TURKEY

TRADE SUMMARY

The U.S. trade deficit with Turkey was $1.6 billion in 2004, an increase of $686 million from $888 million in 2003. U.S. goods exports in 2004 were $3.4 billion, up 15.9 percent from the previous year. Corresponding U.S. imports from Turkey were $4.9 billion, up 30.3 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 2003 was $2.0 billion, up from $1.9 billion in 2002. U.S. FDI in Turkey is concentrated largely in the wholesale, manufacturing, 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 to third-country (including the United States) non-agricultural imports and imposes no duty on non-agricultural items from EU and European Free Trade Association (EFTA) countries.

Turkey maintains high tariff rates (25 percent average Most-Favored-Nation rate) on many food and agricultural products to protect domestic producers. The Turkish government often increases tariffs on grains during the domestic harvest. High feed prices harm Turkish livestock industries, particularly for beef and poultry. Duties on fresh fruits range from 61 percent to 149 percent. Processed fruits, fruit juices and vegetable tariffs range between 41 and 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.

Import Licenses and Other Restrictions

While import licenses generally are not required for industrial products, products which need after-sales service (e.g., photocopiers, ADP equipment, and diesel generators) require licenses, as do distilled spirits. We have concerns about the lack of transparency in Turkey's import licensing system, which can result in costly delays, demurrage charges, and other uncertainties that stifle trade for many agricultural products. For the previous four years, the Ministry of Agriculture and Rural Affairs (MARA), through its quarantine service, has stopped issuing import licenses for rice and corn prior to the harvest. After the harvest these restrictions were lifted. However, in 2004 the Turkish government failed to remove the import restrictions on rice that were levied in late 2003, significantly disrupting rice imports. We are also concerned about the restrictive effects of the licensing system, as well as export and consumer subsidies, on Turkey's imports of U.S. sugar. In concert with its unpredictable licensing system, Turkey has also recently implemented import quota programs for rice and corn. Import quotas, often tied to procurement of domestic crops, tend to fluctuate throughout the marketing year, making it very difficult for commercial traders to plan their import programs.

Turkey is in the process of rewriting its import regulations for agriculture products in order to comply with EU regulations. However, some new regulations do not appear to be fully consistent with those of the EU. For many products, no written standards exist, for example, for red meat and wine imports.

Recent changes in Turkish law call for a liberalization of the spirits and tobacco market over a five-year period, which should improve the competitive environment. The Turkish government has privatized the alcohol operations of TEKEL (a parastatal company) and is in the process of privatizing TEKEL's tobacco operations.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Turkish government has a poor track record of notifying WTO members of proposed technical regulations and phytosanitary requirements, and implementation appears to be arbitrary. Importers report increasing difficulty in obtaining information on sanitary and phytosanitary certifications. The Turkish government often requires laboratory testing on items not normally subject to testing by trading partners, allegedly without any scientific basis.

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.

U.S. CE-marked products, particularly medical devices, are often detained by Turkish customs authorities for inspection. In some cases, U.S. products apparently have been subject to additional tests, despite their CE marks, while EU CE-marked products gain immediate entry to the Turkish market.

Certification of spare parts for automobiles under the Turkish Decree for Standardization in Foreign Trade remains a problem; even though the decree is no longer formally in place, automakers are still subject to several of its provisions.

Turkey has not yet implemented changes in standards for distilled spirits, which currently limit U.S. exports.

GOVERNMENT PROCUREMENT

Turkey is not a signatory of the WTO Government Procurement Agreement. However, it is an observer to the Committee on Government Procurement. Although its laws require competitive bidding procedures for tenders, U.S. companies sometimes become frustrated over lengthy and often complicated bidding and negotiating processes.

In 2003, Turkey implemented a new public tender law that reformed its government procurement system. The new law established an independent board to oversee public tenders, increased the transparency of its procurement procedures, and lowered the minimum bidding threshold at which foreign companies can participate in state tenders. However, the law provides a price preference of up to 15 percent for domestic bidders, which is not applicable to domestic bidders when they form a joint venture with foreign bidders. In 2003, Turkey expanded the definition of domestic bidder to include corporate entities established under Turkish law, including those established by foreign companies.

