AmCham EU
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Our position

Modernising the EU-Turkey Customs Union

Removing barriers to trade and promoting enhanced bilateral business relations

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2016, directly supports more than 4.5 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

American Chamber of Commerce to the European Union
Speaking for American business in Europe

Avenue des Arts/Kunstlaan 53, 1000 Brussels, Belgium • **T** +32 2 513 68 92
ava@amchameu.eu • amchameu.eu • European Transparency Register: 5265780509-97

Executive summary

AmCham EU supports a comprehensive modernisation of the existing Customs Union agreement between the EU and Turkey. Our member companies encourage the EU and Turkey to work together to address some of the technical shortcomings of the Customs Union, as well as look beyond the traditional framework to address impediments to mutual trade and investment. This paper highlights areas for improvement of the existing Customs Union, and proposes concrete recommendations based on the practical experiences of AmCham EU member companies and their customers.

Introduction

The Customs Union is a defining feature of the EU's trade and economic relations with Turkey. Since its entry into force in 1995, the value of trade in goods and services between the EU and Turkey in both directions has increased significantly. Today, the EU ranks as the top trading partner for both imports and exports in Turkey, and Turkey is the EU's 5th most popular market for exports, and 7th for imports. Furthermore, the implementation of the Customs Union has contributed to a gradual alignment of the EU and Turkey in some key policy areas, bringing with it a more investment-friendly environment for businesses across Europe.

The recent decision by EU and Turkish policy-makers to revisit the EU-Turkey Customs Union and evaluate the possible benefits of deepening or broadening the scope of this agreement was welcomed by the American Chamber of Commerce to the EU (AmCham EU). AmCham EU supports a comprehensive review of the existing agreement, and encourages the EU and Turkey to work together to address some of the technical shortcomings of the Customs Union, as well as look beyond the traditional Customs Union framework to address impediments to mutual trade and investment. To build upon our input to the European Commission's June 2016 Public Consultation on the future of EU-Turkey trade and economic relations, this paper highlights areas for improvement of the existing Customs Union, based on the practical experiences of AmCham EU member companies and their customers.

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Customs Procedures and Trade Facilitation

1. **Removing discriminatory trade barriers by modernising the A.TR. Certificate**: The A.TR. Certificate entitles all eligible goods, which are in 'free circulation' in the EU (i.e. the goods are EU-originating, or on importation into the EU all the relevant duties and taxes have been paid) to receive preferential import duty treatment when shipped to Turkey. These certificates are traditionally acquired and completed directly by the exporter who may be an individual, small or larger business owner.

   At present, A.TR. certificates are processed in hard copy format. AmCham EU recommends a shift from manual to electronic filing and processing of A.TR. certificates, to save time, financial resources, and facilitate trade. In addition, the conditions for the application of trade defence measures, (e.g. anti-dumping measures) to goods accompanied by an A.TR. certificate should be more transparent, and economic operators should be formally and consistently informed when such measures are applicable, as this is unfortunately not currently the case. Finally, upon entry into Turkey, goods accompanied by A.TR certificates are in some cases subjected to product safety checks (known as "TAREKS Checks") performed by the Turkish Ministry of Economy. AmCham EU recommends that these checks are applied in a transparent and non-discriminatory manner.

2. **Going Above and Beyond the Trade Facilitation Agreement:** AmCham EU welcomes Turkey's swift ratification of the WTO Trade Facilitation Agreement, which commits members to "adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival." Furthermore, the TFA commits members to "as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents."

   In our experience, the electronic submission of documentation, pre-arrival processing of shipments with a view towards expediting the clearance of goods, and provisions to facilitate the movement of time-sensitive or express shipments are long-established best practices for customs administrations. AmCham EU encourages Turkey to facilitate expedited shipments above and beyond the commitments made within the Trade Facilitation Agreement.

Tariffs

3. **Reducing Tariffs**: AmCham EU supports the elimination of any tariffs which remain applicable to goods traded between the EU and Turkey. The elimination of any remaining tariffs could both spur additional trade in goods between both territories, and contribute to the simplification of customs processes conducted at the EU-Turkey border.

   In addition, over recent years, some additional customs duties on a range of goods exported from the EU including footwear, lights, furniture, and other goods such as cutlery, leather bags, vacuum cleaners and wheelbarrows have been introduced by the Turkish authorities in what seems to be a violation of the EU-Turkey Customs Union. The seemingly arbitrary introduction of new tariff lines have resulted in additional administrative and financial burdens for many businesses. AmCham EU believes that these customs duties should be eliminated without any further delay.

