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Author's Note

On my honour as a student of the Diplomatische Akademie Wien, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.

Die Modernisierung der Zollunion Türkei-EU: Chancen und Herausforderungen

Zusammenfassung

Die Zollunion Türkei-EU ist seit ihrer Umsetzung im Jahr 1995 zum Eckpfeiler der bilateralen Handelsbeziehungen geworden, da sie zur Transformation und Modernisierung der türkischen Industrie beigetragen und einen hohen Grad an Integration zwischen den Parteien ermöglicht hat.

Seit der Gründung der Zollunion haben sich mehrere Veränderungen und Entwicklungen in Bezug auf die globalen Wirtschaftsmuster ergeben. Gemeinsam mit der Ausbreitung des Regionalismus begann die EU, zielstrebigere Freihandelsabkommen abzuschließen, die sogar über die Zollunion EU-Türkei hinausgehen. Darüber hinaus wurde die Zollunion als vorübergehendes politisches Instrument eingerichtet, um den Weg für die EU-Mitgliedschaft der Türkei zu ebnen; dennoch ist der EU-Beitritt der Türkei nicht erfolgt und die Beitrittsperspektive ist im Laufe der Zeit noch unklarer geworden. Nun sind institutionelle Strukturfehler und Mängel der Zollunion noch sichtbarer und haltloser geworden: Die Zollunion ist bei der Umsetzung der bilateralen Handelsbeziehungen weniger effizient geworden und bedarf einer umfassenden Überarbeitung. Diese Studie soll die Wirksamkeit der Zollunion Türkei-EU als Wirtschaftsmodell für die langfristigen Handelsbeziehungen analysieren. Hauptziel der Studie ist es, die Probleme und Mängel der Zollunion zu bewerten und Lösungen für diese Fragen vorzuschlagen.

Diese These argumentiert darüber, dass die Zollunion in ein effektiveres und nachhaltigeres Wirtschaftsmodell für die Umsetzung der Wirtschaftsbeziehungen zwischen der EU und der Türkei umgewandelt werden sollte. Die vorgeschlagene Modernisierung des präferenziellen Handelsrahmens EU-Türkei zielt darauf ab, eine weitere Handelsliberalisierung in weiteren Bereichen wie Dienstleistungen und Landwirtschaft zu gewährleisten und die Funktion der Zollunion zu verbessern, indem Probleme beseitigt werden, die sich aus ihren institutionellen Strukturfehlern ergeben, wie die dysfunktionalen Struktur des bestehenden Streitbeilegungssystems und die asymmetrischen Bedingungen, mit denen die Türkei bei der Durchführung der Handelsabkommen der EU konfrontiert ist. Zudem würde auch ein freier Warenverkehr zwischen den Parteien entstehen, indem nichttarifäre Maßnahmen weiter abgeschafft und die Harmonisierungspflicht der Türkei mit dem EU-Recht erleichtert wird.

Schlagwörter: Türkei, Europäische Union, Türkei-EU Zollunion, Modernisierung der Zollunion

The Modernization of the Turkey-EU Customs Union: Opportunities and Challenges

Abstract

The Turkey-EU Customs Union has become the cornerstone of bilateral commercial relations since its implementation in 1995. It has contributed to the transformation and modernization of Turkish industry and provided a prominent level of integration between the parties.

Several changes and developments regarding global economic patterns have occurred since the Customs Union was formed. In line with the spread of regionalism, the EU started to conclude more ambitious free trade arrangements that go beyond the EU-Turkey Customs Union in scope. Moreover, the Customs Union was established as a temporary policy tool to pave the way for Turkey's membership in the EU; however, Turkey's EU accession has not come to pass, and its membership prospect has become even more ambiguous as time has passed. Now, institutional design flaws and shortcomings of the Customs Union have become more visible and untenable. In this regard, the Customs Union has become less efficient at implementing bilateral trade relations, and it needs a significant overhaul. This study seeks to analyze the effectiveness of the Turkey-EU Customs Union as an economic model for conducting commercial relations in the long term. The primary aim of the study is to assess the problems and shortcomings of the Customs Union and propose solutions to these matters.

This thesis argues that the Customs Union should be transformed into a more effective and sustainable economic model for implementing EU-Turkey economic relations. The proposed modernization of the EU-Turkey preferential trade framework would aim to ensure further trade liberalization in additional areas, such as services and agriculture; and improve functioning of the Customs Union through eliminating problems stemming from its institutional design flaws, such as the dysfunctional structure of the existing dispute settlement system and asymmetric conditions that Turkey encounters while undertaking the EU's trade arrangements. It would also enforce free movement of goods between the parties through further elimination of nontariff measures and facilitation of Turkey's harmonization obligation with EU legislation.

Key words: Turkey, the European Union, the Turkey-EU Customs Union, Modernization of the Customs Union

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List of Abbreviations

APEC	Asia Pacific Economic Cooperation
CAP	Common Agricultural Policy
CCP	Common Commercial Policy
CCT	Common Customs Tariff
CETA	EU-Canada Comprehensive Economic and Trade Agreement
CGE	Computable General Equilibrium
CJEU	Court of Justice of the European Union
CU	Customs Union
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EU	European Union
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
REACH	Registration, Evaluation, Authorization and Restriction of Chemicals
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TDIs	Trade Defense Instruments
TFEU	Treaty on the Functioning of the European Union
WTO	World Trade Organization

INTRODUCTION

The association relationship between Turkey and the European Union (EU) dates to the conclusion of the Ankara Agreement in 1963, which envisaged the formation of the Turkey-EU Customs Union (CU). With the coming into force of the CU agreement in 1995, tariff rates and quantitative trade restrictions concerning manufactured goods were removed from trade between the parties, and Turkey began to apply the EU's Common Customs Tariff (CCT) to third countries (Republic of Turkey Ministry of Trade 2018a).

The Ankara Agreement foresaw Turkey's EU membership as the ultimate objective of Turkey and the EU. In line with this objective, the CU obligated Turkey to align itself with the Union's legislation in several areas, in order to prepare for full membership. Since the CU implementation in 1995, Turkey-EU economic relations have been boosted significantly; bilateral trade volume has mounted more than five-fold, reaching USD 165 billion in 2018 (Republic of Turkey Ministry of Trade 2018a). The EU has become the primary source of investments for Turkey, and European companies' share accounted for 70% of Turkey's overall foreign direct investment stock of USD 193 billion for the period 2002–2017(Republic of Turkey Ministry of Trade 2018a). The CU also helped to enhance the Turkish economy's efficiency level and competitiveness capacity. However, several changes in global economic patterns and the endless process of Turkey's accession necessitate revision of the existing structure of the CU. In that context, this thesis seeks to answer the question, "How effective and sustainable is the CU as an economic model for conducting EU-Turkey bilateral trade and economic relations in the long term?" The primary objective of the thesis is to address the major shortcomings and institutional design flaws of the CU and to offer potential solutions for improving it.

International trade patterns have evolved significantly since the formation of the CU. The spread of global value chains and the World Trade Organization's stalemate at the Doha Round contributed to proliferation of the regionalism that became a rising trade phenomenon in the world economy during the late 1990s and 2000s (Akman 2017). In line with these developments, especially with the implementation of the Union's "Global Europe: Competing in the World" Communication, concluding overarching free trade agreements (FTA) has become a central trade policy tool of the EU since the mid-2000s (Akman 2017, 86). Not only has the number of regional trade arrangements signed by the Union surged dramatically, but the content of these agreements has gone beyond abolishment of tariff rates to encompass several policy issues, such as nontariff measures, services, competition, and investment. The Turkey-EU CU, despite theoretically being a more advanced economic integration model, has fallen behind these arrangements in terms of answering the requirements of the twenty-first century's global economic order.

On the other hand, the CU was not formed as an end itself but was implemented as a transitory stage on the way to Turkey's EU membership. Therefore, when it was initially established, drawbacks of the CU were not regarded as significant problems, since they were expected to be eliminated when Turkey became an EU member (Kabaalioğlu 2010, 49). However, although the accession negotiations were launched in 2005, no noteworthy progress has been achieved owing to several blocked chapters. Due to the frozen accession negotiations, Turkey's membership prospect lost its credibility as an attainable goal in the near future. This situation makes the anomalies of the CU more evident and triggers questions concerning its sustainability. Moreover, although Turkey and the EU started an initiative to modernize the bilateral trade framework in 2015, due to the unpromising course of Turkey-EU relations amid intensive political tensions over the past few years, no progress has yet been achieved. However, modernization of the CU can be considered a vital area of cooperation between the EU and Turkey that could revive bilateral relations. Accordingly, this study argues that the CU between Turkey and the EU should be updated for consistency with global economic realities, and its institutional design flaws should be corrected in order to attain an effective and sustainable economic model for implementing EU-Turkey commercial relations.

The existing literature concerning the EU-Turkey CU mainly focuses on the static and dynamic effects of the CU on the Turkish economy and suggests that the overall effect of the CU on Turkey has been positive. On the other hand, the literature on the subject of CU problems mainly addresses the institutional anomalies of the CU and asserts the need for its reform. In addition to the institutional flaws of the CU, this study also delves into nontariff measures under the CU and their application in practice between the parties, moreover it provides a political assessment of the modernization of the CU within the context of EU-Turkey relations.

This study claims that the CU has some deficiencies and, thus, it should be modernized. To support that argument, this paper identifies main problems of the CU, and for each problem scrutinizes the relevant legal framework, evaluates the status quo, and suggests viable solutions to improve CU functioning. In this regard, the legal documents concerning the association relationship are the primary resources upon which the thesis relies. In addition to conducting a comprehensive literature review that includes books and journals, reports prepared by the World Bank and the EU's institutions are used to assess pros and cons of the Turkey-EU bilateral trade framework. Moreover, stakeholder consultations implemented by the European Commission, surveys, and interviews conducted by some nongovernmental organizations with Turkish businessmen are utilized to examine problems in practice. Statistical data concerning EU-Turkey economic relations is obtained from the databases of relevant government authorities, particularly the Turkish Statistical Institute and the Turkish Ministry of Trade. Official documents and various working papers prepared by the Turkish Ministry of Trade are consulted as well.

This thesis consists of the following chapters: Chapter 1 addresses the theoretical background of the CU; Chapter 2 examines its legal framework; and Chapter 3 analyzes the main shortcomings and institutional design flaws of the CU. In Chapter 4, the study explores different policy options for upgrading the CU and evaluates the political aspect of CU modernization, followed by the paper's conclusion.

CHAPTER 1

THEORETICAL FRAMEWORK

International trade theories and economic integration models are useful tools for comprehending the main rationale behind the formation of the CU between Turkey and the EU, and the areas where there is a need for an improvement in the structure of the CU. In this context, this chapter addresses; Ricardian and Heckscher-Ohlin models, Jacob Viner's CU theory and some other theories building on this.

The comparative advantage theory developed by David Ricardo explains international trade by comparative advantage based on different labor productivities between countries. According to the Ricardian Model, a country tends to produce, specialize and export the goods that it has a comparative advantage in, and while each country gains from international trade, trade gains are distributed between the countries according to relative prices of goods (Krugman, Obstfeld, and Melitz 2012, 24–50). On the other hand, the Heckscher-Ohlin model explicates international trade by comparative advantage deriving from different factor endowments between countries, and according to this theory, countries tend to produce and export the goods which utilize countries' abundant factor intensively in their manufacturing process (Krugman, Obstfeld, and Melitz 2012, 80–111). This model also touches upon the distributional effects of international trade and concludes that although each country engaging in trade benefits from it, within the country abundant factor gains from trade, whereas scarce factor loses. Additionally, this theory provides a useful framework in terms of clarifying trade patterns between developed and developing countries (Krugman, Obstfeld, and Melitz 2012, 80–111).

In the framework of the above-mentioned traditional international trade theories, reasons and patterns of Turkey-EU trade can be explained by different comparative advantages that they have. Although in practice it can be difficult to determine the actual comparative advantages that a country has, roughly speaking, it can be argued that Turkey is a labor abundant country; thus, has comparative advantage in labor intensive products, whereas the EU is capital abundant and, its comparative advantage is in capital intensive products. Particularly, in the first years of the CU, the trade composition between the two justified the above-mentioned conclusions; Turkey's main export items to the EU were textile and agricultural products. However, the CU has led to a progressive transformation in Turkey's production structure as time has passed. The share of capital intensive goods in Turkey's overall exports to the Union, and the intra-industry trade volume between the parties have surged dramatically (Koçyiğit and Şen 2007). For instance, for the period 1995–2018, the ratio of textile products in Turkey's exports to the EU has declined from 48% to 20.2%, whilst the share of automobile parts and accessories has raised from 2.8% to 25% (Republic of Turkey Ministry of Trade 2018a).

Economic integration theories are other crucial tools shedding light on the EU-Turkey CU. According to Balassa (1962), economic integration is abolishment of discriminatory applications within a specific area, and has different forms, namely, "free trade area, CU, common market and economic union." He states that both free trade area and CU require elimination of tariff rates and quantitative restrictions on trade between parties; however, as distinct from free trade area, CU requires member countries to apply common tariffs vis-à-vis third countries. Common market provides free movement of goods and factors among its members, and economic union as being the highest level of economic integration requires harmonization of economic and fiscal policies of member countries (Balassa 1962, 2).

