



-Turkey-

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GENERAL FEATURES OF TRADE POLICY

The most significant aspect of "trade" and Turkey is Decision N° 1/95, that implemented the final phase of the EU/Turkey Customs Union which came into effect on 31 December 1995. The principle aspects of this are:

- free circulation of industrial goods and processed agricultural products
- the abolition of customs duties and charges
- a prohibition on quotas
- harmonisation of Turkey's commercial and competition policies with those of the EU and the extension of most of the EU's trade and competition rules to the Turkish economy
- a level of intellectual property protection similar to that of the EU
- "Voluntary Restraint Arrangements" concerning trade in textiles were abolished by the EU

Associated with this is Decision N° 2/97 which lists the Community instruments that have to be incorporated into Turkish legislation as a means of removing technical barriers to trade.

The Customs Union covers all industrial goods. It does not address agriculture (except processed agricultural products) and services. There is a commitment between the parties to include agriculture through ongoing negotiations on mutual concessions with a view to establishing a free trade area.

At the Helsinki summit in December 1999, Turkey was given the status of a candidate country.

Furthermore, Turkey is also member of the Euro-Mediterranean partnership and as such should conclude free trade agreements with all other Mediterranean partners, with a view to the creation (by 2010) of a Euro-Mediterranean free trade area.

The Commission's objective of "extending and deepening" the Customs Union was endorsed by EU Member States at the December 2002 Copenhagen Council. In order to advance the Customs Union, Turkey and the European Union are pushing ahead to deepen it into new areas such as services and public procurement. The Council has agreed on a negotiations guidelines on the liberalisation of services and public procurement. Several rounds of negotiations have so far taken place.

Since Turkey is a "candidate country" for EU membership, it must fulfil all of the Copenhagen Criteria and adopt all of the EU acquis in addition to that brought by the Customs Union.

Bilateral trade data

Turkey's GDP was €195 billion in 2002. The EU ranks number one in both Turkey's imports and exports while Turkey ranks 11th in the EU's to import and 10th in export markets.

Main Turkish exports markets in 2002 were the EU (51.5%), USA (9.2%), Russia (3.3%), Israel (2.4%), Romania (1.6%) and Saudi Arabia (1.5%). Textiles accounts for some 41.4% of total imports from Turkey. Other important imports from Turkey are transport material(13.4%), agricultural products (9.5%) and office machinery and telecommunications equipment (6.6%).

Imports into Turkey came from the following key markets: the EU (45.5%), Russia (7.6%), USA (6%), Switzerland (4.1%), Japan (2.8%), China (2.7%), and Algeria (2.1%). Main EU exports to Turkey are machinery (29.7%), chemical products (19.1%), and transport material (14.2%).

Foreign Direct Investment

In 2001, 0.1% of EU inflows (€200 million) came from Turkey, while 0.6% (€1.4 billion) of EU outflows went to Turkey.

The following table is an overview of the trade flow between the European Union and Turkey

Section	Year	Import(Euro)	Export(Euro)
Animals & animal products	1996	84,684,740	143,408,800
	1997	109,586,770	68,927,820
	1998	85,585,260	59,748,540
	1999	103,400,730	55,133,570
	2000	97,816,960	69,168,500
	2001	100,543,350	33,795,330
	2002	140,295,130	50,569,520
	2003	158,772,250	48,781,140
Vegetable products	1996	953,155,440	96,103,280
	1997	1,102,523,070	145,398,560
	1998	1,113,016,450	113,253,960
	1999	1,094,619,010	127,302,550
	2000	1,133,774,620	141,910,650
	2001	1,286,028,600	82,739,210
	2002	1,148,776,430	128,222,740
	2003	1,075,018,060	150,509,100
Animal or vegetable fats	1996	4,707,210	42,546,270
	1997	7,367,180	83,132,930
	1998	8,324,910	95,052,600
	1999	9,004,850	82,079,420
	2000	10,289,240	78,278,960
	2001	14,950,660	47,143,140
	2002	14,650,090	55,309,040
	2003	9,875,140	51,622,520
Prepared foodstuffs	1996	505,631,420	300,392,870
	1997	599,833,290	313,108,350
	1998	584,133,950	308,923,390
	1999	628,487,630	214,761,040
	2000	638,022,740	254,690,510
	2001	680,603,870	207,006,910
	2002	670,813,300	248,871,870
	2003	693,157,630	269,748,370
Mineral products	1996	377,254,710	262,615,020
	1997	408,868,150	328,765,130
	1998	343,716,440	343,019,400
	1999	421,485,140	440,537,900
	2000	586,861,550	817,867,490
	2001	715,746,180	354,347,400
	2002	717,920,370	422,521,550
	2003	634,121,280	569,129,050
	1996	160,060,540	1,650,088,220
	1997	201,954,140	2,109,629,670
	1998	211,099,480	2,290,683,310
	1999	241,126,890	2,585,397,400

