# TURKEY

## TRADE SUMMARY

U.S. goods exports in 2014 were $11.7 billion, down 3.4 percent from the previous year. Turkey is currently the 26th largest export market for U.S. goods. Corresponding U.S. imports from Turkey were $7.4 billion, up 10.3 percent. The U.S. goods trade surplus with Turkey was $4.3 billion in 2014, a decrease of $1.1 billion from 2013.

The stock of U.S. foreign direct investment (FDI) in Turkey was $5.3 billion in 2013 (latest data available), down from $5.4 billion in 2012. U.S. FDI in Turkey is led by the manufacturing and the wholesale trade sectors.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Pharmaceuticals*

In late 2009, Turkey's Ministry of Health (MOH) issued a "Regulation to Amend the Regulation on the Pricing of Medicinal Products for Human Use," which took effect on March 1, 2010. The regulation requires foreign pharmaceutical producers to secure a Good Manufacturing Practice (GMP) certificate based on a manufacturing plant inspection by MOH officials, before their products can be authorized for sale in Turkey.

This requirement (previously, MOH recognized GMP inspections performed by the U.S. Food and Drug Administration or the European Medicines Agency) has led to severe delays in many pharmaceutical products receiving GMP certifications because the MOH's inspection backlog has grown significantly. U.S. manufacturers report that these delays are effectively closing the Turkish market to the registration of some new innovative drugs, because delays in GMP inspections have prolonged MOH's already lengthy processes for granting final approvals to place these products on the Turkish market. In response to repeated U.S. Government requests to speed up overall market access approval time frames, the MOH recently authorized "parallel submission" (versus sequential submission) of GMP inspection and marketing approval applications for "Priority One" pharmaceuticals imported from U.S. and EU firms. While a positive step, the MOH has not yet formalized this approach and does not yet apply it to all pharmaceutical product applications.

*Food and Feed Products – Mandatory Biotechnology Labeling*

In 2010, Turkey enacted a comprehensive "Biosafety Law," which, *inter alia*, mandates the labeling of food and/or feed derived from agricultural biotech if the biotech content exceeds a certain threshold. In addition, the Law requires that "GMO" labels on certain food products contain health warnings. The Turkish government has provided no scientific basis for imposing these requirements.

In addition to the labeling requirements, the Biosafety Law mandates onerous traceability procedures for all movement of biotech-derived feed, including a requirement that each handler maintain traceability records for 20 years.

*Alcoholic Beverages - Labeling*

Turkey notified a draft regulation on alcoholic beverage warning statements to the WTO on August 6, 2013, providing a three day comment period. The regulation requires alcoholic beverages to carry the warning statement, "Alcohol is not your friend." In comments submitted by the U.S. Government, dated August 8, 2013, the United States requested that Turkey explain the rationale underlying this requirement. The regulation went into effect on January 1, 2014, but Turkey has yet to respond to the U.S. request.

**Sanitary and Phytosanitary Barriers**

*Agricultural Biotech*

In addition to requiring mandatory biotech labeling, the Biosafety Law immediately negated the approvals of agricultural biotech products granted under Turkey's previous biotech regulation and initially had the effect of stopping all trade in products derived from agricultural biotech (primarily soy and corn products). Though it originally notified the Biosafety Law to the WTO prior to enactment, the Turkish government has failed to notify subsequent revisions of the law and its implementing regulations, nor has it informed its trading partners before implementing various regulatory controls for biotech traits. Trading partners often learn of changes only when products are blocked at Turkish ports.

Turkey assessed and eventually approved three biotech soybean events (feed use) in 2011. By December 2012, Turkey had approved 16 biotech corn events (feed use) and rejected the applications for six. Turkey has not provided scientific justification for the approvals or rejections. In December 2012, Turkey's High Court issued a decision that the process of the Biosafety Board was flawed and rescinded two approvals, bringing the total number of approved corn events to 14; three soybean events remain approved.