Jacob Viner's "The Customs Union Issue" book was issued in 1950 and had a significant effect on the literature with regard to the welfare implications of economic integration models. Previous to Viner's study, the general approach concerning CUs was mostly favorable to them, as they were believed to be welfare increasing; however, Viner's study revealed that CUs may reduce welfare as well (Dura, Atik and Dumrul 2015, 5). According to Viner's analysis (2014, 51–69) two impacts occur for a country joining a CU; trade creation emerges when member countries' more efficient production replaces the country's less efficient own production, and this effect raises trade and welfare. On the other hand, trade diversion effect declines welfare and arises when the country's imports switch from more efficient nonmember countries to less efficient member countries due to the artificially lowered prices via eliminated tariffs (Viner 2014, 51–69). Owing to these two opposing impacts, CU can only be welfare increasing if the trade creation effect outweighs the trade diversion effect. Concerning the Viner's static analysis, Baldwin and Wyplosz (2009) touch upon the issue in the context of the "Viner's Ambiguity" concept. They state that due to removal of tariffs, less efficient domestic products are replaced by member countries' more efficient products, on the other hand, due to the "discriminatory liberalization," prices against nonmember countries get relatively higher, and imports from more efficient nonmember countries are replaced by less efficient member countries. Consequently, while liberalization effect of a CU increases welfare, the discriminatory nature of this liberalization reduces it, therefore net welfare effect of preferential tariff liberalization remains ambiguous (Baldwin and Wyplosz 2009, 201).

Since the CU formed, the Turkey-EU trade volume has surged more than five-fold between 1995–2018 (from USD 30 billion to USD 165 billion); however, since the EU had already abolished many tariffs on Turkey in the context of the association relationship before the implementation of the CU, it is difficult to attribute that five-fold increase only to the trade creation effect of the CU. Besides, the World Bank's (2014a, 7) study underlines that it is not easy to isolate the CU's direct effect on the increasing pattern of bilateral trade volume between Turkey and the EU.

On the other hand, the CU obliged Turkey to adopt the CCT of the EU toward third countries upon the coming into force of the CU Decision in 1996 and to align with the Union's preferential trade agreements and autonomous trade regimes by 2001 (Decision 1/95, Articles 13 and 16). With regard to this matter, Togan (2012) finds out that Turkey's average nominal protection rate against third countries was 22.1% in 1994, and after the implementation of the CU, this rate declined to 6.9% in 2001. Moreover, prior to the establishment of the CU, Turkey's average protection rate against third countries in terms of industrial products was 16%, and in the context of the Turkey's 2019 import regime, this rate realized at 5.4% (Republic of Turkey Ministry of Trade 2019c). Turkey's pre-CU tariff rates against third countries were higher than the EU's CCT, and as a result of the application of the CCT and the alignment with the EU's preferential trade agreements, Turkey's overall tariff rates decreased significantly almost in all sectors, and this situation has played a key role in terms of reversing the potential for the trade diversion effect of the CU (Togan 2012, 2–3). In line with this argument, compared to the initial years of the CU, the share of the EU in Turkey's overall foreign trade volume has declined significantly; for instance, while the EU's ratio in exports and imports of Turkey accounted for 57.4% and 50.5%, respectively, in 1995, these ratios realized at 50% and 36.3% in 2018 (Republic of Turkey Ministry of Trade 2018a). Accordingly, third countries' shares in Turkey's foreign trade have surged. The adoption of the CCT and the policies pursued by Turkey to diversify its export markets have contributed to this changing pattern.

Traditional approaches mainly focus on statistic effects of economic integration models deriving from removal of tariff rates. However, CUs and other forms of economic integration also generate significant dynamic impacts which should be taken into consideration while determining their overall contribution to the economy. Dynamic effects are defined by Schiff and Winters as anything that has an impact on the countries' growth rates in the medium and long run (Schiff and Winters 1998, 179). As emphasized by Balassa (1962), technological improvements, increase of productivity, competitiveness and foreign direct investment can be counted as different types of dynamic effects that can emerge from an economic integration. As for Turkey, the CU has created several dynamic impacts as well; as a consequence of increased competition pressure and policy reforms realized in the scope of the CU, the productivity and efficiency level of Turkish industry have upgraded, the quality and competitiveness of Turkish export products have improved, and Turkey has become more integrated with global markets (World Bank 2014a).

CHAPTER 2

THE LEGAL FRAMEWORK OF THE TURKEY-EU CUSTOMS UNION

The CU applies only to industrial products and regulates Turkey-EU trade concerning these products. On the other hand, bilateral trade in primary agricultural products is conducted within the context of the Turkey-EU Association Council's Decision 1/98 which specifies reciprocally granted trade concessions in relation to agricultural products. Besides, Turkey-EU trade in steel and coal products is implemented via a separate FTA. Consequently, the CU Decision and above-mentioned two other preferential trade arrangements constitute the "EU-Turkey Bilateral Preferential Trade Framework" (European Commission 2016a, 4). In line with the topic of the thesis, this chapter touches upon only the legal framework of the CU in order to illustrate main obligations and rights generated by it.

2.1 Ankara Agreement

Turkey applied to join the European Economic Community (EEC) in 1959. This application culminated in signature of the "Agreement Establishing an Association between the European Economic Community and Republic of Turkey" which is also called as the Ankara Agreement and created the Turkey-EU association relationship in 1963 (Ankara Agreement 1963).

In the preamble of the Ankara Agreement, facilitation of Turkey's accession to the EU was declared as one of the aims of the parties. Additionally, Article 28 of the Ankara Agreement made this purpose clearer through stipulating that if enough progress can be achieved, the possibility of Turkey's EU membership would be examined. Taken together, the above-mentioned Articles indicate that the Turkey-EU association relation was explicitly associated with Turkey's full membership and originally intended to prepare the country for membership via approximating its economic and political policies to the EU. However, Turkey's accession to the EU should not be evaluated as a given guarantee by the Ankara Agreement, because the possibility of membership depends not only the progress achieved by the country, but also the political will of the EU member countries (Arıkan 2003, 57). The Ankara Agreement defined preparatory, transitional and final stages of the association relationship in order to fulfill the determined objectives between the parties (Ankara Agreement 1963, Articles 3–5). The preparatory stage was envisaged to last five years, and within this period Community aid would be granted to Turkey in order to improve its economy. The transitional stage was designed for harmonization of Turkey's economic policies with the Community, and completion of the establishment of the CU between the parties progressively. With the coming into force of the CU, the final stage of the association relationship was envisaged to start.

In addition to provisions specifying gradual process for formation of the CU, the Ankara Agreement had provisions covering other economic policy fields such as services, taxation and competition. Moreover, in the context of Articles 12–14; ensuring free movement of labour, eliminating restrictions regarding "freedom of establishment" and "freedom to provide services" were anticipated to be attained between Turkey and the EU. However, provisions concerning these matters were in the form of good wishes and did not have a binding character. The Financial Protocol and the Provisional Protocol were annexed to the Ankara Agreement. The Financial Protocol regulated the details of the Community aid for Turkey, and the Provisional Protocol specified trade concessions that would be granted Turkey in the preparatory stage regarding some agricultural products.

2.2 Additional Protocol

The Ankara Agreement was a framework agreement, and details, procedures concerning the gradual establishment of the CU were regulated by further documents. In this context, the Additional Protocol, as being Ankara Agreement's integral part, entered into force in 1973. It started the association relationship's transitional stage and determined timeframes and commitments of the parties concerning completion of the CU. Pursuant to Article 9, the EEC was required to remove tariffs on the goods coming from Turkey with the entry into force of the Protocol. However, customs duties remained to exist concerning some products that Turkey had comparative advantage such as steel and textile, and this situation undermined the potential benefits that could be created by the association relationship (Arıkan 2003, 58). On the other side, Turkey had to remove tariffs on the goods imported from the EEC within twenty-two years (Additional Protocol 1970, Articles 8,10,11). The characteristic of the trade liberalization between the parties can be deemed as asymmetric, since the Community abolished tariffs immediately following the coming into force of the Additional Protocol, whereas Turkey did the same progressively within twenty-two years starting from 1973 (Arıkan 2003, 58). In addition to the provisions regulating trade liberalization in industrial goods, the Additional Protocol also dealt with issues concerning agricultural products, services, capital and workers. Article 33 of the Additional Protocol stipulated that Turkey would provide alignment with the EU's common agricultural policy (CAP) in order to ensure free movement of agricultural goods between parties, and Article 36 prescribed that Turkey and the EU would gradually ensure free movement of workers between each other within twenty-two years starting from 1964.

2.3 Association Council's Decision 1/95

The Association Council's Decision 1/95 formed the Turkey-EU CU in 1995. With the establishment of the CU, the final stage of the Turkey-EU association relationship was started as specified in the Ankara Agreement. The policy matters regulated by the Decision can be grouped in two major areas; provisions regulating free circulation of goods, and provisions determining Turkey's obligations in relation to harmonization with the EU acquis in several policy areas that directly or indirectly affect free movement of goods.

Pursuant to Article 2 of Decision 1/95, the CU encompasses industrial products and industrial parts of the processed agricultural products. It does not apply to primary agricultural goods. The industrial products that are covered by the CU are specified as "the products that are manufactured by the EU or Turkey" and "the products imported from third countries and released into free circulation in the EU or Turkey" (Decision 1/95, Article 3). Moreover, moving toward free movement of agricultural products is reaffirmed as parties' common purpose by Article 24(1) of Decision 1/95.

The EU and Turkey are obliged to abolish tariffs and charges having equivalent effect on their bilateral trade (Decision 1/95, Article 4). Turkey is required to align its customs tariffs on the Union's CCT toward third countries upon the date of coming into force of the CU and adjust itself to any change in the CCT whenever it is necessary (Decision 1/95, Article 13). Moreover, where a simultaneous alignment on the CCT cannot be provided by Turkey, the Customs Union Joint Committee may specify a time period for this to be undertaken, however under no circumstance, Turkey can be authorized by this Committee to apply customs duties that are lower than the CCT (Decision 1/95, Article 14). Within the context of Article 54 of Decision 1/95, Turkey is obligated to provide harmonization with the EU's legislation in the fields that are directly relevant to the functioning of the CU such as common commercial policy (CCP), technical legislation, Customs Code and the Union's preferential trade arrangements and autonomous trade regimes. The rationale behind the above-mentioned obligations is converging Turkey's legislative order to that of the EU to attain CU's proper functioning. However, Decision 1/95 creates other vital obligations that are not entailed by a basic CU (Kabaalioğlu 1998, 123), and these requirements can be exemplified as follows. According to Article 39(2) of Decision 1/95, Turkey was required to have a national competition law before coming into force of the CU Decision and adopt relevant rules, schemes and notification procedures concerning state aids. As mentioned by Kabaalioğlu (1998, 123), asking Turkey to have a competition law as a requirement of the completion of the CU was an excessive obligation, since Italy, as being a member country, did not introduce its competition law until 1990. Despite this excessive obligation, Turkey's competition law was adopted in 1994 before the CU formed, and its relevant authority for enforcing this law was established in 1997 (Kabaalioğlu 1998, 123). Additionally, in order to protect intellectual property rights effectively, Turkey had to undertake the provisions specified by the Annex 8 of the Decision (Decision 1/95, Article 31), and this was another overwhelming obligation that caused a significant change in Turkey's legal order (Kabaalioğlu 1998, 126).

Consequently, even a nutshell review of the legal framework indicates that the Turkey-EU CU goes beyond abolishment of customs duties and application of the common external tariffs. It includes further obligations related to different policy fields such as competition policy, intellectual property rights and technical legislation. On this basis, one might argue that these far-reaching obligations implies that the CU was initially designed as an instrument for paving the way for Turkey's full membership through ensuring its partial integration to the Single Market.

CHAPTER 3

PROBLEMS AND SHORTCOMINGS OF THE EU-TURKEY CUSTOMS UNION

3.1 Consultation and Decision Making Procedures

As a nonmember country, Turkey's integration with the EU has a unique characteristic. Turkey is part of the customs area of the Union and partially integrated into the Single Market. Despite this high degree of economic integration, while engaging in bilateral commercial relations under the CU, some problems with decision making put Turkey in a difficult position.

While Turkey is required to adopt the Union's CCP, it has no say or influence in determination of this policy. When the CU was first established, it was regarded as a transitory stage designed to prepare Turkey for full EU membership. Therefore, problems regarding decision making processes were initially not considered significant deficiencies, expected to be eliminated when Turkey joined the EU. Yet, Turkey's membership has not come to pass, and today there is a lack of apparent membership prospect in the foreseeable future (Kabaalioğlu 2010, 49). This uncertainty makes the problems concerning decision making more noticeable and untenable for Turkey. Consequently, under existing conditions, Turkey must apply trade policy of the Union, which the EU has unilaterally shaped and decided without taking into consideration Turkey's interests and concerns.

