# TURKEY

## TRADE SUMMARY

The U.S. goods trade surplus with Turkey was $3.4 billion in 2009, a decrease of $1.9 billion from 2008. U.S. goods exports in 2009 were $7.1 billion, down 28.8 percent from the previous year. Corresponding U.S. imports from Turkey were $3.7 billion, down 21.1 percent. Turkey is currently the 28th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey was $6.1 billion in 2008 (latest data available), up from $6.0 billion in 2007. U.S. FDI in Turkey is concentrated largely in the banking, wholesale trade, and manufacturing sectors.

## IMPORT POLICIES

### Tariffs and Quantitative Restrictions

Turkey applies the EU's common external customs tariff to third-country nonagricultural imports (including from the United States) and does not impose duties on nonagricultural items from EU and European Free Trade Association (EFTA) countries.

Turkey continues to maintain high tariff rates on many food and agricultural product imports. Tariffs 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 tariffs, 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, pulses, sunflower seeds, and wheat, 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. U.S. firms complain that 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 domestic harvest season for domestically produced food (such as pulses, nuts, dried fruits, cotton, grain, and oilseeds). For all grains, quotas limit or block 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 due to onerous certification requirements that have recently changed or are unclear. U.S. companies estimate the cost of this barrier at between $100 million and $500 million per year.

In November 2005, the United States brought a dispute against Turkey to the WTO arguing that, *inter alia*, Turkey's tariff-rate quota (TRQ) regime for rice, which contained an onerous domestic purchase requirement, and its refusal to issue import licenses for rice outside the TRQ, were inconsistent with Turkey's WTO obligations. In September, 2007, a WTO dispute settlement panel agreed with the United

States that Turkey's TRQ regime for rice was in breach of Turkey's market access obligations under the WTO Agreement on Agriculture and the national treatment provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994). The reasonable period of time for Turkey to comply with the WTO's rulings and recommendations expired at the end of April 2008. The United States and Turkey continue to discuss Turkey's import regime for rice; Turkish authorities reportedly have taken no recent actions that have impeded rice imports.

Despite liberalization of the Turkish spirits and tobacco markets – including completion of privatization of the state-owned alcoholic beverage company and the state-owned tobacco company, as well as privatization of importing wine and alcoholic beverages – sales of imported products in these sectors have been inhibited by inordinately high tariffs (85 percent to 100 percent) and special consumption taxes (275 percent) beyond the regular value added tax (VAT).

## 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 valued 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 Turkish law requires competitive bidding procedures, U.S. companies have complained that Turkey's procurement process can be lengthy and overly complicated. One of the problems identified is the requirement to use model contracts, which some Turkish government procuring agencies interpret as not being subject to modification. This makes it difficult for companies to formulate proposals if the model contracts contain non-germane financial requirements or technical specifications.

Turkish military procurement policy generally mandates including offset requirements in procurement specifications. Since the offset guidelines were modified in 2005 to encourage foreign direct investment and technology transfers, U.S. companies have won few new commercial defense sales. Some U.S. companies have declined to submit bids. The most objectionable requirements include those related to *force majeure*, liability and requirements for technical data packages and certain licenses at the time of submission (pre-licensing).

## 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. Published export subsidies ranging from 5 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.

## INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Turkey was listed on the Watch List in the 2009 Special 301 Report. Key concerns cited in the Report included continued uncertainty as to Turkey's commitment to protect data generated to obtain marketing

approval for pharmaceutical products, setbacks in Turkey's enforcement of protection for trademark rights, continued widespread counterfeiting of products, and piracy of books and software.

Enforcement of Turkey's intellectual property rights protection laws has improved in recent years. For example, the software industry welcomed a 2008 publication by the Ministry of Culture of a new circular reminding all government agencies of the requirement to use licensed software. Enforcement agencies engaged in several large operations to seize counterfeit goods over the course of 2009; however, industry reports that considerable gaps in enforcement efforts remain.

