

AN ANALYSIS ON THE ALIGNMENT PROCESS OF TURKEY TO THE EU'S FTAs UNDER THE CUSTOMS UNION AND CURRENT CHALLENGES*

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Abstract

Although the EU historically has been a leading force for preferential trade arrangements (PTAs), its main priority for the past seven years has been negotiating the WTO Doha Round agreement. Soon after the Doha Round negotiations came to a standstill in July 2006, the EU announced an ambitious agenda to enter into more PTAs. In this perspective, the effect of the EU PTA policies and strategies (especially such new initiative) on Turkey as a Customs Union partner since 1996 is a unique case. The purpose of this paper is to analyze the effects of EU's PTAs approach on EU-Turkey CU and the adoption process of Turkey to EU FTAs. It focuses on this process in terms of its legal and historical foundations and current challenges. The paper argues that under the current "aggressive regionalism" phenomenon in the global trade system, a customs union between asymmetric parties like Turkey and EU without a clear prospect for closer integration may not work properly in the long run. In addition, Turkey's memberships in several PTAs, as the result of CU framework, make its trade regime more complex and difficult to manage. Also, if an efficient mechanism is not set up to ensure proper cooperation and consultation between the parties, the new initiative of EU to FTAs will further complicate the present problems and undermine the proper functioning of CU.

JEL Kodları: F15 (Economic Integration), F13 (Trade Policy)

Keywords: Preferential trade agreements/FTAs, the customs union, Turkey, EU

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Öz**Gümrük Birliği Kapsamında Türkiye'nin AB'nin Serbest Ticaret Anlaşmalarını Üstlenme Süreci Üzerine Bir Analiz**

AB tarihsel olarak tercihli ticaret anlaşmaları konusunda öncü olmasına karşın, son yedi yıldır önceliğini DTÖ Doha Turu görüşmelerine vermiştir. Doha Turu görüşmelerinin Temmuz 2006'da duraksamasından hemen sonra, AB yeni tercihli ticaret anlaşmalarına yöneleceğini ilan etmiştir. Bu bağlamda, AB'nin tercihli ticaret anlaşmalarına ilişkin politika ve stratejilerinin, gümrük birliği ortağı olarak Türkiye'ye etkileri özgün bir olay olmaktadır. Bu makalede AB'nin tercihli ticaret yaklaşımının Türkiye-AB Gümrük Birliği üzerindeki etkilerinin ve Türkiye'nin tercihli ticaret anlaşmalarını üstlenmesi sürecinin analiz edilmesi amaçlanmaktadır. Makalede bahse konu sürecin hukuksal ve tarihsel yönlerine ve güncel gelişmelere odaklanılmaktadır. Makalede günümüzde uluslararası ticaret sisteminde yaşanan hızlı bölgeselleşme olgusu kapsamında, Türkiye ve AB gibi asimetrik taraflar arasında oluşturulan gümrük birliğinin daha ileri bir entegrasyon hedefi olmadan uzun vadede tam olarak çalışmayabileceği tartışılmaktadır. Ayrıca, Gümrük Birliği çerçevesinde Türkiye'nin birçok tercihli ticaret anlaşmasına taraf olmasının, dış ticaret rejimini karmaşıklaştırdığı ve yönetimini zorlaştırdığı vurgulanmaktadır. Eğer taraflar arasında danışma ve işbirliğini tesis edecek etkin mekanizma kurulmadığı takdirde, AB'nin tercihli ticaret düzenlemelerine ilişkin yeni açılımının mevcut sorunları daha da karmaşıklaştırabileceği ve gümrük birliğinin uygun işleyişini olumsuz etkileyebileceği ileri sürülmektedir.

Anahtar Sözcükler: Tercihli ticaret anlaşmaları/serbest ticaret anlaşmaları, Gümrük Birliği, Türkiye, AB.

INTRODUCTION

The external trade policy (Common Commercial Policy) has been one of the EU's major common policies and reflected the external dimension of the EU's customs union and Internal Market since the Rome Treaty. Bilateral, bi-regional and other trade policy instruments about PTAs (preferential trade agreements) hold a key role for accomplishing the EU's wider objectives of external trade and foreign policies, with the EU-25 accounting for roughly one fifth of all global merchandise trade (45 per cent including intra-EU trade) and almost one third of global services trade (WTO, 2007a: 175-176).

The broad geographical coverage of the EU's existing PTAs reflects the global economic and commercial reach of the EU as a hegemonic trade/soft power. In total, the EU has concluded 22 PTAs with 24 countries (excluding ACPs) as of March 2007¹. In many instances, the EU's PTAs extend

significantly beyond the scope of the WTO's liberalization and rule-making agenda, including non-trade dimensions including competition, environmental and social development and political concerns (Panagariya, 2002: 1417).

As the EC TPRM Report published in March 2007 states, the EU has continued to “subordinate its other trade policy instruments and measures to the priority granted to the multilateral route. Only where appropriate and necessary, new bilateral or bi-regional initiatives have been used as complements” (WTO, 2007b: 23). In fact, while the EU historically has been a leading force for PTAs, its main priority for the 2001-2006 period has been negotiating the comprehensive WTO Doha Round agreement. Soon after the Doha Round of multilateral trade negotiations came to a standstill in July 2006 (Geneva meetings), the EU announced an ambitious agenda² to enter into more bilateral and regional free trade agreements (FTAs).

Given that the EU is a global economic/trade superpower; its agenda of bilateral and preferential trade strategy has profound ramifications for the multilateral trade system, its FTA's partners as well as for the candidate countries to EU membership.

In this perspective, the decisive effect of the EU PTA policies and strategies (especially such new initiative) on Turkey as a Customs Union partner since 1996, -an accession country and a small open economy with half of its exports to EU market-, is a unique case. Turkey is the only big country that accepted the CU arrangement without acquiring the privileges and rights of EU membership³.