The CU Agreement foresees some institutional bodies and mechanisms to enable Turkey's participation in shaping decisions. To achieve consultation between the parties, the EU-Turkey Customs Union Joint Committee, consisting of the representatives of Turkey and the EU, is empowered to ensure exchange of information and views between the parties (Decision 1/95, Article 52). Articles 54–60 of Decision 1/95 specify the procedures concerning the consultation process. In the context of Article 54, Turkey has an obligation to achieve legislation harmonization with the EU as far as possible in areas directly associated with the functioning of the CU, including CCP; agreements with third parties that have a commercial aspect related to industrial goods; technical legislation for removal of technical barriers to trade (TBT); legislation concerning competition policy; and intellectual property rights and customs. According to Article 55(1) and (2) of Decision 1/95, for the cases when the European Commission draws up new legislation regarding these fields and consults member countries' experts, it must informally consult with Turkish experts; and when the Commission transmits proposals to the Council, it must send copies of these proposals to Turkey as well. Turkey must be informed whenever the EU adopts legislation in the aforementioned areas, in order to align with the relevant legislation, as Decision 1/95, Article 56(1) states. Moreover, Annex 9 of the Decision determines technical committees on which Turkey can participate, and the Association Council has the authority to extend these committees whenever the parties so demand (Decision 1/95, Article 60). On the other hand, concerning formation of the CCT, no consultation mechanism between the parties exists. Turkey must apply the Union's CCT against third countries and adjust itself to any change in the CCT (Decision 1/95, Article 13). Further, Turkey must be informed of any decision taken by the EU concerning amendment in the CCT in sufficient time for it to provide simultaneous alignment on the CCT (Decision 1/95, Article 14). In this context, Turkey is out of the picture and does not even have an opportunity to express its views; it is only notified about the changes in the CCT.

These procedures are mostly designed to inform Turkey of policy changes; they offer no effective mechanism for including Turkey's opinions or sensitivities in decision shaping processes. Moreover, problems can arise regarding functioning of the envisaged consultation mechanism in practice. For instance, although the European Commission is obliged to consult Turkey's experts while preparing some legislation, since this consultation is conducted informally and lacks systematic communication between the parties, failures or delays can hamper the process (World Bank 2014a, 38). Additionally, Turkey can participate in the technical committees specified by Annex 9 of Decision 1/95 with observer status; however, it cannot attend meetings of some committees that critically pertain to the functioning of the CU, such as the Trade Policy Committee and the Generalised Scheme of Preferences Committee (World Bank 2014a, 38).

Despite the significant level of economic integration between Turkey and the EU, since Turkey's membership has not been realized, its integration cannot be completed politically, and decision making problems in relation to the CU mainly derive from this asymmetric situation. Obviously, as a nonmember state, Turkey cannot have a right to vote in the Union's decision making process under the EU's existing legal framework. However, increasing Turkey's involvement in decision making processes of the CCP represents a potential solution that could alleviate the detrimental impacts on Turkey of this asymmetric situation and ensure better functioning of the CU. In other words, Turkey's priorities and interests should be included as much as possible in shaping decisions related to the EU's trade policy. Additionally, considering its obligations to create alignment with the EU's CCP, improved communication and notification procedures have a critical significance for Turkey's meeting those requirements. For instance, Turkey's participation in committees could be extended to include the Trade Policy and Generalised Scheme of Preferences committees, and the consultation mechanism between the parties could operate in a more systematic way by defining more exact procedures and deadlines that would eliminate any delays or failures in consultation or notification processes between the parties.

3.2 Dispute Settlement Mechanism

The lack of a functional dispute settlement system is one of the major deficiencies of the CU. The current mechanism envisaged in its legal framework has some problems and can be deemed an insufficient instrument for addressing trade frictions between the parties.

According to Article 25 of the Ankara Agreement, when a dispute regarding interpretation and implementation of the Ankara Agreement emerges, concerned parties can bring it to the Association Council. Article 25 stipulates that the dispute may be settled or submitted to the Court of Justice of the European Union (CJEU) or other courts and tribunals by Association Council's decisions, and the parties are obliged to comply with such decisions. Within the scope of this Article, the envisaged dispute settlement mechanism has a political character; settlement or submission of a dispute to other courts or tribunals depends on the Association Council's decision. The Association Council comprises representatives of the EU member countries, EU institutions (the Commission and the Council) and Turkey, and it acts unanimously (Ankara Agreement 1963, Article 23). Considering that each party has veto power, obtaining consent from both sides of a conflict simultaneously is rather unlikely under the existing structure of the Association Council, since the defendant party would tend to block the process. This situation impairs the credibility of the dispute settlement mechanism. In the context of the aforementioned Article 25, although parties are required to comply with decisions of the Association Council or courts and tribunals, what would happen if one of the parties does not fulfill this obligation is ambiguous; in other words, no sanction procedure is foreseen regarding cases of noncompliance. Another limitation concerning the envisaged dispute settlement mechanism is that only the contracting parties—namely, Turkey and the EU and its member countries—can submit disputes to the Association Council. Accordingly, natural persons, legal entities, or nonmember countries cannot directly submit their complaints to the Association Council (Kabaalioğlu 1998, 131).

On the other hand, Article 61 of Decision 1/95 points out that disputes related to safeguard and rebalancing measures can be referred to arbitration if the Association Council cannot resolve them within six months after the date of application. The scope of the arbitration process envisaged in Decision 1/95 has a rather limited character, since it only applies to matters related to safeguard and rebalancing measures.

Although the EU and Turkey have had several trade frictions and problems resulting from the CU's functioning in practice, neither the EU nor Turkey has yet applied the dispute resolution procedures envisaged in the Ankara Agreement or in Decision 1/95 (European Commission 2016b, 150). This may be a sign of inefficiency and absence of the current dispute settlement system's practicability. Under existing conditions, the Association Council's decisions play a critical role in achieving progress regarding a conflict. However, the Association Council is a political organ and acts unanimously; thus, the party complained against would tend to deadlock any case that could be detrimental to its interest. This situation obviously has the potential to stalemate any case and impair functioning of the conflict settlement mechanism. Moreover, especially since 1980, the EU adopted a new approach in its free trade arrangements and association agreements by avoiding political bodies and employing judicial mechanisms to manage conflict resolutions (Ülgen and Yenigün-Dilek 2015, 19). This type of dispute settlement mechanism is more systematic and effective; it clearly defines consultation, arbitration processes, time limits, and sanctions in the case of noncompliance (European Commission 2016b, 154). In this regard, the conflict settlement system between the EU and Turkey has become obsolete and should be updated through removing or diminishing the dominance of its political character. For instance, the parties could first apply to the Association Council for settlement of a conflict. However, if the Association Council should fail to resolve the conflict, each party should have a right to resort to arbitration or a court, regardless of the Association Council's decision. Moreover, clear sanctions and remedies should be determined and applied whenever a party does not bring itself into line with decisions of the Association Council, arbitration, or a court. In addition, under the CU Decision, the possibility of arbitration is limited to conflicts related to safeguard measures. However, considering the far-reaching character of the CU covering several policy fields, the scope of the cases that can be referred to arbitration should be extended as well.

All in all, considering the deep economic integration created by the CU between the parties, transforming the current dispute settlement mechanism into a more operational and effective one attaches high significance to ensuring proper functioning of the CU by resolving trade irritants and problems that can emerge while conducting bilateral trade relations.

3.3. Free Trade Agreements

The CU requires Turkey to comply with the EU’s trade agreements with third countries or country groups. However, while trying to fulfill this obligation, Turkey faces vital challenges and asymmetries that negatively affect its competitiveness and the functioning of the CU.

The legal basis of Turkey’s FTA obligations is laid down in Decision 1/95. According to Article 16, Turkey must harmonize itself with the Union’s autonomous trade regimes and preferential trade arrangements with third parties, starting five years from the enforcement of the Decision. While doing so, it is expected to conclude FTAs with third parties based on mutual advantage (Decision 1/95, Article 16). Moreover, Turkey’s obligation to harmonize with the Union’s trade agreements is also emphasized by Article 54 of Decision 1/95.

In the context of its obligations under the CU, thirty-six FTAs have been signed by Turkey so far, with eleven of them annulled since the relevant countries became EU members, and twenty FTAs—Serbia, European Free Trade Association (EFTA), Macedonia, Tunisia, Bosnia-Herzegovina, Mauritius, Palestine, Moldova, Morocco, Albania, Georgia, Syria, Malaysia, Montenegro, Egypt, Chile, Israel, South Korea, Singapore and Faroe Islands—currently in force (Republic of Turkey Ministry of Trade, 2018b). These FTAs have significantly contributed to liberalization of Turkey’s trade regime and its integration into global markets. However, while Turkey aligns itself with the EU’s FTAs, it encounters serious difficulties.

First, Annex 10 of Decision 1/95 determines the Community’s autonomous regimes and preferential agreements with which Turkey must align. In the context of its changing trade policy, the EU started to conclude FTAs in a more ambitious manner; not only has the number of FTAs surged but also the content of these agreements has become more comprehensive, encompassing new policy fields such as services, competition, and state aids. Therefore, Turkey’s harmonization obligation with the preferential regimes of the EU has moved beyond the specifications in Annex 10 of Decision 1/95, and this situation has led to the so-called “moving target” problem for Turkey (Yapıcı 2013, 15). Aligning with the EU’s increasing and overarching preferential arrangements has become more challenging for Turkey. Currently, while the EU has around fifty FTAs, Turkey has only twenty, and this situation is a sign of Turkey's difficulty deriving from compliance with the EU's FTAs.

Second, while Turkey must align itself with the EU's FTAs, it has no influence on decision making and policy shaping processes regarding these agreements. Accordingly, the EU determines its FTA policy based on its own interests and concerns and obliges Turkey to conclude similar arrangements. Due to this asymmetric structure, Turkey's priorities and interests are not considered in negotiations, and Turkey's FTA policy utterly depends on the EU's decisions. Additionally, without consent of the EU, Turkey cannot initiate a separate FTA negotiation with a third country with which the EU does not have a trade arrangement.

Third, the FTAs signed by the EU with third countries do not automatically include Turkey, nor does the EU negotiate FTAs on Turkey's behalf. Turkey must carry out separate negotiations with EU's FTA partners for each agreement. However, the EU's FTA partners can be reluctant to sign similar trade agreements with Turkey, and this situation can lead to trade deflection risk for Turkey (Yapıcı 2013, 15). Third countries can obtain tariff-free access to Turkey's market through the FTA signed with the EU. These countries can first export their products to an EU country and then reexport them to Turkey without paying any tariffs; in other words, once the products enter customs territory, they can enjoy free movement within the customs area (Akman 2010, 26). Thus, the EU's FTA partners can obtain indirect tariff-free access to Turkey without having an agreement. Understandably, these countries can be unwilling to grant tariff concessions to Turkey by concluding separate agreements. This situation weakens Turkey's position in FTA negotiations as well. The trade deflection might also cause revenue loss for Turkey. When third countries send their products directly to Turkey, they must pay customs duties; however, by sending their goods to Turkey indirectly through the EU, they can avoid paying these duties (Ülgen and Zahariadis 2004, 8). Turkey can reduce trade deflection risk by introducing some protection measures based on rules of origin, but application of rules of origin is against the spirit of the CU and can impair benefits from the CU (World Bank 2014a, 25).

Fourth, Turkey can sign an FTA only after the EU has done so, and as it generally takes a couple of years for Turkey to conclude an agreement. This situation leads to the so-called "latecomer effect" which puts Turkish companies at greater disadvantages compared to their European counterparts that can penetrate the third markets, having obtained their preferential position several years earlier (Akman 2010, 28).

Finally, the EU's ambitious FTAs with third countries can lead to Turkey's preference erosion in the EU market. Due to these arrangements, third countries' exporters obtain improved access to the European market, and Turkish companies might lose their share in that market. This argument is understandable considering the legitimate expectations of Turkish producers to have more favorable conditions while accessing the European market due to the CU with the EU; however, the CU does not assure keeping Turkey's preferential position in EU countries' markets (Akman 2010, 25). Therefore, in order to secure or increase their share, Turkish exporters should rather focus on increasing their competitiveness.

Considering these difficulties, the status quo obviously works to Turkey's detriment. Furthermore, the increasing numbers and expanding scope of the EU's FTAs have aggravated the problems that Turkey encounters. In order to eliminate these difficulties, in 2005, the EU's FTAs started to include a "Turkish Clause," through which the EU invites its FTA partners to conclude similar trade arrangements with Turkey (Ülgen and Zahariadis 2004, 8). However, the nonbinding character of this clause undermines its effectiveness in practice. For instance, although it was first used by the EU in its FTA with Algeria in 2005, Turkey still has no FTA with Algeria, and in some cases, such as South Africa's FTA, this clause can be left out of the negotiation process, since it does not form a part of the Union's negotiation mandate (World Bank 2014a, 29).

To improve the functional effectiveness of the CU, the asymmetries deriving from the FTAs should be eliminated (World Bank, 2014, 28). To this end, one option could be jointly conducted FTA negotiations; that is, the EU and Turkey could negotiate together with their FTA partners as parts of a single customs area (Yapıcı 2013, 19–20). Turkey's interests and priorities would be considered in the process, and it would sign FTAs simultaneously with the EU, which would prevent any problems related to trade deflection. Another alternative might be Turkey's handing over its authority to the EU (the European Commission) to conduct FTA negotiations on its behalf, by a decision of the Association Council (Yapıcı 2013, 21). However, considering the existing institutional framework of the EU, both options seem inapplicable in practice. The EU has exclusive competence concerning the CCP (TFEU 2008, Article 3), and it conducts this policy on behalf of the member countries. Thus, including a nonmember country in negotiations of FTAs or implementing negotiations on behalf of a nonmember country do not seem applicable options in the context of the EU's institutional setup (World Bank 2014a, 29).

