TURKEY

TRADE SUMMARY

The U.S. goods trade surplus with Turkey was $5.8 billion in 2008, an increase of $3.8 billion from $2.0 billion in 2007. U.S. goods exports in 2008 were $10.4 billion, up 58.4 percent from the previous year. Corresponding U.S. imports from Turkey were $4.6 billion, up 0.9 percent. Turkey is currently the 27th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey was $4.9 billion in 2007 (latest data available), up from $2.6 billion in 2006. U.S. FDI in Turkey is concentrated largely in the banking and manufacturing sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

Turkey applies the European Union's common external customs tariff to third-country nonagricultural imports (including from the United States) and imposes no duty on nonagricultural items from EU and European Free Trade Association (EFTA) countries. Turkey's average applied tariff rate in 2007 for nonagricultural product imports was 5 percent; however, only 36 percent of Turkey's nonagricultural tariff lines are bound in Turkey's World Trade Organization (WTO) tariff schedule.

While 100 percent of Turkish agricultural tariff categories are bound as part of Turkey's WTO commitments, the country continues to maintain high tariff rates (an average 28.3 percent Most Favored Nation rate) on many food and agricultural product imports, which U.S. companies estimate cost them over $500 million per year in lost trade. Duties on fresh fruits range from 15.4 percent to 145.8 percent. Tariffs on processed fruit, fruit juice, and vegetables range between 19.5 percent and 130 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.

U.S. exporters of rice, dried beans, wheat, barley, rye, oats, corn, and hazelnuts have reported concerns with valuation of their products by Turkish customs authorities and have estimated that the lack of certainty and transparency with regard to Turkish requirements in this area has resulted in losses between $10 million and $25 million per year.

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 results in costly delays, demurrage charges, and other uncertainties that inhibit trade. U.S. producers have reported difficulties in obtaining licenses during the harvest season for domestically produced food (such as pulses, nuts, and dried fruits). For some crops, like wheat, quotas limit the level of imports. In addition, U.S. companies find Turkish documentation requirements affecting all food imports to be inconsistent, non-transparent, and not in accordance with standard international practices. This often results in shipments being held up at port over onerous certification requirements that have changed or are unclear. The estimated cost of this barrier is between $100 million and $500 million.

In November 2005, the United States brought a dispute against Turkey in the WTO arguing that, *inter alia*, Turkey's tariff-rate quota (TRQ) scheme for rice, which contains an onerous domestic purchase requirement, and its refusal to issue import licenses for rice outside the TRQ, are inconsistent with Turkey's WTO obligations. In September, 2007, the dispute settlement panel agreed with the United States that Turkey's failure to grant licenses to import rice and its operation of a discretionary import licensing system for rice are in breach of Turkey's market access obligations under the WTO Agreement on Agriculture. The panel also agreed with the United States that Turkey's domestic purchase requirement, under which Turkey required importers to purchase large quantities of domestic rice in order to import rice at preferential tariff rates, is in breach of the national treatment provisions of the WTO. The reasonable period of time for Turkey to bring itself into compliance with the WTO's rulings and recommendations expired at the end of April 2008. Turkey and the United States are currently engaged in discussions to explore the possibility of entering into a Memorandum of Understanding that would set out commitments by Turkey on its import practices affecting U.S. rice.

Despite liberalization of the spirits and tobacco markets - including a completed privatization of the state-owned alcoholic beverage company and the state-owned tobacco company, as well as privatization of imports of wine and alcoholic beverages – sales of imports have been inhibited by inordinately high tariffs (85 percent to 100 percent) and special 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 or final technical regulations and sanitary and phytosanitary (SPS) requirements. Most changes in regulations become effective immediately upon publication with little or no notification to trading partners. This often results in significant disruptions in trade. Furthermore, U.S. exporters have complained of inconsistent implementation and/or enforcement of laws and regulations among Turkish ports of entry, creating unpredictability and making compliance with regulations difficult for exporters and importers alike. The U.S. Government has raised these issues with the Turkish government on several occasions and in various fora (including bilateral consultations and at WTO Sanitary and Phytosanitary Committee and Trade Policy Review meetings).