Chemical products	2000	308,444,860	3,246,915,120
	2001	307,816,670	2,942,489,150
	2002	355,772,540	3,503,356,010
	2003	356,990,230	3,731,303,780
Plastics & rubber	1996	216,584,360	969,002,290
	1997	278,625,380	1,335,627,360
	1998	348,637,100	1,312,687,850
	1999	394,358,040	1,323,797,860
	2000	505,523,970	1,853,207,970
	2001	603,430,710	1,382,787,220
	2002	637,208,680	1,745,373,780
Hides & skins	2003	748,746,630	2,079,044,650
	1996	246,798,740	387,507,970
	1997	253,307,710	461,033,600
	1998	252,348,630	338,922,470
	1999	248,876,090	164,353,080
	2000	299,508,090	316,284,600
	2001	350,542,170	369,853,000
Wood & wood products	2002	319,116,880	460,526,110
	2003	289,912,430	424,572,270
	1996	13,773,430	44,923,300
	1997	19,398,100	56,699,380
	1998	17,401,720	62,642,650
	1999	20,118,140	45,106,880
	2000	22,237,080	108,093,960
Wood pulp products	2001	27,355,380	53,799,820
	2002	36,772,710	70,568,640
	2003	39,532,030	87,289,920
	1996	23,237,960	404,229,950
	1997	24,596,370	503,852,870
	1998	32,070,520	498,636,340
	1999	31,002,460	532,646,210
Textiles & textile articles	2000	45,532,900	744,218,910
	2001	72,457,740	565,146,370
	2002	98,837,120	706,867,050
	2003	86,283,760	769,955,610
	1996	4,527,602,870	1,024,896,540
	1997	5,422,880,010	1,377,108,960
	1998	6,089,004,660	1,343,471,360
Footwear, headgear	1999	6,452,363,170	1,298,803,190
	2000	7,430,302,120	1,674,397,600
	2001	8,097,383,690	1,515,898,690
	2002	8,908,732,480	1,772,641,130
	2003	9,478,246,870	1,760,201,530
	1996	16,215,340	52,948,520
	1997	19,645,520	72,842,830
Articles of stone, plaster, cement, asbestos	1998	23,325,540	74,973,740
	1999	24,412,310	51,511,260
	2000	26,767,620	79,167,740
	2001	35,321,940	55,669,910
	2002	45,574,840	60,332,490
	2003	66,622,830	71,317,580
	1996	271,378,380	218,732,120
	1997	323,184,240	221,285,340
	1998	351,685,590	238,618,170
	1999	389,649,260	220,542,320
	2000	457,918,470	265,312,700
	2001	521,308,420	199,862,780
	2002	573,553,980	254,149,560
	2003	596,412,190	249,769,570
	1996	27,272,130	42,135,710

Pearls, (semi-)precious stones, metals	1997	32,987,450	70,744,960
	1998	48,391,210	103,455,750
	1999	62,564,790	50,376,360
	2000	77,667,320	175,279,650
	2001	82,335,980	67,780,200
	2002	121,439,140	100,598,190
	2003	131,428,770	142,151,790
Base metals & articles thereof	1996	520,525,030	1,743,019,700
	1997	721,509,420	1,899,904,950
	1998	991,314,820	1,530,524,320
	1999	1,048,689,530	1,169,206,850
	2000	1,387,070,590	1,713,226,550
	2001	1,588,978,510	1,493,819,290
	2002	1,434,087,870	1,878,773,190
2003	1,781,059,310	2,323,921,100	
Machinery & mechanical appliances	1996	845,751,900	5,986,237,640
	1997	1,147,411,310	7,041,080,030
	1998	1,675,269,360	7,331,454,390
	1999	1,749,276,870	6,849,801,320
	2000	2,287,003,090	9,665,418,940
	2001	2,819,701,660	6,570,968,000
	2002	3,480,921,750	7,998,500,150
2003	3,724,737,350	8,589,296,060	
Transportation equipment	1996	468,773,470	2,172,941,060
	1997	592,620,580	3,528,643,680
	1998	422,512,270	2,901,893,570
	1999	1,054,060,930	2,189,692,700
	2000	1,251,441,670	5,136,837,230
	2001	1,889,417,270	1,879,890,050
	2002	2,289,201,950	2,280,880,740
2003	3,131,668,480	4,169,729,360	
Instruments - measuring, musical	1996	15,653,520	423,637,800
	1997	22,383,900	577,393,830
	1998	24,522,170	607,119,890
	1999	33,527,750	575,165,610
	2000	35,460,390	741,663,010
	2001	45,420,850	653,857,330
	2002	50,923,210	671,930,560
2003	53,678,380	735,056,560	
Arms & ammunition	1996	4,337,110	29,281,690
	1997	5,003,570	57,910,220
	1998	6,773,750	143,083,170
	1999	7,470,130	27,281,580
	2000	9,068,460	27,748,640
	2001	12,035,880	24,523,130
	2002	14,507,140	79,136,740
2003	20,091,740	82,151,530	
Miscellaneous	1996	93,285,770	204,105,730
	1997	121,438,690	257,543,400
	1998	149,644,810	286,913,690
	1999	189,764,970	242,271,780
	2000	229,427,120	324,598,790
	2001	280,814,100	218,365,060
	2002	347,351,460	221,374,600
2003	415,605,230	223,137,830	
Works of art	1996	5,435,770	4,666,080
	1997	1,097,550	5,618,850
	1998	605,880	3,699,600
	1999	2,177,370	4,481,150
	2000	5,920,430	6,430,320
	2001	2,315,870	5,988,730

	2002	3,216,400	30,603,780
	2003	766,970	5,028,010
Other	1996	26,317,390	117,005,890
	1997	32,292,480	86,976,170
	1998	42,367,450	136,509,580
	1999	42,638,380	141,865,980
	2000	55,524,620	166,863,340
	2001	103,530,220	144,022,490
	2002	66,596,500	132,122,980
	2003	76,845,730	157,216,190

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TARIFFS AND DUTIES

As a result of the Customs Union with the EU, Turkey applies the EU common external tariff (CET) to all industrial products and to the industrial component of processed agricultural products imported from third countries and eliminated on 1 January 2001 its tariffs that were above those specified in the CET on certain "sensitive" products.

