



TURKISH INDUSTRIALISTS' AND BUSINESSMEN'S ASSOCIATION

# WORLD TRADE ORGANIZATION

5<sup>th</sup> MINISTERIAL CONFERENCE

Cancun, MEXICO,

10-14 September 2003:

TOWARDS GLOBAL DEVELOPMENT

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# FOREWORD

*TÜSİAD (Turkish Industrialists' and Businessmen's Association), which was founded in 1971, according to the rules laid by the Constitution and in the Associations Act, is a non-governmental organisation working for the public interest. Committed to the universal principals of democracy and human rights, together with the freedoms of enterprise, belief and opinion, TÜSİAD tries to foster the development of a social structure which conforms to Atatürk's principals and reforms, and strives to fortify the concept of a democratic civil society and a secular state of law in Turkey, where the government primarily attends to its main functional duties.*

*TÜSİAD aims at establishing the legal and institutional framework of the market economy and ensuring the application of internationally accepted business ethics. TÜSİAD believes in and works for the idea of integration within the international economic system, by increasing the competitiveness of the Turkish industrial and services sectors, thereby assuring itself of a well-defined and permanent place in the economic arena.*

*TÜSİAD supports all the policies aimed at the establishment of a liberal economic system which uses human and natural resources more efficiently by means of latest technological innovations and which tries to create the proper conditions of for a permanent increase in productivity and quality, thus enhancing competitiveness.*

*This report is the outcome of TÜSİAD's ongoing work since the Second Ministerial Conference of World Trade Organization held in Geneva and presents its views for the Fifth Ministerial*

*Conference. The report entitled, "World Trade Organization 5th Ministerial Conference Cancun, Mexico, 10-14 September 2003: Towards Global Development", is prepared by the WTO Sub-Working Group members and aims to offer Turkish business community perspective to the Fifth Ministerial Conference which will be held in Mexico, Cancun.*

***September 2003***

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PREFACE



## **PREFACE**

World Trade Organization (WTO) was established on January 1, 1995, on the conclusion of the Uruguay Round of Trade Talks (1986-1994). However, the organization dates further back to the GATT (General Agreement on Tariffs and Trade), established in the Havana Round of 1948, with the priority goal of "reduction of tariffs." With the establishment of the WTO, this goal was broadened into the "development and strengthening of international norms and disciplines in the field of trade." As of March 26, 1995, Turkey has taken its place amongst the founding members of the organization.

WTO works towards globalization's goal of providing predictable access to technological change and new markets through free market economy in a liberal, safe and fairly competitive environment. This promising system also includes the developing and less developed countries as well as the developed. Especially considering that the less developed countries make a disadvantaged start under the competitive environment inherent in the free market and that the gap is increasingly widening, the importance of the efficient working of the system sought to be established under the WTO framework should be better appreciated.

Today, poor standards of living, worldwide increasing unemployment, mortal diseases, environmental mass destruction and shortage in natural resources as well as the increasing political chaos are realities still facing us. Measures -guarantees developed by each country to protect its citizens, and laws adopted by each nation to support its economy, citizens' health and security, and the sustainable use of its land and resources- taken by states against these, however, must be carefully crafted so as not to hinder the process of international trade facilitation. Rapid technological developments also bring about the need to quickly adapt to changes, which means further capital costs on the financial side, having a negative impact on both the developing and the less developed countries.

In addition to these facts, another factor not to be underestimated is the dynamic structure of the WTO that allows it to renew itself in the face of present or possible threats and problems. The Doha Ministerial Conference in last November, during which a working program initiating a new multilateral negotiation process (also called the Doha Development Agenda) was adopted,

became a turning point for the future of the WTO and the multilateral trade system, especially after the failure experienced in Seattle in 1999. As its title implies, the Doha Declaration brings to fore the "development" dimension under almost every topic. In contrast with the Uruguay Round, developing countries have effectively pursued their own priorities and approaches and actively participated in the process at this round of negotiations. Today, vital issues such as administration and liberalization of world trade, support for sustainable development, and coordination among member states against global environmental threats are addressed under this institution. In this process, in light of lessons taken from past mistakes, developing and less developed countries are handled more carefully, with the efforts particularly concentrated on the integration of these countries into the international system (i.e., facilities such as capacity building, longer implementation periods with multiple installments in tariff reductions for developing countries.) WTO also plays an important role in the redistribution of existing wealth from the developed to the developing countries through investment while its regional investment goals greatly contribute to the resolution of inter-societal conflicts of interest.

Nevertheless, reconciling differences in a negotiation platform of 145 countries from various interest groups requires a long and tough process. However, the fact that the issues of negotiation are laid on the table as a package gives the opportunity to balance possible gains and losses on various issues, and ultimately makes it easier to reach an understanding. At the Fifth WTO Ministerial Conference due to convene in Cancún on September 10-14, 2003, the issues of trade and investment, trade and competition, transparency in public procurement, and trade facilitation (also known as the Singapore issues) will sought to be opened to negotiation by "explicit consensus" of the members. The designated targets are grand and important, but the program must be faithfully implemented if these steps are to have any meaning. In this context, efforts should be concentrated primarily on curbing the timetable delays seen in priority areas such as agricultural and industrial goods.

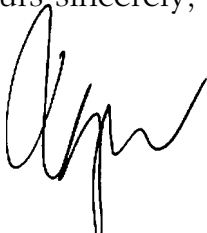
Sound working of the WTO depends on the trust among states. Such an environment would mitigate the negative effects of external factors. Likewise, an examination of external economic developments would reveal that despite the current weakness in world economic growth, the expectation that momentum

would be gained by late 2003 heralds an easier reversal of this trend. Increasing energy supplies and the resulting decline in prices have given way to a chance for growth in a disinflationist environment. Recent developments (a rapid and smooth end to the war in Iraq), elimination of fundamental risks, and diminishing global uncertainties have all increased the consumer confidence and the expectations of the business world. Currently, there are positive signs for the corrections of the imbalances that constitute a hindrance against global recovery (i.e. low consumer spending in the United States, decline in Asian exports) are now improving. In light of these developments, United States, Japan, Euro zone and the developing countries are expected to record 2003 real growth rates of 2,5 percent, 1 percent, 0,7 percent, and 5 percent, respectively.

