

Current Developments in International Law: International IP and Development

Paper on Intellectual Property, Globalization and Development

Turkey at the Crossroads: Intellectual Property, Globalization and
Economic Development Issues For an Emerging Regional Power

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Introduction

Turkey, a country which geographically bridges Europe and Asia, similarly occupies an economic and political crossroads between the advanced and developing nations of the world. For the last twenty-plus years, it has been in the process of leaning westward toward the ultimate goal of becoming a full member of the European Union (EU). While significant progress has been made in this pursuit, the process has not been without issues, and full accession into the EU remains elusive. Recently, Turkey has demonstrated an interest in aligning itself more with its developing nation compatriots in the Middle East and North Africa region. This paper will lay the background for these developments and examine how this trend may impact Turkey's position on intellectual and industrial property regulation and enforcement as it balances global versus regional goals.

Background

The present day nation of Turkey emerged from the ruins of the Ottoman Empire after the First World War, the surviving remnant of a once mighty world power that had struck fear in hearts of Europe until the end of the 17th century. From the formation of its modern independent government in 1923 through the mid 1980s, Turkey was not considered a serious political or economic force despite its strategic position as the gateway between Asia and Europe. For much of this period, its economy was agriculturally based, and its main global exposure revolved around its regional conflict with Greece concerning control over the island of Cypress.¹ Throughout the latter half of the twentieth century, however, Turkey has demonstrated a “will to reach the contemporary level of civilization,” and has proceeded through a series of stages that involved democratization, modernization, globalization and Europeanization.² During this

period, the government's implementation of neoliberal policies ultimately led to the privatization of key economic and industrial institutions. Turkey abandoned its reliance on import substituting industrialization strategies and adopted an export oriented growth model, largely in response to economic assistance by organizations such as the International Monetary Fund (IMF), the Organization for Economic Cooperation and Development (OECD), and the World Bank.³

Turkey's Efforts Toward Europeanization

In 1987, Turkey applied for full membership European Community, a precursor organization to what is now the European Union.⁴ Although this application was rejected, the efforts set the stage for implementation of Turkey's involvement in a Custom Union (CU) with the European Community that had been initiated in 1963 without fruition. On January 1, 1996 the provisions governing the CU took effect and Turkey eliminated its customs duties for European industrial goods. Involvement with the CU allowed Turkey to improve its economic standing with Europe. In 1999, the movement towards Europeanization and the concomitant alignment with the laws and rights of the advanced nations took a monumental step forward when the European Community granted Turkey the status of "candidate country for European Union membership."⁵ The process of accession to the European Union (EU) necessarily involves bringing all aspects of national legislative, judicial and administrative processes in alignment with those of the advanced EU members, the anticipated benefit being increased trade, direct foreign investment, and overall economic advancement. In 2001, the Turkish government adopted the National Program for the Adoption of the Acquis (NPAA), reflecting its commitment to attain advanced nation levels of law and governance. One aspect of the transition

centers on intellectual and industrial property rights, which are monitored and reported on annually by the Delegation of the European Union to Turkey. At this point, it will be useful to review Turkey's overall history of intellectual and industrial property rights-associated treaties and conventions, in order to better understand the EU delegation's reports on this subject.

According to the World Intellectual Property Organization's (WIPO) current reference webpage, it is clear that Turkey has taken all of the necessary steps internationally to bring itself in compliance with world intellectual property standards and norms.⁶ Turkey is a signatory to nineteen intellectual property related treaties, beginning with the Paris Convention for the Protection of Industrial Property in 1925 to the Singapore Treaty on the Law of Trademarks which entered into force in 2009. By comparison, the WIPO website shows key EU member states Germany and the United Kingdom belonging to eighteen and seventeen treaties respectively.⁷ In addition, Turkey has been a member of the World Trade Organization since 1995, which by default places it under the auspices of that organization's Trade Related Aspects of Intellectual Property Rights (TRIPS).⁸ On the surface, therefore, Turkey would appear to be in alignment with its EU member neighbors to the west, and well on its way to enjoying the political and economic benefits alleged to go along with such global conformity. Unfortunately, substantial gaps can exist between membership and compliance, and Turkey has faced an uphill battle in convincing the EU that it has actually brought its intellectual and industrial property rights to the level of harmonization required to gain membership.

