# TURKEY

## TRADE SUMMARY

The U.S. goods trade deficit with Turkey was $903 million in 2005, a decrease of $669 million from $1.6 billion in 2004. U.S. goods exports in 2005 were $4.3 billion, up 27.1 percent from the previous year. Corresponding U.S. imports from Turkey were $5.2 billion, up 4.9 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 2004 was $2.2 billion, up from $2.0 billion in 2003. U.S. FDI in Turkey is concentrated largely in the banking, wholesale, and manufacturing sectors.

## IMPORT POLICIES

### Tariffs and Quantitative Restrictions

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 product imports. 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 fruit, fruit juice, and vegetable tariffs range between 41 percent and 138 percent. The Turkish government also levies high duties, excise taxes, and other domestic charges on imported alcoholic beverages that increase wholesale prices by more than 200 percent.

### Import Licenses and Other Restrictions

Import licenses are required for products that need after-sales service (e.g., photocopiers, advanced data processing equipment, and diesel generators), distilled spirits, and agricultural products. Lack of transparency in Turkey's import licensing system can result in costly delays, demurrage charges, and other uncertainties that stifle trade for many agricultural products and for distilled spirits. Starting in 2000, the Ministry of Agriculture and Rural Affairs (MARA), Office of Protection and Control, stopped issuing import licenses for rice and corn prior to and during the harvest season. Since 2003, however, MARA has stopped issuing import licenses for rice during the entire year, not just during the domestic harvest. The only method of importation is through a restrictive tariff-rate quota (TRQ) scheme that Turkey institutes each year after the Turkish rice harvest ends and suspends just before the next year's harvest begins.

Under the TRQs, in order to receive the preferential in-quota tariff rates, importers must purchase substantial quantities of Turkish rice from the Turkish Grain Board and/or Turkish producers and producer associations. As previously mentioned, Turkey ensures that there are no over-quota imports (to which the domestic purchase requirement does not apply) by failing to issue any import licenses. Turkey's failure to grant import licenses at the over-quota rate and its establishment of an onerous domestic purchase requirement governing imports under the TRQ scheme appear to be inconsistent with Turkey's WTO obligations. Thus, the United States requested WTO dispute settlement consultations with Turkey in November 2005.

In some cases, notably for meat and poultry, the Turkish government simply does not issue any licenses, thereby creating a *de facto* ban on imports of these products. Turkey has not allowed livestock for slaughter or meat imports from any foreign country since 1996 and has not established any public health requirements for the entry of meat. Outbreaks of Bovine Sspongiform Encephalopathy (BSE) and foot and mouth disease (FMD) in Europe strengthened Turkey's resolve to keep livestock and meat products out of their market. The United States is currently not able to export breeding livestock to Turkey since the EU placed the United States in the third BSE risk category. Turkey's BSE Committee has decided not to import any breeding cattle from category 3 countries (based on the EU system). The United States is also unable to export poultry meat for consumption within Turkey because the Government of Turkey requires its officials to inspect and approve all foreign processing facilities and expects inspection costs to be covered by Turkish importers.

Due to the EU accession process, Turkey is in the process of rewriting its agriculture import regulations in order to harmonize them with the EU. Some new regulations, however, do not appear to be consistent with EU regulations.

Despite liberalization of the spirits and tobacco markets, including a completed privatization of the alcohol operations of the state-owned monopoly and a privatization of the monopoly's tobacco operations, as well as privatization of imports of wine and alcoholic beverages, increases in consumption have been inhibited by inordinately high tariffs (85 percent - 100 percent) and consumption taxes (275 percent), along with the value-added-tax (VAT).

## 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 can appear 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. Although these practices do not stop imports, they can make the process more cumbersome. U.S. imports could increase by an estimated $10 million to $25 million if these procedures were regularized.

U.S. products with the EU certificate of conformity (CE mark), 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. For importation of distilled spirits, Customs requires that between 2 and 4 bottles per consignment be submitted for unspecified analysis, raising the cost of importing.

## GOVERNMENT PROCUREMENT

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

Turkey's public tender law established an independent board to oversee public tenders. There is a 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 that is not available if they form a joint venture with foreign bidders. Turkey did expand 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 percent 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 at world prices (well below domestic prices) to Turkish flour and pasta manufacturers based upon their exports of flour and pasta. 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 contains serious problems. Turkey remained on the Special 301 “Priority Watch List” in 2005 due to concerns about the lack of protection for confidential test data submitted by pharmaceutical companies against unfair commercial use and continued high levels of piracy and counterfeiting of copyright and trademark materials.

Turkey is a signatory to a number of international conventions, including the Stockholm Act of the Paris Convention, the Patent Cooperation Treaty, and the Strasbourg Agreement.

Turkey's copyright law provides deterrent penalties for infringement. However it does not prohibit circumvention of technical protection measures, a key feature of the World Intellectual Property Organization (WIPO) "Internet" treaties. Generally, Turkish courts have not imposed deterrent penalties to pirates as provided in the copyright law but have instead applied the Turkish Cinema Law, which has much lower penalties. More recently, however, Turkish courts have issued increasingly deterrent sentences for copyright infringers, but significant backlogs in the courts slow redress. Recently enacted legislation 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 for piracy convictions.