Alcoholic spirits are an agricultural product and therefore exempt from the provisions of the Customs Union. Since its entry into force, new ad valorem taxes have more than doubled the excise duty on imported spirits. The current tax burden is equivalent to over 150% cif. The structure lacks transparency and it is not certain that the same duties are levied on domestically produced spirits.

This use of ad valorem taxes discriminates against higher quality and more expensive imported spirits and prices many products out of the reach of consumers. This creates an incentive for fraud (reportedly 80% of the market for imported spirits is traded through unauthorised distribution channels).

Agriculture and Fisheries

Internal Taxation

970298- Sales tax on spirits [2004-05-28]

Since the entry into force of the CU, new ad valorem taxes have more than doubled the excise duty on imported spirits. The current tax burden is equivalent to over 150% cif. The structure lacks transparency and it remains uncertain whether domestic spirits face the same tax burden.

Turkey's use of ad valorem taxes discriminates against higher quality and more expensive imported spirits. Moreover in pricing many imported spirits out of the reach of consumers, an incentive for fraud is created; around 80% of the market for imported spirits is estimated to be traded through unauthorised distribution channels.

040100-Discriminatory taxation on spirits [2004-05-28]

Since entry into force of the Customs Union, Turkey does not impose customs import duties on spirits. However, it has imposed a very high Special Consumption Tax on the duty paid value at a rate of 275.6% which impacts to a far greater extent on more expensive imported spirits than it impacts on normally cheaper domestic spirits.

Turkey introduced new tax legislation on 14 October 2003.

The high ad valorem tax rate of 275.6% on spirits was maintained and minimum tax takes per category of spirits were introduced, whereby if the ad valorem calculation did not yield as much, then the stipulated minimum tax take would apply. The minimum tax takes stipulated in the October 2003 legislation appeared discriminatory as the lowest minimum tax takes were on products which were primarily locally produced (e.g. raki, vodka, gin and liqueurs) while the highest minimum tax takes were on products which were primarily imported (rum and whisky).

On March 14 2004, new tax legislation was introduced again. The principal change is that instead of the minimum tax levels being set out on a volume basis i.e. TL x per litre of alcoholic beverage, they will now be levied on a "specific" system i.e. TL x per litre of pure alcohol (lpa). The following minimum tax amounts per litre of alcohol apply:

Raki – TL 28,380,952
Vodka – TL 33,250,000
Gin – TL 33,250,000

Liqueurs - TL 46,400,000
Whisky - TL 58,139,540

As such, Turkey has made a welcome step in introducing the principle of the EU – compatible “specific” tax system i.e. on the basis of alcoholic strength, into the excise tax structure. However, it has also maintained the discrimination against imports because categories containing predominantly imported spirits (e.g whisky and rum) are subject to the highest rates and categories with predominantly domestic products (e.g. raki, vodka, gin and liquers) benefit from lower rates.

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NON TARIFF BARRIERS

Alcohol: monopoly

TEKEL, has maintained a near total monopoly of the alcoholic beverage market despite Article 42 of the Customs Union requiring that commercial monopolies be phased out by January 1998. TEKEL arranges permits for all imported alcohol, as well as their distribution (with the exception of whisky and sparkling wines).

An amendment to the Monopoly Law entered into force in January 2001. Companies will be allowed independent distribution and pricing of alcoholic beverages only if their annual imports or production exceeds 1 million litres. Those companies who cannot meet this threshold have to rely on the cooperation of TEKEL. In addition, TEKEL has the authority to control its competitors.

Although the law indicates that the 1 million litre threshold will be reduced progressively to 600 000 litres over a five year period, even this lower figure is a significant trade barrier (imports by members of CEPS, the Confederation of European Spirits Producers, total 400,000 litres). After the sixth year the Turkish Government would have the authority to lower the threshold to zero. However, whilst Turkey has, on political level, indicated that the trading regime will be fully liberalised after this, it has recently been backtracking from this commitment and has been unwilling to indicate any date when the liberalisation would take place.

Turkish companies would not be unduly affected by this threshold as it takes account of domestic production only. Furthermore, small Turkish producers of wine and beer are exempted from the requirement to fulfill the threshold altogether. These aspects would appear to contravene the national treatment principle of Article III:4 of GATT 1994.

However, the law is very unclear as to when the timetable for the reduction of these thresholds begins and ends and is equally unclear on what companies can legitimately consider as their annual volume when calculating whether they meet the threshold criteria. The Commission has continually asked for clarification on these points and it is evident that secondary legislation is required. Neither of these have been forthcoming and the legislation has yet to be put into practise.

On 3 January 2002 , the parliament approved Law N° 4733 reforming the tobacco sector. This has transferred the regulatory rights from TEKEL to a new Agency to oversee tobacco and alcohol pricing, distribution, sales and control. The corporate status of TEKEL has been changed from a Public Economic Enterprise to a more commercial entity State Economic Enterprise, in anticipation its possible privatisation.