A review of sources on this topic revealed at least two organizations that consistently monitor and report on Turkey's status in regards to progress with intellectual and industrial property rights. The first is associated with Turkey's efforts to gain accession to the EU. Beginning in 1998, the European Commission instituted annual reporting on Turkey's progress

towards accession on a wide variety of issues, intellectual and industrial property rights included. The initial report, congruent with the section above, found that “In view of the considerable amount of harmonization already achieved, Turkey should have no problem in completing alignment with the Community's legislation. *The issue of the effective implementation of the legislation merits special attention.*”⁹ (Emphasis added) Jumping forward to twelve years to the 2010 report, not much has changed.¹⁰ The report states that “no progress can be reported in the legislative framework for industrial property rights,” citing issues linked to bad faith, a lack of legal experts, the need for administrative improvements, and the expiration of deadlines for bringing certain legislation in line with the required standards.¹¹ The commission also continued to find significant issues regarding enforcement and judicial procedure and progress. After twelve years of working the accession process, the summary of Turkey’s progress matched that of the initial 1998 summary virtually verbatim.

The second organization that monitors and reports on Turkey’s progress in the intellectual property arena is the Office of the United States Trade Representative. This office issues an annual “Special 301 Report,” an annual review of the global state of intellectual property rights protection and enforcement.¹² The report places countries on either a priority watch list that signifies serious dissonance with U.S. intellectual property norms, and a basic watch list that signifies less serious yet noteworthy intellectual property protection and enforcement concerns. The 2011 report places Turkey on the watch list, echoing concerns that in spite of ratifying numerous treaties, national legislation to protect IP rights remains lacking. It is of note that at the outset of Special 301 reporting in 1989, Turkey was initially placed on the less severe “watch list.” It was downgraded to the more severe priority watch list in 1992 based on difficulties U.S. companies faced in Turkey regarding IP protection. Turkey has oscillated

between the two lists; most recently it was placed on the “watch list” status in 2008 where it has remained through the present. Nevertheless, based on its history and the current assessments by the European Commission and the USTR, there are few indications that it will be removed from this status anytime soon.

While each of these annual reviews would appear on their face to provide reliable assessments of Turkey’s general IP status, there may be some reason to question this at least for the Special 301 Report. Research indicates a nearly exact correlation between the various U.S. presidential administrations and Turkey’s status as either a watch list or priority watch list country, indicating that politics rather than IP status may represent the true metric.

Obstacles to Advancement in the Intellectual Property Arena

While the above mentioned reports consistently mention lacking administrative and enforcement mechanisms to protect IP rights holders, other factors about Turkey’s globalization experiences may help explain the lack of progress as well. An economic crisis in 2001 likely drew attention away from less pressing regulatory issues such as IP rights enforcement. Another reason is likely tied to the fact that nearly half of Turkey’s manufacturing exports are low tech goods such as such as textiles and apparels.¹³ Additionally, Turkey’s economic globalization “essentially fostered the growth of the service industry rather than the manufacturing industry.”¹⁴ Therefore, IP rights and protections are not likely to have a higher priority as they might if Turkey was more concerned about protecting those rights for its own high technology exports. In fact, one source for this paper specifically singles out the WTO, TRIPs, and similar requirements under the Customs Union agreement with the EU as having “restricted the Turkish state’s ability to provide direct support to high technology exports. Similarly, there would

logically be less incentive to incur the costs and difficulties in harmonizing national IP enforcement, courts and regulatory entities if the anticipated benefits of Foreign Direct Investment (FDI) have not materialized as may have been anticipated. Studies have consistently shown a direct and significant correlation between increased IP rights legislation and enforcement and FDI.¹⁵ FDI from the EU, the primary source of FDI in Turkey, has largely been redirected to Eastern and Central European countries that have already attained membership in the EU.¹⁶ A slow growth environment, the until now unrealized FDI benefits from the EU, and the “costly nature of the adjustment process may undermine enthusiasm of key sections of Turkish society both within and without the business community” may lead to “a radical revitalization of the nationalistic and Eurosceptic block in Turkey.”¹⁷ And in fact, within the last decade, signs of Turkey’s shift from the West and toward a more regionally focused stance are evident.