Turkey has adopted two thresholds for unapproved events. The first threshold was adopted in September 2011, and allows for up to 0.1 percent presence in animal feed of agricultural biotech products that are under review or whose approval has expired. Such a low threshold has little practical value, and the United States continues to urge Turkey to increase the 0.1 percent threshold and to extend the provision to food products. The second threshold was adopted in May 2014 and defines "contamination" at 0.9 percent in food products, but does not allow such products on the market (there is no threshold for presence of unapproved events in food—zero tolerance).

The United States is not aware of any information showing that foods or feed derived from agricultural biotech differ from other foods or feed in any meaningful or uniform way, or that, as a class, foods or feed developed by biotech present any different or greater safety concern than foods or feed developed by traditional plant breeding. The United States has repeatedly raised concerns with Turkish officials, including at senior levels, about specific provisions of the Biosafety Law and its implementing regulations. Biotech developers continue to be reluctant to participate in the regulatory approval processes established under the Biosafety Law due to concerns that include the protection of confidential information, the application of onerous liability provisions, and unclear procedures in the assessment process. The Biosafety Board set up by the Biosafety Law to assess and approve or disapprove individual biotech traits thus far has rejected a number of corn and soybean biotech traits and has operated in a nontransparent manner.

Turkey has imposed onerous biotech-focused testing requirements for certain U.S. food and feed imports. Authorities began requiring 100 percent testing for any biotech content in U.S. wheat imports following a single detection in Oregon of an unapproved wheat biotech trait in May 2013. Biotech wheat is not commercialized anywhere in the world and wheat imports from any country are equally likely to test positive for trace amounts of unapproved biotech traits, including corn or soybean traits. However, testing has been limited to U.S. wheat imports only, discouraging importers from buying U.S. products. In October

2014, in response to pressure from Turkish animal feed suppliers fearful of potential prosecution for violating the Biosafety Law, the Turkish government implemented a 100 percent testing regime for imports of animal feed. As a result, U.S. corn co-products such as dried distiller grains and solubles and corn gluten feed pellets currently are unable to enter Turkey.

Also in October 2014, Turkey began requiring certifications from the country of origin that products exported to Turkey have not been produced using agricultural biotech enzymes or microorganisms. As no government in the world regulates the use of biotech enzymes or microorganisms, many imports that may have been produced using them, ranging from wine and cheese to breads, pet food, and livestock nutritional supplements, subsequently have been rejected at Turkish ports for lack of the required certifications.

*Food Safety*

Turkey's efforts to conform its national food safety laws to EU measures have been inconsistent, often resulting in non-transparent regulatory requirements and unpredictable enforcement actions. Changes frequently have been implemented without notification or consultation with trading partners, increasing the costs to exporters.

Turkey generally bans all meat, beef, poultry, and slaughter cattle imports, allowing imports of poultry products only for re-export. The import of live animals and animal products requires a Control Certificate, the issuance of which by the Ministry of Food, Agriculture and Livestock (MinFAL) is neither automatic nor guaranteed. On June 30, 2013, Turkey published a regulation restricting the use of monosodium glutamate and six other food additives in "traditional" meat products, which Turkish authorities have broadly-defined to include virtually all meat products.

*Animal Health*

In June 2013, Turkey began to require dioxin-free certification for imports of animal feed and pet food products. This requirement negated a 2006 agreement under which Turkey accepted that such imports from the United States did not require this certification. Turkey has not provided any evidence that products from the United States contain dioxins.

## IMPORT POLICIES

### Tariffs

In accordance with its customs union agreement with the European Union (EU), Turkey applies the EU common external customs tariff to third-country nonagricultural imports, including those from the United States. Turkey exempts from duties nonagricultural products imported from the EU and a number of other trading partners with whom it has concluded free trade agreements. Turkey has bound just over half (50.3 percent) of its tariff lines under the WTO Agreement, a relatively low percentage for an economy of its size.

Turkey continues to maintain high tariff rates on many imported food and agricultural products, regardless of source. 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 and tobacco products that increase wholesale prices for these products considerably. Turkey raised import tariffs on steel rebar to 30 percent in October 2014, and maintains high tariffs on many other steel products.