Turkish Industrialists and Businessmen Association (TÜSİAD) has been supportive of this process since the very beginning. It is the only Turkish non-governmental organization accredited with the WTO. Its efforts regarding the WTO started with the Second WTO Ministerial Conference in Geneva and continued with the opinion document prepared by its WTO Working Group for the Third WTO Ministerial Conference. With a diverse set of members, TÜSİAD's WTO Sub-Working Group has been closely following the WTO and prepared this document on TÜSİAD's general approach towards the Fifth WTO Ministerial Conference due to convene in Cancún, Mexico in September 2003.

I wish success to our delegations at the negotiations and hope that the Fifth WTO Ministerial Conference and the broader negotiations will be concluded in a way that increases the international competitiveness of Turkish industry and businesses, and that our country increasingly takes its due share from international trade.

Yours sincerely,



TUNCAY ÖZILHAN

Chairman of the Executive Board

CHAPTER  
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AGENDA ISSUES

## **II. AGENDA ISSUES**

### **A. AGRICULTURE**

Obtaining the best possible decisions for Turkey at the Advanced Agricultural Negotiations depends on how well Turkey's position at these negotiations is emphasized. As a matter of fact, two points must be taken into consideration:

- WTO Agreement on Agriculture classifies member states under three categories: Developed Countries, Developing Countries and Least-Developed Countries. Turkey is classified under the Developing Countries status.
- Prominent countries in world trade in agricultural products (United States, the European Union, Canada, Australia, and New Zealand) will want to retain their weight at the negotiations. Common action among the developing countries, however, would be limited.

As a candidate for membership to the EU, Turkey acts with the necessity to adapt its agricultural policies to the Common Agricultural Policy, carrying out efforts -however limited- to harmonize its agricultural laws with the EU laws. Nevertheless, since it is not yet a part of the Common Agricultural Policy, it can act independently from the EU. What matters are Turkey's interests in the field of agriculture. Food safety and self-sufficiency are the most fundamental issues.

#### **Turkey's Commitments, Problems and Possible Solution Proposals**

Considering that the fundamental aim of the Advanced Agricultural Negotiations is further liberalization of agricultural trade through comprehensive and gradual reductions -an effort initiated worldwide with the Uruguay Round- the negotiations are likely to result in new commitments also for Turkey, as they will for other member states.

Turkey has made tariff commitments to the WTO in all agricultural products. It has also made use of the concessions allowed for the developing countries while binding the tariff rates for certain products.

**Imports:** Turkey cannot resort to special protection measures, since it has made no minimum and within-quota access commitments on imports. Thus, Turkey

has taken the maximum allowed level for domestically sensitive goods and the September 1986 rates for others as a basis, applying the same reductions as the other developing countries.

Consequently, commitments for tariff cuts on important products have been kept at the minimum and high tariffs have been bound for tea, grain, wheat flour, sugar, tomatoes and processed tobacco.

Low tariffs and high reductions have been bound for materials demanded by export-oriented industries and goods that the country is a net importer of (such as vegetable oils, silk and cotton ...).

Turkey has made a simple average reduction commitment of 24 percent with a minimum per tariff line reduction of 10 percent. For instance, the commitment level for beef has been bound at a megatariff (tariffs in excess 100 percent) of 250 percent. By 2004, the bound tariff rate will be reduced to 225 percent.

However, tariffs provide only a limited protection. Indeed, the decline in world prices coupled with high domestic prices for certain goods reduce the effects of the protection that comes with the tariffs. Most effected from this dynamic are the beef and sugar industries.

While shaping policy for the new round of negotiations, it should not be forgotten that megatariffs provide only a temporary protection since tariffs are bound to be reduced eventually. Therefore, implementation of a nationwide project on the revitalization of the livestock sector is particularly essential while high tariffs on beef still constitute a barrier to entry.

**Exports:** Turkey has committed itself to limiting its expenditure on export subsidies for nearly 44 products or product groups. While the developed countries are able to operate high levels of export subsidies with their adequate budgetary possibilities, Turkey's limited resources allow it to sustain only a poorer level of subsidized exports in comparison. Turkey's total export subsidies are around USD 140 million as of the base year. The most important items in this list of commitments are wheat, barley, and wheat flour. By 2004, subsidies will have gradually been cut by 24 percent with respect to the base year levels. While subsidized exportation of wheat and barley, both of which are supported through domestic purchases, is possible, sugar was not included in the list. Subsidized exportation of sugar is prohibited.

Consequently, export subsidies are not advantageous for developing countries like Turkey, who are unable to make the necessary budgetary allocations. Considering that it is the developed countries that benefit from export subsidies on real terms, they should be required to make additional and comprehensive tariff reductions. Efforts should also be made towards forming a common position with other developing countries in this direction.

For Turkey, as for many other developing countries, the WTO Agreement on Agriculture offers an unbalanced structure that works against developing countries. The Agreement on Agriculture should therefore be revised with a view to removing such imbalances while not stepping back from but preserving and strengthening the flexibility clauses on the special and differential treatment for developing countries.

**Domestic Supports:** Turkey tried to keep its level of domestic supports as low as possible during the base year. Since the share of supports in its agricultural production was below 10 percent (*de minimis*), Turkey does not have any commitments to cut its domestic supports, or in other words, it has agreed to keep its support below 10 percent. But in the meantime, by initially setting higher domestic support levels, which they then began to reduce, other countries in effect promoted their production over the same period. Since Turkey does not have any commitments to cut back on supports, these are not allowed to exceed the 10 percent limit on a product basis. This situation has not been to Turkey's advantage.

**Non-Tariff Barriers:** As visible hindrances to trade, tariffs and quotas are reduced on paper, only to be replaced with new invisible barriers, or the non-tariff barriers. The way to overcome these obstacles that emerge as barriers to market access is gradual convergence to the standards of the leading export market of Turkey, the EU, and producing environment-friendly agricultural products of good quality.

## **B. MARKET ACCESS**

GATT -having formed the institutional and legal infrastructure of international trade- and the agreements made under the umbrella of its successor -the WTO- have enjoyed considerable success in the reduction of tariffs and liberalization of trade.

At the market access negotiations, priority should be given to addressing the issues of bindings and high tariff rates, tariff rate quotas, and non-tariff barriers.

