

# DIGITALEUROPE Position for a new EU-Turkey Customs Union

Brussels, June 2016

## INTRODUCTION

After a nearly 20-year old Customs Union, there is a historical momentum for the European Union and Turkey to strengthen their bilateral trade relations and to explore new areas of economic cooperation.

While the European Union launched its Digital Single Market (DSM) last year, Turkey should be a key partner to achieve the ambitions set up by the European Commission in the implementation of the DSM.

Indeed, Turkey's digital economy is also coming of age. There is a growing dynamism in Turkish e-commerce and mobile banking. According to statistics from the Turkish Interbank Card Center, Turkey ranks third in the world in mobile shopping with about half of Turkish consumers shopping online. Turkey's online retail market is expected to double to 4,6 billion EUR by 2020 from 2,3 billion EUR in 2015, according to report « Multichannel Pricing Strategy » from the Boston Consulting Group and Boomerang Commerce. And Turkey also recently became the best emerging country for mobile banking investments, thanks to factors like a high percentage of youth, a high percentage of cell phone users (95% cell phone penetration rate), a healthy financial sector and high number of credit card transactions, reported a 2015 BBVA Research Study<sup>1</sup>.

With around 60.000 start-ups set up every year in the country<sup>2</sup>, the European Investment Fund (EIF) identified many assets in the country such as a strong skills base, an entrepreneurial spirit and a record for creativity and innovation.

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1 Fran Méndez, "Mobile banking in Turkey: the future of Digital Banking", [https://www.bbvaresearch.com/wp-content/uploads/2015/08/Digital\\_Economy\\_Outlook\\_jul-ago152.pdf](https://www.bbvaresearch.com/wp-content/uploads/2015/08/Digital_Economy_Outlook_jul-ago152.pdf)

2 Estimations Coface Panorama Turkey, January 2015.

Turkey is among the frontrunners in the digital space and also advanced the G20 agenda on digital economy with the first-ever B20 Digital Economy Forum<sup>3</sup>.

While we see many opportunities to enhance exchanges and trade in goods and services between the European Union and Turkey, a number of significant challenges remain. European and global ICT industry face a variety of market access barriers that in principle should not exist under the existing Customs Union. These barriers are unfortunately increasing rather than diminishing. Further, notwithstanding the need to ensure the enforcement of existing provisions, it is indeed also high time to modernise the scope of the customs union to make it fit for the new digital age. DIGITALEUROPE is pleased to present some recommendations for a widened customs union which reflects new 21st century trade ambitions.

## NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS & SERVICES

### 1. Encourage Turkey to join the ITA agreement

While Turkey was among the parties who negotiated the expansion of the Information Technology Agreement (ITA), the country decided to not join in the end the final agreement concluded in December 2015. Through the revision of the Customs Union, we ask the Commission to encourage Turkey to become a signatory of the expansion of the ITA or to obtain similar commitments of those taken by the EU in this agreement.

### 2. Regulatory harmonisation

In an Industry 4.0 and Internet of Things era, while the EU is looking at digitising its Industry, a very critical issue for the ICT sector will be to keep up with the process of harmonisation of regulations with its customs partner. A continuous and dynamic implementation process of the EU acquis into Turkish regulatory framework requires a strong attention from both parties.

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<sup>3</sup> World Economic Forum, “Four things Turkey did for business in the G20”, <https://www.weforum.org/agenda/2015/10/four-things-turkey-did-for-business-in-the-g20/>.

### 3. Concerns over new protectionist policies

Over the past few years Turkey has taken a protectionist stance by putting in place a series of tariffs and non-tariff measures harming imports that may not only be a violation of the provisions of the Customs Union created between the EU and Turkey, but also in some cases of WTO provisions. These tariff and non-tariff barriers cause significant additional costs. These are applied across several sectors including manufacturing services.

