

Trade Policy Review Body
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TRADE POLICY REVIEW

TURKEY

Minutes of Meeting

Addendum

Chairperson: H.E. Ms Mary Whelan (Ireland)

This document contains the advance written questions, and replies provided by Turkey.¹

Organe d'examen des politiques commerciales
17 et 19 décembre 2003

EXAMEN DES POLITIQUES COMMERCIALES

TURQUIE

Compte rendu de la réunion

Addendum

Présidente: S.E. Mme Mary Whelan (Irlande)

Le présent document contient les questions écrites communiquées à l'avance et les réponses fournies par la Turquie.¹

Órgano de Examen de las Políticas Comerciales
17 y 19 de diciembre de 2003

EXAMEN DE LAS POLÍTICAS COMERCIALES

TURQUÍA

Acta de la reunión

Addendum

Presidente: Excma. Sra. Mary Whelan (Irlanda)

En el presente documento figuran las preguntas presentadas anticipadamente por escrito, junto con las respuestas facilitadas por Turquía.¹

¹ In English only./En anglais seulement./En inglés solamente.

**ADVANCE WRITTEN QUESTIONS BY MEMBERS AND
REPLIES PROVIDED BY TURKEY**

I. ECONOMIC ENVIRONMENT

INVESTMENT

Question (Switzerland):

The Swiss Government welcomes the efforts (a series of new laws and decrees in the fields of foreign direct investment) made in recent years by the Turkish authorities concerning the improvement of the investment environment in Turkey, in particular the new law on "Foreign Direct Investment" of June 2003. Switzerland is pleased to learn that the new law on "Foreign Direct Investment" includes a number of key elements for investors such as (investor-friendly) definitions of foreign direct investment and foreign investors in accordance with international standards, a policy shift from ex-ante control to a promotion approach with minimal ex-post monitoring and reassurance of existing guarantees with regard to foreign investor's rights such as national treatment, protection against expropriation etc. However, Switzerland would appreciate if the Turkish authorities could provide it with some additional information relating to their experiences made under the national strategy to increase the overall level ... of firms operating in Turkey, particularly the experiences made by the Coordination Council for the improvement of Investment Environment (CCIE).

Question (Australia):

Australia welcomes Turkey's intention to introduce new legal and administrative measures to attract foreign direct investment. When does Turkey envisage that this process will be complete, and what opportunities will the process afford foreign companies?

Answer:

Turkey has already a private sector driven economy; however, we believe that we still need to take further steps that will drive our domestic markets to operate efficiently in a competitive, transparent and predictable environment. To this end, the government policy is oriented towards creating a small but an efficient public sector to provide more room for private sector activities. We are deepening this transmission process through public sector reforms to decentralize the administration; fiscal reforms to better manage the expenditure policy; tax reforms to create an equitable tax system; banking reform to consolidate the gains achieved in bank restructuring; judicial reforms to enhance corporate restructuring, and agricultural reforms to modernize agricultural system and support policies.

The Government of Turkey in 2001 has launched a reform process in order to improve the investment climate since complex and time-consuming administrative procedures could discourage investors despite other attractive features that a country might have.

Taking into account the findings and recommendations of a diagnostic study and the project on administrative barriers to investment conducted jointly by the Government of Turkey and the Foreign Investment Advisory Service (FIAS), a joint facility of the International Finance Corporation (IFC) and the World Bank, the Government enacted a "Decree on Improving the Investment Climate in Turkey" on December 11, 2001 as a part of a national strategy to increase the overall level of income and productivity and to raise the level of competitiveness of firms operating in Turkey.

The challenge facing the government was how to implement the reform vision in the most efficient manner that would streamline administrative procedures while incorporating private sector feedback on the measures to be taken. As observed by the FIAS project team there was certainly a need for the Turkish national, regional and municipal authorities to seek increased participation of the private sector in the reform process.

Within this framework, a three-phase strategy was designed and started to be implemented to facilitate the reform process.

First, a clear vision and a consistent direction for the reform were embodied in the December 2001 ministerial decree in order to demonstrate political commitment and consensus behind the reform scheme. The decree established a coordinating body, Coordination Council for the Improvement of the Investment Environment (CCIIE), with the mandate to identify and remove regulatory and administrative barriers to both domestic and foreign private investments.

Second, a clear and precise action plan defining the priorities, the timing and responsibilities was formulated. Last but not the least, the CCIIE has been holding regular monthly meetings in order to monitor the progress made by the technical committees and the eventual changes in private investors' needs.

The CCIIE convened each month while the technical committees held several meetings to discuss existing problems and to submit necessary actions to be taken for solution to the CCIIE, concerning the following issues:

- Company registration and reporting
- Employment
- Sectoral Licenses
- Land Acquisition and Site Development
- Taxes and Incentives
- Customs and Standards
- Intellectual Property Rights
- Promotion of Investment
- Foreign Direct Investment Legislation

The first CCIIE meeting was held in March 2002, and set targets and timelines for these technical committees. Monthly reports of the technical committees have been quite positive. The Government has taken several steps in compliance with the recommendations of the technical committees.

The new government has also identified this programme as a priority issue and decided to head CCIIE by a minister. Moreover, the Government amended the Council of Minister's Decree to include another technical committee on small and medium enterprises.

The reform program has proved to be effective and various legislative changes has been made or draft laws has been prepared. Enacted laws as a direct result of the CCIIE process to-date include:

- Law on employment of foreign personnel;
- The law on the investment allowance system which enables a shift to an automatic state aid system became a general tax measure in line with EU requirements;
- The law that redesigns company registration process, which diminishes the prior 19 required steps to 3 steps and reducing turnaround from two and a half months to one day.

The company registration procedures which previously were taking almost two and a half months and requiring excessive documentation and approvals from several authorities have been simplified and streamlined. Now the registration can be done in a day. All that is required is to fill out a standard form at one point without applying to several different authorities for necessary approvals;

- The labor Law arranges the rights and responsibilities of workers in working conditions and working climate,
- And, the new up-to-date FDI law that serves as a declaration to foreign investors of their rights and will enable a shift from an “investment permission system” to an “investment monitoring system” in conformity with international best practices.

With the new FDI legislation notification based system instead of screening and approval system will be in effect. Also this law defines investment and investor in line with the international standards and abolishes minimum capital requirement of USD 50,000 per real or legal person for foreign investors. The foreign investors are free to make foreign direct investments in Turkey and also they shall be subject to equal treatment with the domestic investors.

The necessity of establishing a concerted and focused investment promotion effort in order to compete effectively with other countries was very well perceived by the policy makers who decided to include investment promotion in the reform process. The technical committee in charge of building an investment promotion institution appropriate for the needs and expectations of Turkey made substantial progress toward setting up a new entity that will be supported by both public and private sectors. The draft law for establishment of the investment promotion agency was submitted to the prime ministry at the end of April 2003.

Furthermore, the CCIIE efforts have created positive results in several other areas such as sectoral licensing, customs and intellectual and industrial property rights. With respect to customs reform, the Undersecretariat of Customs has been implementing an ambitious reform program to improve its administrative efficiency and effectiveness. The customs automated system has been rolled-out to 99% of all customs offices and further enhanced to assist customs in controlling movement of goods. Important steps taken include modernizing customs laws, regulations and procedures in line with the EU legislation, and simplifying and harmonizing forms, procedures and control techniques in line with those recommended by the World Custom Organization. Necessary legislation to strengthen the capacity and infrastructure of the Turkish Patent Institute has been submitted to Parliament.

Finally, land acquisition and site development for investment as a critical issue for both local and foreign investors have been discussed within the relevant technical committee.

With this process various laws have been enacted and several draft laws were submitted to the Grand National Assembly of Turkey and to the Prime Ministry. The process will not be completed with the ratification of these draft laws. It is planned to be a continuous process to address the problems that would arise in the future.

Abolishing the complex and time-consuming administrative procedures affords several opportunities to the foreign companies. Avoiding cumbersome, unclear, informal and time-consuming administrative procedures could create a transparent and stable business environment, and could lower the initial and operational costs for investors.

Question (Chinese Taipei):

As indicated in the government report, Turkey is drafting a law to establish the “Investment Promotion Agency of Turkey”. While we understand that the law is still pending review by the Turkish Parliament, we would like to know at this stage: (1) whether the agency is going to be official in nature or supported by the private sector, (2) how would it coordinate with other government agencies, and (3) will investment promotion activities focus on specific sectors?

Answer:

The Law on the establishment of Investment Promotion Agency of Turkey has already been drafted by the Undersecretariat of Treasury in cooperation with the representatives of public and private sector in the relevant technical committee of the Coordination Council for the Improvement of Investment Environment.

The institutional framework and the powers of the Agency to be established is designed with a view to ensuring effective fulfillment of functions such as investor servicing, investment generation, image building and policy advocacy.

The draft law laying down the details of institutional framework establishes an agency that will be a related institution of the Ministry of State responsible for the Treasury. It will have administrative and financial autonomy and not carry on regulatory functions such as issuing permissions.

Mainly the Agency will be responsible and have the power for formulation and implementation of national investment promotion strategy in line with Turkey’s foreign direct investment policy. It will also play an active role in the ongoing reform process to improve investment environment.

The agency will be governed by a board composed of private sector representatives and representatives of relevant government bodies.

The Agency will be empowered to establish relations with relevant government bodies in order to solve specific and general problems of the investment environment.

The Agency will carry on both general and sector specific promotion programs according to priorities of promotion strategy that will be elaborated after its establishment.

Question (Canada):

Paragraph 37 states, “A company can be 100% foreign owned in almost all sectors of the Turkish economy. The exceptions are: (i) broadcasting, where foreign shareholders' equity participation is restricted to 25%; and (ii) aviation, maritime transportation, ports, fish-processing and telecommunications services provided under concession agreements, where it is restricted to 49%. Acquisitions of over 30 hectares by foreigners are subject to permission from the Council of Ministers. Establishments in the financial, petroleum, and mining sectors require special permission, according to appropriate laws (Table II.5).”

If the Council of Ministers does not grant permission of an acquisition of over 30 hectares, is there a right of recourse or re-submission?

Answer:

In accordance with the Article 125 of the Constitution of the Republic of Turkey, recourse to judicial review shall be open against all actions and acts of the administration in Turkey. Therefore foreigners can apply to the Council of State for reviewing the decision of the Council of Ministers.

II. TRADE AND INVESTMENT REGIMES

WTO AND DDA NEGOTIATIONS

Question (Canada):

In the event that multilateral trade talks do not resume in a timely manner, what does Turkey see for the future of its trade strategy? Specifically, which existing arrangements will receive the most emphasis? Will Turkey be seeking new arrangements - regionally or bilaterally?

Question (EU):

Bilateral, regional and global trade liberalization is vital for promoting prosperity, growth and development to the benefits of the world at large. The EC considers that the WTO and multilateral liberalization is the most certain way for promoting global interests for industrialized countries and developing countries at large.

- How does Turkey judge the importance and possibilities for furthering multilateral liberalization and the development of the WTO system in terms of its own trade and development needs?

Answer:

The WTO and the multilateral trading system since the GATT era proved its validity and indispensability to open up markets and maintain trade liberalization in a transparent manner.

Turkey is convinced that an international trade system embodied within the WTO on the principles of reciprocity, equity, mutual understanding and non-discrimination can serve the interests and welfare of the whole global community. Having this in mind, Turkey has always been a proponent of smooth functioning of the multilateral trading system where all members equally participate. Turkey continues to support the priority of the multilateral trading system especially for those countries lacking necessary bargaining power, technical or human capacities to compete in the world markets.

Turkey further believes that liberalization of trade at regional or bilateral level can also contribute to liberalization and trade expansion in the global context. From this point of view, Turkey as a country bridging different regions of the world with wide range of economic, cultural, social and political features considers establishing bilateral and regional trade relations as valuable opportunities to further enhance trade liberalization. Regional or bilateral trade liberalization are complementary tools to the multilateral trading system provided that they are fully in compliance with the WTO rules.

Turkey while being fully committed to the multilateral trade liberalization, has been actively taken part in many regional initiatives and continued to expand its economic and trade relations bilaterally.

As long as the basic principles of the multilateral trading system are fully respected, trade liberalization on both fronts will consolidate the benefits of the multilateral trading system.

Turkey, while carrying out its economic and trade relations both bilaterally and regionally on the basis of the WTO Rules, will continue its efforts in the re-launching of the multilateral trade negotiations.

REGIONAL TRADE AGREEMENTS

Question (Australia):

We note that the Secretariat report (para 17, page 21) states that there is no firm timetable for the integration of agriculture into the Turkey-EU Customs Union. Can Turkey advise whether discussions have taken place on a tentative timetable?

Question (Chinese Taipei):

The Secretariat Report mentions that the agricultural sector is excluded from liberalization in the customs union between Turkey and the EU, and there is no firm timetable for the integration of agriculture. Could Turkey provide the timetable for its agricultural liberalization policies to be finally integrated with those of the EU? Furthermore, could Turkey please explain how this exclusion is consistent with the relevant provisions of Article XXIV of GATT 1994, which requires a customs union to cover substantially all the trade between and among members, within a transition period not exceeding 10 years?

According to the Secretariat Report, Turkey has been following closely the position of the EU in WTO negotiations on non-agricultural products. However, when it comes to agricultural products, Turkey takes the position that further tariff reductions can be considered provided that the developed countries substantially reduce or eliminate their export subsidies and domestic support. In view of the fact that a customs union has been established between Turkey and the EU since 1995, could Turkey please explain how it intends to move towards harmonizing its position on agriculture with that of the EU while their respective positions on agriculture negotiations appear to be divergent?

Answer:

Originally, the Ankara Agreement of 1963 that had formed an association between Turkey and the EC had foreseen the establishment of a customs union in between covering all sectors of the economy. Therefore, in principle, agricultural products were covered by the Customs Union.

However, during the negotiations of the Customs Union, the Parties agreed to postpone the free movement of agricultural products until Turkey's adoption of the EU's Common Agricultural Policy (CAP). Nevertheless, Article 24 of the Association Council Decision No. 1/95 establishing the Customs Union between Turkey and the EC included *inter alia*, the Parties intention to move towards the free movement of agricultural products.

Until the attainment of this objective, which requires the adaptation of agricultural policy of Turkey to the Common Agricultural Policy of the EC, the parties committed themselves to improve market access conditions. In this regard, the preferences granted in trade in agricultural products already accounted for a large portion of total agricultural trade as a result of a separate Decision of the Association Council which entered into force on 1 January 1998.

With its implementation, in 2002, approximately 97% of Turkey's agricultural exports to the EU benefited from preferences while the preferential access of EU constitutes to 45% in the Turkish market.

Therefore, the time frame required for alignment with the CAP will serve as a preparatory stage where the current level of agricultural preferential trade will gradually be expanded in conformity with the requirements of the Ankara Agreement, relevant Protocols and Association Committee Decisions.

As yet, there has been no fixed plan for the full alignment.

Turkey's current negotiating position within the DDA, however, which is primarily based on the experience gained since the entry into force of the Agreement on Agriculture as well as the new requirements under the agricultural reform programme, aims to improve and increase the competitiveness of its agricultural sector. EC's position in the negotiations, on the other hand, is followed closely from the full membership perspective.

Question (Switzerland):

While § 21 explains that the CUD has strengthened trade relations between Turkey and the EU, showing that trade has greatly increased in absolute terms, Chart II on p. 24 appears to provide no clear indication that the RTAs with EU, EFTA and ECO partners have contributed to the creation of mutual trade beyond the level of trade with the rest of the world. What is the evaluation of the Government of Turkey as to the effects of the RTAs concluded in the 90ies?

Answer:

Turkey has implemented a wide range of reforms within the framework of the Customs Union between Turkey and the EC, taking it significantly beyond its Uruguay Round commitments as well as generating improved and more secure trading opportunities for third countries. In addition to reducing its manufacturing tariffs to the levels of the EC's Common Customs Tariff (CCT), Turkey has also harmonized much of its legislation with that of the EC in areas such as competition policy, customs provisions, intellectual property rights and standards.

With the completion of the Customs Union, Turkish economy has integrated with an important economic bloc of the world. Obviously, it has become the biggest impetus to Turkish economy since the adoption of liberalization measures of the early 1980's. With the Customs Union, Turkey has opened its internal market to the competition of the EC and third countries, while guaranteeing free access to the EC market. Accordingly, in the course of its six-year implementation, both positive and negative reflections of the Customs Union have been experienced.

The EC is clearly the biggest trade partner of Turkey. In 2002, the EC accounts for 51.3% of total exports and 45.4% of total imports. Turkey is an important trade partner of the EC as well. The foreign trade statistics of the EC for the year 2002 demonstrate that Turkey ranks eleventh at imports and tenth at exports of the EC with shares of 2.13% and 2.47% respectively.

The Customs Union has strengthened the traditionally comprehensive trade relations. The volume of trade between Turkey and the EC reached to the level of US\$41.5 billion in 2002 from the level of US\$27.9 billion in 1995.

Even though imports from the EC has fluctuated in parallel with internal and external macro economic developments, increase rate of imports has exceeded increase rate of exports following the

customs union. During the period of 1995-2000, imports from the EC has increased by 57.8%, while exports to the EC has experienced an increase of 30.9%. Yet, this trend reversed in 2001 and some positive developments were observed in trade balance with the EC.

Following the completion of the customs union in 1996, imports have experienced a sharp increase, while increase in exports was moderate. Accordingly, Turkey faced a large trade deficit. Substantial reductions in protection rates and lack of appropriate macroeconomic measures to compensate the revenue loss played an important role in this process.