Efforts towards the reduction of tariffs should continue. Within the scope of its Customs Union with the European Union, and in accordance with the Decision 1/95 of the EC-Turkey Association Council, Turkey has put the European Union's Common Tariffs into implementation, and in 2001, again as required by decision 1/95, tariffs for sensitive products were equalized with the Common Tariffs. As a result, Turkey has gone fairly below its WTO commitments in tariff reductions. As required by the same decision, tariff reductions the EU would implement at the end of the negotiations will also be binding for Turkey. Consequently, drawbacks were conveyed to the EU side at a meeting with the EU Commission on October 21, 2002. At the meeting, a list of products the reductions are likely to have a negative effect on and the sectors they are classified under were conveyed to the EU Commission. These sectors are as follows:

- Textiles and clothing
- Automotive
- Leather goods
- Shoes
- Ceramics
- Glass
- Porcelain
- Ceramic bricks
- Copper and aluminum goods
- Electronic goods under Chapter 84

In addition to its reduction commitments in industrial goods, Turkey has also implemented the tariff reductions it has undertaken within the framework of decisions envisaging favorable market access conditions for the least-developed countries and the Information Technology Agreement (ITA) accepted under the Singapore and Geneva Declarations of Ministers. Therefore, an assessment of the possible effects of further tariff reductions on the economy should also be conveyed to the EU.

Concessions to be given to the developing and the least-developed countries are a matter of considerable importance for Turkey. Turkey should carefully

monitor the practice of duty-free market access in the developed countries for such countries. The impact of this practice on the competitiveness of our exports in foreign markets should be investigated. Better results will be achieved in trade liberalization if developing countries implement reductions in decreasing installments after making initial high cuts instead of cuts in equal installments.

Removal of non-tariff barriers plays as important a role as the tariffs themselves in the development of free trade. The diversity and increasing number of non-tariff barriers as well as the discrepancies in legal and administrative arrangements considerably hinder trade liberalization among countries despite the principle of non-discrimination in imports and the associated practice of national treatment. Lack of transparency in the implementation of such barriers constitutes a great problem. Reaching a common definition for non-tariff barriers is desirable for Turkey. However, it would be best to tackle the unique barriers one by one with a vertical approach, and those that might fall into the scope of current WTO agreements within the framework of horizontal measures. At the international level, legal and administrative regulations should be harmonized and reciprocal recognition for different practices serving to similar purposes should be generalized. Harmonization with the WTO Agreement on the Non-Tariff Barriers should also be generalized. WTO's intervention mechanisms against non-tariff barriers should be improved.

Turkey's failure to conclude agreements under the EU Common Trade Policy with certain third countries that have signed free trade agreements with the EU leads to trade diversions. Goods from such countries are able to enter Turkey freely through the EU while Turkish exports are subjected to high tariffs in these territories. It is therefore imperative that these agreements be concluded at once.

Reaching an agreement on the definitions for environmental products is an important issue. Practices promoting trade in environmental products are essential.

### **C. SERVICES**

As a rapidly growing sector, the services sector constitutes 60 percent of the world GDP. Likewise, the sector has shown faster progress in trade than goods since 1985. Alongside the maritime and finance sectors, both of which are more open to international trade in services (or to trade in general), technical and legal arrangements have been made in several other sectors since 1985. Moreover,

widespread use of the Internet has made possible the emergence of numerous goods that would be a subject of international trade.

These developments are also crucial for Turkey, who is in an advantageous position in terms of its manpower -an important component of the supply of services. Turkey's services sector has long been the largest sector of the economy. Its share in the economy, which was 46.3 percent in 1963 when the First Five-Year Development Plan was put into effect, rose steadily until 1987, after which it stabilized around 57-59 percent.

We believe that further openings in the services sector that might enter the agenda within the framework of the Doha Development Agenda would be an important factor contributing to the planning of development strategies for developing countries.

As a result of its Customs Union with the EU, Turkey has opened up much faster than other developing countries in liberalization of trade in goods, carrying out several legal and statutory arrangements that helped build the infrastructure required for a market economy. In parallel with the distance it has gone in the field of free movement of goods, Turkey also continues its initiatives to open up and make arrangements in other fields with a view to ensuring the sound working of the market system. In this line, Turkey is rapidly covering ground towards fulfilling its commitments in all fields -and primarily in the political field- in the context of its membership process to the EU. Taking of concrete steps towards the liberalization of trade in services between the parties come out as a natural extension of this integration process.

In light of these facts, new circumstances that will emerge at the negotiations on trade in services are likely to have important consequences for Turkey.

International negotiations on trade in services started in 2000, in accordance with the provisions of the General Agreement on Trade in Services (GATS). At the negotiations, held for further liberalization in several sectors, we seek to identify those domestic laws and practices that hinder or slow down our exports in services and to obtain the necessary concessions for their removal.

As a result of the GATS negotiations, started with this view in 2000, an agreement has been reached as of March 2001 on the methods and principles of the negotiations on trade in services.

Within the scope of the GATS negotiations, carried out on a sectoral basis, 9 of the 12 main services sectors have been opened up. Additional commitments to be undertaken in the new round should be in line with our competitiveness.

Sectors already opened up are as follows:

1- Business Services

- Professional services
- Computer and related services
- Other professional services

2- Communication Services

- Postal services
- Courier services
- Telecommunication services

3- Construction and related engineering-architectural services

4- Educational Services

- Primary, secondary and other education services
- Higher education services

5- Environmental Services

- Sewer services
- Refuse disposal services
- Sanitation and similar services

6- Financial Services

- Insurance and insurance-related services
- Banking and other financial services

7- Health Related and Social Services

- Hospital services

8- Tourism and Travel Related Services

- Hotels and restaurants
- Travel agencies and tour operators services

## 9- Transport Services

- Maritime transport services
- Air transport services
- Rail transport services

The list of commitments submitted by Turkey within the scope of GATS has been among the most extensive and advanced proposals submitted by the developing countries.

Turkey's commitments for the previous round encompasses 72 of the 155 activities included in the services sectoral classification list of the GATS. A close look at the unlisted services reveal that no commitments were made; in certain branches of the professional services which are exclusively reserved for Turkish citizens (such as veterinary, dental, and medical services, and services provided by nurses); in those sectors where there is no legislation either in general, or specifically on the regulation of market access for foreigners (such as Research and Development Services, Real Estate Leasing Services, and Distribution Services); in internal waterways transport services since foreigners are not permitted to engage in coast trading in Turkey; and in sectors like space transport where there is no field of application in the country.