Theoretically, a customs union involves trading goods between countries without any customs duties and tariffs and the application of a common external tariff on imports from third countries. The common or parallel external trade policies are required to a well-functioning CU. So, the CU arrangement is not common in the global trade system (Panagariya, 1999: 479-480; Crawford *et. al.*, 2005: 3-4). In the EU-Turkey case, Turkey unilaterally has adopted the EU trade policies including preferential regimes as a policy-taker, rather than one of the counterparties of policy-making process.

According to the Association Council Decision No.1/95⁴, dated 6 March 1995 (ACD 1/95), establishing the Customs Union with the EU, Turkey is progressively aligning its preferential regime with that of the EU. In this vein, Turkey participated in several PTAs in the last decade. The EU-Turkey CU with its derivatives (related FTAs) represents a clear example of new regionalism. Although there are a number of studies that analyzed the macro economic effects and political dimensions of EU-Turkey CU, only a few works in the

literature have focused on the PTAs alignment process of Turkey and the asymmetric nature of the CU.

The purpose of this paper is to analyze the effects of EU's PTA approach on EU-Turkey CU and the adoption process of Turkey to EU FTAs in the perspective of ACD 1/95. It focuses on this process in terms of its legal and historical foundations and current challenges. The main argument of paper is that under the current "aggressive regionalism" phenomenon in the global trade system (Bhagwati, 2002: 91-120), a customs union between asymmetric parties like Turkey and EU without a clear prospect for closer integration may not work properly in the long run. In addition, Turkey's memberships in several PTAs, as the result of CU framework, make its trade regime more complex and difficult to manage. Also, if an efficient mechanism is not set up to ensure proper cooperation and consultation between the parties, the new initiative of EU to FTAs will further complicate the present problems and undermine the proper functioning of CU. Obviously, there are some negative political and economic ramifications of this situation on the overall relations between EU and Turkey.

The paper consists of four main parts: Firstly, the EU's new initiative on FTAs at the end of 2006 is analyzed with the historical background. Secondly, the EU-Turkey Customs Union is evaluated in terms of adopting/harmonizing FTAs. In this part, the current challenges and roots of structural problems are mentioned. Thirdly, the Turkey's problems about alignment process of FTAs are analyzed. Finally, the paper concludes that the new initiative of EU on FTAs may make the current problems of CU more complicated.

2. FREE TRADE AGREEMENTS OF EU AND ITS NEW INITIATIVE

2.1. Cycles of EU Trade Policy on FTAs

Historically, the EU was an early, big forerunner of PTAs⁵. The EU, which began with the establishment of the European Economic Community (EEC), is itself a preferential trade area with an agenda of deepening and widening. The notion of granting preferences to trade partners is the norm, rather than the exception. As a result of its numerous PTAs and its generalized system of preferences (GSP), the EU's MFN regime entirely applies to only nine WTO Members (Australia, Canada, Taiwan, Hong Kong, Japan, South Korea, New Zealand, Singapore and the US); these nine WTO Members accounted for about 30% of the EC's total imports in 2005 (WTO, 2007b: 40).

In the 1960s, EC concluded the Yaounde Agreements with former colonies. This was followed in 1975 by the Lome Treaties, giving nonreciprocal

access for the mostly African former colonies to the EC. In the 1970s, the PTAs were signed with Turkey and Greece and bilateral FTAs with the six EFTA countries were signed in 1972. The EU initiated its GSP in 1971.

A second wave of regionalism began in the early 1990s. After the Iron Curtain fell, the EU concluded Association Agreements with 10 countries in the Central and Eastern Europe and Trade and Cooperation Agreements with most of the former Soviet Union countries. Other major initiatives were FTAs with South Africa, Israel and Mexico (Sapir, 2000) (Appendix-1: EU PTAs).

After the mid-1990s with establishing WTO, the EU began to give priority to the multilateralism of the WTO over bilateral agreements for a number of reasons. Most generally, as Aheran (2006: 3) states, "Brussels saw multilateralism and the WTO as a mechanism for managing globalization. By using the single European market as a model for its global trade liberalization agenda, European policy makers hoped to control globalization more tightly". The steps involved in managing globalization in trade included widening the definition of trade issues subject to new issues such as investment, services, intellectual property rights (IPRs), and competition policy and redistributing the benefits and costs of globalization, both outside and inside Europe (Jones, 2006).

In this perspective, although EU did not abandon any of its FTAs, under the leadership of its former Trade Commissioner Pascal Lamy, in 2001 it halted the negotiation of any new FTAs while Doha was underway (called the Lamy doctrine)⁶. However, the suspension of WTO Doha Round negotiations in July 2006 prompted the EU to move rapidly back towards a strong reliance on bilateral agreements.

2.2. Departure of EU FTAs Policy from the Lamy Doctrine

The European Commission (EC) announced an assertive policy paper titled "*the Global Europe: Competing in the World*", adopting a new trade policy agenda on October 4, 2006 (EC, 2006a). In this paper, the EC expressed its intention to launch new FTA negotiations.

While the stated goal is to use these trade agreements as a tool to enhance European competitiveness, as Aheran (2006: 4-6) emphasizes, a less obvious goal may now be to catch up to the US in signing bilateral and regional trade deals, bringing about a convergence in the trade policies of the two economic superpowers. The following statement from the Commission paper is a good example of the "domino" or "bandwagon effect of regionalism", borrowing the expression used by Baldwin (2006): "The rapid development of third countries

concluding FTAs with the EU's main competitors such as the US or Japan carries risks of marginalizing the EU. The higher the level of barriers against EU interest, the higher the risk of trade diversion implied by such FTAs, as demonstrated by the case of NAFTA - which resulted in a substantial loss of market share for the EU in Mexico” (EC, 2006b: 17).

This latest shift of EU towards the FTAs can be seen as a natural policy position. Meunier and Nicolaidis (2006) argue that the EU has a deeply rooted tradition of negotiating bilateral preferential agreements and of using trade policy as an instrument of foreign policy. For example, they have played an important role in the European Neighbourhood Policy (ENP) and pre-accession strategy in the enlargement process by reinforcing economic and regulatory ties with the EU.