On the other hand, the existing situation could improve with more viable changes. Upgrading consultation, cooperation, and information mechanisms between Turkey and the EU could ensure consideration of Turkey's priorities while the FTAs are being negotiated; moreover, introducing reforms that would help the EU and Turkey to pursue a parallel track in relation to negotiation and conclusion of FTAs could eliminate asymmetry problems (World Bank 2014a, 29). In this regard, Ülgen and Zaharidais (2004, 9) suggest introducing a new kind of conditionality in the EU's trade agreements, whereby the EU's FTAs coming into force would be contingent upon the signing of an FTA with Turkey. Nonetheless, considering that some EU FTA partners did not accept the current Turkish Clause, even with its nonbinding character, applicability of a such strict conditional provision does not seem very likely. On the other hand, "reinforced Turkey Clause" is another alternative that could encourage third countries to conduct parallel FTA negotiations with Turkey, and distinct from the existing "Turkey Clause," in the event that the EU concludes an FTA with a third country before Turkey does so, Turkish goods would have an opportunity to benefit from the trade concessions envisaged in the FTA signed between the EU and the third country through this "reinforced Turkey Clause" (Yapıcı 2013, 22). In other words, until Turkey's agreement with the EU's FTA partner enters into force, Turkish products would obtain preferential access to a third country's market, and the third country's products could get direct access to the Turkish market in the context of the FTA concluded between the EU and the third state. This solution could prevent trade deflection risk; however, to provide an effective solution in practice, this clause should have a binding character.

3.4 Technical Barriers to Trade

Various technical regulations, standards, conformity assessments, and testing-inspection procedures can sometimes create hidden obstacles to trade, known as TBT. Since tariffs between Turkey and the EU were abolished with the formation of the CU, elimination of TBT has become more vital to secure free circulation of goods between the parties.

Harmonized and nonharmonized areas are the two fields that constitute the technical legislation of the EU. In the context of the harmonized area, member countries agree to adopt the same technical rules and regulations in order to abolish TBT within the Single Market and enable free movement of goods. The EU has different harmonization methods. While the "Old Approach" determines products' technical specifications in great detail, the "New Approach" identifies "essential requirements" concerning products and obliges member states to harmonize with them (European Commission 2016c, 9). On the other hand, within the scope of the nonharmonized area, there is no technical legislation at the Union level, and elimination of TBT within the internal market is attained through the "mutual recognition principle" (European Commission 2016c, 9). Articles 34–36 of the "Treaty on the Functioning of the European Union" (TFEU), requiring prohibition of "quantitative restrictions" and "measures having equivalent effect" on bilateral trade, and the case law of the CJEU constitute the core elements of member countries' mutual recognition obligation in this area (European Commission 2016c, 9).

The framework of Turkey's harmonization commitment concerning the EU's technical legislation is regulated by Articles 8–11 of Decision 1/95. In order to fulfill the aim of abolishing the TBT between the parties, Turkey was required to transpose the EU's relevant instruments into its legislation within the five years starting from the implementation of the CU, as described in Article 8(1) of Decision 1/95. According to Article 9 of Decision 1/95, when Turkey implements the EU's necessary instrument for removal of TBT concerning a specific product, bilateral trade in this product is conducted in line with the conditions specified in the relevant instrument. This Article seems to generate a tie between harmonization of Turkey with the Union's instruments and removal of TBT; elimination of TBT on bilateral trade between Turkey and the EU depends on Turkey's convergence with the EU's technical legislation; in other words, the provision appears to imply that if Turkey has an alignment failure, relevant products cannot access the EU market freely and can be subject to different TBT, such as conformity checks and requirements for further documents at the EU border (World Bank 2014a, 34). Although EU member countries' customs authorities are entitled to enforce import controls in the case of nonalignment, this is not exercised systematically and strictly in practice (World Bank 2014a, 34).

In addition to Turkey's harmonization obligation with the EU's instruments concerning harmonized area, the EU and Turkey also have commitments in relation to nonharmonized area. Articles 5–7 of the Decision 1/95 correspond to Articles 34–36 of the TFEU and regulate prohibition of quantitative trade restrictions between the parties. In this regard, utilizing different technical legislation as an obstacle to trade is prohibited in Turkey-EU trade. Moreover, in the context of Article 66 of the CU Decision, application of Articles 5–7 is required to be interpreted in line with CJEU case law (European Commission 2016c, 26). On the other hand, the European Commission's "Interpretative Communication of 2003/C 265/02" regulates the details concerning the mutual recognition principle's application in practice. The Communication points out that when the Union has no common harmonizing legislation, and relevant trading partners have different technical regulations, mutual recognition secures the single market's proper functioning and free circulation of goods. The Communication underlines that a product lawfully produced or marketed in Turkey or in a member country of the EU must be allowed to be placed on the market of a member country of destination, under the condition of "an equivalent level of protection of the various legitimate interests involved" (European Commission 2003). The Communication emphasizes that any product control cannot be conducted prior to release on the market in principle, and the conformity of Turkish products with technical legislation of the destination EU Member State can only be examined after release on the market through market surveillance activities (European Commission 2003). In the context of this Communication, it can be concluded that Turkish products are envisaged to have equal treatment to the products originating in the EU and cannot be subject to any border check at customs; they can only be controlled after release on the market within the scope of market surveillance activities.

Turkey has recorded serious progress in fulfilling its commitments under the CU in the field of TBT, through establishing its legal framework and quality infrastructure (European Commission 2018a). In this context, the Turkish Standards Institution, the main responsible body for standardization, joined the "European Committee for Standardization" and the "European Committee for Electrotechnical Standardization" in 2012 (European Commission 2016c, 26). The organizational structure of the Turkish National Metrology Institute, which confirms the reliability of the measurements carried out in Turkey, has been improved. The certificates issued by the Turkish Accreditation Body in relation to conformity assessment bodies' accreditation applications have gained equivalence in the EU (European Commission 2016c, 26). In relation to alignment with technical standards and regulations, 20.042 national standards have been adopted by the Turkish Standards Institution as of October 2017, and a high degree of harmonization with the EU's standards has been achieved (European Commission 2018a, 63). Concerning the technical regulations, Turkey has completed most of the legislation harmonization in the New Approach area, but it is not the same for the Old Approach directives. The Association Council's Decision 2/97 determines the Community instruments that Turkey must incorporated into its national law. Out of 280 Old Approach technical regulations specified in Decision 2/97, 220 were adopted by the relevant authorities (Republic of Turkey Ministry of Trade 2018c). Turkey still has transposition shortcomings in this area; moreover, although the EU's technical regulations have changed over time, Decision 2/97 has not been amended in line with these changes and remains outdated (World Bank 2014a, 35). Although Turkey has recorded considerable progress concerning technical regulations in the harmonized area, it did not do the same in nonharmonized area for a very long time, since the mutual recognition principle was only introduced into Turkey's legislation in 2013 (Togan 2015, 130). In relation to technical legislation alignment, information exchange and notification mechanisms have been designed to ensure an effective transposition. Under these mechanisms, Turkey's draft technical legislation related to nonharmonized area must be made known to the European Commission for its approval (Republic of Turkey Ministry of Trade 2018c). However, in practice this mechanism does not operate efficiently; several delays or failures in notification or approval processes can occur, additionally problems concerning coordination between the European Commission and EU member countries' customs authorities regarding Turkey's technical legislation harmonization pose the risk of upsetting free movement of goods between the parties (World Bank 2014a, 34). Improving coordination and information exchange mechanisms through defining specific procedures and deadlines would help to achieve a more effective harmonization process between Turkey and the EU. Additionally, the sanitary and phytosanitary (SPS) measures concerning plants, animal health, and food safety constitute another important aspect of TBT. However, since the CU does not encompass agricultural products, SPS measures are not explicitly covered by the CU (European Commission 2016a, 9). On the other hand, there is an ongoing process regarding alignment with the Union's SPS measures within the scope of the relevant Chapter under the accession negotiations, and Turkey has provided a partial legislative alignment in this field (European Commission 2016b, 155). Application of different SPS measures might lead to an unpredictable legal environment for Turkey-EU bilateral trade.

Turkey has attained a high degree of legislation harmonization since the establishment of the CU. However, several TBT still exist in trade between the parties (European Commission 2018a), and problems related to some specific product groups or industries can occur from time to time in practice. For instance, alignment with pharmaceutical technical regulations is rather slow and, in this area, Turkey still has not introduced the mutual recognition principle; moreover, while the certificates of "good manufacturing practices" issued by Turkey are not recognized by the EU, certificates prepared by the EU concerning pharmaceutical product registration are not accepted by Turkey (World Bank 2014a, 106). These recognition problems lead to duplicative procedures and delays that can result in additional administrative costs for both Turkish and European companies. The EU introduced the technical regulation “Registration, Evaluation, Authorization and Restriction of Chemicals” (REACH) for chemical products to define some obligations for importers and manufacturers of the chemicals, and the European Chemicals Agency has a key role in implementing the REACH regulation, namely, assessing and authorizing companies’ applications (European Commission 2019c). Turkey adopted the relevant legislation for harmonization with REACH; however, as a non-EU country, it cannot join the European Chemicals Agency as a member, thus treated like a third country (World Bank 2014a, 105). For instance, Turkish exporters cannot directly submit their registration applications to this Agency; they can only do so through appointing an “Only Representative” or requesting an importer company to conduct registration procedures on their behalf, and this situation creates additional costs and administrative burdens for Turkish exporters, putting them in a more disadvantageous situation than their European counterparts (World Bank 2014a, 105). Furthermore, Turkey’s alignment obligation with the EU in relation to technical legislation matters also constitutes a part of Turkey’s accession negotiations. Thus, the EU periodically follows Turkey’s progress in this field. In this regard, Turkey’s 2018 Progress Report states that Turkey has provided noteworthy preparation concerning the chapter on free movement of goods; however, some matters, such as localization schemes in the field of pharmaceutical and domestic contents requirements for renewable electricity generation, remain as trade barriers for European companies. Additionally, Turkey is advised to align quickly with EU legislation, especially in the area of pharmaceuticals, and abolish export restrictions and various additional requirements concerning licensing and surveillance that violate the CU by hindering free circulation of goods (European Commission 2018a).

Turkey did not have a proper quality infrastructure and technical legislation system before the establishment of the CU. Despite its lengthy, costly, and complex nature, the technical legislation harmonization process has helped Turkey to upgrade the quality of its infrastructure, which enabled the implementation of the transposed acquis and contributed to economic growth and competitiveness of the country (Togan 2015). Turkish producers’ export activities have been facilitated, as testing and licensing procedures for export products can be conducted in Turkey; moreover, consumers have benefited from increased product quality and safety (World Bank 2014a). Nonetheless, it is also important to keep in mind that this harmonization process also has led to significant adjustment costs for Turkey. Togan (2015, 142) argues that Turkey has incurred adjustment costs of eliminating TBT in the hope of becoming a member; however, developing countries that have similar economic structures with Turkey and want to have a deeper economic integration with the EU would do better to focus on abolishing TBT in the industries in which they have a comparative advantage, instead of undertaking the entire technical legislation harmonization with the EU. Linked to this matter, Harrison et al. (1996) and Zahariadis (2005) use computable general equilibrium (CGE) models in their studies to predict economic effects of elimination of TBT between the parties. Harrison et al. (1996, 11) find that due to alignment with the EU's technical standards, Turkey is expected to realize 0.1% gain in GDP, and Zahariadis (2005, 18) predicts that removal of TBT creates 0.6% GDP gain for Turkey. On the other hand, in his study, Togan (2015, 139) calculates the estimated cost of undertaking the obligations of the CU for removal of the TBT through using budgetary figures of relevant public institutions, and he finds out that for the period 1996–2009, Turkey's administrative costs in order to meet its obligation for removal of the TBT amounted to EUR 536 million which corresponds to 0.12% of its GDP (Togan 2015, 139). Furthermore, various factors have made the harmonization process more challenging for Turkey, such as inadequate numbers of civil servants with expertise in TBT matters and lack of a mechanism between the EU and Turkey, similar to EFTA Surveillance Body that assesses EFTA countries' draft technical legislations and ensures their acceptability by the EU (Togan 2015,141).

All in all, Turkey has recorded vital progress in relation to technical legislation alignment, but some TBT remain in practice. The existing technical barriers lead to administrative burdens and additional costs for both the EU and Turkey. Thus, both parties should focus on removal of TBT and achieving better coordination, for a rapid and effective adoption and implementation of the technical legislation to assure CU's proper functioning and free movement of goods.

3.5 Visa Application for Turkish Citizens

Turkey has been the only candidate country of the EU whose nationals are required to get visas for visiting EU member states (World Bank 2014a, 78). This situation does not comply with the high level of economic integration between the parties, since strict visa regulations can act as a hinderance and harm bilateral commercial relations.