U.S. companies have reported that products of U.S. origin bearing the EU certificate of conformity (CE mark), particularly medical devices, have been detained by Turkish customs authorities for inspection related to a variety of Turkish requirements. According to U.S. companies, products of EU origin bearing the CE mark are not subject to inspection and therefore Turkish customs authorities have been unfairly singling out U.S. products. In some cases, U.S. products apparently have been subjected to additional tests, despite their CE marks. For importation of distilled spirits, Turkish customs requires that between two and four bottles per consignment be submitted for unspecified analyses, raising the cost of importing.

Sanitary and Phytosanitary Measures

In 2008, Turkey notified the WTO of an SPS measure related to phytosanitary requirements for seed potatoes – the first Turkish SPS notification since 2004.

Turkey has not allowed meat imports from any country since 1996, closing a market that U.S. companies estimate could be worth $100 to $500 million annually. The government maintains that the ban on meat imports relates to valid health concerns, but has not established any public health requirements for the entry of foreign meat onto the Turkish market. Outbreaks of Bovine Spongiform Encephalopathy (BSE) and foot and mouth disease (FMD) in Europe strengthened Turkey's resolve to prevent imports of poultry and meat products. Turkey continues to require inspection and approval of all foreign poultry processing facilities at the expense of Turkish importers, a condition that has the effect of preventing poultry imports. As a result of ongoing bilateral discussions, a U.S.-Turkish protocol permitting the import of live breeding cattle from the United States was agreed to in July 2007.

Turkey does not have any regulations related to agricultural biotechnology in force and the fourth draft of a National Biosafety Law is being reviewed by the Office of the Prime Ministry. The previous draft would have effectively halted U.S. exports of soybeans, soy- and corn-based products and affected cotton exports to Turkey. The current draft has not been made public. The total value of U.S. transgenic crop exports to Turkey was over $1 billion in 2007, all of which could be endangered depending upon how any future law is written. The United States Government and private industry have been actively working to raise awareness among Turkish regulators as to the benefits and safety of biotechnology crops.

GOVERNMENT PROCUREMENT

Turkey is not a signatory to the WTO Agreement on Government Procurement; however, it is an observer to the WTO Committee on Government Procurement.

Turkey's public tender law established an independent board to oversee public tenders. Foreign companies can participate in state tenders that are above an established threshold. The law provides a price preference of up to 15 percent for domestic bidders, which is not available if they form a joint venture with foreign bidders. Turkey has expanded the definition of domestic bidder to include foreign-owned corporate entities established under Turkish law. Although Turkey's laws require competitive bidding procedures for tenders, U.S. companies have complained that Turkey's procurements can be lengthy and overly complicated.

Turkish military procurement policy generally entails including offset requirements in individual procurement 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. Export subsidies ranging from 10 percent to 20 percent of export values are granted to 16 agricultural or processed agricultural product categories in the form of tax credits and debt forgiveness programs, and are paid for by taxes on exports of primary products such as hazelnuts and leather. The Turkish Grain Board generally sells domestic wheat at world prices (which are well below domestic prices) to Turkish flour and pasta manufacturers in quantities based upon their exports of flour and pasta.

Similarly, the Turkish Sugar Law allows a certain amount of domestic sugar ("C quota") to be sold at world prices for utilization in products that will be exported. The current price for this C quota sugar is $390 per metric ton (MT); while the normal domestic selling price is $1,370/MT. Exporters also do not pay import duties on the amount of sugar imported for use in their exported products. The impact of this subsidy on U.S. exports to Turkey is estimated at about $10 million.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Turkey's intellectual property rights regime has improved in recent years. For example, in 2008 the Ministry of Culture published a new circular, reminding all government agencies of the requirement to use licensed software, which the software industry has welcomed.

As a result of notable progress on copyright enforcement, seizures of pirated goods, and the imposition of deterrent penalties by the courts, Turkey was lowered from the Priority Watch List to the Watch List in the course of the 2008 Special 301 review.