2.3. Forthcoming the New Generation of EU FTAs

The new EC's policy text shows that the key economic criteria for new FTA partners should be the market potential (economic size and growth) and the level of protection against EU export interests (including tariffs, non-tariff barriers as well as services, harmonization of technical requirements and standards, protection of intellectual property rights, liberalization of investment and capital flows, cooperation on competition policies, government procurement, environmental and social considerations, trade defense instruments, and dispute settlement). EU will also take account of its potential partners' negotiations with EU competitors, the likely impact of this on EU markets and economies and its economic interest in terms of access to resources (such as energy and primary raw materials). It will also consider political criteria such as human rights record, democratic credentials, regional role, adherence to key multilateral instruments or geostrategic relevance in the context of the EU's Security Strategy (EC, 2006a: 3-7). This is because FTAs are viewed by the Commission as an integral part of the EU's bilateral relations with the country or region concerned.

Based on above criteria, ASEAN, S. Korea and Mercosur (with whom negotiations are ongoing) emerge as priorities. They combine high levels of protection with large market potential and they are active in concluding FTAs with EU competitors. India, Russia and the Gulf Co-operation Council (negotiations also currently active) also have combinations of market potential and levels of protection which make them of direct interest to the EU. The current regional priorities of EU trade policy have been summarized in the Appendix-2.

3. THE EU-TURKEY CUSTOMS UNION AND FTAS OF TURKEY

3.1. Concise History of the EU-Turkey Customs Union

The Customs Union (CU) between EU and Turkey was established on December 31, 1995. It should be noted that the CU is a phase of more than 40 years of continuing association between the EU and Turkey. In fact, a customs union is an intrinsically complex arrangement to carry out. As Ulgen *et. al.* (2004: 29) states, "it creates a policy-dependency framework that is difficult to manage between two sovereign entities of a totally different size". The basic principle of the customs union is the "free circulation" of goods within the customs union territory. Therefore, in order to prevent trade diversion and facilitate proper functioning of the customs union, the application of similar commercial policy is indispensable.

However, the EEC adopted the customs union model internally and initially externally as illustrated by its earliest association agreements with Greece and Turkey in 1960s. Essentially, the CU has constituted the economic aspect of the association between Turkey and the EU. To understand most of the current challenges to the Turkey-EU CU and why they established the CU instead of a FTA in mid 1990s, we should analyze the historical background.

The association relation between Turkey and the EU (EEC) started in 1963, with the Association Agreement (Ankara Agreement), which envisaged three stages (preparatory, transitional and final) to enable Turkey to prepare itself for full membership (Article 2-5 and 28). This agreement still constitutes the legal basis of the association between the EU and Turkey. At the time the parties aimed to establish a customs union, which would eventually lead to Turkey's membership of the EC. A progressive establishment of a wide-scope economic integration (including free movement of goods, services, labor and capital), which should be completed in three stages, was proposed by the Ankara Agreement.

The preparatory stage, which should last five years, started on December 1, 1964 with the entry into force of the Ankara Agreement. The EEC undertook to provide aid to Turkey. In return, Turkey undertook to strengthen its economy in order to gain the capacity to fulfill its obligations in the transitional and final stages as stipulated in the Ankara Agreement. The transitional stage initiated on January 1, 1973 with the entry into force of the Additional Protocol (AP) signed by the EEC and Turkey on November 13, 1970. The AP introduced bilateral obligations to the parties and laid down detailed rules for the establishment of a customs union and conditions for the transitional stage. With the AP, the EEC immediately abolished quantitative restrictions to its imports from Turkey on

the industrial goods, except for petroleum products and particular textile products, whereas Turkey undertook the same in accordance with a timetable containing two calendars set for 12 and 22 years (UFT, 2007: 296-301). In this vein, the Additional Protocol of 1970 set the timetable of the current CU.

After 22 years, with the beginning of the final stage, the Customs Union (CU) between Turkey and the EC entered into force on December 31, 1995 under Decision No. 1/95 of the Turkey-EC Association Council on March 6, 1995, which is the main decision-making body of the association. The ACD 1/95 is the basic current legal text of the Customs Union arrangement⁷.

The ACD 1/95 provides for free trade in, and a common external tariff (CET) on, the industrial goods and industrial component of processed agricultural goods. In other words, the Customs Union initially covers industrial and processed agricultural products. However, traditional agricultural products will be included in the Customs Union only after Turkey's adaptation to the EU Common Agricultural Policy. In 2006, about 95% of Turkey's merchandise imports originated in the EU, and 97% of its exports to the EU were subject to the CU regime (UFT, 2007: 374). In this regard, Turkey, as defined in the Article 24 of GATT, eliminated the customs duties on imports of non-agricultural products originating in the EU and adopted of the EU's common external tariffs (CET) for imports of these products from third countries. This has led to a substantial reduction of its average tariffs on all imports, called as a thanksgiving to third countries (Hartler and Laird, 1999).

The ACD 1/95 also covers the competition and commercial policies, customs provisions, IPRs, and technical barriers to trade. Moreover, the two parties have continued the negotiations to liberalize the trade in services and government procurement since 2000.

At the Helsinki European Council held in December 1999, the EU recognized Turkey as a candidate for accession. On October 3, 2005, the accession negotiations were opened. Such developments have paced up the integration process of Turkey with the EU. Since the Helsinki Summit, the issues about the CU have been addressed in the perspective of accession. As a candidate country, Turkey has to approximate the *acquis communautaire* (including a certain chapter on external trade relations on the negotiations agenda-Chapter 29).

To sum up, Turkey and the EU ended up in a customs-union framework mainly as a result of a legacy issue rather than pure economic motives and new wave of regionalism in 1990s⁸ (Onis, 2001). As Ulgen *et. al.* (2004: 1) states, "this long historical relationship, combined with the unique status of a customs

union between an existing regional trading block and an independent country, have contributed to the establishment of a successful, but also highly complex regional arrangement”.