The Tobacco Board, which will be set up as a result of this law, should be more neutral than TEKEL and will be charged with the specific task of drafting the definitive implementing decree. This decree and all its subsequent decisions will implement Law N°4250 on Monopoly of Alcohol and Alcoholic Drinks, called the "Monopoly law". However, as of September 2002, although we understand that the members of the Board have been chosen, the Board itself has yet to be set up. There is also some concern on the decision to appoint as Chairman the (ex) Deputy Director of TEKEL.

Alcohol: Labelling Requirements

Turkey Standard N°4331 ("The Marking and Labelling of Packages") governs the labelling requirements for

alcoholic beverages and goes well beyond what is required in the EC. In addition to what is normally required in the EU, Turkey also requires:

- number and date of the import permit
- age of the product (whisky only)
- rotation and case number or serial and batch number
- name of the importer.

In practice, this requires a change of label for each consignment and by year.

Should any mistake be found on the labelling, there is no possibility for correction at customs; the goods must be returned to the country of origin.

Industry has also reported that the spirits label should also indicate a production date. This is contrary to applicable EU Labelling Directive 2000/13 (which Turkey undertook to apply since 1 January 2001 under their obligations via Article 8 of the Customs Union).

With respect to the WTO, requirements such as the obligation to print the number of the import permit on the original label would appear to be contrary to the provisions of "least trade restrictiveness" seen in Article 2.2 of the TBT Agreement.

Alcohol: Special Consumption Tax

Article 12 of the Special Consumption Tax Law permits the Council of Ministers to increase the tax level on alcoholic beverages by up to 500% if the product in question declares a value that would produce less tax than the minimum yield established by the SCT Law.

The concern for EU producers of such goods is that although there is no direct discrimination per se, nearly all the goods affected by this measure are imported. Therefore, it is likely that the Council of Ministers would apply the increased tax rates on imported goods only resulting in an effective discrimination.

In addition, Article 12 allows tax rates to be raised based upon certain types and characteristics of the goods. However, there is no reference how the type and characteristics are determined leading to the possibility that the Council of Ministers may apply the criteria for such in a discriminatory way.

Alcohol and Foodstuffs: Geographic Indications

It would appear that Turkey is not respecting its obligations under the WTO TRIPS Agreement by providing adequate protection for WTO Member States geographic indications.

Products claiming to be "Scotch Whisky" are entering the market from Northern Cyprus which are neither Scottish, nor comply with the international recognised definition of "whisk(e)y". In addition, reports from Industry indicate that the product does not comply with the definition of "whisk(e)y" under Turkey's own Food Codex Declaration 95-01 of 1995.

In addition, spirit products such as "Koniak" and cheese products such as "Rokfor" exist.

Labelling of Foodstuffs

Although not listed under TS N°4331, it is compulsory for the name of the importer and the number and date of import authorisation to be indicated on the label of all foodstuffs.

In addition, it is understood that a draft law includes a provision that insists foodstuffs are labelled by the exporter prior to the shipment. This will place a serious burden on EU exporters.

Pharmaceuticals: data protection

Before pharmaceuticals are granted marketing approval, evidence that the product is safe for human consumption must be filed with the authorities. This data may take 12 years to accumulate to a satisfactory standard and is very costly to produce.

The original filing of such data, and therefore the first version of the product to enter the market, is usually by the so-called "brand-name" companies. Their competitors, (the "generic" companies) also have to provide such data when they wish to release a product into the market. However, if they can prove that their product is a copy of a product for which the marketing approval data has already been filed, they are permitted to merely refer to that data, without having to compile similar data themselves.

In recognition of the cost involved in compiling such data and in order to provide brand-name companies with proper recompense, all EU states protect such data from disclosure, ie. do not permit it to be referred to, for 6 to 10 years.

This is in accordance with with Article 4(8) of Directive 65/65 and Article 39(3) of the TRIPs Agreement (though that does not place a time limit on disclosure).

However, Turkey does not offer data protection for any period. As a result, generic companies are frequently able to obtain marketing approval for their products within one or two years of the brand-name version. Aside from giving an unfair advantage to the generic companies, this practise is contrary to Article 4(8) of Directive 65/65 (and therefore a violation of Turkey's obligations under the Customs Union) and to Article 39(3) of TRIPs with which it should have complied by 1 January 2001 and 1 January 2000 respectively.

In addition, there are allegations that the actual data provided by the brand-name company is being released to the generic companies. If true, this would be a direct violation of Article 39(1) of TRIPs.

Pharmaceuticals: Other Issues

In September 2001 a general letter put out by the Ministry of Labour and Social Security initiated a "buy local" scheme. This said that imported medicines would not be purchased where a locally produced alternative was available. This is contrary to basic national treatment provisions.

Under EU legislation, the authorisation procedure must be completed within a deadline of 210 days. Turkish legislation provides no such deadline. In addition, price approval is part of the authorisation procedure whereas in the EU the two phases are separate.

Profit margins on domestic products are higher than imported products. This leads to discrimination against imported products.

The Ministry of Health controls what the price of medicines should be and legislation insists that this may not be higher than that in the country of origin. As prices in the EU are generally lower than those in the US or Switzerland, EU importers are put at a disadvantage.

Foodstuffs: labelling

The controlling legislation is TS N°4331 which sets out various requirements with which labels on foodstuffs should comply. These are not too different to EU standards.