Turkey has recently experienced two major financial crises and consequently made important legal changes towards the regulation of its financial markets. Legal arrangements on the 29 topics of harmonization with the EU are still in agenda. It is believed that particularly those amendments that enter the agenda within the scope of the law on foreign capital can clear the way for trade in services. Within this framework, it appears that new openings will be achieved upon the reflection of the following legal amendments in the negotiation process:

- Coming into force of Law no. 4817 regarding Work Permits for Foreigners and revocation of Law no. 2007 regarding Trades and Services Reserved to Turkish Citizens in Turkey
- Law no. 4875 regarding Foreign Direct Investments
- Banking Act
- Mining Act
- Decree on Amendments to be made to Lawyers Law Number 4667 and the related Regulation on the Turkish Bars Union

- The Regulation on Amendments to be Made to the Regulation on Insurance and Reinsurance Brokers

Legislations made on the regulation of the market constitute another opening that enters the agenda within the scope of legal arrangements. Within this framework, also considering the privatization of the Turkish Telecom and the opening process of the market to competition, it is important to reflect this situation in the negotiation position on the telecom services.

Another important issue to be reflected in Turkey's negotiation position relates to the legal arrangements on the services sector as foreseen by the "National Program," which addresses Turkey's harmonization process with the EU. With the realization of these legal arrangements in the medium term, Turkey will have carried its market in many sub-services sectors to a more liberal position.

Another issue to be attended to at the GATS negotiations relates to the openings brought by the EU under GATS into the agenda of the new round.

Emphasizing on the importance of liberalization of trade in services within the EU, UNICE, the representative body of the EU private sector, stresses that such a step may act as a driving force particularly on the developmental processes of the developing countries.

EU has declared that it might initiate openings towards third countries within the scope of the Doha Development Agenda in the telecommunications, banking, insurance, environment, tourism, news agency (journalism), business services, construction and distribution sectors.

However, in the EU negotiation position it is also made clear that the union will not open up sectors such as education, health, and audiovisual where the public is heavily involved in the supply of services. Concentrated NGO efforts to inform the public of the problems that are likely to arise in the provision of public services in the EU have played an important role in the shaping of this position.

Together with the sectoral openings, the EU has also determined a pre-negotiation position for vertical commitments. With a new opening provided under mode 4 within the framework of the Doha Development Agenda, the EU plans to contribute to the trade in services by granting temporary movement and the right to residence to natural persons providing a service. This opening has been brought into the agenda more as a response to the expectations of the developing countries.

At this stage where the negotiations on trade in services are still in progress within the WTO, the possibility that Turkey might launch an opening towards liberalizing trade in services with the EU as part of its membership perspective to the Union makes it necessary to take the following factors into account:

- In the coming period, it would not be appropriate for Turkey to adopt a negotiation position that goes beyond its prior commitments to the EU in those sectors where the EU does not intend to open up to the third countries (education, audiovisual, health).
- Turkey needs to make sectoral arrangements in its laws in those sectors the EU makes further openings to the third countries in the new round, within a process parallel to the adaptation schedule to the EU.
- While determining its position at the WTO for those sectors where it has requested a transition period from the EU, Turkey should take into account its harmonization with the EU laws and its competitiveness in these sectors.

Therefore, while determining sectoral approaches towards the third countries, Turkey should take the EU negotiation position into account, rapidly establish coordination with the EU on the negotiations at the WTO, and try to have its views included in the EU's GATS 2000 positions as much as possible. Furthermore, implementation schedules for the Customs Union should be converged to the WTO schedules as much as possible by ensuring coordination between the delegation attending the negotiations on the extension of the Customs Union to trade in services and the delegation attending the GATS 2000 negotiations.

Although Turkey has a considerable share in international trade in services in comparison with other developing countries, it should not be forgotten that the GATS 2000 negotiations will be shaped around the US and EU positions.

Other issues that Turkey will face at the GATS negotiations and that should be taken into account for each services sector are as follows:

### **Safeguards**

Due to the unique characteristics of the modes of supply and sectors of the trade in services, implementation of safeguards similar to those implemented in trade in goods is not possible under GATS. Ensuring that WTO's fundamental principles of transparency and predictability are reflected also in the safeguards employed in trade in services and that these measures are pre-defined so as to

include all sectors would prevent countries from applying protection measures in a discretionary and over-restrictive way.

Current GATS text includes various safeguards. (Article XXII-balance of payments-, Article XIV-public health, morals and safety-, Article IX-damping-, and Article XV-subsidies-). However, the scope of the articles on these protection measures and restrictions on trade will come to the agenda with the modes of supply of services, on a sectoral basis and along with the lists of commitments. Turkey's position particularly towards the approach that foresees pre-notification of the WTO of safeguards and monitoring of the safeguards by the WTO mechanisms should be determined after a careful examination of our competitiveness for each sector and mode of supply.

### **Domestic Laws**

Trade in services is more affected than international trade in goods by domestic laws. Moreover, there have been great setbacks in defining the protectionist and discriminatory effects of domestic laws or the decisions and practices of national regulatory bodies that restrict market access and hinder the competitive environment in the markets. Therefore, the issue of ensuring transparency in and international discipline on domestic laws should be brought into the agenda of GATS 2000.

Another important issue that might come to Turkey's table regarding domestic laws are monopolies. Particular attention should be given to the privatization of the Public Economic Institutions (PEIs) and the adoption of policies by regulatory bodies to be established after the privatization of such state monopolies towards the protection of the competitive environment in the market.

### **Subsidies**

Unlike GATT, GATS does not stipulate the application of the principle of national treatment and divides the modes of supply for services into four parts -a practice that hinders the application of rules for subsidies in international trade in services similar to those enforced in GATT.

Therefore, Turkey should approach with caution to the extension of the principle of national treatment particularly except for those subsidies that might hurt the exports and the other country markets.

Indeed, the EU position at the negotiations for the new round is towards sustaining subsidies in the services sector.

