TURKEY

TRADE SUMMARY

The U.S. trade deficit with Turkey was $884 million in 2003, an increase of $481 million from $403 million in 2002. U.S. goods exports in 2003 were $2.9 billion, down 6.7 percent from the previous year. Corresponding U.S. imports from Turkey were $3.8 billion, up 7.7 percent. Turkey is currently the 31st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey in 2002 was $1.9 billion, up from $1.7 billion in 2001. U.S. FDI in Turkey is primarily in the manufacturing, wholesale, and banking sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

As a result of its 1996 customs union with the European Union (EU), Turkey applies the EU's common external customs tariff for third country (including U.S.) imports and imposes no duty on non-agricultural items from EU and European Free Trade Association (EFTA) countries. The simple average tariff for industrial products from the United States and other third countries dropped to 4.4 percent in 2003. Turkey's harmonization of trade and customs regulations with those of the EU and the overall decline in tariff rates benefits third country exporters.

Turkey maintains high tariff rates (25 percent average Most-Favored-Nation rate) on many food and agricultural products to protect domestic producers. Imports of animal products carry the highest tariffs, with *ad valorem* rates ranging up to 227.5 percent on meat products and edible meat offal. The Turkish government often increases tariffs during the domestic harvest or during times of high stocks. In 2003, the government increased the tariff on corn from 20 percent to 70 percent. High feed prices have had a negative impact on Turkish livestock industries, particularly for beef and poultry. Duties on fruits range from 61 percent to 149 percent. Processed fruits, fruit juices and vegetable tariffs range between 41 percent and 138 percent. Turkey also levies high duties as well as excise taxes and other domestic charges on imported alcoholic beverages that increase wholesale prices by more than 200 percent.

Import Licenses and Other Restrictions

While import licenses generally are not required for industrial products, products which need after-sales service (e.g., photocopiers, advanced data processing equipment, diesel generators) require licenses. In addition, non-tariff barriers result in costly delays, demurrage charges, and other uncertainties that stifle trade for many agricultural products.

Private traders report that Turkish import policies are often implemented in a nontransparent manner. Moreover, gaps in communication between Ankara and regional offices often result in improper implementation of regulations. Turkey is in the process of rewriting its import regulations for agriculture products in order to comply with EU regulations. However, some new regulations have not been fully conformed to EU requirements. For many products, no written standards exist. For example, despite repeated requests, Turkey failed to provide guidelines for red meat imports. For the past four years, the Ministry of Agriculture and Rural Affairs (MARA), through its quarantine service, issued no import licenses for rice prior to the domestic harvest. In July 2003, Turkey stopped issuing licenses and has not yet lifted this ban.

The import process for alcoholic beverages is exceedingly complicated, requiring both MARA control certificates and TEKEL (a parastatal company) permits. The operations of TEKEL have been privatized and recent legislation provides private companies with more control over alcoholic beverage import and distribution. Despite these changes, non-tariff barriers, arduous document requirements, and high duties continue to limit trade in alcoholic beverages. Recent changes in Turkish law call for continued liberalization of the spirits and tobacco market over a five-year period, which should improve the competitive environment.

Industry has raised concerns that Turkey applies discriminatory price controls for imported pharmaceuticals. Under a regulation passed in February 2004, the Turkish government allows higher prices for domestically produced generic drugs.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Turkish government has not consistently notified the WTO of changes in import policies and phytosanitary requirements, and implementation has been arbitrary. Importers have had increasing difficulty in obtaining information on sanitary and phytosanitary certifications. Turkey often requires laboratory testing on items not normally subject to testing by trading partners, often without any scientific basis. Finally, the GOT often requires phytosanitary certification on quality issues that are normally handled in private contracts.

The government requires laboratory tests and certification that quality standards are met for the importation of foods, human and veterinary drugs, and medical equipment and appliances intended for use by humans.

GOVERNMENT PROCUREMENT

Turkey is not a signatory of the WTO Government Procurement Agreement. Although its laws require competitive bidding procedures for tenders, U.S. companies have been frustrated by lengthy and often complicated bidding and negotiating processes. Some tenders, especially large projects involving co-production, are frequently opened, closed, revised, and opened again.

In 2003, a new public tender law entered into force. The law establishes an independent board to oversee public tenders and lowers the minimum bidding threshold at which foreign companies can participate in state tenders. However, the law gives a price preference of up to 15 percent for domestic bidders. Amendments to the law in 2003 enlarged the definition of domestic bidder to include corporate entities established under Turkish law, including those established by foreign companies. However, the preference does not apply to domestic bidders that form a joint venture with foreign bidders.

Military procurement generally include an offset requirement in tender specifications. The offset guidelines were recently modified to encourage foreign direct investment and technology transfer.