To the large extent, the increase in foreign trade deficit is attributed to the customs union. Nevertheless, it should be noted that Turkey, during that period, has experienced a growth performance of 7%, which is above the OECD average, and imports of investment and intermediate goods has displayed a great increase accordingly. In contrast, in 1999 and 2001 where national income experienced substantial declines, imports from both the EC and third countries decreased significantly. Therefore, the role played by internal and external economic factors should not be ignored while considering the increase in imports observed after the Customs Union.

On the other hand, exports to both the EC and third countries have exhibited an increasing trend. Despite the fact that this increase was far below the expectations before the customs union, a stable market share in the EC has been guaranteed. During the period of 1995-2000, the imports of the EC from the third countries decreased by 19%, yet Turkey maintained its share of 1.7% in the EC imports.

A general observation for the post-customs union period is that imports have expanded faster than the exports. The composition of imports, which depends heavily on intermediate and investment goods for the needs of the manufacturing industries, has been shaping the volume of imports. Hence, any internal or external macro economic development has had a direct effect on the volume of imports. Imports decline in the periods of economic contraction, while improves in the periods of economic recovery.

When it comes to exports, the expected increase has not been realized. This development can be attributed largely to contraction in external markets and challenging competition conditions resulting from Asian and Russian financial crises. Moreover, adverse shocks experienced in Turkey with respect to exchange rates, interest rates and investment have played role as well.

In sum, the Customs Union locked in reforms towards liberalization in Turkey and accelerated the regional integration process, which will shape the external trade relations in the future. The openness rate of Turkey, which is the share of total trade volume in GNP, increased to 48.3% in 2002 from 30.6% in 1994.

Developments experienced so far indicate that the Customs Union exposing Turkish industry to intense international competition, has launched a challenging process, which will ensure the integration of Turkey to the new world order. Our sectors have adapted themselves to the competition environment thanks to their dynamic structures and flexible production structures.

On the other hand, as a result of the "Trade Development Strategy with Neighboring and Region Countries" initiative of the last three years, Turkey is looking for new ways to improve its trade and create a fair trading environment in the Middle East, South East Europe, Black Sea, Caucasus and Central Asia. In this respect deepening trade relations with ECO countries and BSEC countries are on the agenda of Turkey in order to identify and simplify trade documents to facilitate movement of goods.

Members will find the detailed Table comprising trade figures under the relevant regional agreements in the Annex.

OTHER PREFERENTIAL TRADE ARRANGEMENTS

Question (EU):

According GSP-treatment to least developed countries is rather important to improve the trading conditions of these countries and to give them the possibility also to benefit from international trade.

What are Turkey's plans for enacting a GSP-regime?

Question (India):

Turkey was expected to align itself with EU GSP as of 1-1-2001 but this has now been postponed to November 2004. Whether the Government of Turkey would kindly indicate the reason for this delay and an assessment as to whether the obligation would be complied with by November 2004.

Question (Chile):

According to information available through UNCTAD, approximately 2.500 tariff lines receive GSP treatment in Turkey. We understand that these products belong mainly to Chapters 28, 29, 37, 38, 82, 84 and 85 of the Harmonized System.

Chile would like to request Turkey the list, if possible in electronic format, of products that benefits from its GSP scheme. We would appreciate that this information be made available in HS 2002 nomenclature if already available in that format.

Chile would also like to know if Turkey's list of GSP beneficiary products coincides with that of the European Union; and, if that is not the case, whether and when it is foreseen that this will happen.

Answer:

In accordance with Article 16 of the Association Council Decision No. 1/95 setting out the rules and procedures of the Customs Union between Turkey and the EC, Turkey commenced to introduce the EC GSP from 1 January 2002 onwards.

The preferences, granted in this regime are classified basing upon the sensitivity of the products as "sensitive" and "non-sensitive" similar to the EC's current regime and the same rate of duties are charged accordingly.

All the countries covered by the EC GSP are accorded preferential treatment. And, 2884 12-digit tariff lines are included within the scope of the current GSP scheme of Turkey.

Turkey is also endeavoring to align its tariff rates for the rest of the products under the EC GSP depending upon the improvements recorded in the prevailing economic situation.

Further alignment to the EC GSP will be continued depending upon the improvements recorded in the economic performance of Turkey, the effects of the GSP Regime on Turkey's foreign trade and the impact of the implementation over the industry.

In this regard, within the framework of the 2004 Import Regime, it is envisaged that the "Everything but Arms (EBA)" initiative will be adopted which means that EC GSP will be fully operational for the Least Developed Countries for the products under the Customs Union.

Meanwhile, further improvement will be done in favor of the developing countries where it is foreseen that approximately 51 % of all industrial products covered by the EC GSP regime will be included in Turkey's own regime for this country group by 1 January 2004. In other words, from 1 January 2004 onwards, we will be covering 5660 12-digit HS lines which constitutes 50.9 % of the current EC GSP.

Turkey's efforts towards adopting EC's GSP fully by 2006 are continuing.

III. TRADE POLICIES AND PRACTICES BY MEASURES

CUSTOMS PROCEDURES

Question (Japan):

The Secretariat Report states that certain goods can be imported only through specialized customs officers.

Please explain why Turkey imposes such a system.

Answer:

The intention in establishing specialized customs offices is first to render the customs formalities by customs officers who have long been dealing with the release of the same good and have developed expert knowledge on the customs formalities of that good. Secondly, Turkish Customs Administration, when determining the specialized customs offices, takes into account the trade volume of that office with regard to that specific good to be specialized at. Therefore, the offices that turned into specialized customs offices are usually the ones, which had been carrying out the customs formalities of the very same good. This means that the specialized customs offices would not impede the trade, on the contrary accelerate the trade and diminish the time release of goods at customs. Thirdly, the specialized customs offices also serve the needs of the companies and their production. The companies established at the vicinity of the specialized customs office are using those goods as input, which is therefore crucial for them that the input enters into the production without any time loss at customs. The infrastructure is another factor when establishing specialized customs offices. These offices are equipped with technical infrastructure necessary for that special good, such as laboratories, weighing stations, loading-unloading availability...etc.

Question (USA):

The Secretariat's report notes that Articles 23 to 31 of Customs Law No. 4458, in force since 5 February 2000, address the valuation of imported goods.

- Would Turkey please provide us with a copy of this law? We would also encourage Turkey to respond to the Valuation Questionnaire identifying specifically how the law implements the WTO Valuation Agreement.

Under paragraph 3 of Annex III of the WTO Valuation Agreement, Turkey has reserved indefinitely the right not to reverse the deductive and computed valuation methods at the importer's request.

Would Turkey explain how the right to reverse the deductive and computed valuation methods at the importer's request gives rise to real difficulties?

The Secretariat's report notes that appeals against decisions of customs authorities are governed by Title XII of Customs Law No. 4458.

How does Title XII implement the provision in Article 11 of the WTO Valuation Agreement, which specifies that the right of appeal shall be without penalty to a judicial authority?

Additionally does Customs Law No. 4458 provide that the notice of the decision on appeal shall be given to the appellant in writing, along with the reasons for such decision?

The Secretariat's report notes that any person has the right to appeal against decisions taken by the Regional Directorates for Customs and by the Undersecretariat for Customs.

Does the notice of the decision on appeal specifically inform the appellant of such rights of further appeal?

Answer:

The English version of the Turkish Customs Law No: 4458 can be found at the official website of the Undersecretariat of Customs. The address is the following: http://www.gumruck.gov.tr/Turkish_Customs_English/toctum.htm

Furthermore, Turkey is ready to respond to any kind of questionnaire to clarify the implementation of the Agreement.

Turkey, bearing the status of a developing state that has the right of using such a reservation as stated in the para. 3 of the Annex 3 to the WTO Valuation Agreement, has the discretionary right to agree with the request of the importer to reverse the deductive and computed valuation methods. Actually, the effects that might arise in real terms if Turkey granted the right of reversing the two methods have not been assessed. However, up until now, there has been no case that Turkey received such a request from the importers. Since Turkey has not faced any complaints from the traders due to that implementation, we deem that neither the flow of trade nor the interests of traders get negatively affected. Therefore, as Turkey's right of reservation does not seem to hamper the trade to Turkey it would be retained.

Article 242 of the Turkish Customs Law no: 4458 explains the appeal procedure and foresees the right of the traders to apply to a judicial authority against a decision of the customs administration. The customs authorities may decide penalty if they establish that the declared customs value on the customs declaration does not confirm the value that customs officers determine. If there is a penalty, it is given because of under valuation and has nothing to do with the right of appeal, therefore does not impede the right of the traders to appeal judicial authorities.

Every application for a correction of a customs act is dealt by customs within the time limits mentioned in Article 242 of the Turkish Customs Law No: 4458. The customs authorities in question notify their decisions in writing to the applicant indicating the reasons by underlying the related provisions of the Law that legitimate such a decision. When the applicant is not satisfied with the decision of the customs offices and regional customs directorates on the application of correction, he can forward his petition to Undersecretariat of Customs, which is the last resort in administrative hierarchy. The Undersecretariat of Customs has to reply within 45 days, after which he can bring his petition to the attention of judicial authorities.

Appealing against an administrative decision in front of judicial authorities is also a constitutional right. Therefore, Article 242(7) of the Turkish Customs Law No: 4458 grants this right to the interested parties. Since Article 242(7) ensures that an applicant, after using up the administrative steps, can always go for an appeal in front of judicial authorities, the notices sent to applicants do not comprise any extra information reminding them their right of further appeal.

Question (Canada):

With reference to Article 11 of the Valuation Agreement, paragraph 14 states, Appeals against decisions of customs authorities are governed by Title XII of Customs Law No. 4458. Any person has the right to appeal against decisions regarding, *inter alia*, requests for correction, administrative issues, customs duties, and penalties. Appeals can be brought within seven days before the relevant administrative judiciary of the Regional Directorate for Customs, where a decision must be taken within 30 days and notified to the relevant person. A decision taken in the Regional Directorate can be appealed, within 15 days, before the Undersecretariat of Customs; the decision and notification to the person concerned are made within 45 days. Any person has the right to appeal against decisions taken by the Regional Directorates for Customs and by the Undersecretariat for Customs.”

Please explain further the number of levels of “internal appeals” and the process and procedures an importer must follow to file an appeal? As well, is there in Title XII of Customs Law No. 4458 a right of appeal, without penalty, to an independent judicial authority (i.e., at “arms-length” from Customs)? If so, what process must an importer follow to file a judicial appeal (i.e., regarding decisions by the Undersecretariat for Customs)?

Answer:

The relevant provisions of the Turkish Customs Law, written below, clearly indicate the appeal process to be followed by the declarant against the decision of a customs authority.

There are 3 internal appeals that we can call administrative steps, before one can appeal to judiciary authority. The first appeal has to be made to the local customs office that is taking the decision; the second, if the declarant was not satisfied with the last decision of the customs office, has to be brought to the attention of the regional customs office that is in administrative hierarchy above the initial customs office; and the third one has to be made to the Undersecretariat of Customs (Director General of Customs). After using up the administrative steps, one could always apply to judicial authorities. The process that an importer must follow is explained in the provisions below. The more detailed information could be found in Article 741-753 of the Customs Code Implementing Provisions of Customs Law 4458, which is on the Turkish Customs Website, www.gumruk.gov.tr.

TITLE XII

Appeals

ARTICLE 242-1. Within 15 days from the notification of the customs duties, the debtors shall reserve the right to apply to the customs administration with a petition concerning the correction.

2. The relevant customs administration shall decide on the request for the correction within 30 days, and shall notify the debtor hereof.

3. Any person shall have the right to appeal, within 7 days, before the Regional Directorate for Customs to which the decision making customs administration is affiliated, against the decisions regarding the requests for correction, administrative decisions, customs duties and penalties.

4. Appeals received by the regional customs directorates shall be decided within 30 days and notified to the relevant person.

5. Where the first decision has been taken in the regional directorate of customs, it shall be appealed, within 15 days, before the Undersecretariat for Customs against that decision.

6. Appeals received by the Undersecretariat for Customs shall be decided within 45 days and notified to the relevant person.

7. Any person shall have the right to appeal before the administrative judiciary bodies where the Directorate for Customs or Regional Directorate for Customs are located in which the formalities relating to the decisions of the Regional Directorates for Customs and Undersecretariat for Customs are carried out.

ARTICLE 243-1. Within 15 days as from the notification, any person shall have the right to appeal in writing before the Regional Directorate for Customs against the chemical analysis results taken as a basis in the calculation of the customs duties notified to the relevant persons in accordance with Article 197.

2. Upon an appeal, second analysis shall be made by two chemists other than the chemist who works in the laboratory where he made the first analysis. Upon request, the customs administrations shall authorize an observer chemist who is not a customs chemist, to be involved in the second analysis.

Where an appeal has been lodged against the analysis made in the customs laboratories in which not more than three chemists work, the second analysis shall be made in the laboratory in which at least two chemists work and which is affiliated to the nearest customs administration.

On condition that it will be returned if they are proved right, an analysis charge shall be received from those who apply for a second analysis. Through consultation with relevant institutions, analysis tariffs shall be determined by the Ministry to which the Undersecretariat is affiliated.

3. The result of the second analysis shall be precise in respect of the determination of technical features and nature of the goods.

ARTICLE 244- The appeal of the relevant persons shall not be considered; where the customs administration has been notified in writing that the fines hereunder have been paid or shall be paid by the relevant person within 15 days as from the notification of the penalty decisions, without appealing before the administrative judiciary bodies against the mentioned fines; and where the amount of the fines has been paid within 2 months as from the notification of the penalty decisions.

In such a case, the fines shall be collected at a deficiency rate of one third.

ARTICLE 245-1. On the basis of the declaration presented to the customs administration and the information and documents attached therein; the debtors shall not have the right to appeal against the customs duties directly calculated by themselves.

2. No documents and data other than those used in appealing before the customs administration, shall be used in the appeals before the administrative judiciary bodies.

3. Appeals before the administrative judiciary body against the decisions, shall not preclude the implementation of this decision by the administration.

Question (Switzerland):

Swiss Exporters informed us and this was confirmed by the Turkish administration that an additional Form was required as a proof of origin for import of Textiles originating in Switzerland in order to survey textiles imports from Asia ("woven fabric fiber detailed sheet", since 5 April 2003). What is the legal basis of this measure, its objective and its scope, knowing that it implies in some cases considerable added costs for the exporters?

Answer:

The Communiqué published by Undersecretariat of Customs on 5 April 2003 requires the importers of woven fabric fiber to make out the form annexed to the Communiqué.

Turkey has been facing with certain difficulties in the trade of the goods in question due to the under-valuation that the customs authorities suspected on import declarations. Turkish Customs Administration, in order to overcome this difficulty, issued this Communiqué to find out the technical details of the goods and establish whether the declared customs value is an abuse of customs authorities or not. Therefore, the intention is to determine the actual customs value of the goods by evaluating its technical details when being imported to Turkey and to avoid unfair competition in the internal market. It goes without saying that, the said Communiqué was issued by taking into consideration of all relevant WTO provisions, and in our view it is not burdensome for the importers.

TARIFFS, OTHER DUTIES AND TAXES

Question (Switzerland):

According to the Report, Turkey has bound only 46.3% of its tariff lines. How does Turkey ensure the predictability of its unbound tariffs? How often and who has the authority to modify the tariffs?

The Report of the Secretariat indicates that Turkey's tariffs show a high level of dispersion and have a mixed escalation. Does Turkey have plans to further rationalize its tariff structure and make it more transparent?

§ 24 indicates that the imposition of non-ad valorem tariff rates does not ensure compliance by Turkey with its WTO binding commitments made at ad valorem bound rates. Which steps does Turkey intends to take to ensure the compliance by Turkey with its WTO binding commitments and in which time frame? Given the fact that Turkey is obliged by the CUD not to impose tariffs higher than the EU common external tariffs except in area where the CUD does not apply and taking into consideration that Turkey has only bound 36% of its tariff lines for non-agricultural products, are there differences between the level of bounds tariffs in Turkey's schedule and in the common external tariff for certain products? If yes, please indicate which are the products affected (tariff line and product description). By which mechanisms does Turkey ensure that for the unbound tariff lines it only applies the rates of the EU common external tariff and that the duties levied on goods originating from territories not Member of the customs union are substantially the same? Can we assume that the

rates of the EU common external tariff represent the maximum that Turkey is entitled to levy for the unbound tariff lines, i.e they represent *de facto* the bound rates of Turkey?

Question (Indonesia):

According to paragraph 2 of the Secretariat's Report (WT/TPR/S/125, the imposition of non-ad valorem tariffs (1.5% of the total lines) may not ensure compliance by Turkey with its WTO binding commitments made at ad valorem rates. Indonesia wishes to have further explanation regarding Turkey's strategy to hold the remain 1,5% of total tariffs lines at non-ad valorem rates.

Answer:

As a result of the Uruguay Round, Turkey bound 36% of its duties on industrial goods and 100 % on agricultural products. In total, the bound rates constitute 46.3% of all tariff lines. On the other hand, with the Customs Union in 1996, Turkey adopted the EU's Common Customs Tariff (CCT) for the imports from third countries. The Customs Union covers all industrial products excluding European Coal and Steel Community (ECSC) products, which constitute 2.6% of total tariff lines, namely 509 products in 12-digit HS tariff lines. In practice, Turkey applies the CCT on all of its unbound tariffs except ECSC products. Turkey has no binding commitment on these products and normally applies its statutory duties.

We are aware of the fact that Turkey's tariff displays mixed escalation. This structure is mainly affected by the high tariffs on raw agricultural products. Another reason for this is the CCT. For instance, the simple average rate of the CCT is about 4 percent in 2003. Therefore, while tariffs are high on raw materials, tariffs of most semi-finished products are very low as a result of application of CCT.