#### **D.TRIPs**

It's required that all countries should bring effective protection on intellectual property rights and adapt to the developments in the field as soon as possible.

Practices in the WTO member states have shown that those member states, which have implemented the TRIPs provisions, acquired beneficial outcomes. Accordingly, increased efforts towards the effective implementation and enforcement of the TRIPs decisions should be supported.

It's a fact that most developing countries have failed to carry out the legal arrangements on intellectual rights by January 1, 2000 within the TRIPs criteria framework. It is crucial that these countries make the necessary legal arrangements as soon as possible.

Efforts towards sharing among all member states of their experiences on the implementation and enforcement of the provisions of the TRIPs Agreement should be supported.

#### **TRIPs Agreement and Public Health**

Regarding the issue of drug patents, one of the issues related to public health which entered the agenda with the Declaration of the Doha Ministerial Conference, steps towards the facilitation of access to drugs by increasing flexibility for countries within the framework of the TRIPs Agreement should be supported.

Due to the problems encountered in accessing drugs used in treating diseases that pose a threat to public health, our country should also support the efforts towards the implementation of compulsory drug licensing in accordance with the provisions of TRIPs in those countries with insufficient or almost no production capacity.

It is obvious that the kind of serious public health problems encountered in the least developed countries cannot be solved solely with regulations on intellectual rights. In order to solve the problem, multi-dimensional policies including technical and financial assistance should be introduced and the implementation of such policies by member countries should be ensured.

While looking for solutions to public health problems in these countries, it is crucial that innovative efforts in every field of industry -especially the drug industry- are supported and that balanced policies exercising caution on not damaging the system brought with TRIPs on the protection of the intellectual rights are made.

### **The Relationship Between the TRIPs Agreement and the Convention on Biological Diversity and the Protection of Traditional Knowledge and Folklore**

In corporation of article 8/j on the protection of traditional knowledge and ways of life as well as the fundamental principles defined in articles 15, "Access to Genetic Resources" and 16, "Access to and Transfer of Technology" of the "Biodiversity Convention" (to which Turkey became a party in 1996) into the TRIPs Agreement would be beneficial for Turkey.

Keeping in mind that Turkey has an immense biological diversity, the following proposals should be supported:

- Principles such as "national sovereignty," "prior informed consent," and "equitable sharing of benefits" should be included in the provisions of the TRIPs Agreement,
- For those applications for patent rights in which genetic resources and traditional knowledge are used, declaration of the source and the country of origin by the applicant should be made legally compulsory in patent laws and legal sanctions should be brought against those failing to do so,
- At the application for a patent, the applicant should be required to provide evidence on "prior informed consent" certified by the competent authorities under the national laws of the country of origin of the source used,
- At the application for a patent, the applicant should be required to provide evidence that the principle of fair and equitable sharing of benefits is respected under the national laws of the country of origin of the source used.

The Biodiversity Agreement to which Turkey became a party in 1996, places special emphasis on intellectual rights in articles 15 and 16 and on the protection of the knowledge, novelties and practices of local peoples in article 8/j, thus encouraging the equitable sharing of benefits arising from such uses.

Considering Turkey's wealth in terms of traditional knowledge and methods of production, including its flora and handicrafts, protection of such fields is crucial for our country.

We believe in the necessity of formation and ripening of proposals on the recognition and protection of traditional knowledge as an intellectual property right, and in the benefit of initiatives within this framework towards ensuring support for proposals -also underlined by Turkey- on establishing a relationship between the mentioned agreement and the TRIPs Agreement.

### **Review of Article 27.3(b) of the TRIPs Agreement**

It would be beneficial if the wording of the article, which regulates the exceptions member states can bring on patentable subjects, is clarified and those inventions (exceptions) held outside the protection are clearly defined. However, we also believe that it would be inappropriate to expand the scope of article 27.3(b) and to open various matters to discussion within the article.

### **Multilateral Notification in Geographical Indications and the Recording System**

The efforts on the subject are positive and it is beneficial to support the introduction of multilateral notification system.

The scope of the protection of geographical indications should be expanded so as to include all types of agricultural and processed food products. Likewise, extension of the protective scope of geographical indications so as to include industrial goods, and particularly hand-made goods, is a proposal that merits support.

### **Transfer of Technology**

All initiatives on boosting technology transfer to the least developed countries should also be supported.

## **E. ENVIRONMENT**

Regarding the field of trade and environment, it is possible to talk about the problem of *lack of clearly defined concepts* both due to the novelty of the subject in regulatory terms and its sensitivity, which is strong enough to change the course of trade flows. This is not a situation unique to a single concept, but particularly to several concepts employed both in multilateral environment agreement (MEAs) and

in the WTO rules. For instance, the expression of "like products" has important environmental implications. Particularly, considering that members are required to act in accordance with the WTO rules that prohibit discrimination between polluting imported goods and non-polluting domestic goods, the situation by all means needs clarification, that is, actions should be taken with a view to clearly defining what an environmental good and service is. At this point, the approach to be taken in defining environmental goods and services is of great importance; validity for Turkey of definitions based on "production and methods of production" should be carefully studied. In the context of the above-mentioned example, although certain criteria have been brought several times within framework of the WTO Dispute Settlement Mechanism, there is still ambiguity on the issue.

Yet another source of ambiguity appears both in the definition of the MEAs and in their relationship with the WTO rules. As mentioned both in the Doha Declaration and in the following assessments on the subject, the idea of defining the term MEA more broadly should be supported. Arguments that the multilateral trade system lacks the competence necessary to make such definitions or would go beyond whatever competence it has by doing so lose their significance in the face of the increasing effect MEAs have on international trade. Particularly, considering the importance of MEAs for the trade of developing countries like Turkey, the great significance of bringing up, discussing and deciding on the issue within such an influential organization should be better appreciated.

However, the most important issue, which has entered the agenda in the context of how MEAs and WTO rules relate to each other, is that these agreements may at times conflict with the WTO rules in several ways. For instance, the Basel Convention on the Transboundary Movement of Hazardous Wastes prohibits the exportation of hazardous wastes in the world. In effect, this means that the exportation of hazardous wastes from the developed countries, generating 98 percent of such wastes, to the developing countries is prohibited -a situation that conflicts with the WTO rules which seek to liberalize trade. This conflict stems from the differing points of view between the two; while the agreements on the environment seek to ban those forms of trade they deem harmful such as the trade in hazardous wastes, the WTO seeks to eradicate the obstacles to the transboundary movement of goods.