The entry into force of a Bilateral Tax Treaty between the United States and Turkey in 1998 eliminated the application of a 15 percent withholding tax on U.S. bidders for Turkish government contracts.

EXPORT SUBSIDIES

Turkey employs a number of incentives to promote exports, although programs have been scaled back in recent years to comply with EU directives and WTO standards. Historically, wheat and sugar have been the main subsidized commodities. Export subsidies, ranging from 10 percent to 20 percent, are granted to sixteen agricultural or processed agricultural products. The Turkish Eximbank provides exporters with credits, guarantees, and insurance programs. Certain tax credits also are available to exporters.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

There have been some improvements in Turkey's intellectual property rights regime in recent years, but serious problems persist. Beginning in 1995, the Turkish Parliament approved a series of patent, trademark and copyright laws in connection with Turkey's customs union with the EU and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In view of Turkey's legislative progress, USTR moved Turkey from the Special 301 Priority Watch List to the Watch List in the 2002 review, where it remained in 2003.

Turkey's 2001 copyright law substantially modernized the legal regime, providing deterrent penalties for copyright infringement. However, Turkey is not a party to the World Intellectual Property Organization (WIPO) Internet treaties (including the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty) which include important provisions designed to protect digital content. For example, Turkey currently does not prohibit circumvention of technological protection measures. In addition, the Turkish courts have failed to impose deterrent penalties on pirates as provided in the copyright law. They have instead applied the Turkish Cinema Law, which has much lower penalties. The copyright industries' key concern is for improved enforcement. Currently, the police generally do not intervene in pirate production or sales unless the right holder specifically requests that they do so. In March 2004, the Turkish Parliament approved legislation banning street sales of all copyright products and authorizing law enforcement units to make seizures. The same law, however, also reduces penalties for piracy.

In 1995, new patent, trademark, industrial design, and geographic indicator laws revamped Turkey's foundation for industrial property protection. Turkey also acceded to a number of international conventions, including the Stockholm Act of the Paris Convention, the Patent Cooperation Treaty, and the Strasbourg Agreement. Although the Turkish Patent Institute (TPI) was established in 1994 to support technological progress, protect intellectual property rights and provide public information on intellectual property rights, it is currently understaffed.

In accordance with the 1995 patent law and Turkey's agreement with the EU, patent protection for pharmaceuticals began on January 1, 1999. Turkey has been accepting patent applications since 1996 under with the TRIPS agreement "mailbox" provisions. The patent law does not, however, contain interim protection for pharmaceuticals in the research and development "pipeline."

The key intellectual property concern for research-based pharmaceutical companies is Turkey's lack of protection from unfair commercial use for confidential test data, which is required by the TRIPS Agreement. U.S. industry contends that at least 165 products benefitting from such unfair commercial use have been approved or are pending review by the Turkish Health Ministry, and that the lack of protection costs U.S. companies some $400 million annually in lost sales. Patent holders have also noted that the Health Ministry has accepted applications to register generic copies of products protected by patents.

Trademark holders also contend that there is widespread and often sophisticated counterfeiting of their marks in Turkey. The industry believes that Turkey is a significant exporter of counterfeit products to developed country markets.

SERVICES BARRIERS

Telecommunications Services

State-owned Turk Telekom currently provides voice telephony and most value-added and basic telecommunications services. In the WTO negotiations on Basic Telecommunications Services, Turkey made commitments to provide market access and national treatment for all services at the end of 2005, and permitted value-added telecommunications services to be licensed to the private sector with a 49 percent limit on foreign equity investment. In the interim, Turkey committed to provide national treatment for mobile, paging and private data networks. In 2000, the Turkish government passed a law unilaterally accelerating the opening of the market for basic telephone services to January 1, 2004. A 2001 law provides for liberalization of areas under the Turk Telekom monopoly once the state's share in that company falls below 50 percent. The Turkish government has not yet issued implementing regulations. These laws also created an independent regulatory body - the Telecommunications Regulatory Board - and made licensing criteria publicly available. U.S. firms complain that the licensing process still lacks transparency and that revenue sharing with Turk Telekom is required where competition is permitted. There are three private cellular operators in Turkey, with a fourth license held by Turk Telekom.

The Turkish government plans to announce its strategy for privatizing Turk Telekom in the near future. In November 2003, the Transport and Communications Minister said that the Council of Ministers had agreed on a block sale of a majority stake in Turk Telekom by the end of May 2004, with a possible sale of additional shares to the public after that date. The Minister stated that foreign investors would be eligible to buy a majority stake in the company.

Other Services Barriers

There are restrictions on establishment in financial services, the petroleum sector, broadcasting, aviation and maritime transportation (see Investment Barriers section). A 2003 law on work permits for foreigners repealed earlier legislation defining certain professions and services open only to Turkish citizens. This has significantly broadened the range of occupations in which foreigners can be engaged, but there are still restrictions for doctors, attorneys and several other professions.