Conversely, when a safeguard measure on footwear imports from non-EU countries expired in August 2014, a new 'additional duty' was introduced by the EU. The new rate for textile and synthetic footwear is $3 per pair or 30% of the freight-on-board (FOB) price, whichever is higher, and for leather footwear of $5 per pair or 50% of FOB, whichever is higher. AmCham EU believes that this additional duty violates the EU-Turkey Customs Union agreement provisions on tariff harmonisation and harmonisation of commercial policy.

Further and in addition to infringing custom duties, industry also faces fees that de facto amount to import duties on industrial goods between the EU and Turkey. This in particular concerns the Turkish Resource Utilisation Support Fund, with a 6% fee of the import value. The 6% fee is levied on imports on credit (acceptance credits, deferred payment letter of credit and on a cash-against-goods basis.) and effectively constitutes the equivalent of an import duty, contrary to the objectives of the Customs Union.

Rules of Origin

4. **Simplification of Rules of Origin**: Since the negotiation and ratification of the EU-Turkey Customs Union over 20 years ago, the landscape of international trade has evolved dramatically, as both the EU and Turkey have engaged in multiple bilateral trade agreements with third countries. As a result, some of the rules of origin requirements for goods traded between the EU and Turkey merit further simplification. AmCham EU supports the extension of cumulation to third countries that have a preferential trade agreement with both the EU and Turkey, to allow products of the EU to be further processed or added to products in Turkey as if they had originated in Turkey, and vice versa.

Non-Tariff Measures

5. **Reducing Undue Administrative Burden and Preserving In-Market Surveillance for Cosmetics:** Turkish authorities recently introduced a new system for the notification of cosmetic products prior to entering the Turkish market, inspired by the pharmaceuticals tracking system (PTS), and established on a code called squarecode which was affixed on pharmaceutical packaging. On 1st March 2016, the previous Turkish electronic notification system (EUP), similar to the EU notification portal (CPNP), was closed, and cosmetics companies must now notify their products via the new barcode system. No transition or implementation period was foreseen, and no legal basis for this change was provided.

   AmCham EU wishes to highlight several shortcomings of the new notification system: First, the previous Turkish electronic system was based on the product name, and a single notification covered all the different product sizes and shades. Under the new system, companies must notify all product sizes and shades, a time consuming process without tangible additional benefits for consumer safety. Second, the previous system allowed for notification of both formula and concentration range (the information required for cases of medical emergency) using an Excel or pdf file. Under the new system, companies must manually enter all ingredients, providing the exact concentration of each ingredient, thus jeopardizing trade secrets and distorting bilateral trade relations. AmCham EU believes that the new system aims at product-tracking as opposed to surveillance. It requires additional information, not previously required by the CPNP or the EUP. The concept of "in-market surveillance" is compromised as authorities run de facto pre-market surveillance.

6. **Improving Transparency and Reducing the Costs of Footwear Testing**: Non-tariff barriers in the form of additional testing requirements for Phthalates for importing footwear to Turkey are increasingly

prevalent[1]. Testing is conducted at the expense of the importer and is resulting in significant costs and delays. The selection process is not transparent, and the ratio of selected products fluctuates over time without prior notification from the authorities. Furthermore, Turkey does not accept test results from accredited EU laboratories and insists that testing is carried out by Turkish laboratories. The average delay to customs clearance times caused by these "TAREKS" inspections is 20 calendar days, during which economic operators have to pay for storage and testing. The average price per test is €188. AmCham EU would encourage the mutual recognition of Phthalates testing in accredited laboratories, and the introduction of greater transparency in the selection process.

7. **Transparency of pharmaceutical pricing & reimbursements (P&R) processes:** P&R decisions should be based on non-discriminatory, transparent and objective criteria. The existing Customs Union Agreement addresses some of these measures through general national treatment provisions and the requirement that Turkey implements the terms of the EU Transparency Directive. With the goal of achieving a more predictable pricing and reimbursement environment, AmCham EU believes that reinforced transparency provisions, including building on general due process principles in decision-making procedures, will be important elements in the revised Customs Union Agreement. This would also be consistent with provisions included in EU trade agreements with other trading partners, such as Korea and more recently, Vietnam.

8. **Mutual Recognition of Good Manufacturing Practices**: AmCham EU encourages the EU and Turkey to establish mutual recognition of EU Good Manufacturing Practices (GMP) certification for pharmaceuticals, to reduce the administrative burden time delays duplicative processes have on access to medicines. Until the mutual recognition is established, AmCham EU suggests, GoT would allow for parallel submission for all products which will decrease the waiting times significantly.

