US-Turkey Business Council, Session III

Topic 9.

Advanced Manufacturing

Overview:

In today's global economy, countries are competing for advanced manufacturing investments. Advanced manufacturing represents key elements along the global value chain that produce value-add products based on high-skilled jobs and can encourage significant domestic economic growth. As part of these global value chains, advanced manufacturing companies are innovators, adding value to a) traditional products to elevate packaging materials which can ensure less food waste and better food security; b) sustainable, energy efficient infrastructure materials; and c) advanced electronic materials to support today's high tech IT infrastructure.

For both the US and Turkey, to be competitive to attract advanced manufacturing investment, it is necessary to upgrade and streamline (1) the overall investment climate; (2) enabling environment for advanced manufacturing operations; and (3) global value chain integration.

Recommendations:

1. Investment Climate – we welcome Turkey's recent announcement of additional measures and support for investment incentives. In support of advanced manufacturing we recommend efficient implementation of incentives programs that support innovative development, new market creation and leveraging advanced technologies. For example, in the Turkish incentive program, the majority of incentives focus on import substitution. However, innovative products are by definition new, and would not create import substitution but would create new market jobs and products critical to overall domestic economic growth.

2. Enabling environment – advanced manufacturing investments are impacted by a number of critical policy factors. The Council recommends both governments to focus on implementing measures to
    - Energy Policy – including ensuring reliable, competitive energy supply; fostering diversity of supply by encouraging alternative energy exploration and investment;

    - Regulatory Cooperation – ensuring regulatory measures are based on sound science and transparent, consultative practices. Government should work with industry and all interested stakeholders to ensure effective consultation and smart regulation, which meets high standards of protecting health and human safety while also ensuring economic competitiveness;

    - Intellectual Property Enforcement- ensuring effective means of protecting sensitive technology developments including fair treatment of dispute and enforcement cases; and

    - Workforce/Talent Development Programs - including student and professional exchange programs.

3. Global Value Chains – advanced manufacturing relies on strong, integrated global value chains, allowing access to necessary inputs and ensuring availability of all components along the supply chain, through to end product and customer markets. Turkey should eliminate import restrictions which disrupt value chains and burden manufacturing operations. Similarly, the US Government should encourage greater partnership and exports with Turkish partners by streamlining or simplifying export licensing requirements. Both governments should encourage identification of sectors or value chains that serve common national needs for development and potential publicly-leveraged investments. Additionally, Turkey should take to heart the commitments set out in its own B20 recommendations, encouraging a performance-based, life-cycle approach to infrastructure procurement, instead of one focused simply on low cost. This enhanced process will deliver better return

on investment by incentivizing high-tech, energy efficient, more sustainable infrastructure construction. Turkey can align its infrastructure priorities with implementation of the WTO Trade Facilitation Agreement (TFA) commitments.

4. Know-How Transfer: In order to increase the R&D on bio-pharmaceuticals, the collaboration between US and Turkey should be increased by means of scientist exchange between countries. As hands-on trainings and expert experience are very important in R&D in bio-pharmaceuticals, Turkish scientists should spend time in US companies increase their know-how and US scientists should be hosted in Turkish companies to share their experiences. The two governments should develop exchange programs in priority sectors such as bio-pharmaceuticals, robotics, advanced electronics and others.

US-Turkey Business Council, Session III

Topic 4.d.

Aviation and Aerospace

Aviation and aerospace contribute enormously to the economies of both the United States and Turkey and to our mutual security; however, in order to continue to realize the commercial opportunities that expanded air service brings, as well as the benefits of our status as NATO allies, we respectfully submit the following recommendations:

1. Create a Fly America Act Exception for Turkey

Some members of the U.S. Turkey Business Council believe that the U.S. Departments of State and Transportation should duly permit Turkish flag carriers to provide air service for non-military U.S. government-funded passenger travel under a Fly America Act exception. Civilian U.S. Government travellers are required by 49 USC 40118, commonly referred to as the "Fly America Act," to use United States air carrier service for all air travel and cargo transportation services funded by the United States Government. A notable exception to this requirement, as provided in the Act, is a) transportation provided under a bilateral or multilateral air transportation agreement to which the United States Government and the government of a foreign country are parties and which the Departments of State and Transportation have determined is consistent with the United States' goals for international aviation policy, and b) where the agreement provides for the exchange of rights or benefits of similar magnitude.

While the US-Turkey Open Skies Agreement is a bilateral agreement to which our governments are parties, the agreement when signed in 2000 and amended in 2012 did not provide for a Fly America Act exception for Turkish carriers, nor does it appear that consideration was given by the Departments of State and Transportation as to whether such an exception would be warranted. Much has changed in Turkish aviation since our Open Skies agreement was last amended; among other things, new nonstop passenger service to the United States has been added which has bolstered the economies of both countries. In the spirit of economic cooperation and consistent with the United States' goals for international aviation policy, the US-Turkey Business Council would respectfully ask for that consideration and approval to occur for non-military U.S. government travel.

The goals for US international aviation policy are set out in 49 USC 40101(e). In pertinent part, they include freedom of air carriers and foreign air carriers to maintain and increase their profitability in foreign air transportation, freedom of air carriers and foreign air carriers to offer prices that correspond to consumer demand, eliminating operational and marketing restrictions to the greatest extent possible, and increasing the number of nonstop United States gateway cities. Allowing Turkish carriers to provide Fly America Act passenger service would be consistent with these and other US aviation goals.

Today, US Government travellers and contractors regrettably have to fly inconvenient, circuitous routes when they fly between the United States and Turkey. Turkish Airlines is currently the only carrier in the world that provides nonstop service between our two countries. While code-sharing with U.S. carriers is permitted, the economics of code-sharing on GSA city-pair routes are far less desirable than being able to fly the routes independently. In order to meet consumer demand, increase profitability, knock down marketing restrictions, and maintain and increase service to the US, granting a Fly America Act exception to Turkish carriers for passenger service would be well justified. Indeed, the US Government has previously entered into open skies agreements with the European Union (2007), Australia (2008), Switzerland (2008) and Japan (2011) which granted Fly America Act exceptions which allow the flag carriers of those countries to provide service in certain circumstances. We hope that those precedents will be persuasive to the U.S. Departments of State and Transportation in granting similar authority to Turkey.

2. Create a Customs Preclearance Facility in Ataturk Airport

The U.S. Customs and Border Protection ("CBP") should move forward with negotiations to create a preclearance operation at Istanbul Ataturk Airport. Preclearance for Ataturk Airport will provide substantial benefits to the United States and Turkey through increased security, enriched customer experience and growth opportunities for airlines and airports.

Currently U.S. preclearance operations are located in 15 locations in six foreign countries and clear over 15.5 percent of all commercial air travelers arriving in the United States. Meeting the CBP's goal of increasing preclearance to 33 percent by 2024 will be bolstered by creating a preclearance operation in Istanbul. The Ataturk Airport is a global gateway serving over 41 million international fliers with direct flights to some of the largest U.S. cities.

Preclearance will build confidence and increase the number of visitors to and from Turkey and the United States by providing more direct flights, faster connections, streamlined security screening, higher passenger volumes, higher capacity, new route options and other economic benefits while implementing a "risk based" set of security protocols that will keep travels safe and secure. We urge the US government to prioritize an application from Turkey's Istanbul Ataturk Airport as a preclearance expansion location and to work creatively with airport and airline stakeholders to generate funding to pay for CBP's reimbursable costs.

3. Aerospace Industry Collaboration

As NATO allies, the United States and Turkey stand shoulder to shoulder to safeguard against global threats to the alliance. They do so through a long tradition of industrial cooperation in the aerospace sector. This collaboration has led to significant technological developments aimed at bolstering system interoperability to address next generation security threats. Increasing the ability of U.S. and Turkish companies to collaborate on research and development in the aerospace sector is critical to future technological advancement. This can be accomplished through the following:

• Establishing a bilateral industrial aerospace working group to identify new research and development priorities;

• Recommending bilateral Memoranda of Understanding to cooperate in identified areas; and

• Establishing mechanisms to promote public-private sector funding for new initiatives.

Recommendations:

1. Create a Fly America Act exception for Turkey (supported by some members of the Council)
2. Create a customs preclearance facility at Istanbul's Ataturk Airport
3. Increase the ability of U.S. and Turkish companies to collaborate on research and development in the aerospace sector

Turkey-U.S. Business Council, Session III

Topic 2.

Bilateral Sector Consultation Mechanism

Trade and investment disputes often arise unnecessarily because stakeholders are not aware of foreign market conditions or home market policies and practices. And once a dispute is formally invoked, not only the result but the process itself has distorting effects on markets, distorting free trade principle and creating uncertainty for Turkish and American business partners.

No matter what the outcome of the dispute may be; trade practices are often adversely affected for a lengthy period of time and not only cost the parties millions of dollars for legal and technical consultations but can artificially inflate pricing that adversely affects customers and consumers.

In this regard, we strongly believe that the creation by the US and Turkish Governments of a "consultation mechanism" between Turkish and American business representatives of select sectors, in which general market conditions are discussed, would lead to a better business practices and mitigate the risk of unnecessary transnational disputes arising.

Recommendation:

We propose, for future sessions of the Turkey-U.S. Business Council, that sector-based consultative working groups be established and that private sector membership in the Council be oriented to appointments that would include representatives of the designated sectors from each country.

The Sector Consultative Working Groups would receive and discuss, quarterly, government-generated trade and investment data in order to consider trends and conditions in the respective markets

The Sector Working Groups would discuss sector-wide problems and opportunities, with a particular focus on bilateral trade and investment, and based on these discussions, prepare and deliver reports to the Government Co-Chairs of the Council after each meeting of the relevant Working Group.

The Working Group reports could also help inform bilateral discussions held under the Trade and Investment Facilitation Agreement between the two countries as well as the Framework for Strategic Economic and Commercial Cooperation.

US-Turkey Business Council, Session III

Topic 5.b.

Cross-border Cooperation in Digital Commerce

Turkey and the United States are at different places in the digital economy spectrum, but both governments agree that the nurturing and development of the digital economy in their respective jurisdictions is a key challenge and priority for policy development. Few dispute the conclusion that digital commerce spurs economic growth by generating new job opportunities and consumer choice as well as optimizing efficiency and productivity in industrial sectors. But what is also becoming apparent to all global jurisdictions is that the digital economy often transcends national geographies, laws and regulations. The result has been a palpable increase in regulatory interest in web-based business, transnational data flows and processing, data rights, interoperability of systems, and cybersecurity. This includes increasing interest in taxation of digital economic activity, controls on the cross-border flow of data (particularly when it may contravene national data privacy laws), or when regulators fear that access to data may be impeded by its storage or processing outside its national boundaries.

