TURKEY

TRADE SUMMARY

The U.S. trade surplus in 2001 was $52 million, a $626 million decrease from 2000. Goods imports from Turkey were $3.1 billion, down approximately 16.5 percent from 2000. Turkey is the United States' 33rd largest export market. Approximately half of Turkey's exports to the United States are textile products. Turkey ranks 14th among textile exporters to the U.S. market. Turkey is a beneficiary of GSP, has a Bilateral Investment and Tax Treaty with the United States, and is a member of the EU Customs Union. The stock of U.S. investment in Turkey was about $1.4 billion in 2000.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

As a result of its customs union with the European Union, Turkey now 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 weighted average rate of protection for industrial products from the United States and other third countries dropped from 11 percent to six percent with the introduction of the customs union and to four percent by the end of 2000. Higher transitional tariffs on imports of sensitive goods (including automobiles, leather and ceramics) from third countries also are being gradually phased out. Further reductions in the general tariff level are not likely to affect U.S. exports significantly.

The customs union has helped the EU consolidate its trade relations with Turkey. The EU decision in December 1999 to confirm Turkey as an EU candidate served to further strengthen the EU's position as Turkey's primary trading partner. In particular, the harmonization of trade regulations with those of the EU should, on balance, benefit third country exporters as well. It will simplify import procedures for EU goods, but also should improve the general import climate.
Turkey maintains high tariff rates on many agricultural and food products to protect domestic producers. These include fruits and fruit juice (up to 140 percent), raisins (58 percent), grains (up to 85 percent), rice (35 percent) and meats (232 percent). High feed input prices have resulted in inflated prices for poultry and beef. Rates can vary during the year, depending on the availability of domestically produced crops. During recent years, corn duties fluctuated from 10 percent to 60 percent, while duties on milling wheat varied from five percent to 55 percent. Under its EU customs union and other bilateral agreements, imports of about 2,300,000 tons of milling wheat and 28,000 tons of rice are given duty-free entry. The World Bank has recommended that domestic support be reduced, agricultural tariffs be lowered and other trade barriers be eliminated. The Turkish Government also levies high duties, as well as domestic taxes and other charges, on imported alcoholic beverages that increase wholesale prices by more than 200 percent.

Import Licenses and other Restrictions

Non-tariff barriers result in costly delays, demurrage charges, and other uncertainties that stifle trade for many agricultural products. Changes in import policies and phytosanitary requirements are not notified to the WTO and are often communicated verbally, rather than in writing, with varying levels of enforcement. Import permits for some products that previously were issued by Ministry of Agriculture and Rural Affairs (MARA) officials at ports of entry must now be cleared by headquarters in Ankara. Wheat import permits are only issued to flour product exporters and EU-quota holders. In 2000, the specifications for imported corn were tightened with no scientific justification. MARA

stopped issuing permits for paddy rice during the domestic rice harvest period from September - November 2000, disrupting U.S. export sales. Also, U.S. rice exports were displaced by a zero-duty import quota for 28,000 tons of rice granted to the EU. MARA limited the quantity of bananas that can enter under each import permit to 200MT and imposed new laboratory certification requirements. In December 2000, MARA implemented a similar policy for beans (50MT per permit). Furthermore, for these two products, importers are issued only one permit at a time, discouraging larger, cost-effective shipments. Although the Government officially lifted its ban on livestock imports in August 1999, MARA sets strict conditions for cattle imports and only a few thousand breeder cows were imported last year. The import of meat and slaughter cattle is banned.

The import process for alcoholic beverages is exceedingly complicated, requiring both MARA control certificates and TEKEL (state parastatal) permits which strictly limit trade and distribution channels and are made available under only limited and unpredictable circumstances. The government is considering ways to liberalize TEKEL's monopoly power, but the initial proposal appears to maintain TEKEL's market dominance by allowing companies to import and distribute only if their annual sales exceed one million liters.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In recent years, it has become more difficult for importers to obtain sanitary and phytosanitary certifications. For instance, MARA has begun to require official certification for laboratory results on certain food ingredient imports, including dioxin levels. U.S. regulatory agencies do not require such testing or certify these types of results.

Requirements for labeling of genetically modified organisms (GMO) foods are under discussion. Although the Government officially lifted its ban on livestock imports in August 1999, MARA sets strict conditions for cattle imports and only a few thousand breeder cows were imported last year.

A regulation in place since 1999 prohibits the import of certain new construction equipment manufactured in prior calendar years, limiting U.S. producers' ability to export to the Turkish market. In 2000, the government instituted a "grace period" to allow importation in the year following production if all export formalities are completed during the final six months of the year of production. However, some U.S. exporters report that the regulation has been applied arbitrarily to exclude equipment manufactured more than a few months before importation.

While import licenses generally are not required for industrial products, products which need after-sales service (e.g., office equipment, white goods, electronic and electrical consumer products, advanced data processing equipment, diesel generators) and medical and agricultural commodities require licenses. In addition, 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. In 2000, the government introduced a testing requirement on imported candles although no tests are required for domestically produced candles.