We refer by way of example to formalities imposed that delay custom clearance and increase the cost of importing, in particular the requirement to renew import licenses bi-annually and other taxes and procedures which create additional burden (TRT, TAREKs and registering IMEI). We also note recent measures aiming to artificially inflate the customs value of imported materials that seemingly favour the use of local products for manufacturing in Turkey, as well as the application of artificial exchange rates to excessively depress product prices.

Furthermore, laws, regulations as well as court decisions are applied in an arbitrary and discriminatory manner, sometimes ignored altogether, resulting in significant market access hurdles. Within this framework, we have also witnessed practices going against WTO disciplines, through the increasing use of trade defence instruments, i.e. safeguard investigations, and are concerned about the potential use of the GATT national security exception and other public policy exceptions in a manner that is not in line with the WTO principles of necessity, proportionality and least-trade restrictiveness, and so as to constitute protectionism in disguise, and in the broader range of WTO disciplines the potential use of the GATT national security exception and other public policy exceptions in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on international trade, and/or have the effect of creating unnecessary obstacles to international trade.

We understand and support Turkey's desire to develop its local industry. However, we also believe that this objective would be better served by the creation of a fair, open and non-discriminatory business environment that is in full compliance with the EU-Turkey Customs Union and with the World Trade Organisation rules. Turkey itself has

committed to this approach under its G20 Presidency in 2015. However, the measures adopted by the Turkish government do not seem to lead in this direction.

The attempts to tackle these measures on technical grounds have been only partially successful, more often resulting in significant cost increases for companies doing business in Turkey.

Trade between the EU and Turkey is highly important for both parties but is at risk if Turkey continues to operate under a protectionist regime. We are of the opinion that the European Institutions need to raise their diplomatic and political efforts towards the Government of Turkey to demand the removal of the measures harming EU and foreign trade.

In this context, the EU should leverage the negotiations on the Customs Union to obtain concrete signs from the Government of Turkey of its commitment to refrain from trade restrictive measures, tariff barriers and non-tariff measures that are in direct conflict with the EU-Turkey Customs Union and the GATT.

### 3.1. Examples of non-tariff barriers experienced by the ICT sector

One concrete example of the policies described in point II, 1.2. is the new Turkish Import regulation<sup>4</sup> which entered into force in January 2015.

The ICT sector is strongly worried about the impact of several provisions in the new regulation that in our view deviate from the way in which the concerned EU legislation is implemented and from best practices adopted by market surveillance authorities.

Indeed, due to the new regulation the import process may become cumbersome and burdensome, thereby significantly slowing import clearance.

In practice this means that importers might be exposed to penalties from two sides:

- 1) from authorities: manufacturers/importers have three “attempts” to submit the « complete documents ». If there are issues that can't be resolved due to the new requirements (on top of existing ones) the likelihood of remaining problems after the third attempt increases considerably. In consequence, the importer may

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4 Regulation published here: <http://www.resmigazete.gov.tr/eskiler/2014/12/20141231M1-9.htm>

be requested to send the concerned goods back after not being able to provide the “complete” documentation after the third attempt.

- 2) from customers who expect their products to be supplied according to the contractually agreed timeline which may be jeopardized due to the delays resulting from the enforcement of the new regulation.

The requirement to present « complete documentation » before being able to complete the import of products is in contradiction with the EU CE marking regime. As a product eligible to be placed on the market in the EU should also be deemed compliant to be placed on the market in Turkey, this additional requirement is at odds with the Customs Union agreement and unnecessarily restricts trade between the EU and Turkey.

Specific restrictions also apply to spare parts as well as used/refurbished parts:

- Import of spare parts: this is in principle only allowed if the importer has a local repair facility. If the spare parts otherwise comply with the EU single market acquis, it should be possible to market in Turkey under the Customs Union.
- Refurbished goods: in principle, the import of refurbished goods is not allowed (unless it is sold through Turkish distributor). It is possible to get a special license through an application to the Ministry of Economics for ‘end of life’ products. It cannot be for the intent of sale. The license procedure requires very cumbersome documentation requirements, including service agreements and reassurances from customers that they accept the repaired parts. These licenses as well have to be renewed biannually, adding administrative and compliance costs. If the refurbished good is otherwise compliant with EU single market acquis it should be possible to market in Turkey under the Customs Union.

