TURKEY

TRADE SUMMARY

The U.S. goods trade surplus with Turkey was $6.3 billion in 2010, an increase of $2.9 billion from 2009. U.S. goods exports in 2010 were $10.5 billion, up 48.7 percent from the previous year. Corresponding U.S. imports from Turkey were $4.2 billion, up 14.8 percent. Turkey is currently the 26th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey was $6.3 billion in 2009 (latest data available), up from $5.7 billion in 2008. U.S. FDI in Turkey is led by the 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.

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 import licenses during the domestic harvest season for products that compete with domestically produced food (such as pulses, nuts, dried fruits, cotton, grain, and oilseeds); however, this situation has reportedly improved in the past year. U.S. companies also frequently find Turkish documentation requirements affecting all food imports to be onerous, inconsistent, non-transparent, and not in accordance with standard international practices, resulting in shipments on numerous occasions being held up at port.

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, as well as 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. Turkish authorities have taken no recent actions to impede rice imports, and rice exports in 2010 reached record levels.

The Turkish government has taken a number of steps to liberalize the spirits and tobacco markets – including completing the privatization of the state-owned alcoholic beverage company and the state-owned tobacco company, as well as some opening to private firms of the ability to import wine and alcoholic beverages. However, sales of imported products in these sectors have been inhibited by inordinately high tariffs (85 percent to 100 percent) and special tax treatment in some cases.

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 are allowed to participate in state tenders valued above an established threshold. However, the law provides a price preference of up to 15 percent for domestic bidders, which is not available if they form joint ventures with foreign bidders. Turkey has expanded the definition of a 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 by some companies is the requirement to use model contracts. Because various Turkish government procuring agencies do not allow for such model contracts to be modified, companies can find it difficult to formulate proposals when the model contracts contain non-germane financial requirements or technical specifications.

Turkey generally requires offsets with respect to military procurement. Since 2005, when the offset guidelines were modified 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 in the face of such requirements.

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 remained on the Watch List in the 2010 Special 301 Report. Turkey has not yet completed important legislative reforms needed to ensure effective enforcement of IPR. The Special 301 Report noted that piracy and counterfeiting are continuing, serious problems. Piracy of business software, and online music piracy have increased, and book and entertainment software piracy remain a concern. Over the course of 2010, Turkey conducted several operations that resulted in the seizure of large amounts of counterfeit goods. However, Turkey is also becoming a major exporter of, as well as a transshipment point for, counterfeit and pirated products. Delays in the judicial process further deficiencies in the overall IPR protection and enforcement regime. The Constitutional Court's dismissal of a significant number of trademark-related infringement convictions in 2008 – and the Turkish government's

subsequent inability to successfully prosecute the original offenders – continues to cause concern among rightsholders regarding Turkey's commitment to effective trademark protection.

SERVICES BARRIERS

Telecommunications Services

The Telecommunications Authority (TK) is responsible for enforcing bans on Internet content that the courts have determined 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 www.wordpress.com, social networking sites like MySpace, and the video-sharing website YouTube.

Other Services Barriers

There are some restrictions on establishment in the financial services, legal services, broadcasting, and petroleum sectors. 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

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. As of December 2010, ten of the 21 regional distribution companies have been fully transferred to the private sector, eight have been tendered are in the process of being transferred, and three are in the tender process. The government plans to finalize privatization of all distribution regions and start privatization of the generation facilities in 2011.

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. BOTAS plans to announce another tender in the first half of 2011 to transfer operational rights of some other contracts. The Turkish government has plans to introduce an amendment to the Natural Gas Market law, but the timetable remains unclear. According to this amendment, BOTAS would be broken up into three different companies charged with transportation, trading, and storage. Natural gas distribution in cities is dominated by the private sector, with the exception of Istanbul, where the local administration holds the distribution license but has plans to finalize privatization of the distribution system in 2011.

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. The law is expected to come up for legislative consideration in 2011.

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 moved forward with nuclear power projects in two sites in 2010: Akkuyu on the Mediterranean coast and Sinop on the Black Sea coast. In May 2010, the government signed an intergovernmental agreement for the construction and operation of the Akkuyu plant with the government of Russia. The government pursued a public-private partnership model with the government of the Republic of Korea for the Sinop site, but negotiations ended in November 2010 without an agreement.

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 ten 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 is a party to the OECD anti-bribery convention and passed implementing legislation that makes bribery of foreign officials illegal and no longer tax-deductible. Turkey is also a State Party to the United Nations Convention Against Corruption, which requires State Parties to criminalize domestic and foreign bribery and other corruption offenses as well. Despite this, many foreign firms doing business in Turkey perceive corruption to be a problem.

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

Taxes

Turkey assesses a special consumption tax between 27 and 50 percent on all motor vehicles based on engine size, which has a disproportionate adverse effect on automobiles imported from the United States.

Pharmaceuticals

The pharmaceutical industry reports that its sales have been severely affected by government price controls and an awkward, burdensome reimbursement system. In 2008, Turkey implemented changes in its reimbursement 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. A large majority of the burden of these discounts fall on foreign manufacturers of pharmaceuticals. 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.