continue	2015
45	Japan	Negotiations Continue	Negotiations Continue
46	MERCOSUR	Negotiations Continue	Negotiations Continue
47	Democratic Rep. Of Congo	Negotiations Continue	Negotiations Continue
48	Chad	Negotiations Continue	Negotiations Continue
49	Thailand	Negotiations Continue	Not Negotiating
50	USA	Negotiations Continue	Not Negotiating
51	India	Negotiations Continue	Not Negotiating
52	Indonesia	Negotiations Continue	Not Negotiating
53	Eastern and Southern Africa Countries	Negotiations Continue	Not Negotiating
54	Myanmar	Negotiations Continue	No Initiative
55	Philippines	Negotiations Continue	No Initiative
56	Libya	Negotiations Suspended	Negotiations Continue
57	Gulf Cooperation Council	Negotiations Suspended	Negotiations Suspended

Source: <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>

http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf

<http://ec.europa.eu/trade/policy/countries-and-regions/>

***Until August 27, 2016.**

Ratification Process: FTA will get into force when the internal ratification process is completed.

Initialled: The parties have initialled the agreement but not signed yet.

Negotiations Continue: The parties are still negotiating the FTA.

Negotiations Suspended: Negotiations were suspended because of the initiative of the third party.

No Initiative: The parties have not attempted to initiate FTA negotiations.

Not Negotiating: Third party does not want to initiate FTA negotiations.

Signature Suspended: Negotiations were completed, but the agreement has not been signed.

Suspended: FTA has been suspended because of political reasons.

****The EU has Cooperation Agreement with Syria dated 1977.**

ANNEX 3

CURRENT SITUATION IN ACCESSION NEGOTIATIONS			
(30 June 2016)			
OPENED CHAPTERS		8 CHAPTERS OF WHICH OPENING BENCHMARK IS ADDITIONAL PROTOCOL	
25	SCIENCE AND RESEARCH (Provisionally closed)	1	FREE MOVEMENT OF GOODS
20	ENTERPRISE AND INDUSTRIAL POLICY	3	RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES
18	STATISTICS	9	FINANCIAL SERVICES
32	FINANCIAL CONTROL	11	AGRICULTURE AND RURAL DEVELOPMENT
21	TRANS-EUROPEAN NETWORKS	13	FISHERIES
28	CONSUMER AND HEALTH PROTECTION	14	TRANSPORT POLICY
6	COMPANY LAW	29	CUSTOMS UNION
7	INTELLECTUAL PROPERTY LAW	30	EXTERNAL RELATIONS
10	INFORMATION SOCIETY AND MEDIA	CHAPTERS BLOCKED BY SOUTHERN CYPRUS UNILATERALLY	
4	FREE MOVEMENT OF CAPITAL		
16	TAXATION	2	FREEDOM OF MOVEMENT FOR WORKERS
27	ENVIRONMENT	15	ENERGY
12	FOOD SAFETY, VETERINARY AND PHYTOSANITARY POLICY	23	JUDICIARY AND FUNDAMENTAL RIGHTS
22	REGIONAL POLICY AND COORDINATION OF STRUCTURAL INSTRUMENTS	24	JUSTICE, FREEDOM AND SECURITY
17	ECONOMIC AND MONETARY POLICY	26	EDUCATION AND CULTURE
33	FINANCIAL AND BUDGETARY PROVISIONS	31	FOREIGN, SECURITY AND DEFENSE POLICY
CHAPTERS WITHOUT POLITICAL BLOCKAGES			
5	PUBLIC PROCUREMENT	34	INSTITUTIONS (At the end of negotiations)
8	COMPETITION POLICY	35	OTHER ISSUES (At the end of negotiations)
19	SOCIAL POLICY AND EMPLOYMENT		

Source: http://www.ab.gov.tr/files/5%20Ekim/yatay_muzakere_tablosu_30_06_2016.pdf