A Trend Toward Regionalization

As mentioned at the outset, Turkey’s geographic position between Europe and Asia and as a natural bridge between advanced and developing nations provides opportunities to orient its globalization in two different directions. It can either follow a costly and difficult path to true globalization by aligning itself with the EU; alternatively it can orient itself regionally as the chief actor amongst its developing nation neighbors in the MENA sphere. Current events clearly demonstrate a political shift away from the West, as evidenced by the current “Arab Spring Tour” underway by the Turkish prime minister. One Turkish commentator describes the trip as reflecting “Turkey’s place in the new order of the Middle East, not as an observer of history but as its author.”¹⁸ Should Turkey succeed in becoming the dominant regional power broker in the

ever volatile and unpredictable MENA region, this would likely provide greater political and economic leverage than being positioned as a lesser member of the EU. It is therefore likely that IP rights and protections may take on a reduced significance in the greater scheme of Turkey's international concerns.

Conclusion

After reviewing sources and materials for this paper, several points stand out. The first is that while Turkey has historically signed all of the necessary treaties and conventions as it has aspired to become a more prominent trade partner with the advanced nations, implementation and enforcement remain its major stumbling block. Second, the nature of Turkey's industrial base and export markets may not provide the motivation to make the necessary and costly changes; in fact frustration over its lack of progress despite significant efforts to do so may breed frustration that pushes Turkey away from Europe and into a more fitting regional role. Should this be the case, alignment with other developing nations in terms of IP rights and protections, along with political and security related leverage, may prove to be a better alternative.

¹ Central Intelligence Agency Library Publications, *The World Fact Book: Middle East: Turkey*, <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html> (last updated August 23, 2011).

² . Fuat Keyman, *Globalization and Democratization in Turkey: The AKP Experience and its Limits*, 17 *Constellations: An International Journal of Critical & Democratic Theory* 312 (2010).pp. 318

³ Ziya Önis & Caner Bakir, *Turkey's Political Economy in the Age of Financial Globalization: The Significance of the EU Anchor*, 12 *South European Society & Politics* 147 (2007) pp. 149

⁴ Europa: The European Union and the World, Delegation of the European Union to Turkey, History, http://www.avrupa.info.tr/AB_ve_Turkiye/Tarihcesi.html (accessed September 12, 2011).

⁵ Ibid

⁶ World Intellectual Property Organization, *Treaties and Contracting Parties: Turkey*, http://www.wipo.int/treaties/en/ShowResults.jsp?search_what=C&country_id=173C (accessed 12 September 2011)

⁷ Ibid

⁸ World Trade Organization, *Member Information: Turkey*, http://www.wto.org/english/thewto_e/countries_e/turkey_e.htm (accessed September 13, 2011)

⁹ European Union, *Regular Report From the Commission on Turkey's Progress Toward Accession*, pp. 34 <http://www.avrupa.info.tr/Files/File/Docs/1998.pdf>, (accessed on 12 September 2011)

¹⁰ European Union, *Turkey's 2010 Progress Report*, pp 52-55, http://www.avrupa.info.tr/Files/File/key%20documents-Turkish/tr_rapport_2010_en.pdf (Accessed 13 September 2011)

¹¹ Ibid

¹² Office of the United States Trade Representative, *2011 Special 301 Report*, http://www.ustr.gov/webfm_send/2841 (April 2011).

¹³ Nilgun Onder, *The Turkish Project of Globalization and New Regionalism*, 7 *Alternatives: Turkish Journal of International Relations* 86 (2008) p. 90.

¹⁴ Nurullah Ardiç, *Friend or Foe? Globalization and Turkey at the Turn of the 21st Century*, 11 *Journal of Economic & Social Research* 17 (2009) pp 16.

¹⁴ YASED International Investors Association, *Protection of International Property Rights in Turkey: Impact on Foreign Direct Investment*, <http://www.yased.org.tr/webportal/English/Yayinlar/Documents/YASEDIPRReport-Nov08.pdf> pp.15 (accessed September 14, 2011)

¹⁶ Onder, p. 93.

¹⁷ Ziya Önis & Caner Bakir, *Turkey's Political Economy in the Age of Financial Globalization: The Significance of the EU Anchor*, 12 *South European Society & Politics* 147 (2007) pp 159.

¹⁸ Today's Zaman, *The importance of Erdogan's Tour*, <http://www.todayszaman.com/columnist-256676-the-importance-of-erdogans-tour.html> (accessed September 13, 2011)