### Import Licenses and Other Restrictions

Turkey requires import licenses for some agricultural products and various products that need after-sales service such as photocopiers, advanced data processing equipment, and diesel generators. 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. Turkish documentation requirements for food imports are onerous, inconsistent, and nontransparent, often resulting in shipments held up at Turkish ports. U.S. exporters of rice, dried beans, pulses, sunflower seeds, and wheat have reported concerns with valuation of their products by Turkish customs authorities.

## GOVERNMENT PROCUREMENT

While Turkish procurement law requires competitive bidding procedures, U.S. companies have complained that Turkey's procurement processes can be lengthy and complicated and discriminate against foreign bidders. Turkish government contracting officials are authorized to issue tender documents with provisions that restrict foreign companies' participation and that award price advantages of up to 15 percent (particularly for high technology products) to domestic bidders. Additionally, there are certain cases in which Turkish procurement law requires government contracting agencies to accept only the lowest-cost bids in response to tenders. Such a narrow focus, particularly in a scenario involving the procurement of highly technical goods or services, may prevent consideration of bids (*e.g.*, from U.S. firms) that typically include a greater number of services and higher quality products.

There are several other features of the Turkish procurement system that severely curtail the ability of U.S. companies to participate. First, Turkish contracting agencies are able to impose "unlimited liability" clauses on successful bidders. Such clauses render contractors liable for any loss or damage resulting from design or application errors or lack of supervision. Second, Turkish procurement law mandates the use of model contracts, which many government procuring agencies refuse to modify. These standard contracts make it difficult for U.S. companies to formulate proposals that are fully responsive to procuring agencies' requirements (*e.g.*, in terms of pricing adjustments that reflect the latest changes in tax and/or customs duty rates). Third, onerous documentation requirements have become very difficult for foreign companies to comply with (including those with Turkish subsidiaries).

Turkish military procurement policy generally mandates the inclusion in contracts of various "commercial offset" requirements. These specifications typically encourage localization commitments regarding foreign direct investment and technology transfers. Such requirements can dramatically increase costs for bidding firms and have discouraged participation by some U.S. companies in Turkish commercial defense tenders.

In February 2014, the Turkish parliament adopted an Omnibus Bill that gives civilian government ministries authority to impose commercial offset requirements in procurement contracts. Similar to the military offset requirements, this new law would essentially force a foreign company that wins a Turkish government procurement contract to produce locally in order to provide its products and services. Reportedly, such commercial offset requirements may soon be instituted in the medical devices and commercial aircraft sectors, among others. A 2015 draft law calls for all government procurement tenders exceeding $5 million to require 30 percent local content, with local content levels for tenders exceeding $100 million to be set by an interministerial body on an *ad hoc* basis.

Turkey is not a signatory to the WTO Government Procurement Agreement (GPA) but has participated as an observer in the WTO Committee on Government Procurement since 1996.

## SUBSIDIES

Turkey employs a number of incentives related to exports. Subsidies ranging from 5 percent to 20 percent of a product's export value are granted in 16 agricultural or processed agricultural product categories. These subsidies take the form of tax credits and provisions for debt forgiveness, and are paid for by taxes on exports of primary products such as hazelnuts and leather. Additionally, the Turkish Grain Board generally purchases domestic wheat at intervention prices (above world prices) and then sells domestic wheat at world prices to Turkish flour, biscuit and pasta manufacturers. U.S. exporters have expressed serious concerns about the adverse impact subsidized Turkish wheat flour exports have had on their sales in certain third country markets. U.S. steel producers have raised concerns that Turkish steel production – and concurrently, Turkish steel exports, including to the United States – increased rapidly in recent years, citing a range of government subsidy programs as spurring this growth. For instance, fully 20 percent of the short-term credits issued by the Turkish Export-Import Bank go to the iron and steel sector.

## INTELLECTUAL PROPERTY RIGHTS PROTECTION

Turkey remained on the Watch List in the 2014 Special 301 Report. Amendments to the patent and trademark law made by the Turkish Patent Institute in 2014 have stalled, as has copyright legislation that has been in progress for several years.