However, despite not being listed in TS N°4331, there would appear to be a compulsory requirement for labels to indicate the name of the importer and the number and date of import authorisation. It is understood that draft legislation is being prepared that will insist that foodstuffs are labelled prior to shipment, creating an undue burden on importers.

Ceramics: labelling

Certain ceramic products are subject to compulsory certification in accordance with Turkish Standards. Apart from the usual labelling requirements, products consisting of hard porcelain should be marked with the indication "hard porcelain". Failure to comply with this can result in access to the Turkish market being refused.

However, it would appear that the Turkish Standards do not include a precise definition of the meaning of hard porcelain. Although the measure is not yet implemented the authorities could do so in the near future. Producers have estimated that this additional marking could represent an additional cost of 30% to 50%. Furthermore, UK products and certain German products are automatically marked with "Bone China" and

the addition indication of "hard porcelain" could be confusing for the consumer.

In addition, a large number of ceramic products are subject to compulsory certification by the Turkish Standard Institution (TSE). Despite already conforming with EU standards, they have to be tested according to Turkish national standards. The "TSE" indication should be included on the product or on its label, which creates further difficulties for EU companies.

Registration, Documentation, Customs Procedures

● 970284-*Temporary Admission/Containers* [2004-12-22]

Durably marked containers (indicating the identity of the owner or operator, the identification marks and numbers of the container, its weight and the country to which it belongs) need to be declared formally for a temporary admission procedure on entry and for re-exports.

This procedure is costly and time-consuming and no such formalities are required in the EU.

- The situation described above is still in place.
- The above measures are still in place

Other Non-Tariff Measures

● 970350-*Payment Problems* [2005-01-10]

There are still considerable difficulties with the terms of payment D/P (documents against payment). Only a confirmed irrevocable credit or a bank guarantee will ensure the payment. If the terms of payment provide for documents against payment, the importer is considered to be the owner of the goods as soon as the goods have entered a Turkish customs warehouse (regardless of whether or not he has paid for the goods). The exporter can only get his goods back if the Turkish importer agrees.

The goods have to be declared for entry within a period of 20 or 45 days if it has been shipped. Otherwise, the goods will be sold on an auction, sold for reexportation, sold in a retail shop, transferred to an official Turkish institution or even destroyed.

The goods can nevertheless be sent back to the exporter upon application, only if no decision on the above mentioned courses of action has been taken yet by the relevant service of the Ministry of Finance. There is no specific period of application defined as the delay granted depends on the workload faced by this service.

The Customs authorities keep this relevant service of the Ministry of Finance informed about application received and the latter is responsible for informing the exporter of the fees to be paid by a recommended letter or against signature. These fees amount to 1% of the CIF (Cost Insurance Freight) Value plus the processing fees and other charges. They are due by the exporter within a period of 10 days, starting on the seventh day following the date of the postmark of the above mentioned registered letter.

The goods will be reexported under Customs supervision, within a period of 15 days following this payment.

- The above measures are still in place.

● 040115-*Inadequate CE marking requirements* [2004-12-22]

Since decisions taken in February and April 2004 by the Undersecretariat for Foreign Trade, CE marking is compulsory for toys, medical devices and in vitro medical devices, and products falling under the machinery Low Voltage Council Directives - 73/23/EEC of 19 February 1973 and 93/68/EEC of 22 July 1993 - and the Electromagnetic Compatibility Council Directives - 89/336/EEC of 3 May 1989, 92/31/EEC of 28 April 1992 and 93/68/EEC of 22 July 1993. This is reflected on imports.

Problems however arise as those products for which there do not exist any rules for CE marking are also stopped at the Customs and CE marking and related documentation are asked.

This is a regular source of complaints of EU exporters.

Agriculture and Fisheries

Standards and Other Technical Requirements

● 990099- *Alcohol labelling requirements* [2004-06-14]

The Turkish labelling requirements for alcoholic beverages are governed by Standard N° 4331 and go well beyond what is required in the EU. Aside from what would be required within the EU, Turkey requires the following information for imported goods:

- Number and date of the import permit
- Age of the product (whisky only)
- Rotation and case number or serial and batch number
- Name of the importer.

In practice, these oblige the importer to change the label by consignment and by year in order to comply with the requirements. Should any mistake be found on the labelling, there is no possibility for correction at customs; the goods must be returned to the country of origin.

- In May 2004, we are informed that the Tobacco and Alcoholic Beverages Markets Authority is currently refusing to grant import permits unless further information, including ingredient listings, is included on the label. For the time being, there is no such requirement in the EU.

Quantitative Restrictions and Related Measures

040103-Import licence requirements for alcoholic beverages [2004-06-10]

The documentary and procedural requirements to obtain a Control certificate (or import permit) from the Ministry of Agriculture and Rural Affairs (MARA) are restrictive, complex and burdensome and act as a significant barrier to EU exports of spirit drinks to Turkey.

By Law No. 4733 published in January 2002, the regulatory powers of the TEKEL (the Turkish alcohol monopoly body) were transferred to a new independent body, the Tobacco and Alcoholic Beverages Markets Authority (TABA). The TEKEL, which was subsequently privatised, continues as a producer and distributor. In June 2003, the TABA published the implementing decree for the 2001 Alcohol Act.

The implementation decree introduced additional requirements and procedures whereby importers of spirit drinks from the EU would henceforth have to obtain a Certificate of Compliance, issued by the TABA, in addition to the import permit from the MARA.