9. **Alignment of CE Market Regime for ICT Products:** At present, all compliance documentation before must be presented before a product can be placed on the market. This is in contrary to the EU's CE marking regime, whereby the producer declares conformity, with ex-post oversight. As a product eligible to be placed on the market in the EU should according to the Customs Union (CU) also be deemed compliant to be placed on the market in Turkey, this additional requirement unnecessarily restricts trade between the EU and Turkey.

10. **Easing Restrictions on Spare Parts and Used/Refurbished Parts**: At present, the import of spare parts is in principle only allowed if the importer has a local repair facility. Secondly, in principle the import of refurbished goods is not permitted (unless sold through a Turkish distributor). It is possible to get a

[1] Stemming from Communication No. 2012/ 30 on Product Safety and Inspection

special license through an application to the Ministry of Economy for 'end of life' products, however the license procedure involves very cumbersome documentation requirements, including service agreements and reassurances from customers that they accept the repaired parts. These licenses have to be renewed biannually, adding administrative and compliance costs and since 2016 the Ministry of Economy has ceased to grant licences. AmCham EU believes that if the spare parts or refurbished goods are otherwise compliant with EU single market acquis, it should be possible to market them in Turkey under the Customs Union.

11. **Improving the Turkish Regulation on** Registration, Evaluation, Authorization and Restriction of Chemicals **(KKDIK)**: Turkey will be introducing a new regulation for the Registration, Evaluation, Authorization and Restriction of Chemicals which will be similar to the EU REACH regulation. Industry expects significant issues with the transition to the new regulation. Turkey's REACH lacks a prioritization approach for the registration of substances based on tonnage bands or classification of substances. The registration period is expected to last only 2 years, whereas a similar process in the EU took significantly longer. Problems with identifying cost sharing principles, lead registrants and data sharing will be a consequence. AmCham EU would recommend a phased implementation approach, based on tonnage bands and, with an initial focus on substances above 1000 metric tonnes.

    The requirement of submitting the entire registration dossier in Turkish will mipose additional costs for international operators and inhibit the quality of dossiers given potential translation issues of very specific and technical information. AmCham EU suggests that Turkish authorities allow for dossier formats including a high-level summary in Turkish and a detailed dossier in English.

Trade in Services

12. **Fostering the Growth of Competitive Delivery Services:** In May 2013, the government of Turkey published a new Postal Service Law which introduces a licensing regime, and requires all service providers to contribute to a compensation fund for the provision of the universal service. It is extremely unusual for a state postal entity to have both a monopoly market position and have competitors in the non-monopoly segments pay into a compensation fund.

    AmCham EU opposes the introduction of a compensation fund, which we believe will harm the competitive landscape for the provision of delivery services. In addition, we believe that the licensing regime should be restricted to providers of services within the scope of the monopoly. The cost of these changes to operators is 2.35% (2% contribution + 0.35% administrative fee) of net revenue for parcels below 30 kilograms (66 pounds) to help fund the universal service, which is approximately $4 million per year. Delivery service providers are also obliged to acquire a postal license (approximately $43,000) along with other operators.

Exchange Rate and Localisation

13. **Readjusting the Exchange Rate for Medicines:** Turkey has failed to correctly readjust the exchange rate following a policy to set an artificially low exchange rate for medicines. The financial damage to the pharmaceutical industry from the artificially low exchange rate is estimated at 15 billion TL. The Turkish authorities' measure of threatening to delist imported products from the reimbursement list, forcing companies to undertake local production, is an additional hindrance to investment in the healthcare sector, and risks seriously harming companies' current and future investments in Turkey. To that end, we would like to see that the renewed Customs Union Agreement includes a provision prohibiting use of exchange rates other than market-based exchange rates.

IPR Protection and Enforcement

14. **Improving IPR Protection for Pharmaceuticals**: Despite recent efforts within the Turkish Parliament to address some of the constraints of Intellectual Property Rights (IPR) enforcement, serious concerns remain around compulsory licensing and second medical use claims. Moreover, also related to pharmaceuticals, and in light of the goal to align with the EU Acquis, deficiencies in Turkey's Regulatory Data Protection (RDP) regime should be addressed, and Supplementary Patent Certificates (SPCs) should be introduced.