Additionally, there are significant problems with export and trans-shipment of counterfeit goods, as well as software piracy, piracy of printed works, and online piracy. Stakeholders report that the Turkish software piracy rate in particular remains 20 points higher than the global average and that there is significant trafficking in circumvention tools that enable illegal downloading of software. Efforts by Turkish law enforcement and other authorities to improve IPR enforcement appear to have lagged in the past year; the judicial system as whole (including judges, prosecutors and police) has increasingly failed to deter IPR crime adequately, perhaps due to a widespread perception that copyright and other infringements are not serious transgressions.

## SERVICES BARRIERS

In the area of professional services, Turkish citizenship is required to practice as an accountant, certified public accountant, or to represent clients in Turkish courts.

## INVESTMENT BARRIERS

### Energy Sector

Despite legislation requiring a phased transfer of 80 percent of its gas purchase contracts to the private sector by the end of 2009, Turkey's state pipeline company, BOTAS, still controls over 75 percent of such contracts and remains dominant in gas importation. The Turkish government has introduced an amendment to the natural gas market law which may be considered by Parliament in 2015. According to the draft amendment, BOTAS would be broken up into three different companies charged with transportation, trading, and storage.

*Real Estate*

Foreign ownership of real estate in Turkey has long been a contentious issue. A 2012 amendment to Turkey's title deed law increased the amount of land that foreign individuals can own from 2.5 acres to 12 acres. No foreign individual may own more than 10 percent of the land in any district. 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 those companies' business activities.

## ELECTRONIC COMMERCE

The Information and Communication Technologies Authority (BTK), which is affiliated with the Ministry of Transportation, Maritime Affairs, and Communications, is responsible for enforcing bans on Internet content determined by Turkish courts to be offensive. This has on several occasions led to BTK blocking access for all consumers to various Internet-based service providers, including U.S.-based suppliers.

On February 6, 2014, the Turkish Parliament passed amendments to Turkey's Law No. 5651 (the "Internet Law") that expanded the government's authority to restrict Internet access. The amendments created the Internet Service Providers Association which, upon notification from the government, must shut down websites within four hours or face large fines. The amendments attracted opposition from a wide range of journalistic freedom advocates and business interests, both domestic and foreign. In October 2014, following government-ordered blocking of access by Turkish users to the YouTube and Twitter websites, the Turkish Constitutional Court annulled certain aspects of the amendments which had enhanced the government's ability to block such access. In early 2015, the Turkish Parliament is considering a new amendment to the Internet Law that would provide the Prime Minister the right to block websites without a court order on the basis of national security, public order, or prevention of crime, restoring some of the authority denied to the government by the Constitutional Court's ruling.

A draft Personal Data Protection law being reviewed by the Ministry of Justice would bar e-payment companies from the Turkish market if they do not localize personal data banks in Turkey. Such localization requirements would inhibit the further development and expansion of creative electronic services such as electronic invoicing, electronic general assembly and executive board meetings, electronic bookkeeping, and new e-payment and e-money services.

## OTHER BARRIERS

### Corruption

Despite Turkey having ratified the OECD anti-bribery convention and passed implementing legislation that makes bribery of foreign and domestic officials illegal, 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 on occasion to be biased against foreigners.

### Taxes

In January 2014, Turkey raised its special consumption tax to between 45 percent and 145 percent on all motor vehicles based on engine size. Previously, the rate range was 37 percent to 130 percent. This tax has a disproportionate effect on automobiles imported from the United States.

*Pharmaceuticals*

U.S. pharmaceutical companies have complained that their business operations in Turkey are being adversely impacted by the Turkish government's refusal to adjust the official exchange rate used for government purchases of imported pharmaceutical products. In 2009, companies negotiated with the MOH to sell their products using a Turkish Lira (TL) 1.95 = Euro (€) 1 exchange rate; the government codified this arrangement in statute. The government also agreed in the 2009 law to adjust the exchange rate if it went up or down by over 15 percent compared to the 2009 baseline. The Lira has depreciated significantly against the Euro since 2009; the exchange rate shift exceeded 15 percent of the baseline in 2011, resulting in an effective price discount of over 50 percent, according to stakeholders. Despite rulings in Turkish courts that it is obliged to respect the rate adjustments provided for in the 2009 law, the government thus far has indicated no willingness to provide relief.