Both the United States and Turkish governments have been enacting laws and regulations to address the new realities of digital commerce, but most would agree that the speed by which new technologies develop far outstrips most legislative and regulatory responses that seek to protect consumers, investors, or public health and safety – at least when the law or regulation is too narrowly drafted. And the opposite governance approach is equally harmful: Laws that offer government overly broad authority to restrain commercial, social, or industrial use of the internet will impede innovation and have a tendency to drive investment and economic development to other jurisdictions more amenable to digital commerce.

In light of the rapid pace of change in the digital economy, various policy proposals have been developed in order to help nourish digital commerce while also fulfilling certain key sovereign prerogatives. But in these formative stages of governmental response to digital innovations, the process of forming policy, or developing legislative and regulatory actions relating to the digital economy, is a foundational prerequisite to enlightened government action now and in the future. For this critical reason, the Council recommends that the Turkish and US governments form a digital economy working group under the auspices of the Framework for Strategic and Economic Cooperation (FSEC) which would meet semi-annually to evaluate legislative and regulatory actions in order to enhance greater cross-border digital solutions and cooperation. Key principles should guide the evaluations in order to promote the development of digital economic tools and participants:

Allow an open and unfragmented Internet to continue to flourish.

Adopt a regulatory perspective that considers the value of the entire communications and digital services ecosystem, and takes into account the public interest. This will foster a positive environment for the investment in the development and proliferation of capable and compelling digital networks, content, applications, and services. Recognizing that e-Commerce has served as an equalizer, allowing companies that offer the best products to succeed regardless of size and location, we hope both governments will adopt facilitative approaches to this engine of small business export growth.

Subscribe to a transparent regulatory process – To maximize its effectiveness, the regulatory process must be clearly understood by policymakers and industry. Policymakers would need to be open and forthcoming as to their domestic initiatives. It would need to establish well-defined timetables for the coordination of regulations and provide for a consistent means of consultation and dialogue with market participants and industry bodies, with reasonable timelines for market participants to respond to regulatory proposals.

Provide consumers with predictable levels of protection by evaluating regulatory frameworks for information and communications technologies , and digital services in order to apply consistent approaches. This is about finding the appropriate level of rules for consistently protecting consumer rights in the digital economy while at the same time fostering the development of new services and innovation for all. Careful and comprehensive analysis is required to determine which services are similar, competing and substitutable in today's rapidly changing and highly innovative markets.

Demonstrate transparent and responsible use of data. Consumer acceptance of new technologies also requires demonstration of transparency and responsible use of data. The nature of digital industry requires a careful balancing of privacy concerns in light of the risks posed both by misusing data and conversely, by restricting the use of data in a way that could affect the use of digital industry to improve the safety, efficiency, and function of critical infrastructure.

Promoting internationally-recognized cybersecurity standards. Digital commerce and industry is marked by fast-moving technological development. As such, the US and Turkish governments should promote mutual adherence to existing, voluntary cybersecurity frameworks as opposed to broad-scope cybersecurity legislation covering the digital economy and/or industry as a whole.

Clarify and rationalize tax and tariff treatment of digital/electronic commerce. This effort would seek to make valuation methodology more certain, tax rates less susceptible to arbitrage (affecting where new start-ups are sited for tax purposes), and tax liabilities and payments more balanced and in keeping with the guidelines established under the OECD Base Erosion Profit Shifting project.

Apply comprehensive, evidence-based impact analysis and an evaluation of competition and consumer protection laws across the entire economy, and favor the use of such broad tools to the creation of new sector specific regulations. With the objective to ensure consumer protection, while also providing incentives for investment and innovation by all parties, policymakers should be mindful of the unintended consequences of new regulations. Building in a comprehensive risk impact assessment is encouraged, where objectives are clearly defined, and risks fully analyzed in light of the objective. Wherever possible, reliance on existing general competition and consumer protection laws is preferable to new prescriptive regulations that could stifle investment and innovation.

Use competition law to evaluate product and geographic market definitions on a continuous basis. Rapidly evolving technologies and business models make prescriptive, *ex ante* regulations quickly obsolete. To the extent possible, a preference should be for the sophisticated application of competition law and economics as a less stifling and more efficient means by which to regulate innovative and technologically advanced business activity.

Timely – Identifying cross-border issues early in the regulatory drafting process would be an important advance compared with the existing ad-hoc frameworks where international dialogues occur too late to improve outcomes.

Aimed towards conflict mitigation – While important and useful dialogues do exist between regulators, at present there are no processes in cross-border regulation to systematically manage divergences in well-understood ways. The absence of such a formalized and regular mechanism potentially delays and even prevents countries from moving towards mutually satisfactory outcomes.

With the rapid growth of digital economy comes a unique opportunity for regulatory modernization – that is, updated rules that can adapt to new facts. These new and updated rules can promote investment, competition and innovation throughout the digital economy, while satisfying the sovereign prerogative to protect consumer interests and investor expectations no matter who is providing the service. Such a consultation mechanism will help strike the right level of protection for business and consumers while fostering competition, investment and innovation both domestically but also on a cross-border basis. Regulators are encouraged to engage meaningfully, on cross-border basis as well as with business throughout the policy-making process in establishing a digital economy.

The US and Turkish governments' actions should be coherent and coordinated to avoid dampening the prospects for mutual improvements in economic growth and productivity resulting from digital commerce and industry. A key positive role a bilateral working group can play is to recognize the critical nature of international data flows. The global digital economy relies on the interchange of data. The US and Turkish governments should promote the free flow of data across borders and ensure that any future, applicable trade agreement(s) address any existing barriers to data movement.

Recommendation:

The Council recommends that the Turkish and US governments form a digital economy working group under the auspices of the Framework for Strategic and Economic Cooperation (FSEC) which would meet semi-annually to evaluate legislative and regulatory actions in order to enhance greater cross-border digital solutions and cooperation

US-Turkey Business Council, Session III

Topic 8.

Energy

Turkey is one of the world's fastest growing economies and, according to US Energy Information Administration (EIA); its importance in the energy markets is increasing both as a regional energy transit hub and as an expanding consumer. Turkey's strategy for the electricity sector is mainly driven by the objectives of increasing energy security and domestic supplies in order to meet electricity demand growth Turkey is currently pursuing a privatization and power generation growth agenda, which includes a target of at least 30% of renewable resources by 2023. According to the Turkish Ministry of Energy and Natural Resources, in order for Turkey's supply to meet growing demand, over USD 120-130 billion of investment will be required in the next 10 years. Faced with ever-increasing demand and market liberalization activities, the Turkish electric industry is in need of new players and should therefore create a more competitive power market with incentives to attract foreign investments. Provided that Turkey continues to move towards a market-friendly environment with improvements in the regulatory framework, the following will foster investments and provide great opportunities for US firms who should proactively consider entering the Turkish market:

- ✓ The Turkish government estimates that Turkey needs $4.5 billion of annual investment in new power projects and $1 billion annually for power transmission to avoid an energy crisis.
- ✓ The Turkish government is also seeking a crash program to develop power plants, with an increased role for private and foreign investors, which is key to Turkey's continued economic growth.
- ✓ Turkey would like to attract a large infusion of foreign capital to increase its generating capacity.
- ✓ Electricity demand in Turkey has increased an average of 8.4% since 2007, the world's second highest growth rate after China.

According to recent studies of the Turkish government, the share of private sector installed capacity and electricity generation has reached more than 60%, and the government continues implementing new strategies in order to increase this share.

Energy Assessment:

1. It should be noted that Turkish energy sector is open to investments, although sometimes there are some concerns of investors due the lack of finance, difficulties

in accessing the soft loans, and sometimes length of bureaucratic process and political uncertainty. Significant steps have been taken to improve this situation as the incentives for the renewable energy in tariff support mechanism is under reconsideration for the period of 2020 and afterwards. The market conditions in the lower EU, and Turkish Banks exposure to conditions in Greece, Syria, Iraq and other troubling neighboring areas, have also effectively stalled access to capital for exporting U.S. goods to Turkey. Recent unfortunate incidents also affected this negatively.

2. There are currently a limited number of US-based companies that are actively investing in power generation and distribution projects overseas. The majority of players in the market are local market participants, though several of them have partnerships with multinational companies. While Turkey has showed commitment towards liberalization of the sector, the pace of reforms has not been as fast as expected to attract large number of foreign private investors.

3. According to the Turkish Government's 2009 Electricity Market and Security of Supply Strategy Paper, market design (the new balancing and settlement regime, day ahead market, capacity mechanisms, optional tendering mechanisms) and target for the electricity generation mix by 2023 have been identified:
   a. The main target is to provide 30% of total energy production from renewable energy by 2023 (20,000 MW wind, 600 MW geothermal and 5,000 MW solar installed capacities are targeted to be in operation by 2023)
   b. The whole economically usable existing hydropower potential of Turkey will be provided for generating electrical energy until 2023 (Pump hydroelectric storage, current and tidal energy is not included into this calculation).
   c. Introduction of nuclear power at least 5% of total installed capacity.
   d. Minimize losses in production, transmission, distribution through efficiency and reduced energy costs by building a competitive environment based on resource priorities of energy policy.
   e. Ensure supply security by encouraging diversity of resources, new technologies, and increased use of domestic and renewable resources in order to reduce dependency on energy imports.

4. The 2012 Turkish Renewable Energy Law (No: 6094) introduced new supporting mechanisms such as feed-in tariffs. Namely, 7.3 US cents per kWh for hydro and wind; 10.5 US cents per kWh for geothermal and 13.3 US cents per kWh for solar and biomass and will be provided if the investors opt to sell their electricity to trading companies. An additional support of 0.4 to 3.5 US cents per kWh will be provided to the plants utilizing domestically manufactured technical equipment. The Turkish Energy tariff rates are much higher than other European countries and there is a mix of tax and non-tax incentives offered by the Turkish government.

5. Grid modernization and distribution efficiency will be key objectives as Turkey seeks to capitalize on the recent privatization of distribution utilities and reduce losses. The average level of technical and non-technical electricity losses is about 17% in Turkey (around 10% in large cities in the Western part of the country, but can reach up to 60% in some Eastern regions of the country). These losses cost consumers considerably (approximately $0.05 per KWh) however, several steps are being taken to reduce them. The privatization of distribution companies is targeted to reduce the losses to 10% by 2015. Moreover, under the current single tariff, western provinces subsidize less developed eastern regions, but tariffs are expected to be replaced in the future with regional tariffs that will better reflect the cost of generating power. Turkish utilities are also expected to invest $9.3 billion in grid upgrades and other smart grid investments over the next five years.