The Ankara Agreement envisaged gradual establishment of free movement of labor and elimination of restrictive measures on "freedom of establishment" and "freedom to provide services" between the EU and Turkey (Ankara Agreement 1963, Articles 12–14). The

Additional Protocol, which came into force in 1973, stipulated that free movement of labor between the parties would gradually be completed between 1976 and 1986 (Additional Protocol 1970, Article 36). On the other side, Article 41(1) of the Additional Protocol, the so-called standstill clause, is a key provision for service providers and points out that after the Protocol enters into force, the parties cannot introduce any new restriction concerning "freedom of establishment" and "freedom to provide services." The CJEU's jurisprudence has become a significant source of law in terms of interpretation of Turkish citizens' free movement rights under the Ankara Agreement and subsidiary legislation (Groenendijk and Guild 2010, 15). In this context, the *Soysal* judgment is one of the vital cases concerning the effects of the standstill clause. Mr. Savatlı and Mr. Soysal were truck drivers at a Turkish transportation company and their visa applications for transporting goods to Germany were denied, they brought actions before the relevant German Courts, and then the cases were submitted before the CJEU in 2006 (CJEU 2009, Case C-228/06). The CJEU in its ruling underlined the direct effect of Article 41(1) and stated that Turkish citizens can rely upon this provision before the EU member countries' courts. The Court ruled that introducing any new restrictions that create difficulties for exercising "freedom of establishment" and "freedom to provide services" after the Additional Protocol's entry into force (1973) is prohibited among the contracting parties by Article 41(1). Since there was no visa requirement against Turkish nationals in 1973, introduction of visa restrictions against Turkish citizens by Germany in 1980 created recurrent financial costs for Turkish service providers; thus, violated Article 41(1) (CJEU 2009, Case C-228/06). Although Germany asserted that visa requirements imposed upon Turkish citizens were introduced in order to transpose the EU's relevant secondary legislation into its national law, the Court recalled the primacy of the international agreements over the secondary legislation and did not accept this argument (CJEU 2009, Case C-228/06). Concerning the application of the standstill clause, it was clear that the provision covers the service providers. However, there were different views on whether it could be applicable for service recipients, and with the Leyla Ecem Demirkan Judgement (Case C-221/11), the Court ruled that the standstill clause does not cover service recipients (World Bank 2014a, 77). The standstill clause did not create a significant facilitation in practice; for instance, in order to benefit from visa-free access to Germany, Turkish service providers must submit several documents to obtain a "visa exemption" from German embassies (Tezcan-İdriz 2010, 26). Thus, the standstill clause provided more liberalized visa procedures for Turkish service providers to some extent, with limited application in practice.

Some historical developments contributed to the failure to secure freedom of movement for labor between Turkey and the EU. In the first years of the 1960s, Western countries had a significant labor demand due to their booming economies, several bilateral recruitment agreements were concluded with Turkey, and thousands of Turkish "guest workers" arrived in European countries; however, especially due to the 1973 oil crisis, there was no longer a high workforce demand in Europe (Tezcan-İdriz 2010, 10). Therefore, changing economic and political situations negatively affected the prospect of establishing freedom of movement for workers and could not be achieved. Even the conditions became more stringent. First, Germany introduced visas against Turkish citizens in 1980, followed by France, Belgium, and the Netherlands (Tezcan-İdriz 2010, 10), and in the context of the EU's Regulation no. 539/2001, Turkey was listed as a third country whose citizens must obtain visas to enter EU member countries' territory (Council of the European Union, 2001). Currently, although the citizens of the EU member countries can visit Turkey visa-free or with simplified visa procedures, all EU member countries require visas for Turkish citizens (Republic of Turkey Ministry of Foreign Affairs 2019a-2019b).

According to the results of the World Bank's (2014a) survey of Turkish businessmen, there are several problems concerning visa procedures applied by European countries. First, the visa application can require several documents, such as bank account information, real estate deeds, and regular income information, and this paperwork leads to cumbersome procedures that exhaust the applicants. Second, high visa fees and additional fees charged by intermediary companies, initially designed to facilitate the visa process, increase the overall cost of a visa. Third, delays in the visa granting process or visa refusals lead to uncertainty and make situations more difficult for Turkish businessmen, who must consider possible delays or even rejections while organizing their business relations with their European counterparts. For instance, among the Turkish businessmen participated in the survey; Germany, the United Kingdom, and France are found to have 10%, 7%, 7% visa refusal percentages, respectively, and this situation is ironic, since these countries have strong economic relations with Turkey and are frequently visited by Turkish professionals (Word Bank 2014a, 79).

Turkey has become partially integrated with the Single Market and achieved a high degree of economic integration with the EU. However, contrary to this situation, Turkish nationals' access to EU countries has not been facilitated. The problems arising at various stages of the visa procedure contradict the main objectives of the CU and create unfair competition for Turkish businessmen, compared to their European counterparts, in terms of accessing the European market. Visa procedures for Turkish citizens could be relaxed by requiring fewer documents, issuing longer stay durations, and lowering the visa fees.

On the other hand, liberalizing visa regime toward Turkish citizens is a delicate issue since it is related with the EU’s migration agenda. The EU has significant concerns regarding this matter; facilitated visa restrictions can cause permanent migration from Turkey, moreover, it can lead to undocumented migration from Africa and Middle East to Europe since migrants from these regions can transit through Turkey and access to the Schengen area through crossing the Greek border (Word Bank 2014a, 78). Thus, lifting or easing visa procedures for Turkish citizens appears to be a challenging task.

One solution could be completing the Visa Liberalization Dialogue, launched between Turkey and the EU in parallel with the conclusion of the Readmission Agreement in 2013. Within the scope of the Visa Liberalization Dialogue 72 criteria are specified to be fulfilled, and Turkey has met 65 criteria so far (European Commission 2018a, 48). The remaining benchmarks relate to some sensitive fields such as antiterrorism legislation and data protection, making possible progress more challenging. However, both the EU and Turkey should try to complete the visa liberalization process successfully in order to remove the above-mentioned problems.

Another solution could be creating a specific type of visa with more streamlined procedures for Turkish businessmen and professionals, who frequently travel to European countries (World Bank 2014a, 81). For instance, the Asia Pacific Economic Cooperation (APEC) designed “The Asia Pacific Economic Cooperation Business Travel Card” to facilitate travel conditions within the APEC region for businessmen holding passports of APEC countries (APEC 2019).

In conclusion, due to deep and integrated Turkey-EU economic relations, travelling to EU member countries is a common need of Turkish economic operators. However, encountering several difficulties in the visa process, such as extensive paperwork, burdensome procedures, delays, and denials, does not comply with realities of business life. Moreover, this situation creates a paradox. On the one hand, the CU aims to ensure free circulation of goods; on the other hand, producers or sales representatives of these goods face visa requirements and strict procedures that can act as an indirect obstacle for free movement of goods. Ensuring Turkish citizens visa-free access to the EU countries would not only eliminate problems deriving from the visa application process but also improve functioning of the CU through contributing to free movement of goods. Thus, both the EU and Turkey should seek facilitation and elimination of visa procedures used against Turkish citizens.

3.6 Trade Defense Instruments

Countries apply Trade Defense Instruments (TDIs) to defend their domestic industries against serious injuries caused by unfair imports. Within the context of the CU, the EU and Turkey are allowed to use TDIs under specific conditions. Unjustified use of TDIs in EU-Turkey bilateral trade can act as nontariff measure that impair the CU through distorting free movement of goods.

Turkey is required to harmonize its legislation with that of the EU concerning TDIs. Under the CU, trade policy measures are regulated by Articles 44–47 of Decision 1/95. In the context of these provisions, the EU and Turkey may apply TDIs against each other and third countries; moreover, they do not have to impose the same TDIs on third countries. The Association Council can review the TDIs, other than safeguard measures imposed between the EU and Turkey upon one party's request, and it may decide on suspension of these TDIs under the condition that Turkey has put into force state aid, competition legislations and other parts of EU acquis linked to the Single Market, as stated in Decision 1/95, Article 44(1). Although the application of TDIs conflicts with the spirit of the Single Market (for instance, they are not allowed to be applied in intra-EU trade), the rationale behind permitting these instruments in the CU can be to encourage Turkey to fulfill its obligations in other matters, such as state aid and competition legislation, which would help to ensure fair competition between the parties (Dawar and Togan 2016, 18). Article 44(2) of Decision 1/95 states that Article 47 of the Additional Protocol, concerning antidumping measures, stays valid. Article 47 specifies the rights and obligations of the parties in relation to dumping cases and prescribes that after the demand of one of the contracting parties, if the Association Council reveals dumping practices in bilateral trade, the Council recommends to the relevant party to end such practices. While applying TDIs, both the EU and Turkey must strive to coordinate their actions against third countries through information sharing and consultation (Decision 1/95, Article 45). Pursuant to Article 46 of Decision 1/95, when a trade policy measure is imposed by one of the parties against a third country, this measure can be applicable to the relevant products coming from territory of the other party. For instance, if Turkey introduces a TDI against a third country's goods, it can apply this measure for the concerned goods coming from the EU. Moreover, origins of the products that are subject to TDIs must be shown by the importers on customs declarations in EU-Turkey bilateral trade (Decision 1/95, Article 47). On the other hand, pertaining to safeguard measures, Article 63 of Decision 1/95 states that Article 60 of the Additional Protocol stays in force. According to Article 60, parties can take necessary protective measures; if "serious disturbances" arise in an industry of the economy or "prejudice external financial stability" or if "difficulties" which have negative impacts on economic conditions in a region of the EU or Turkey emerge.

Both the EU and Turkey utilize trade remedies widely in their foreign trade. According to the World Trade Organization (WTO), a WTO member can apply safeguard measures through restricting imports of a product "if its domestic industry is injured or threatened with injury caused by a surge in imports", and it can apply countervailing measures through charging extra duties on subsidized imports if these imports hurt domestic manufacturers (WTO 2019b). Over the period from 1995 to 2017, the EU initiated 502 antidumping and 79 countervailing investigations, and in terms of numbers of initiated investigations, ranked as third and second, respectively, among WTO members (WTO 2018a, 2018c). On the other hand, Turkey uses trade remedies as significant trade policy instruments and launched 21 safeguard and 221 antidumping investigations over the period from 1995 to 2017, ranking third and ninth, respectively, among WTO members (WTO 2018a, 2018b). The EU and Turkey do not seem to achieve a proper coordination with regard to application of TDIs. A significant number of discrepancies exist between the parties, in terms of products subject to trade policy measures; for instance, according to the analysis conducted by the World Bank (2014a, 41) for the period 1995–2011, Turkey launched investigations concerning 329 products, whereas the EU did so regarding 336 products, and only 15% of these products were subject to investigation by both parties. This situation can be a consequence of different economic structures and requirements of the parties; however, it also leads to application of different trade policies toward third countries, in contrast to the obligations of the CU.

Concerning the trade measures applied in bilateral trade between Turkey and the EU, as of May 2019, Turkey has eighteen anti-dumping measures in force against different EU countries—four against Greece, four against Bulgaria, three against Germany, two against Italy, two against Spain, two against Poland and one against Sweden—relating to different products or product groups such as fittings, water heaters, laminated flooring, woven fabrics, sodium percarbonates, hinges of base metal, and tubes and pipes of refined copper (Republic of Turkey Ministry of Trade 2019a). The TDIs applied against some of the EU member countries can lead to different economic incentives among these countries, since the ones not subject to measures gain advantage over the others in exporting their products to Turkey (World Bank 2014a, 42). On the other hand, the EU has an antidumping measure on tubes of iron or steel coming from Turkey (Republic of Turkey Ministry of Trade 2019a). Turkey's safeguard measures are generally applied against all countries and imposed on the products that have a lower price than a specific threshold value determined by Turkey. Currently, Turkey has safeguard measures concerning toothbrushes, wallpapers, polyethylene terephthalate and steel products, applied to all countries including EU members, on the other hand, the EU has a countervailing measure on Turkish origin trout (certain rainbow) and a safeguard investigation against Turkish origin steel products (Republic of Turkey Ministry of Trade 2019a).

According to the trade statistics obtained from Turkish Statistical Institute (2019); Turkey's 2018 imports from the EU concerning the products that are subject to antidumping and safeguard measures realized at EUR 86.7 million and EUR 2.7 billion, respectively, whereas its exports to the EU in relation to the products which are subject to antidumping and countervailing measures amounted to EUR 15.7 million and EUR 63.2 million, respectively. Moreover, Turkish origin steel products are under an ongoing safeguard investigation, and Turkey's exports to the EU concerning these products accounted to EUR 4.4 billion in 2018.

Application of trade policy measures in EU-Turkey bilateral trade can undermine the predictability and transparency of trade policy environment. TDIs applied between the EU and Turkey can be subject to review by the Association Council; however, considering the political nature of the Association Council, achieving an effective and fair result at the end of the review process does not seem very possible. Additionally, the Association Council's review mechanism is envisaged for the trade measures except for safeguard measures; in other words, safeguard measures are precluded from this review mechanism. Another limitation concerning the review mechanism is that the Association Council can only suspend TDIs if Turkey adopts and implements the EU legislation in required fields. Therefore, Turkey's harmonization with the EU acquis seems extremely critical in order to have a chance of suspending TDIs between the parties. On the other hand, although the importance of coordination between the parties has been underlined in Decision 1/95, the parties seem to lack effective coordination between them in relation to application of trade remedies. According to WTO statistics, although most of the measures taken by the EU and Turkey are against China and other Asian countries, as noted above, trade measures are applied mostly to different products.

Ensuring free movement of goods is the main objective of the CU, and utilization of TDIs in EU-Turkey bilateral trade contradicts this objective by upsetting free movement of goods through charging additional duties. Moreover, utilization of different trade policy measures against third countries might also lead to a deviation from applying the same external tariffs to third countries, another vital principle of the CU. Thus, both the EU and Turkey should avoid employing TDIs in their bilateral trade and try to coordinate their trade measures against third countries, to secure proper functioning of the CU.

