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RESEARCH ARTICLE

A New Milestone for Turkey's Enhancing International Economic Partnerships: The Turkey-Japan New Generation Free Trade Agreement

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Abstract

The Turkish government's "open trade policy" to negotiate and conclude bilateral and multilateral economic partnership agreements (EPAs) or free trade agreements (FTAs) with various states across the world have become particularly salient since 2013. Since then, against the backdrop of a global protectionist wave, Turkey has significantly intensified its efforts to conclude "new generation FTAs." The ongoing FTA negotiations with the Japanese government - active since 2014 - are one of the outcomes of those efforts. In this paper, the general characteristics of new generation FTAs and their significance in the context of the global protectionist currents will be tackled. Subsequently, advances in economic relations between Turkey and Japan will be examined in comparison with Turkey's previous new generation FTAs with Korea and Singapore and assessed in the context of Turkey's active and open trade policy of enhancing international EPAs and its priorities for leaving a considerable maneuver space for implementing its national economic policies.

Keywords

New Generation Free Trade Agreements (FTAs) • Economic Partnership Agreements (EPAs) • Turkey's Open Trade Policy • Protectionism • Globalization • Japan-Turkey FTA

Türkiye'nin Gelişmekte Olan Uluslararası Ekonomik Ortaklıklarında Yeni Bir Kilometre Taşı: Türkiye-Japonya Yeni Nesil Serbest Ticaret Anlaşması

Öz

Türk hükümetinin dünyanın farklı bölgelerindeki çeşitli devletlerle ikili veya çok taraflı ekonomik ortaklık (EOA) veya serbest ticaret anlaşmalarına (STA) girmeye yönelik "açık ticaret politikası" bilhassa 2013'ten sonra belirgin hale gelmiştir. Küresel korumacılık dalgasına rağmen, Türkiye, 2013'ten bu yana "yeni nesil STA'lar" imzalamaya yönelik çabalarını kaydedeğer ölçüde arttırmıştır. Japonya ile 2014'ten beri süren STA müzakereleri de bu çabaların bir ürünüdür. Bu makede, yeni nesil STA'ların genel karakteristiği ve küresel korumacılık dalgaları bağlamında önemi ele alınacaktır. Ardından, Türkiye ve Japonya arasındaki ekonomik ilişkilerde yaşanan ilerlemeler, Türkiye'nin daha önce Kore ve Singapur ile yaptığı yeni nesil STA'lar ile mukayese edilerek ve Türkiye'nin uluslararası EOA'larını arttırmak için yürüttüğü aktif ve açık ticaret politikası bağlamında değerlendirilecektir. Türkiye'nin kendi ulusal ekonomik politikalarını uygulamak için belli bir hareket alanı muhafaza etmeye yönelik öncelikleri de bu değerlendirmede göz önünde tutulacaktır.

Anahtar Kelimeler

Yeni Nesil Serbest Ticaret Anlaşmaları (STA) • Ekonomik İşbirliği Anlaşmaları (EİA) • Türkiye'nin Açık Ticaret Politikası • Korumacılık • Küreselleşme • Japonya-Türkiye STA

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A New Milestone for Turkey's Enhancing International Economic Partnerships: The Turkey-Japan New Generation Free Trade Agreement

Economic and political relations between Turkey and Japan date back to the late 19th century, when the Ottoman Frigate “Ertuğrul” paid a goodwill visit to Japan in 1890, bringing with it honors and gifts from Sultan Abdulhamit II to the Emperor Meiji.¹ Diplomatic relations between Turkey and Japan, two countries which are historically located at opposite ends of the Silk Road, were established in 1924 and Turkey's first diplomatic mission to Japan was opened in 1925.² The first Japanese investments in Turkey were made in the 1920s.³ In the following decades, these relations have continued to grow steadily and culminated in a bilateral investment agreement (BIT) in 1992.⁴ Cooperation between two countries was promoted to the “Strategic Partnership” level in 2013.⁵ This partnership further flourished when negotiations for an economic partnership agreement started in 2014. The mutual demand of both sides to conclude an economic partnership agreement, in which the wide range of trade and investment issues are expected to be included, is crucial because such an agreement, if materialized, would be another important milestone in Turkey's endeavors to buy into “new generation free trade agreements (FTAs).” This paper aims to examine the negotiations process for an FTA⁶ between Turkey and Japan in the context of the recent global trend of new generation FTAs and Turkey's continuing open trade policy against the backdrop of a global protectionist wave. With this analysis, it is also hoped to manifest Turkey's main concerns regarding this prospective FTA which would also reflect similar concerns and positioning of the developing countries in the current global conjuncture, in which there is a nascent but substantial struggle for finding equilibrium between the prevailing global open trade policy and the protection of national economies.

1 Selçuk Esenbel, ‘Fukushima Yasumasa and Utsunomiya Tarō on the Edge of the Silk Road: Pan-Asian Visions and the Network of Military Intelligence from the Ottoman and Qajar Realms into Central Asia’ in Selçuk Esenbel (ed), *Japan on the Silk Road Encounters and Perspectives of Politics and Culture in Eurasia*, (Brill 2018) 97.

2 ‘Relations between Turkey and Japan’ (Turkish MFA) <<http://www.mfa.gov.tr/relations-between-turkey-and-japan.en.mfa>> accessed 10 October 2018.

3 ‘The Turkish-Japanese Textile Factory and its Operation’, Minako Mizuno Yamanlar and Şüküfe Gökçen (eds.), *The Turkish Japanese Factory 1928: History Woven in Bursa*, (Ege Yayıncılık 2015) 352-401.

4 Official Gazette of Republic of Turkey, 21.11.1992 (the Treaty came into force in 1993) <https://www.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanunbmmc076/kanunbmmc076/kanunbmmc07603844.pdf>

5 ‘Joint Declaration On The Establishment Of Strategic Partnership Between Japan And The Republic Of Turkey’ (Japanese MOFA) <<https://www.mofa.go.jp/files/000004160.pdf>> accessed 10 October 2018

6 The Turkey-Japan FTA might be known as “The Turkey-Japan EPA” in some sources. Even though the terms of FTA and EPA imply similar arrangements, there is a tiny difference between those terms. An FTA is an international treaty to eliminate tariffs imposed between countries or regions and to abolish regulation in the field of foreign investments in trade in services. An EPA is an international treaty to deregulate regulations for investments and for immigration control in addition to the contents of an FTA. This actually means that the EPA encompasses the FTA, however, there might be some other additional agreements like free movement of goods/people or transfer of innovation in EPAs. Therefore, both of those terms could be used to title the nascent economic partnership between Turkey and Japan. Nevertheless, as it seems to be the more popular term, we prefer to use the term FTA throughout the Article.

I. The Era of the New Generation Free Trade Agreements (FTAs)

A. Traditional FTAs' evolvement into new generation FTAs

For decades, free trade agreements (FTAs) have been one of the greatest tools of the globalized/globalizing economy and markets. FTAs have paved the way for cooperation between at least two countries to reduce trade barriers and to increase the trade of goods and services with each other.⁷ In other words, FTAs create numerous free-trade corridors and areas across the globe.⁸ Also, Article XXIV of the GATT 1994 allows for the establishment of customs unions and free trade areas by stipulating that *“the purpose of a customs union or a free-trade area should be to facilitate trade and not to raise barriers to trade.”*⁹

On the other hand, the term of the “new generation FTAs” implies the FTAs that do not just include traditional provisions on reducing tariffs and other barriers to the trade of goods and services, but also include some additional provisions on competition, sustainable development, electronic commerce, public procurement, protection of intellectual property and, most importantly, foreign investment. In a nutshell, even though the new generations FTAs do not have a certain identical structure, they mostly merge trade in goods, trade in services and bilateral/multilateral investment agreements into an agreement, while including some new topics/chapters which did not previously exist in traditional FTAs.¹⁰

New generation FTAs often appear in the form of regional trade agreements (RTAs). There are various reasons behind this global trend in negotiating regional agreements.¹¹ These reasons might be articulated in the following manner: *“WTO’s cumbersome consensus-based decision-making process, unsatisfactory existing WTO rules on many issues such as trade in services and the fact that WTO is not seen any more as the most adequate platform for negotiating regulatory issues.”*¹²

7 Kimberly Amadeo, ‘Free Trade Agreements, Their Impact, Types, and Examples’ (The Balance, 7 November 2018) <<https://www.thebalance.com/free-trade-agreement-types-and-examples-3305897>> accessed 15 November 2018.

8 ‘The world’s free trade areas – and all you need to know about them’ (World Bank, 6 May 2016) <<https://www.weforum.org/agenda/2016/05/world-free-trade-areas-everything-you-need-to-know/>> accessed 12 December 2018.

9 “In regulating entry into preferential regional and bilateral trade agreements, Article XXIV of the GATT 1994 allows for the establishment of customs unions and free trade areas, stipulating that ‘[t]he purpose of a customs union or a free-trade area should be to facilitate trade ... and not to raise barriers to ... trade.’ Thus, the formation of regional trade agreements is not meant to undermine WTO concessions and other obligations, or to frustrate WTO market access benefits. Indeed, Article XXIV:6 provides that if a Member entering into a customs union or free trade agreement ‘proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply’. This reflects the principle that each WTO Member entering into a free trade agreement remains bound by its WTO commitments, including bound tariff ceilings.”, Panel Report, US – COOL (Article 21.5 – Canada and Mexico), para. 7.687.

10 “How do “new generation” trade agreements such as the TPP differ from traditional free trade agreements?” (2016) World Bank Group Global Weekly, 2 <<http://blogs.worldbank.org/prospects/global-weekly-how-do-new-generation-trade-agreements-such-tpp-differ-traditional-free-trade>> accessed 10 November 2018.