As it is mentioned in the Secretariat's report, only 372 distinct tariff rates exist in our tariff structure. However, if we take into account the large number of tariff lines (19,478) in the Turkish tariff nomenclature at the HS 12-digit level, we are of the view that, such a tariff structure is transparent and predictable. Nevertheless, simplification of the tariff system can be considered especially within the context of current negotiations on non-agricultural products. Similarly, members will recall that Turkey's proposal within the NAMA negotiations provides 100% consolidation for all non-agricultural products for all members.

With regard to non-ad valorem application of ad valorem bound rates, in 1995 Turkey consolidated its tariffs on the ad-valorem basis. However, following the Customs Union Decision between Turkey and the EU that entered into force in 1996, Turkey harmonized its tariff system with that of the EU to provide free trade in industrial components of processed agricultural products. Thus, Turkey has to apply non-ad valorem tariff rates as a Customs Union obligation.

As it is known, a tariff schedule provides the upper limits of duty that may be imposed. However, there is no clear requirement for the application of the same type of duty provided in the schedule.

The applied rates are published in the Official Gazette at the beginning of every year and become effective throughout the year. The said Import Regime is endorsed by the Council of Ministers. Furthermore, each year, the ad-valorem equivalent of the applied (non-ad valorem) rates is calculated and included in the Import Regime to make sure that the applied rates do not exceed the bound rates.

As a last comment, due to the Customs Union, Turkey practically applies the bound rates of the EU for almost all the industrial products except ECSC products. Although Turkey bound 36.3 percent of its industrial products, it cannot exceed the EU bound rates on the unbound industrial products pursuant to the commitments under the customs union. Therefore, CCT represents *de facto* bound rates of Turkey on the products covered by CUD.

Question (Switzerland):

Please give the reasons why for fabricated metal products the column representing the raw materials is characterized by "not applicable"? What is the meaning of this "not applicable"?

Answer:

We think that there is no missing data provided by the Turkish Government. "Not applicable" does not make any sense to us. Probably the problem is stemming from the different calculation method used by the Secretariat, which can provide further clarification on the issue.

Question (Japan):

The Government Report states that Turkey adopted the EU's Common Customs Tariff for the imports from third countries.

- Please explain the reason for adopting such policy.
- Please also indicate whether the applied tariff rates for all the imports from third countries coincide with those of the EU's Common Customs Tariff.
- If so, please explain how the applied tariff rates of Turkey match up with those of EU's Common Customs Tariff in such a case where the EU's tariff rates alter.

Answer:

Turkey adopted the EU's Common Customs Tariff in 1996 and has been applying it since then. The reason for this is the establishment of a Customs Union between Turkey and the EU, which requires the application of common tariff rates to imports into the Customs Union area from third countries.

The Customs Union includes almost all industrial products and industrial components of processed agricultural products. Currently, agricultural products are excluded from the product coverage of the Customs Union. Therefore, the applied tariff rates for imports of products covered by the Customs Union are the same as those of the EU's Common Customs Tariff.

Turkey is informed of any modification that takes place in the EU's Common Customs Tariff pursuant to the consultation mechanism established by the CUD. Then the modification is reflected in Turkey's tariff rates by the competent authorities. Parties act simultaneously and avoid any time lag for the application of the modifications.

Question (Japan):

According to the Government Report, products originating from least developed countries are imported to Turkey as duty-free, excluding two products.

- Please provide the exact names of the two excluded products.
- Please explain why these two products are excluded.

Answer:

a) As mentioned in the Government Report, in line with the decisions taken in the High Level Meeting for the LLDC's, which was held in Geneva in 1997, and the relevant provisions of the Singapore Ministerial Declaration, Turkey has launched its unilateral preferential treatment. It covers 556 products originating in the least developed countries to be imported into Turkey as duty-free, excluding two products. These two products are caffeinated and decaffeinated coffee. Since coffee is arranged under two different HS codes as caffeinated and decaffeinated (namely 0901.11 and 0901.12), it is counted as two different products.

b) The unilateral preferential treatment of Turkey *vis-a-vis* LLDC's has been covered by the GSP regime of Turkey since 1 January 2002. In this context, 2884 tariff lines (including 556 products mentioned above) originating in the least developed countries could be imported into Turkey as duty free. On the other hand, although coffee is not imported duty-free from least developed countries, we have a preferential rate for the least developed countries. While the coffee originating from the least developed countries is subject to 11% tariff rate, that originating from third countries is subject to 13%, meaning a 2% percent preference for least developing countries over the others. Furthermore, it should be noted that Turkey will provide duty-free treatment to LDCs for all industrial goods from 1 January 2004 onwards.

Question (Hong Kong, China):

We note that apart from customs tariffs, some goods imported into Turkey are subject to excise duties, the Mass Housing Fund Levy, the special consumption tax and the value-added tax. All these duties and taxes may prevent other trading partners from enjoying the full benefits of Turkey's tariff liberalization. We would like to know if Turkey has any plan to remove such duties and taxes.

Answer:

The Mass Housing Fund (MHF), which was levied on 87 percent of tariff lines in 1993 and 3 percent of the tariff lines in 1998, has now been curbed further down. Currently it is applicable to only a certain number fish and fishery products, which make up only 2.8 percent of the total tariff lines. The Mass Housing Fund levy is calculated on the basis of Turkey's statutory duties. The difference between the statutory duty rates and the applied protection rates needed by the sector is levied as Mass Housing Fund. It is important to note that fish and fishery products are not included in the Turkey's Schedule of Concession to the WTO. Therefore, Turkey does not have any WTO commitment for fish and fishery products.

Question (USA):

We note that in January 2003 the Special Consumption Tax (SCT) on distilled spirits was increased from 212% to 275.6%. On October 14, 2003, we understand from our industry that the government introduced minimum excise tax rates per category of spirit, effective immediately.

While distilled spirits continue to be subject to the 275.6% excise tax, the law stipulates that minimum tax payments must be paid per liter of spirits in each category. Furthermore, if the 275.6% tax results in a tax bill above the required minimum specific amount, the higher rate applies. We are concerned that the effect of the new system is to discriminate against imported spirits.

Could the Representative of Turkey explain how the government of Turkey will ensure this tax does not discriminate against imported distilled spirits?

Question (EU):

On 14 October 2003, Turkey introduced a new law (2003/6257) introducing a notion of “minimum tax take” per category of alcoholic beverage. For spirit drinks, while the actual excise tax rate of 275.6% is not changed, the law stipulates that different specified minimum amounts of taxation must be paid depending upon the type of spirit. The “minimum tax takes” are substantially higher for those spirits, which are mainly imported than for those spirits, which are mainly produced domestically.

Does Turkey have plans to revise this legislation in the short term to bring it into line with both its WTO obligations and its other international commitments?

Answer:

The Ministerial Decree promulgated in October 2003 on Special Consumption Tax introduced minimum rates per category of alcoholic beverages; however, the tax rates on beer, wine and distilled spirits remained at the same level as indicated in SCT in January 2003. The minimum rates are determined on the basis of product category, not the source. Therefore, implementation of the new system does not create any discrimination between the domestic and foreign producers, which is in accordance with the national treatment principle of the WTO.

Question (Australia):

We note that Turkey continues to apply an almost total ban on imports of meat and live animals. Does Turkey intend to review this policy, which reinforces inefficiencies in the domestic industry and inflates the price of domestic product?

We note that Turkey's duty system is complex, including, for example ad valorem rates of up to 227.5% on meat products and edible meat products. Does Turkey have a plan to decrease such high tariff rates and simplify and rationalise its tariff system.

Answer:

Under the WTO rules, Members are permitted to impose a duty that is less than or equal to that provided for in its schedule. Each year, tariff rates are revised taking into account the WTO commitments and the need of the domestic sectors. The applied tariff rates do not exceed those mentioned in Turkey's schedule.

On the other hand, except for detailed tariff lines that are used for statistical purposes, Turkey's tariff system is transparent, simple and easy to understand.

The import tariff system is applied on the MFN basis without any discrimination among the source countries for imports.

Question (Australia):

Australia notes that imports of wheat and sugar into Turkey are administered generally within the framework of EU customs regulations. We understand that the Undersecretariat for Foreign Trade plays a major role in decisions regarding source countries for such imports. Does Turkey intend to provide competitive exporters with the opportunity to service the market?

Answer:

Regarding sugar importation, Turkey provides completely equal treatment to all importers on condition that quality requirements are fulfilled. The Undersecretariat for Foreign Trade does not play a role in decisions regarding source countries on sugar imports.

Likewise, the Undersecretariat for Foreign Trade does not play a role in decisions regarding the wheat importation on the basis of source of imports. Furthermore, there is no limitation on the participation to the international tenders neither for foreign nor domestic companies.

Question (Australia):

Australia welcomes Turkey's efforts to deregulate alcohol imports through the establishment of a framework incorporating a new regulatory body and the passage of a new law pertaining to wine imports. While the new bureaucratic and legal arrangements have the potential to result in a genuine opening of the market, Australia notes that the import tax imposed on wine, currently at 70 per cent, as well as domestic taxes, represent a considerable impediment to market penetration. Does Turkey intend to review the level of the import tax?

Answer:

There will be no change in our application. We are fully in compliance with our WTO commitments.

IMPORT PROHIBITIONS, QUOTAS AND LICENSING

Question (USA):

The report states that, "In general, import licenses are maintained on health, sanitary, phytosanitary, and environmental grounds, under international conventions to which Turkey is a signatory, or to administer tariff quotas set on MFN or preferential basis."

Are there any other grounds, other than ones stated above, that Turkey maintains import licenses?

Answer:

Currently, there exists a list of goods subject to approval before importation takes place. The reasons behind the licensing of these goods are to protect public security, safety, the environment, consumer rights and, for a number of items, prevent the use of imported goods for purposes other than those intended for the use in civil aircraft. Import licenses are required for a limited group of products including, inter alia, telecommunication equipment, some machinery, some motor vehicles, transmission apparatus, some chemicals, and a number of items related to civil aircraft. Importers of these items must obtain permission from the relevant authorities.

Turkey's application of licensing is in full conformity with the provisions of the WTO Agreement on Import Licensing. The system is automatic in the sense that once an applicant meets the pre-established conditions the license is issued automatically.

Question (USA):

How does Turkey ensure that import licenses required for phytosanitary concerns for numerous agricultural products (for example, rice and corn) do not become unjustified barriers to trade?

Control Certificate, which is required at the importation of certain agricultural products, is not a kind of import license but just a reference document needed at customs proceedings for SPS purposes. Control Certificate system is not intended in any way to restrict the imports. As it is stated in the Secretariat Report, Section III, Pr. 67, import of agricultural products and foodstuffs require a control certificate issued by the Ministry of Agriculture and Rural Affairs.

Question (EU):

To the knowledge of the EC, Turkey adopted an 'implementation decree' (ID) for its 2001 Alcohol Act in June 2003. While the ID contained some positive aspects for the liberalisation of the Turkish market for alcoholic beverages, it nevertheless increased the already burdensome import licensing requirements, by introducing the need to obtain an import permit from the newly created Tobacco and Alcohol Board, in addition to the requirement to obtain a certificate of compliance from the Ministry of Agriculture and Rural Affairs. When and how does Turkey foresee the simplification or removal of these restrictions?

Answer:

The state monopoly over the production and distribution of alcohol and distilled spirits in Turkey has been abolished with the Law No. 4619 promulgated in January 2001. With the establishment of the Tobacco, Tobacco Products and Alcoholic Beverages Market Regulatory Authority (TAPDK) in 2002 with the Law No. 4733 to restructure the 70-year-old monopoly market in accordance with free market principles, significant improvements have been achieved to introduce open market conditions for the alcoholic beverages market. The legislative framework has been accomplished with the enactment of the latest implementation legislation in June 2003.

It should be noted that the certificate of conformity issued by the TAPDK for the imports is based on the notification of the companies. The notification requirement has the sole purpose of accurate registry destined to effective market surveillance, which is among TAPDK's duties. This practice does not cause any discrimination between domestic and foreign companies and their products since domestic companies are no exception to the registry.

In line with the accomplishment of technical legislation harmonization under the National Programme for the Adoption of the EU *Acquis*, phasing out of these administrative formalities can be envisaged.

Question (Chinese Taipei):

As indicated in Table III.9, the import of machinery and related items (53 items, including air-conditioning machines, household type electrical refrigerators, clothes dryers, instantaneous gas water heaters, vacuum cleaners, telex machines, etc....) is only permitted if the importer/exporter demonstrates that after-sales services, such as maintenance and repair, are warranted on a regional basis and that maintenance service technicians and spare-part stocks are sufficient.

In our view, these measures could become barriers to such imports. Furthermore, they do not seem to be consistent with Articles 2 (Automatic Import Licensing) and 3 (Non-Automatic Import

Licensing) of the Agreement on Import Licensing Procedures, which state that these measures shall not have trade-restrictive or -distortive effects on imports.

Answer:

It is well known that under World Trade Organization Agreements “no country should be prevented from taking measures necessary to ensure the quality of its exports or for the prevention of deceptive practices”. In addition, Article 2(1) of the Agreement says that “Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.” Furthermore under Agreement on Import Licensing Procedures, Article 1(3) states that, “The rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner”.

The aim of this practice is protection of consumer. In respect of consumer protection it is obligatory that both domestic manufacturers and importers provide repair and maintenance services by making available adequate technical staff and spare parts inventories for the industrial goods, which they sell, produce or import, during the life of goods. In addition, domestic manufacturers or importers shall issue warranty certificates for the industrial goods they manufacture or import. For warranty certificates manufacturers or importers provide after sale services. The aim of this regulation is to protect consumer against deceptive practices.

Question (Hong Kong, China):

We note that Turkey is still applying quotas, on a unilateral basis, on imports of textile and clothing products from HKC in 2003, notwithstanding the rulings of the Appellate Body in the India-Turkey dispute settlement case on textiles QRs that Turkey’s QR restrictions imposed as a result of its customs union with the EU, were inconsistent with the relevant WTO provisions. We would like to know if Turkey has any plan to bring its textile and clothing regime into conformity with the GATT 1994 and the ATC, and to remove the quantitative restrictions on all concerned WTO members.

Answer:

One of the commercial policy instruments which, pursuant to Decision 1/95 of the Association Council (CUD), Turkey was required to implement as part of the common regulation of commerce of the Turkey-EC Customs Union were quantitative limitations on imports of certain textile products which the EC maintained pursuant to the WTO Agreement on Textiles and Clothing (ATC) *vis-à-vis* certain third countries.

In a communication dated 2 February 1998, India requested the Dispute Settlement Body (DSB) to establish a panel to examine the matter in the light of GATT and the ATC, in accordance with Article 6.2 of the DSU. On 13 March 1998, the DSB established a panel pursuant to the request of India. The Panel submitted its final report to the parties on 26 March 1999.

With this report the panel concluded that “the measures adopted by Turkey on 19 categories of textile and clothing products are inconsistent with the provisions of Articles XI and XIII of GATT and consequently with those of Article 2.4 of the ATC. Hence, The Panel recommended that DSB request Turkey to bring its measures into conformity with its obligations under the WTO Agreement. Afterwards, Turkey appealed from certain issues of law and legal interpretations in the Panel Report.

At the end of the proceeding, Turkey declared its intention to implement the decision of the DSB and agreed with India on a 15 months-time period to allow her to make the necessary adjustments for that purpose. This “reasonable period of time” ended on 19 February 2001.

This case put Turkey in a very contradictory situation. First, it had to comply with the CUD and therefore applied the Community’s Common Trade Regime *vis-à-vis* India. Secondly, it also had to comply with the WTO ruling and bring its measures into conformity with the WTO rules. Consequently, Turkey, especially towards the end of the reasonable period of time held intensive bilateral consultations with the Commission and India. As a result of these consultations, possibility of reaching an agreement between India and Turkey emerged that parties agreed to extend the time granted for implementation on 8 March 2001. Eventually, India and Turkey agreed upon a compensation that includes increases in the existing quota levels of 17 categories, early integration of remaining two categories that are 24 and 27 with respect to India, and certain tariff concessions covered by the forthcoming GSP Scheme of Turkey as far as 17 chemical items are concerned and MFN reductions from the applied rates of black pepper (090411) and castor oil (151530).

Turkey’s recognition of the WTO ruling with this respect should not be questioned. We have devoted the reasonable period of time for searching the best possible way of compliance that is not detrimental for textile and clothing sector of Turkey and eventually for the Customs Union. Unfortunately, compensation is the only solution to the matter for the time being.

As to the question regarding the effectiveness of quantitative restrictions *vis-à-vis* certain textile and clothing products; since Turkey is making quota allocation in a flexible manner, basically relying upon the past performance and ensuring quota transfers the figures concerning the quota utilization levels denote that only 15 out of 402 categories reached to 90% quota utilization level in 2002.

CONTINGENCY TRADE REMEDIES

Question (Indonesia):

Paragraph 60 of the Government’s Report states that “since increasing number of safeguard measures by the WTO members, safeguards Agreement and its implementation have become main trade policy instruments in the world”. Does this statement indicate Turkey’s intention to enforce safeguard measures as the main instrument of trade remedy? Please clarify.

Answer:

Turkey put into force its safeguard investigation, which is fully in conformity with the Agreement on Safeguards. In this legislation it is clearly stated that what conditions are necessary to enforce a safeguard measures when there is properly documented safeguard application lodged by domestic producers. Turkey shall look into the matter and enforce safeguard measures only following an investigation as stipulated by the Article 3 of SA.

Question (Indonesia):

Paragraph 47 of the Secretariat Report states that trade remedy investigation might be initiated *ex-officio*. Under Law on the Prevention of Unfair Competition in Imports (G/ADP/N/1/TUR/3) the Directorate General of Import may initiate and/or reopening new investigation. How does Turkey authority ensure that this *ex-officio* initiation would not be abused? Is there schedule or time frame arrangement available before the reopening investigation being initiated?