3.7 Agriculture

The shaping of the bilateral trade framework in agricultural goods between the EU and Turkey started with establishment of the association relationship. While Article 11 of the Ankara Agreement stipulated that the association relationship would cover agriculture and agricultural trade, Article 33 of the Additional Protocol required Turkey to adapt itself to the Community’s CAP within a twenty-two-year period in order to ensure free movement of agricultural goods between Turkey and the EU. Nonetheless, within the envisaged period, although the establishment of the CU ensured the trade liberalization in industrial goods, liberalization in agriculture could not be attained. The CU formed between the parties applies only to industrial goods (Decision 1/95, Article 2) and excludes primary agricultural products. While the CU encompasses the industrial component of processed agricultural goods and does not subject them to any customs duties, the basic agricultural component does not fall within the scope of the CU. Moreover, although agriculture is precluded from CU coverage, the EU and Turkey defined as a common goal in Decision 1/95 the ensuring of free circulation of agricultural commodities. In order to attain this goal, Turkey must adjust its agricultural policies in such a way as to implement the CAP (Decision 1/95, Articles 24 and 25).

With the initiation of the association relationship, the parties started to grant trade concessions concerning agricultural goods between them. The EU provided quotas for tobacco, dried figs, dried grapes, and hazelnuts originating in Turkey with the implementation of the Ankara Agreement, and it started to apply reduced or eliminated customs duties against Turkey’s several agricultural products with entry into force of the Additional Protocol in 1973 (Arıkan 2003, 61). The Association Council’s Decision 1/98 became the main instrument that elaborates on reciprocally recognized trade concessions and application of the EU and Turkey preferential trade regime in agricultural products. After the EU’s 2004 enlargement, this Decision was amended by Decision 2/2006 in order to cover new member countries. Decision

1/98 can be considered a “de facto free trade agreement” regarding agricultural goods, since it provided significant tariff reductions between the parties; for instance, with trade concessions granted by the Ankara Agreement, the Additional Protocol and Decision 1/98, 67% of the Union’s agricultural tariff lines against Turkey have been reduced or eliminated (World Bank 2014 a, 61).

Due to increasing growth of services and industry sectors, the share of agriculture in the Turkish economy has declined over years, but it still plays key economic and social roles for the country. Turkey’s 2017 exports and imports in relation to agricultural products were realized at USD 16.4 billion and USD 14.4 billion, respectively (WTO 2019a). In terms of its agricultural production, Turkey is the seventh largest agricultural producer in the world (WTO 2016, 121). Turkey’s agriculture sector is protected through various tools such as tariffs, quotas, and import bans. In this regard, Turkey’s average tariff rate on agricultural goods is over 40%, and animal products, sugar-confectionary, and dairy products are counted among the country’s mostly protected agricultural products (WTO 2016, 11). In the last decades of the twentieth century, Turkey mostly used price regulations and state interventions as agricultural support policies, and with implementation of the “Agricultural Reform Implementation Project” in the early 2000s, it started to use more market oriented policies, such as decoupled payments (Word Bank 2014b, 9). The decoupled support payments have been phased out and direct payments based on output level or input use, such as diesel, fertilizer and animal-husbandry supports, have increased significantly (WTO 2016, 128; World Bank 2014b, 9). Overall agricultural supports that Turkey provided in 2018 amounted to 14.5 billion Turkish Lira (Republic of Turkey Ministry of Agriculture and Forestry 2019). Application of high tariff rates, import restrictions, and agricultural supports indicate the existing protection in Turkey’s agricultural sector.

On the other hand, the EU is one of the biggest agricultural producers in the world. Its 2018 agri-food exports and imports realized EUR 137.528 billion and EUR 116.310 billion, respectively (European Commission 2018b). The EU’s average tariff on agricultural products is 14.1%, and dairy products, sugar and confectionary, and animals take their place among mostly protected products of the Union (WTO 2017, 49). The CAP is one of the oldest policies of the Union. The EU’s agricultural support mechanisms have evolved significantly over time. While the dependence on export subsidies, high customs duties, and market price supports have decreased, decoupled payments have increased, especially as a result of the 2003 reforms; moreover, innovative applications and sustainability of farming have gained priority in the context of the 2013 reforms (European Commission 2019a). The CAP is funded at the EU level and support payments are organized at the national level. In 2018, CAP expenditure was realized at EUR 58.82 billion and, considering that the EU's total budget was EUR 160.11 billion for the same year (European Commission 2019a), the share of CAP spending in the Union's overall budget corresponded to approximately 37%.

With regard to agri-food trade between the parties, Turkey's 2018 volume of exports to the EU was EUR 4.482 billion, and its imports from the Union amounted to EUR 3.147 billion, while Turkey's primary export items to the EU are fresh vegetables, fruits, and nuts, its main import products from the EU are live animals, wheat, and food preparations (European Commission 2018b).

Under the existing preferential trade regime, the EU offers more liberalized trade conditions against Turkey; it eliminated ad valorem duties on almost all agricultural and fishery products, and majority of Turkey's agricultural products can access the EU market without customs duties (European Commission 2016a, 10). The EU uses tariff quotas for some Turkish agricultural products. On the other hand, Turkey provides less favorable conditions for EU's agricultural goods; it offers relatively few preferential tariffs and can apply high tariff rates and quotas concerning these goods (European Commission 2016a, 10). Reciprocally granted trade concessions under the Association Council's Decision 1/98 ensures a partial trade liberalization in agricultural trade between the parties. Nonetheless, several trade restrictions are still in force between the parties. For instance, the EU applies import restrictions concerning some animal products originating in Turkey; only a limited number of Turkish companies authorized by the Union can export dairy goods to EU countries; some agricultural products in which Turkey has a comparative advantage can frequently be subject to tests and controls, such as aflatoxin checks in hazelnuts or pesticide, residues tests in fresh fruit and vegetables; on the other hand, Turkey's import restrictions on bovine meat from the EU, first introduced in 1996, has been a controversial issue between the parties for several years (World Bank 2014a, 61). However, due to domestic price increases in the past few years, these restrictions were loosened by Turkey; additional tariff quotas were introduced for bovine meats' import, and customs duties concerning the live animals were abolished. Accordingly, imports of live animals and bovine meat from the EU have increased dramatically (European Commission 2018b, 5). Moreover, the EU and Turkey reached a consensus on extending the scope of Decision 1/98 to cover more meat products (European

Commission 2018a, 78), and if the extension of the Decision can be achieved, this might offer a permanent solution for bovine meat import restrictions applied by Turkey.

FTAs signed by the EU with third parties might offer vital trade concessions for agricultural products, and this situation leads to preference erosion for Turkey in terms of accessing the European market; for instance, trade agreements concluded with Chile, South Africa, or Morocco have more favorable conditions for their agricultural products than trade concessions granted to Turkey (Ülgen and Yenigün-Dilek 2015, 88). On the other hand, application of high tariff rates, quota restrictions, nontransparent management of import quotas, and different national SPS measures can act as various kinds of trade restrictions in the EU-Turkey bilateral agricultural trade. Thus, there is vital room for further liberalization in agriculture between the parties.

Implications of a possible extension of the CU to the agricultural sector arise as follows. First, the tariffs and quantitative restrictions would be eliminated between the EU and Turkey, and the common external tariff of the EU would be applied by Turkey to third countries. Considering that Turkey's average tariff rate in agricultural products is more than 40%, a possible trade liberalization in agricultural goods would result in significant decline in Turkey's tariff rates and protection levels against both the EU and third countries. This would also lead to decreases in agricultural product prices, which would benefit the consumers. Second, under the existing preferential trade regime, most Turkish agricultural products can access the European market with reduced or eliminated tariff rates; thus, further liberalization may not lead to vital improved market access conditions for Turkish agricultural products in terms of tariff rates, but could abolish import restrictions such as quotas or bans applied by the EU against Turkey. On the other hand, eliminated tariff rates would favor the EU more than Turkey, since Turkey's existing tariffs are relatively higher for EU agricultural products. Third, another important aspect would be Turkey's alignment with food safety, SPS measures concerning agricultural goods. Since the existing CU does not cover agricultural products, it does not create any obligation for Turkey with respect to SPS measures. On the other side, there is an ongoing process regarding SPS measures under accession negotiations, and Turkey has partially harmonized with the EU in this area (European Commission 2016b, 155). With liberalization in agricultural goods, Turkey's legislation alignment obligation would become more dominant because Turkish companies would only be able to access the European market provided they fulfill required food safety standards. This alignment process might bring significant compliance costs to Turkey, but it would help the Turkish agricultural industry to catch up with international standards and develop its product quality. Fourth, Turkey has become one of the leading agricultural producers in its region, mainly due to its comparative advantage derived from mediterranean climate, large agricultural land, water basins, and geographical location; however, it still has significant structural problems concerning the agricultural sector (Ülgen and Yenigün-Dilek 2015, 91). The productivity level of Turkey is relatively lower than that of most of the EU member countries; for instance, agricultural output increase due to productivity growth achieved by the southern European countries between 1960 and 2014 is 50% more than Turkey's (World Bank 2014a, 66). There are major productivity differences between Turkey and European countries; thus, if the CU is extended to cover agricultural goods, Turkish farmers with their higher costs and lower efficiencies would be exposed to serious competition and have challenges while trying to compete with European companies. However, competition stemming from further liberalization can also be a significant driving force for the Turkish agricultural sector to upgrade its structure and productivity. Additionally, Turkey has vital import dependency in relation to some basic agricultural inputs, such as diesel oil, fertilizer, forage, and pesticides; therefore, price increases and fluctuations in these goods can undermine competitiveness of Turkish farmers through raising their costs and creating unpredictable conditions for agricultural production (Ülgen and Yenigün-Dilek 2015, 92). Fifth, if the modernization of the CU requires Turkey to adopt the CAP, this will be a compelling requirement for Turkey, as there are significant differences between Turkey and the EU regarding productivity levels, structures of agricultural sectors, and applied support programs. Turkey would also need to establish relevant institutional and administrative framework for management of the CAP. Thus, adoption of the CAP would lead to vital adjustment and administrative costs for Turkey as well.

While estimating possible welfare gains that would be obtained through liberalization in agricultural products, the above-mentioned impacts should also be considered. In this regard, the World Bank's study states that the EU and Turkey have their own sensitivities and priorities concerning some specific agricultural products, and there are adjustment concerns in relation to some specific agricultural industries; thus, concluding an FTA between Turkey and the EU might be a more viable option for trade liberalization in agriculture, although this option offers fewer welfare gains for both parties compared to other scenarios (World Bank 2014a, 67).

The simulation conducted by the World Bank (2014a, 2014b) using a CGE model addresses four different scenarios for liberalizing agricultural trade between the parties:

1. Elimination of customs duties and quotas in agricultural trade between the parties;
2. Extending the scope of the CU to agricultural products;
3. Second scenario plus alignment with FTAs concluded by the EU with third parties;
4. Third scenario plus implementation of the CAP by Turkey.

The impacts of these alternatives on Turkey's economy are indicated in Table 1.

Table 1. Economic Impacts of Agricultural Liberalization on Turkey

	First Scenario	**Second Scenario**	**Third Scenario**	**Fourth Scenario**
Overall Economic Welfare (Million USD)	72	292	843	500
Efficiency Gains (Million USD)	339	754	1659	1209
Trade Balance (Exports-Imports) (Million USD)	127	122	222	-281
Private Household Prices (percent)	-0.34	-0.59	-0.98	-1.26
Primary Factor Rents, real (Deflated by private consumption prices)				
Land (percent)	-2.35	-8.20	-13.75	21.69
Unskilled Labor (percent)	0.11	0.16	0.23	1.21
Skilled Labor (percent)	0.15	0.31	0.54	1.06
Capital (percent)	0.17	0.35	0.57	1.29

Source: Tsigas and Sahin 2013, cited in World Bank 2014b, 26

According to the results of the simulation, under all scenarios, Turkey's welfare is found to increase, and its highest possible gain is estimated to be USD 843 million under the third scenario. The overall efficiency gain for Turkey under the fourth scenario is lower than under the third scenario, because the fourth scenario shifts the resources from manufacturing to agricultural industry, through application of the CAP; in other words, under the fourth scenario, exports of agricultural goods increases at the expense of manufactured products (World Bank 2014b, 16). Moreover, due to liberalization in agricultural products trade, the private household (consumer) prices are estimated to decrease, and this situation benefits the consumers. On the other hand, vital changes concerning the rents and wages of production factors imply distributional impacts of the liberalization. Prices of labor and capital rise. Land prices go down under the first three scenarios, whereas under the fourth scenario, adoption of the CAP escalates land prices significantly. Considering the increase in labor wages together with the decreased consumer prices, the benefits of the liberalization in agricultural commodities might be greater for lower income groups (World Bank 2014b, 1).

Consequently, a further liberalization in agriculture could create additional welfare gains for both the EU and Turkey. Applying polices for increasing productivity and competitiveness of the agricultural sector, changing composition of agricultural supports, and completing the alignment with the EU's food safety standards are highly significant for Turkey, in order to enable agricultural liberalization with the EU.

3.8 Services

Abolishment of restrictive measures on "freedom of establishment" and "freedom to provide services" was prescribed as an objective of the EU and Turkey by Articles 13–14 of the Ankara Agreement. Pursuant to Article 41 of the Additional Protocol, no new restrictions concerning these freedoms can be implemented after the enforcement of the Protocol, and existing restrictions between the parties would gradually be abolished. However, with regard to services, no provision was anticipated in Decision 1/95, which established the CU. Thus, in relation to removal of restrictions on services trade, no noteworthy progress could be achieved under the association relationship between the EU and Turkey. The existing bilateral services trade is implemented through the EU's and Turkey's commitments under the "General Agreement on Trade in Services" (GATS) (European Commission 2016a, 11).