11 Stefan Grillier, Walter Obwexer, Erich Vranes, ‘Mega-Regional Agreements: New Orientations for EU External Relations?’ in Stefan Grillier, Walter Obwexer, Erich Vranes (eds), *Mega-Regional Trade Agreements: CETA, TTIP, and TiSA* (International Economic Law Series) (OUP 2017) 4.

12 *ibid* 4-5.

Two large RTAs which were signed and came into force in the 1990s can be considered as the pioneers of comprehensive RTAs: The European Union (EU) Single Market Agreement (established in 1993) and the North American Free Trade Agreement between Canada, Mexico, and the United States (NAFTA, established in 1994, and more recently, replaced by the United States-Mexico-Canada Agreement-USMCA). Following these, dozens of RTAs were established, yet most of them did not have the characteristics of new generation FTAs given that they were usually only focused on reducing tariffs. Over time - and more recently as well - such agreements have started to focus on more ambitious and comprehensive agreements, which indicates the transition process towards new generation FTAs. The most striking examples of the new generation FTAs in the form of RTAs are the Regional Comprehensive Economic Partnership (RCEP), the Trans-Atlantic Trade and Investment Partnership (TTIP), the Trans-Pacific Partnership (TTP) and the Free Trade Area of the Asia-Pacific (FTAAP). Thanks to their huge impact on the global economy and significantly broad scope, such RTAs are called “mega-regional” agreements by some international lawyers, and this term might imply a categorical change from the traditional RTAs.¹³

For sure, the new generation FTAs are not limited to the RTAs, even though RTAs or multilateral FTAs constitute almost half of all FTAs notified to the WTO.¹⁴ There have been many recent bilateral initiatives to conclude new generation FTAs. For instance, the EU-South Korea Free Trade Agreement, which has contributed to boosting trade between the EU and South Korea since 2011, is considered to be the first of the new generation of EU FTAs. This FTA, provisionally applied since July 2011 and formally applied since December 2015, has helped EU exports to South Korea increase by around 55%, which is the determinant fact making it one of the most effective and leading bilateral new generation FTAs.¹⁵

The new generation FTAs contain quite comprehensive rules, which even sometimes extend beyond the boundaries settled by WTO rules without formally marking a deviation from the WTO system, as such, they are called “WTO-plus” rules.¹⁶ These comprehensive rules might be composed of provisions devoted to various topics such as trade in services, sustainable development, labor, business environment and environmental issues.¹⁷

13 Peter-Tobias Stoll, ‘Mega-Regionals: Challenges, Opportunities and Research Questions’ in Thilo Rensmann (ed), *Mega-Regional Trade Agreements*, (Springer 2017) 3.

14 David Evans, ‘Bilateral and Multilateral PTAs’ in Simon Lester and Bryan Mercurio (eds), *Bilateral and Regional Trade Agreements* (Cambridge University Press 2009) 52.

15 ‘Briefing: Benefits of EU international trade agreements’, (European Parliament, October 2017) <[http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/603269/EPRS_BRI\(2017\)603269_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/603269/EPRS_BRI(2017)603269_EN.pdf)> accessed 25 October 2018

16 The term of “WTO-plus” marks the provisions in FTAs which stipulates additional commitments beyond the WTO agreements and protocols.

17 Roberto V. Fiorentino, Luis Verdeja, Christelle Toqueboeuf, ‘The Changing Landscape of Regional Trade Agreements: 2006 Update’ (2007) WTO Discussion Paper NO:12, 13 <https://www.wto.org/english/res_e/booksp_e/discussion_papers12a_e.pdf> accessed 15 November 2018.

Furthermore, one of the main features of the new generation FTA is that they leave a larger space for the “implementation of national policies” of the states. Therefore, they usually include provisions stipulating that the existing national standards should not be compromised in order to attract or encourage trade or investments.¹⁸ These FTAs pursue two policy goals which would go hand in hand: “*Investment liberalization through greater market access commitments and strengthening state control by ensuring host governments sufficient space to regulate in the public interest.*”¹⁹

The new generation FTAs mostly have a dual structure: They are composed of detailed and comprehensive provisions concerning both foreign investment and trade. The emergence of such a structure is mostly a development seen over the course of the last decade. Earlier, either the investment agreements and trade agreements were completely separate or the trade agreements contained very brief provisions – mostly as little as a paragraph - concerning foreign investment issues.

The scope of the investment rules of the new generation FTAs is usually broader than the traditional investment treaties. Traditional investment treaties generally impose regulations pertaining to the period after the entry of foreign investments to a country, however, the new generation FTAs tend to regulate the whole process from A to Z, including the period before the entry of foreign investments to a country.

It is a very important point that changes in domestic laws do not affect the provisions imposed by a new generation FTA, unless those topics are exempted from the scope of that FTA. Therefore, to conclude a well-functioning new generation FTA, there is a great need for intensive and complex coordination between the numbers of institutions of the parties. This was not the case for the traditional FTAs and BITs, as their scope was much narrower compared to the new generation FTAs.

Another important feature of the new generations FTAs is that not only do they tackle some new concepts such as trade in service, business environment, e-commerce but they also usually regulate traditional concepts such as intellectual property rights (IPR), technical barriers, rules of origins and so on in a much more elaborate way. Therefore, the new generation FTAs could be perceived much more regulative compared to the traditional FTAs. For instance, it is often observed that some of the new generation FTAs go beyond the current WTO rules settled for certain topics such as government procurement or the Agreement on Trade-Related Investment Measures (TRIMs)²⁰ and impose more detailed rules.

18 Peter-Tobias Stoll, *Mega-Regional Trade Agreements* (n 13) 9.

19 Stephan W. Schill, *Mega-Regional Trade Agreements* 123.

20 This Agreement, negotiated during the Uruguay Round, applies only to measures that affect trade in goods. Recognizing that certain investment measures can have trade-restrictive and distorting effects, it states that no Member shall apply a measure that is prohibited by the provisions of GATT Article III (national treatment) or Article XI (quantitative restrictions).

B. Concerns stemming from the new generation FTAs

The rapid emergence of the “global market” has shaped the international system in the modern age. There is no doubt that free trade in the age of globalization has enabled nations to concentrate their efforts on manufacturing products or providing services where they have a distinct comparative advantage,²¹ and has thus encouraged the capital and goods flow between the continents by overriding isolated and mercantilist economic models.²² The relatively newer approaches such as the so-called “New Trade Theory” pioneered by Krugman also attempt to show the merits of increasingly “internationalized” trade.²³

Hence, reducing or removing the entry barriers for capital and goods have increasingly become the mutual demand of the international community, particularly after the demise of the Soviet Union and the end of the Cold War, following which, the rapid liberalization of the entire global market has been experienced. Therefore, the imposition of tariffs on imports and similar mercantilist regulations have started to be viewed as hurdles which would impede free trade and growth in domestic economies. These considerations paved the way for the free trade agreements all around the world and hundreds of FTAs were signed during the last century. At the end of the 20th century, the comprehensive regional FTAs - such as NAFTA - came into existence. After the millennium, as the empirical evidence on international trade had also been overwhelmingly positive, the globalization of the markets has become more apparent and the growing demand of the international community for more and more integrated markets at global, regional and sub-regional levels has led to the emergence of the new generation FTAs (as mentioned above, mainly in the form of RTAs).²⁴ Indeed, the overall positive welfare effects of RTAs has been significant. For instance, *“TPP would comprise twelve initial contracting parties from the Asia-Pacific region, of which combined GDP is roughly \$ 278 trillion. This amount is*

21 Comparative advantage theory usually attributed to the famous economist David Ricardo and his book “Principles of Political Economy and Taxation” in 1817. Accordingly, comparative advantage is when a country produces a good or service for a lower opportunity cost than other countries then the opportunity cost measures a trade-off. Thus, the advantages of buying their good or service outweigh the disadvantages, and the nation with a comparative advantage makes the trade-off worth it. By expanding on the concept of absolute advantage which is mainly attributed to another famous economist Adam Smith, this theory was a breakthrough against mercantilism which was dominant in modernized parts of Europe from the 16th to the 18th centuries and advocates a national economic policy that is designed to maximize the exports of a nation. For comparative advantage theory, see also: James Mill, *Elements of Political Economy* [1821, 2nd Edition (London: Baldwin, Cradock, and Joy, 1824)] 117-118.

22 Laura Lahaye, ‘Mercantilism’ The Concise Encyclopedia of Economics <<http://www.econlib.org/library/Enc1/Mercantilism.html>> accessed 26 November 2018.

23 According to Krugman model, it is assumed that there is a fixed cost of production to be covered by a firm in order to produce a certain good. Higher production would allow this fixed cost to be spread over more units of production, thus lowering the average costs of production and the price charged on this good. Besides, consumers would be happy to choose from a wide range of different goods presented by different manufacturers. Opening up to international trade leads to a larger market, more manufacturers and more differentiated products in equilibrium. This would mean an increase in welfare for countries participating in international trade.” Paul R. Krugman, ‘Increasing Returns, Monopolistic Competition, and International Trade’ (1979) 9 *Journal of International Economics* 469, 469.