3.2. Legal Basis for FTAs in the EU-Turkey Customs Union

Developments in the world trade system, as well as the current degree of integration in EU changed the previous definition of the Turkey-EU Customs Union in a broader context to include implementation of identical trade policies applicable to both in bilateral trade and in trade with third countries.

In order to prevent trade diversion and ensure proper functioning of the Customs Union, pursuant to Articles 12 and 16 of the ACD 1/95, Turkey unilaterally assumed to apply provisions and implementing measures to align its commercial and customs policies with those of EU. As stipulated in Article 12, Turkey adopted the Community legislation in the following fields; “common rules for imports, common rules for imports from certain third countries, Community procedure for administering quantitative quotas, protection against dumped and subsidized imports, Community procedures in the field of the common commercial policy, establishing common rules for exports, officially supported export credits, outward processing arrangements for textiles and clothing; textile imports under common rules, textile imports under autonomous arrangements and textile imports from Taiwan”.

In other words, under the CU, Turkey is applying the same common commercial policy measures with the EU (UFT, 2007: 325-348). In this vein, together with the Common External Tariffs, the PTAs constitute the most important part of the trade policy applied towards third countries. Article 16 of ACD 1/95 and its Annex 10 set the rules and modalities of the alignment.

The Article 16 of ACD 1/95 states;

1. With a view to harmonizing its commercial policy with that of the Community, Turkey shall align itself progressively with the preferential customs regime of the Community *within five years* as from the date of entry into force of this Decision. This alignment will concern both the autonomous regimes and preferential agreements with third countries. To this end, Turkey will take the necessary measures and negotiate agreements on *mutually advantageous basis* with the countries concerned. The Association Council shall periodically review the progress made.

2. In each of the cases referred to in paragraph 1 the granting of these tariff preferences shall be *conditional on compliance with provisions relating to the origin of products identical to those governing the granting of such preferences by the Community*. (Article 16) (*Emphasis added*).

In order to align its commercial policy with the EU CCP, within five years starting from 1996, Turkey has to conclude FTAs with third countries as listed in Annex 10 of the ACD 1/95⁹.

In this point, it must be emphasized that the main legal texts of CU do not envisage the issue about the adoption of Turkey to the prospective FTAs. As a result of such legal framework, Turkey always is a policy-taker/second mover for future trade negotiations of EU with the third countries.

3.3. Turkey's FTAs: A Spaghetti Bowl Phenomenon

Taking into account its obligations stemming from the CU and its commercial priorities, Turkey has signed 23 preferential trade agreements for last 15 years. Currently, only 12 of these preferential agreements are in force: EFTA, Israel, Macedonia, Croatia, Bosnia-Herzegovina, Morocco, Syria, Egypt, Palestine, Tunisia, Albania and Georgia as of April 2009¹⁰ (UFT, 2009).

The FTA between Turkey and the EFTA countries, which entered into force in April 1992, was the first step on the way to the adoption of the preferential regimes of the EU even before the entry into force of the CU. FTAs entered into force on 1 May 1997 with Israel, on 1 February 1998 with Romania, on 1 March 1998 with Lithuania, on 1 April 1998 with Hungary, on 1 July 1998 with Estonia, on 1 September 1998 with Czech and Slovak Republics, on 1 January 1999 with Bulgaria, on 1 May 2000 with Poland, on 1 June 2000 with Slovenia, on 1 July 2000 with Latvia, on 1 September 2000 with Macedonia, on 1 July 2003 with Bosnia and Herzegovina and Croatia, on 1 July 2005 with Tunisia and Palestine, on 1 January 2006 with Morocco, on 1 January 2007 with Syria, on 1 March 2007 with Egypt, on 1 May 2008 with Albania and finally on 1 December 2008 with Georgia.

The Agreements with Hungary, Czech and Slovak Republics, Latvia, Lithuania, Estonia and Slovenia were terminated as of 1 May 2004 (also Bulgaria and Romania as of 1 January 2007), since these countries became EU members. As of that date, these countries were included in the CU (Appendix-1: EU&Turkey PTAs).

On the other hand, Turkey continues to negotiate FTAs with Jordan, Lebanon, Serbia, Faeroe Islands, Gulf Cooperation Council, Chile, Mercosur, South Africa, Mexico and Ukraine. Furthermore, Turkey has initiated preparations for negotiations with Algeria, ACP, ASEAN, South Korea and India (UFT, 2009).

Drawing the above picture, a criticism in the Turkey TPRM Report (WTO, 2003: 17) is undoubtedly right in that, "Turkey's FTAs makes its trade regime complex and difficult to manage. Future trade agreements could further complicate the trading environment creating a web of incoherent rules and detract from multilateral efforts, given the limited resources available".

4. TURKEY'S PROBLEMS RELATED TO ADOPTING THE FTAS

4.1. Big Asymmetry on the Trade Negotiations Table

Although Turkey fulfilled its obligation to a certain extent, she was unable to meet the deadline to conclude the FTAs. As the parties to FTAs negotiate agreements on mutually advantageous basis, reluctant behavior of some third countries during the negotiations caused substantial delay for Turkey to meet the deadline. In fact, Turkey would rather complete the negotiations of all EU FTAs timely, either together with the EU or just after the EU (UFT, 2007: 344-348). It would be serving to the common interests of the customs union partners. Because otherwise, as it has been the case, any delay creates absolute disadvantages to the other partner, like Turkey, in terms of competitiveness and proper functioning of the customs union. The opportunity cost of incomplete agreements is also reflected in limited gains from less global market access such as in services and goods.