Services constitute approximately 65% of Turkey's GDP, and in 2017, Turkey's commercial services exports and imports amounted to USD 43.392 billion and USD 22.662 billion, respectively (WTO 2019a). The ratio of services trade to GDP has increased dramatically for several countries; however, this ratio has not changed significantly for Turkey and has been around 10% since 1996 (World Bank 2014a, 69). Moreover, low-value-added services, such as tourism and transport, constitute the largest share in Turkey's overall services exports, and in terms of creating high-value-added services, Turkey seems to be underperforming. On the other hand, the EU's 2017 commercial services exports and imports accounted for USD 1.009 trillion and USD 799 billion, respectively, and in addition to transport and travel services, business services and financial services play key roles in the Union's overall services trade performance (WTO 2019a). The EU's services exports and imports with Turkey realized EUR 12.6 billion and EUR 14.1 billion, respectively, in 2017, and accordingly, Turkey had a EUR 1.6 billion trade surplus in its bilateral services trade with the EU (European Commission 2019b).

Liberalization in goods trade can be basically achieved through abolishment of tariffs, quantitative restrictions and nontariff measures. However, quantification and removal of trade barriers in services can be more intricate since they are not simple border obstacles like tariff rates. Main trade impediments in services can be counted as regulatory restrictions on market access and discriminatory treatment against foreign service providers or investors; therefore, trade liberalization in services is generally provided through abolishment of restrictive regulations (Gros et al. 2018, 23).

According to the World Bank's (2014a, 74) study using its Services Trade Restrictiveness Index, Turkey's overall openness level in services is quite similar to the EU's; however, there are significant differences concerning specific sectors; for instance, while the EU's restrictiveness level is high in retail and transport sectors, Turkey's is more restrictive in accounting, legal services, and railway sectors. Moreover, according to the analysis conducted by the World Bank through utilizing an gravity model, Turkey is found to underperform in terms of services exports to most of the EU countries and overperform to a few such as Hungary; on the other hand, many EU countries' services exports to the Turkey are found to be underperforming, and this situation implies room for further liberalization in services between the parties (World Bank 2014a, 73).

Services constitute an important part of the global economy, and they are not only vital forces for economic growth but also key inputs for several other sectors (Gros et al.). The GATS is one of the success of the WTO's Uruguay Round, and aims to create a more predictable and transparent environment for services trade. Within the scope of the GATS (1995), members have general obligations, such as most favored nation treatment, and their own commitment schedules, which determine national treatment and market access conditions at the sectoral level. In the context of GATS commitments, the bilateral framework of services trade between the EU and Turkey does not provide for ambitious liberalization between the parties, since the commitments are generally modestly and selectively determined (Gros et al. 2018, 24). Thus, achieving further liberalization in services trade between the EU and Turkey would bring additional welfare gains for both sides through increasing services trade. In addition to that, services liberalization would also affect bilateral trade in goods; it would contribute to functioning of the CU by enabling free circulation of goods between Turkey and the EU. It would also increase competition in Turkey's services sector, and this competitive pressure might lead to a set of dynamic effects for the Turkish economy, such as efficiency increase and capacity improvement for more high-value-added services production.

According to the simulation run by the World Bank (2014a, 125) utilizing a CGE model, impacts of trade liberalization in agricultural products under four different scenarios were reappraised by assuming Turkey's liberalization in services trade from all countries, including the EU member states, and accordingly, the impact of liberalization in services and utilities is found to create around USD 1.1 billion additional welfare gain for Turkey. Under all scenarios, services liberalization does not seem to create a sizable percentage change in Turkey's GDP, as illustrated in Table 2.

Table 2. Economic Impacts of Liberalization in Agriculture and Services on Turkey

	First Scenario Elimination of duties and quotas in agricultural trade		**Second Scenario** Extending the CU to agricultural products		**Third Scenario** Second scenario plus alignment with the EU's FTAs		**Fourth Scenario** Third scenario plus implementation of the CAP	
	Without Services	With Services	Without Services	With Services	Without Services	With Services	Without Services	With Services
Economic Welfare Million USD	72	1.238	292	1.458	843	2.010	500	1.666
Real GDP Change Percent	0.05	0.26	0.12	0.32	0.26	0.46	0.19	0.39

Source: World Bank 2014a, 125

In light of the studies reported in the literature (World Bank 2014a; Ülgen and Yenigün-Dilek 2015; Gros et al. 2018), the European Economic Area (EEA) and FTA models can be addressed as main options for liberalization in services between the EU and Turkey. Under the EEA model, the Single Market of the Union is extended to Norway, Iceland, and Liechtenstein, and these countries must eliminate restrictions in their services trade with the EU and undertake complete EU acquis in relation to services. In other words, these countries are envisaged to have a parallel legislative order with that of the EU regarding services, to remove any trade hinderance stemming from different regulations (World Bank 2014a, 76). Another option might be concluding an FTA in the field of services, and different approaches are used in EU's FTAs concerning services. For instance, the "EU-Canada Comprehensive Economic and Trade Agreement" (CETA) foresees a comprehensive liberalization between the parties for elimination of restrictions in relation to services through a "negative listing" method, under which liberalized conditions for market access is applied as a general principle, unless restrictions are explicitly specified in the relevant lists of the Agreement (Gros et al. 2018, 25). On the other hand, another approach concerning the services liberalization is the "EU-Ukraine Association Agreement," apart from the CETA, this Agreement also prescribes Ukraine's legislative harmonization with the EU in selected services sectors; thus, after the completion of the alignment process, Ukraine would partially integrate with the Single Market in terms of selected services sectors (Gros et al. 2018, 29).

Among the options stated above, the EEA model provides the most advanced integration, since it requires full harmonization with the EU acquis and, in return, ensures access to the Single Market concerning services. However, if Turkey tries to apply this model, its main challenge would be policy dependency on the EU (Ülgen and Yenigün-Dilek 2015, 50); that is, it would have to mimic all the EU's relevant acquis regarding the services, without having a voice in any policy shaping process. Considering that the policy dependency of Turkey in the field of commercial policy is a vital problem of the CU, application of the EEA model would also cause similar problems for Turkey in the services sector. On the other hand, this model might be beneficial for Turkey's accession process, since it would provide an advanced level of alignment with the EU regarding services (Ülgen and Yenigün-Dilek 2015, 51). Another option for Turkey could be signing an FTA with the Union in the field of services. If an FTA similar to the CETA is decided upon, services liberalization would be achieved through reciprocally granted commitments between the parties, and there would be no legislation harmonization requirement. On the other hand, a comprehensive FTA like the EU-Ukraine Association Agreement would offer a model between the EEA and CETA for Turkey. The EU and Turkey can determine specific services sectors for liberalization, and Turkey would undertake the legislative alignment obligation in relation to selected sectors. This option would offer more flexibility compared to the EEA model and provide Turkey's further integration with the Single Market.

CHAPTER 4

POLICY ALTERNATIVES FOR MODERNIZATION OF THE TURKEY-EU CUSTOMS UNION

The shortcomings and problems concerning the current structure of the CU reveal a need for improvement in the way of conducting EU-Turkey bilateral commercial relations. Obviously, the most effective way to eliminate these anomalies would be through Turkey's accession to the EU. However, blocked chapters in the accession process and the current course of political relations make Turkey's EU membership unlikely in the near future. Thus, it becomes more significant to modify the CU in the meantime. In light of the studies reported in the literature (European Commission 2016a; Dawar and Togan 2016), this chapter evaluates three policy options for revising the existing structure of the Turkey-EU bilateral trade regime; the EEA model, replacing the CU with an FTA, and revising the CU and having a separate FTA in additional fields.

This study assumes that Turkey's accession to the EU would remain as the ultimate objective of the parties while assessing different alternatives for revision of the CU. Turkey has ambitiously liberalized its trade regime, aligned itself with the EU acquis, and undertaken vital adjustment and implementation costs since the formation of the CU. Thus, replacing the membership prospect with the revised CU would be a serious setback for Turkey. In this regard, renewal of the CU should not be viewed as an alternative to Turkey's full membership. Rather, it should be regarded as a stepping stone toward full membership by providing Turkey's further economic integration with the EU. Moreover, without a membership prospect, having a CU with the EU might not be the most effective economic model for Turkey.

4.1 European Economic Area Model

The EEA Agreement was concluded between the EU, its member states and three EFTA countries, namely, Norway, Iceland, and Liechtenstein (EFTA-EEA member countries), ensuring an advanced market integration between the parties. On the other hand, as another EFTA country, Switzerland does not take part in the EEA Agreement, and economic relations between Switzerland and the EU are conducted through a series of agreements (EFTA 2019).

In the context of the EEA Agreement, free movement of persons, goods, capital, and services is achieved between the contracting parties. Besides, the EFTA-EEA member countries have become parts of the Single Market, and they are entailed to transpose certain aspects of the EU acquis into their own national law in order to create a parallel legislative order to the EU's (EFTA 2019). Despite being obliged to incorporate the EU acquis into their national legal order, the EFTA-EEA member countries have no influence in the Union's decision making process; however, they get actively involved in preparatory stages of the EU law (Böhler, Pelkmans and Selçuki 2012, 15). The EEA agreement creates a free trade area; therefore, preferential trade between the EU and the EFTA-EEA member countries is based on rules of origin. This agreement does not encompass CU, CCP, agriculture and fisheries policy of the Union (EFTA 2019).

Turkey has a partial integration with the Single Market, which only encompasses free movement of goods. On the one hand, compared to the EU-Turkey CU, the EEA model provides further integration with the EU, since it covers four freedoms, including free movement of workers, and extends the Single Market to the EFTA-EEA member countries. On the other hand, the EEA is based on an FTA; thus, it does not cover CU and trade policy of the Union, and from this standpoint, the EU-Turkey CU goes beyond the EEA and ensures a higher level of integration between the parties. The EEA has envisaged more effective institutional setups for ensuring the non-EU countries' participation in policy shaping; yet, both models have similar problems concerning policy dependency on the EU in relation to law making processes.

Consequently, although the EEA model provides full participation in the Single Market and four freedoms, including free movement of persons which attaches high significance to Turkey, shifting from the CU to the EEA model would be a step backward for Turkey, since as a candidate country seeking full membership, Turkey has already become part of the Union's common customs area and undertaken the EU's CCP. Thus, the EEA alternative does not seem to be a more viable policy alternative compared to the CU, in terms of implementing EU-Turkey economic relations.

4.2 Free Trade Agreement

Replacing the CU with a comprehensive FTA could be another policy option for modifying the Turkey-EU bilateral trade regime (European Commission 2016a). Concluding an ambitious FTA that goes beyond tariff abolishment and includes far-reaching policy issues, such as agriculture, public procurement, and services, would also be compatible with the EU's existing trade policy strategy as well.

This policy option has main two advantages for Turkey. First, an ambitious FTA through covering services and agriculture fields could realize the untapped potential of the existing CU and would help the EU and Turkey to enhance their bilateral trade and investment relations. Second, Turkey would regain its independence over foreign trade policy, which would eliminate problems deriving from Turkey's policy dependency on the EU regarding that policy.

On the other hand, this policy alternative would also bring with it vital drawbacks for the parties. Bilateral trade in industrial goods would start to be conducted according to rules of origin, and goods would move with a certificate of origin between the parties in order to benefit from preferential trade. This would incur significant additional trade and transaction costs for both parties' economic operators. Moreover, products coming from third countries to the EU or Turkey would not be able to move freely between them any longer. The above-mentioned reasons might negatively affect the bilateral trade volume between the two.

In the context of the CU, Turkey has achieved a significant level of legislation alignment with the EU. However, under this scenario, Turkey's legislative harmonization commitment deriving from the CU would be undertaken by "Turkey's political commitments" in the context of the accession process, and this situation might lead to slowdowns in the alignment and reform process (European Commission 2016a, 31). Besides, the CU between the parties was initially designed as a part of the membership prospect, and the reforms realized within the scope of the CU's obligations have also contributed to Turkey's progress toward its accession process. Thus, the Turkey-EU CU is linked not merely with economic relations but also with political relations. In this respect, replacement of the CU with a trade agreement would be a setback in terms of EU-Turkey economic relations as well as political relations (European Commission 2016a, 24).

In conclusion, although replacing the CU with an FTA might solve some problems and shortcomings of the CU, economically and politically it would be a step backward in Turkey-EU relations.

4.3 Modernization of the Customs Union and a Free Trade Agreement

This policy alternative includes upgrading the CU via fixing its institutional design flaws and extending the preferential trade regime to new policy fields through concluding a separate FTA (European Commission 2016a). This option would require intense political engagement and commitment, as it targets both structural changes in the CU and further ambitious liberalization between the parties (European Commission 2016a, 24). In order to improve the institutional structure of the CU, parties should address matters concerning Turkey's inclusion in the policy shaping process, elimination of FTA related problems, and having a functional dispute settlement system. On the other hand, a separate FTA in the fields of agriculture and services would realize the unfulfilled trade potential between Turkey and the EU. With regard to political relations, this policy scenario seems to be in line with Turkey's membership prospect, since it would further deepen the bilateral relations and increase Turkey's approximation with the EU in terms of economic policies. In other words, Turkey's accession process would be reinforced.

According to a quantitative analysis conducted by an external consultant firm for the European Commission, the above-mentioned second and third policy alternatives' economic impacts are shown in Table 3 (European Commission 2016a, 31).