24 ‘How do “new generation” trade agreements such as the TPP differ from traditional free trade agreements?’ (2016) World Bank Group Global Weekly, 2 <<http://blogs.worldbank.org/prospects/global-weekly-how-do-new-generation-trade-agreements-such-tpp-differ-traditional-free-trade>> accessed 10 November 2018.

currently accounting for 37% of world GDP. While intra-TPP exports amount to 13% of world exports, intra-TPP foreign direct investment (FDI) amounts to 9% of world outward investment.”²⁵

However, it is impossible to argue that the new generations FTAs have always been embraced by the entire international community. In particular, the rise of the RTAs has ignited debate on whether they support or impede global efficiency and activity, even though some empirical data proves that they indeed support global efficiency and activity by encouraging a more efficient division of labor, technology spillovers, and related productivity growth globally.²⁶ However, it is true that while RTAs may significantly benefit the state parties to the agreements, they can hinder economic activity for the states outside the blocs created by those RTAs.²⁷ First of all, “*the competitiveness gains developed in these new blocs could potentially divert trade away from more efficient non-member exporters towards less efficient ones – the ‘trade diversion’ effect. In addition, RTAs can bring about the erosion in the value of preferences given to Least Developed Countries (LDCs) under existing duty-free, quota-free, preferential schemes, such as the ‘Everything but Arms Initiative’ of the European Union and ‘African Growth and Opportunities Act’ of the U.S.*”²⁸ The static model by Jacob Viner in the 1950s suggests that RTAs can have negative welfare effects for countries within the trade agreement and countries outside the agreement.²⁹

Moreover, developed countries seek more elaborative regulations in the new generation FTAs, and this demand sometimes results in highly restrictive legal frameworks for the developing or LDCs, which usually prefer to keep more room to maneuver given that their national laws are not as stable and developed as the developed countries. For this reason, highly elaborative and restrictive regulations could cause problems for such countries.

Last but not least, new generation FTAs are inclined to leave more space for state parties to pursue their “national policies” since many of them, regardless of whether they are developed or not, have suffered from the far-reaching rights granted by the

25 Gary Clyde Hufbauer, Cathleen Cimino-Isaacs, ‘How will TPP and TTIP Change the WTO System?’ (2015), 18 *Journal of International Economic Law*, 1, 2.

26 Stefan Grillier, Walter Obwexer, Erich Vranes, *Mega-Regional Trade Agreements: CETA, TTIP, and TiSA (International Economic Law Series)* (n 11) 4-5.

27 There are some propositions arguing that it is not always the case: “Firstly, bilateral streamlining of regulations and standards between the EU and the US should also reduce the trade costs for third country exports to the EU and the US through e.g. economies of scale or having to meet only EU or US requirements to get into both markets (direct spillover estimated at 20% of the bilateral fall in trade costs). Secondly, because of the combined market size of the EU and the US, some third countries can be expected to adopt the common standards agreed between the EU and the US, making these standards de facto common global standards which in turn would create efficiency gains (indirect spillover estimated at 10% of the bilateral fall in trade costs)” Joost Pauwelyn, ‘Not As Preferential As You May Think: How Mega-Regionals Can Benefit Third Countries’, *Mega-Regional Trade Agreements* 63.

28 Stoll, *Mega-Regional Trade Agreements* (n 13) 21.

29 The model in question is presented in the famous book of Jacob Viner: ‘The Customs Union Issue’ (Carnegie Endowment Int. Peace, 1950).

traditional BITs to foreign investors. In many cases, the comprehensive protections given to the investors have impeded the national sovereign rights of the states to the extent that they could not make some crucial decisions for the sake of their own public interests or even when they do and implement those decisions, many times they were taken before the international arbitration courts and had to pay out large sums in compensation.

In fact, the main problem is that the abovementioned concerns and challenges have gradually resulted in a protectionist wave across the globe. In recent times, the impact of this wave is increasingly gaining strength. The prevailing reluctance of many states for more open global markets has become apparent and their unwillingness is leading to a kind of refreshed version of mercantilism,³⁰ to the extent that their unwillingness is putting the development of an international free trade system in jeopardy.

There is no doubt that there are some merits in the arguments of the protectionist currents.³¹ Indeed, there are always winners and losers from trade liberalization³² and when the losses are significant and the different segments of society suffer gravely from such losses, it should not be surprising to see that some governments and groups of citizens are mobilizing around such a reactionary movement against the liberalization of international trade policies.

First, growing numbers of citizens of different countries feel unease about their capacity to democratically voice their opinion, to claim their rights, and “*promote their interests in a world increasingly framed by international trade agreements that are more or less stealthily negotiated among anonymous bureaucracies.*”³³ The only problem is not just the questions arising about democratic representation. Also, the fact that the comprehensive free trade agreements of the last two-three decades are no longer just about lowering or abolishing tariff barriers but regulating a number of policy fields³⁴ which had generally been subject to domestic politics, prompts citizens to think that their popular power and national sovereignty are eroding away.³⁵ In connection with such suspicions, the bulk of citizens have started to perceive an international trade system as “*an instrument of powerful multinational corporations to curb a state’s capacity to democratically decide on regulations in specific policy*

30 Dani Rodrik, “The New Mercantilist Challenge” (Project Syndicate, 9 January 2013) <<https://www.project-syndicate.org/commentary/the-return-of-mercantilism-by-dani-rodrico?barrier=accesspaylog>> accessed in 7 December 2018.

31 Paul R. Krugman, Maurice Obstfeld, *International Economics Theory and Policy* (6th edn, Addison Wesley 2003) 665-674.

32 Griller, Walter Obwexer; Erich Vranes, *Mega-Regional Trade Agreements: CETA, TTIP, and TiSA (International Economic Law Series)*, (n 11) 281-282.

33 *ibid* 286.

34 Non-tariff provisions especially seen in new generation FTAs such as foreign direct investment (FDI) and protection of investments, competition policy, public procurement, standards of production, intellectual property rights, labour, environment, agriculture, information technology, and services.

35 Griller, Walter Obwexer; Erich Vranes, *Mega-Regional Trade Agreements: CETA, TTIP, and TiSA (International Economic Law Series)* (n 11) 286-287.

fields that may run counter to corporations' interests."³⁶

Second, the current international trade regime seems, in many ways, disadvantageous to developing countries, because of the fact that developed countries tend to negotiate only the reduction of tariffs and the elimination of subsidies for the goods in which they have a comparative advantage while they are highly reluctant to open up their own markets to other areas where the developing countries have advantage.³⁷ Moreover, developed countries usually wield their political power to ensure this win-win situation for themselves.

Indeed, the international community and decision-makers are aware of the suspicions and concerns of people summarized above and trying to appease the anxious segments of the society who perceive themselves as the losers of the modern international trade system. The "Trade for All" initiative of the European Commission is one of the most accurate examples of it, which admits that "*it is clear Europeans want trade to deliver real economic results for consumers, workers and small companies. However, they also believe open markets do not require us to compromise on core principles, like human rights and sustainable development around the world or high quality safety and environmental regulation and public services at home. They also want to know more about trade negotiations carried out in their name.*"³⁸ The "Trade for All" initiative seeks to render trade policy more responsible, more effective, more transparent and respecting the core values.³⁹

In conclusion, while international trade agreements have been part and parcel of the modern capitalist world since the nineteenth century, it cannot be argued that those agreements have experienced a linear development, as "*there have always been ups and downs depending on historical contexts and varying national preferences swinging between liberalization and protectionism of the global economy.*"⁴⁰ It is the fact that the globalization phenomenon over the past few decades has brought about increased trade volumes and openness to trade. Particularly after the demise of Soviet Union, most of the countries have given their commitment to liberalized trade policies. Moreover, "*the advent of economic globalization has introduced a paradigm of interdependence*"⁴¹ between the countries and export promotion policies

36 Pia Eberhardt, Blair Redlin, Cecile Toubeau, "Trading Away Democracy: How CETA's Investor Protection Rules Threaten the Public Good in Canada and the EU" (2014) <<https://corporateeurope.org/sites/default/files/trading-away-democracy.pdf>> accessed 7 December 2018.

37 Joseph E. Stiglitz, Andrew Charlton, *Fair Trade for All* (OUP 2005) 12.

38 "Trade for All" (European Commission, 2015) <http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf> accessed 1 December 2018.

39 *ibid* 7.

40 Andreas Dür sheds the light on this fluctuating development of international trade agreements in his book, *Protection for Exporters: Power and Discrimination in Transatlantic Trade Relations 1930–2010* (Cornell University Press 2010).

41 Pedro J. Martinez-Fraga, C. Ryan Reetz, *Public Purpose in International Law: Rethinking Regulatory Sovereignty in the Global Era* (Cambridge 2015) 7.

have made a significant contribution to the economic growth of those countries. Also, it seems that as long as the new generation FTAs, which are the essential tools of trade liberalization on global scale, result in crucial advances in global economic integration, it might be predicted that they will continue to be found favorable by the international community. However, it is also a fact that the disagreements and critics on such trade liberalization have gained ground in the course of time. The strong emphasis governments place on liberalizing trade policies may sometimes cause the erosion of their sovereign rights and the authority for regulating domestic economic order, and it seems to be increasingly worrisome for masses in their populations who perceive themselves as the losers of open trade policies. In the countries where there are highly increased amounts of imports which weaken the production capacity of domestic manufacturers, this disturbance is felt more profoundly.⁴²

Turkey is one of the countries which should very carefully maintain the balance between its open/liberal trade policies and domestic concerns such as the protection of domestic economy and market or implementing the national policies. Signing new generation FTAs with the important trade partners could offer Turkey an opportunity to maintain this balance.

II. Turkish foreign trade policy in conformity with the “New Generation FTAs Trend”

A. Foreign trade policy of Turkey in general

Turkey is a developing country, which has for a long while embraced the open trade policy and adapted its rules and domestic market order to the global market. By having acknowledged that it is crucial for economic development and growth, Turkey attaches a high importance to attracting foreign direct investments (FDI) to the country. In this direction, Turkey is a country which has been a member of the Customs Union and WTO since 1995 – and even before the establishment of WTO, the membership of Turkey of General Agreement on Tariffs and Trade (GATT) dates back to 1951.⁴³ Turkey has signed and ratified bilateral and multilateral economic partnership agreements or FTAs, and bilateral investment treaties (BITs) and trade and co-operation agreements with various states across the world, which is a significant indicator of Turkey’s engagement in the global market. In addition, Turkey is also a member of the Organization of Islamic Cooperation (OIC), the Economic Cooperation Organization, and the Organization of the Black Sea Economic Cooperation.