GOVERNMENT PROCUREMENT

Turkey is not a signatory of the WTO Government Procurement Agreement. It nominally follows competitive bidding procedures for tenders. U.S. companies sometimes become frustrated over lengthy and often complicated bidding and negotiating processes. Some

tenders, especially large projects involving co-production, are frequently opened, closed, revised, and opened again. There often are numerous requests for "best offers"; in some cases, years have passed without the selection of a contractor. Parliament enacted a law reforming public tenders early in 2002.

The Turkish government has discretionary authority to grant a percentage preference to domestic firms on public construction projects. However, some large infrastructure projects including dams, power plants, highways, and railways are tendered for international firms. The foreign firms usually have local partners. All projects with foreign currency or foreign credit guarantees allocated by the Turkish Treasury and State Planning Organization are open to foreign engineering and construction companies.

Military procurement generally requires an offset provision in tender specifications when the estimated value of the imported goods and/or services exceeds $5 million. Direct offsets, i.e., exports from Turkey of products, systems or parts directly or indirectly related to the project, are preferred. However, indirect offsets – new foreign capital investments and product exports in fields outside the project – have been accepted.

EXPORT SUBSIDIES

Domestic producers and exporters can take advantage of a number of government programs designed to support production for domestic and export markets, including cash and credit assistance for research and development projects, environmental projects, participation in trade fairs, market research and establishment of branch offices overseas. The Government provides subsidies for exports of a number of agricultural products including sugar and wheat. These subsidies are expected to be phased out as Turkey complies with the terms of its IMF and World Bank agreements. However, in 2000, Turkey exceeded the 1.2 million metric ton ceiling on wheat subsidies to which it committed under the WTO.
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. With the assistance of the World Bank, Turkey is shifting from production subsidies to a more efficient direct support payment system for farmers.
The Turkish Eximbank provides exporters with credits, guarantees, and insurance programs for non-agricultural products. Certain other tax credits also are available to exporters.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 1995, as part of Turkey's harmonization with the EU in advance of the customs union, the Turkish parliament approved new patent, trademark and copyright laws. Turkey also acceded to a number of multilateral intellectual property rights (IPR) conventions. Although the new laws provide an improved legal framework for protecting IPR, they require further amendments to be consistent with the standards contained in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The government has declared that it intends to have a TRIPS-compatible IPR regime in place as soon as possible. Amendments to the Copyright Law designed to meet this goal were approved unanimously by Turkey's Parliament in late February 2001.

Turkey has been on the Special 301 Priority Watch List since 1992. In the 1997 Special 301 review, the U.S. Trade Representative provided Turkey with a set of benchmarks necessary in order to improve its status in the Special 301 process. In April 1998, the United States announced that it would not consider requests to

augment Turkey's benefits under the U.S. Generalized System of Preferences until further progress had been made on the benchmarks. Benchmark items include: equalizing taxes on domestic films; ensuring that the government uses only properly licensed software; maintaining a public anti-piracy campaign; amending copyright and patent laws to provide for retroactive copyright protection, protecting proprietary data and clarifying that importation constitutes working of a patent; amending the Cinema, Video and Music Works Law to include higher penalties; and sustaining enforcement efforts.

Turkey has made significant progress on five of the six benchmarks and is in the process of addressing the problems identified in the sixth. Taxes on the showing of foreign and domestic films were equalized in 1998. The Prime Minister issued a circular in 1998 directing all government agencies to ensure that they have proper licenses for the software used in their offices. A public anti-piracy campaign was begun in 1998 and the government has made efforts to educate businesses, consumers, judges and prosecutors regarding the implications of its laws. Turkey extended patent protection to pharmaceutical products in January 1999 in accordance with its customs union commitments to the EU and passed amendments to its copyright law in February 2001.

In August 1999, fines were increased by 800 percent and indexed to inflation. The Copyright Amendments approved in February 2001 further increase fines and set possible jail sentences of one to three years duration. Turkish police and prosecutors are working closely with trademark, patent and copyright holders to conduct raids against pirates within Turkey. Many seizures have been made (including by Turkish Customs officials at ports of entry), and several cases have been brought to conclusion successfully. Prior to the passage of the Copyright Law amendments, U.S. industry was concerned that fines and penalties levied by the courts did not serve as a significant deterrent. It is too early to evaluate the application of the new fines and penalties under the amended Copyright Law.

In 2001, the Parliament enacted amendments to the copyright law which provide retroactive protection, expand the list of protected items and increased deterrent penalties against piracy. These amendments brought Turkey into compliance with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). In recognition of Turkey's progress in the IPR area, USTR removed Turkey from its Special 301 Priority Watch List and placed the country on its Watch List in 2001.