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".

Turkey's recently amended Patent Law provides for penalties for infringement of up to three years in prison, or approximately $32,000 in fines, or both, and closure of the business for up to one year. However, research-based companies in the pharmaceuticals sector are concerned about provisions that 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. There is concern that amendments proposed this year to the patent law could lead to weaker enforcement and penalties and dilute basic intellectual and industrial property protections. Turkey does not currently have a system for patent linkage, which could create confusion and possibly allow generic pharmaceutical manufacturers to register a patent-infringing copy of a brand name drug.

The Ministry of Health introduced limited protection for undisclosed test data against unfair commercial use in a regulation issued in January 2005 and revised in June 2005. However, several of the regulation's provisions severely undermine protection for confidential test data. Data protection is limited to original products licensed in a European Customs Union country after January 1, 2001, for which no generic manufacturers had applied for licenses in Turkey as of January 1, 2005. The term of exclusivity is limited to the duration of the drug patent or to six years after the date of licensing in a European Customs Union country, implying a shorter term of protection because of the length of the marketing approval process in Turkey. Research-based companies estimate that due to the prolonged regulatory review, on average the period of data protection is diminished by 20 percent to 25 percent. Trademark holders also contend that there is widespread and often sophisticated counterfeiting of their marks in Turkey especially in apparel, film, cosmetics, detergent, and other products.

## SERVICES BARRIERS

### Telecommunications Services

In the WTO negotiations on Basic Telecommunications Services, Turkey made commitments to provide market access and national treatment for all services by the end of 2005. In the interim, Turkey committed to provide national treatment for mobile, paging, and private data networks. In the current WTO services negotiations, Turkey has offered to adopt the full WTO Reference Paper on regulatory principles

In November 2005, 55 percent of the government-owned Turk Telecom was sold to a Saudi-Lebanese company (Oger Telekom). Turk Telecom currently provides all voice telephony, most value-added, and other basic telecommunications services. While still new and inexperienced, the Telecommunications Authority (TK) is working to enforce its rulings on interconnection between Turk Telecom's network and the competitive internet service providers and long-distance operators. The TK is targeting the phased opening of wireless communications and some value-added services. U.S. firms complain about a lack of transparency in the licensing process and about the revenue sharing requirement with Turk Telecom.

### Other Services Barriers

There are restrictions on establishment in financial services, the petroleum sector, broadcasting, and maritime transportation (see Investment Barriers section). While recent legislation significantly broadened the range of occupations in which foreigners can be employed, restrictions remain for doctors, attorneys, and several other professions.

## INVESTMENT BARRIERS

The United States-Turkey Bilateral Investment Treaty (BIT) entered into force in May 1990. Turkey has a liberal investment regime, but private investment has often been hindered by excessive bureaucracy, political and macroeconomic uncertainty, and weaknesses in the judicial system, high tax rates, a weak framework for corporate governance, and frequent changes in the legal and regulatory environment. The current government has been trying to promote foreign investment and foreign direct investment increased in 2005. Almost all areas open to investment by the Turkish private sector are fully open to foreign participation without screening or price approval, although establishment in the financial and petroleum sectors requires special permission. Foreign equity ownership is limited to 25 percent in broadcasting and 49 percent in maritime transportation. 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 undermined 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. A recent law expanded the scope of international arbitration in contracts with the Turkish government. Investors continue to have concerns about the government's recognition and enforcement of arbitral awards against public entities, and at least one American company reports that the judicial system in Turkey has not recognized foreign arbitral awards. Turkey is a party to both the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and to the ICSID Convention.

Turkish legislation aims to introduce a liberalized energy market, in 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. The privatization of electricity distribution is planned, but still awaits new legislation. Targeted liberalization of the natural gas sector has also faced delays. The state pipeline company, BOTAS, will remain dominant, but legislation requires a phased transfer of 80 percent of its gas purchase contracts.

As the result of a 1997 court decision, the Turkish government has blocked full repatriation of profits 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. Almost all such lawsuits have been finalized against the claimant companies. A new petroleum law that seeks to provide greater investment incentives and protections still awaits passage in the parliament.

## OTHER BARRIERS

### Corruption

Turkey has ratified the OECD antibribery convention and passed implementing legislation providing that bribes of foreign officials, as well as domestic officials, are illegal and not tax deductible. Corruption is perceived to be a major problem in Turkey by private enterprises and the public at large, particularly by government officials and politicians. The judicial system is also perceived to be susceptible to external influence and to be biased against outsiders to some degree.

### 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. One of those companies has launched an international arbitration case. In 2002, the government requested BOT projects already in operation, which include U.S.-owned companies and/or creditors, to apply for new licenses from the new Energy Market Regulatory Authority (EMRA).

Negotiations between the Turkish government and the relevant companies concerning the request of the Turkish government to reduce the electricity sale tariffs are continuing while the license application process is still underway. Despite lack of action on new licenses, the Turkish government has continued to purchase electricity produced under the existing contracts.

**Taxes**

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. 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.

**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.

**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.