42 Oliver Morissey, ‘EPAs and prospective trade policy analysis’ in Oliver Morissey (ed), *Assessing Prospective Trade Policy* (Routledge 2010) 1.

43 GATT helped establish a strong and prosperous multilateral trading system that became more and more liberal through rounds of trade negotiations. But by the 1980s the system needed a thorough overhaul. This led to the Uruguay Round, and ultimately to the WTO.

While the amount of the FDI to Turkey was only around 15 billion dollars in 2002, in the course of the last 16 years this amount has plummeted to nearly 200 billion dollars.⁴⁴ Particularly in recent years, the efforts of the Turkish government to open its economy to the outside have become more salient, as the number of FTAs that Turkey has signed and ratified reached 35, including the ratified FTAs with Korea and Singapore, while there are also many ongoing negotiations to conclude more FTAs with a number of countries from various continents. One of those ongoing negotiations is the one with Japan. The formal negotiation process between the two Parties has been going on since 2014, and after 11 rounds of negotiations so far, both sides seem to be coming very close to concluding an agreement.

Turkey has liberal and transparent foreign investment and trade laws. Especially in the recent years, the regulations were amended to ease the procedures for the establishment of companies, construction permissions, title deed issues, telecommunication and infrastructure permissions, access to funds, international transactions and transfers and so on.

Furthermore, the large-scale incentive scheme for foreign investments, incentive schemes for strategic investments to produce goods in Turkey and general incentive scheme for investments render Turkey an attractive investment destination. Importantly, there are significant tax exemptions or cuts for foreign investors. It must also be noted that the general approach of Turkey is to apply national treatment to foreign investors, which manifests Turkey's positive attitude in terms of foreign investments and trade agreements.

Among the 35 FTAs Turkey has signed and ratified to date, 20 FTAs are in effect while most of others have been abrogated because of the participation of the other Parties to the European Union (EU). The FTA between Turkey and Syria has been suspended following the eruption of the Syrian crisis and more recently, the FTA between Turkey and Jordan was repealed. There is a great diversity among the FTA partners of Turkey: While many of them are neighboring countries from Southeast Europe or the Middle East and North Africa (MENA) region, it is also possible to see FTAs with Asian countries such as Singapore, South Korea and Malaysia or Chile from South America and Mauritius from Africa.

Moreover, the Turkish government is currently pursuing a highly active policy for increasing the number of its economic partnerships. While there are three FTAs with Sudan, Lebanon and Kosovo which have been signed and are currently under ratification, the negotiations for FTA with Ghana have been concluded and both parties are due to sign the agreement as soon as possible. The negotiations for FTAs

44 'Why Invest in Turkey?' (Presidency of the Republic of Turkey Investment Office, <<http://www.invest.gov.tr/en-US/infocenter/publications/Documents/WHY-INVEST-IN-TURKEY.pdf>> accessed 15 October 2018

with the following countries have also begun: Colombia, Ecuador, Peru, Mexico, Democratic Republic of Congo, Djibouti, Pakistan, Thailand, Indonesia, Ukraine, Euro-Mediterranean Free Trade Area and Japan. Additionally, there are efforts to upgrade the current FTAs with the European Free Trade Association (EFTA)⁴⁵, Bosnia and Herzegovina, Serbia and Georgia.⁴⁶

The list of the BITs that Turkey is a party to is much longer, inasmuch as Turkey has signed 107 BITs so far.⁴⁷ Beside the FTAs and BITs, Turkey has trade and co-operation agreements with 27 countries including Afghanistan, Argentina, Australia, China, India, Indonesia, Qatar and the Russian Federation.⁴⁸

B. Turkey's approach for new generation FTAs

Turkey's view reflects that the current WTO rules far from satisfy the contemporary needs of the global market and are not sufficient for the further expansion of open markets.⁴⁹ Therefore, the states feel compelled to sign new bilateral or multilateral FTAs among themselves. Not only do the developed countries feel this necessity, but also the developing countries or LDCs are intensifying their efforts to conclude such agreements, because they do not want to stay outside of the global value chains (GVC). Thus, most of the countries pursue participation in a rapidly expanding network of bilateral and multilateral FTAs and contemporarily, the new generation FTAs.

Turkey is not exempt from this trend. As an upper-middle developing country, Turkey has for a long while embraced the open trade policy by becoming a party to FTAs including the highly comprehensive Customs Union and adapted its rules and domestic market order to the global market. Similarly, now Turkey is catching the "trend of the new generation FTAs," and pursuing a foreign trade policy aiming to build up comprehensive economic partnership agreements.

45 Turkey and the European Free Trade Association (EFTA) countries—Iceland, Liechtenstein, Norway, and Switzerland—signed an agreement on June 25 to enlarge their free trade agreement (FTA) which was signed in 1991 and covers trade in industrial products, fish and marine products, and processed agricultural products between Turkey and EFTA countries.

46 Turkey is also in talks with Cameroon, Chad, Seychelles, Gulf Council of Cooperation, Libya and MERCOSUR to start the FTA negotiations, there are also attempts to initiate the economic partnership talks with the United States (US), Canada, India, Vietnam, Algeria, South Africa, Middle America countries; African, Caribbean, and Pacific Group of States (ACP) and the United Kingdom (UK).

47 The BITs in question are signed with Albania, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, China, Croatia, Cuba, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Hungary, India, Indonesia, Iran, Israel, Italy, Japan, Jordan, Kazakhstan, Kyrgyzstan, Kuwait, Latvia, Lebanon, Libya, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Moldova, Mongolia, Morocco, the Netherlands, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, the Russian Federation, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Syria, Tajikistan, Thailand, Tunisia, Turkmenistan, United Arab Emirates, Ukraine, the UK, the US, Uzbekistan and Yemen.

48 All information is received from the Official Website of the Ministry of Trade of Turkey: <<https://eb.ticaret.gov.tr/>>

49 'The general briefing regarding the free trade agreements' (Ministry of Trade of Turkey) <<https://ticaret.gov.tr/data/5b872ada13b8761450e18f4b/%C3%9C%lkemizin%20STA%20politikas%C4%B1na%20ili%C5%9Fkin%20detayl%C4%B1%20bilgi.pdf>> accessed 26 October 2018

It can be argued that the year of 2013, when Turkey-Korea FTA came into force, was the starting point for Turkey's venture into new generation FTAs. Traditionally, the general structure of Turkey's FTAs had usually been composed of the following chapters respectively: Preamble, initial provisions, trade in goods, rules of origin and customs cooperation, sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT), trade remedies (safeguards, anti-dumping), cooperation (economic and technical cooperation chapter), transparency rules, institutional provisions, dispute settlement mechanism, exceptions and final provisions. However, the FTA between Turkey and Korea had a new structure and there were some new chapters in addition to the abovementioned chapters of the traditional FTAs. Another new generation FTA of Turkey was that with Singapore, which came into force in 2017 after a very short period of negotiations which took only one and half years, and it also presents a precise example of the new generation FTAs. The reasons why we call these FTAs the new generation FTAs will be elaborated in the next chapter, however, it must be noted that these agreements have a dual structure composed of trade and investment agreements, which is one of the main identical features of the new generation FTAs.

It must also be noted that in the case of signing a new generation FTA with a state, that FTA substitutes the bilateral investment treaty (BIT), if there is any, with the concerning state since the new generation FTAs include investment agreements or chapters which might overlap the provisions of the BIT. Hence, as long as Turkey signs new FTAs which could be characterized as new generation FTAs, the old BITs will be substituted by those FTAs. Therefore, it can be expected that many of the 81 BITs to which Turkey is a state party will be abolished in the foreseeable future. On the other hand, it should be noted that Turkey is usually inclined to include investment provisions into the new FTAs it negotiates, albeit, not insisting if the other party is not eager to do so.

It must be noted that Turkey's experience with negotiating an investment text under FTAs began with South Korea and Singapore. Following these, Turkey negotiated comprehensive investment chapters under free trade agreements with Mexico and Peru; both of which are suspended for the moment. Currently, Turkey's talks or negotiations to conclude new generation FTAs with many countries or groups of countries are in process. The most prominent ones among them are the efforts for upgrading EFTA and the ongoing negotiations with Japan which is prospected to result in a FTA that would have a similar structure with Turkey's FTAs with Korea and Singapore.

Despite Turkey's great efforts to keep up with "the new generation FTA" trend and its endeavor to remain in the GVC, unfortunately, there is also the fact that Turkey is being affected by global protectionist currents. The prevailing reluctance of many states for more open global markets does not only result in those states' unwillingness to enter into new FTAs, it is also sometimes experienced that they withdraw from the

current FTAs unilaterally or attempt to narrow down the scope of the current FTAs. For instance, Jordan has just withdrawn from the FTA with Turkey and Morocco and Tunisia have taken restrictive measures against Turkey even though they have FTAs in effect with Turkey.

