TURKEY

TRADE SUMMARY

The U.S. trade deficit with Turkey was $408 million in 2002, a reversal of $448 million from $40 million trade surplus in 2001. U.S. goods exports in 2002 were $3.1 billion, up 0.4 percent from the previous year. Corresponding U.S. imports from Turkey were $3.5 billion, up 15.1 percent. Turkey is currently the 32nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey in 2001 was $1.2 billion, down from $1.4 billion in 2000. U.S. FDI in Turkey is primarily in the manufacturing, banking and services sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

As a result of its 1996 customs union with the European Union, 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 weighted rate of protection for industrial products from the United States and other third countries dropped to 4.65 percent at the end of 2001. Turkey's harmonization of trade and customs regulations with those of the EU and the overall decline in tariff rates is benefitting third country exporters as well.

Turkey maintains high tariff rates on many agricultural and food products to protect domestic producers. Duties for paddy and milled rice were recently raised to 38 percent and 46 percent respectively. Corn and milling wheat duties were reduced to 10 percent in early 2002. However, the duty on corn was increased to 40 percent during the local harvest season and has yet to be reduced again. In recent years, tariff rates for these grains have been raised to prohibitively high levels in the months following the domestic harvest. Barley duties are maintained at 85 percent year-round. High feed input prices have resulted in high prices for poultry and beef, and have negatively impacted local industries. Under its EU customs union and other bilateral agreements, Turkey imports approximately 230,000 tons of milling wheat, 100,000 tons of durum wheat and 28,000 tons of rice duty-free. Duties on fruits range from 61 percent (apples) to 149 percent (bananas). For processed vegetables and fruits/fruit juices, tariffs range from 41 percent to 138 percent. The Turkish Government 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. Turkey does not permit any meat imports.

Import Licenses and other Restrictions

While import licenses generally are not required for industrial products, products which require after-sales service (e.g., photocopiers, advanced data proceeding (ADP) equipment, diesel generators) require licenses. Non-tariff barriers result in costly delays, demurrage charges, and other uncertainties that stifle trade for many agricultural products. Changes in import policies are not always notified as required by WTO obligations. 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. MARA is currently revising its technical import requirements to harmonize with EU standards. In the interim, no written standards exist for many products,. Wheat import permits are only issued to flour product exporters and EU-quota holders.

The MARA also stopped issuing permits for paddy rice during the domestic rice harvest period in 2001 and 2002, and applied quantitative restrictions during the rest of the year, which seriously constrained U.S. export sales. Many quantitative and non-tariff barriers for bananas have recently been resolved, however the 149 percent tariff has had a significant negative affect on trade.

The import process for alcoholic beverages is exceedingly complicated, requiring both MARA control certificates and TEKEL (a parastatal company) permits which strictly limit trade and distribution channels and are made available under only limited and unpredictable circumstances. The government is preparing TEKEL for privatization, but it is still unclear to what degree competition will be permitted in this sector.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Government of Turkey has not notified a number of changes in import policies and

phytosanitary requirements to the WTO. These changes are often communicated verbally, rather than in writing, with varying levels of enforcement. 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.

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, ADP 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.

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 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 are often numerous requests for "best offers."

In 2002, the Turkish Parliament approved a new public tender law which establishes a board to oversee public tenders, and lowers the minimum bidding threshold at which foreign companies can participate in state tenders. However, the law has not yet been implemented. Military procurement generally requires an offset provision in tender specifications when the estimated value of the imported goods or services exceeds $5 million. 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 were the main subsidized commodities. In 2001, Turkey exceeded its WTO obligations for subsidized barley exports. The Turkish Eximbank provides exporters with credits, guarantees, and insurance programs. Certain tax credits also are available to exporters.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 1995, the Turkish Parliament approved new patent, trademark and copyright laws in connection with preparations for Turkey's customs union with the EU. Turkey also acceded to a number of multilateral intellectual property rights (IPR) conventions, including the 1971 Paris Act of the Berne Copyright Convention. In 2001, the Parliament enacted amendments to the copyright law which provided retroactive protection, expanded the list of protected items and included deterrent penalties against piracy. These amendments brought Turkey into compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in most areas. 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, implementing regulations in the area of broadcasting include an arbitration provision which could lead to compulsory licensing of musical and possibly other works. In the software area, piracy rates have come down in recent years following an anti-piracy campaign and a directive to legalize software used in government bodies. Trademark holders contend that there is widespread and often sophisticated counterfeiting of their marks in Turkey.

Turkey's 1995 patent law replaced a law originally passed in 1879. New trademark, industrial design, and geographic indicator laws were passed at the same time, completely revamping Turkey's foundation for industrial property protection. Turkey also adhered to a number of international conventions in 1995, including the Stockholm Act of the Paris Convention, the Patent Cooperation Treaty, and the Strasbourg Agreement.

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 in compliance with the TRIPS agreement "mailbox" provisions. The patent law does not, however, contain interim protection for pharmaceuticals in the research and development "pipeline." Lack of data exclusivity protection, which is required by the TRIPS agreement, is the key concern for research-based pharmaceutical companies.

Turkish police and prosecutors are working closely with trademark, patent, and copyright holders to conduct raids against pirates within Turkey. Although several cases have been brought to conclusion successfully, U.S. industry believes continued enforcement efforts are needed.

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 in 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, which are 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. 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 IMF program.

Telecommunications Services

State-owned Turk Telekom currently provides voice telephony and most value-added and basic telecommunications services. The Turkish government plans to privatize Turk Telekom, with the government retaining a single "golden" (blocking) share. Foreign investors will be able to acquire up to 45 percent of Turk Telekom. 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 of 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. Key changes under discussion include: elimination of screening of foreign investors in favor of a notification system; national treatment for foreign-owned entities in the acquisition of real estate; and the abolition of specific minimum capital requirements for foreign investors.

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.

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.

OTHER BARRIERS

Corruption

Corruption is perceived to be a major problem in Turkey by private enterprise and the public at large. 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. The operations resulted in the resignation of both ministers and the arrest of many high-level officials.

Corruption appears to be most problematic in government 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 susceptible to external political and commercial influence to some degree.

Turkey has ratified the OECD antibribery convention, but has not yet passed the relevant implementing legislation which would explicitly provide that bribes of foreign officials, as well as domestic, are illegal and not tax deductible.

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 contributions to the community solicited, with varying degrees of pressure, by municipal or local authorities.

Energy: Over the last 5-7 years, U.S. firms have spent tens of millions of dollars pursuing contracts for power projects using the build-operate-transfer (BOT) and transfer-of-operating-rights (TOR) models. The constitutional court ruled in April 1992 that the Government of Turkey would have to either honor the contracts or compensate the companies involved. To date, the Government of Turkey has not commenced negotiations with the companies, one of which has launched an international arbitration case. Because of the delay, the companies are now required to submit license applications to the Energy Market Regulatory Board (EMRA), which took control of such licenses in September. In addition, BOT projects already in operation filed suit against EMRA on October 2002, claiming that the license requirement was in violation of their implementing contracts.

Cola tax: Punitive taxation of cola drinks (raised in 2002 to 47.5 percent under Turkey's new "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.