In spite of this progress, the pharmaceutical industry is concerned that certain proposals under consideration by the Parliament regarding patents and protection of test and other data submitted for marketing approval may erode Turkey's standards for protection and enforcement. The United States has encouraged Turkey to approve amendments that are consistent with its international and EU obligations.

Furthermore, trademark rights holders contend that there is widespread and often sophisticated counterfeiting of their marks in Turkey, especially in apparel, film, cosmetics, detergent, and other products. Trademark industry representatives are concerned about recent developments relating to Turkey's trademark laws, particularly a 2008 Constitutional Court ruling that invalidated the portion of trademark law that criminalized trademark infringement. This decision was later reversed through legislation, but the Turkish government's initial inaction in the face of the court decision led to the "downgrading" of approximately 9,000 pending criminal trademark cases to a lesser charge.

SERVICES BARRIERS

Telecommunications Services

The Telecommunications Authority (TK) has been actively taking steps necessary to promote a competitive Turkish telecommunications market, including the decision to start implementing mobile number portability as of November 2008 and the successful November 28, 2008 3G license tender, in which all three major domestic cell phone operators participated. Unfortunately, TK in the past was hampered by its lack of adequate authority to provide effective enforcement of the new rules. In 2008, the Turkish Parliament passed an Electronic Communication Law designed to harmonize Turkey's communications legislation with that of the EU; it included the transfer of additional authority to TK from the Ministry of Transport and Communications. Following a veto by the President, Parliament made the changes to the law he recommended and passed a revised bill in November 2008.

Other Services Barriers

There are restrictions on establishment in financial services, the petroleum sector and broadcasting (see Investment Barriers section). Turkish citizenship is required to practice as an accountant or certified public accountant, or to represent clients in Turkish courts. Legislation awaiting final approval by Parliament would permit foreign doctors to work in Turkey.

INVESTMENT BARRIERS

The United States-Turkey Bilateral Investment Treaty entered into force in May 1990. Almost all areas open to investment by the Turkish private sector are fully open to foreign participation without screening or prior approval, although establishment in the financial services and petroleum sectors requires special permission. Foreign equity ownership is limited to 25 percent in broadcasting, though Parliament is considering draft legislation easing restrictions on foreign ownership in the media sector. Even when investors have committed to the Turkish market, however, they have sometimes found their investments undermined by legislative or court action. Such actions can include the imposition of production limits, an example of which is the sugar law, which sets the price for domestically-produced sugar well above the world market price, limits the domestic production of fructose and sets a duty on imported fructose of 135 percent. These restrictions create a shortage of domestically-produced fructose (not fully offset by imports), which hinders the ability of foreign-owned producers in Turkey to fully utilize production capacity.

Energy Sector

Turkish law calls for a liberalized energy market in which private firms are able to develop projects with a license obtained from the Energy Market Regulatory Authority, an independent regulatory body. The state electricity utility has been unbundled into power generation, transmission, distribution, and trading companies, and after years of delays, the first four electricity distribution regions were privatized in 2008. The Turkish government plans to finalize privatization of distribution facilities and start privatization of generation facilities by the end of 2009. This ambitious schedule may be delayed by limited access to credit caused by the global financial market turmoil.

Liberalization in the natural gas sector also has faced delays. The state pipeline company, BOTAS, will remain dominant in gas importation, but legislation requires a phased transfer of 80 percent of its gas purchase contracts to the private sector by 2009. Except for a small scale contract transfer tender in 2005, BOTAS has failed to reach its targets and still has an 86 percent share in the gas market. The Turkish government now appears to be taking a different tack and reportedly will soon introduce an amendment to the Natural Gas Market Law that will liberalize the importation of gas into Turkey but will drop provisions to downsize BOTAS. Natural gas distribution in cities is dominated by the private sector. The only exceptions to this are the Ankara and Istanbul distribution networks, where the local administrations hold the distribution license. In 2008, a deal was reached to privatize Ankara's pipeline network, Baskent Gaz, but the financing for the deal fell through as a result of the global financial crisis and the future of the project is unclear.