Recommendations:

1. Energy Policy: The Turkish Government and industry, both energy producers and energy users, should work together to develop an integrated national strategy to support reliable, competitive supply of energy for public use, manufacturing and utilities. By developing an integrated strategy, Turkey can better target effective investment in energy that will deliver multiple value-add, including incentivizing manufacturing investment, supporting energy efficient access for consumers and creating new investment markets. Therefore, the Council recommends that the Turkish and US governments form energy policy working group with participation of the Council. This group would meet semi-annually to evaluate legislative and regulatory actions in order to achieve effective polices.

2. Grid Solutions: US smart grid companies have been competitive in the initial stages of market development even as European suppliers maintain the major presence in Turkey's electricity sector. It is recommended that the Turkish Government can promote greater competition in the smart grid sector by enacting relevant standards. With respect to budgetary limitations, the government could also work through cost-benefit analyses of grid solutions by leveraging the Council to facilitate technical workshops, feasibility studies and pilot projects between the electricity sector and US smart grid companies.

3. Integrated Renewable Energy Solutions and Bio-Fuels: Turkey can meet its domestic energy need with its renewable energy resources with the assistance of the US technologies/investments, decrease its energy dependency considerably and perhaps, it can become an energy exporting country. This requires coordinated effort to tap into the combination of renewable energy technologies such as solar, wind, various types of hydro renewable energy technologies and bio-fuels. By integrating these technologies is one or multiple locations in the country, Turkey may eliminate the majority need for foreign energy import to meet its energy.

Integrated renewable energy projects will require strong financial, resource and economic commitment from both governments. Renewable energy credits, or RECs, which are tradable commodities that represent the green attributes associated with energy generated from renewable energy resources, such as sunlight, wind, or hydro must be introduced to the Turkish energy sector. Appropriate legislation with strong government backing will grant development of these technologies rapidly in Turkey. It would be best that the approval processes for licensing, environmental analysis and other requirements should be expedited for such projects and the bottlenecks for delaying these projects should be eliminated. Some of these American renewable energy technologies are available to launch immediately and these are:

a. <u>Conventional Solar</u>: <u>Covering one half of one percent of the land area of Turkey with solar panels would be sufficient to generate all of the electricity used by the Turkish consumer.</u> Average annual solar radiation is 1521 kWh/(m^2yr) or 4.17 kWh/(m^2d). Some locations have even 30% higher than this average annual solar radiation. The annual average total insolation duration is 2740 hours (7.5 hours per day). The Turkish government is aiming for at least 5 gigawatts (GW) by 2023. Turkish solar energy potential is one of the best in Europe and it should be supported with more incentives:
   (i) Such incentives should include annual escalation clauses to the current feed-in-tariff rate of US$0.133 per kilowatt. For example, 2% annual escalation is very common in the United States.
   (ii) Predetermined tax breaks (labor, land, etc.) to investors for a certain period should be offered. (Already being applied).
   (iii) At this time, systems producing up to 1-megawatt (MW) of energy do not need a license, and are eligible for payments of US$0.133 per kilowatt-hour (additional $0.067 per kwh for usage of domestic components) for 10 years when plugged into the national grid. Expanding years of service from 10 years to 20, perhaps 25 years for projects over (including) 1MW may encourage both domestic and foreign investors to expand their solar energy operations rapidly in Turkey.
   (iv) Investment, land, employment and tax credits should be offered to rich solar radiation regions such as Central Anatolia and Southeast regions in Turkey.
   (v) It would be beneficial for Turkey to implement SREC (Solar Renewable Energy Certificate/Credit) markets. In SREC markets, the Renewable Portfolio Standard (RPS) requires electricity suppliers (namely utilities) to secure a portion of their electricity from solar generators. The SREC program provides a means for Solar Renewable Energy Certificates (SRECs) to be created for every megawatt-hour of solar electricity created. The SREC is sold separately from the electricity and

represents the "solar" aspect of the electricity that was produced. The value of an SREC is determined by the market subject to supply and demand constraints. SRECs can be sold to electricity suppliers needing to meet their solar RPS requirement. The market is typically capped by a fine or solar alternative compliance payment (SACP) paid by any electricity suppliers for every SREC they fall short of the requirement.

SREC (Solar Renewable Energy Certificates/Credits) FACTS:

a. 1 SREC = 1 Mwh of solar electricity
b. A 10 kW facility generates around 12 SRECs annually
c. SRECs are sold separately from the electricity
d. Value is determined by market supply and demand mechanics
e. Facilities must be certified by government entity to sell SRECs.

b. Concentrated Solar Power (CSP) Systems: Technological developments in concentrated solar power systems now have the potential to reach electricity costs under 6-7 cents/kilowatt-hour in small projects. Because of its ability to store large amounts of solar heat for non-daytime use, coupled with occasional backup fuel, the these type of plants can provide firm, flexible, dispatchable power around the clock. CSPs can be sized as small as 400 kWe (kilowatts, for roughly 80-100 US homes) to provide distributed power adjacent to the load while also providing waste heat from the turbines in combined heat and power (CHP) applications. It would be beneficial for solar rich Turkey to provide similar encouragements for this technology as the conventional solar.

c. Wind: Wind power in Turkey is gradually expanding in capacity, mainly in the Aegean and Marmara regions. The Central Anatolia and Southeast portions of the country should be included into the expansion of wind energy in Turkey. Turkey has about 5 GW of installed capacity. The Turkish government has a target of increasing Turkey's wind capacity 20 GW by 2023. Several US Wind manufacturers have interest in joint venture projects; however, lack of investment funds, low feed-in-tariff incentives (even with bonus feed-in-tariff which is $0.05 per kwh), no escalation clauses for feed-in-tariff rates, bureaucratic barriers and excessive, low cost, but ordinary and shoddy competition from Europeans and Asians for wind power discourages the American firms to move forward and dedicate funds to invest in Turkey. A number of large projects may be implemented both in the Central and Southeast Anatolia if prior hurdles are resolved. Similar to SREC’s above, renewable energy credits, or RECs, should be offered for wind power. It is important to note that long term sustainable policies and better financing conditions are needed to facilitate investments.

d. <u>Pump Hydroelectric Storage</u>: Pumped hydroelectric storage facilities store energy in the form of water in an upper reservoir, pumped from another reservoir at a lower elevation. During periods of high electricity demand, power is generated by releasing the stored water through turbines in the same manner as a conventional hydropower station. During periods of low demand (usually nights or weekends when electricity is also lower cost), the upper reservoir is recharged by using lower-cost electricity from the grid or renewable energy sources to pump the water back to the upper reservoir. <u>Combination of this technology (pump hydroelectric storage) with solar and wind renewable energy will allow a non-stop generation without any conventional energy sources.</u> Pump Hydroelectric Storage is widely used both in US and Europe since early 1920s. In Turkey, it has been studied in Kayseri-Yahyalı region. This technology may be applied to some of the dams which have ownership of both upper and lower streams/reservoirs (specifically government managed sites) in Turkey. We believe that salt water pump hydroelectric storage systems may be more beneficial to build in Turkey since high elevated areas are closely approximated to the sea. The 30 MW Yanbu project in Okinawa, Japan was the first demonstration of seawater pumped storage. A 300 MW seawater-based project has recently been proposed on Lanai, Hawaii, USA and several seawater-based projects have recently been proposed in Ireland and Chile. When this technology is used in combination with solar and wind energy technologies, it provides a more efficient process and usefully smooths out the variability of energy captured from all sources. For example, in northern Chile, the Espejo de Tarapacá power project combines solar and hydroelectric resources. The project takes advantage of the unique geographic characteristics of the Atacama Desert in order to build a 300 MW pumped storage hydroelectric plant that uses the Pacific Ocean as its lower reservoir and an existing natural concavity as its upper reservoir, and a 600 MW solar photovoltaic plant that is located in the region with one of the highest solar irradiation in the world. A similar condition exists in Central Anatolia and all three renewable energy technologies may be used to achieve the desired result. This application of these technologies (Saltwater/Seawater Pump Hydroelectric Storage, Wind and Solar) may also help sustaining ecosystem at Tuz and Burdur salt lakes in Turkey which are environmentally threatened and went through drastic drying as a result of climate change. Same combination, in unsalted water form, can be applied to Southeast Anatolia near Euphrates and Tigris rivers, and Van lake. At this time there are no Turkish legislation regarding this technology. We would be happy to assist the Turkish government to place appropriate legislation to implement this technology.

e. <u>Current/Tidal</u>: Marine current power is a form of marine energy obtained from harnessing of the kinetic energy of marine currents. UK, Ireland and

China are looking into taking advantage of this technology even though it is more expensive than other conventional renewable energy options. Turkey has a unique source for this technology. Two way currents in Turkish straits may be able to satisfy all Istanbul's current and future energy demand. This requires preparation of appropriate legislation, monetary incentives, and high feed-in-tariffs for this technology now to achieve the desired competitive rates in the near future.

f. Bio-Fuels: Consumption of biofuels is projected to grow to $105.4 billion by 2018 worldwide. Somewhat in response to this projection, the Turkish Government has adopted a zero tax policy to ease the process for launching bioenergy projects. With its strategic location and its zero percent customs duty policy with the European Union, Turkey presents a great opportunity for U.S. firms to take advantage of an effectuated EU 2020 sustainable energy target while diminishing the special tariffs for US producers. One of the main ingredients to produce bio fuel/ethanol is sugar and currently Turkey is the 3rd largest producer of sugar beet in Europe and 4th largest in the World. It is important to note that the EU has higher tariffs for U.S. produced biofuel, including the production performed in Canada. Since Turkey is part of the European Customs Union, there will be zero tax for any sales to Europe from and to Turkey. There is already a pipe line between Turkey and the EU which presents the most cost effective transportation channel. At the same time, the EU has mandated that all of its partners consume diesel labeled "B20" which contains 20% biodiesel. Even though such advantages and incentives are available to produce bio-fuels in Turkey, no US based bio-fuel producers decided to participate and set up a facility in Turkey. US bio-fuels firms choose to invest heavily in Brazil due to the Brazilian governments incentives such as land, tax, investment funding and abundance of raw material (sugar cane) for the process. We believe that US bio-fuel producers need to notice the note-worthy potential that Turkey offers. This could only be achieved by the Turkish governments direct investment guarantee, US government's introduction, mediation and assurance, in addition to further incentives from Turkish government such as land allocation, tax incentives, build-out credits, and incentives to farmers to grow sugar beet, etc. Turkey may be a major hub for bio-fuels in the region due to its central location connecting Europe, Asia and Africa. The Council would be a catalyst to this process to achieve the desired results. Therefore, we recommend forming an American-Turkish biofuels joint working group with industry representatives, government leaders and the council members, meeting periodically, establishing relationships and working towards achieving making Turkey a biofuel hub with the American partnership. Producing Bio-Fuels (Ethanol) in Turkey with US technologies would be tremendously beneficial to both countries.

g. Lignite: Turkey has note-worthy lignite reserves and would like to utilize these reserves for its energy security. Moreover, Thermal plants (with lignite) increase reliability of the supply of electricity during periods of low hydrology or low availability of renewable sources, as well as contribute to guarantee low tariffs. The security of supply and price advantage of lignite-fired power plants, and their contribution to reduce foreign trade deficit justify their utilization for Turkey. Appealing public-private partnership structures should be introduced in order to make lignite projects fundamentally attractive and financeable without conflicting with the liberalization efforts. It would be beneficial for Turkey to privatize some the lignite fields to efficiently harness the reserves. Moreover, U.S. Clean Coal Technologies may be implemented to the Turkish thermal plants. These technologies can help meet the regulatory challenges by incorporating pollution control into a portfolio of cost-effective regulatory compliance options for conventional and developmental coal-fired power plants.

h. Technology Transfer: A number of small to mid-sized U.S Energy firms are interested in setting up manufacturing facilities if their technologies are used fully in Turkey. They are seeking local partners whom would work with them, invest in their technology and market their technology not only in Turkey, but also in the surrounding region. Any incentives given by the governments to the local firms for this type of partnership would certainly accelerate these types of projects in Turkey.