Typical examples are Mediterranean countries (Algeria, Egypt and Lebanon), South Africa and Mexico (Appendix-1). Generally before launching FTAs negotiations, the ambitions of both sides must be clearly understood to avoid the risk of negotiations later stalling because of a mismatch of expectations between the two parties. The problem was that those countries did not want to negotiate with Turkey for a simple reason. As Ulgen *et. al.* (2004: 8) states, their agreement with the EU allowed them to export tariff-free (although indirectly) to the Turkish market, as their goods would enter into free circulation within the Community and therefore within the Turkey-EU CU. In return, they did not have to reciprocate because under the FTA only goods originating from the EU member states would profit from the preferential arrangements.

As a result, they could export to Turkey on a preferential basis but did not have to extend this preferential arrangement to Turkey. Furthermore, this asymmetric structure also put Turkish exporters at a disadvantageous position with regard to EU exporters in those third countries. Turkey has also been at risk of losing potential tariff revenues since goods originating from these third countries might not have been exported to Turkey directly but re-exported from the EU so as to take advantage of the lack of import duties (Ulgen *et. al.*, 2004: 8).

4.2. Catching the Moving Target

As Article 16 of the ACD 1/95 obviously states, the obligation of Turkey is limited to conclude FTAs with third countries as listed in the Annex 10; however, as I mentioned in part 2, the EU is in the process of negotiating FTAs with many other third countries. In order to align Turkish commercial policy with that of the EU and avoid any trade asymmetry, conclusion of additional FTAs, which are not listed in the Annex 10, will become a moving target for Turkey. With the new EU initiative on FTAs in 2006, this dilemma may become more complicated.

Although the CU by definition requires an identical trade policy, even after the completion of the customs union, changes in commercial policies were carried out without proper cooperation or consultation between the parties. The most visible example is provided by the series of FTAs concluded by the EU after 1996 (Mexico, South Africa and so on). As Ulgen *et. al.* (2004: 8) states, the EU went ahead and concluded these agreements without actually taking into consideration the existence of a customs union arrangement with Turkey. As such, there were no prior consultations with Turkey and therefore Turkish concerns did not come into play during these negotiations. Yet because of the CU arrangement, Turkey was forced to conclude a similar agreement with those countries after the EU did.

4.3. Asymmetrical Trade Preferences in the FTAs

The EU FTAs have a standard model based on the preferences of each party with the EU; bilateral trade has been liberalized on industrial goods at the end of a transition period, and mutual concessions are granted on selected agricultural and processed agricultural goods. Some of the EC's reciprocal preferential arrangements consist of both bilateral and multilateral aspects, and in almost all cases, liberalization is asymmetrical, with the EC's partners liberalizing at a slower pace than the EC, and over different transition periods (to reflect country and regional needs) (WTO, 2007b: 24).

In this vein, Turkey's current FTAs have the same features of EU agreements. If we take the last examples, current FTAs of Turkey with Euro-Med countries, i.e. Morocco, Syria, Egypt and Tunisia, include many asymmetrical concessions at the expense of Turkey (UFT, 2007)¹¹.

Firstly, according to the Morocco-Turkey FTA, customs duties and charges having equivalent effect on imports applicable in Turkey to products originating in Morocco shall be abolished upon the entry into force (on January 1, 2006) of this Agreement. On the other hand, parallel to the Association Agreement between Morocco and the EU, customs duties and charges having equivalent effect on a group of sensitive industrial products originating from Turkey will be dismantled gradually under a period of nine years.

Secondly, according to the Syria FTA, with its entry into force (on January 1, 2007), Turkish side abolished all the customs duties and measures having equivalent effect on industrial products. Syria, on the other hand, will abolish the custom duties according to the established timetable of 12 years.

Thirdly under the Egypt FTA framework, customs duties and charges having equivalent effect on imports applicable in Turkey to products originating in Egypt shall be abolished upon the entry into force of this Agreement (on March 1, 2007). On the other hand, in line with the Association Agreement between the EU and Egypt, customs duties and charges having equivalent effect on imports applicable in Egypt to products originating in Turkey which are classified under 4 lists will be gradually abolished. In this regard duty reductions: For List 1, will start on the date of entry into force of the Agreement and completed on 1 January 2008; for List 2, will start on 1 January 2008 and completed on 1 January 2014; for List 3, will start on 1 January 2010 and completed on 1 January 2017; for List 4, will start on 1 January 2011 and completed on 1 January 2020.

Finally with the Tunisia FTA, Turkey undertook to abolish all customs duties on industrial products originating from Tunisia as soon as the Association Agreement took effect (on July 1, 2005). On the other hand, Tunisia will remove tariffs progressively in 9 years and List III is out of the scope of tariff elimination.

4.4. Turkey's Priorities: Whether the Conflict of Interest with EU?

Turkey's trade authority has considered regionalism as a natural process and as a complementary means to multilateral liberalization. As the Government part of TPRM (WTO, 2003: 28) states, "considering their positive overall impact on international trade, regional integration arrangements will also

be the key elements in Turkey's future agenda". In parallel with its existing FTAs, Turkey has carried out the Trade Development Strategy with Neighbouring and Surrounding Countries, since 2000¹². Turkey matched its trade policy to contribute to economic and political stability in its region. The various economic organizations in the area (i.e. Black Sea Economic Cooperation Organization, Economic Cooperation Organization, and Organization of Islamic Countries) had emerged as new platforms to initiate better regional trade conditions (UFT, 2006).

As a result of the Trade Development Strategy with Neighboring and Surrounding Countries and the new Export Strategy for 2004-2006 period, Turkey is looking for new ways to improve its trade and create a fair trading environment in the Middle East, South East Europe, Black Sea, Caucasus and Central Asia. In this perspective, the EU regional strategy is compatible with Turkey's priorities for such regions, but not generally for Latin America, Africa and East Asia. The current regional priorities of EU trade policy and compatibility with those of Turkey have been summarized in the Appendix-2.