C. The first fruits of Turkey's salient new generation FTA policy: Korea and Singapore FTAs

Turkey's experience with negotiating an investment text under FTAs began with South Korea and Singapore and was followed by the negotiation of comprehensive investment chapters under FTAs with Mexico and Peru. As a good example of the new generations FTAs which Turkey signed and ratified with a developed Asian country, Turkey-South Korea FTA⁵⁰ can be examined in order to see the general structure and characteristics of Turkey's recent FTAs. This FTA which came into effect in 2013 desired to further strengthen the economic relationship between Turkey and Korea, and to create a new climate for the development of trade and investment between the parties. The parties agreed on gradually liberalizing all the trade in goods between each other over a transitional period starting from the date of enforcement of the FTA. In this manner, thanks to a very large-scale elimination of tariff barriers with this FTA, exports of Turkey to Korea have increased by 7% and imports from Korea have increased by 21% compared to the figures of 2012.⁵¹

Turkey-South Korea FTA is composed of three agreements; namely the framework agreement, the trade in goods (TiG) and services agreements (TiS) and the investment agreement. Such a dual structure enabled the FTA to include both the provisions concerning trade and investment affairs between two countries. The Framework Agreement is applicable for the Trade in Goods (TiG) Agreement (unless otherwise stated), which is composed of a preamble, initial provisions and general definitions, intellectual property rights (IPR), competition, transparency, trade and sustainable development, dispute settlement (and Annexes stipulating the composition and procedures of the arbitration panel), institutional provisions and exceptions and final provisions. Particularly, as it is due in a new generation FTA, there are specific chapters and provisions for sustainable development which did not always exist in the old FTAs. For instance, committing to the development of international trade in such a way as to contribute to the objective of sustainable development was counted among the main objectives of the FTA. The main objectives of the FTA are listed in the Framework Agreement as follows: "*a) to gradually liberalize and facilitate substantially all trade in goods, b) to gradually liberalize and facilitate trade in services and investment, c) to promote competition in their economies, particularly as it relates to economic relations, d) to adequately and effectively protect intellectual property rights, e) to contribute by removing the barriers to trade and by*

50 Official Gazette of Republic of Turkey, 30.04.2013, <<http://www.resmigazete.gov.tr/eskiler/2013/04/20130430-7.htm>>

51 The statistics are received from the datas presented by the Ministry of Trade of Turkey, <<https://ticaret.gov.tr/data/5bfbfa8a13b8762fa4955cb0/G%C3%BCney%20Kore%20STA%20Bilgi%20Notu.pdf>> accessed 1 December 2018.

developing an environment conducive to increased investment flows, to the harmonious development and expansion of the world trade, f) to commit, in the recognition that sustainable development is an overarching objective, to the development of international trade in such a way as to contribute to the objective of sustainable development and strive to ensure that this objective is integrated and reflected at every level of the countries' trade relationship, g) to promote foreign direct investment without lowering or reducing environmental, labor, or occupational health and safety standards in the application and enforcement of environmental and labor laws of the countries."⁵²

Regarding IPR, the Parties commit to ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties, by mainly referring to the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights, in Annex 1C to the WTO Agreement), and specifying the concerning rights.⁵³

The Parties "*recognize the importance of free and undistorted competition in their trade relations and undertake to apply their respective competition laws so as to prevent the benefits of the trade liberalization process from being removed or eliminated by anti-competitive practices.*"⁵⁴ While the provisions under the Competition Chapter are mostly written in general language, it is important that the Parties specifically agreed that state enterprises would not adopt or maintain any anti-competitive practices that would affect the purposes of the FTA negatively.⁵⁵

By obliging the Parties to promptly provide information and reply to any questions relating to an actual or proposed measure that might substantially affect the implementation of the agreement and not to disclose any confidential information, the FTA attaches high importance to transparency between the Parties.⁵⁶

It is also notable that, in the case of any dispute in terms of trade relations, the Parties agreed on establishing an arbitration panel which shall consist of three arbitrators, while many options of arbitration institutions - including ICSID, UNCITRAL and ad hoc tribunals - are given to disputing parties in case of any dispute in terms of investment relations. It is important to note that there is a provision preventing investors from using MFN clauses in arbitration cases. With this provision, Turkey aims to prevent its own investors and investors of third countries from submitting a dispute to arbitration based on this Agreement.⁵⁷

52 Framework Agreement Establishing a Free Trade Area Between the Republic of Korea and the Republic of Turkey 2012, Article 1.2 (f).

53 Framework Agreement, Article 2.1.

54 Framework Agreement, Article 3.2.

55 Framework Agreement, Article 3.8.

56 Framework Agreement, Article 4.1.

57 Dispute settlement chapters from all of the Framework Agreement, TiG-TiS agreements and Investment Agreement signed between Turkey and Korea in 2012.

Turkey includes safeguard provisions in all its agreements that allow the adoption of restrictive measures to transfers in case of serious threats. There are only two exceptions to the provisions of the Korea FTA: Balance-of-payments-exceptions and security exceptions. Accordingly, without prejudice to the outcome of negotiations on the agreements to be concluded stipulated in Article 1.4.2 of the Framework Agreement, if a Party decides to impose measures for balance-of-payments purposes, it shall do so only in accordance with its rights and obligations under GATT 1994 and nothing in the Turkey-Korea FTA would be construed to prevent a Party from taking any action which it sees necessary for the protection of its essential security interests.⁵⁸

The Trade in Goods Agreement (TiG) is composed of the following chapters: National treatment and market access of goods (including the provisions for reduction or elimination of custom duties in Annex-2), customs and trade facilitations, trade remedies, technical barriers to trade, and final provisions chapters. In this agreement the provisions regarding customs occupy the largest portion.

In the first chapter, the Parties committed to accord national treatment to each other which is consistent with Turkey's general preference.⁵⁹ In regard to the reduction and elimination of custom duties, the Parties adopted the most favored nation (MFN) status.⁶⁰ The sanitary and phytosanitary measures (SPS) are also regulated under the first chapter; however the Parties simply affirm their existing rights and obligations with respect to each other under the SPS Agreement, in Annex 1A to the WTO Agreement without furthering its scope.⁶¹ Concerning the exceptions related to trade in goods, the Parties make do with affirming their existing rights and obligations under Article XX of GATT (General Agreement on Tariffs and Trade) 1994.⁶²

Regarding the trade remedies, each Party retains its rights and obligations under Article XIX of the GATT 1994 Safeguards Agreement; however, they also stipulated more detailed rules and procedures in the TiG even if they keep the current legal framework in some issues⁶³ such as anti-dumping and countervailing duties.⁶⁴ Concerning TBT, the Parties once again make do with affirming their existing rights and obligations with respect to each other under the WTO TBT Agreement and specify these rights and obligations.⁶⁵ Another interesting point is that TiG does not include provisions concerning rules of origins because the Parties decided to

58 Framework Agreement, Article 8.

59 Agreement On Trade In Goods Between The Republic Of Korea And The Republic Of Turkey (TiG) 2012, Article 2.6.

60 TiG, Article 2.4.

61 TiG, Article 2.10.

62 TiG, Article 2.12.

63 TiG, Article 4.

64 Anti-dumping and countervailing duties are measures taken by states which are intended to protect the manufacturing industry of a country from foreign manufacturers when foreign manufacturers sell goods in that country at less than the value the domestic manufacturing industry can appreciate.

65 TiG, Article 6.

regulate these provisions in a distinct protocol, namely “Protocol on Rules of Origin and Origin Procedures.”

The Trade in Services (TiS) Agreement is composed of only three main chapters; trade in services, electronic commerce and final provisions respectively. According to TiS, the definition of services includes any service in any sector except a service supplied “in the exercise of governmental authority.”⁶⁶ Under the first chapter, the objectives and scope of the agreement and the other relevant issues are clearly stipulated, while a special focus and a distinct chapter is given to electronic commerce. The provisions in regard to temporary free movement of natural persons, telecommunication and financial services exist in the Annexes.

The Agreement on Investment starts with a broad definition of investment to shed light on which assets are covered by this definition.⁶⁷ Turkey generally includes the “based investment” definition, addressing four elements of the Salini test⁶⁸ as characteristics of investment. In this way, Turkey aims to protect long term investments that contribute to economic development of the host country. In addition to the definition of “investment”, Turkey also incorporates a detailed definition of “investor” with the aim of preventing frivolous claims to international arbitration. Furthermore, the investment provisions are both pre- and post-entry provisions for covered investments. In this way, they are different to BITs and bring more responsibilities to the host country.

As with their FTA agreements, the Parties committed to apply national treatment, MFN and “fair and equitable treatment and full protection and security” to the investors of each other.⁶⁹ However, in Annex 2 of the Agreement, the obligations in this regard are specified for each sector covered by the Agreement.

The Parties adopted an easy-going manner in terms of performance requirements and do not enforce any serious commitment in this regard. Especially, when it comes to transfers relating to a covered investment, the Parties permit all transfers freely and without delay into and out of its territory.⁷⁰ Also regarding expropriation and compensation issues, the Parties do not adopt any rule or exception outside the traditional framework concerning these issues.

66 Agreement on Trade in Services under the Framework Agreement Establishing a Free Trade Area between the Republic of Turkey and the Republic of Korea (TiS) 2012, Article 1.2.

67 Agreement on Investment under the Framework Agreement Establishing a Free Trade Area between the Republic of Turkey and the Republic of Korea 2012, Section A.

68 “The Salini tribunal introduced a definition for an investment under Article 25 of the ICSID Convention, which is known as the Salini Test. Accordingly, an investment should contain the following elements: contribution of money/assets (1), risk (2), duration (3) and a contribution to the host State’s economy (4)”, *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, para 52.

69 Investment Agreement, Section B.

70 Investment Agreement, Section B.

Crucially, the denial of benefits rule is imposed in the Agreement to deprive the enterprises which have no substantial business activities in the territory of the other Party under whose law it is constituted or organized from exploiting the benefits brought by the Agreement.⁷¹ Denial of benefits provisions did not use to exist in the old trade and investment agreements; however, because of the serious abuse of the absence of such provisions, denial of benefits constitutes an important chapter of many FTAs contemporarily.