Answer:

i) The criteria for initiating ex-officio is stated in Article 20 of the Regulation on the Prevention of Unfair Competition in Imports. In accordance with this Article, the initiation of an ex-officio investigation requires the presence of sufficient evidence of dumped or subsidized imports and existence of injury on the domestic industry caused by such imports, as defined in Article 19. The existence of this clear requirement prevents the abuse of ex-officio initiations.

ii) The conditions for "reopening of the investigation" are laid down at Article 39 of the Regulation on the Prevention of Unfair Competition in Imports. Pursuant to this Article the reopening of an investigation is due when the domestic industry submit a written request to the Directorate General alleging that the definitive duties were neutralized due to a fall in export prices. Following the request, if the Board decides to reopen an investigation, exporters, importers and producers of the product concerned are provided with the opportunity to submit comments on the sales prices of the product.

STANDARDS AND OTHER TECHNICAL REQUIREMENTS

Question (Japan):

The Secretariat Report states that the TSE is adopting and harmonizing its standards with those of the EU on 41 product categories, including foodstuffs, electrical equipment and machinery, and that this is to be completed by the end of 2003.

- Please confirm whether this schedule is correct.
- Is Turkey planning on increasing the number of such product categories in the future?
- If so, please indicate the categories on which TSE will adopt or harmonize.
- The Secretariat Report states that compulsory standards apply equally to imports (regardless of the origin) and locally produced goods.
- We would like to know whether foreign enterprises are appropriately informed of the long-term prospect regarding such standards as well as of any modifications to such standards, in order to ensure transparency.

Answer:

TSE is constantly harmonizing and adopting its standards with those of the EU not only in 41 product categories as mentioned in the referenced paragraph, but also in other product categories about which there is an EU standard. The "41 product categories" listed in Table III.11 are prepared according to ISIC classification.

Since standardization is a continuous and dynamic work, the current schedule for completing the harmonization process till the end of 2003 is only valid for the existing EU standards. However, the harmonization process for the new standards will continue according to the work programme which is prepared in parallel to the work programme of the two European standardization bodies, CEN and CENELEC, with new standards being added to the list of standards to be harmonized as soon as they come into force in the EU.

As explained above, the standards to be adopted are not chosen according to their product categories. Therefore, there is no specific product group for the standards to be adopted. Eventually, every EU standard will become a Turkish standard according to the work programme.

TSE is obliged to follow the Decree of Regime for Technical Regulations and Standardization for Foreign Trade published by the Undersecretariat for Foreign Trade. Within the context of The Decree, The Undersecretariat for Foreign Trade also publishes a list of products that should be certified according to the related standards before being imported to Turkey. TSE is responsible for carrying out conformity assessment for these products. The Decree and the said list relating to products and standards are available on the official website of the UFT.

Question (Hong Kong, China):

We note that among the 1,264 obligatory standards in Turkey, only about a quarter of them are equivalent to international standards. We would like to know how Turkey ensures that its standards are not more trade restrictive than necessary where relevant international standards are not adopted. We would also like to know if Turkey has taken any steps to allow a wider use of international standards, on top of harmonization with the EU directives.

Answer:

Within the context of the Decree of Regime for Technical Regulations and Standardization for Foreign Trade, imported products which are covered by standards are subject to conformity assessment in respect of health, safety and protection of environment according to their standards by the TSE. Upon importers' request, these conformity assessments can be carried out according to international standards as well.

Question (USA):

In notification G/LIC/Q/TUR/2, Turkey stated that "[r]egarding the controls within the context of SPS measures, the quantity of the goods to be imported is determined by the importers since there are temporary constraints in the capacity of the laboratory infrastructure. However, these constraints will be eliminated soon since the Turkish Government has already started implementing a comprehensive laboratory modernization programme."

Could the representative of Turkey please provide an update on the comprehensive laboratory modernization programme?

Answer:

Turkish Government has started up grading the control laboratories of MARA to increase the effectiveness of food control and food safety. Within the framework of modernization of laboratories, many sophisticated laboratory equipments were supplied to laboratories and laboratory staffs were trained. Furthermore, EU supported MEDA project "Support To Food Inspection Services In Turkey" has started in 2002, accelerating the upgrading process of 15 Control Laboratories of MARA. This project has three components: supply of laboratory equipments, training of laboratory staff and establishment of a computer network.

Another priority of MARA is accreditation of control laboratories, within this context, four laboratories applied to Turkish Accreditation Body.

Question (Canada):

The Secretariat Report makes no reference to regulatory measures with respect to products derived through biotechnology. Please provide any information on this matter.

Answer:

There is no specific legislation on biotechnology in Turkey.

Question (Canada):

Paragraph 68 states that “Turkey has continued harmonizing its sanitary and phytosanitary regulations with EU norms, as well as those of the Codex Alimentarius Commission, the Office International des Epizooties (OIE), and other international norms.”

Canada notes that “norms” adopted by the EU do not constitute “international standards, guidelines and recommendations, for the purposes of the WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement).” Canada requests assurances from Turkish authorities that, in harmonizing its SPS regulations with EU norms, Turkey will do so in a manner consistent with its WTO SPS obligations.

Canada further notes recent examples in which Turkey has not abided by the transparency obligations of the WTO SPS Agreement. In this regard, over the past 18 months, Turkey has changed its phytosanitary import regulations three times. Turkey did not notify the WTO on any of these occasions, nor did Turkey inform Canada bilaterally. In June of this year, Turkey banned imports of all live animals from Canada due to Severe Acute Respiratory Syndrome (SARS). Again, Turkey did not notify the WTO or Canada bilaterally. Canada requests Turkey’s assurances that it will provide notification on future changes to import requirements relating to SPS matters.

Furthermore, Canada notes that Turkey has imposed measures that, in Canada’s opinion, have not been based on science. With reference to the above mentioned SARS example, action was taken despite clear advice from the World Health Organization (WHO) that any goods, products, or animals arriving from SARS-affected areas did not pose a risk to public health. Canada does not understand the rationale for Turkey’s temporary import ban on live animals (dairy and beef cattle, sheep, goats, and poultry) and meat (beef, sheep, goat, and poultry) based on sanitary considerations. Please explain the ban. What steps are Turkey proposing to take to ensure that future measures will be based on science?

Answer:

Turkey is following closely the international standards set by the Codex Alimentarius Commission, IPPC and OIE referred in the SPS Agreement. Pursuant to the provisions of the Turkey-EC Customs Union, Turkey has been endeavoring to harmonize its regulations with those of the EU. This is also a requirement under the National Programme of Turkey on the way of full membership to the EU.

Ministry of Agriculture and Rural Affairs did not ban imports of live animals from Canada due to Severe Acute Respiratory Syndrome (SARS) in June this year. However Ministry of Health has taken temporary measures

Question (USA):

We understand that since 1996, the Ministry of Agriculture and Rural Affairs has not issued “control certificates” to countries considered to be at risk for diseases such as BSE and FMD. Many countries are free of BSE and FMD (for example, the United States) and yet are not granted control certificates to export red meat. We are concerned that your regulations are being used as a barrier to trade.

Does Turkey allow the import of red meat from countries free of BSE and FMD? Does Turkey allow the import of live cattle from countries free of BSE and FMD other than for breeding purposes?

Has Turkey allowed the import of live cattle or beef from the European Community? If so from what countries? Have any of these countries had instances of FME or BSE?

Answer:

Turkey has been implementing an impressive agricultural reform program, having very high costs in social terms. The overall objective of the program is to comply with the WTO rules and principles.

Livestock farming in Turkey is in subsistence level and small sized, and it is also the main livelihood source of people. The livestock production is not competitive; therefore it is sensitive and vulnerable to importation. Previously, we faced with mass importation of meat stemming from high level of subsidization. In addition, Turkey has lost one third of its national livestock capacity in the last two decades, and it is in a state of rebuilding its national livestock herd. The sector needs to be protected and promoted for a while due to both social and economic reasons.

We have a relatively high rate of tariffs on livestock and livestock products except for breeding animals. The tariffs are within the limits of our binding commitments. We haven't got any other instruments in order to protect our livestock sustainability from the steadily decreasing world prices resulting from high level of subsidies given by the developed countries.

Turkey has not allowed the import of live animals and meat in the risk groups due to BSE disease from the European Community according to OIE animal health code and notifications.

We took note of all the concerns raised by the members and this will be conveyed to the attention of policy setting authorities.

GOVERNMENT PROCUREMENT

Question (Switzerland):

Does the legislative framework in Turkey foresee a remedy system specific for government procurement with a review body or a Court?

Answer:

Turkey has designed its own challenge mechanism by the new Public Procurement Law (PPL), which entered into effect by January 2003. By this Law, an administratively and financially autonomous Public Procurement Authority as a review body has been established. It is envisaged that the Public Procurement Board (PPB) will also perform the review of the complaints submitted to it in conformity with the procedures stated in the PPL. The review of the complaints is applicable for the phase prior to the signing of the contract.

The final decisions taken by the PPB are under the jurisdiction of the Turkish Administrative Courts.

If yes, can a procedure be suspended until final decision by the review body or the Court?

Answer:

Yes it can. According to the PPL (Public Procurement Law), Following the submission of a complaint, the contracting entity shall not sign the contract unless the contracting officer certifies that urgency and public interest considerations require the tender proceedings to continue.

In case the contracting entity notifies that the tender proceedings may continue and the contract may be signed, then the complainant candidate or tenderer may apply the Authority for protested complaint within three days following the date of the aforementioned notification.

What are the most frequently cases brought for complaints?

Answer:

Notices, evaluation criteria, qualification criteria, and unreasonably low tenders.

Why are the operators in the energy, water, transportation and telecommunications sectors not subject to government procurement rules?

Answer:

As well known water, energy, telecommunication and transport sectors need more flexible rules rather than the other government procurement practices. Hence Turkey has decided to regulate these sectors with a specific Law on utilities. And the new law on that is under way by using EU directives as reference.

Do purchasing entities use permanent list of suppliers?

Answer:

No, there's not a permanent list of suppliers used by the purchasing entities.

If yes, how do they proceed for the qualification process?

—

Are tenders available on electronic means?

Answer:

The tenders are not available on electronic means yet.

But as from 1 January 2004, Public Procurement Authority is going to issue a bulletin for tender notices. This bulletin will be issued as hard copy and electronic means. The contracting entities will be able to send their notices to be published electronically.

Does Turkey envisage to join the GPA in the near future?

Question (Norway):

As mentioned in par. 82 in the report by the Secretariat, Turkey has, since June 1996, participated as an observer in the WTO Committee on Government Procurement. Against this

background it might be expected that Turkey becomes a party to the Government Procurement Agreement. What are the intentions of Turkey in this regard - is Turkey considering to accede to the Agreement?

Answer:

In line with the internationally accepted government procurement standards, Turkey passed a new Government Procurement Law from the Parliament and it has gone into effect at the beginning of this year. Within the framework of the aforementioned Law, public procurement system and Public Procurement Authority, which is the review body for complaints in the public procurement area, have been newly established. However, this is not the final step for improving the public procurement system in Turkey. As a consequence, Turkey may consider becoming a party to the GPA in the future.

Question (EU):

Government procurement is vital for ensuring that the state utilizes government spending as efficiently as possible and that the market is not undesirably curbed. The EC has had good gains from using various tools in this field and should like Turkey to have similar gains. Consequently, the EC should like to pose the following questions:

- To the knowledge of the EC the Turkish Public Procurement Law excludes some entities and sectors from the scope of the Law. These are, amongst others and according to the Secretariat's report, operators in the energy, water, transportation and telecommunication sectors, procurement related to defense, security and intelligence needs, procurement related to agriculture and livestock.
- Could Turkey provide references to the appropriate legislation that governs procurement in these excluded sectors and elaborate on the treatment to foreign goods and suppliers under this separate and specific legislation?

Answer:

As well known water, energy, telecommunication and transport sectors need more flexible rules rather than the other government procurement practices. Hence Turkey has decided to regulate these sectors with a specific Law on utilities. And the new law on that is under way by using EU directives as reference.

Not all kind of purchases related to defense, security and intelligence needs are out of scope of Public Procurement Law. According to the Law "With regard to defense, security and intelligence pursuant to legislation requires to be treated confidentially as approved by the contract official for each tender; procurement of tools, arms, military materials and equipments, systems and war materials such as aircraft, helicopter, ships, submarines, tanks, panzer, rockets, missiles and procurement of their research, development, training, manufacturing, modernization, software and ammunition biddings and their related goods and services aiming at military expedition stocks, maintenance, operation and maintaining, and procurement of services, tools, equipment and systems within the scope of state security and of intelligence shall not be governed by this Law except prohibition and criminal provisions".

And not all kind of purchases related to agriculture and livestock are out of scope of the Law. According to the Law "Procurement of products relating to agriculture and livestock, by entities included within the scope of this Law, directly from the producer or its partners in order to process,

utilize, improve or sell pursuant to the establishment purpose or regulations of such entity shall not be governed by this Law except prohibition and criminal provisions

Question (EU):

Turkey's State Supply Office (DMO) acts as a central procuring entity that re-sells goods to public institutions at single prices. Are these single prices higher than the price paid by the DMO? How are these prices established? What is the purpose of these single prices? Is there any exception to the obligation for public entities to purchase from the DMO? What products are produced by the DMO by itself?

Answer:

Turkey's State Supply Office (DMO) sells goods at single prices applicable across the country. The selling agencies of the DMO deliver goods, which are sold to customers in city and district without demanding extra fee for transportation. These single prices are higher than the price paid by the DMO.

The selling price is set through taking into account a cost of warehouse, transportation, insurance, amortization, etc.

Turkey's State Supply Office as a central procuring entity procures goods from domestic and foreign markets, through opening tenders and to the extent possible directly from manufacturers in the most economic way, and therefore provides all public institutions prices set in accordance with the cheapest prices achieved through this mechanism.

There's no obligation for public entities to purchase goods from the DMO. The DMO produces paper, office materials and stationery, etc.

Question (EU):

Domestic price preference and local-content requirements in government procurement is sometimes used to promote local industry and set-aside some sectors from foreign competition. To the knowledge of the EC this is also sometimes the case in Turkey. Following, will Turkey re-consider this policy and the cost in terms of budget expenditure (better value for money) as well as the need to introduce healthy competition between Turkish and foreign bidders? If the aim is to promote some industrial sectors, why is such a preference granted to any tender irrespective of the industrial sector?

Answer:

The only purpose to arrange provisions in public procurement law, related to domestic tenderers and domestic goods is to protect them. In view of the newly established public procurement system, it may be too early to abolish all domestic protections. It should not be ignored that Turkey is still a developing country.

According to Public Procurement Law "In tenders held under the Law, the contracting entities may establish some provisions to the tender documents with regard to; only domestic tenderers shall be able to participate in tenders of which estimated costs are below the threshold values, and in cases where the estimated costs are above the threshold values, in procurement of services and works, a price advantage shall apply to all domestic tenderers, up to 15%, and in procurement of goods, a price advantage up to 15%, shall apply to domestic tenderers, who offer products which are accepted as

domestic products by the Authority by taking the opinions of Ministry of Industry and Trade and of other relevant organisations and institutions". In other words price advantage is not compulsory for contracting entities to be provided.

There is no restriction to foreign tenderers except for tenders under threshold values.

Also with an amendment on Public Procurement Law in August 2003, definition of the domestic tenderer has been arranged in favour of foreign tenderers as below.

Domestic Tenderer: Real persons who are the citizens of Republic of Turkey and [any] legal entity established in accordance with the Laws of Republic of Turkey.

LOCAL CONTENT REQUIREMENTS

Question (USA):

This report indicates that, although not legally required, "foreign companies setting up a joint venture in the motor vehicle industry typically agree to incorporate a certain share of local content in their production."

In what way do foreign companies "agree" to incorporate local content into the production of automobiles? For example, do companies sign contracts that make such an agreement binding?

Please also explain whether companies are provided incentives when they agree to incorporate a share of local content.

Question (Chinese Taipei):

Turkey has indicated that there are no local-content requirements for incentive purposes in the automotive sub-sector. At the same time, according to the Secretariat Report, foreign investors usually accept a certain share of local content on a non-compulsory basis. Please could Turkey provide more details on the situation as it exists and indicate the measures, if any, that may be involved.

Answer:

Motor vehicle manufacturers are neither legally nor practically required to meet a local content requirement.

Since such a requirement does not exist, companies are not provided with supplementary incentives in return for local content requirement.

EXPORT RESTRICTIONS, CONTROL AND LICENSING

Question (USA):

As a member of the WTO and under the Agreement on Textiles and Clothing (ATC), Turkey has agreed to textile and apparel quotas with the United States. Could Turkey provide a list of the "41" textile and apparel categories in which Turkey believes quotas are still in effect?

Answer:

Regarding the question of quotas in the textiles and apparel sector, a list indicating the categories which Turkish exporters face quotas in the US market is provided below. Each number in the list demonstrates a different product group and the sum of the product groups is 41.

