



**Nilgün Arisan Eralp<sup>1</sup>**  
*Center Director*

*EU Studies Center*

## **UPGRADING CUSTOMS UNION BETWEEN TURKEY AND THE EUROPEAN UNION IS NOT ONLY ABOUT UPGRADING CUSTOMS UNION**

### **- Unique Nature of the Process**

As they generally say for football, currently the process of up upgrading customs union between Turkey and the European Union (EU) is not only about upgrading customs union. Although the initial motive was rather technical and economic, currently upgrading the customs union is either being regarded as a panacea that would take the Turkey-EU relations out of the current impasse they are in or suspension of which is thought as a punishment for Turkey that moves away from EU norms and values.

The talks to upgrade the customs union have started in 2014 with the initiative of the European Commission, based on an evaluation report by the World Bank<sup>2</sup> which was assigned to it by the Commission itself.

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

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

<sup>2</sup> The World Bank, Evaluation of the EU-Turkey Customs Union, Report No. 85830-TR March 28, 2014.

Improving the asymmetric structure of the customs especially in the case of common external policy was the other main goal. In the current Customs Union framework, Turkey is obliged to follow EU decisions. Turkey has the obligation on the basis of the Customs Union decision No. 1/95 to align itself, without having a say in neither the decision-making nor the 'decision shaping' of the current Customs Union.

Turkey, though not with very much enthusiasm, welcomed the initiative of the Commission mainly as it regarded this process an instrument of being a part of Transatlantic Trade and Investment Partnership (TTIP) which was attached great importance at that time.

Currently, the motives behind upgrading Customs Union go well beyond economic and commercial interests. Where other co-operation areas like energy, migration and security (counter-terrorism) seem to be mainly transactional as they lack a long-term transformative impact guided by a common set of rules and norms; it does not seem to be the case for the Customs Union, which at least embodies the spirit of a rule based framework though limited with the economic sphere<sup>3</sup>.

The process of upgrading customs union has the potential to strike a delicate balance that is being sought nowadays, given the dormant accession negotiations. Some also think that **it might also** prevent political dissonance from slipping into outright conflict<sup>4</sup>. This delicate balance stems from the nature of the Customs Union which is:

- a functional relationship where interests of the parties seem to overlap to a certain extent

and also

- a rule based framework that has the potential to result an improvement in the economic governance and rule of law in Turkey.

Through such a rule based functional relationship EU might have (or expected to have) some kind of a leverage and/or transformative power through which it would not totally fail that segment of Turkish society which increasingly attribute a normative role to the EU<sup>5</sup>.

On the opposite end of the line there are those who view the upgrading or rather suspending the of Customs Union as a punishment for Turkey for moving away from EU values and norms like democracy, rule of law and human rights. People who hold on to this line of argument suggest imposing political conditions even for giving a mandate to the European Commission to negotiate upgrading the Customs Union with Turkey. Those who adopt this viewpoint might go

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<sup>3</sup> Sinan Ülgen, Trade as Turkey's Anchor, Carnegie Europe, December 2017

<sup>4</sup> Nathalie Tocci, Beyond the Storm in EU-Turkey Relations, FEUTURE Voices, no. 4, January 2018

[http://www.feuture.uni-koeln.de/sites/feuture/user\\_upload/pdf\\_tocci\\_feuture.pdf](http://www.feuture.uni-koeln.de/sites/feuture/user_upload/pdf_tocci_feuture.pdf)

<sup>5</sup> Senem Aydın Düzgit, Foreign policy and identity change: Analysing perceptions of Europe among the Turkish public, SAGE Publications, November 21, 2017.

as far as downgrading customs union to a free trade area, although there is a weak economic rationale behind this proposal.

#### - **Benefits of Customs Union and Expectations from the Upgrading Process**

The initial Customs Union that was completed in 1996 has been beneficial to Turkey not only in terms of increased trade and competitiveness and transformation of the Turkish industry via the investments in technology, but also via providing the legal and institutional infrastructure of a rule based free market economy. In this sense the original customs union has contributed a lot to the economic reform programme of early 2000s that brought an exemplary economic success to the country.

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

According to empirical impact assessment studies, the upgrading and modernization of Customs Union would bring economic benefits to both parties. These are prepared by both parties and the findings are more or less similar. The impact assessment of the EU projected the expected gains to reach 5.4 billion euros or about % 0.01 of GDP for the EU and 12.5 billion euros or 1.44 % of GDP for Turkey.<sup>6</sup>

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

#### - **Concerns Regarding Different Approaches to Upgrading Process**

First approach belongs to democratic and reform minded people in Turkey and those in EU who think that they should do at least something to change the internal dynamics in Turkey, especially after the EU politicians have turned a blind eye on what's going on in the country for the sake of the refugee deal. They want the negotiations to start and they want the EU to send the ball to Turkey's court.

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<sup>6</sup> European Commission, COMMISSION STAFF WORKING DOCUMENT, IMPACT ASSESSMENT, Accompanying the document :Recommendation for a Council Decision authorising the opening of negotiations with Turkey on an Agreement on the extension of the scope of the bilateral preferential trade relationship and on the modernisation of the Customs Union [http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc\\_155238.pdf](http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155238.pdf)

There are some concerns regarding this approach:

- Can upgrading the customs union fulfil the expectations of having such a transformative power?
- Even if the process would have a positive impact on economic governance and rule of law in the economic sphere, can these be extended to the political sphere?
- Whether Turkish administration would be accomplish the reforms regarding transparency in the areas of state-aid, public procurement and re-establish the independence of regulatory authorities as it has been dragging its feet to do so for some time?
- Whether Turkish administration would recognize the jurisdiction of an independent international dispute settlement

The second approach is observed among some EU Member States led by Germany. They would like to block the initiation of the negotiations for upgrading the customs union by not giving a mandate to the European Commission towards this end. It is very difficult to understand this process as the mandate to be given is to negotiate not to conclude the upgrading the process and all the conditionalities can in principle be imposed in the negotiation process and/or at the end of it as the European Parliament has to approve the upgraded Customs Union.

Supporters of this approach argue that Turkey is not serious in demanding the upgrading of the Customs Union. Those who support the counter argument can easily question why Turkey's so called bluff is not being called. Otherwise the leadership of Turkey would be given an easy exit card and narrative of being a victim of the EU would be strengthened<sup>7</sup>.

It might sound rather exaggerated and even pathetic to expect so much from upgrading customs union but sadly it is the only instrument in the hands of the people who would like to pull the Turkey-EU relationship back from the brink and EU is not impeccable in reaching at this state.

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<sup>7</sup> The podcast of the discussion on Sinan Ülgen's paper "Trade as Turkey's EU Anchor, Carnegie Europe, 31 January 2018. <http://carnegieeurope.eu/2018/01/23/toward-renewed-eu-turkey-customs-union-event-5796>