With each Party recognizing that it would be inappropriate to encourage investments by investors of the other Party by relaxing its environmental measures, the Parties demonstrate their liability to environmental and health measures.⁷² Taxation and security clauses are counted as exceptions to the Agreement, and it is stipulated that in the event of any inconsistency between this Agreement and any such agreement about taxation, the other agreement shall prevail to the extent of the inconsistency.⁷³

The Turkey-Singapore FTA is much newer than the Turkey-Korea FTA: It came into force in October 2017. While the main approach and objectives of the Turkey-Singapore FTA are almost the same as the Turkey-Korea FTA, the structure is significantly different. Although the Turkey-Singapore FTA is also a typical example of a new generation FTA whose scope is very broad and encompasses both trade and investment provisions, it is not composed of various agreements, instead it tackles all of the relevant issues in different chapters of an agreement and the annexes. Since most of the content of the provisions of the Turkey-Singapore FTA is similar to the Turkey-Korea FTA, to avoid repetition, those provisions will not be mentioned again. Instead, the different points of both FTAs will be the focal point.

The Turkey-Singapore FTA is composed of the following chapters: preamble, objectives and general definitions, national treatment and market access for goods, trade remedies, sanitary and phytosanitary measures, technical barriers to trade, customs and trade facilitation, cross border trade in services, telecommunications, electronic commerce, financial services, temporary movement of natural persons, investment, government procurement, competition and related matters, intellectual property, transparency, dispute settlement, institutional, general and final provisions. The rules of origin issue is regulated in an additional protocol, just as it was preferred in the Turkey-Korea FTA too.

Just by reviewing the chapters of the Turkey-Singapore FTA, it can be seen that this FTA is different from the Turkey-Korea FTA in terms of how it tackles the issues related to

71 Investment Agreement, Article 1.15.

72 Investment Agreement, Article 1.16.

73 Investment Agreement, Section D.

trade in services. In the Agreement there are five chapters⁷⁴ exclusively touching on trade in services issues, while those topics constitute a distinct agreement in the Turkey-Korea FTA.

The second distinctive feature of this FTA is that investment is also not subject to a separate agreement but constitutes only a chapter within the FTA. However, even though there are some minor differences between the two FTAs such as the existence of the saving clause in the Turkey-Singapore FTA, in general the core investment provisions are almost the same. Nevertheless, while investment provisions were much more elaborate in the Turkey-Korea FTA, the length of the investment chapter in the Turkey-Singapore FTA is less than half the length of the investment provisions in the Turkey-Korea FTA. Another remarkable point is that the sanitary and phytosanitary measures (SPS) provisions are organized in a separate chapter, while they do not constitute a distinct chapter in the Turkey-Korea FTA.

III. One More Step Towards Enhancing Turkey's Economic Partnerships: Turkey-Japan FTA

A. General outlook of Turkey-Japan economic relations

While Turkey has attracted an FDI worth more than 200 billion dollars in the last 16 years (2002-2017), the share of the Japanese capital within that is a very tiny amount, at 2.2 billion dollars.⁷⁵ With this amount, Japan is barely ranked in 15th place among the main exporting countries to Turkey. This situation does not reflect the real trade and investment potential between Turkey and Japan. The main objective of the FTA in negotiation is to materialize this potential and increase the amount of the bilateral capital inflow. According to some experts, over the next 10 years Turkey could receive an inflow of up to \$10 billion in Japanese capital, particularly in such sectors as the automotive industry, consumer electronics, energy and food.⁷⁶

According to the most recent statistics, the number of Japanese companies operating in Turkey is 227, which means a significant development over the course of the last 15 years considering that this figure was only 28 in 2004.⁷⁷ It is known that the Japanese companies have strategically turned their attention towards emerging markets like Turkey.⁷⁸ Turkey is a large market and has a population of over 80 million. The average

74 Namely, Cross Border Trade in Services, Telecommunications, E-commerce, Financial Services and Temporary Movement of Natural Persons.

75 'Turkey-Japan Economic and Trade Relations' (Turkish Ministry of Foreign Affairs) <http://www.mfa.gov.tr/turkey_s-commercial-and-economic-relations-with-japan.en.mfa> accessed 20 October 2018.

76 Altay Atlı, 'Japanese investment on the rise in Turkey' (2018) Asia Times <<http://www.atimes.com/japanese-investment-rise-turkey>> accessed 15 October 2018.

77 '2004 White Paper on International Trade and Foreign Direct Investment' (Japan External Trade Organization, 2004) <https://www.jetro.go.jp/ext_images/en/reports/white_paper/2004.pdf> accessed 20 October 2018.

78 'Japan's EPA/FTA Policy' (the Ministry of Economy Trade and Industry of Japan, 2007) <https://www.rieti.go.jp/en/events/07080601/pdf/3-5_E_Tanaka_PPT.pdf> accessed 16 October 2018.

age is 30 years, while the average age in the Japanese population is 49 years and it is rapidly aging and shrinking. Per capita income of Turkey is nearly 10,000 dollars and is very high compared to other similar countries in the region. Moreover, the economic laws too are much more mature compared to those other countries.

Turkey's dynamic production and distribution base, with strong hinterlands such as Izmir as well as Istanbul's ports, are other attractions for Japan. Turkey is an important production hub in the centre of Eastern Europe, Russia and the Turkic republics, Middle East, the entire African continent and Western Asia. A member of the Turkish-Japanese Business Council at the Foreign Economic Relations Board (DEIK), said, "*Japan and Turkey complement each other like yin and yang: Japan as the modest partner who likes to stay in the background, and Turkey as the equally wise but go-getter counterpart when it comes to sales and execution: They bring planning, time management, listening skills and technology. We provide the ability to convince, crisis management, and hardworking workforce.*"⁷⁹

Japanese investors seem to be mostly interested in consumer electronics, ready meals, beverages and automotive sectors, in addition to sectors whose target group is young consumers or some small-medium enterprises.⁸⁰ The most outstanding point is that many Japanese companies are risk-tolerant and have continued to invest in Turkey despite some worrisome incidents which occurred in Turkey between 2015 and 2017. According to Turkish Central Bank data, in 2016, of the 104 countries tracked, 99 reduced their investment in Turkey while 5 of them, including Japan, increased it.⁸¹ Turkish investors and exporters are also waiting for the accomplishment of the FTA between Turkey and Japan. They believe that by the removal of the tariffs between two countries, they will be able to compete with European exports to Japan.⁸²

B. Brief history of Turkey-Japan FTA negotiations and the Role of the Customs Union

The negotiations for Turkey-Japan FTA started in January 2014, when Turkey clearly expressed its intention to work on a free trade agreement with Japan parallel to the EU-Japan free trade agreement and sign a FTA. The political and economic cooperation between Turkey and Japan goes back a long way in history. In fact, Japan had been Turkey's greatest trade partner from the Asia-Pacific region until the 2000's. However,

79 Ilgın Yorulmaz, 'Japon şirketleri Türkiye'de nasıl daha fazla yatırım yapar?' (2018) BBC Turkish, <<https://www.bbc.com/turkce/haberler-dunya-45759330>> accessed 13 November 2018.

80 For instance, in 2015, a Japanese beverage company DyDo bought 90 percent of a Turkish holdin's beverage brands for 112 million dollars.

81 For example; in 2016, a famous Japanese auto manufacturer, which brings parts from Japan to manufacture in Turkey and sells in the domestic market and export outside as Turkey's second biggest exporter, doubled the capacity of their factory which is located close to Istanbul.

82 İmam Güneş, 'İhracatçının gözü Japonya anlaşmasında' (2018) Dünya <<https://www.dunya.com/ihracat/ihracatcinin-gozu-japonya-anlasmasinda-haberi-422851>> accessed 2 November 2018.

after the millennium, China took over Japan's position due to the rapid development of its economy, production capacity and highly competitive prices.⁸³ Indeed, in order to further compete with China for influence and leadership in Asia and throughout the world, Japan has shifted its traditional course by seeking out free trade agreements, even though “*its trade policy historically centered on multilateral negotiations while it used to be shielded away from bilateral and regional free trade agreements.*”⁸⁴ Hence, it is prospected that Turkey-Japan FTA could divert the recently declining economic relations between the Parties,⁸⁵ and hoped that this FTA would compensate for the waning significance of each Party for one another as a trade partner.⁸⁶

As a milestone in the bilateral investment and trade relations, the Turkey-Japan BIT was signed on February 12, 1992 and came into force on March 12, 1993.⁸⁷ While it is a matter of fact that if the current FTA negotiations between the Parties can be concluded with a new and comprehensive agreement, as it is prospected, this agreement will replace the Turkey-Japan BIT. However, in the absence of such an agreement, the BIT signed in 1992 is still in force and its framework is limited to only bilateral investment relations.

It is hard to claim that the framework that the Turkey-Japan BIT in 1992 sets an accurate framework which addresses the contemporary needs of the Parties. There have been many significant developments and changes both at a bilateral and a global level. Therefore, it is necessary to adapt the legal base of Turkey-Japan trade and investment relations into contemporary circumstances and necessities. Realizing this urgent need, Turkey and Japan seem highly eager to reach an agreement in the first half of 2019, as some Turkish and Japanese high officials stated.⁸⁸ As the Japanese Foreign Minister stated that by finalizing the negotiation process, both sides are willing to “*feel the benefits of a free trade agreement as soon as possible*”⁸⁹.