As a drawback of the customs union, this is a major issue related to the inconsistencies between the trade priorities of the two sides. Furthermore, according to the legal texts, as a result of the customs union and accession process, Turkey cannot carry out an independent trade policy from EU and initiate a PTA negotiation based on its own regional priorities. As the EC Regular Report 2002 for Turkey (EC, 2002: 126) states, "in its 1998 Report, the Commission concluded that Turkey had demonstrated its ability to apply the Community commercial policy in full, and that completing the alignment of its preferential policy on the Community policy should not pose any problems. The commission added that "Turkey should refrain from negotiating preferential agreements with countries, which have no agreement linking them to the Union in accordance with the Customs Union decision".

4.5. Empirical Results: Are the Turkish FTAs just A Veil?

While Turkey has been a party to an increasing number of FTAs, the EU has been the most important destination for Turkish exports and source for imports; its share (about 50 per cent) unchanged since the early 1990s. If the trade statistics are analyzed, the share of Turkey's trade with FTA partners did not seem to have increased either (UFT, 2007: 359-360)¹³. This implied that the FTAs might not have had very strong trade-diverting effects. In this vein, an empirical study using the gravity models and panel data for 1990- 2002 period also shows that FTAs did not have statistically significant effect on Turkish export (Bayar *et. al.*, 2003). On the other hand, it can be emphasized that we need more empirical works in this new field of research.

4.6. Is a Feasible Solution Possible?

There are no simple solutions to these structural problems. Turkey cannot automatically become a party to the FTAs that the EU has negotiated or will negotiate due to the *Acquis*. There will have to be separate negotiations. So far, there have been some actions taken by parties to prevent the asymmetries (UFT, 2007: 391; Ulgen *et. al.*, 2004: 30):

- The EU and Turkey have held bi-monthly information meetings that would inform Turkey about the ongoing negotiation of EU since 2002.
- The parties have tried to use more efficiently the existing legal platforms of association relation envisaged in Ankara Agreement (the Association Council meetings) and ACD 1/95 (the Customs Union Joint Committee meetings).
- In addition to these meetings, to facilitate the conclusion of FTAs, European Commission has suggested inserting a clause (the Turkish clause) in FTA texts with third countries in which it asks its trading partner to negotiate a similar agreement with Turkey. Although the first case of such clause was Algeria-EU agreement, this option has not worked until today (UFT, 2007: 348).
- The other option to be considered in the following period is to enable the participation of Turkish trade experts into the EC technical committees in the trade policy decision-making process.

In short, as Ulgen *et. al.* (2004: 30) argues, feasible solutions can be found to these problems, which prevent unnecessary friction between the customs union partners or a perceived trade diversion and export impediment for the Turkish side. But, this is beyond the scope of this paper and a subject of further works on this issue.

CONCLUSION: THE (UN) SUSTAINABILITY OF SECOND MOVER DISADVANTAGE

It can be stated that an asymmetric customs union is an inherently difficult arrangement to sustain in view of the requirement of formulating and applying a common trade policy between the members. This paper has analyzed this argument in the view of EU-Turkey Customs Union case with focusing on alignment process of PTAs.

Under the EU-Turkey CU framework, the EU is concluding agreements and putting into force trade arrangements which might have direct influence on

Turkish economy. Any decision about CCP taken by the EU is posing the same effect on Turkey as the member countries. It is obvious that all PTAs concluded by the EU have direct fiscal and economic effect on the implementation of the Turkish trade policies as a natural consequence of the CU. The EU is granting trade concessions to third countries within the scope of PTAs, and in return of its commercial or political interests. However, the EU is negotiating these agreements without taking into account the Turkey's priorities. In other words, provisions regarding the trade preferences and market access possibilities in the FTAs are drawn up without considering Turkish foreign trade priorities and structure of the Turkish industry.

As a natural consequence of this CU framework, it can be said that the Turkish foreign trade policy, and its integral part of foreign policy are designed mainly by EC. In this case, if EU concludes an agreement with a third country, even which is not laid down in ACD 1/95 (such as Mexico and S. Africa in the past), Turkey is in a position of automatic application of the provisions of such agreement.

On the other hand, the CU with the EU is not an ultimate stage in Turkey-EU relations. It is rather an intermediary stage of the economic union on the way to full membership. In addition, Turkey viewed the customs union as a more integrationist project, which would have paved the way towards full membership. At this point, it should be underlined that the customs union regime will be sustainable in the long term only if there is concrete progress towards Turkey's full membership. The policy-dependency aspect of the customs union would otherwise create a political cost that would militate for a modification of the trade regime into a free trade area in the long run (Ulgen *et. al.*, 2004: 9).

It is possible that, apart from clearly indicated commercial policy instruments in the provisions of the ACD 1/95 and especially in the absence of timetables for certain perspectives of the full membership, Turkey's internal legislative and administrative establishment could not be considered as suitable to accept or to adopt automatically all the policies developed and all the measures taken by the EC in the long run.

Finally, with respect to adopting FTAs by Turkey, as Ulgen *et. al.* (2004: 30) suggests, "the EU must undertake a significant effort to alleviate the concerns of the Turkish side in terms of the policy dependency framework, particularly in relation to the development of a genuinely common commercial policy. Yet both the EU and Turkey must start to address this issue in more imaginative ways so as to bring workable, adaptable and flexible solutions to the core problems of policy dependency and institutional cooperation".

APPENDIX-1: THE EU&TURKEY PTAs AND COMPARASION

Country	EU PTAs	Turkey PTAs	After 2004-2007
	Entry into force	Entry into force	
Hungary	EU member	04.01.1998	Customs Union
Romania	EU member	02.01.1998	Customs Union
Czech R	EU member	09.01.1998	Customs Union
Slovak R	EU member	09.01.1998	Customs Union
Lithuania	EU member	03.01.1998	Customs Union
Estonia	EU member	07.01.1998	Customs Union
Latvia	EU member	07.01.2000	Customs Union
Slovenia	EU member	06.01.2000	Customs Union
Bulgaria	EU member	01.01.1999	Customs Union
Poland	EU member	05.01.2000	Customs Union

Source: UFT (2009), EC (2008), WTO (2008). For detailed and updated list:
http://www.wto.org/english/tratop_e/region_e/a_z_e.xls (April 2009).