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

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 commitments. Historically, wheat and sugar have been Turkey's main subsidized commodities. Export subsidies, ranging from 10 to 20 percent of export values, are granted to 16 agricultural or processed agricultural products. In 2004, the Turkish Grain Board (TMO) sold domestic wheat to flour and pasta manufacturers based upon their exports of flour and pasta. This is an implicit subsidy as TMO is selling the manufacturers wheat at world prices, which are well below domestic prices. It is too early to quantify the size of this subsidy. The Turkish Export-Import Bank provides exporters with credits, guarantees, and insurance programs. Certain tax credits also are available to exporters.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Turkey's intellectual property rights regime has improved in recent years, but still presents serious problems. Turkey was elevated from the Special 301 Watch List to the Priority Watch List in 2004, due to concerns about lack of pharmaceuticals data exclusivity protection and continued high levels of piracy and counterfeiting of copyright and trademark materials.

Turkey's 2001 copyright law substantially modernized the legal regime, providing deterrent penalties for copyright infringement. However, it does not prohibit circumvention of technical protection measures, a key feature of the World Intellectual Property Organization (WIPO) “Internet” treaties. In addition, the Turkish courts have failed to render deterrent penalties to pirates as provided in the copyright law but have instead applied the Turkish Cinema Law, which has much lower penalties. Legislation enacted in March 2004 contains several strong anti-piracy provisions, including a ban on street sales of all copyright products and authorization for law enforcement authorities to take action without a complaint by the rights holder. However, the law also reduces potential prison sentences in piracy convictions. U.S. industry estimated losses to piracy in 2004 at $50 million for motion pictures, $15 million for records/music and $23 million for books. There are signs that anti-piracy measures introduced in 2004 may be having a positive impact on industry.

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 in compliance with the TRIPS agreement "mailbox" provisions. The patent law does not, however, contain interim protection for pharmaceuticals in the R&D “pipeline”.

Parliament amended the Patent Law in June 2004. The new law provides for penalties for infringement of up to 3 years in prison, or 47 billion TL (approximately $32,000) in fines, or both, and closure of the business for up to one year. However, some companies in the pharmaceuticals sector have criticized provisions which delay the initiation of infringement suits until after the patent is approved and published, permit use of a patented invention to generate data needed for the marketing approval of generic pharmaceutical products, and give judges wider discretion over penalties in infringement cases,.

The Health Ministry has accepted applications to register generic copies of products which have a valid patent in Turkey; in the absence of a system for patent linkage, it may become possible for generics manufacturers to register a copy of a brand name drug with a valid Turkish patent, with enormous damage to the interests of the patent owner.

The Government of Turkey introduced limited data exclusivity in a regulation issued by the Health Ministry in January 2005. However, several of the regulation's provisions severely undermine protection for confidential test data. Retroactive application is limited to original products licensed in a Customs Union country after January 1, 2001 for which no generic manufacturers have applied for licenses in Turkey and the term of exclusivity is limited to the duration of the drug patent. Also, the six-year term of data protection starts on the date of licensing in an EU Customs Union country, implying a shorter term of protection because of the length of the marketing approval process in Turkey.

Trademark holders also contend that there is widespread and often sophisticated counterfeiting of their marks in Turkey, especially in apparel, pharmaceuticals, film, cosmetics, detergent and other products.

In 2004, Turkey published its first Plant Variety Protection (PVP) Law. A subsidiary of a major U.S. seed company, however, has been unable to obtain protection for its commercial seed under this new law, reportedly at great cost to the company.

SERVICES BARRIERS

Telecommunications Services

State-owned Turk Telecom 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 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; however, the Turkish government has not yet issued implementing regulations. These laws also created an independent regulatory body - the Telecommunications Authority (TK) - 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. Due to a well publicized merger and a government seizure in February, 2004, there are now two private GSM cellular operators in Turkey, with a third (Telsim) currently owned by the Turkish Government.