4. Legal Framework: Due to the necessary large capital investments, investors usually prefer to invest in markets with well-established legal framework, transparent legal system, stable political climate and competitive tariff rates with annual escalation clauses. Appropriate adjustments in legal structure, building confidence in legal and business systems, competitive tariff rates with steady escalation clauses and modifications to speed up licensing procedures will attract significant investment opportunities to Turkey. In the short to medium term, until these markets are fully liberalized, the Turkish Government should consider some interim measures to address the financing challenge. Additionally, Renewable Energy Certificates/Credits must be structured within the legal framework, so that it encourages energy distributors to consume a portion of their energy needs from renewable energy sources. Furthermore, gradually increasing feed-in-tariff rates may not be popular; however, the annual rate increase helps the country in two ways:

a. It makes country attractive to the energy investors,
b. It also encourages the market to invest in network improvements and savings technologies.

5. Price Subsidies: A gradual solution should be implemented to avoid last minute required sudden increase which may lead to opposition and instability.

6. Grants and Incentives: Turkish authorities may give financial grants, loans and worthwhile incentives such as investment matches, land allocation, tax incentives. Since there are no customs/tariffs to import solar panels from Turkey to US, the Turkish government should give export credits for solar industry within the anti-dumping limits to encourage the exportation of high-quality solar products to US. In addition, Turkey should support development of alternative energies by incentivizing and encouraging local investment in alternative energy production – including manufacturing of wind blades, solar panels, turbine parts. Increasing the market for alternative energy will have positive corollary impacts in driving investment in the production of necessary goods, technologies and services for alternative energy provision. We value the Turkish Ministry of Economy's new project based incentive program, which includes renewable energy technologies as a priority areas, and are looking forward to the finalization of the legal framework with secondary legislation to operationalize the incentive program

7. Long Term Contracts: The lack of capacity payment mechanism for security of supply and the merchant risk nature of the Turkish power generation market make it difficult to attract US and global investors. In particular, the absence of long-term contracts and power purchase agreements creates uncertainty in the market. The Transition Period Contracts ("TPCs") prevent Distribution Companies from evolving to long-term power purchase agreements, and therefore are hindering the bankability of new greenfield investments. Immediate termination of the TPCs and 20-25 year contracts strongly are recommended in order to improve efficiency and promote competition in the market.

8. Investment Guarantees and Government Sponsored Projects: An investment guarantee is a special provision that is designed to protect investors from incurring losses as the result of an investment opportunity that carries risk. A guarantee of this type is not available with every type of investment, but is relatively common when it comes to real estate and construction projects. The purpose of the investment guarantee is to protect the interests of the investor in the event that circumstances or events should arise that could not be foreseen, and are considered outside the scope of typical and known risk factors. Protection of this nature is sometimes extended through insurance coverage associated with foreign investments, especially if the investment involves operations within a nation that is currently undergoing significant political turmoil. It is recommended that the

Turkish government should offer investment guarantees and make arrangements to cover any insurance costs of any American investor for renewable energy and energy efficiency projects to counter the recent political concerns. An addition, when an investors come with large renewable energy projects, the Turkish government also should sponsor such projects financially after evaluation & allow investor to payback the investment to the government at a predetermined time period.

9. Financing: Both Turkish and U.S. banks, as well as multilaterals, should work together to help finance some of the private sector projects and should provide easy access to export loans. Additionally, both governments may provide guarantees to private banks to make funds available for capital and export projects. Currently EXIM Bank provides this service; however, it is very limited. The US and Turkish governments should work together to promote greater access to financing for energy, energy efficiency and other infrastructure projects in Turkey. On the US side, OPIC's carbon cap – which limits its participation in supporting thermal projects to approximately 400MG globally – should be re-evaluated for countries like Turkey which are eligible for preferred duty rates (GSP) and contribute a small percentage to global emissions or where there are imperatives for security of supply and affordability of the power generation. EXIM Bank should also re-evaluate its policies to make it more available and attractive in Turkey, including US content requirements in line with OECD averages, making MARAD (Maritime Administration) and economic impact requirements less burdensome and promoting partnerships with Turkish Engineering, Procurement and Construction companies (EPCs) in the region through automatic co-financing to include their content for deals in other countries. On the Turkish side, the delays in liberalization of electricity and gas markets constitute a major challenge to the financing and development of large scale energy projects. The liberalization process on electric sector has been completed. 21 distribution regions have already been privatized and Energy Exchange Istanbul (EXIST) has been established and it operates smoothly. On the gas sector, liberalization process is still going on. The Law Nr. 4646 is in the parliament for approval. This law includes unbundling of BOTAS, tariff settlements, regulations on gas import-export, etc. In the short to medium term, until these markets are fully liberalized, the Turkish Government should consider some interim measures to address the financing challenge. The government of Turkey and the World Bank is running a project together with the GEF loan to promote energy efficiency through Turkish State Banks. One solution is Turkish State Banks' support to the financing of larger scale projects and minimizes risk for the investors by providing investment guarantees. The government of Turkey has succeeded to complete large scale projects such as the 3rd bridge over the Bosporus, a bridge over the Marmara Bay as well as the connecting highways, by means of a new type of financing. There are and will be more projects which are being built in the same way. Therefore, Turkeys' experience in financing such projects is quite valuable and can be utilized especially for any types of large energy projects. Moreover, new incentive programs have been

announced recently for numerous projects. Therefore, all types of energy projects and their financing methods have to be discussed with the responsible government officials.

CONCLUSION:

There is tremendous potential for US and Turkish public and private sectors to cooperate in the energy sector and share best practices for restructuring the Turkish market to reduce risk and promote mutually beneficial investments.

US-Turkey Business Council, Session III

Topic 5.c.

Government Procurement

Introduction

Effective public government procurement practices reduce contracting costs, improve value, and support economic development. Public procurement is time-consuming and can require complex procedures. There are risks of errors and of deliberate abuse of the process for personal gain by officials or by contractors and suppliers. Issues in procurement can lead to delays, poor quality or lack of value-for-money and can undermine the trust of citizens in their government.

Good procurement practices include many of the same themes as good governance, especially transparency and accountability. Good governance in procurement brings immediate benefits in resource savings and improved quality of works and services. In turn, establishing and demonstrating the benefits of good procurement practice results in improved administrative capacity and better understanding of the essential building blocks of good governance.

For countries with developing economies like Turkey, effective public procurement can help build important national capacity, spur technological development, generate local employment and create opportunities for vulnerable members of society or disadvantaged demographic or geographical sectors. On the contrary, failure to institute and adhere to effective government procurement practices can sap overall trust in government and undermine a country's economy.

The following are considered to be key principles of any procurement policy or system: transparency, integrity, economic viability, openness, fairness, competition and accountability.

Comparing the US and Turkey

United States Public Procurement - Public procurement in the US is governed by the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget which plays the central role in instituting US federal policies and practices. The OFPP shapes the policies and practices that federal agencies use to acquire the goods and services they need to carry out their responsibilities. Two statutes are the foundation for modern federal procurement: Federal Property and Administrative Services Act of 1949 (41 USC.) (FPASA) and the Armed Services Procurement Act of 1949 (10 USC.) (ASPA). The Federal Acquisition Regulation (FAR) establishes public procurement procedures.

With few exceptions, US public tenders are publicly listed on the Federal Business Opportunities website. Aside from a few common business registration requirements, foreign companies are eligible to compete for almost all contracts on an even playing field with US companies. The US federal procurement system is also subject to numerous statutes and international agreements. For example, the US became a party to the World Trade Organization Government Procurement Agreement on 1 January 1996 (this agreement seeks to ensure open, fair and transparent conditions of competition in the government procurement markets).

Turkey Public Procurement - Public procurements in Turkey play a large role in the overall Turkish economy, making up an estimated 10% of GDP. Public procurement law in Turkey is set forth in the Public Procurement Law of Turkey dated January 2012. Turkey is an *observer* to the WTO Government Procurement Agreement. Turkey signed a customs union with the EU in 1995, but the agreement does not address government procurement.

The Public Procurement Authority of Turkey is the responsible agency for administering government procurement procedures. The Public Procurement Authority openly announces most public tenders and has a website in both Turkish and English (contract announcements are made in Turkish). The Public Procurement Authority's e-Procurement system allows interested parties to download and view tender documents free of charge. The Public Procurement Authority also offers a tender award appeals process. Turkey's procurement law generally requires competitive bidding procedures in the public sector. It also sets minimum bidding thresholds under which foreign companies are prohibited from bidding and stipulates a price advantage of up to 15% for domestic companies. The Public Procurement law stipulates “the economically most advantageous tender shall be awarded with the contract,” but also states that “In cases where it is not possible to determine the economically most advantageous tender on the basis of the lowest price only, the economically most advantageous tender shall be determined by taking into account the factors other than price such as operation and maintenance costs, cost-effectiveness, productivity, quality and technical merit. In tender proceedings where the economically most advantageous tenders shall be determined by taking into account the other factors in addition to the price, these factors must be stated in the tender documents and where possible, must be expressed in monetary values. Relative weights shall be determined in tender documents for the factors which cannot be expressed in monetary values.” Thus Turkey’s Public Procurement Law seems to have the benefit of avoiding the trap of having to award a contract solely on lowest cost criteria.