Although intellectual property holders have praised Turkey's new legislation as a significant improvement in the legal regime, producers allege that implementing regulations in the area of broadcasting do not adequately protect intellectual property rights holders. Foreign drug manufacturers contend that data exclusivity infringement and restrictive government price and procurement policies are serious barriers. Trademark holders contend that there is widespread and often sophisticated counterfeiting of their marks in Turkey.

SERVICES BARRIERS

Accounting

Foreigners are not permitted to acquire, own an interest in, form a partnership with, merge with, establish, or affiliate with Turkish accounting firms. Owners and employees of accounting firms established in Turkey cannot acquire, own an interest in, form a partnership with, merge with, establish, or affiliate with foreign firms. Names of foreign or affiliated firms cannot be used in the legal name of an auditing partnership

or corporation, and cannot be used on letterheads and business cards.

Regulations prohibit the formation of partnerships among partners of different levels and titles. Also, qualified non-Turkish auditors are not permitted to practice on a basis equal to qualified Turkish auditors because of non-recognition of foreign-country professional certification and foreign education, and because of nationality requirements.

Legal Services

The practice of Turkish law and membership of the bar is restricted to Turkish nationals. A person cannot provide legal advice on foreign or international law without being licensed in the practice of Turkish law. Turkish lawyers are not permitted to form partnerships with foreign lawyers. However, some foreign law firms have established liaison or branch offices in Turkey, staffed by Turkish lawyers.

Architecture and Engineering

Licensing of architects and engineers is limited to Turkish nationals. The Turkish government has discretionary authority to grant a percentage preference to domestic firms on public construction projects. Licensing of architects and engineers is limited to Turkish nationals. However, some large infrastructure projects including dams, power plants, highways, and railways are tendered for international firms. The foreign firms usually have local partners. All projects with foreign currency or foreign credit guarantees allocated by the Turkish Treasury and State Planning Organization are open to foreign engineering and construction companies. However, Turkish Treasury guarantees for new projects have been significantly reduced in order to meet strict fiscal goals under Turkey's disinflation program and Standby Agreement with the IMF.

Telecommunications Services

State-owned Turk Telekom currently provides voice telephony and most value-added services, and basic telecommunications services, with the exception of two GSM licenses, operated by Turkcell and Telsim, which provide cellular telephone service. The Turkish government plans to complete divestment of its shares in Turk Telekom by the end of 2002, although it may still retain a single "golden" (blocking) share of approximately 33 percent. The United States has urged the Turkish government to pursue full and complete privatization.

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 Telecom monopoly once the state's share in that company falls below 50 percent. 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 Telecom is required where competition is permitted. There are three private GSM cellular operators in Turkey, with a fourth license held by Turk Telecom.

Other Services Barriers

There are restrictions on establishment in financial services, the petroleum sector, broadcasting, aviation and maritime transportation (see Investment Barriers section).

INVESTMENT BARRIERS

The U.S.-Turkish Bilateral Investment Treaty (BIT) entered into force in May 1990. Turkey has a liberal investment regime in which foreign investments receive national treatment. There is a screening process for foreign investments, which the government applies on an MFN basis. Once approved, firms with foreign capital are treated as local companies. 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, such as laws imposing limits on the production corn sweeteners.

The Turkish government accepts binding international arbitration of investment disputes between foreign investors and the state; this principle is enshrined in the U.S.-Turkish 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.

While Turkey's legal regime for foreign investment is liberal, 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. The Turkish government is considering legal and other changes to reduce red tape and dismantle other barriers to investment.

Turkey is a member of several international dispute settlement bodies. Nevertheless, until 1999, Turkish courts did not recognize investors' rights to third party arbitration under any contract defined as a concession. This was particularly problematic in the energy, telecommunications and transportation sectors. Constitutional amendments, accepted by the Parliament in 1999 granting access to international arbitration to foreign investors, largely corrected this problem. Investors in these sectors often expressed concern about the lack of clarity in the government approval process, lack of lender's step-in rights, the lack of lender rights to termination, and disparities between the rights of lenders and the rights of the Turkish Government to claim force majeure. The Turkish government passed legislation in February 2001 that will introduce a fully liberalized energy market in Turkey, under which private firms will develop projects with the approval of an independent regulatory body. The Turkish government also introduced a bill to Parliament designed to make government tenders more transparent.

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, but currently remain 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 public procurement, with frequent allegations that contracts are awarded on the basis of personal and political relationships of businesspersons and government officials. The judicial system is also perceived to be compromised to some extent by corruption. Turkish legislation outlaws bribery and some prosecutions of government officials for corruption have taken place.

OTHER BARRIERS

Turkey's decision to limit sovereign guarantees for certain energy projects has hurt several U.S. companies that had made substantial investments in these projects. In addition, the Turkish Electricity Trading Company (TETTAS) has refused to honor its contractual obligation to pay OPIC-financed U.S. power generation companies for foreign exchange costs resulting from the sharp depreciation of the lira in 2001.