## SERVICES BARRIERS

### Telecommunications Services

The Telecommunications Authority (TK) has been actively taking steps necessary to promote a competitive Turkish telecommunications market. Two problems the sector saw as major impediments to a competitive telecommunications market were the lack of both number portability rules and 3G licenses. TK started requiring mobile number portability in November 2008 and issued three 3G licenses to the major domestic cell phone operators. (Prior to November 2008, TK was hampered by its lack of adequate authority to provide effective enforcement of its rules, but a regulatory change granted it additional powers to regulate the market.)

TK is also responsible for enforcing bans on Internet content determined by courts to be offensive. This has on many occasions led to TK blocking access for all consumers to various Internet-based service providers, such as the weblog hosting site wordpress.com, social networking sites like MySpace, and the video-sharing website YouTube.

### Other Services Barriers

There are restrictions on establishment in financial services, legal services, the petroleum sector and broadcasting (see the 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

Almost all areas open to investment by the Turkish private sector are fully open to foreign participation without screening or prior approval, although there are restrictions on establishment in the financial services, legal services, broadcasting and petroleum sectors. Foreign equity ownership is limited to 25 percent in broadcasting, although Parliament is considering draft legislation to ease these restrictions. Foreign investors have sometimes found their investments undermined by legislative or court action.

### 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 three electricity distribution regions, privatized in 2008, were transferred to the private sector in 2009. The Turkish government successfully finalized privatization of three additional distribution regions in 2009 and announced the results of a tender for four more in February 2010. The government plans to finalize privatization of all 20 distribution regions and

start privatization of the generation facilities in 2010. This schedule may be delayed by limited access to credit caused by global financial market turmoil.

Liberalization in the natural gas sector has also faced delays. The state pipeline company, BOTAS, remains dominant in gas importation, despite legislation requiring a phased transfer of 80 percent of its gas purchase contracts to the private sector by the end of 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 has plans to introduce an amendment to the Natural Gas Market Law that will liberalize the importation of gas into Turkey. The amendment will reportedly include measures aimed at facilitating a better-functioning Turkish gas market, such as an unbundling of BOTAS' activities. 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. The Privatization Administration restarted the privatization process for Baskent Gaz in September 2009, and plans to finalize privatization of both Baskent Gaz and Istanbul Gas Distribution in 2010.

As the result of a 1997 court decision, the Turkish government blocked full repatriation of profits by foreign oil companies under Article 116 of the 1954 Petroleum Law, which had 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 gone 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 being 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 power sector from 2001 to 2008, at a time when demand for electricity increased substantially.

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. After a year-long evaluation period, the Turkish government finally cancelled the tender in November 2009, based on a court decision related to legal complications with the bid. The government plans to move forward with nuclear power projects in two sites in 2010, Akkuyu on the Mediterranean coast and Sinop on the Black Sea coast. The government may use a public-private partnership model in these projects to avoid a new tender process.

**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**

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 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 corruption of some government officials and politicians to be a problem.

The judicial system is also perceived by many observers to be susceptible to external influence and to be somewhat biased against foreigners.

### Taxes

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

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. In September 2009, faced with a growing health care budget deficit, the Turkish government decreed additional mandatory discounts totaling over $2.3 billion per year. According to industry analysis, approximately 70 percent of the burden of these discounts will fall on foreign pharmaceutical manufacturers. In December 2009, the government and pharmaceutical industry agreed on a compromise pricing deal that will require U.S. firms to provide extra discounts of approximately $800 million per year. On December 31, 2009, the Ministry of Health publicized a new decree (effective March 1, 2010) requiring all imports of pharmaceutical products to receive a recognized goods manufacturing practices (GMP) inspection certificate; U.S. manufacturers are analyzing the new rules but have expressed concern that the Turkish government's implementation of them is already adversely affecting Turkish imports of pharmaceutical products.

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.