Recommendations:

Support global best practices in public contracting—seeding innovation. While attempting to ensure stringent and transparent application of government procurements laws and procedures, government agencies charged with implementing contracting also run the risk of choking off competition, innovation, and quality.

- **Seek to avoid overly rigorous pre-bidding qualification requirements that tend to create roadblocks that limit competitiveness and prevent Small and Medium Enterprises (which often offer the most innovative solutions).**

- Excessively large projects result in only a few contractors being cable of submitting tenders, thus stymieing competition and innovation. This is especially true in the information services arena. **Even though it requires more work on the part of government contracting authorities, breaking down projects into smaller work packages can create a level playing field and broaden the number of companies that can take part in a project and foster more innovative solutions.**

- Government laws and procedures have a hard time keeping up with the pace of technology. **To seek more agile solutions, governments can engage in expanded pre-bid dialogue with prospective solution providers to learn more about the state of technology and help contractors design the best possible product or solution. Public tenders can be a way of attracting international technology that can then be made part of local solutions, thus spurring potential development.**

US-Turkey Business Council, Session III

Topic 4.c.

Establishment of Humanitarian Industrial Zones Supported by Duty-Free Access to the U.S. and Other Participating Consumer Markets

The ongoing economic contraction in Turkey's main export markets combined with intensified geopolitical risks in the region have made it necessary to develop effective policies for Turkish export strategy.

Among many surrounding risks and challenges, the Syrian crisis clearly stands out as the major political risk, not only for Turkey and Syria but also for the region as a whole. Considering the fact that the number of refugees is approaching 5 million and the problem is likely to continue at least in the near future. Providing life-supporting jobs for Syrian refugees living in harsh conditions in the region has the potential to alleviate both political and economic costs for all of the stakeholder countries.

As mentioned above, in addition to the Syria problem and the related terrorist activities that it is causing, the economic slowdown on a global scale has made the situation even worse for Turkish exporters. Within this perspective, it is clear that the United States economy, with its huge domestic market and import demand receives deserved attention. Likewise, other significant consumer markets, where there is an interest in helping the refugees and the host countries bearing the financial and social burden of caring for them, can be viable stakeholders in this program.

Based on the above observations and realities, it is important to design a win-win policy and program framework that will benefit all the stakeholders in the region from both a political and economic perspective. Providing employment opportunities for Syrian refugees within Turkey and other countries in the region in which large Syrian refugee populations are being supported has the potential to improve both economic outcomes and mitigate political risks.

For this purpose, establishing a humanitarian shelter for Syrian refugees, which will also generate an economic value added can reduce both the high level of unemployment among the refugees and decrease the risk of increasing terrorism on a global scale.

Within this context, setting humanitarian purposes as its focal point, the Council recommends establishing an industrial zone that will operate within the context of a (duty-free) preferential trade agreement with the United States and other similarly disposed consuming markets stands out as an important policy action to pursue.

While such an agreement will provide employment opportunities for refugees and improve their living standards, it will also reduce the financial burden on all of the regional stakeholder countries. The main pillars of the program can be stated as follows:

- The employment of Syrian refugees at each facility operating under this program should not be less than 20%.
- For garment production (an example of an easily established production capacity that could quickly employ refugees) the cotton to be used in these Humanitarian Industrial Zones should be imported from the US, especially, in the case of Turkey, without the anti-dumping duty.
- Duty free access to the US and other participating consumer markets for exports from such Zones should be guaranteed.
- In case a peaceful and a secure environment within Syria is established, the agreement should allow for the above mentioned industrial zones to be established also in Syria.
- The project should be designed to contribute to the peace-making process in the region as well as termination of Syrian refugee migration to the western countries.

As a supporting argument of the above-mentioned characteristics, it is worth considering the humanitarian and peace-building nature of existing QIZs of the US. These projects have been successful particularly in establishing a stable political, economic and social environment in the regions where they are constructed.

As an important side benefit, on the condition that one or more preferential trade agreements are reached, it is clear that bilateral trade between Turkey and the US will improve.

Another important benefit of establishing the above-mentioned humanitarian industrial zones in the region will be to reduce the regional disparities by promoting employment and improving the investment climate. In other words, such a policy will also serve the purpose of regional development, which is a policy priority for all governments.

Recommendation:

The Council recommends establishing an industrial zone that will operate within the context of a (duty-free) preferential trade agreement with the United States and other similarly disposed consuming markets stands out as an important policy action to pursue.

Turkey-U.S. Business Council, Session III

Topic 6.

Trade and investment in US-Turkey intellectual property (IP), information technology and communications (IT/C)

The US is the undisputed leader in information technology/communications and bio-pharmaceuticals.

Turkey, with its large, young, educated workforce, is one of the most promising markets for the industry's expansion of the digital economy in Europe, the CIS and the Middle East, with the potential to become a regional hub for US IT/C and other digitally-enabled companies. This potential, however, has not been fully utilized due to several impediments to growth in the sector in Turkey.

The Government of Turkey has made significant investments in its healthcare sector over the past decade, resulting in impressive improvements in health outcomes. However, it's ranking on key pharmaceutical and healthcare indicators still barely meets the global average. Turkey is the 16th largest pharmaceutical market in the world, but ranks only 35th in share of pharmaceutical R&D and manufacturing; it also lags compared to other similar sized markets in FDI for R&D and manufacturing.

To position itself as a major player in the life sciences, especially in pharmaceuticals, and to secure a greater share of global pharmaceutical investments, Turkey should consider recalibrating its policies especially in the area of intellectual property, a key component of the eco-system of innovation needed to create and support the life sciences industry.

The following are steps which the Turkish government could take to encourage increased bilateral trade and investment to develop Turkey's IP and IT/C capacity to host companies and operations that depend on internet and on other forms of advanced information and communications technologies:

1. IP and Data Protection

Draft "Law on Industrial Property"

As has been well-publicized, Turkey has suffered from a chronic weakness in the protection of intellectual property rights, particularly for trademarks, patents and industrial designs from the time these rights were first regulated by various decrees (*Kanun Hükmünde Kararname*) adopted in 1995.

Turkey has now prepared a single, comprehensive law to replace Turkey's patchwork of decrees governing the intellectual property. The final draft of the "Law on Industrial Property" was submitted on April 6, 2016 to the Turkish Parliament. The draft would substantially strengthen the protection of intellectual property rights in Turkey but also needs to address some outstanding important IP issues.

For example, while some of the draft provisions represent welcome advances in aligning Turkey's intellectual property laws and practices with the European Convention on Patents (EPC) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the draft law lacks provisions for patent term extensions to balance what appears to be intended as a Bolar exception. Article 87 may be interpreted as excluding from patent rights the right to exclude others from certain activity. One such activity is experimental acts related to registration of a medicine and relevant tests and experiments in Art. 87(4)(c). This cutback in the property right of a patent must be balanced with similar provisions that provide patent term extension (or supplemental certificate) for a patent term that was lost during the time that a medicine was undergoing testing and review for regulatory approval. This is a significant gap in Turkey's law, which we believe is the sole member of the European Patent Conventions (EPC) lacking such provisions.

Art. 87(4)(c) enumerates another apparent exclusion from the patent right related to medicines prepared without mass production. While certain exceptions from patent infringement may be available when they involve the treatment of patients, the current language, which refers to the activity of pharmacies rather than an individual pharmacist and suggests that products that are not under "mass production" would be excluded, is ambiguous presents a risk that the provision will be used for circumventing the rights of patent holders.

Art. 135(2) suggests that for patents that are important to public health, the government is mandated to "make an offer" for the invention. Although this provision suggests that no compulsory license may be granted, but only an offer made, the provision is part of the section on compulsory licensing; this may create some ambiguity. Compulsory licensing for patents related to medicines should only be utilized as an extreme measure to address matters of public health urgencies or emergencies.

Article 153, which is directed to enforcement matters, lacks provisions to enable the granting of preliminary injunctions in advance of a final ruling to protect the rights of a patent holder.

Regulatory test data for biopharmaceuticals

In addition to the IP issues outlined above, Turkey should also take steps to improve protection of regulatory test data for biopharmaceuticals. For example, Turkey does not provide an effective mechanism for resolving patent disputes before the marketing of follow-on products. Further, Turkey inappropriately ties the regulatory data protection period (RDP) to the patent term, and the lack of RDP for combination products is still an unresolved issue. Finally, the combination of an RDP term that starts with first marketing authorization in the European Union and regulatory approvals delays results in a severe restriction on the actual period of RDP provided. Consistent with Turkey's international obligations, the RDP term should begin when a product receives marketing authorization in Turkey. Turkey should clarify in its laws that RDP applies to all medicines, including biologics.

Notice and Takedown Procedures for Copyright Infringement

The notice and takedown procedure for copyright infringement on the internet is vague and, in practice, not applied consistently. Although the Law on Intellectual and Artistic Works specifies the procedure for notice and takedown for online copyright infringement, intellectual property courts are often unfamiliar with these rules. Additionally, despite detailed rules in the Internet Law on notice and takedown, judges do not uniformly consider infringement of intellectual property rights to be a violation of personal rights and, as a result, the rules are often not applied.

Implementing Regulations for New Data Protection Law

Turkey enacted its comprehensive Data Protection Law on April 7, 2016. Secondary implementing regulations are expected to be issued by April 7, 2017, and the Data Protection Authority established by October 7, 2016.

Recommendation:

The Council recommends that the Turkish government obtain input from leading players in multiple sectors, public institutions and academics during the regulation drafting process. We also recommend that the Turkish government take steps to ensure that the Data Protection Authority is formed as an independent, autonomous authority.

e-Commerce Law and Regulations

Turkey enacted the e-Commerce Law and adopted its secondary regulations in 2015. Although we welcome this development, some of the rules are not consistent with international standards and practices, such as those found in the EU and US. This creates barriers to entry into the Turkish market and to limits the ability of US companies to target Turkish consumers.

Turkish Collecting Societies

One of the major barriers to market entry for providers of online content in Turkey is the strong position of Turkish collecting societies, which have the exclusive right to collect royalties on behalf of artwork owners and publishers. Their bargaining position is especially apparent where internet content providers negotiate royalties for content delivered into Turkey.

2. Cross-Border Data Flows

The growth of the digital economy is being significantly shaped by the shift to cloud computing and the wealth of new applications and services now being delivered over the internet thanks to cloud computing technologies. For cloud computing to be technically and economically viable, a global data flow between data centers both inside and outside Turkey is essential. Recent legislative developments in Turkey have allowed businesses to move some of their operations onto the internet and to develop creative electronic services, such as electronic invoicing, electronic general assembly and executive board meetings, electronic bookkeeping, and new payment and e-money services. The potential of these services and Turkey's ability to maximize the benefit is currently limited as regulatory barriers in certain sectors in Turkey, such as payment systems, prevent effective management of international data flows.