Regulatory Data Protection (RDP)

Turkish Law[1] currently provides a protection term of 6 years for regulatory data generated by pharmaceutical companies as part of the application dossier submitted for marketing authorisation. However, there are a number of long-standing shortcomings to this protection.

The 6-year Regulatory Data Protection (RDP) period starts from the date of the first marketing authorisation in the Customs Union, rather than in Turkey. This leads to a de facto period of one to two years for new products. Secondly, there is a lack of RDP for combination products. This contrasts with the EU, which recognises that such products deserve an independent period of regulatory data protection, reflecting their value and the need for dedicated clinical trials and a separate marketing authorisation. In addition, the length of RDP should align with the EU Acquis, i.e. 10+1 years. Finally, cases of generic applications having been accepted and processed during the 6-year protection term, which should normally not be accepted before the actual period of RDP has expired.

Turkey should therefore bring its RDP legislation and practice into alignment with the EU acquis in advance of negotiation of the modernised Customs Union Agreement. This implies providing for RDP with a scope and duration fully aligned with EU standards, starting from marketing authorisation in Turkey and during which no generic applications can be accepted.

Patent Term Restoration / Supplementary Patent Certificates (SPCs)

Most of the life of a pharmaceutical patent is actually lost to complying with regulatory procedures designed to ensure safety and efficacy of medicinal products. Unlike the EU and almost all developed economies, Turkey currently does not have any system in place for restoring effective patent exclusivity which has been lost to comply with the regulatory procedures for pharmaceutical products. The negotiation of the modernised Customs Union Agreement should require Turkey to harmonise its local legislation with the relevant provisions of EU law, specifically Regulation (EC) No 469/2009 on Supplementary Protection Certificates.

[1] Regulation on Licensing of Human Medicinal Products, Article 9, 19 January 2005 (Official Gazette No. 25705)

15. **Facilitating the Acquisition of Search Warrants**: Right owners in the footwear and apparel industry face difficulties when carrying out enforcement actions, due to challenges in obtaining search warrants. The process of applying for search warrants currently requires filing at a regular criminal court (The Court of Peace) rather than an IPR Court, which creates barriers to obtaining search and seizure warrants for infringements. Regular criminal courts are reluctant to issue search warrants even when strong evidence is submitted by right holders and often refuse requests on the basis of "insubstantial evidence" submitted proving the reasonable doubt for infringement.

Public Procurement

16. **Non-discriminatory Public Procurement**: Current national legislation and official policy documents as well as previous actions indicate that government procurement is frequently used as a tool to facilitate discriminatory practices. This can be observed in the public procurement market for imported pharmaceutical products. The Turkish authorities' measure of threatening to delist imported products from the reimbursement list, forcing companies to undertake local production, constitutes an additional hindrance to investment in the healthcare sector, and risks seriously harming companies' current and future investments in Turkey.

    Turkish public procurement rules strongly favour local content; procurement bidders benefit from a 15% price advantage (i.e. they can be 15% more expensive that competitors and still be selected) if at least 60% of their offering comprises local content.

    AmCham EU would encourage an alignment of Turkish government procurement legislation with the EU acquis, providing for a level-playing field for foreign companies with transparent rules and procedures.

Dispute Settlement

17. **Enabling Effective and Transparent Dispute Settlement:** One of the main challenges faced under the current EU-Turkey Customs Union is a lack of enforceability of decisions. AmCham EU would encourage the inclusion of a comprehensive, effective and transparent dispute settlement mechanism in order to create a modern 21st century agreement, which offers the opportunity to solve longstanding disputes, as well as face new hurdles, under a set framework of rules based on WTO provisions. This should provide for independent, efficient and reliable dispute settlement panels that operate under the terms of the Agreement.

Beyond the EU-Turkey Customs Union

18. **Remaining Committed to the Multilateral Trade Agenda and Ambitious in the Plurilateral Arena**: AmCham EU holds high hopes for the positive impact of Customs Union modernization on business operations and the flow of goods and services between the EU and Turkey. In addition to the range of possible improvements to the mechanics of the Customs Union, as well as the potential alleviation of regulatory hurdles outlined in this paper, it is important to acknowledge that the future success of the EU-Turkey Customs Union will also be impacted by changes to the broader international trade context in which it functions. In addition to the swift and effective implementation of the WTO Trade Facilitation Agreement, AmCham EU encourages both the EU and Turkey to remain committed to the progress of discussions at plurilateral level, such as the Trade in Services Agreement, and would recommend a reconsideration of Turkey's decision not to become a signatory of the Information Technology Agreement (ITA).