It is possible to see examples of trade in hazardous wastes in Turkey conducted in violation of the provisions of the convention. Although the "Regulation on the

Control of Hazardous Wastes" is in effect in Turkey since 1995, due to the problems encountered at the controls, a situation has emerged where those who carry out trade in compliance with the rules are in effect punished. Finding legal solutions to such implementation problems would both set an example for other developing countries, and direct the exporting parties to eliminating such dangerous wastes at their source. Consequently, in the face of the danger of completely turning into a toxic waste dump in the future, it is important for the developing countries to form a single voice, engaging in effective activities aimed at persuading the developed countries to solve the problem at its source. Because, as in other MEAs, in the event of a violation of the Basel Convention, parties will take steps towards preventing and sanctioning such acts, or in other words, will resort to legal, administrative and other measures within the scope of the agreement (Article 4- General Provisions).

Since the MEAs lack the mechanisms to enforce their provisions/rules, in such conflicting cases where exportation occurs despite a ban on exports as set by an MEA, countries still retain the right to enforce their own laws. As required by these national laws, a country may ban the importation of such products or their by-products and even impose embargoes on those countries that violate its bans. The WTO rules, however, still acknowledge the right to complain against such trade restrictions. Therefore, both Turkey and other developing countries still need an effective mechanism to be structured with the capacity to enforce the MEAs in such situations.

The need to ensure coherence between economy, environment and development requires the strengthening of cooperation between the WTO and other concerned institutions. In order to do this, policy coordination at the national level should also be forged at the international level between international organizations such as the WTO, UNEP, UNCTAD and the World Bank. Within this framework, efficiency of the Committee on Trade and Environment -of which contribution to the discussed issues has been under question for some time- will increase in light of the principles of openness-transparency-consultation.

The delicate balance between the protection of the environment and the developmental efforts of the developing countries should be meticulously addressed, examined, and assessed. Trade measures that seek to protect the environment (technical non-tariff barriers) should neither lead to unfair and unnecessary trade restrictions nor damage the environment sought to be protected

under very difficult conditions -at the dimension of the goal of sustainable development.

Therefore, Turkey would greatly benefit from establishing a separate department equipped with all required information on the subject under either the Undersecretariat of Foreign Trade or the Ministry of Environment and Forestry. Such a unit should assume the role of a think-tank on the trade-environment issues and debates, which will gain further impetus in the future.

In connection with this, Turkey should prepare itself to the process of eco-labeling -which came to fore with the assessments made in the wake of the Doha Conference- under the EU norms and format. It should be kept in mind that a strong eco-labeling regime will constitute a serious hindrance to market access. Since we are already within the adaptation process to the EU, it is of utmost importance that Turkey adopt an approach similar to the EU in such efforts. At the same time, institutions and organizations that might engage in eco-labeling should also be directed to acting within certain standards. Failing to do so will inevitably lead to the emergence of illogical standards that are impossible to meet.

Finally, an assessment made within the framework of the numerous MEAs and protocols/declarations Turkey is a party to, bring to minds the question of which ones of the 28 protocols, all containing trade measures, should stand out. For instance, after the elimination of the "Annex II list barrier" standing in the way of the ratification of what is maybe one of the most important steps of the Rio process, the Kyoto Protocol on Global Climate Change, Turkey will need to start making reductions in the emission of six greenhouse gasses, particularly in the emission of carbon dioxide when the Protocol is ratified by the Turkish Grand National Assembly (TGNA). Although the general rate of reduction is set to 8 percent of the 1990 levels, it is very important that Turkey adopt an approach similar to that of the EU to which it is in the process of adaptation. At this stage, Turkey does not seem to have any problems regarding the ozone-depleting substances banned with the Montreal Protocol. On the other hand, Rotterdam and Stockholm Conventions both of which were signed by Turkey in 1998 and 2001, respectively, but have not yet been ratified by the TGNA, severely restrict trade in 22 dangerous agricultural pesticides and 12 dangerous chemicals, respectively, and produce obligations such as labeling/security labeling.

Although the number of countries ratifying the agreements is yet to reach the required majority for them to take effect, Turkey should at least make the necessary

preparations towards harmonizing its own legislation with such conventions in order to reach the point where it can promptly take measures if and when these treaties come into effect. Turkey, who has signed the agreements on biological diversity, became a party to CITES in 1996, and has signed but not yet ratified the Cartagena Protocol, which is due to take effect in September 2003. The protocol addresses LMOs (Living Modified Organisms) -agricultural, food, processed food and pharmaceutical products obtained through the use of modern biotechnology (i.e. certain vaccines, certain vitamins, canned foods, and yeasted products such as beer and bread). The Cartagena Protocol introduces regulations on the safe transportation, acquisition and use of, and particularly on compliance with these security measures in the international trade in, such goods. The protocol is also associated with several trade agreements (such as SPS Agreement, TBT Agreement, TRIPs). Considering the share of the LMOs in its trade, Turkey is expected to carry out the necessary legislative and technical preparations on the issue and to undertake similar efforts for the genetically modified organisms (GMOs), which are evaluated under a similar status as the LMOs.

## **F. INVESTMENTS**

Paragraph 22 of the Doha Declaration of Ministers instructs the Working Group on the Relationship Between Trade and Investment to focus on the clarification of seven issues:

1. Scope and definition
2. Transparency
3. Non-discrimination
4. Modalities for pre-establishment commitments based on a GATS-type, positive list approach
5. Development provisions
6. Exceptions and balance-of-payments safeguards
7. Consultation and the settlement of disputes between members

### **Performance Requirements**

At the meetings of the Working Group on the Relationship Between Trade and Investment, some members have argued that this list is not exhaustive and should, for instance, include "performance requirements" and reaffirmed the importance of providing technical assistance in enhancing developing countries' understanding of the implications of a possible WTO investment framework so that they can be in a

position to make informed decisions at the Fifth WTO Ministerial Conference. Although it is proper to include the "Performance Requirements" among the issues, since they are aimed at measuring domestic operational performance, the "requirements list" should be devised outside the scope of the agreement by each country in line with their domestic needs.