Categories of textile and apparel quotas in the U.S. market

Categories
219 DUCK FABRIC
313-0 COTTON SHEETING FABRIC
314-0 COTTON POPLIN&BROADCLOTH FABRIC
315-0 COTTON PRINTCLOTH FABRIC
317-0 COTTON TWILL FABRIC
326-0 COTTON SATEEN FABRIC
617 MMF TWILL AND SATEEN FABRIC
625 MMF POPLIN&BROADCLOTH STAPLE
626 MMF PRINTCLOTH
627 SHEETING STAPLE
628 TWILL/SATEEN STAPLE
629 OTHER MMF FABRICS OF STAPLE
200 YARN FOR RETAIL SALE SAVING THREAD
300/301 CARDED/COMBED COTTON YARN
335 COTTON COATS
336/636 COTTON/MMF DRESSES
338/339/638/639 KNIT SHIRTS/BLOUSES
340/640 COTTON SHIRTS NOT-KNIT
341/641 COTTON/MMF SHIRTS/BLOUSES NOT-KNIT
342/642 COTTON/MMF SKIRTS
347/348 TROUSERS, BREECHES, SHORTS
347/348-T TROUSERS
351/651 COTTON/MMF NIGHTWEAR AND PAJAMAS
361 COTTON SHEETS
369-S OTHER COTTON MANUFACTURES
410/624 WOOL/MMF WOVEN FABRIC
448 WOOL SLACKS, TROUSERS, BREECHES, SHORTS
604 YARN, SYNTHETIC STAPLE FIBER
611 WOVEN FABRIC, ARTIFICIAL STAPLE

FREE ZONES

Question (Japan):

The Secretariat Report states that in 2002, government-budgeted expenditure for free zone was TL 340 billion, down from TL 1 trillion in 1998.

- Please provide the reason for such decrease in government-budgeted expenditure.

Answer:

Despite the fact that in the budget of the 1998 financial year 1 trillion TL has been allocated for the Free Zones Establishment and Development Fund, the amount of total realized expenditure has registered as 376.9 billion TL for the given year. This difference is stemming from the fact that some planned investments and expropriations could not be realized during 1998.

On the other hand, for the year 2002 the related figures have been recorded as 1 trillion and 992 billion TL of total amount of budget allocations; and 340.4 billion TL of realized total expenditures.

Question (EU):

Turkey has established certain advantages extended to companies operating in Free Zones in order to promote foreign direct investment and joint ventures in export oriented enterprises. What are the eligibility criteria for a company to be able to locate in a Free Zone? Are there any export requirements?

Answer:

According to Article 1 of Turkish Free Zones Act No: 3218, the objectives and scopes of the free zones are not only to promote foreign direct investment and joint ventures in export oriented enterprises but also, to accelerate the entry of foreign capital and technology and most important of all to procure inputs of the economy in an economic and orderly fashion. Thus, importing from free zones to Turkey plays a vital role for our economy and there exists no limitation to sales to domestic markets from free zones and a condition to export.

The operating licenses are not granted neither upon the export performance nor use of domestic products in the export goods. Any firm can obtain an operating license by fulfilling the application procedures explained below:

An application form for Operating License can be obtained from Directorate General of Free Zones, Zone Directorates, or Zone Operator, Founder/Operator Companies and has to be completed and the documents mentioned below have to be attached to the copy of the said form.

- 1- Descriptive information about the Applicant and its Free Zone operation,
- 2- Authorization document and specimen signature of the signatory and power of attorney and specimen signature of the representative of the firm (if any),
- 3- Turkish Trade Registration Gazette that announces the establishment of the Applicant Firm showing its current capital composition (For foreign firms Trade Registration Document ratified by the related Turkish Consulate),
- 4- Last three years' balance sheets and income statements,
- 5- The original receipt of application fee deposited to the Central Bank of Turkey, and its copy,
- 6- Documents related to the foreign currency brought into Turkey in the last three years, (If any).

The above mentioned documents have to be sent to Undersecretariat for Foreign Trade, Directorate General of Free Zones directly, or through Zone Operator or Founder/Operator Firms.

According to the article 32 of the Free Zones Governing Regulation, the entry of the firearms and their ammunition, radioactive substances, dangerous and toxic wastes to the Zones is prohibited. Also, inflammables, explosives, combustibles, fire-inducing substances or materials which are dangerous to other substances when put all together, can only be brought into the Zones on the condition that there is a special arrangement or construction serving for that purpose in that Zone. In the same article, it is also stated that the movement of narcotic substances, psychotrop substances and the related chemical substances, and their preparations in and out of the Zone are subject to the provisions of the national and international laws carried out by the Ministry of Health.

INCENTIVES

Question (US):

Regarding incentives provided under the General Investment Encouragement Programme (GIEP):

Would Turkey please explain whether tax exemptions for imported goods, such as textiles, apparel, machinery, and equipment are taxed at the same rate as domestically produced goods, given the GIEP tax exemption?

Answer:

In the page 68 of Secretariat Report at paragraph 115 the encouragement measures granted within the GIEP are enlisted and there is no measure called “tax exemption” among them. However, as we have understood, the measure “Value Added Tax (VAT) Exemption” is implied there.

Pursuant to Article 59/d of the Law No: 4369 and dated: 22/7/1998, both imports and domestic purchases of machinery and equipment within the scope of approved machinery and equipment lists attached to the investment encouragement certificate are exempted from the Value Added Tax.

In addition, according to Article 1 of the Law No: 3065 on Value Added Tax, deliveries of goods and services provided in the framework of commercial, industrial, agricultural activities and activities of self employed persons and imports of all kinds of goods and services are subject to VAT. Moreover, a unique good or service, whether it is imported or not, is subject to VAT at the same rate. (For VAT rates, please refer to page 43, pr. 33 of the Secretariat Report.)

Hence, we can say that both domestically obtained and imported machinery and equipment is subject to same ratio of exemption resulting with a benefit provided to the investor on equal basis under the GIEP. In other words the measure does not make any differentiation between domestically obtained and imported goods.

Question (USA):

This report also states that incentives under the GIEP program are also granted in the form of tax and duty exemptions for investors who are “committed to realize at least \$1000 of exports upon the completion of the investment.”

Please explain how this program complies with Turkey’s commitment under Article 3 of the Subsidies Agreement, not to provide prohibited export subsidies.

Answer:

The investors who are committed to realize 1.000 US Dollars of exports to be realized two years after the completion of the investment are granted an exemption during the investment stage from the taxes, duty and related fees, for operations and processes of obtaining standard credits through banks and land registration in accordance with the related Laws (Law No: 488 dated 1 July 1964 and Law No. 492 dated 2 July 1964). The implementation shall be done in accordance with Temporary Article 2 of the Law No. 3505 (dated 3 December 1988), which are all general Tax Laws. The measure, as it has been stated, is not contingent upon export performance in nature, because the benefit obtained with this measure is not linear and not increasing with the amount of export

commitment or performance. The export commitment requirement of the measure comes from the Law and not to contradict with our obligations to WTO/ASCM requirements and temporary nature of the Law (amendment in the Law would take too much time and bureaucratic formalities), which will expire at the end of 2003, the export commitment requirement has been kept in the Decree at a symbolic amount which is only 1.000 USD of export to be realized two years after the completion visa of the investment has been done.

In addition, according to the Law No: 4842, as stated in the page 68 of the Secretariat Report at footnote 97, investors will start to benefit from this measure without the obligation to have an encouragement certificate and without having to realize 1.000 US Dollars of exports starting from January 1st, 2004.

Question (USA):

How does Turkey reconcile the GIEP with its WTO commitments?

Answer:

The purpose of the general investment encouragement program is to; encourage, support and orient investments, in-line with international commitments, in conformity with the objectives of Development Plans and Annual Programs, in order to reduce regional imbalances within the country, create new employment opportunities, while taking the advantage of advanced and appropriate technologies with greater added value and to realize international competitiveness.

The program covers all investment activities related to the production of goods and services, research and development (R&D), environmental protection and improvement of quality and standards. In summary, no matter which sector the investor shall be operating in, all investors who have prepared their investment feasibility studies and proposals, who believe that they shall be eligible for evaluation, within the set framework of the Decree, apply to the Undersecretariat of Treasury for the evaluation of their investment project to be considered for encouragement. In more practical way, it can be said that the program is based upon the regional and horizontal (research and development, environmental protection) objectives.

As far as the mechanism is concerned, domestic and foreign investors are equally treated; the foreign investment companies can benefit from all encouragement measures granted to domestic companies.

Therefore, objectives of the program, the encouragement measures covered within mechanism and eligibility criteria;

- a) do not make any distinction between domestic and foreign investors,
- b) are not contingent upon export performance,
- c) are not contingent upon use of domestic investment goods over imported ones
- d) do not allow sectoral selectivity,
- e) are not limited to access of certain enterprises,
- f) are based upon objective rules and automatically implemented after having the certificate and those criteria are strictly adhered within a transparent mechanism.

PUBLIC ENTERPRISES AND PRIVATIZATION

Question (Japan):

Please inform where there exists any other privatization programme than those listed in Table III.16 of the Secretariat Report.

Answer:

There is no other privatization programme existing than those listed in Table-III.16 of the Secretariat Report.

Question (Canada):

On May 23, 2001, Law No. 4673 freed up 100% of Turk Telecom for privatization, except for one “golden share” that would be maintained by the Government of Turkey in order to address national security and public interest concerns. Is this still the structure that the privatized Turk Telecom will have? How will the Government of Turkey use this “golden share”? What criteria will be used by the Government of Turkey to determine if national security or public interest is being threatened?

Question (Chinese Taipei):

Paragraph 117 seems to indicate that, according to Law No. 4673, Turk Telecom may be entirely privatized. But the system of a “golden share” that carries the right of veto may be exercised to protect national security and public interest. We would be grateful if Turkey could provide details of this “golden share” system and explain what protection is afforded to foreign investors.

Answer:

According to the “Long-term Strategy” and “8th Five Year Development Plan” of Turkey, telecommunication market is going to be opened up to full competition, and in order to enable Turk Telekom to compete within market conditions and in this market, the role of the State to regulate and provide a competitive environment will gain significance.

In this policy context, it is obvious that the use of golden share in Turk Telekom will not distort competitive market conditions and will not result in expropriation of private shares in Turk Telekom.

Question (Japan):

The Secretariat Report states that the Turkish energy subsector (over 90% state-owned) has been a primary target of the privatization programme for years.

Please indicate to which degree Turkey will finally carry out the privatization of the energy sub sector.

Answer:

Turkey has already reaffirmed its commitment to liberalize and privatize its electricity sector. The Electricity Market Law (No. 4628) lays out the objective to be achieved regarding privatization

of electricity sector. According to the Law, distribution and generation facilities will fully be privatized. However, the transmission system will continue to be a State monopoly.

One distribution region has been operated by private sector. As of December 2003, two big power generation companies and one power plant (total installed capacity is 1600 MW) have been transferred to Privatization Administration's portfolio. Assets, which have been taken into the scope of privatization, consist of 11 thermal power plants, 16 hydro-electric & 55 river/stream plants as well as 19 distribution region out of 32 regions. These assets will be taken into the privatization programme in due course. In the meantime, preparatory works are being carried out by the PA in collaboration with the Ministry of Energy and Natural Resources and Energy Market Regulatory Authority.

The Natural Gas Market Law, enacted in 2001, has been based on a liberalized market structure. After 2009, state operations in the sector will be limited to the transmission activity. Therefore, in natural gas market the current public ownership, except existing transmission network, will be privatized until 2009.

The oil sector is also under the restructuring programme. The Petroleum Market Law has just been enacted on 4th of December, 2003.

There is no barrier for foreign investors to invest in petroleum sector in Turkey. TÜPRAŞ, which is the only state-owned company is currently under privatization process and the tender is expected to finalize soon. So, the refinery sector is expected to be completely privatized by the end of January 2004.

Currently, distribution and marketing of Petroleum products have been carried out by 22 distribution companies and 56 LPG companies. There is no state owned company in distribution and marketing sector.

Question (Japan):

According to the Secretariat Report, there are a number of regulations imposed on oil industries by the Government of Turkey. We consider that such regulations will create high energy prices, such as that for electricity, and may obstruct the activities of private sectors.

Please explain why such regulations are enforced.

Answer:

Turkey has initiated a heavy restructuring programme in the energy sector. The aim of this programme is to increase efficiency and to bring competition through liberalization. It is expected that in the long-run the energy prices will decrease within the competitive market mechanism and the quality of energy will increase.

In achieving this objective, as stated in the relevant parts of the report, Electricity Market Law and Natural Gas Market Law have been enacted at the beginning of 2001. Recently, Turkish Parliament has also passed the Petroleum Market Law on December 4, 2003.

Question (Japan):

The Secretariat Report states that under the 2001 Electricity Market Law, the vertically integrated, state-owned undertaking has been unbundled.

Please indicate what measures are taken to ensure third party access to transmission.

Answer:

There are no obstacles for third party access to the transmission and distribution systems, which is secured under the Electricity Market Law. Third party access to transmission and distribution systems is regulated under the complementary legislation such as Licensing Regulation, that requires no additional interpretation.

Turkish Electricity Transmission Corporation (TEIAS) or the Distribution Companies sign Connection and Use of System Agreements with the users of the transmission and distribution systems. These are standard agreements regulated by EMRA under The Communiqué Regarding Connection and Use of System, March 2003.

The Law clearly defines the minimum common provisions applicable to all licenses and among these, obligation of the holder of a distribution or transmission license to provide non-discriminatory system access and use of system rights to all real persons and legal entities is listed.

When new generation facility applications for generation license are received, EMRA requests TEIAS or distribution company views/opinions in terms of system connection. The Article 38 of the Electricity Market Licensing Regulation, August 2002, regulates the System access and system use rights. For the details of this regulation, please see EMRA website at www.emra.gov.tr.

Question (Chinese Taipei):

Tariffs on energy products and services are heavily regulated by the Turkish government, a situation that might not be in line with the government aim of encouraging new investment and creating a competitive market. With this in mind, we are interested to know whether the government has any plan to deregulate the sector?

Answer:

Electricity and Natural Gas Market Laws provide provisions for liberalization of the electricity and natural gas markets. Since the main players in these markets are currently state owned entities, there will be tariff regulations for the transitional period until the competition in the market is fully established.

As an example, for Electricity Market, EMRA regulates wholesale, retail sale, transmission and distribution tariffs.

The wholesale tariff is regulated only for the sales of TETAS (which is a state owned wholesale company and trades 80% of the generated electricity), as a transitional period implementation. The prices of the other wholesalers (privately owned) in the market are not regulated. As the generation and distribution assets owned by the State are privatized the TETAS trade share of the market will be reduced and eventually will be eliminated. Then, the wholesale tariffs will be totally determined in the market.

The retail sale tariff will be regulated by EMRA (only for sales to captive consumers) until all consumers become "eligible consumers". The annual consumption threshold for eligibility is currently 9 million KWh which is to be revised by EMRA annually.

The transmission and distribution tariffs will be the only tariffs continued to be regulated by EMRA.

Question (Chinese Taipei):

It seems that electricity trading systems in Turkey are bilateral-contract based and include complementing balancing and settlement mechanisms. We would like to know which agency is in charge - TEİAS and/or others - and how the system works.

Answer:

TEİAS thru Financial Reconciliation Center (FRC) will be in charge of the balancing and settlement implementations.

Currently, The Balancing and Settlement Regulation is being worked on by TEİAS and EMRA and plans are full implementation of this regulation by the end of the year 2004.

For the transitional period until then, the generated and consumed quantities of electricity will be compared by the end of each month based on three (night (valley), peak and daytime (shoulder)) periods and the variations will be billed to the party that created the imbalances based on the loading and de-loading prices offered.

Currently, the loading and de-loading prices are basically determined by TETAS (state owned wholesaler which has a dominant position in the market by trading 80% of the generated electricity in the market). TETAS prepares monthly loading and de-loading price proposals for EMRA Board approval.

However, the physical balancing rules are expected to be implemented beginning March 2004 in addition to the current financial settlement (reconciliation) implementations.

As the negotiable excess of supply quantities increase in the market and the metering infrastructure is improved, the loading and de-loading prices will start to be determined by the bid and offer prices of the other market participants.

PROTECTION ON INTELLECTUAL PROPERTY RIGHTS

Question (Switzerland):

In WT/TPR/S/44 (TPR 1998, §170), it is mentioned that the new law on patent protection (Article 83.3) also provides for protection for test data submitted to the Institute to support marketing approval of pharmaceutical and agricultural chemical products that utilize new chemical entities, as required by Article 39.3 of the TRIPS Agreement. Switzerland would very much appreciate to receive detailed information on how Turkey implements Article 39.3 of the TRIPS Agreement in its internal law. In particular, we would like to know to what extent, if any, a second applicant can rely on, or refer to the original data of the first applicant, when applying subsequently for market authorization for a similar product.

Question (EU):

When marketing a pharmaceutical product, pharmaceutical companies are also in Turkey required to submit extensive documentation in order to receive authorization for marketing the product. This rather sensitive documentation is subject to protection against disclosure, also when

regulatory authorities are considering the approval of generic products, and it prevents authorization of generic products for a certain period of time. Thereby ensuring the continued research and development of new drugs to combat diseases and investments in all countries to the benefits of the populations of those countries and their population at large. To the knowledge of the EU, Turkey is not fully respecting this principle of data protection and exclusivity for the patented product. When will Turkey revise its data protection / exclusivity legislation in order to meet the requirements of the relevant obligations under the WTO agreements?

Answer:

We agree to the fact that protection of confidential business information is important to support a friendly foreign investment environment in the pharmaceuticals sector in Turkey.

In this context, we would like to point out that Turkish legislation on data protection is in accordance with Turkey's WTO/TRIPS commitments and it is in line with Article 39.3 of the TRIPS Agreement.

Protection of undisclosed information is provided by four legislations: 1-Turkish Commercial Code, 2- Regulation on Pharmaceutical Products, 3- Civil Servants Act, 4- Patent Decree.

1- Protection under Commercial Code is provided through unfair competition provisions. Article 57/7-8 Describes the acts incompatible with good faith and the acts, which constitute unfair competition. Among those:

- Deducing the employees, agents or other assistants and getting them to divulge or obtain the trading and manufacturing secrets of their employer or of his agents,
- Taking an illicit advantage from trading or manufacturing secrets obtained or learnt incompatible with good faith or divulging them to others are the acts constitute unfair competition.