Country	EU PTAs	Turkey PTAs
	Entry into force	Entry into force
EFTA/EAA	01.01.1973	04.01.1992
Israel	06.01.1995	05.01.1997
Macedonia	10/23/01	09.01.2000
Bosnia-Her.	01.01.2000	07.01.2003
Croatia	12/20/02	07.01.2003
Palestine	07.01.1997	06.01.2005
Tunisia	03.01.1998	07.01.2005
Morocco	03.01.2000	01.01.2006
Syria	not yet in force	01.01.2007
Egypt	06.01.2004	03.01.2007
Albania	12.01.2006	05.01.2008
Georgia		11.01.2008
Montenegro	01.01.2008	not yet in force

OCT	01.01.1977	
Andorra	07.01.1991	
San Marino	12.01.1992	
Faroe Is.	01.01.1997	
Jordan	06.01.1997	
South Africa	01.01.2000	
ACP	03.01.2000	
Mexico	07.01.2000	
Chile	02.01.2003	
Lebanon	03.01.2003	
Algeria	09.01.2005	

APPENDIX-2: CURRENT REGIONAL PRIORITIES OF EU TRADE POLICY IN THE FRAMEWORK OF TRADE NEGOTIATIONS		
R.	Priorities & Initiatives of EU	C/U*
Balkans	While the last two enlargements of the EU of 2004 and 2007 had been prepared by so-called Europe Agreements, a similar process is now underway with the candidate countries Croatia and Macedonia through Stabilization and Association Agreements (SAA). Other countries in the Western Balkans either have such agreements in place already as well (Albania; pending the ratification of the Agreement, an Interim Agreement on the trade aspects entered into force in December 2006) or are currently negotiating them (Bosnia and Herzegovina, Montenegro and Serbia). Complementary to the deepening of its own trade relations with the Western Balkan countries, the EC has also acted as the motor of further regional integration through the 'Stability Pact for South Eastern Europe' and thereafter the creation of the new Central European Free Trade Area (CEFTA), combining the individual bilateral FTAs in a single one.	COMPATIBLE
Transition Economies	More generally, within the European Neighborhood Policy (ENP), works have been continued on the implementation of the trade-related aspects of the Action Plans. EU has prepared for future FTA negotiations with Ukraine, and the implementation of a Common Economic Space with Russia. For Moldova, this may include the development of additional EU trade preferences, when the country complies with relevant conditions as laid down in the Action Plan. For the countries of the Southern Caucasus (Georgia, Armenia and Azerbaijan), negotiations on the Action Plans will be started in the near future.	COMPATIBLE
Mediterranean Region and the Middle East	Under the Barcelona process, the EU and the Mediterranean (MED) countries aim to establish a Euro-Mediterranean free-trade area by 2010. The Mediterranean countries are already closely linked to the EC through the Euro-Med agreements, the trade parts of which are very comprehensive Association Agreements. All agreements, with exception of the one with Syria, have entered into force with such countries (Tunisia, Morocco, Jordan, Egypt, Lebanon, Algeria, Israel and the Palestinian Authority). Improving trade relations with the Middle East remains important both politically and economically for the EU. The Gulf Cooperation Council (Saudi Arabia, Oman, Qatar, Bahrain, UAE and Kuwait) is the EU's fifth export market. The conclusion of a comprehensive FTA with the GCC is one of the EU's important regional objectives for 2007-8. With Iran, continuation of negotiations for a Trade and Cooperation Agreement which were launched in December 2002 depends on the political developments. Negotiations for a Trade and Cooperation Agreement with Iraq were launched in November 2006. This will be a Community non-preferential agreement.	COMPATIBLE

APPENDIX-2 (CONTINUED): CURRENT REGIONAL PRIORITIES OF EU TRADE POLICY IN THE FRAMEWORK OF TRADE NEGOTIATIONS		
R.	Priorities & Initiatives of EU	C/U*
East and South Asia	<p>Relations between EU and South and East Asian countries have been advanced. The European Council adopted the negotiating mandates for a new generation of FTAs with India, South Korea and ASEAN on April 23, 2007.</p> <p>Since 2000, trade and investment issues have been discussed at Ministerial (EC-ASEAN Economic Ministers) and official (Senior Economic Official Meeting) levels between the EC and ASEAN. The key challenge for the EU is to promote region-to-region economic relations, particularly by addressing non-tariff barriers through regulatory co-operation using the framework of TREATI (the Trans-Regional EU-ASEAN Trade Initiative), and ultimately to lay the foundations for a FTA in the future. In October 2006, the EU-India summit considered the possibility to launch negotiations on a broad-based trade and investment agreement. The Commission started of negotiations on the New Framework Agreement including trade and investment aspects of the EU's relations with China in 2006. EU priority regarding S. Korea is to improve the market access. The EC has also continued to monitor the impact of Korea's policies on FTAs, notably with Japan, ASEAN, EFTA, Canada and the US, as well as their implications for the EU.</p>	UNCOMPATIBLE
Africa	<p>The EC's trade relations with South Africa's are governed by the Trade, Development and Co-operation Agreement (TDCA), which was signed on 11 October 1999 (The trade-related articles of the agreement had been applied provisionally since January 2000). The agreement provides for asymmetric (in favor of South Africa) trade liberalization in goods and services over a period of twelve years. The EC's relations with the 77 African, Caribbean and Pacific countries (ACP) are governed by the Cotonou Agreement of June 2000, concluded for a period of 20 years. As foreseen by the Cotonou Agreement, the ACP countries and the EC are negotiating Economic Partnership Agreements (EPAs) which are WTO-compatible, scheduled to enter into force by 1 January 2008.</p>	UNCOMPA.
Latin America	<p>Negotiations between the EC and MERCOSUR were launched in June 2000 with the aim of achieving a greater level of political and economic co-operation including the substantial liberalization of all trade in goods and services. The intention to launch FTAs negotiations with Central America, was declared by both sides at the EU-Latin American and Caribbean summit in Vienna in May 2006. With the Community of Andean Nations, preparations to officially launch negotiations are ongoing. With Mexico and Chile, comprehensive Free Trade Agreements are already in place. The Chile-EU Agreement provides for progressive and reciprocal liberalization of goods trade, over a ten-year period. It also covers services, government procurement, liberalization of investment and capital flows, the protection of intellectual property rights, cooperation in the field of competition, and dispute settlement. The EC maintains close trade relations with Mexico through the FTA that entered into force in October 2000. The FTA is comprehensive in coverage and has an asymmetric liberalization schedule by 2007-8.</p>	UNCOMPATIBLE
	<p>* Whether Turkey's and EU's Priorities are compatible or not? (A general view). Source: EU's priorities are summarized from the EC (2006a), the working programme of EC-DG Trade (EC, 2006b) and EU TPRM (WTO, 2007b). The compatibility with those of Turkey is derived from the Export Strategy Plan of Turkey, 2004-2006 (UFT, 2006) and Emerson et. al.(2004).</p>	