### **Investment Agreement**

At the meetings of the Trade and Investment Working, developed countries have favored a comprehensive agreement that also includes portfolio investments while the developing countries have supported a narrowly defined agreement largely focusing on direct investments in manufacturing industries. Several developing and least developed countries under India's leadership agree to the inclusion of new long-term investments in the agenda of the negotiations only on condition that they also take the needs of the developing countries into consideration. The current definition in Turkey, on the other hand, is not sufficient to make a distinction between the temporary short-term capital flows that leave the country within a short period and long-term capital flows. Therefore, the term long-term investment should be redefined, this time with explicit reference to the preferred method of control to be employed to check whether the investment has lost this property.

### **Transparency**

At the meetings, countries have put special emphasis on the importance of transparency for a stable and reliable foreign investment environment. Discussions have largely focused on the depth and scope of implementation of the provisions on transparency. Furthermore, one of the important views that emerged at these meetings argues that the articles on transparency in the General Agreement on Trade in Services might contribute to the definition of the scope of a possible multilateral agreement on investment on the matter of transparency. In this context, transparency should be regarded as the most important issue for all transactions within the scope of the WTO.

### **Flexibility in the Provisions on Investment**

Several countries under the leadership of India have expressed their desire that a possible agreement contain provisions on investment that allow a degree of "policy flexibility" for the host country to promote its national interests. In light of

research showing that certain forms of direct investment have negative effects on the economy of the host country, some developing countries have emphasized on the need to include certain exceptionality clauses in a possible agreement on investment. Creating the need for such clauses are the differing economic needs of the developing countries from the developed. Turkey, on the other hand, should clarify the meaning of "policy flexibility" after an assessment of its definition under the Law on Foreign Direct Investment passed in June.

### **Dispute Settlement**

Varying views have been discussed on whether the Dispute Settlement Mechanism (DSM) -one of the fundamental organs of the World Trade Organization- is an appropriate platform that could be employed in settling disputes arising under a possible agreement on investment. DSM will only prolong the settlement of disputes unless it is comprehensively and effectively defined. Disputes between the investor and the concerned government should be settled within the scope of the aforementioned principles of transparency and non-discrimination.

### **Market Access**

On the matter of market access, lists, whether negative or positive, should be devised. However, methods and forms of participation employed to devise such lists should be clearly indicated by countries under the principle of transparency. Furthermore, provisions stipulating that such lists be dynamic and updated periodically should also be included in the agreements. The WTO should organize training programs on the subject, particularly open to the participation of the developing countries.

## **G. COMPETITION**

International standardization of the "rules of competition" through signing of a multilateral agreement is at the same time a step towards increasing the welfare of consumers. Maximum possible number of countries meeting at a least common denominator will also help prevent the unfair competition created by those countries that fail to comply with the competition rules.

In contrast to other issues of negotiation, the fact that it is a multilateral agreement on competition policy of which rules are set makes the active involvement of business circles indispensable for the process. Deeming states as

the sole enforcers of competition policy and law in domestic and international trade would mean ignoring the important role business circles play on the issue. Internalization of the competition culture by businesses is just as important as the enforcement of competition policy by governments. The closer governments and business circles work with each other, the faster and more effectively rules will be adopted. Such a cooperation can be materialized at the international level through institutions like the ICC, OECD, ICN where business circles are directly or indirectly represented, and at the national level, through the active participation of non-governmental organizations representing business circles.

### **Fundamental Principles to be Included in a Multilateral Agreement on Competition Policy**

#### **Non-discrimination**

Competition rules governments adopt should not contain discrimination at the national level. It is crucial that governments observe the principle of "national treatment." In other words, competition rules should not aggravate the conditions on foreign goods, services, companies and persons. However, neither should it be forgotten that providing foreign companies with more advantageous conditions than those imposed on national companies is also a form of discrimination.

The case for non-discriminatory rules should also be reflected into practice. Authorities or governments in charge of enforcing the competition rules should adopt rules that give an end to practices that favor local companies, particularly on the control of mergers and takeovers.

#### **Transparency and Procedures Regarding Equity**

It's important that the institutions to be established by governments towards the implementation of competition policy should adhere to certain equitable principles and the implementation should offer a certain degree of transparency for all parties.

Competition authorities should be established with a view to allowing all parties affected or likely to be affected by the distortion or restraining of competition in the market to make a complaint. These institutions should also transact with transparency, stating the grounds of their decisions. Competition authorities require an independent structure in order to be able to enforce the competition rules in an accurate and impartial way. Likewise, a legal infrastructure allowing appeals to decisions of competition authorities should also be foreseen.

It is important that the competition authority is equipped with the necessary investigative powers in order to implement the competition policy under the best possible terms. In parallel with these powers, rules on the confidentiality of information gathered by the competition authority should also be well defined. Proper protection of the rights of the actors in the market also depends on the well definition of the decision-making processes of the competition authority. Sound implementation is contingent upon the designation of deadlines for transactions such as application, investigation and decision-making.

### **"Hard Core" Cartels**

The biggest ambiguity on the matter of Hard Core cartels since the Doha Summit has been observed in the definition of the term. Starting a new search for and reaching a definition on which all parties agree would cost valuable time. For this reason, making a reference to the definition made in the recommendation on the Hard Core Cartels adopted by the OECD Council Concerning Effective Action Against Hard Core Cartels on March 25, 1998, could be useful.<sup>1</sup>

Action against Hard Core cartels plays a crucial role in the liberalization of international trade. In order to take effective action against such horizontal agreements that usually take place between competing parties, certain core principles should be determined and incorporated into the legislation of each country, i.e., arrangements made between competitors on fixing prices or sharing markets.

Cooperation is necessary to deal with international Hard Core cartels. There are great benefits to initiating a mechanism that mutually defines the boundaries of the cooperation and rights of the national competition authorities in conducting investigations abroad. Such mechanisms should also include rules on the confidentiality of information sharing between competition authorities.