3. High-Speed Broadband Access

The unequal access to and utilization of information and communication technologies is a significant problem in Turkey. To overcome this "digital divide", competition at network and service levels and targeted subsidies could help to connect underserved areas where the market fails to do so.

4. Tax and Customs

Permanent Establishments

Given the extraterritorial nature of IT/C services, the issue of taxable "permanent establishments" in Turkey is particularly important for the sector. Turkish law uses a "fixed place of business" standard which is not sufficiently flexible to handle the IT/C services, and leaves Turkey without an objective legal basis to assess PE questions for this sector. This approach creates an environment of uncertainty and leads to subjective enforcement that discourages new market entry. In addition, while Turkey's double tax treaties include the international standard definition of permanent establishment, Turkey uses a more expansive interpretation than most other countries.

VAT and SCT on Certain Electronic Devices

Equipment and broadband penetration are prerequisites to the development of a strong and vibrant IT/C sector. Broadband penetration can be boosted by increasing penetration rates for IT equipment such as computers and smart phones. Improved broadband penetration could help increase tax revenues from related services, and so would be a useful economic stimulus for Turkey. IT equipment is not included in the list of "reduced or zero-rated" goods and services under the Turkish VAT law. Expanding the reduced/zero-rated list to include this equipment would encourage IT investment and market entry in Turkey.

Recommendations:

The Council recommends that the Turkish government accelerate enactment of the draft "Law on Industrial Property", with the proposed revisions specified above, to establish a workable legal framework, provide a greater protection of intellectual and industrial property rights consistent with international standards with a few important changes to the law.

The Council recommends that the Turkish government seek to implement a regulatory data protection period (RDP) framework that implements its existing international commitments.

The Council also recommends increasing R&D on biopharmaceuticals, collaboration between US and Turkey should be increased by means of scientist exchange between countries. As hands-on-training and expert experience is very important in R&D in bio-pharmaceuticals, Turkish scientists should spend time in US companies for hands-on-training to increase their know-how and US scientists should be hosted in Turkish companies to share their experience in biopharmaceutical production. Cross-collaboration between US and Turkey and developing new biopharmaceuticals should also be supported.

The Council recommends that the Turkish government establish clear and comprehensive rules for online copyright infringement remedies, and educate judges on the proper application of the these rules.

The Council recommends that the Turkish government align its e-commerce rules with international standards.

The Council recommends that the Turkish government limit the right of Turkish collecting societies to negotiate royalties for the online use, sale and distribution of content and, specifically, that collecting societies be required to set royalties on non-discriminatory terms and publish the royalties charged.

The Council recommends that the regulatory barriers to the international transfer of data and its storage be removed to support the development and use of cloud computing services in Turkey and to enable Turkey to become a hub for not only the provision of such services but also for business operations using these services.

The Council recommends that the Turkish government create tools to promote further investment in Turkey's next-generation "backbone" and access communications networks with national and regional tax incentives and exemptions, at least at the early stages of operation.

The Council recommends that the Turkish government adopt legislative changes to provide an internationally accepted objective standard for assessing the existence of PEs for all companies, including those in the IT/C sector, that it adheres more strictly to OECD international standards of interpretation, and that it adopt clear objective guidance on the attribution of profits to PEs consistent with these standards. The Council also recommends that the Turkish government continue and expand local incentives available to all companies to facilitate development of intellectual property and technology skills in the Turkish market.

The Council recommends that the Turkish government add IT equipment such as computers and smart phones to the list of reduced or zero-rated CAT and SCT goods.

US-Turkey Business Council, Session III

Topic 4.b.

Joint US/Turkish Governmental Advocacy Process for Bilateral Business Pursuits in Third Countries

Background:

On behalf of the US Government, the US Department of Commerce considers applications made to its Advocacy Center for official US Government advocacy (support and assistance in promoting specific pursuits). Following is the Commerce Department's Advocacy Center policy on content of national origin:

1. The overall basis for determining the nature and extent of USG support for a viable bid or proposal in connection with an international transaction shall be the U.S. national interest. A U.S. national interest determination will first weigh and assess the foreseeable, material benefits to the U.S. economy that may potentially be derived from a transaction and assess the merit of a request for USG support of any bid or proposal made in connection with the transaction.

2. A bid or proposal in which the U.S. content of the goods or services to be provided exceeds 50 percent of the total value (including material, equipment and labor) shall be presumed to be in the U.S. national interest.

3. In cases where the U.S. content does not exceed 50 percent, the following factors, in addition to the 50 percent U.S. content threshold, may be considered in determining whether USG support of a bid or proposal is in the U.S. national interest:

* the bid or proposal includes a significant dollar value of U.S. goods or services exports;

* the foreign project or procurement opportunity provides a substantial probability of future exports of U.S. goods or services;

* the foreign project or procurement opportunity provides a substantial benefit to the U.S. industrial base or technological capabilities in the industry or industries concerned;

* the potential U.S. export content for the foreign project or procurement opportunity is limited by restrictions or conditions imposed by the terms of the project or procurement opportunity, or because sourcing particular goods or services from the United States is economically unfeasible; and

* the foreign project or procurement opportunity provides export opportunities for small and medium-sized enterprises that might not otherwise be available.

The USG may determine that a bid or proposal that meets one or more of the above factors in a clear and substantial way is in the U.S. national interest.

4. All bids or proposals that are determined to be in the U.S. national interest under paragraphs 2 or 3 above shall be supported by the USG in an equal and nondiscriminatory manner.

Recommendation:

Proposal for FSECC: Where deemed in the interest of both the US and Turkish Governments, and whereas the joint US-Turkish content is deemed significant, via the US Department of Commerce and its Turkish counterpart, both governments will advocate for approved joint US-Turkish business pursuits competing for projects in third countries. The US and Turkish Governments will provide an on-line process for US and Turkish business joint collaborative teams to apply for advocacy. It is recommended that approval be based on mutually agreed upon prerequisites and requirements of both countries.

A US Commerce Department review would determine which of its requirements could be modified in a joint advocacy approval. The review process would include a definition of targeted national content from the US and Turkey.

US-Turkey Business Council, Session III

Topic 3.

Knowledge Partnership in R&D, Innovation, Technology Transfer and Funding

Establish A Joint "*Collaborative Innovation Funding Program*" for Private Sector Projects

U.S. and Turkish policy makers should consider establishing a joint funding mechanism for research and innovation partnerships formed between private companies and research institutions from both the countries. There are already a few research-only partnership funding programs set between U.S. and Turkey. However these collaboration efforts and funding agreements are limited to almost uniquely academic research that reflect a diminutive percentage of joint innovation potential. A newly structured innovation funding mechanism should involve private sector as much as research institutions in a much broader term with the goal of creating products and services competitive in global markets in shorter term.

There are a number of immediate and longer term benefits of such approach. First of all this initiative would encourage and improve collaboration between research and private sector members from both countries. These collaboration efforts hold the potential of expanding into joint development, manufacturing, and sales activities not only in U.S. and Turkey but also in third countries. It would also improve the chance of developing joint intellectual property which will be utilized worldwide as well as in both the countries. It will create a lucrative channel between a research organization from one country and a private company from the other. A funding mechanism for technology transfer to Turkish private sector would open up a new intellectual property market for U.S. research organizations, and vice versa.

U.S. and Turkish policy makers or representative institutions can determine and publish the technology areas or the sectors to which joint research and innovation should be directed to through such a funding mechanism.

European innovation funding mechanisms set a good working model for this recommendation. Horizon 2020 and Eureka exemplifies well established technology funding programs between European Union and Turkey. Horizon

2020 does not only incentivize working on innovative products or services but also and more importantly collaboration and partnership between private corporations of member countries. It created a positive environment for innovative companies to access research in other countries. One of the three main focus areas of Horizon 2020 program is called “Industrial Leadership” where growth potential of European companies is stimulated by offering access to risk finance, encouraging private investment in R&D and engaging smaller companies by offering support for innovative SMEs. Horizon 2020 funding opportunities are awarded to consortiums of at least 3 organization from different countries but not a single company which strongly encourages partnerships between companies and countries. Horizon 2020 provides funding for exploring the feasibility of new knowledge or technology up to 100% but not limited to it. Companies can apply for funding to cover networking and coordinating research and innovation projects. SMEs use funding to access mentoring and coaching services. The program funds public sector to act as a buyer for innovative products and services where new market opportunities open for private research on one hand and public sector accesses innovation faster on the other hand. Eureka program has even more direct impact on commercial partnerships sometimes involving 3-4 different companies from member countries, associated countries and even third countries. These relations often carried to other private deals and joint projects between those involved.

Establish A “*Startup Access Program*” for Entrepreneurs and Venture Capital Companies from U.S. and Turkey

In the business world today, startups are positioned as the primary outlet for innovation. It is becoming seemingly clear that a well-established startup ecosystem can have long term impact at every level of business. Even larger corporations acknowledged the startup value and have taken part in ventures investment community. U.S. and Turkish businesses would greatly benefit from having access to each other’s startup ecosystem.

The proposed Startup Access Program should be a vehicle to help innovators, entrepreneurs and investor to access funding, customers, know-how, and partners in the other country as well as its own. U.S. has achieved a model country status for creating a nurturing environment for startups. Turkish entrepreneurs can take advantage of being part of it through this program.

Turkey, on the other hand, is proving vast government funding to local startups, is a gateway to a number of markets in the region as well as being a fast growing economy with relatively young and curious population. Both countries have complementary assets to offer through such proposed program.

Turkey has a large number of untapped technology startups ready for growth with the smart investment. As oppose, the same caliber startups in U.S. are in the midst of investment bidding frenzy. U.S. venture capital institutions would be invigorated to take advantage of these reasonable investment opportunities given that Turkish policy makers give certain guarantees for the protection of such investments. The proposed program should set the framework for cross investment protection against business environment instabilities and regulative changes.

U.S. and Turkey mutually benefit from opening up their startup ecosystem to each other due to their complementary aspects if a framework of incentives and protection can be devised.

Recommendations:

1. The Council recommends that both the governments create a joint "Innovation Funding Program" modelled after Horizon 2020 and Eureka supported by both governments. The funding is provided to joint projects where U.S. and Turkish companies collaborate to create and/or apply new technologies with a significant market opportunity.

2. The Council recommends that both the governments set up bilateral researcher and tech employee exchange programs.

3. The Council recommends that both the governments encourage bilateral, public-private sector efforts to identify high-value, high-likelihood fields of innovation, and encourage both governments to determine what existing public innovation funds/programs could be tapped. For example, the US should be encouraged to open a foreign partnership track for its National Network for Manufacturing Innovation (NNMI) program. These programs demonstrate that manufacturing advancement can be accelerated through strategic sourcing and exchange of foreign talent, materials and processes. The US is committed to spend a few billion dollars annually on these institutes, and

a policies to improve and promote strategic foreign partnerships would benefit both the US and Turkey.