The Turkey-Japan FTA is expected to cover many sectors in the two countries, as it is stated in the summary of the initial round of the negotiations: “*The trade pact, if concluded, will give a significant boost to bilateral trade and investment*

83 Mehmet Söylemez, ‘Turkey and China: An Account of a Bilateral Relations Evolution’ (2017) l’Observatoire de la Chine NO.22-24, 2 <https://centreasia.hypotheses.org/files/2018/06/22-SoylezmeZ-ChineTurquie_De%CC%81c2017.pdf> accessed in 28 November 2018.

84 John R. Patton, ‘Comprehensive Economic Partnership Agreements’ (2011) 12 Journal of Management Policy and Practice 36, 36.

85 The discussions in this and the following sections are based on data prepared for a presentation titled “Turkish-Japanese Economic Relations and the Free Trade Agreement” and presented at “International Symposium: Naval Forces and Diplomacy Tracing Ertuğrul” Naval Museum in Istanbul during 15-17 September 2015 (from the footnote 5 of n 86).

86 Ali Akkemik, ‘Is Turkey Turning Its Face Away From Japan to China and Korea? Evidence from Trade Relation’s’ (2016) XXI Perceptions 45, 59.

87 Turkey-Japan BIT 1992, <https://www.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanunbmmc076/kanunbmmc076/kanunbmmc07603844.pdf>

88 ‘Japan and Turkey seek to conclude early free trade accord’ (2018) Japan Times <https://www.japantimes.co.jp/news/2018/09/25/business/japan-turkey-seek-early-conclusion-free-trade-accord/#.W-_1vIqhmno> accessed 3 November 2018.

89 ‘Taro Kono’s statements’ (Japan Times, 22 October 2018) <<https://www.japantimes.co.jp/news/2018/10/22/business/economy-business/japan-eu-work>> accessed 4 November 2018.

relations and create new business opportunities for a wide range of sectors, including transportation and logistics.”⁹⁰ The Director General for EU Affairs at the Ministry of the Economy and the former Chief Negotiator on behalf of Turkey in the negotiations with Japan has also said, “*with the liberalization of trade, we believe that this agreement covering investments, services and industry will offer very important mutual opportunities for both the Turkish and Japanese business circles.*”⁹¹

The Customs Union which was established between the European Union (EU) and Turkey in 1995 and obliged the latter to eliminate all customs duties and quantitative restrictions in the trade of industrial goods with the EU as of 1 January 1996 is also very relevant to Turkey-Japan FTA negotiations.⁹² In addition to tariffs and related issues, the Customs Union extends to rules on various regulatory border and behind-the-border policies, such as customs modernization, eliminating TBT, competition policies, IPR and trade policy instruments.

For Turkey, the Customs Union has been a major instrument of integration into the EU and the global markets as it was offering the country powerful tools for reforming its economy. It has been one of the main means which have locked Turkey into a liberal foreign trade regime. Quantitative assessments have found substantial effects on Turkey’s exports to EU countries and GDP per capita. It is estimated that as a result of the Customs Union, Turkey’s exports to the EU have increased by 38% and Turkish GDP per capita by 13%.⁹³

Nevertheless, because of the fact that many essential issues such as government procurement, SPS, investment protection and dispute settlement are not covered by the Customs Union, both the EU and Turkey realized that the customs union is outmoded and their trade and investment relations need to be reformed. However, the outmoded content is not the only problem. At the moment, there is the more urgent problem that the EU has recently begun negotiating and signing trade agreements with countries that have relatively large economies and high volumes of foreign trade, including Japan, and most of which have exports that would compete with the Turkish goods in the EU market. It poses a “lose-lose” situation for Turkey because it would face greater competition in the EU as well as in its own domestic market without enjoying preferential access to these other markets.

90 “Summary of the First Round of the Negotiations for a Japan-Turkey Economic Partnership Agreement (EPA)” (Ministry of Foreign Affairs of Japan, 10 September 2014) <https://www.mofa.go.jp/press/release/press4e_000535.html>

91 ‘Turkey-Japan FTA negotiations nears end’ (Daily Sabah, 2 February 2018) <<https://www.dailysabah.com/economy/2018/02/03/turkey-japan-fta-negotiations-nears-end>> accessed 22 September 2018.

92 ‘Countries and Regions: Turkey’ (European Commission, <<http://ec.europa.eu/trade/policy/countries-and-regions/countries/turkey/>> accessed 20 November 2018.

93 Subidey Togan, ‘Modernising the EU-Turkey Customs Union’ (2018) The Forum EFR Research Portal <<https://theforum.erf.org/2018/03/01/modernising-eu-turkey-customs-union/>> accessed in 3 November 2018.

The most relevant point of the Customs Union to Turkey-Japan FTA is that Turkey shall adopt the EU's common customs tariff on third-country imports and all preferential agreements that the EU had or would conclude with third countries. Accordingly, Turkey should take the necessary measures and negotiate agreements on a mutually advantageous basis with the third countries in order to harmonize its commercial policy further with the EU's. In other words, *"This puts Turkey at a significant disadvantage, as the EU-Turkey Customs Union is structured to allow these countries to access Turkish markets without having to reciprocate by opening their own markets."*⁹⁴ Thus, it is very plausible to conclude a new FTA between Turkey and Japan as soon as possible because Japan-EU FTA has already been concluded and once it comes into effect, Turkey will be affected by that agreement.

In conclusion, Turkish exports will suffer serious setbacks after every new EU free trade agreement with a third country, including the one between Japan and the EU, which is known as "the free trade agreement for the 21st century" since it encompasses 30% of world GDP, and 40% of the value of global trade.⁹⁵ If no measures are taken in the short term, there is a risk of deterioration in European-Turkish economic relations due to the EU-Japan FTA. Therefore, Turkish officials have been seeking solutions and signing new and comprehensive FTAs with countries such as Japan is a part of these solutions.

C. Challenging points on the road to a new generation FTA between Turkey and Japan

Starting from December 2, 2014, so far 11 rounds have been held in the negotiation process. Under the prospected FTA, the main objective is to eliminate import tariffs on most products traded between the Parties. Therefore, the negotiations are revolving around 17 main chapters and topics. In the first two rounds, the two Parties started to exchange their ideas on a broad range of topics such as market access of trade in goods, investment, and intellectual property rights, improvement of the business environment, government procurement, sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBT), electronic commerce, labor and general provisions.⁹⁶ In the third round, the negotiation teams added the topics of final provisions, rules of origin, customs procedures, competition and dispute settlement to their discussions⁹⁷ and in the fourth round, they also started talks on trade facilitation in addition to the

94 Kemal Kirişçi, 'Don't Forget Free Trade with Turkey' (Brookings Institution, 15 April 2013) <<https://www.brookings.edu/opinions/dont-forget-free-trade-with-turkey/>> accessed 15 October 2018.

95 Irina Angelescu, 'EU-Japan partnership agreements herald new era of closer cooperation' (2018) ECFR <[://www.ecfr.eu/article/commentary_eu_japan_partnership_agreements_herald_new_era_of_closer_coopera](http://www.ecfr.eu/article/commentary_eu_japan_partnership_agreements_herald_new_era_of_closer_coopera)> accessed 3 November 2018.

96 "Summaries of the First and Second Rounds of the Negotiations for a Japan-Turkey Economic Partnership Agreement (EPA)", (Ministry of Foreign Affairs of Japan, 2 December 2014 and 17 April 2015).

97 "Summary of the Third Round of the Negotiations for a Japan-Turkey Economic Partnership Agreement (EPA)" (Ministry of Foreign Affairs of Japan, 10 September 2015).

previous discussions.⁹⁸ In the seventh round, a new discussion topic was brought to the table - trade in service,⁹⁹ while the Parties started to discuss the business environment ,among others, in the ninth round.¹⁰⁰ In the most recent rounds – the tenth and eleventh rounds which were held in June and September 2018 respectively, almost all of the aforementioned topics were discussed, while a new discussion topic appeared in the very last meeting: State-owned enterprises.¹⁰¹ In order to see the main features of the Turkey-Japan FTA, it would be better to delve into the progress made in the course of the aforementioned rounds and the resulting disagreement points between the Parties. Nevertheless, it should be noted that because of the very limited open sources, it is impossible to review the Turkey-Japan FTA negotiations in depth. Therefore, we will content ourselves with the brief knowledge obtained from the interviews we did with the Turkish negotiation team,¹⁰² plus some very limited open sources.

First of all, it must be noted that the final structure of the FTA is not settled yet. However, it is known that it will be composed of both trade and investment provisions, either as separate agreements like the structure of the Korea FTA or as different chapters within an agreement like the structure of the Singapore FTA. Therefore, the dual structure usually seen in the new generation FTAs of Turkey will be retained and, as mentioned before, this FTA will substitute the Turkey-Japan BIT in 1992. It is also likely that the trade provisions will not only be about trade in goods, but trade in services provisions will also be encompassed by the FTA, as is the case in Singapore FTA.

There seem to be some new chapters which do not exist in the Turkey-Korea or Turkey-Singapore FTAs: Improvement of the business environment and labor, which are frequently included in the most recent new generation FTAs. Likewise, Turkey and Japan also did not avoid including them, however, there is still not a full agreement on the provisions even though the Parties could come to terms to a large extent. Additionally, it is remarkable that there is no specific chapter concerning environmental issues even though it usually prevails among the recent new generation FTAs.

Agriculture is one of the most crucial chapters for Turkey because Japan is currently importing 70% of its agricultural products and the Turkish agriculture sector aims to gain a significant share of this market. From Turkey's point of view, one of the main

98 “Summary of the Fourth Round of the Negotiations for a Japan-Turkey Economic Partnership Agreement (EPA)” (Ministry of Foreign Affairs of Japan, 28 January 2016).