Articles 58-63 provide civil remedies such as prevention of the infringement, compensation for damages for those unfair competition related to *inter alia* undisclosed information. Additionally Article 64 stipulates criminal sanctions within the form of imprisonment and/or fine against unfair competition related to undisclosed information.

2- Article 36 of the Regulation on Pharmaceutical Products brings responsibility on Ministry of Health not to divulge the information disclosed by the applicant during the application of marketing permission.

3- Additionally Civil Servants Act Article 31 brings responsibility on civil servants employed in the Ministries and in the public institutions not to divulge secret business information related to their service.

Infringing acts against those last two legislation brings responsibility of the public administration in accordance with Article 125 of the Constitution. (Article stipulates that *recourse to judicial review shall be available against all actions and transactions of public administrations.*) Through those judicial review the public administration may be obliged to pay compensation in the Administrative Court to the persons whose secret information divulged by the civil servants in the administration.

4- Article 83/3 of Patent Decree states that "Where an application for patent has been filed for pharmaceutical or veterinary products/drugs and for chemicals destined to agriculture, the authorities

issuing authorizations/licenses for the manufacture and sale of such products and requesting for this purpose information and test results, that were not disclosed to the public and the realization and accumulation of which requires considerable expenses and efforts, shall keep such information and test results secret/confidential. The authority asking for such information and test results shall take the necessary measures to prevent unjustified/illegitimate use thereof.”

Data protection, as it appears to be understood by some of our trading partners, could be seen as complementary to the patent protection system. Therefore, after the expiry of patent protection period, if onerous data protection expectations are implemented, as a consequence, this could pave the way for the consolidation of the market power of some large pharmaceutical companies, in a way not envisaged by the IPR system under the TRIPS Agreement.

Therefore, it would be fair to state that discussions in the WTO on the scope of data protection under the Article 39.3 of the TRIPS Agreement have not yielded an authoritative interpretation of the said article.

Nevertheless, it is hoped that economic, financial, social, and political circumstances that have been affecting Turkey would be appreciated by our trading partners, particularly the public debt of Turkey, which has increased significantly, partly due to the unsustainable social security deficits that were incurred by the Turkish social security agencies.

It is Turkey's aim to streamline its IPR regime to that of the EU. To this end, relevant Turkish authorities have started to consider the issue with all its aspects. This task would be carried out in parallel to Turkey's accession process to the EU, and once achieved; this streamlined regime will be implemented on an MFN basis, in line with the WTO rules.

Question (Hong Kong, China):

It is noted that parallel imports of goods and services containing IPRs are prohibited in Turkey. In 2000, however, the Competition Board of Turkey decided that parallel imports could not be prohibited. The decision was later challenged and the case is now before the Council of State. We would like to know if further details of the case could be provided. We are also interested in Turkey's views on the issue of parallel imports.

Question (Canada):

It is noted in this paragraph that although parallel importation of goods and services containing intellectual property rights is prohibited in Turkey, the country's Competition Board held that such imports could not be prevented. Canada understands that this decision was challenged before the Council of State. Please comment on the process for reviewing this decision and when such a review will be completed.

Answer:

With the amendment made by Law No. 4110 in 1995, on the Law no 5846 on Intellectual and Artistic Work, article 23, which is entitled as Right of Distribution, of the Law no. 5846 has been changed and the parallel imports of goods containing intellectual property rights has been prohibited. For fulfilling our responsibilities in accordance with the GATT-TRIPs text and with in the framework of harmonisation with the EU legislations, a rearrangement made with in the Law no. 5846 on Intellectual and Artistic Works, and Law amending some articles of the existent law entered into force as no 4630, and the arrangements related to the aforementioned article has been preserved. Within this context, in accordance with the article 23 entitled as “Right of Distribution” and article 80 entitled as

“Rights Related to the Rights of Author” of the Law no. 5846, parallel imports of goods containing intellectual property rights is prohibited. It should be mentioned that presently these arrangements related to parallel import are in force, and there is no intention of making any amendments within these articles.

Competition Authority has a different perspective to interpret the cases regarding parallel import. In two specific cases involving conflict of laws (Competition Policy *versus* Intellectual Property Rights regime) brought before the Competition Board, the Board has adopted a more "competition oriented" approach. On the above-mentioned cases brought before the Council of State, it is expected that in the final decision TRIPS Agreement as well as the competition policy will be taken into account. The authorized department of the Council of State has still been reviewing the Competition Board Decision. The duration of the reviewing process depends upon the workload of the relevant department.

Question (USA):

What is the status of Turkey's efforts to stem the unreasonably high rates of piracy of copyrighted works in Turkey?

Please describe in detail new legislative or other action being taken.

Question (Canada):

Canada applauds Turkey on its wide-ranging changes to its intellectual property regime since the last trade policy review. Among these changes, we recognize and support the creation of 81 Anti-piracy Inspection Commissions in March 2002 and the launch of an information campaign on fraud and piracy. However, we note that piracy in music and software appears to still be on the rise in Turkey. What measures are being considered by the Government to combat this problem?

Answer:

Ministry of Culture and Tourism combats with piracy in a consistent and strong manner. Therefore within the framework of combating with piracy, it is aimed to make legal arrangements in the Law on Municipality, Law on Municipality Revenue, Law on Combat with Smuggling, Law on Rights and Duties of the Police Officials, Law on Combat with Organizations of Organized Crime, and Law on Cinema, Video and Musical Works;

1-With the legal arrangement that will be made in the Law on Municipality and Law on Municipality Revenue; it is aimed to ban the sale of intellectual and artistic works on the streets.

2-With the legal arrangement that will be made in the Law on Combat with Smuggling; it is aimed to stop the exportation and importation of the pirated copies of intellectual and artistic works.

3-With the legal arrangement that will be made in the Law on Rights and Duties of the Police Officials; it is aimed to make police officials take action by confiscating the pirated copies of intellectual and artistic works and sending them to the public prosecutor with the notice of crime.

4-With the legal arrangement that will be made in the Law on Combat with Organizations of Organized Crime; it is aimed to name to duplicate and disseminate the copies of intellectual and artistic works without the consent of the right owner as organized crime.

5-With the legal arrangement that will be made in the Law on Cinema, Video and Musical Works; it is aimed to abolish the provisions of ineffective penalties which are far away from being deterrent.

Moreover, Law on Intellectual and Artistic Works will be amended, studies on Draft Bill has not yet finished but with this amendment it is aimed;

1-To make compulsory the usage of international standard codes such as SID Code or ISRC or ISBN etc. for copies of intellectual and artistic works.

2-To create a system of applicable penalties such as stepped penalties.

3-To control the places which duplicate or disseminate or distribute or sell the copies of intellectual and artistic works by classifying and giving them certificates and inspecting these places frequently.

Besides these legal arrangements it is aimed;

1- To revise the existing registration system, which is still applied to the cinematographic and musical works. It is planned that all the forms and documents used during the registration will be rearranged and the registration system will be planned in terms of the direct right ownership.

2- To form the on-demand registration system in other intellectual and artistic work groups. With this system, all the information related to the works and to the authority of usage of financial rights of authors and other right owners will be taken under registration in detail. The Turkish Ministry of Culture and Tourism established enforcement committees in all 81 provinces of Turkey in 2002 and these committees combat with piracy in a strong and consistent manner. Anti-piracy inspection commissions detected great number of pirated materials including tangible copies of entertainment and business software, cinematographic and musical works and books in the year 2003 and also hundreds of people have been prosecuted.

It is also aimed;

1- To overcome the need for financial resources such as technical equipments, office rents, expenses of inspection etc. paying special attendance to the cities where piracy is widespread.

2- To establish a Provincial Inspection Coordination Unit in which the representatives of cinema, music, software and publication sectors are included as well as the representatives of Ministry of Culture and Tourism and the collecting societies.

3-To provide cooperation and instant information access by developing the software used and spread the usage of this software in the cities.

The awareness raising campaigns in the field of copyright and related rights have led impact on society. Regarding that it is necessary to inform the public opinion about the importance of copyright and related rights;

1-Ministry of Culture and Tourism has prepared several spot movies within the framework of combating against piracy. These movies are shown in TV channels and in cinema saloons.

2-Several meetings realized by Ministry of Culture and Tourism with the title of combating against piracy in which representatives of collecting societies and related sectors attended.

3-Ministry of Culture and Tourism continues to support the infrastructure and technical equipment projects and to strengthen the collecting societies by means of administrative, financial and legal ways.

4-It is aimed to continue the studies to inform judicial milieu.

5-Ministry of Culture is planning to have prepared entertainment software for the children within the framework of combating against piracy.

Question (USA):

The United States has received reports regarding the high cost and complexity of the banderole system in Turkey.

Please describe the banderole system and any other certification system for copyrighted materials in Turkey?

Answer:

The 81th article of the applicable law regarding incision intellectual rights has been rearranged in order to prevent illegal reproduction of intellectual and artistic works and providing efficiency in combating against piracy. Procedures and merits related to the use of banderoles as a significant determination instrument in differentiation of the original copy from the pirated copy were laid down within the article, and conditions of infringement were stated in paragraphs. Punishments of imprisonment, and fines to be imposed against infringement have been increased. Furthermore, ex officio follow up of the banderoles were established through a commission to be made up by territorial administration governors of representatives of Ministry of Internal Affairs, Ministry of Finance and Ministry of Culture and Tourism and collecting societies.

The amended article number 81 entitled as “The Intervention of the Intrusion to Rights” of the Law number 5846 which should be prepared again by the Ministry of Culture and Tourism, entitled as “The Regulation on the Principles and Procedures for the Implementation of Banderole” was publicized at the Official Gazette on November 8, 2001 no: 24577 and came into force.

Thanks to the serial number and codes, the above mentioned regulation comprises the principles and procedures for the usage of the Banderole as a label which is to be a quality of the Banderole accepted to be an effective technical means against pirate activities that is compulsory for the copies of cinema and musical works and non-periodical publications whereas it can be used voluntarily for other work groups which are easy to be copied and comprises the principals and procedures for the foundation and operation of the commission which will control the mentioned implementation of the Banderole. According to the above mentioned Regulation Provisions, the Notification determining the Procedures and Principals for the Functioning of these Supervision Commissions, came into force on January 27, 2002 with the number of 24653 on the Official Gazette.

Question (USA):

What efforts are being made to ensure certification of copyrighted materials is not unnecessarily complicated, costly, or entails unreasonable time limits or delays?

Answer:

The banderole implementation is made according to the above mentioned provisions. This implementation is neither costly nor complicated. For example Banderoles for non-periodicals are easily given to the authors or to the publishers by only filling a covenant. In cases of conflict, the Ministry can claim documents (such as contracts) from the ones who make a declaration. The banderoles used for the non-periodicals cost 20.000 TL.

A similar procedure is also made for the cinematographic and musical works' copies.

It is also aimed;

1- to revise the existing registration system, which is still applied to the cinematographic and musical works. It is planned that all the forms and documents used during the registration will be rearranged and the registration system will be planned in terms of the direct right ownership.

2- to form the on-demand registration system in other intellectual and artistic work groups. With this system, all the information related to the works and to the authority of usage of financial rights of authors and other right owners will be taken under registration in detail.

On the other hand, The Law number 5846 "Intellectual Property Rights" and the Law number 3257 "Cinema, Video and Musical Works" and the related legislation is within the responsibility of the General Directorate of Copyrights and Cinema. In order to strengthen the intellectual property rights system a software program has been prepared within the General Directorate. Thus, it will provide to reach to documents, archives and administration easily.

By using this program;

- The whole archive of the General Directorate will be transferred to electronic environment.
- To carry out the procedures such as the registration of intellectual and artistic works, the implementation of banderoles or the documents that shall be arranged by the Ministry itself for the broadcasting of the work in radio and televisions.
- In case there is a disagreement among right holders, it will be possible to reach the documents or information that is necessary.
- To meet new necessities (document arrangement, forms, statistical information) within the framework of the amendments realized with the Law number 5846.
- To provide transparency of procedures within the General Directorate.

Question (USA):

What steps is Turkey taking to stem the unreasonably high rates of counterfeiting of trademarked products?

Please describe in detail new legislative or other action being taken.

Answer:

Turkey is trying to establish effective enforcement system for fighting counterfeiting of trademarked products. It is proved especially by increasing the penalties and establishing specialized courts.

Industrial property legislation promulgated in 1995 including trademark law put an end to bring revocation actions against the IP Rights before the administrative court by giving jurisdiction only to specialized courts.

The recent development on specialized court on this issue reached up to 7 courts, specialized court system in Turkey started since the beginning of February 2001.

We can also mention that EU financed Project related to the training of judges and prosecutors on IP Rights.

Related with the border enforcement, we can mention the 57th Article of the Customs Law No.4458 entered into force 2000, is covered the IP Rights. It enables the customs authorities to enforce the provisions of Article 57 of Customs Law No.4458. It regulates the form of application, actions to be taken by the customs authorities prior to and after a suspension decision, action for goods found infringing.

Turkish Patent Institute is also supporting in improving the enforcement of IP issues through informed training of judicial officials and increasing the awareness of the IP regime among consumers, industry, R&D managers and technical staff as well as academics through workshops, symposia, and distribution of document.

One of our main objective is to disseminate industrial property information effectively and in a lasting manner with projects such as; providing access to industrial property library via the internet, establishing on IPR's help desk, tracking and archiving publications electronically; publishing trademark data's electronically and supplying swift access to information through on electronic medium for everybody who request, especially for customs officials, police and judges.

Considerable amount of work was achieved in Turkey for last 5 years concerning the legislation passed and the awareness created among the public for industrial property rights. Anti-piracy associations began to be formed.

We believe that effective solutions fighting on counterfeiting requires not only updated or new legislation but also dissemination of knowledge and especially co-operation not only among the national institutions but also co-operation in international fora.

Final event in this field, Customs Administration are organizing workshop on IPR enforcement, on 7-8 January 2004 in Ankara with the contribution of EU for fighting counterfeiting of trademarked products and piracy.

Question (USA):

What steps is Turkey taking to comply with its obligations to protect undisclosed test data against unfair commercial use as required by TRIPS Article 39.3.

Has Turkey halted the granting of registration to products of others that rely on data submitted by the originator of the data?

Has Turkey taken any steps to revoke previously granted registration of products to parties relying on such data?

Question (USA):

Article 41 of TRIPS provides that "Members shall ensure that enforcement procedures as specified in this Part are available under the law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements."

Please describe how in practice Turkey permits effective action and provides for expeditious and deterrent remedies.

We have read media reports that courts, in cases involving IPR violations, do not hand down sentences sufficient to deter further violations and can be subject to delays and procedural hurdles.

Could Turkey comment on court practices in cases involving IPR?

Question (USA):

Under TRIPS Art 50(2) "The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed."

Please describe under which Turkish laws civil *ex parte* searches are permitted and how these orders are applied in Turkish courts.

Answer:

Enforcement of Intellectual Property Rights Before the Turkish Courts

In general and in particular on IPR cases, Turkish judicial authorities has a general approach and *de jure* duty to practice of cases and legislation in the sphere of their judicial power in terms of all civil and penal cases.

Besides this general approach, and of course as a part of this general practice, Turkish judicial authorities also practice the intellectual property cases according to the various specific IP legislation, in particular. Furthermore, it can be said that the trial of IP cases have been being handled as an area which requires specific expertise by the judiciary. As a result of this approach, we see that two specialized courts, one as civil, another as penal have been established in Istanbul in 2002, in where more than half of these cases were brought before courts in a countrywide context, as a first beginning(in 2003 seven more IP courts have been established which shall be mentioned below).

Obligations under TRIPs and EU integration process, elements of Ministry of Justice's approach concerning enforcement

Ensuring effective enforcement of IP rights is an obligation under the TRIPS system. Having considered that the effective enforcement of IPR is more important than only adoption of necessary laws, it can be said that Turkish Ministry of Justice which is only responsible of enforcement of IPR

rights before the courts has an approach to fulfill its obligations on enforcement. The main elements of this approach are as follows;

- a- Ensuring training to judges and public prosecutors in country,
- b- Ensuring training to judges and public prosecutors abroad,
- c- Participation to training activities of other institutions,
- d- Sending circulars on effective enforcement of IPR rights to central and field organization of Ministry of Justice to be distributed to all judges and public prosecutors for giving/refreshing information,
- e- Publishing of new IPR legislation (including ratified conventions) which were entered in force in its monthly periodical intra-organizational bulletin which is distributed to each one of judges and public prosecutors every month when such a new IPR legislation appears in the time being,
- f- Establishing specialised courts(two in 2001, seven more in 2003 recently),
- g- Preparing and conducting project focused only to effective enforcement of intellectual property rights.

Ultimately Deterrent Sanctions

While reviewing the developments in area since 1998, it can be said that, Turkey is focused to meeting the requirement of effective enforcement of intellectual property rights stipulated by TRIPs Agreement. To that end, strengthening the effectiveness of existing legislation could be achieved.

The strengthening the enforcement of intellectual property rights priorly became possible by raising the effectiveness of existent legislation by various adoptions. By adopting the Law numbered 4630 which came into force on 3 March 2001 for the amendment of Law numbered 5846 on Intellectual and Artistic Works, penal provisions of the Law numbered 5846 became even to international standards considerably high as ranging from 4 to 6 years of imprisonment terms and for 2003 year 121.794.000.000 TL (87057 USD) to 365.382.000.000 TL (261173 USD) as fines. Furthermore, it should be remembered that the Law numbered 4128 dated 7 November 1995 which brought penal sanctions to industrial property protection system (Thus, 551 Patent, 556 Trademark, 554 Industrial Design, 555 Geographical Indications Legislation.) has also penal provisions ranging from 1 to 4 years of imprisonment terms and for 2003 year 13.871.420.709 TL (9915 USD) to 46.238.069.030 TL (33050 USD) as fines (Conversion is made as 1 USD=1.399.000 TL. according the Central Bank of Turkey official exchange rate on 2nd October 2003. The fines are raised annually subject to change in accordance with a re-evaluation ratio announced per annum by the Ministry of Finance. The yearly repetition of raise of fines ensures the continuous deterrence).