4. The Council recommends that both the governments set up a joint agency (U.S. - Turkey Startup Access Agency) that encourages bilateral knowledge and expertise sharing, enables bilateral market access and supports the startup communities in both countries. Such an agency's tasks would include:
    a. Organizing demo day events for investors and entrepreneurs from both countries.
    b. Qualifying startups according a certain innovation and collaboration criteria to participate in the targeted programs of the agency
    c. Creating a database of qualifying startups and investors from both countries
    d. Securing and channelizing Eximbank like credits with low or no interest for qualifying startups
    e. Organizing accelerator programs for Turkish startups to come, relocate, learn and present their business ideas in US
    f. Tracking government technology, research and entrepreneurship funding and support programs in each country and empower relocating startups to take advantage of these programs.

5. The Council recommends that the Turkish government devise a regulatory guarantee for U.S. based investors investing into Turkish startups.

US-Turkey Business Council, Session III

Topic 7.

Life Sciences

Background:

The Life Sciences sector, comprising technologies for the advancement of crop, animal and human life, including specifically biotechnology and pharmaceuticals (including the generics and innovative segments), represents one of the fastest growing, dynamic and high value-added strategic sectors in the global economy.

The U.S. is acknowledged as the global leader today in biotechnology, research-based pharmaceuticals, medical devices and diagnostics. A very high percentage of novel products and devices originate from the U.S., which has established a strong and stable eco-system to support innovation in Life Sciences. Forward-looking policies, built on years of private-public sector consultation and collaboration, form the building blocks of this success.

In recent years, senior Turkish policy-makers have expressed their ambition to evolve as a global competitor in Life Sciences, with a specific focus on biotechnology, medical devices, and establish a manufacturing base for the export of generics and innovative medicines.

The Government of Turkey has made significant investments in its healthcare sector over the past decade, resulting in impressive improvements in health outcomes. However, it's ranking on key pharmaceutical and healthcare indicators still barely meets the global average. Turkey is the 16th largest pharmaceutical market in the world, but ranks only 35th in share of pharmaceutical R&D and manufacturing; it also lags compared to other similar sized markets in FDI for R&D and manufacturing.

To position itself as a major player in the life sciences, especially in pharmaceuticals, and to secure a greater share of global pharmaceutical investments, Turkey should consider recalibrating its policies to create the eco-system of innovation needed to create and support the life sciences industry.

These policies that comprise the eco-system include a high degree of free market competition, recognition and reward for innovation, consistent public support for basic research, close collaboration between the private sector and academia, a world-class intellectual property rights system to support investment and commercialization, and a globally-recognized standards-setting regulatory authority.

Industry has been working with the government for a number of years with the goal for the Government to develop a well-articulated, detailed vision, strategy and policy road map that would support a vibrant medical devices, generics and innovative medicines sector. More work is needed to develop and implement policies that will allow Turkey to compete with other countries seeking to develop the life sciences sector. Based on the data from a recent Putgatch Report released at the Annual International Biotechnology Conference, Turkey has yet to create the eco-system that will allow it to compete with other countries seeking the same investments.

Opportunity

The U.S.-Turkey Business Council, aware of Turkey's as yet mostly untapped but very high potential for R&D, manufacturing and exports in this sector, is encouraged by outreach by the new government to external stakeholders and across relevant ministries and government agencies to develop a new Vision and Strategy to rejuvenate the sector. Industry believes the creation of the new Health Care Steering Committee to oversee the transformational change in the healthcare sector is an important start.

As an established powerhouse in the Life Sciences, the U.S. is in a strong position to provide benchmarks, modeling and counseling on best practices. It's globally leading Life Sciences companies are in a strong position to increase their investment, employment and operations in Turkey. As a country possessing rich human potential and other competitive advantages, including a well-established healthcare and university system, Turkey can reasonably expect to achieve its ambition to become a global top 10 player in the Life Sciences sector by 2023. In a globally-competitive world, however, this will necessitate adopting world class standards and practices, including supporting the young researchers in universities in Turkey, as well as predictability and transparency in this sector.

The U.S-Turkey Business Council urges that the governments would prioritize their collaboration in this sector, particularly in the area of harmonizing regulatory standards and best practice sharing to incentivize investment. Upgrading and harmonizing standards in these areas will strengthen the prospects for the sector in both countries. It will also fortify the case for moving toward an FTA and ensuring that Turkey will be among equals at the U.S.-E.U. Trans-Atlantic Trade and Investment Partnership.

Recommendations:

U.S. and Turkish policy-makers should agree to provide the necessary technical assistance and demonstrate strong political will to support the advancement of the Life Sciences sectors in both countries.

- This includes cooperation in the regulatory sphere that would assist Turkish companies aiming to increase exports to the USA and find new partners there, and policy assistance that would help U.S. companies to benefit from a secure and predictable investment and operating environment in Turkey. Explore ways to connect possible partners as a means to increase exports to the USA.

- Given the size of the Life Sciences sector, it is important that the two countries accelerate harmonization of standards (e.g. regulatory, market access including pricing and market-based exchange rates) in a manner that would provide a stronger foundation for FTA discussions or Turkey's close involvement in the US-EU TTIP. Specifically,

  - **Ensure local market price of products is not barrier to exports**. **Confirm timetable** to move to 100% of FX rate by 2019.
  - **Promote industry dialogue with government** to:
    1) Ensure fair and transparent public tender procedures
    2) Review opportunities for incentives for investments in manufacturing and other R&D and pharma-related investments

- **Extend concurrent GMP and registration applications to Category II** to expedite patient access.
- **Implement risk-based assessments on-file** by relevant experts **for an expedited review of sites** approved by **FDA or EMA.**
- **Finalize membership by Turkish Pharmaceutical and Medical Devices Agency (TITCK) in PIC/S** including FDA and other EU authorities.

- The US Government should direct the FDA to conduct 2-3 technical workshops in Turkey in 2017-18 focusing on the regulatory process and requirements for approving exports of pharmaceuticals, food and agricultural products.
- Create a formal role of private sector engagement and input with and into the new Health Care Steering Committee
- Leverage Turkish expertise especially on phytotherapy and conventional methods for R&D of innovative products.
- Ensure an attractive investment climate by refraining from implementing preferential reimbursement arrangements for healthcare products produced domestically and the delisting of imported products from the reimbursement list as such measures appear to be inconsistent with the WTO's national treatment requirements.

US-Turkey Business Council, Session III

Topic 5.a.

Logistics and Customs Collaboration

Overview: Turkey's favorable geographic position, young and talented workforce, and the dynamism of its entrepreneurs have made the country a growing market for U.S. exporters. Likewise Turkish businesses see tremendous opportunity in the U.S. market. U.S.-Turkey trade was roughly $17.4 billion in 2015 and the potential for two-way trade growth is enormous. Customs modernization and other measures to take time, cost, and complexity out of trade can play an important role in driving the U.S.-Turkey trade relationship to new heights. Public and private infrastructure investments have made important contributions to Turkey's logistics efficiency, as evidenced by the country's move up the global logistics performance rankings to 30 out of 160. The scope of this paper, however, is less on hard infrastructure decisions and more on soft infrastructure, namely the customs and logistics policies that allow governments to best leverage their infrastructure spend and that can play a role in driving trade between the U.S. and Turkey.

Current Market Situation: Formal adoption of the WTO Trade Facilitation Agreement (TFA) took place on November 27, 2014. The TFA will streamline the passage of goods across borders by cutting red tape and bureaucracy and establishing common approaches to clearing goods through customs. The U.S. and Turkey are among the nearly 100 countries that have ratified the agreement on the path to the 110 needed for entry into force. In the TFA, all WTO members accepted obligations for their customs authorities to, among other things:

- Publish all customs forms, rules, and procedures on the Internet and provide opportunities to comment on new or amended customs laws and regulations;
- Establish pre-arrival processing of required information by electronic means to permit clearance through customs before goods arrive in the country;
- Allow the release of goods from customs prior to the final determination of customs duties and taxes;

- Adopt trusted trader programs to speed clearance for firms that have established a good record of compliance with customs regulations;
- Provide expedited customs clearance for express shipments; and
- Require each country to set a de minimis value – the threshold below which duties are not required in order to expedite the release of low-value shipments.

Burdensome customs procedures, which involve excessive paperwork and sometimes extremely lengthy hold-ups at borders, have a huge impact on businesses of all sizes, but particularly small business. They can lead to missed shipment deadlines and damaging financial losses, and over time can make or break a business' relationship with a client. For time- and temperature-sensitive shipments such as pharmaceuticals and healthcare products, the time window may be even more critical.

Modernizing customs procedures, including moving away from paper-based and toward electronic customs regimes, utilizing risk management systems that allow appropriate targeting of goods, ensuring expedited treatment for express goods, and adopting trusted trader programs for highly compliant shippers, will enhance the trading environment for U.S. and Turkish businesses and entrepreneurs looking to capture new overseas market opportunities.

Recommendations:

1. **WTO Trade Facilitation Agreement:** The TFA contains 13 articles on a range of customs and border issues. We recommend a focus during the implementation period on the following five articles, which will have a particularly significant impact in terms of boosting customs efficiency.

    ✓ **Pre-arrival processing (Clause 7.1)**: This includes the collection of manifest and other key information prior to the arrival of the goods at customs, in an electronic format.

    ✓ **Separation of release (7.3)** from final determination of customs duties, taxes, fees and charges. This ensures that goods are moved out of customs and to the next phase of delivery, without being subject to customs' receipt of duties, resulting in fewer bottlenecks at the border caused by late payments from shippers.

- ✓ **Risk management (7.4)**: This includes implementing a procedure to allow low-risk shipments to pass swiftly through customs and reduce the number of goods held at the border for—often unnecessary—inspection.
- ✓ **De Minimis (8.2.D)** permits goods to be exempt from taxes or duties if they fall below a certain value threshold. Governments should set their de minimis threshold at commercially meaningful levels.
- ✓ **Single window (10.4):** Establishing a "single window" allows shippers and traders to submit documentation through a single entry point to the necessary government authorities or agencies, as opposed to submitting redundant information to each separately.

- Turkey has established a good foundation of a modern customs regime, and the extent to which the above five provisions are fully deployed will determine trade facilitation outcomes, including the proper balance of border efficiency and security.

- Another key TFA provision calls on parties to promptly publish information about customs laws, procedures, taxes, and appeal procedures, which helps to advance transparency and predictability for traders. Turkey and the United States must provide opportunities for stakeholders to comment on proposed regulations related to the movement, release and clearance of goods prior to implementation of such rules.