As the result of a 1997 court decision, the Turkish government 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 but the judgments in almost all such lawsuits have been against the claimant companies. A new petroleum law that would provide greater investment incentives and protections has been submitted to the parliament, but prospects for passage currently appear slim.

Turkey's decision to cancel 46 contracted power projects in 2001 led to a number of arbitration cases against the government, with the end result that most companies were compensated. However, this action and the uncertainty it generated, combined with government-controlled prices despite rising fuel costs, delayed private investments in the sector from 2001 to 2008. At the same time, demand for electricity increased substantially over this period as the Turkish economy experienced record growth rates. In order to address the supply gap problem which Turkey is likely to face in 2009, the government passed an energy security law in 2007 and introduced a number of incentives to facilitate investment in the energy sector, focusing on strategies for diversifying sources of supply by fuel type. Turkey also implemented an "automatic pricing mechanism" in 2008, according to which electricity prices are revised three times per year, based on changes in the foreign exchange rate, oil prices, and the consumer price index. Gas prices are adjusted monthly.

Turkey passed its long-awaited Nuclear Power Law in 2008, and conducted a tender in September 2008 to build a nuclear plant. Several international companies, including U.S. firms, expressed interest in the tender. However the government turned down the companies' request for a delay in the bidding deadline, and as a result only one Russian consortium submitted a bid. The government has not yet indicated the final disposition of this bid or the manner in which bids for future projects will be considered. A new law will need to be passed before another nuclear power plant tender can be conducted.

Work Permits

Many foreign (and reportedly many Turkish) employers perceive the difficulty in obtaining Turkish work permits for professional or highly skilled foreign workers as a pervasive problem. Companies complain that the application process is time-consuming and requires extensive documentation, the adjudication process is lengthy (often exceeding the time for which the permit is requested), and the chances of approval are low.

Real Estate Sector

Foreign ownership of real estate in Turkey has long been a contentious issue. In early 2008, the Constitutional Court issued two decisions that suspended portions of the Foreign Direct Investment Law and the Title Deed Law, which had allowed foreign individuals and companies to purchase land. In response, the Turkish government passed new legislation to permit these purchases again, but imposed an upper limit on the amount of land that can be owned by foreign individuals - no foreign individual may own more than 2.5 acres and all foreign individuals together can own no more than 10 percent of the land in any given development zone. As information on the amount of land currently held by foreigners in any development zone is not readily available, this may in the future cause problems and legal challenges for individual investors seeking to purchase land in Turkey. There are no limits on the amount of land that can be owned by foreign companies with a legal presence in Turkey, so long as the land is being used in accordance with their business activities.

OTHER BARRIERS

Corruption

Turkey has ratified the OECD anti-bribery convention and passed implementing legislation that makes bribery of foreign and domestic officials illegal and no longer tax-deductible. Despite this, many foreign firms doing business in Turkey perceive of some government officials and politicians to be a problem. The judicial system is also perceived to be susceptible to external influence and to be somewhat biased against outsiders.

Taxes

Taxation of all 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, which has a disproportionate effect on automobiles imported from the United States.

Corporate Governance

A recent OECD report stated that Turkey's overall corporate governance outlook is positive because the authorities have already adopted, or are introducing, high quality corporate governance standards (including audit standards) and because transparency has improved significantly. The report cautions, however, that it is important for Turkey to improve further in the areas of control and disclosure of related party transactions and self-dealing, the protection of minority shareholders, and the role of the board in overseeing not only management but also controlling shareholders.

Pharmaceuticals

Aside from their intellectual property concerns detailed above, the pharmaceutical industry's sales have been affected by government price controls and an awkward and burdensome reimbursement system. In 2008, Turkey implemented changes in its discounting scheme that increased the cost borne by pharmaceutical manufacturers. U.S. research-based pharmaceutical firms are also concerned about achieving transparent and equitable treatment in upcoming reforms of the government's health care and pension system.