INVESTMENT BARRIERS

The U.S.-Turkey Bilateral Investment Treaty (BIT) entered into force in May 1990. Turkey has a liberal investment regime in which foreign investments receive national treatment. Once approved, firms with foreign capital are treated as local companies. However, private sector investment is often hindered, regardless of nationality, by: excessive bureaucracy; political and macroeconomic uncertainty; weaknesses in the judicial system; high tax rates; a weak framework for corporate governance; and frequent, sometimes unclear, changes in the legal and regulatory environment.

Almost all areas open to the Turkish private sector are fully open to foreign participation, but establishments in the financial and petroleum sectors require special permission. The equity participation ratio of foreign shareholders is restricted to 20 percent in broadcasting and 49 percent in aviation, value-added telecommunications services, and maritime transportation. Nonetheless, once investors have committed to the Turkish market, they sometimes find the rationale for their initial investments significantly undercut by arbitrary legislative action.

The Turkish government accepts binding international arbitration of investment disputes between foreign investors and the state; this principle is enshrined in the U.S.-Turkey BIT. For many years, there was an exception for concessions involving private (primarily foreign) investment in public services. In 1999, the Parliament passed a package of amendments to the constitution allowing foreign companies access to international arbitration for concessionary contracts. In 2000, the Turkish government completed implementing legislation for arbitration. In 2001, the Parliament approved a law further expanding the scope of international arbitration in Turkish contracts.

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In 2003, Parliament passed legislation that streamlined the process of establishing a company in Turkey, and which eliminated screening of foreign investors in favor of a notification system, provided national treatment for foreign-owned entities in acquisition of real estate, and abolished specific minimum capital requirements for foreign investors.

The Turkish government passed legislation in February 2001 that will introduce a fully liberalized energy market, under which private firms will develop projects with the approval of an independent regulatory body, but little progress has been made in privatizing power generation and distribution.

ANTICOMPETITIVE PRACTICES

As part of its customs union agreement with the EU, Turkey has pledged to adopt EU standards concerning competition and consumer protection. In 1997, a government Competition Board commenced operations, putting into force a 1994 competition law. Government monopolies in a number of areas, particularly alcoholic beverages and telecommunications services, have been scaled back in recent years. These monopolies, along with the concentration of private sector ownership in other areas, are a barrier to certain U.S. products and services.

Corruption

Corruption is perceived to be a major problem in Turkey by private enterprise and the public at large.

Corruption appears to be most problematic in government procurement, with frequent allegations that contracts are awarded on the basis of personal and political relationships between business representatives and government officials. The judicial system is also perceived to be susceptible to external political and commercial influence to some degree. U.S. firms have sometimes alleged that corruption, or at a minimum, nontransparent practices, have been a barrier to direct foreign investment. American companies operating in Turkey have complained about the solicitation of community contributions with varying degrees of pressure, by municipal or local authorities.

The Turkish government conducted two significant anti-corruption operations in 2001, one in the energy ministry and the other in the public works ministry. Several individuals were charged with corruption and wrongdoing in government contract tenders. Parliament continues to probe corruption allegations involving senior officials in previous governments, particularly in connection with energy projects. In 2003, after the government intervention in a bank owned by the Uzan group, evidence of corrupt practices at the bank was discovered.

Turkey ratified the OECD antibribery convention, and passed implementing legislation providing that bribes of foreign officials, as well as domestic, are illegal and not tax deductible. In 2003, Turkey ratified the convention on Combatting Bribery of Foreign Public Officials in International Transactions, the Council of Europe's Civil Law on Corruption and the UN Convention against Transnational Organized Crime. The GOT has signed the Council of Europe's Criminal Law on Corruption, but has not ratified it. The Turkish Government signed the UN Convention Against Corruption in December 2003.

OTHER BARRIERS

Energy

In 2001, the Turkish Government cancelled 46 contracted power projects based on the build-operate-transfer (BOT) and transfer-of-operating-rights (TOR) models. Turkey's constitutional court ruled in

2002 that the government would have to either honor the contracts or compensate the companies involved. To date, the Turkish government has not commenced negotiations with the companies, one of which has launched an international arbitration case. In 2002, the government required BOT projects already in operation -- which include U.S.-owned companies -B to apply for new licenses from the new Energy Market Regulatory Authority (EMRA), and has pressed the companies to unilaterally lower their prices while the license application process is still underway.

Cola tax

Punitive taxation of cola drinks (raised in 2002 to 47.5 percent under Turkey's Special Consumption Tax) discourages investment by major U.S. cola producers.

Corporate Governance

Weaknesses in the protection of minority shareholder rights and regulatory oversight have left some American companies at a disadvantage in disputes with Turkish partners.