The burdensome requirements to obtain permission to import spirit drinks into Turkey, including the necessity to obtain approval from two different bodies, appear contrary to Decision 1/95 of the EC-Turkey Association Council and the WTO rules.

Other Non-Tariff Measures

040116-Live bovine animals and meat importation ban [2004-12-22]

Turkey bans import of live bovine animals (except, under strict conditions, some breeding animals), sheep and goats, camels, other ruminants and derived products, including notably meat (38 product groups in total).

The ban also means that EU exporters do not in practice benefit from significant tariff concessions on live cattle and beef, granted by Turkey under Decision 1/98 of the EC-Turkey Association Council of 25 February 1998 on the trade regime for agricultural products.

Quantitative Restrictions and Related Measures

040134-Import restrictions on aromatized wines [2004-11-25]

We are informed that in August 2004 the Turkish Agricultural Ministry withdrew the validity of 2004 licences for imports of white and red vermouth from the EU on the grounds that these products do not comply with paragraph (Madde) 491 of law 4/6999K dated 18/10/1952 included in the "Gıda Maddeleri Tüzüğü" (food material rules) .

EU Regulation 1601/91 article 2.1 (a) on aromatized wines, aromatized wine-based drinks and aromatized wine-based cocktails lays down that vermouth and aromatized wines should have a minimum alcoholic strength by volume of 14.5% and a maximum alcoholic strength by volume of less than 22%.

The referred Turkish law includes a translated definition as "Aromatised wines (vermouth): wines, which alcoholic degree has been reduced to 18-23%, by adding volatile alcohol and various botanicals to white and red wines."

As such, it appears that vermouth with an alcoholic strength of between 14.5% and 18% by volume which is legally produced and marketed in the EU following EU Regulation 1601/91 is being prevented from entering the Turkish market.

Standards and Other Technical Requirements

000012-Spare parts for automobiles [2004-12-22]

Items that are on the list of automotive parts, that are not covered by ECE_R approvals are subject to the Turkish Standards Institution's approval. The terms used are not always very clear and a number of products are classified under the heading "others".

Individual products holding ISO 9000 certificates are not accepted as the authorities claim such certificates are for overall output quality, not individual products.

The authorities also request the detail of the process applied to specific products before those products are granted EU certificates, before accepting the validity of the certificate themselves.

- The situation described above remains in place.
- Following bilateral negotiations, this barrier now concerns fewer items.

Standards and Other Technical Requirements

040113-Import restrictions on tiles [2004-07-20]

Tiles are subject to barriers to trade taking the form of compulsory tests performed by the Turkish Standard Institute (TSE).

It is compulsory to present the certificate in order to clear every tile shipment. The standards are the same as the European (EN-ISO) but certificates issued by a recognised European lab are not accepted.

TSE must carry out an additional test to "verify that the products that arrive to Turkey comply with the European norms".

In fact, any recognised European laboratory could test and provide the EN certificate for the products. However, only the Turkish ones would be acceptable for the clearance of the goods at customs.

040114-Import restrictions on tableware ceramics [2004-07-20]

Since 1999, tableware ceramics products have been subject to various barriers to trade. Compulsory tests and certification performed by the Turkish Standards Institute (TSE) are required.

Tests are performed only in certain customs offices, a relevant number of pieces are taken and not given back, and it takes sometimes months to have the results of the tests and testing fees are high.

Recently, the situation has been worsening. A hygiene report has to be stamped by the local veterinary office and a product technical data sheet (list of content) has to be stamped by the local chamber of commerce.

- Following intensive negotiations, Turkey has adopted secondary legislation by the Communiqué n° 2004/41 on 21 October 2004 which has exempted ceramic products from the conformity assessment requirement. Nevertheless, the regulation referred to by Communiqué 2004/5 dated 31 December 2003 and published in the Official Gazette n° 25333 requiring from the importers a certificate of the Ministry of Agriculture for safety reasons, is still maintained.

Other Non-Tariff Measures

040110-Limits to importation of second hand goods [2005-01-10]

A wide range of industrial products are subject to an import licensing in case they are old, used or renovated according to the Communication on importation 2004/09.

This limitation derives from article 7 of the Turkish Import Code (Council of Ministers n° 1995/7606 published in the Official Gazette dated 31 December 1995).

Competition Issues

020097-"Buy Turkish" [2004-03-17]

A general letter issued by the Ministry of Labour and Social Security on 6 September 2001, stated that health facilities will purchase imported medicines only if there is no local alternative.

This discriminates against imported products and is at odds with basic national treatment

provisions.

- The situation is currently unclear; it is not certain that the practise has ceased.
- This issue was dealt with on bilateral grounds notably in the context of a Customs Union Action Plan aimed at extending and deepening the Turkey-EC Customs Union. A complaint was however lodged by the European Federation of Pharmaceutical Industries under the EC Trade Barriers Regulation. Under this regulation, a report is to be released by the Directorate General Trade within a period of 5 to 7 months following the announcement of the procedure in the Official Journal of the EU on 20 December 2003.

Standards and Other Technical Requirements

020098-Lack of deadline for granting marketing authorisation [2004-03-23]

Turkey does not apply a deadline by which the authorities should grant (or refuse) marketing authorisation to a pharmaceutical product.

In the EU, there is a 210 day deadline.