NOTES

¹ For the detailed and updated information for all PTAs, see: <<http://trade.ec.europa.eu/doclib/html/118238.htm>>; for ongoing negotiations: <<http://trade.ec.europa.eu/doclib/html/118238.htm>> (04.15.2008).

² EC (2006), “Global Europe: Competing In the World”, **Staff Working Document**, October 4, 2006.

³ The EU has also customs union agreements with two very small countries, i.e. Andorra and San Marino.

⁴ For the full text:

<<http://www.mfa.gov.tr/MFA/ForeignPolicy/MainIssues/TurkeyAndEU>> (04.04.2008).

⁵ While there is a big difference between the notion of PTAs and FTAs, in this paper I generally refer to the same meanings. See the discussion for such difference: Bhagwati (2002: 106-120).

⁶ On the other hand, in the same period, other countries, including the US, Japan and China, did not follow the EU’s approach. Although the US had not prompted FTAs for decades because it saw itself as the post-1945 champion of a multilateral system-GATT/WTO; with the Bush Presidency in 2002 she began pursuing bilateral and regional FTAs with many countries around the world with much greater vigor (Aheran, 2006). Under the banner of “competitive liberalization” (by former US Trade Representative R. Zoellick), the US saw an opportunity to catch up with the EU’s long record of pursuing PTAs (see for US FTAs agenda: USTR (2007); for Japan: METI (2007)).

⁷ Following the entry into force of the CU, several ACDs were accepted for further implementation of the CU (The most important ACDs are the 1/97 for technical harmonization and 1/98 for trade of agricultural products).

⁸ In this specific case, Turkey and the EU went ahead with the option of the customs union in contrast to the FTA solution that was being implemented between the EU and the Central and Eastern European countries, essentially because of a legacy issue. The Ankara Agreement (unlike the Europe Agreements) is based on a customs union. The parties’ contractual obligations stemming from the Ankara agreement included the establishment of a customs union. There was very little discussion during the customs union negotiations about whether to implement a FTA as opposed to a customs union, since changing the specific model of trade integration would have had political ramifications as well (Ulgen, 2004: 9).

⁹ The Annex 10 on the autonomous regimes and preferential agreements referred to in Article 16 is listed as follows;

1. The autonomous regimes are:-the Generalized System of Preferences, -the regime for goods originating in the Occupied Territories, -the regime for goods originating in Ceuta or Melilla, -the regime for goods originating in the Republics of Bosnia-Herzegovina, Croatia and Slovenia and the territory of the former Yugoslav Republic of Macedonia. 2. The preferential agreements are: -the Europe Agreements with Bulgaria, Hungary, Poland, Romania, Slovakia and the Czech Republic,-the FTA with the Faroe Islands, -the Association Agreements with Cyprus and Malta,-the FTAs with Estonia, Latvia and Lithuania, -the Agreement with Israel,-the Agreements with Algeria, Morocco and Tunisia,-the Agreements with Egypt, Jordan, Lebanon and Syria,-the

Convention with the ACP States, -the FTA with Switzerland and Liechtenstein, -the Agreement on the European Economic Area.

¹⁰ In addition, in line with the EU CCP, Turkey has fully implemented the Generalised System of Preferences Regime including the autonomous tariff concessions applied by the EU since August 2004. Also Turkey became a part of the Pan European Cumulation System (PECS) as of January 1, 1999. PECS lays down the common origin rules and tariffs between Turkey, the Central and East European Countries and EFTA countries.

¹¹ For the full texts of FTAs: <<http://www.dtm.gov.tr>> (04.10.2007).

¹² This strategy involves Azerbaijan, Bulgaria, Georgia, Greece, Iran, Iraq, Moldova, Romania, Russian Federation, Syria and Ukraine as neighboring countries, and Afghanistan, Albania, Algeria, Bahrain, Belarus, Bosnia-Herzegovina, Croatia, Djibouti, Egypt, Eritrea, Ethiopia, Hungary, Israel, Jordan, Kazakhstan, Kyrgyz Republic, Kuwait, Lebanon, Libya, Macedonia, Morocco, Oman, Pakistan, Palestine, Qatar, Saudi Arabia, Slovenia, Somalia, Sudan, Tajikistan, Tunisia, Turkmenistan, United Arab Emirates, Uzbekistan, and Yemen as surrounding countries. The major criterion is taken as geographical distance, and the strategy to realize potential and improve bilateral trade with these countries has yielded positively (WTO, 2003: 29-30).

¹³ For detailed FTAs statistics:

<<http://www.dtm.gov.tr/dtmadmin/upload/AB/SerbestTicaretDb/STA%20Ing.xls>>.

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