99 “Summary of the Seventh Round of the Negotiations for a Japan-Turkey Economic Partnership Agreement (EPA)”, (Ministry of Foreign Affairs of Japan, 29 September 2017).

100 “Summary of the Ninth Round of the Negotiations for a Japan-Turkey Economic Partnership Agreement (EPA)”, (Ministry of Foreign Affairs of Japan, 13 April 2018).

101 “Summaries of the Tenth and Eleventh Rounds of the Negotiations for a Japan-Turkey Economic Partnership Agreement (EPA)”, (Ministry of Foreign Affairs of Japan, 14 June 2018 and 7 September 2018 respectively).

102 These interviews are done on November 22, 2018 in Ministry of Trade in Ankara. We, as authors, express our gratitude to the delegation team members of Ministry of Trade for their contribution.

expectations resulting from this FTA is to increase the export of agricultural products to Japan. Therefore, Turkey's demand is to strike "zero tariffs" provisions. There are different tariff models in this regard and the Parties are still negotiating these models.

Market access of goods is another crucial chapter because of the great export imbalance (1:10) between Turkey and Japan. Even though it is impossible to reduce it to a great extent in the near future, Turkey wants to reduce this gap as much as possible, or at least, not to let it drift further. In this respect, the comprehensive FTA signed between Japan and the EU engenders the possibility of the growth of the export imbalance between Turkey and Japan, as EU goods will enter the running against Turkish products. Therefore, for Turkey, easy market access of some industrial and textile products or some specific products such as salt is particularly important in order to reduce this imbalance.

Concerning trade remedies and TBT, the Parties are not overly diverging from the provisions of their previous FTAs, so there is almost a full compromise on these topics. Turkey is usually comfortable in this regard. As far as is known, the Parties are only discussing improving the transparency of bilateral safeguard measures.

Regarding SPS, Turkey is pushing for more detailed provisions in order to avoid any ambiguity which might cause problems in the future. It is also known that Japan is a meticulous country in this regard, as it is an island country which must be extra cautious about animal diseases etc. As yet, there is no compromise on the content of this chapter, however, it is said that the Parties could progress significantly.

IPR is one of the most comprehensive chapters. Despite the existence of some minor disagreements such as the length of the guard timings of copyrights and patents, the Parties could come to terms to any great extent. They are working on clarifying the procedures regarding IPR.

Concerning trade facilitation, the Parties were able to reach an almost full agreement by reaffirming their rights deriving from the WTO Agreement. They are now discovering the possibilities of stipulating some WTO-plus rules in the FTA.

State-owned enterprises (SoE) are a relatively newly-emerging topic in the new generation FTAs. This topic has become a matter of discussion mainly because of the challenges posed by the powerful Chinese SoEs.¹⁰³ However, at Japan's request, the Parties have started to discuss this issue. From Turkey's perspective, it does not seem possible to accord national treatment to Japanese investors by treating them the same as the Turkish SoEs. Therefore, this issue seems to be challenging for both Parties.

¹⁰³Sherman Kartz, 'Why the WTO Should Constrain the Power of China's State-Owned Enterprises' (Harvard Business Review, 11 December 2017) <<https://hbr.org/2017/12/why-the-wto-should-constrain-the-power-of-chinas-state-owned-enterprises>> accessed 1 December 2018.

Electronic commerce is also one of the most recent and popular topics in new generation FTAs. The Turkey-Japan FTA will also include a distinct chapter for e-commerce. However, Japan wants more detailed provisions and less protection in this regard and all of those demands do not seem to be acceptable for Turkey.

The dispute resolution mechanisms will vary according to whether the dispute is about trade or investment. Most probably, the same pattern as in Korea FTA and Singapore FTA will be seen: The establishment of an arbitration panel for trade disputes and resorting to an arbitration institution from the list counted within the FTA or on which the Parties would agree for investment disputes. The right to use the WTO dispute resolution mechanisms and to go before the national courts are also preserved as alternatives.

The rules of origin rules might be stipulated in a separate protocol as in The Korea FTA and the Singapore FTA. Accordingly, for the purpose of a preferential tariff treatment only these products shall be considered as originating in a Party: 1) products wholly obtained in a Party within the meaning of Article 4 of TiG Agreement, 2) products obtained in a Party incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the Party concerned within the meaning of Article 5 of TiG and 3) products obtained in a Party exclusively from materials that qualify as originating pursuant to this Protocol.¹⁰⁴

The trade in services chapter usually occupies the largest portion of the FTAs. It is expected that this will be the case again because the Parties are continuing negotiation on a broad array of sectors such as telecommunications, financial services, raw transportation, and the freedom of movement of natural persons.

Concerning investment, national treatment and MFN, along with fair and equitable treatment to investors will be committed by both Parties as usual. Also the exact meanings of these treatments will be explained in the FTA, as in the Korea FTA and the Singapore FTA too, in order to leave less room for the interpretation of the arbitrators in case of any dispute.

When it comes to performance requirements, Turkey does not prefer to give commitments beyond TRIMS rules, however, as Japan is eager to go beyond the framework of TRIMS, it is a challenging discussion topic between the Parties. The provisions regarding expropriation will not be different to the equivalent provisions in the Korea FTA and the Singapore FTA. The most crucial point of these provisions is that the distinction between direct and indirect expropriations is clearly made in order to avoid any confusion in the future. Also regarding transfers, exceptions and

¹⁰⁴ Protocol on Rules of Origin and Origin Procedures in addition to Agreement On Trade In Goods Between The Republic Of Korea And The Republic Of Turkey (TiG) 2012, Article 2.

denial of benefits, the provisions will be the same as the provisions in the Korea FTA and the Singapore FTA.

It must also be noted that it is said that the Japanese side wants, at least exclusively for its investors, to overrule a procedural rule applied in practice in Turkey: Apart from some exceptions, employers shall employ five Turkish citizens for each foreign employee in their enterprises.

Overall, most of the disagreement points stem from the different approaches and economic and political backgrounds of Turkey and Japan. Japan builds up its demands according to its priorities and perspective as one of the most developed countries in the world. However, despite its rapid economic growth over the last fifteen years, Turkey is still in the development process in many fields and sectors. The Japanese side should take this reality about Turkey into consideration and put forward its demands with realistic expectations.

On the Turkish side, the greatest challenge seems to be adapting to Japan's high standards in some issues such as IPR, SPS and e-commerce. The challenges are not only at a provisional level, but also even when the Parties reach an agreement, Turkish enterprises will face difficulties in keeping up with these standards. In order to overcome these challenges, there are two essential tasks that the Turkish side needs to fulfil: First, Turkey should insist on highly clear and detailed provisions which would guide Turkish investors. Turkish authorities also need to prepare the enterprises in the relevant sectors for them to reorganize their manufacturing standards in line with the Japanese standards.

Last but not least, the new generation FTAs/EPAs present an opportunity for Turkish authorities to keep up with global standards of international trade and investment. Because of the various and challenging demands of Japan in the FTA negotiations, Turkey might sometimes feel its deficiencies in legal, bureaucratic and sectoral fields. However, if structural reforms are required to fill those deficiencies, by using this FTA as a motivation source, Turkey could and should initiate such reforms.

Conclusion

Recently, many countries, be they developed or developing countries, are facing a protectionism vs. globalization dichotomy. While it is generally acknowledged that liberalized trade policies result in a significant amount of economic growth on a global scale, on the other hand, the negative consequences of the rapid globalization of domestic economies are felt more profoundly by both the decision-makers and average citizens. Be it rightly or wrongly, such negative consequences are strengthening the sentiment that their national sovereignty and economic production capacity are slipping from

their grasp. This growing sentiment could account for the contemporary reactionary movements against a liberal and globalized trade and market.

Hence, most countries and their decision-makers are more cautious than in previous decades when it comes to encouraging more openness in their economies. Governments do not want to be blindsided by the premises of the global conjuncture of the previous decades. This cautious manner and the endeavors to maintain the balance between liberal international trade policies and national concerns can be clearly observed in the recent FTAs. The shift in the focal points of FTAs is becoming more obvious while the provisions leaving more room to maneuver for governments to implement their national policies and imposing more restrictions are becoming more visible.¹⁰⁵ Furthermore, with these changes, new generation FTAs are able to present an opportunity for finding new formulations of international trade which would address the growing concerns about the globalization of the markets without isolating the domestic economies from the global market.

Turkey's prospected FTA with Japan might be another perfect example of the new generation FTAs with its provisions reconciling the different approaches of two countries which have different economic backgrounds. It is also expected to have the typical characteristics of new generation FTAs by encompassing a wide range of fields such as trade in goods, trade in services and investment, as it was seen in Turkey's FTAs with Korea and Singapore.

As an upper-middle income country, Turkey has both an open trade policy and growing concerns for the protection of its domestic market. That is to say, while Turkey's view and policies are not in line with global protectionist currents, it has some concerns overlapping their arguments. Turkey expects its developed trade partners to take the economic imbalances and thus the different necessities and priorities between the two sides into consideration. They are expected to take a constructive approach in settling those provisions which would fit the realities. Also, in those new generation FTAs to which it is party, Turkey aims to leave considerable room to maneuver for implementing its national policies since it is crucial for a developing country to overcome the challenges for its economic development and stability.

¹⁰⁵ One of the most recent and accurate examples of such a shift can be seen in USMCA which substitutes NAFTA, see: Jeffrey J. Schott, 'For Mexico, Canada, and the United States, a Step Backwards on Trade and Investment' (Peterson Institute for International Economics, 2 October 2018) <<https://piie.com/blogs/trade-investment-policy-watch/mexico-canada-and-united-states-step-backwards-trade-and>> accessed 13 December 2018.

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