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(1) "A hard core cartel is an anti-competitive agreement, anti-competitive concerted practice, or anti-competitive arrangement by competitors to fix prices, make rigged bids (collusive tenders), establish output restrictions or quotas, or share or divide markets by allocating customers, suppliers, territories, or lines of commerce. The hard core cartel category does not include agreements, concerted practices, or arrangements that (i) are reasonably related to the lawful realization of cost-reducing or output-enhancing efficiencies, (ii) are excluded directly or indirectly from the coverage of a Member country' s own law, or (iii) are authorized in accordance with those laws. However, all exclusions and authorizations of what would otherwise be hard core cartels should be transparent and should be reviewed periodically to assess whether they are both necessary and no broader than necessary to achieve their overriding policy objectives."

## **Modalities for Voluntary Cooperation**

Today, the importance of distances and boundaries in international trade is diminishing. In such a trade environment, as important as an agreement between governments meeting at a least common denominator on the competition policy is communication and cooperation between the authorities enforcing competition rules.

The increasing share of electronic trade in traditional trade has almost led to the eradication of all boundaries on trade in certain goods and services. The prospect that this share will increase even further makes it necessary to take certain international measures.

It is crucial that, for conducting investigations, an information network is established through which the competition authorities can share information under certain standards. International violations of competition should also be investigated at an international scale. Formation between the competition authorities of an organization similar to the Interpol will facilitate this information sharing.

## **Strengthening of the Competition Institutions in Developing Countries**

Establishment of the competition policy is contingent upon the adoption of certain rules as well as the development of a culture of competition. International cooperation is necessary for the developing countries to establish their own competition authorities. A cooperation mechanism and model texts on model core principles should be established so as to allow those countries experienced in competition policies to share their experiences with other countries. The WTO should assume a key role on the matters of technical assistance and cooperation in the field.

In addition to the adoption of competition rules, also crucial is the measurement of quality of implementation. Establishment of a monitoring mechanism that will control the degree of compatibility of the competition rules and implementation in accordance with the core principles as determined by the WTO shall increase the quality of implementation within a country. With the creation of databanks, it will be possible to closely scrutinize the development of current legislations and practices on competition in all countries.

## **Conclusion**

Turkey has already harmonized its legislation on the law of competition with the EU law in accordance with the Decision 1/95 of the EC-Turkey Association Council. As a result of the efforts starting with the establishment of the Competition Institution in 1997, Turkey is currently well ahead of the international standards.

An independent Competition Institution has been established and numerous legislations have been passed towards regulating the conditions of competition in the market. The implementation since then, as well as the point that has been reached, are well ahead of the minimum conditions described above and which should be adopted by all countries. Therefore, within the framework of a multilateral agreement on competition, even the setting of the bar to the highest possible height won't put any extra burdens on Turkey's shoulders. On the contrary, this will help direct other countries with which Turkey is already competing in international markets to undertake similar commitments and will curb the current unfair competition in international trade.

## **H. PUBLIC PROCUREMENT**

Public Procurement Law (PPL) that came into force earlier this year is based on both the European Union's relevant directives and the principles of the UNCITRAL Model Law on Government Procurements. The general structure of the PPL forms a more transparent, competitive and practical mechanism than the State Procurement Law No. 2886, which was the basic legislation in public procurement prior to its entry into force.

Nevertheless, trying to fuse two different systems like the EU directives and the UNCITRAL Model Law, the PPL leaves certain issues in ambiguity while contradicting in some others due to the structural differences between the two systems. In order to boost foreign participation and competition as much as possible with this view, the law prevents discrimination based on nationality.

The fundamental difference between the two systems is that while the EU directives seek to coordinate a supranational public procurement system, Model Law undertakes to establish a national public procurement system. Within this framework, directives try to define a public procurement system framework for member states, and leave the initiative in making individual arrangements to the member states on condition that they remain within this framework. The Model

Law, on the other hand, makes detailed arrangements for the public procurement process.

Although there are merits to the criticisms that the Public Procurement Law would cause problems at the implementation and that there have been problems in the preparation of secondary legislation, no criticism could justify any amendments that mean a return to Law No. 2886. Points that should be taken in consideration in case of a possible amendment to the law are as follows:

- The scope of the law should not be narrowed down
- Administrative and financial autonomy of the Public Procurement Law should be maintained
- Amendments that might mean a return to the old regime in capacity to enter the bids and the related provisions should be avoided.

The view we can state at the moment on the Public Procurement Law is that it is crucial that the Law should be maintained along with its current fundamental principles.

## **I. TRADE FACILITATION**

### **Liberalization of Transit Trade**

Certain arrangements have been made in Article V of GATT 1994 with a view to ensuring reduction, harmonization, and standardization of customs procedures and documents.

According to this, unnecessary and burdensome transactions will be reviewed and abolished and arrangements clearing the way for transit trade will be put into effect. It will be possible to monitor entries and exits electronically, and risky transports with TIR Carnets. The use of ATA Carnets in transits will be put into practice. Single administrative document will be put into practice. Mutual Transit Procedure will be implemented.

Meeting the standards as defined in the above-mentioned topics is essential.

### **Simplification of Import and Export Related Transactions, Rearrangement of Charges**

Article VIII of GATT 94 stipulates that those charges other than taxes, transportation, storage, documentation, banking transactions and fees, such as dual

taxation, Additional Education Tax, Special Transaction Tax, Exporters Union fees, fees for Exporters Unions planned to be established, letter of guarantee requirements and commissions, translation and certification fees, non-mandatory control and monitoring and TSE (Turkish Standards Institute) fees should be abolished.

These are the essentials for developing countries. Development and competitiveness of Turkish foreign trade require introduction of a trust-based system.

### **Publication and Implementation of Arrangements Connected with Foreign Trade**

Publication of procedures unique to foreign trade by various institutions and bodies separately and at various times, without any regard to harmony of implementation makes it harder to follow these and obtain information.

Despite having automated its customs practices after the Customs Union with the European Union, Turkey has not yet gone beyond the recording function. Indeed, since the pre-clearance trust-based system has not yet been introduced in foreign trade, documentary requirements, controls of the customs authorities as well as the examinations and controls by other institutions hinder simplification and harmonization.

Within this framework, performance assessments should be implemented by devising a control mechanism that implements performance assessments, replacing pre-clearance documents and control transactions to post-clearance. Taxpayers should be able to follow the sanctions of punishments, and objections. Guarantees and commitments should be accordingly assessed.

Considering that our country conducts most of its trade with the developed countries, Turkey's competitiveness will increase to the extent that it adapts to practices in the standards of developed countries.

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