Cryptographic goods represent another area of potential concern. While there is currently no market access or compliance issue in the area, Industry has previously experienced dual use control requirements that were not in line with EU control regime. The revised Customs Union should also ensure future alignment in this field between EU and Turkey as both EU and Turkey are signatories of the multilateral Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

### 3.2. Examples of tariff barriers experienced by the ICT sector

As regards tariff barriers, as mentioned in point 1., the key priority for DIGITALEUROPE in the modernisation of the EU-Turkey customs union is for Turkey to take similar commitments as those of the EU in ITA II.

However, and even though the Customs Union has removed import duties on industrial goods between the EU and Turkey, the ICT industry faces a number of other tariff barriers as well that should be addressed.

Below, a few examples of such challenges:

#### ➤ Turkish Resource Utilisation Support Fund

The Turkish Resource Utilisation Support Fund fee of 6% of the import value effectively constitutes the equivalent of an import duty, against the Customs Union's spirit. The 6% fee is levied on imports on credit (acceptance credits, deferred payment letter of credit and on a cash-against-goods basis.)

#### ➤ Special Consumption Tax

Some common use ICT products such as smartphones are still considered "luxury products" and therefore are imposed an additional luxury fee.

#### ➤ Turkish cultural tax

In February 2012, the Turkish Customs published a circular mentioning that all TVs with USB recording & reproducing function must be subject to a 2% tax for the Culture fund. Later, a new circular changed the approach by excluding the TVs with a solo-reproducing function from the 2% tax (regardless of the HS code). This means that users can play videos stored on USB memory stick but they cannot save any video on the USB stick itself as the recording function is blocked by default.

#### 4. Extension of the Customs Union to Services and Digital Trade

The services industries represent 60% of Turkey's GDP, with the computer and information-related services experiencing double-digit annual growth between 2000 and 2011. However, according to the « Evaluation of the EU-Turkey Customs Union » made by the World Bank, Turkey is under-trading services with nearly all EU Member States<sup>5</sup>.

With the emergence of global value chains and the interdependence between trade in goods, services, and cross-border investment flows, the new customs union should also integrate services. Turkey and the European Union are both part of the Trade in Services (TiSA) negotiations where they are both seeking ambitious services liberalisation commitments from their trading partners. However, the customs union should go one step further than the TiSA and provide for a substantive harmonisation of laws and regulations in the area of services.

In this new area for the customs union, digital trade should occupy an important chapter as it enables business models, economic growth and employment in the global digital economy.

Turkey and the European Union could support each other to accomplish the change towards new megatrends such as Industry 4.0, by jointly addressing matters such as standardisation, strengthening broadband infrastructure, regulatory convergence, safeguarding openness of the Cloud and the free flow of data in respect to privacy, or upskilling workforces, that are essential to exploit the full potential of new technologies<sup>6</sup>. Therefore, we encourage both partners to set up a cooperation mechanism to support the creation of harmonised rules in new types of services to extend their respective ecosystem.

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<sup>5</sup> World Bank, "Evaluation of the EU-Turkey Customs Union", pp. 69, 70, 73.

<sup>6</sup> See also DIGITALEUROPE, 10 principles to foster EU digital trade, [http://www.digitaleurope.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core\\_Download&EntryId=998&PortalId=0&TabId=353](http://www.digitaleurope.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=998&PortalId=0&TabId=353)

## 5. Extension of the Customs Union to Public Procurements

Divergences exist about whether or not public procurements are covered in the current customs union with Turkey. The revision of the customs union should clarify the scope and include public procurements. In 2003, Turkey adopted its Public Procurement Law (PPL) to align its legislation with the EU acquis, and developed in 2010 the EKAP system to introduce e-procurement. However, if the system creates more transparency for the private sector, at the present time foreign companies still cannot be registered. Further, while most tenders are open, Article 3 from the PPL contains several exclusions and exemptions from the PPL, which have been recently extended.