Table 3. Economic Impacts of Policy Alternatives

	Second Scenario Replacing the CU with an FTA		**Third Scenario** Modernization of the CU and concluding an FTA	
	EU	Turkey	EU	Turkey
Exports (Million EUR)	7.978	-4.342	27.062	4.960
Welfare (Million EUR)	1.150	-144	5.388	12.522
Real GDP (Percent)	-0.005	0.264	0.007	1.438

Source: European Commission 2016a, 31; European Commission 2016b

Both scenarios include four elements, namely, liberalization for the goods that are not covered by the existing CU, reduction of nontariff barriers for goods, services, and foreign direct investment (European Commission 2016b). According to the results of the analysis, the third scenario provides significant welfare gains and export increases for both Turkey and the EU. On the other hand, under the second scenario, combination of liberalization in the goods that are not covered by the CU and switching from the CU to an FTA creates losses for both parties, due to the additional trade costs generated by introduction of rules of origin (European Commission 2016b, 193). For the EU, total gains derived from other elements, particularly reduction of nontariff barriers for services and goods, outweigh rules of origin's negative effect on welfare, however they do not offset this negative impact on real GDP, and as for Turkey, the opposite is found (European Commission 2016b, 193). Under the second scenario, the EU experiences a modest increase in exports to Turkey compared to the third scenario, and Turkey realizes a decline in bilateral exports. Considering the changes in the real GDP and welfare, the second scenario does not appear to create a clear loss or gain on the economy at the macroeconomic level for the EU and Turkey (European Commission 2016b, 191).

Furthermore, modernization of the Turkey-EU bilateral trade relations would require relatively more ambitious tariff reduction/elimination for Turkey, as the country's existing average tariff levels for agricultural products are higher than the EU's. It would create significant adjustment and implementation costs for Turkey; besides, imports and the current account deficit of the country might surge (Altay 2018, 193–94). There would be distributional consequences as well. While some income groups, such as producers in liberalized sectors, might be affected negatively by the upgraded CU, consumer's welfare would increase, owing to decreased prices. Short term negative impacts can be balanced by the welfare gains that would be attained in the long term through creating dynamic effects (Ülgen 2017, 4).

Moreover, post-Brexit arrangements to implement economic relations between the United Kingdom and the EU might offer another opportunity for Turkey. Although the United Kingdom is withdrawing from the EU while Turkey is seeking accession, both countries have similar expectations, such as accessing the Single Market and keeping some sovereignty over their foreign trade policy (Ülgen 2016). In this context, as mentioned by the European Commission's president Jean-Claude Juncker, Turkey and the United Kingdom might be in a "new orbit," where they would have a common status for conducting their economic relations with the EU (Perchoc 2018, 4).

Consequently, considering the pros and cons of different policy alternatives mentioned above, the last scenario, which includes modernization of the CU through rectifying its institutional flaws and concluding an FTA in additional areas, seems to be an effective policy alternative for revising the Turkey-EU trade framework.

4.4 Political Aspect of the Modernization of the Customs Union

The Turkey-EU relationship has pursued a challenging course since the establishment of the association relationship in 1963. With regard to formation of the CU in 1995, the EU and Turkey had different motivations and objectives; while the latter saw the CU as a stepping stone toward full membership, the former carefully avoided referring to any linkage between the CU and full membership of Turkey during the negotiations, and saw the CU as a mechanism for strengthening the bilateral relations and political dialogue with Turkey (Arıkan 2003, 81).

Despite the varying considerations, the CU has become the most concrete fruit of the bilateral relations that brought significant benefits to both parties. The trade volume between the parties has increased more than five-fold since 1995 and amounted to USD 165 billion in 2018 (Republic of Turkey Ministry of Trade 2018a). Turkey’s trade regime has liberalized considerably, and the country has integrated with European and global markets. Moreover, the legislation alignment with the EU has led to vital transformation in several economic fields, which contributed to a rule-based, predictable economic environment in Turkey. On the other hand, the CU also brought challenges for Turkey. It is the only candidate country that has been implementing the CU for more than two decades without becoming a member, and this situation has created vital adjustment costs for Turkey. Turkey has fulfilled its comprehensive obligations under the CU without taking advantage of financial assistance provided by the EU for its member countries. With regard to this matter, in his study, Togan (2012, 19) estimates that Turkey’s administrative cost deriving from application of the CU came to EUR 1.07 billion, and the financial assistance provided by the EU for Turkey covered 8.83% of this cost for the period 1994–2009.

The CU was designed as part of Turkey’s membership process. Turkey’s accession negotiations launched in 2005; however, due to several blocked chapters, accession talks have come to a standstill. While Turkey has failed to fulfill properly all the reforms required for the accession, the EU has tried to keep Turkey in its economic and political sphere of influence while postponing its full membership prospect (Arıkan 2003, 1). The motivation and political will concerning Turkey's membership have weakened significantly both in the EU and in Turkey, and recent internal problems of both parties have made it more difficult to spend more energy and time on improving bilateral relations (Böhler, Pelkmans and Selçuki 2012, 2). Turkey's EU membership has not come about, and for the time being, membership is not on the table as an option in the foreseeable future. Thus, sustainability of the CU has come into question, and a certain need for overhaul has emerged. In this context, in May 2015, the EU and Turkey agreed on a mutual understanding for modernization of the preferential trade framework (European Commission 2016a, 6). Although, in December 2016, the European Commission asked for a mandate to start negotiations, the mandate still has not been given by the Council of the European Union, mainly owing to further deteriorating political relations after the failed coup attempt in Turkey in July 2016 (Tastan 2017). Within the scope of the deteriorated relations, the European Parliament adopted a resolution on 13 March 2019 and called for formal suspension of the accession negotiations with Turkey (European Parliament 2019). The report underlines the importance of Turkey as a growth market and mentions that "a door should be left open" for renewal of the CU, which would provide leverage for the EU, in terms of inducing positive improvements concerning fundamental freedoms and democracy in the country, it also recommends that the European Commission set fundamental freedoms as a condition for revision of the CU (European Parliament 2019). This report is not binding and has an advisory character; however, it clearly indicates wrecked EU-Turkey political relations and eradicates the membership possibility for the near future.

In this context, despite the surging political hurdles and unpromising course of the relations over recent years, both parties have significant mutual benefits to urge maintaining cooperation in several critical policy fields, such as migration, energy, security, and economy (Zeytinoğlu 2018). Thus, both the EU and Turkey should seek concrete cooperation areas that can reinvigorate Turkey-EU relations. In this regard, modernization of the CU can revitalize the relations and bypass the existing predicament between the EU and Turkey.

The political climate of the 1990s was quite similar to that of today; the EU-Turkey political relations were not promising and came to a halt, and the establishment of the CU was decided with the intention to bring momentum to bilateral relations (Tastan 2017). Accordingly, to a large extent, the CU restored the EU-Turkey relationship and motivated Turkey to fulfill significant reforms that contributed to Turkey's recognition as a candidate country. Today, under similar conditions, the renewal of the CU can act as a key instrument for bringing new dynamism to relations and confirm the role of the EU as an economic and political anchor for Turkey. From an economic point of view, according to the European Commission's Impact Assessment (2016a), renewal of the CU is estimated to bring considerable economic gains not only for Turkey but also for the EU, by enhancing trade and investment flows between the parties. Moreover, the CU has been an effective policy instrument for the EU, in terms of developing political dialogue with Turkey and encouraging the country to upgrade itself with EU standards and norms. Taking into consideration that the accession talks are at an impasse and political turmoil is jeopardizing the future of the Turkey-EU relationship, the CU can be seen as the only remaining EU-led policy tool that could sustain the economic and political transformation of Turkey, through intensifying cooperation and political dialogue between the parties (Ülgen 2017, 8). The reforms that would be undertaken in the revision of the CU by Turkey can also have political spillover effects that would lead to improvement in good governance, rule of law, and democracy in the country, through ensuring further convergence with the EU's norms and values (Nas 2018, 12).

Consequently, under current conditions where the suspension of the accession negotiations is being discussed and faith in membership is evaporating, both the EU and Turkey should seek to overcome political challenges and keep dialogue channels open. In this respect, the modernization of the CU means more than enhancing the economic ties; it can act as a viable instrument for maintaining positive engagement between the parties.

CONCLUSION

The Turkey-EU CU came into effect in 1995, to pave the way for eventual membership of Turkey in the Union. The CU has strengthened bilateral trade and investment ties and contributed to transforming the Turkish economy, which enabled Turkey's integration into global and European markets. However, the twenty-four-year-old CU has become insufficient for keeping pace with evolving global trade dynamics and needs an overhaul. Moreover, Turkey's open-ended accession process has made design flaws of the CU more apparent and unsustainable. Accordingly, this thesis proposes that the Turkey-EU CU should be improved in order to have an effective and sustainable economic model for implementing EU-Turkey bilateral trade relations in the long run.

The proposed modernization of the CU should address the following main policy matters. First, its integration into to the Union's customs area requires Turkey to undertake the EU's CCP by aligning itself with the EU's relevant acquis in relation to the CU. However, since Turkey is a nonmember state, it has no decision making or decision shaping power under the existing structure of the CU. In other words, it must undertake the Union's trade policy unilaterally determined by the EU, without regard for Turkey's interests or sensitivities. This asymmetric structure should be corrected as much as possible through increasing Turkey's participation in trade policy formulation processes. Moreover, the EU's FTAs with third countries or country groups do not automatically include Turkey. Despite its alignment obligation with the EU's trade agreements, FTA partners of the EU mostly do not have an incentive to conclude a separate trade agreement with Turkey, because these countries can access Turkey's market without paying any tariffs through the FTA signed with the EU. This asymmetric situation creates significant trade deflection risks for Turkey. Thus, the revision of the CU should ensure that the EU and Turkey pursue a parallel track in relation to negotiation and conclusion of FTAs to eliminate trade deflection risks.

Second, the existing dispute settlement mechanisms between the EU and Turkey have a political character under which resolving a dispute or referring it to any other courts or tribunals depends on the Association Council's decisions. Thus, it does not operate effectively in terms of resolving trade frictions arising between the parties. Renewal of the CU should provide a more effective and functional dispute settlement mechanism that would reinforce free circulation of goods by addressing the trade irritants breaching the rules of the CU.

Third, the primary objective of the CU is to ensure free movement of goods between the parties, and to this end, tariff rates and quantitative trade restrictions were eliminated on EU-Turkey trade with implementation of the CU. Thus, nontariff barriers have become more significant to guarantee free circulation of goods. Although the CU Decision has some provisions to remove nontariff measures, several technical barriers persist in practice. Therefore, contrary to the spirit of the CU, border checks and inspections can be applied between the parties. TBT can act as hinderances, driving vital trade costs and administrative burdens that undermine the functioning of the CU. Turkey's harmonization with the EU's technical rules and regulations is extremely critical in terms of abolishing TBT between the parties. Thus, increasing Turkey's involvement at preparatory stages of technical legislation and improving coordination mechanisms could enable Turkey's convergence with the Union's acquis. Besides, application of mutual recognition principle in more fields would help to abolishment of TBT. On the other hand, frequent utilization of TDIs between the EU and Turkey can impair functional effectiveness of the CU by imposing additional duties on products subject to trade. Furthermore, their uncoordinated use against third countries leads to deviations from application of the Union's CCT. Thus, the modernization of the CU should improve information sharing and notification mechanisms between the parties, to avoid resorting to TDIs in bilateral trade and to achieve coordinated use of trade remedies against third countries.

Fourth, application of restrictive visa requirements against Turkish citizens contradicts the high degree of economic integration achieved through the CU. Strict visa procedures should be eliminated or loosened, at least for Turkish economic operators, to strengthen the functioning of the CU through contributing free movement of goods.

Finally, the Turkey-EU CU precludes agriculture and service sectors, areas of untapped trade potential between the parties. Proposed revision of the bilateral trade relations covering these key sectors would increase economic flows between the parties. Granting the significant differences between the parties in terms of agricultural productivity, support mechanisms, and protection levels, providing further liberalization of agriculture with a separate, ambitious FTA could offer more flexibility than expanding the coverage of the CU to agricultural products. On the other hand, with respect to liberalization in services, the EEA model necessitates legislation harmonization with the EU's entire services acquis for non-EU countries and provides for abolishment of any restrictions regarding services among the contracting parties. However, under this option, the non-EU countries must undertake the

EU's relevant acquis without being able to participate in the Union's decision making processes. Considering the policy dependency of these countries on the EU, having an FTA that envisages less ambitious legislative alignment in selected services sectors might be a more effective alternative for Turkey and the EU.

The renewal of Turkey-EU preferential trade would have not only economic but also political implications. Along with providing additional welfare gains for both parties through increasing bilateral trade and investment volumes, it would also act as a vital area of cooperation that could skirt the current impasse in EU-Turkey political relations, through maintaining positive engagement between the parties.

This study addresses various policy alternatives for revising the preferential trade framework between Turkey and the EU, including EEA model, replacing the CU with an FTA, and modernizing the CU through rectifying its institutional flaws and concluding an FTA in additional fields. Considering the significant degree of economic integration with the EU that Turkey has achieved through fulfilling its CU obligations, and the country's ongoing membership prospect, the first two policy options could appear to be backward steps in terms of EU-Turkey relations. On the other hand, the third policy alternative could enforce bilateral economic relations and contribute to Turkey's accession process by enhancing Turkey's convergence toward the EU.

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