As seen clearly, the imprisonment terms and fines enforced by Turkish courts in IPR cases are ultimately deterrent.

Applications of the Deterrent Sanctions

When a penal case is brought before a penal court on IPR violations, the abovementioned sanctions are subject to impose by the court. When committing the crime is proved (according to the judge), it becomes a must to impose the penalty, so there is no any discretion to impose or not to impose. That is why, without doubt, the provisions of related laws which contains deterrent sanctions entered into force for being enforced without any option.

The Turkish Criminal Procedure Law

The application of criminal law must satisfy the requirements of due process prescribed by the Code of Criminal Procedure (as well as the principles of the Constitution).

In general, criminal procedure is, as the term suggests, concerned with the enforcement of criminal law. It deals with such matters as the identification and the collection of evidence of crime, the apprehension and indictment of criminals, and finally the procedure of criminal trials. Although criminal procedure is concerned with form, it is in fact closely related to the substantive law.

There are three basic systems of criminal procedure as accusatorial, inquisitorial and mixed systems.

Turkey follows a procedure which is a mixture of the inquisitorial, with its emphasis on effective investigation, and the accusatorial system, with its respect for the defendant's personal rights and freedoms.

As for an information, it can be added that the Turkish Code of Criminal Procedure of April 20, 1929 (in force today), is a translation of German Code of Criminal Procedure of 1877, adopted with many changes. This Code has been amended many times.

To satisfy the requirements by the judiciary stated in the Code of Criminal Procedure is a must for Turkey as a state governed by rule of law. The evaluation of criminal procedures of each penal case should be made in the light of the principle of rule of law.

The IPR legislation prescribes different very deterrent punishments for different IPR crimes. (The judges are given some discretion in fixing punishment. They decide whether to impose the minimum or maximum punishment or something in between. The aggravating or mitigation reasons are stated in the Turkish Penal Code).

The Law of Civil Procedure

General Overview to Court Practices and its Legal Environment for Commenting

The civil procedure is regulated by the Code of Civil Procedure, Law No:1086, dated June 18, 1927 and the Code of Execution and Bankruptcy. For understanding and commenting the court practices, giving outlined information hereinafter below of the legal base governing *inter alia* IPR cases may be beneficial.

In civil cases, the procedures stated in the Code, must be followed by the judiciary.

Bringing action: The plaintiff must draft a petition and should file in the appropriate court. First of all, the court must be the competent court and secondly the provisions of the Code of Civil Procedure on venue should be fulfilled. The petition must be filed with the clerk of the court. The case is considered commenced when the petition is filed with the clerk and the necessary fees are paid.

Noticing to the defendant: After the plaintiff's petition has been filed, the clerk of the court prepares a summons which, together with a copy of the petition, is sent by the court to the defendant. The usual method of service in Turkey is by registered mail.

Defendant's response: A petition of reply should be submitted within ten days (or other period permitted by law) after service of summons and petition on the defendant.

The petition of reply follows the same general structure as the plaintiff's petition of the case. It may contain many legal defenses stated in the Code.

The defendants may dispute the facts stated by the plaintiff and may assert new facts.

Possibility of counter-claim: The defendant may include in his petition of reply a counter-claim if it has some connection with the plaintiff's claim and if it requires no new parties, although what constitutes an adequate connection is not specially defined. The counter-claim is considered as an independent suit. The defendant, therefore, need not assert his counter-claim in his petition of reply. He may, however, submit it in the form of a separate petition within the time allowed for the petition of reply. He may also bring an independent action.

Burden of proof: After the exchange of petitions, the facts on which the claim is based must be proved.

The general rule on the burden of proof is stated in Article 6 of the Code: Each party must prove the facts on which he has based his claim, unless the contrary is stated by law.

In some specific instances the law states who must prove the facts. There are also presumptions, which indicate the existence of certain facts.

Means of proof: There are different types of instruments of proof. Some of them, such as deeds, are binding on judges, and many others, such as testimony of witnesses are left to the discretion of the judge. Written instruments or deeds, books of account, witnesses, depositions (when the need for taking the testimony away from court arises during the course of trial, for instance the witness is in hospital, the judge himself/herself takes it or a substitute judge take it; when a witness is living in another province, then the court issues an order to a judge of the province where the witness can be found and demands the testimony), oath, expert evidence, view and real evidence (if necessary in the case to take a view of the premises involved in litigation, he/she may, at that time, take testimony on the spot) are sorts of evidence which have their own characteristics and different value.

The expert evidence is worth to mentioned separately because of its importance in IPR cases. An expert is a person who renders a written report with respect to certain aspects of a case. He is not retained by one of the parties, but by the court; he is not limited as to the sources of his information or as to the nature of the opinion which he can express; he frequently as one member of a team of several experts (usually consisting of three persons). The objection to expert reports by parties to the case, may lead to appointment of different experts to prepare a new expert report, so this normal process lengthen the trial period. Enjoyment of this right depends on the will of the parties and envisaged and accepted in all of the modern legal systems. That is why; these right enjoyments by parties during the trials may cause a length in time period but should not be regarded as an ``hurdle`` or ``delay``. Since case parties' enjoyment of rights on objection to expert reports cannot be prohibited, the alleged critics may be reviewed in the light of the rights of the parties to the case during the trial.

Rendition of judgment: After the reception of all the evidence the parties may submit final petitions arguing why judgment should be rendered in their favor.

The final decision necessarily embodies judge's conclusion on the evidence, on relevant substantive law, and on the application of such law to the facts found. It should be distinguished from the interlocutory decisions previously rendered throughout the course of the hearings.

After the decision is filed in the office of the clerk, either party may secure a copy by paying the necessary fees. With the service of the decision the time for the appeal starts to run.

Appeal: An appeal goes from the first instance court to the related Chamber of the Court of Cassation, which handles the type of the subject matter involved. After rendition of the decision either party may ask the Court of Cassation to reconsider it for a variety of reasons. The competent Chamber may either approve or disapprove the lower court's judgment.

If the final decision of the Chamber is to affirm the judgment of the lower court no further review is possible. Only exceptionally a revision may be demanded. If the Chamber disapproves the judgment of the lower court, the case is returned to that court of action.

When the trial court insists that the original disposition was correct the case may be sent back to the Court of Cassation, where it is considered by all civil or criminal Chamber Members. The decision of this assembly must be followed by the lower court.

The Court of Cassation reviews not only the factual determination but also legal questions.

A party wishing to appeal must file a petition of appeal within fifteen days after service of the judgment.

The members of the Chamber and the rapporteur examine the file. Usually, there is no oral argument. Only in those cases where the subject matter exceeds pre-defined monetary level in the law an oral argument may be demanded.

The Turkish Code of Civil Procedure which was prepared by greatly being affected from Switzerland's Neuchatel Canton, France and Germany Civil Procedure Laws, adopted in the country, offers the practitioners the same legal standards.

The court practices should observe the legal requirements which was stated above with the outlines to reflect the functioning of the system and better understanding of how the enforcement before court work.

Turkey comments that a fair trial can be possible to meet the abovementioned standards on court practices involving IPR.

Civil Ex Parte Searches

Turkish Code of Civil Procedure permits the civil *ex parte* searches in its provisions.

The Articles 101-113/A of the Code affords the needs. If a delay is likely to cause irreparable harm to right holder or there is a demonstrable risk of evidence being destroyed, civil *ex parte* searches can be requested with a petition from a court. Where the enforcement of *ex parte* search is possible in terms of least expense and quickest, the request also may be directed to that place court.

To render an *ex parte* search decision is not an obligatory issue for judge, he/she has the discretion to render or not.

It is known in Turkey that, there is a wide practice in judiciary on civil *ex parte* searches in general, and also on IPR in particular.

Independence and Impartiality of Judges and Courts and the Court Practices

The Turkish Constitution and procedural laws contain many provisions for securing the independence and impartiality of the judges and the courts. Independence from the executive branch

of the government was secured mainly through the adoption of the separation of powers, which is stated in the Constitution and enforced by special statutes concerning the judiciary.

According to the Article 138 of the Constitution;

“Judges shall be independent in the discharge of their duties. They shall pass judgments in accordance with the Constitution, law, justice and their personal convictions.

No organ, office, agency or individual may give orders or instructions to courts of judges in connection with the discharge of their judicial duty, send them circulars, or make recommendations or suggestion.”

Since every penal or civil IPR case may vary in its characteristics and may carry different properties from another, each one of the decisions rendered by these independent courts may be different. To evaluate a court decision should be made in the light of these facts by remembering the possibility of existence of different contents of each case that judge’s face. It is fact that the contents of the case files are not uniform. The diversity/variety of the contents of case files may lead to difference of the decisions at the end of trials.

Increasing Number of Cases Before Courts

It is observed that many factors cause to a significant increase in number of cases before courts.

First of all, increasing awareness both in private and penal sectors affects it. The more they know their rights, the more they bring action before courts.

The establishing of specialized IPR courts contributed the knowledge level of IP in country.

Continuous training activities in private and public sectors triggered the sensitivity on protection of IPR.

The increasing numbers of IP attorneys which are taking certificates from Turkish Patent Institute also play important role in this increase of number of cases. They may work in the client companies or may form specialized IP attorneyship companies or offices to involve in IP issues. Many of them have contracts with client companies for following the IP piracy or counterfeiting events, which are actionable against the pirates and counterfeiters, on behalf of clients. This means that as right owners as legal or real persons generally show a tendency that they leave the traditional way to follow the piracy or counterfeiting by themselves and preferring allowing to leave this business to the IP professionals. The more advanced techniques used by the IP professionals and/or specialized IP attorneys cause an increase on detecting existing undiscovered IPR violations or new piracy or counterfeiting events against right owners. The increase in detecting the IPR violations directly affects the numbers of IPR cases brought before the courts.

The reactions and reports in Turkey to the increasing number of IPR cases are evaluated as positive signs of increasing level of IPR knowledge and specialized human resources in country and realizing more the effectiveness and deterrence of judgments.

IPR Enforcement Projects

“Effective enforcement of intellectual property rights project”

A pilot project funded by European Union reached the implementation stage on 2002. This project's budget is 2,289,000 Euros. The overall objective of the project is to enable Turkey to meet its commitments on intellectual, industrial and commercial property in accordance with the Agreement on European Community-Turkey Customs Union. It is known that the status of full harmonization of Turkey's IPR legislation is declared by the WTO/TRIPs Council after the country review in 2000. After this stage, it is observed that the efforts on enforcement of IPR legislation gained much more importance. As one of these efforts, the abovementioned project envisages in its structure of each separate sub-components:

- 1) The development of human resources by training specialized IPR judges,
- 2) Creation of sustainable support infrastructure by establishing an IT network between Ministry of Justice, the specialized courts, the specialized IPR doc center and customs administration,
- 3) Establishing of a specialized IPR documentation center,
- 4) Creation of awareness in the public and private sector by organizing an international symposium.

The trained specialized IPR judges and established specialized IPR courts

The decision on the venues of new seven specialized IPR courts has been given by Supreme Council for Judges and Public Prosecutors. According to the Supreme Council of Judges and Public Prosecutors' decision, which is based on the density and civil or penal natures of IPR cases throughout the country; the places of specialized courts are designated as İstanbul (in addition to previous two courts; two civil and two penal as a plus), İzmir (one penal), Ankara (one civil, one penal). The majority of these IPR cases are generally brought before the courts of these three biggest cities since the population, industry and trade are generally gathered in (perhaps %90 per cent around) these areas.

The selected seven (7) judges who completed their 10 months abroad education in Europe has been appointed to their posts in October 2003. Furthermore, these seven (7) specialized courts (for strengthening the enforcement of intellectual property rights, two specialized courts were set up in 2001 in İstanbul city where IPR cases are relatively intensive in comparison to other cities- almost half of total number of IPR cases in country) have been established legally, and other general purpose courts have been transferred the IPR cases to these specialized courts.

The Enforcement of Intellectual Property Right Network

The IPR network, which was mentioned above to work as an continuous and permanent inter/institutional specific IPR network is about to be physically established after following current tender evaluation phase to designate the winner of tender. It is apparently seen that this IPR network shall produce incredibly successful results in IPR enforcement.

The establishment of specialized intellectual property rights documentation center

The specialized IPR documentation center has been established and refurbished in the context of this project in Ankara University to contribute anyone on IPR issues.

The intellectual property rights symposium for public and private sectors

The symposium, which shall be organized with the collaboration of European Patent Organization to disseminate knowledge (Various training activities were occurred before. Since the European Union gives great importance to the protection of intellectual property rights. The TAIEX

(Technical Assistance Information Exchange) office of the European Union-DG Enlargement organizes various seminars both in Turkey and abroad. In 2003, TAIEX organized an IPR seminar in April in Istanbul for Turkey and organized a seminar in December in Brussels to which Turkey also participated in. In the beginning of 2004, on 7-8th January, TAIEX shall also organize a seminar on many IPR enforcement issues in Ankara. These clearly show the density of the training activities on enforcement of IPR in context of the EU-Turkey relations) to both public and private sector shall be held in May 2004 as the last sub-component of the project and lead to completion of last phase of the IPR pilot project.

Arbitration as a Binding Option in IPR

As known, arbitration (The application areas where arbitration is possible should be taken into consideration) is legal in Turkey, *inter alia* on IPR issues. Arbitration can be used as an option in Turkey that a binding arbitration decision can be given. Since the recognition and execution of an arbitral award can enter in the enforcement area of judiciary; we may clarify some issues on arbitration.

In the context of enforcement of intellectual property rights before courts in Turkey, it should be noted that courts play role in different areas, civil actions, penal actions, on domestic arbitral awards and on recognition and execution of foreign civil courts judgments and arbitral awards on intellectual property issues.

As regards enforcement of domestic arbitral awards on intellectual property rights issues, gaining execution capability of this award which is finalized by not using the right to appeal by one or whole parties in appeal time limit depends on an administrative approval of a first instance court. But for appealed domestic awards, this can be done by a first instance court by following approval of Court of Cassation. The provisions governing this issue and procedure are stated in Code of Civil Procedure (Art. 516-536).

The recognition and execution of the foreign civil court judgments and arbitral awards on intellectual property rights issues are also in the coverings of the enforcement of Turkish courts. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated June 10 1958 (which is valid only between wide range of signatories) is in force since 1 October 1992 in Turkey. The actions concerning recognition and execution of the foreign court judgments and arbitral awards on intellectual property rights issues can be brought before the Turkish courts by plaintiffs according to this Convention as well as the Law numbered 2675 which is mentioned below.

On the contrary to abovementioned Convention which is valid only between signatories, as an option, plaintiffs may bring action for demanding recognition and execution of the foreign court judgments and arbitral awards on intellectual property issues according to the Law Numbered 2675 Concerning International Private and Procedural Law which is valid for every judgment or for foreign arbitral award.

Conclusion for Enforcement of IPR Cases

For future policies, it is a fact that, the Ministry of Justice in charge of effective enforcement (Enforcement has a wide meaning. The applications in the Turkish Patent Institute or in the Ministry of Culture, or by the Customs Administrations, police application to IPR are different examples to enforcement of IPR. The enforcement of IPR before courts forms the sole responsibility of Ministry of Justice) of IPR before the courts, is determined to ensure the effective enforcement of IPR in Turkey and to strengthen it. To that end, there is a consensus in judiciary for settling and maintaining an effective and perfect functioning enforcement system on the issue. For that reason, Ministry of

Justice shall intensively continue to educate judges and public prosecutors on IPR issues both in country and abroad in future.

Question (USA):

We understand that an optical disc law is currently being considered. Could Turkey provide further information on this law? When might it go into effect?

Answer:

If “an optical disc law” means “Law on Cinema, Video and Musical Works” which is in force, there will be an amendment within this Law. With the legal arrangement that will be made in the Law on Cinema, Video and Musical Works; it is aimed to abolish the provisions of ineffective penalties which are far away from being deterrent and to provide conformity within the Law on Intellectual and Artistic Works and this Law in the scope of punishment.

Question (EU):

To the knowledge of the EC, piracy and counterfeiting remains a serious problem in Turkey. Some recent analysis’ from private industry suggests that the percentage of counterfeited products in the field of software is approximately 58% (2001) and 30% in the field of music piracy. What is Turkey’s strategy for reducing the production and use of piracy and counterfeited goods? Will this strategy i.e. entail a strengthening of Turkey’s border enforcement and a more existing enforcement of intellectual property rights, appropriate remedies and sanctions in case of infringements of copyrights?

Answer:

The official instruction of the Directorate General of Customs addressed to the Regional Customs Directorates dated 10.09.2003 no: 23141, mainly explains what customs would do when counterfeited DVDs, which could be treated as commercial goods due to high volume in quantity, are seized at customs during their customs operations are being conducted. In that occasion, the counterfeited DVDs are not allowed to be re-exported, the customs authorities shall wait for the precautionary measures given by the court to the right holder and shall act in line with the court decision reached following the precautionary measures.

IV. TRADE POLICIES BY SECTOR

MANUFACTURING

Question (USA):

Paragraph 84 provides information regarding state aid provided by the Turkish government to Turkish steel companies.

Please provide details on Turkey’s state aid law, specifically, what conditions must be met for a steel company to qualify for state aid.

Answer:

Since the GIEP makes no sectoral selection among the industrial sectors or services, applications for an investment encouragement certificate in the steel sector is treated on an equal basis

with the others and the application procedure is the same for all investment projects. For that reason, general characteristics of the GIEP are mentioned below.