In addition, Industry has complained that, during the authorisation procedure it is very difficult to obtain information concerning the progress of their application. When information is received, it is often contradictory and therefore difficult to establish at what stage in the procedure the product has reached.

- The situation described above remains.
- This issue has been dealt with on bilateral grounds notably in the context of a Customs Union Action Plan aimed at extending and deepening the Turkey-EC Customs Union. The situation as described above remains.

020096-Lack of data protection [2004-03-17]

All EU states protect from disclosure, the data that pharmaceutical companies have to file in order to obtain market approval (ie. proving that the product is safe for human consumption). If another (usually "generic") company can prove that their product is a copy of a product for which the marketing approval data has already been filed, they are permitted to merely refer to that data, without having to compile similar data themselves.

Throughout the EU, the period for which such data may not be referred to, ranges from 6 to 10 years.

This is in accordance with with Article 4(8) of Directive 65/65 and Article 39(3) of the TRIPs Agreement (though the latter does not place a time limit on disclosure).

However, Turkey does not offer data protection for any period. As a result, generic companies are frequently able to obtain marketing approval for their products within one or two years of the brand-name version.

In addition, there are allegations that the actual data provided by the brand-name company is being released to the generic companies.

- At present, there is still no data protection in Turkey.
- In the CU Joint Committee meeting of December 2002, the Turkish authorities stated expressly that it would not be implementing data exclusivity in the near future owing to the negative impact it would have on local industry.
- This issue has been dealt with on bilateral grounds notably in the context of a Customs Union Action Plan aimed at extending and deepening the Turkey-EC Customs Union. A complaint was however lodged by the European Federation of Pharmaceuticals Industries and Associations under the EC Trade Barriers Regulation. Under this regulation, a report is to be released by the Directorate General Trade within a period of 5 to 7 months following the announcement of the procedure in the Official Journal of the EU on 20 December 2003.

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INVESTMENT RELATED BARRIERS

040111-Limits to foreign investments in security services [2004-07-20]

Article 16 of the law 2495 requires that staff involved in security services have Turkish citizenship. No distinction is made between the management and the security teams. As a consequence, a proficiency certificate of the General Security Directorate of the Ministry of Interior, in the field of installation and operation of alarm systems is being refused.

040112-Limits to foreign investments in placement services [2004-07-20]

Article 17 of the law establishing the state employment agency which was adopted in July 2003 requires that the staff of private agencies in charge of placement activity - intermediation in the search of employees - has the Turkish nationality.

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IPR

Turkey is a "developing country" member of the WTO and as such was required to bring all its intellectual property legislation in line with the TRIPs Agreement ("Trade Related Aspects of Intellectual Property") by 1 January 2000.

However, the Customs Union demanded that it comply fully with TRIPs by 1 January 1999.

As a developing country that did not provide patent protection on pharmaceutical products and processes prior to the introduction of TRIPs on 1 January 1995, it was granted a 10 year transitional period in which to provide such protection (1 January 2005).

However, the Customs Union set a deadline for full patent protection by 1 January 1999.

Patents

Decree N° 551 came into force in 1995 and includes protection for micro-organisms and microbiological processes and utility models. Pharmaceutical products are protected under the amending Decree N° 566 of 1995 with effect from 1 January 1999.

Trademarks

Decree 556 entered into force in 1995 together with its implementing Regulation using a system of publication and opposition before registration. It includes protection for service marks, guarantee and collective marks and has a term of protection of 10 years, indefinitely renewable.

In addition, well-known trademarks (in the sense of Article 6bis of the Paris Convention 1967) are considered among the grounds for refusal of registration or, if there is a registration they are among the grounds for invalidity.

The Decree is based on EC Directive No. 89/104, in addition to the seven Articles (15 to 21) of the TRIPs Agreement.

Industrial Designs

Decree N° 554 of 1995 and its Regulation, are based upon the TRIPs Agreement and on EC Directive 98/71 and uses a system based on non-examination, deferment of publication, and opposition by third parties. A multiply application process is possible in order to secure less costly protection for textile designs.

The initial period of protection is five years. This is renewable a maximum of four times (up to 25 years).

Artistic designs are protected by the "Copyright Law" (see below)

Unregistered design protection is provided through the unfair competition provisions of the Turkish Commercial Code.

Geographical Indications

Decree N° 555 and its Regulation were came into force in 1995. Protection is based on registration, and

may be afforded to all goods (in addition to wines and spirits) with the requirements for wines and spirits as insisted by Article 23 of TRIPs being applicable for all goods subject to geographical indications.

Unregistered geographical indications may benefit from unfair competition protection within the framework stated in the Commercial Code.

Copyright and Neighbouring Rights

The Intellectual and Artistic Works Law N° 5846 was adopted in 1951. The Cinema, Video and Musical Works Law N° 3257 and five Regulations implementing those Laws are in force.

Law N° 4110 of 1995, amended the Copyright Law to include protection for neighbouring rights and for software and data bases. It also extended the term of protection to 70 years (in line with the EU). A further 44 amendments were made in March 2001 by Law N° 4630.

There is a draft law, currently before Parliament, on the Protection of Semiconductor Chip Topography (based on EC 87/54). The draft law on the Protection of Plant Breeders' Rights (introducing a sui generis protection in line with UPOV 1991) was sent back for revision by a Parliamentary Committee and has yet to be resubmitted.