- Effective in March 2016, after a long period of industry advocacy, the United States raised its import de minimis level from USD200 to USD800, which we expect will bring particular benefits to small business shippers and help underpin the healthy growth of e-Commerce. We would urge Turkey to consider raising its de minimis level from 75EUR to USD200.

- For both Turkey and the United States, we recommend a focus on completing their respective Single Windows, or "one government at the border." In Turkey, there are over 300 different documents that may be attached to a customs declaration form. Roughly 20 of these are from the customs administration and the remaining 300+ are required by other authorities, adding time and cost. In order to simplify export and import procedures, Council of Minister's decree no. 28239 was issued in the Official Gazette on March 20, 2012, declaring that Turkey would adopt and implement a single window system. The Ministry of Customs and Trade is coordinating efforts for system implementation in Turkey as well as the establishment and management of the relevant technical infrastructure. Single window implementation is anticipated to reduce import costs from 7-10% to 3-5%.

- In the U.S., legislation passed in February 2016 codified and improved the President's Executive Order on International Trade Data System (ITDS) or the Single Window, which enables companies to electronically transmit, through a single window, the data required by each of the U.S. Government agencies to import or export cargo. We urge the U.S. to make steady progress toward the completion of the system.

- We recommend adoption of a 24/7 in-service regime for the main customs offices in Turkey (Istanbul, Izmit, Bursa, Ankara, and Izmir) with a view to facilitating import-export operations, timely conclusion of which have significant consequences on businesses.

2. **Turkish Postal Law:** Turkey's postal law (6475 – May 2013) requires logistics service providers to contribute fees and a separate amount equal to 2% of revenues into a fund for the provision of the universal postal service. As Turkey pursues the goal of accelerated export growth, and with most international express shipments by Turkish small business exporters focused on their own business development, penalizing the system with 2% of revenues is not aligned with the government's policy objectives and represents a significant burden for both service providers as well as exporters. 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 is highly unusual and inconsistent with global best practice approaches to postal regulation. As of October 2016, we anticipate that international air express deliveries may be excluded from the compensation fund, which would be a positive development, particularly as most international express shipments by Turkish small business exporters are focused on their own business development.

Turkey-U.S. Business Council, Session III

Topic 4.a.

Third country project development and financing

Background

US-Turkish joint business activities have long been benefiting in third countries for quite some time already. Especially in labor intensive sectors, the relatively cheap and highly efficient Turkish labor force has added a great value to US-Turkish joint ventures. Sectors such as overseas contracting, textile and automotive manufacturing are some of those sectors in this category. Considering the new emerging markets such as countries of sub Saharan Africa and countries of Middle East/Central Asia, where frequent political and economic changes occur, flexibility of Turkish businessmen, manufacturing power of Turkish industries as well as geographical location of Turkey allows various business activities to expand rapidly to 58 countries surrounding Turkey which are located within 4 hours of flight time.

Current situation

Today, especially in Africa and Latin America, the increasing influence of Chinese business model has created a new appetite for emerging countries with big infrastructure and development ambitions. Those emerging countries are already looking for alternative partners, companies as well as alternative business models to continue their growth programs.

Recommendations :

US-Turkish joint ventures willing to create bigger and more sustainable business opportunities in those new markets must develop green field construction projects on design and build principal whereas both countries goods and services can be utilized during the execution of those projects including architectural and engineering services. A big potential in this line of business exists in power generation whereas equipment can be supplied from US and workmanship can be performed by Turkish partner. Another untapped line of business is concessional management contracts (PPP,BOT,BOO etc.) for operation of ports, airports, toll roads, municipal utilities and all kinds of service related projects whereas US know-how combined with Turkish human resources creates competitive value.

In the manufacturing field there are also great opportunities especially in those countries which are parties to free trade agreements or preferential tariff and trade programs with US which allows them to manufacture a variety of goods to be imported by the US. An example of that is Moldova. Today a manufacturer having its factory in Moldova can export a wide variety of products to the US enjoying preferential tariff treatment. Similarly, Senegal and some other countries are ready to benefit from the same model. <u>US and Turkish companies working in a variety of sectors should join forces and establish new factories in those strategically preferred third countries to create a more competitive business not only for sales to the US but for other third country markets.</u>

A critical issue is financing. That's where both US and Turkish Eximbanks are needed as well as other sources of financing. Usually those emerging third countries governments require the foreign business partners to bring along financing as a part of the commercial proposal. In order to be able to provide that financing option procedures usually take up to 6 months or even more depending on the size and complexity of the project. This duration is very long and sometime can become frustrating. <u>To avoid the time loss and loss of interest; a fast track application desk should be formed by both Eximbanks simultaneously in Washington and in İstanbul to start processing various projects coming from third countries and be able to give a term sheet within 4-6 weeks, finalize the loan agreements within 12-16 weeks.</u>

Another issue is the terms and conditions of those loans offered by the Eximbanks. Although there is a collaboration agreement signed by both Eximbanks beginning in 2016, the interest rates and duration of loans still are regulated by OECD rules. The potential third countries which will prefer to benefit from US -Turkish business and related financing options might request lower interest rates and longer durations. <u>To be able to meet such requests US and Turkish governments should try to create a joint development fund to be able to finance potential joint projects coming from those third countries</u>.

When doing all of these <u>the essential goal should be to create a sustainable information exchange and networking platform for both US and Turkish companies which are interested to collaborate on the same subjects and in the same countries. Both governments should encourage the relative institutions and NGO's to support such platforms.</u>

US-Turkey Business Council, Session III

Topic 1

Trade agreements to help improve bilateral trade and investment

The period following the previous recommendations of the Council witnessed important developments in global trade negotiations. After seven years of negotiations, the Unites States concluded the Trans-Pacific Partnership (TPP) with eleven countries, paving the way for deeper trade integration in that part of the world. Meanwhile, by July 2016, the 14th round of negotiations on the Transatlantic Trade and Investment Partnership (TTIP) was concluded, with some progress achieved as consolidated texts are now being discussed. Despite pessimism on the prospects for a 2016 conclusion of TTIP, which only deepened with the vote of the UK to exit the EU, the U.S. and EU continue to insist that TTIP must be an ambitious, comprehensive and high-standard framework as was originally envisioned. Such an outcome, whenever it can be harvested, underscores the importance of also taking concrete steps to further the U.S.-Turkey economic and trade relationship.

In May 2015, Turkey and the EU jointly declared their intention to modernize and upgrade the Customs Union mechanism. Currently, both Parties are continuing technical preparations to finalize the internal procedures for corresponding negotiating mandates. It is understood that negotiations will start in the first quarter of 2017, not only for extending the scope of the current Customs Union beyond trade in goods to agriculture, services and public procurement, but also for deepening it with, inter alia, harmonization in intellectual property rights, establishment of a dispute settlement mechanism, cooperation on regulatory efforts and better cooperation of customs administrations. Turkey continues to define the initiative as a top political and economic priority in its relations with the EU in full recognition of its relevance to a prospective TTIP engagement. The Council's private sector members (Members) acknowledge and welcome this significant commitment as a strong declaration of political willingness of the Turkish Government for undertaking the necessary reforms in order to facilitate the engagement in a sophisticated new generation trade agreement like TTIP. Hence, we encourage dedicated efforts by Turkey and the EU, together with regular and effective private sector input, to identify and implement upgraded commitments on the Customs Union that will align and support eventual integration into the TTIP agreement.

For almost a century, Turkey has acted as a strong partner of the West and contributed to key Western institutions and initiatives. However, there is now more academic research published attesting to the fact that Turkey will be among the most adversely affected countries if it is excluded from this new Transatlantic dynamic. **The Members believe that sufficient accommodation of related Turkish concerns deserves due diligence** as it would serve multilateral interests in all aspects, especially during a period when significant economic, demographic and political stress storms the region.

Therefore, we once again highlight the importance of the High Level Committee established in May 2013 with the ultimate objective of deepening our economic relations and liberalizing trade. However, we regret to express our common disappointment over the fact that the Committee failed to continue its work during the last two years after the initial Ministerial meetings which mandated technical working groups to formulate a recommendations report by May 2015 that has never emerged.

The Members understand the difficulties on both sides for focusing on common priorities during a time when Turkey saw consecutive elections and the U.S. passed through exhausting negotiations on TPP and TTIP while also being busy with the Presidential elections. Certainly, the UK's decision to leave the EU adds to the environment of uncertainty with regard to the future negotiations of TTIP not to mention the EU project in general. However, it is precisely due to this volatile nature of the political environment that the **work of the High Level Committee should swiftly progress in the background with full motivation of concluding the necessary "time-bound technical preparations" for "an ambitious trade partnership"** once the political resolution is there. **A re-invigorated Trade and Investment Facilitation Agreement (TIFA)** between the U.S. and Turkey would be a useful step supporting such preparations.

The Members reiterate their previous recommendation for a Turkey-U.S. FTA as an appropriate legal framework to strengthen and solidify the economic pillar of the bilateral "Model Partnership". Encouraged with the "parallel initiative to be undertaken by the EU" with Turkey explicitly setting "TTIP-convergence as a primary objective", simultaneously, **we invite both Parties to invest necessary resources and commitment into a "structured process" for a Turkey-U.S. FTA** with the same goal.

The Members underline the significance of a TTIP shaped in an "open architecture" allowing all interested countries to join in future, provided that they are ready to meet the established level of ambition. In this sense, **we invite the U.S. administration to support the related liberal position of the EU manifested in their strategy named "Trade for All" in October 2015**.

Without any prejudice to the above-stated overarching perspective in their bilateral relations, Turkey and the U.S. should also exploit additional opportunities of collaboration in the ongoing multilateral trade negotiations. **Both countries should work closely to identify key customs efficiencies and logistics barriers as components of the WTO Trade Facilitation Agreement (TFA) national implementation plan. The Trade in Services Agreement (TiSA) offers another route for enhancing the collaboration of Turkey and the U.S. as they both aim at concluding a business-friendly text.** Therefore, we also recommend an intensified dialogue between Parties to help bridge remaining gaps for conclusion of the TiSA negotiations in the shortest period possible.

Recommendation:

The Council recommends that the High Level Committee established in May 2013 resume its work in a structured way with full motivation of concluding the necessary "time-bound technical preparations" for an ambitious trade partnership which we believe should be an FTA between the U.S. and Turkey.

Without any prejudice to the above-stated overarching perspective in the bilateral relations, the Council also recommends that both countries intensify collaboration in multilateral trade issues, specifically in implementation of the WTO Trade Facilitation Agreement and conclusion of the Trade in Services Agreement.