In November 2004, the Privatization Administration announced the tender for a block sale of 55 percent of Turk Telecom. Law 5189 of 2004 lifted the limit on foreign ownership of Turk Telecom. Turkey has offered to bind this accelerated liberalization in the current WTO services negotiation, and fully adopt the WTO Reference Paper on regulatory principles. While a welcome improvement, Turkey has failed to address either in domestic law or in its revised WTO offer the key outstanding market access barrier, the 49 percent foreign equity restriction for this sector.

Other Services Barriers

There are restrictions on establishment in financial services, the petroleum sector, broadcasting, 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.-Turkish Bilateral Investment Treaty (BIT) entered into force in May 1990. Turkey has a liberal investment regime, but private investment has often been 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 changes in the legal and regulatory environment.

Almost all areas open to investment by the Turkish private sector are fully open to foreign participation, but establishment in the financial and petroleum sectors requires special permission. Foreign equity is limited to 20 percent in broadcasting and 49 percent in maritime transportation and many value-added telecommunications services (such as GSM, satellite and data, though telecommunications legislation has been amended to allow certain company-specific exceptions to these limits). Parliament is considering draft legislation easing restrictions on foreign ownership in the media. Once investors have committed to the Turkish market, they have sometimes found their investments undercut by arbitrary legislative action, such as the imposition of production limits.

The Turkish government accepts binding international arbitration of investment disputes between foreign investors and the state. In 2001 the Parliament approved a law expanding the scope of international arbitration in Turkish contracts. However, at least one American company reports that the judicial system in Turkey has not recognized international arbitration awards. (Turkey has been a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1992. It has been a party to the ICSID Convention since 1989.)

The Turkish government passed legislation in February 2001 that aims to introduce a fully liberalized energy market, under which private firms will be able to develop projects with the approval of the Energy Market Regulatory Authority, an independent regulatory body. The state electricity utility has been unbundled into production, transmission, distribution, and trading companies, but little progress has been made in privatizing power generation and distribution. Targeted liberalization of the natural gas sector has also faced delays. The state pipeline company BOTAS will remain dominant, but legislation requires phased transfer of 80 percent of its gas purchase contracts. Privatization of natural gas distribution is proceeding slowly.

As the result of a 1997 court decision, the Turkish Government has blocked full repatriation of investments by oil companies under Article 116 of the 1954 Petroleum Law, which protected foreign investors from the impact of lira depreciation. Affected companies have challenged the 1997 decision and the case is currently in the Turkish court system.

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. The Turkish government maintains a state monopoly on wine production that restricts the sales of U.S. wine.

Corruption

Corruption is perceived to be a major problem in Turkey by private enterprise and the public at large, particularly in government procurement. The judicial system is also perceived to be susceptible to external influence and to be biased against outsiders to some degree. American companies operating in Turkey have complained about contributions to the community solicited, with varying degrees of pressure, by municipal or local authorities.

Parliament continues to probe corruption allegations involving senior officials in previous governments, particularly in connection with energy projects.

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.

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 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 requested BOT projects already in operation -- which include U.S.-owned companies -- to apply for new licenses from the new Energy Market Regulatory Authority (EMRA), and has indirectly pressed them unilaterally to lower their prices while the license application process is still underway. Despite lack of action on new licenses, the Turkish government has continued to purchase electricity produced per the existing contracts.

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.

Automakers: Turkey assesses a Special Consumption Tax of 27 percent to 50 percent on all motor vehicles based on engine size. This tax has a disproportionate effect on U.S. automobiles.

Pharmaceuticals: Besides their intellectual property concerns detailed above, the pharmaceutical industry's sales have been hurt by Government price controls. Research-based industry is also concerned about achieving transparent and equitable treatment in upcoming reforms of the Government's health care and pension system.