Other legislation, associated with intellectual property is as follows:

Protection of undisclosed information

- Contract Law N° 818 obliges workers not to divulge business secrets of the employee and prevents them from dealing with competitors. Remedy is provided by compensation of damages.

- the Commercial Code establishes "unfair competition" as: seducing employees into divulging trading secrets of their employer and taking advantage from trade secrets obtained without good faith, or divulging them to others. Civil remedies are provided by compensation for damages and criminal remedies by fines and/or imprisonment.

- the Regulation for Pharmaceutical Products 1996, obliges the Ministry of Health not to disclose and keep secret information and test results submitted by applicants seeking marketing approval for pharmaceuticals. The same obligation is placed upon public authorities who take applications for marketing approval for pharmaceutical, agrochemicals or veterinary products under the provisions of the Patent Decree 551.

- Civil Servants Act N° 657 places responsibility on civil servants employed in the Ministries and public institutions not to divulge secret business information related to their services. Infringement permits action to be brought against the public administration with remedy being provided by compensation, in addition to disciplinary and criminal sanctions against the civil servant.

The following international conventions have been ratified by Turkey:

- TRIPS Agreement
- Paris Convention for the Protection of Industrial Property
- Nice Agreement concerning the classification of trademarks
- Patent Cooperation Treaty
- Vienna Agreement concerning the international classification of figurative elements of trademarks
- Strasbourg Agreement on patent classification
- Budapest Agreement on the deposit of micro-organisms for the purpose of patent procedure
- Locarno Agreement for the classification of designs
- Madrid Protocol relating to trademarks
- European Patent Convention
- Berne Convention for the Protection of Literary and Artistic Works and Paris Act of the Convention
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

In addition, Turkey has signed (but has yet to ratify) the following:

- Hague Agreement Concerning the International Deposit of Industrial Designs

- Trademark Law Treaty
- Patent Law Treaty

Once the draft law on the Protection of Plant Breeders' Rights is passed, Turkey will comply with the UPOV Convention. Ratification of the WIPO Copyright Treaty and Performances and Phonograms Treaty is on the agenda of Ministry of Culture.

Agriculture and Fisheries

Legislation on Appellations of Origin and Geographic Indications

020099-Lack of protection for geographic indications [2004-07-22]

It would seem that products such as the spirit drink "Koniak" or "Kanyak" and types of cheese termed "Rokfor" are available on the Turkish market.

These goods contravene WTO and EU legislation on the protection of geographic indications and appellations of origin.

- The situation described above remains.
- "Kanyak" was previously produced and marketed by the former monopoly TEKEL. The TEKEL has now been privatised and feedback from the market suggests that "Kanyak" is still being produced and put on the market by the new owners MEY. We will monitor the situation to see if the new owners MEY change the name of this product or cease its production in reviewing their new operations.

Enforcement problems on IPR

020103-Imports of fake Scotch Whisky [2004-07-22]

Alcoholic beverages, labelled as "Scotch Whisky" are being exported from the Turkish Republic of Northern Cyprus and sold in Turkey.

Tests undertaken on these products prove that they do not originate from Scotland nor do they comply with the definition of "whisky" (as per. EC Regulation 1576/89 and the Turkish Food Codex 95-01 of 21/10/95).

For the most part, the products appear to consist of neutral alcohol with added flavourings (eg. vanilla) and sweetening agents.

- It is understood that the Ministry of Agriculture has instructed provincial administrations to carry out analyses for; strength by volume, methyl alcohol, total volatile substances content, higher alcohols and organoleptic qualities, in order to combat the problem.
- Turkey introduced new tax legislation on 14 October 2003.

The high ad valorem tax rate of 275.6% on spirits was maintained and minimum tax takes per category of spirits were introduced, whereby if the ad valorem calculation did not yield as much, then the stipulated minimum tax take would apply.

On March 14 2004, new tax legislation was introduced again. The principal change was that instead of the minimum tax levels being set out on a volume basis i.e. TL x per litre of alcoholic beverage, they will now be levied on a "specific" system i.e. TL x per litre of pure alcohol (lpa). The following minimum tax amounts per litre of alcohol apply:

Raki – TL 28,380,952
 Vodka – TL 33,250,000
 Gin – TL 33,250,000
 Liqueurs - TL 46,400,000
 Whisky - TL 58,139,540

On one hand this tax system appears discriminatory against imports because categories containing predominantly imported spirits (e.g whisky and rum) are subject to the highest minimum tax takes and categories with predominantly domestic products (e.g. raki, vodka, gin and liquers) benefit from lower tax takes. However, the system seems to have had an indirect benefit in that the high minimum tax takes imposed on whisky seem to have stemmed the flow of fake scotch whiskies from the Turkish Republic of Northern Cyprus. It is intended to confirm the situation following a market survey and the situation will have to be monitored as Turkey should still make further changes to its tax legislation to bring it into line with the EU acquis.

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OTHERS

Anti-competitive practices are governed by Competition Law No. 4054. Based on the provisions within the Treaty of Rome, it prohibits agreements, decisions and concerted practices in restraint of competition, and abuse of dominant position.

Turkey is not a signatory to the WTO Government Procurement Agreement. Although it does comply with the usual bidding procedures for tenders, these procedures can be complicated and lengthy. It would appear also that some tenders, particularly those concerning major projects, are re-opened after the normal bidding procedure has closed.

It is also understood that calls for tender are "tailor made" for specific companies, the conditions within being worded in such a way so as to eliminate most competitors.

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