Turkish companies' solutions also have an approximate 15% price advantage in public procurement contracts., which leads to unfair competition. If 60% of tendered goods are local content, the procurement bidder will get a 15% price advantage (i.e. can be 15% more expensive than competitors and still be chosen). The Turkish government is now considering to lower the local content threshold to 20 - 30% and make it mandatory for contracting authorities to choose the local content bidder.

Since 1996 Turkey is an observer to the WTO plurilateral Agreement on Government Procurement (GPA). As the EU is a member of the GPA, we will recommend that Turkey also accede to the agreement.

## DISPUTE SETTLEMENT MECHANISM

As mentioned in the evaluation realized by the World Bank, the existing Dispute Settlement Mechanism is currently limited to disagreements on the duration of safeguard measures<sup>7</sup>. Also as the Association Council, the focal point for the settlement disputes in EU-Turkey relations, is a political organ, consensus is the *modus operandi* for any decision.

Therefore, many of the issues raised previously in this paper remain unresolved. We really insist that in order to be relevant, there should be an effective mechanism to ensure the enforcement of the new customs union.

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<sup>7</sup> World Bank, "Evaluation of the EU-Turkey Customs Union", p. 86.



## CONCLUSION

We fully support quick and ambitious negotiations toward a modernised customs union that should release the untapped economic potential of areas like services and government procurements, as stated in the recent EU Trade Policy Strategy. We also ask for the inclusion of an efficient dispute settlement mechanism and appropriate consultation mechanisms to ensure the good implementation of EU regulations under Turkish law.

We encourage a continuous consultation with the private sector during this process.

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## ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 61 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

## DIGITALEUROPE MEMBERSHIP

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Airbus, AMD, Apple, BlackBerry, Bose, Brother, CA Technologies, Canon, Cisco, Dell, Dropbox, Epson, Ericsson, Fujitsu, Google, Hewlett Packard Enterprise, Hitachi, HP Inc., Huawei, IBM, Ingram Micro, Intel, iQor, JVC Kenwood Group, Konica Minolta, Kyocera, Lenovo, Lexmark, LG Electronics, Loewe, Microsoft, Mitsubishi Electric Europe, Motorola Solutions, NEC, Nokia, Nvidia Ltd., Océ, Oki, Oracle, Panasonic Europe, Philips, Pioneer, Qualcomm, Ricoh Europe PLC, Samsung, SAP, SAS, Schneider Electric IT Corporation, Sharp Electronics, Siemens, Sony, Swatch Group, Technicolor, Texas Instruments, Toshiba, TP Vision, VMware, Western Digital, Xerox, Zebra Technologies, ZTE Corporation.

### National Trade Associations

**Austria:** IOÖ

**Belarus:** INFOPARK

**Belgium:** AGORIA

**Bulgaria:** BAIT

**Cyprus:** CITEA

**Denmark:** DI Digital, IT-BRANCHEN

**Estonia:** ITL

**Finland:** FFTI

**France:** AFNUM, Force Numérique, Tech in France

**Germany:** BITKOM, ZVEI

**Greece:** SEPE

**Hungary:** IVSZ

**Ireland:** ICT IRELAND

**Italy:** ANITEC

**Lithuania:** INFOBALT

**Netherlands:** Nederland ICT, FIAR

**Poland:** KIGEIT, PIIT, ZIPSEE

**Portugal:** AGEFE

**Romania:** ANIS, APDETIC

**Slovakia:** ITAS

**Slovenia:** GZS

**Spain:** AMETIC

**Sweden:** Foreningen Teknikföretagen i Sverige, IT&Telekomföretagen

**Switzerland:** SWICO

**Turkey:** Digital Turkey Platform, ECID

**Ukraine:** IT UKRAINE

**United Kingdom:** techUK