I. The legislative basis for GIEP

The legislative base and the title of the general investment encouragement program is “Decree Concerning State Encouragements to Investments” (Decree No:2002/4367, dated: June 10th 2002, published on the Official Gazette dated at 09.07.2002 and No:24810).

II. The scope of the GIEP

This program covers all investment activities related to the production of goods and services including steel sector, research and development (R&D), environmental protection and improvement of quality and standards.

III. Regional Classification of GIEP

One of the main objectives of the system is to eliminate inter-regional imbalances. For this purpose the following regional classification is established with the Decree;

- *Developed regions:* Istanbul and Kocaeli city boundaries. Greater Municipality boundaries along with Ankara, Izmir, Bursa, Adana, and Antalya cities.
- *Normal Regions:* Cities situated outside of the Developed Region and Priority Development Region classifications.
- *Priority Development Regions:* Cities, which are determined as the Priority Development Regions by the Decision of the Council of Ministers.

In summary, no matter which sector the investor shall be operating in, all investors who have prepared their investment feasibility studies and proposals, who believe that they shall be eligible for evaluation, within the set framework of the Decree, apply to the Undersecretariat of Treasury for the evaluation of their investment project to be considered for encouragement.

IV. Application Authorities for an Investment Encouragement Certificate under GIEP

Applications to be made for the issuance of an investment encouragement certificate to the relevant authority is as follows:

All investments to be made by foreign investment companies and their branches will be received by General Directorate of Foreign Investment (GDFI)

a- Investment encouragement certificate applications for investments in manufacturing and agro-industry sectors, which are specified in the Table II attached to this document (excluding those which can benefit from credit allocation measure) that are not foreign capital investments and that have a fixed investment cost not exceeding four trillion Turkish Liras shall first be made to the specified Chambers¹ (Adana, Ankara, Balıkesir, Denizli, the Aegean Region, Eskişehir, Gaziantep, Istanbul, Kayseri Kocaeli, Konya Chambers of Industry). In this way, it's aimed to ensure the

¹ “Chambers of Industry”, “Chambers of Commerce and Industry”, and “Chambers of Commerce that are members of The Union of Chambers of Commerce, Industry, Maritime Trade and Commodity Exchanges of Turkey.”

participation of local governmental and non-governmental institutions in the state aid implementations and subsequently extend the level of decentralization to include all other sectors.

b- For other investments, applications are made to General Directorate of Incentives and Implementation (GDII).

V. Procedure to Obtain an Investment Encouragement Certificate

An investor should complete and apply with the following documents for an encouragement certificate:

- Investment application form
- The receipt of the amount deposited in the Central Bank, varying between 200 Million TL and 400 Million TL according to regional developmental status of the location.
- A notarized copy of authorized signatures of the company
- A copy of the trade registry gazette in which the Articles of Association is published.

Once the application is completed and presented for evaluation purposes, in conformity with the Decree and Communiqué's, eligible investment projects are evaluated and granted an Encouragement Certificate, after an analysis of each project proposal.

As far as all the related procedures are concerned for the investment encouragement system, there are no differences between foreign and domestic investors. The "Certificate" mentioned above contains specific encouragement measures, which are granted to the investment.

VI. Encouragement Measures

Within the objectives and the scope of the program, eligible investments projects which are granted a certificate can benefit from the following encouragement measures:

- a. Exemption from Customs Duties and Fund Levies*
- b. Value Added Tax Exemption for imported and domestically purchased machinery and equipment*
- c. Exemption from certain taxes, duties and fees*
- d. Credit allocation from the Budget*

Question (USA):

Could you please also explain to what extent overcapacity is taken into consideration when the government makes the decision to provide state aid to a steel company?

Answer:

Today, with three integrated steel works and sixteen electric arc furnaces Turkey has 22 million tons of total crude steel production capacity. In the year 2002, 84 % of this capacity was allocated to long products, 14 % to flat products, while the remaining 2 % was to alloy steel.

Currently, the main problem of the Turkish steel industry is the imbalance between the type of products produced and consumed domestically. Despite the surplus in the domestic production of long products, the output of flat steel products is far from meeting the domestic demand.

In addition to that there is a free trade Agreement between European Steel and Coal Community and Turkey covering ECSC products, which entered into force on 1 August 1996. "

Article 7 of the Agreement states that "The following shall be incompatible with the proper functioning of this Agreement, in so far as they may affect trade between the Community and Turkey: (iii) public aid in any form whatsoever except derogations allowed pursuant to the ECSC Treaty."

Article 8 of the Agreement states that "The Parties recognize that during five years after the entry into force of this Agreement, and by way of derogation from Article 7, paragraph 1 (iii), Turkey may, exceptionally, as regards the products covered by this Agreement, grant public aid on a case-by-case basis for restructuring or conversion purposes, provided that; transparency is ensured by a full and continuous exchange of information concerning the implementation of the restructuring program including amount, intensity and purpose of the aid and a detailed restructuring plan; the restructuring program is linked to rationalizing not involving an overall increase in capacity for hot-rolled products; the aid leads to viability determined according to the usual viability criteria implying modernization with the sole aim to improve efficiency of the benefiting firms under normal market conditions at the end of the restructuring period."

However, this 5 year grace period has expired and taking into account of restructuring process of Turkish steel industry is incomplete yet, Turkish authorities negotiated the extension of the grace period. For this purpose, studies on a "National Restructuring Program In The Turkish Steel Industry" has been launched jointly with the European Commission.

Investment encouragement certificate applications for investment project proposals in the steel sector have been evaluated under the aforementioned criteria and characteristics of the industry. In other words, the general approach to the industry has been not to create an excess capacity with state aids from the starting date of the Agreement between two Parties, which has foreseen strict rules in the field of state aid.

With this sole aim, during the evaluation studies of the investment encouragement certificate applications in the steel industry, project proposals satisfying the condition of not creation of capacity increase and targeting product conversion (long product to flat, long product and alloy steel), modernization, renewal, bottle-neck elimination, quality improvement, environmental protection, research and development, transfer have been granted an investment encouragement certificate.

After the completion of the studies "National Restructuring Program In The Turkish Steel Industry" and provided that the grace period is granted, and also taking into account the results of the negotiations of "OECD Steel Subsidy Agreement" conditions to grant state aids in the steel sector may need to be reshaped.

MINING AND ENERGY

Question (USA):

This report refers to the creation of a Mining Fund under the supervision of MENR to provide financial credits for *inter alia*, export activities.

Could you please provide more information regarding the Mining Fund? For example, please explain what role export activities play in the provision of such credits and how this program complies with Turkey's commitment under Article 3 of the Subsidies Agreement, not to provide prohibited export subsidies?

How does Turkey reconcile credits provided by the Mining Fund with its WTO commitments?

Answer:

The Mining Fund was abolished as of December 31, 2001. Although a new mechanism, which is called as "Commission for Support, Incentives and Credit for Mining", was established in 2003, the main purpose of this new mechanism is not supporting exports solely but supporting activities mainly in R&D, production and modernization of the facilities in mining sector.

SERVICES

Question (Chinese Taipei):

According to its Services Schedule and Initial Offers, Turkey has retained certain reservations with respect to the liberalization of its computer services, for example, in database services, CPC 844. As all sub-sectors of computer services are closely related, it has been suggested previously both by the EU, and us that Members use a two-digit CPC classification system in making their commitments. In addition, we believe that Members should not make their commitment exclusions for certain lines of computer services only, mainly because it would make it very difficult for foreign suppliers to provide complete lines of services. We would therefore like to know why Turkey chooses not to liberalize its Data Base Services (CPC 844) and most Other Computer Services (CPC 849). We would also appreciate it if Turkey would consider tabling its initial offers using the two-digit CPC code for computer services.

Question (Canada):

Canada notes that Turkey has not taken commitments for the following sub-sectors of computer and related services: (a) Data base services and (b) Other. Are there any particular concerns that make it difficult for Turkey to make commitments in this sub sector? Does Turkey have any plans to commit to any of these services during the current round of GATS negotiations?

Answer:

With regard to the computer and related services, "Data base services" are not covered in Turkey's Uruguay Round commitment list and also in its conditional offer which was circulated on 3 September 2003. At this stage, Turkey does not have any intention to include this sub-sector in its conditional offer, as the studies on the related regulations such as; confidentiality of the personal data, information security have not been completed yet.

In Central Product Classification (CPC), "Other computer services" have the broad coverage without any definition. As mentioned above, related regulations regarding computer services have not been completed yet. Therefore, Turkey includes only "training services for staff of clients" in its conditional offer.

With regard to the CPC coding of the computer and related services, for the time being, Turkey prefers to use the generally accepted CPC classification codes as it is stated in the CPC. However, pertaining to the changes in related regulations, Turkey would consider using the two-digit CPC code for computer and related services.

Question (Hong Kong, China):

It is noted that efforts have been made in the privatization programme for Turk Telekom (TT) but certain restrictions on foreign direct investment seem to deter a greater participation by private investors. It is also noted that a reinvigorated privatization programme is in progress in the telecommunications sector. We would appreciate it if Turkey could share with us some more details of its initiative in this regard.

Answer:

We would like to take this opportunity to furnish the latest developments concerning the privatization of Turk Telekom. As of April 2003 a Council of Ministers Principal Decree has been passed stipulating that the preparations as to the minimum 51 % block sale and/or Initial Public Offering (IPO) of the company will be undertaken simultaneously. The decision pertaining to the selection of one of these two methods is to be made in the framework of market conditions. In this respect, market analysis for Turk Telekom privatization have been completed and the Council of Ministers Decree divulging the new privatization strategy has been issued on November 13, 2003. According to this Decree, minimum 51 % of Turk Telekom shares will be privatized through a block sale, while tender announcement for such sale will be launched latest by May 31, 2004. Following the block sale, remaining shares will be offered to public in accordance with the process set by the Tender Committee. Preparations as to hire sale advisors for Turk Telekom project is underway.

As regards with the aforesaid, certain restrictions on foreign ownership, rather than the term used "foreign direct investment", do not prevent the sale of controlling stake to a consortium of domestic and foreign investors.

Needless to add that Turkey is determined to enhance the investment climate and strives to attract much more foreign direct investment than its present level particularly through major privatization projects.

Question (USA):

The United States welcomes Turkey's decision to allow competition in basic telecommunications services by the end of 2003, two years ahead of the date that Turkey committed to under the WTO Agreement on Telecommunications Services.

Would Turkey please comment on whether it believes that the liberalization described in this TPRM will suffice to establish a pro-competitive regulatory framework that will fulfill Turkey's commitments under that WTO Agreement? If not, what remains to be done?

Question (Canada):

Canada notes that, although there is currently a public monopoly in the sector of telecommunications services, that monopoly is scheduled to end on December 31, 2003. Canada would like to know more about the privatization process of Turk Telekom A.S., the publicly owned telecommunications company. Will the telecommunications services market be fully liberalized on December 31, 2003 as originally planned?

Answer:

Turk Telekom's monopoly rights will expire by the end of this year and to establish a pro-competitive framework, Telecommunications Authority of Turkey has already published clearly

defined and transparent rules for licensing, interconnection etc., that are necessary prerequisites for competition. Moreover, relevant legal framework has been put into force for the prevention of anti-competitive practices in telecommunications (responsible institutions are Competition Authority and Telecommunications Authority). Hence, we believe that in general terms, the liberalization described in this TPRM will suffice to establish a pro-competitive regulatory framework.

The telecommunications services market will be fully liberalized on December 31, 2003 in accordance with the relevant Law no. 406 amended by the Laws no. 4502 and no. 4673.

Question (Canada):

Canada commends Turkey on the creation of an independent regulator, the Telecommunications Authority. Canada is interested in how this regulator will consult all interested parties and how it will make its process and all relevant information leading to final decisions transparent and available to those interested parties. Additionally, Canada notes that new entrants to the market must seek permission to build infrastructure from the Telecommunications Authority. Will this permission be granted only when Turk Telekom cannot provide the needed infrastructure? Is it possible for a foreign company to gain permission to build infrastructure when sufficient capacity already exists? Is this requirement intended to coordinate rights of way questions or are there other issues that are of concern to the Government of Turkey?

Answer:

Telecommunications Authority obtains the views of all interested parties on every regulation it prepares. Draft regulations are put on the web site of the Authority for consultation. In addition, the views of the interested parties are taken orally by arranging meetings if necessary.

New entrants don't need to ask for permission to build infrastructure necessary for service provision if the establishment of the subject infrastructure is included in their licenses or authorizations.

During the monopoly, the new entrants have to ask Turk Telekom for the infrastructure which is not covered by their licenses. If Turk Telekom cannot provide the needed infrastructure, Telecommunications Authority grants permission to the new entrant for establishing that infrastructure.

After the end of the monopoly, in addition to Turk Telekom, new infrastructure providers will be authorized by Telecommunications Authority. Therefore, the new entrants will build the infrastructure that is covered by their licenses and will be able to obtain the infrastructure which is not included in their licenses, from the new infrastructure providers in addition to Turk Telekom.

Question (Canada):

Aside from tax breaks afforded to seafarers, are any other incentives provided to attract more ships to the Turkish Register?

Answer:

No, there is not any additional incentives.

Question (Canada):

Many countries, including the US, Canada, and the EU, have adopted legislation governing activities of liner conferences. Is Turkey considering similar legislation?

Please explain why ships flying the Turkish flag are on the Paris MOU black list.

Answer:

A number of Turkish flagged ships have been detained over the last years following the Port State Control (PSC) inspections held in accordance with Paris Memorandum in foreign ports.

It should be noted that despite the frequency of the detention of Turkish flagged ships, their involvement in maritime accidents is very low, as the cause of their detention stem mostly from minor deficiencies.

Nevertheless the Turkish authorities are aware of these deficiencies and exert every effort to improve the safety record of the commercial maritime fleet of Turkey.

The Maritime Undersecretariat is undergoing a new structural change, which also aims at establishing an efficient FSI (flag state implementation) and PSC inspections in all Turkish Ports. 70 additional PSC and FSI officers have been recruited in October 2003 to increase the number of inspections of both Turkish and foreign flagged ships. Moreover the said Secretariat is also taking a number of measures to increase the quality of the training of Turkish seafarers in conformity with IMO standards.

Turkey supports the international efforts and is committed to enhance the safety of maritime navigation and the protection of environment in the world seas.

This is a genuine approach, as Turkey has deep concerns regarding the safety of life, property, navigation and environment in the Turkish Straits, one of which runs through the hearth of the largest city in the country, namely Istanbul.

The increasingly congested maritime traffic in the Turkish Straits causes serious concern from various respects. An accident in the Strait of Istanbul that involves hazardous cargo has the potential of endangering the lives of tens of thousands, if not millions, of people. Moreover, the effects of an environmental catastrophe resulting from such an accident would leave its scars for many decades.

The number of oil tankers and other dangerous cargo vessels passing through the Strait of Istanbul rose by % 75 in the last 5 years alone from 4303 in 1997 to 7427 in 2002. Similarly, the amount of hazardous cargo increased from 63 million tons in 1997 to 123 million tons in 2002.

In view of these facts, Turkey is and will remain vigilant regarding the assurance of safe and secure navigation through the Turkish Straits against the backdrop of the safety and security risk conditions prevailing in the world seas.

Question (Norway):

In relation to the information on preference for national flag vessels in relation to public cargoes and strategic raw materials, could Turkey specify which raw materials are considered strategic?

To what extent is the restriction on the use of foreign flag vessels for transport of strategic materials still applied? Could Turkey please provide figures with respect to the market share of Turkish flag vessels on the shipment of such strategic import cargoes? Could exports cargoes be shipped by foreign flag vessels free of restrictions?

Answer:

Iron ore, coal, acids, petroleum products, phosphate rock and fertilizers are considered strategic raw materials.

Foreign flag vessels can transport strategic materials of public entities provided that their prices are more than 10 per cent cheaper than the transport prices of the Turkish flag vessels.

Question (Chinese Taipei):

The major purpose of the Savings Deposit Insurance Fund (SDIF) is to insure savings deposits and tackle the problem of insolvent banks. We would like to know (1) if all deposit-taking institutions are required by law to join the scheme, (2) does the SDIF offer a blanket guarantee or just partial coverage for depositors, (3) if foreign bank branches are included in the scheme, and (4) how the SDIF raises the funds needed for its effective operation.

Answer:

All deposit-taking institutions are required by law to join the deposit insurance scheme of the SDIF.

Currently, savings deposit accounts are fully guaranteed by the SDIF. However, starting from July 5, 2004 a limited savings deposit insurance scheme will apply under which a portion up to TL 50 billion (around EUR 30.000) of savings deposit accounts (per person-per bank) will be under the guarantee of the SDIF.

Foreign bank branches are also included in the savings deposit insurance scheme.

The SDIF's resources are consisted of the following:

- a. Insurance premium,
- b. Deposits, custody accounts and claims which have been subjected to prescription pursuant to the relevant provisions of the Banks Act,
- c. Entrance fee received from banks when they first enter into the deposit insurance system (the fee is equal to 10% of the minimum capital required for the establishment of a bank),
- d. Judicial and administrative fines charged against those violating the provisions of the Banks Act (50% of such fines collected goes to the SDIF).

Apart from the ordinary revenues listed above, the SDIF may borrow in extraordinary circumstances provided that it takes consent of the Treasury Undersecretariat, or it may borrow long-term government securities from the Treasury if deemed necessary. Where assets of the Fund falls short of its commitments, advances may be received from banks in the amount of up to the total insurance premium paid by them in the previous year (such advances are then deducted from the banks' future premium obligations). Finally, under extraordinary circumstances and where resources of the Fund turn out to be not sufficient the Central Bank provides advances to the Fund if demanded by the Banking Regulation and Supervision Agency.
