

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) INTRODUCTION

1. Since its last Trade Policy Review (TPR), in 1998, Turkey has continued to liberalize its trade regime, with a focus on export promotion. The incentives system comprises duty and tax concessions, finance, insurance, guarantee, promotion, and marketing assistance. The number of free zones has increased alongside various financial benefits.

2. The tariff structure has been somewhat simplified, and the simple average MFN duty rate declined from 12.4% in 1998 to 11.8% in 2003 (Table III.1). However, the tariff still comprises *ad valorem*, specific, mixed, compound, and formula duties. This structure (the formula duties in particular) has partially resulted from the ongoing harmonization with the EU's tariff. The average MFN tariff rate continues to be substantially higher on agricultural than on non-agricultural products. Some 46.3% of total tariff lines are bound, and rates applied to certain products are below the bound rates, leaving Turkey margins for tariff increases. Furthermore, the imposition of non-*ad valorem* tariffs (1.5% of total lines) may not ensure compliance by Turkey with its WTO binding commitments made at *ad valorem* rates.

Table III.1
Structure of MFN tariffs in Turkey, 1998 and 2003
(Per cent)

	1998	2003
1. Bound tariff lines (% of all tariff lines)	46.3	46.3
2. Duty free tariff lines (% of all tariff lines)	13.6	20.0
3. Non- <i>ad valorem</i> tariffs (% of all tariff lines)	1.7	1.5
4. Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	0.8	0.6
5. Simple average applied rate	12.4	11.8
Agricultural products (WTO def.) ^a	42.8	43.3
Non-agricultural products (WTO def.) ^b	6.4	5.4
Agriculture (Major Division 1 of ISIC Rev.2)	26.0	25.0
Mining and quarrying (Major Division 2 of ISIC Rev.2)	2.0	0.2
Manufacturing (Major Division 3 of ISIC Rev.2)	11.6	11.1
6. Domestic tariff "spikes" (% of all tariff lines) ^c	7.2	8.3
7. International tariff "spikes" (% of all tariff lines) ^d	16.7	15.5
8. Overall standard deviation of applied rates	23.4	25.8
9. "Nuisance" applied rates (% of all tariff lines) ^e	6.5	11.2

a WTO Agreement on Agriculture.

b Excludes petroleum.

c Domestic tariff spikes are defined as those exceeding three times the overall simple average applied rate (indicator 5.).

d International tariff peaks are defined as those exceeding 15%.

e Nuisance rates are those greater than zero, but less than or equal to 2%.

Note: Indicator 1 and 4 are calculated taking into account all tariff lines (i.e. in-quota and out-of-quota lines).

Source: WTO Secretariat calculations, based on data provided by the Turkish authorities.

3. Turkey provides tariff preferences to EU and EFTA member states, and under bilateral trade agreements (currently 14, up from 6 in 1998); negotiations are continuing with seven other countries. In an effort to simplify and harmonize its tax system with the EU's, Turkey modified its excise duty legislation; introduced the Special Consumption Tax (SCT), which replaced various taxes and charges; and reduced the number of VAT rates from five to three. The Mass Housing Fund (MHF) still applies on some fish and fishery products.

4. In line with its commitments under the WTO and the EU, Turkey has redrafted or amended legislation in many areas, including customs, anti-dumping and countervailing measures, standards and technical regulations, and intellectual property rights. It has also enacted two new laws on government procurement, where supplies of Turkish origin are eligible for price preference of up to 15%. In general, import licences 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.

5. The government has retained a direct and strong influence on the economy, mainly through its control of public enterprises. Some of these are sheltered from competition and some remain a severe drain on public revenue. Recognizing the need to increase efficiency and reducing the pressure on scarce resources, a reinvigorated privatization programme is in progress in many economic activities, including banking, transportation, energy, and telecommunications.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures

6. Customs Law No. 4458, in force since 5 February 2000, replaced Customs Law No. 1615 of 19 July 1972, and introduced, *inter alia*, the following changes¹: (i) goods can remain under temporary importation procedure for up to 24 months (previously 12 months); (ii) temporary importation even with partial (instead of total) relief from import duties; (iii) the monopoly for warehouse keeping has been abolished; (iv) goods may remain under the customs warehousing procedure with "no limit of time" (previously five years); (v) for the transportation of goods by road, air, and sea, a "summary declaration" is used (in lieu of the three different manifests); and (vi) a new customs classification system (Binding Tariff Information), similar to the EU system, to make it easier for traders.

7. The GUMSIS (security systems for customs checkpoints) project was launched in November 2001 to improve facilities at customs posts, including controlling trade in motor vehicles and cultural goods, and detecting nuclear materials.² Moreover, Turkey has largely completed the automation of all customs operations at customs gates through the customs automation project (GIBOS), following the introduction in 2002 of the computerized customs activities system (BILGE), a software programme developed to carry out all real-time customs formalities, such as electronic data interchange (EDI) and internet.

8. As part of the reform programme to improve the investment environment, a technical committee on customs has been established to streamline customs procedures by, *inter alia*: (i) strengthening the institutional capacity of customs, especially with respect to post-entry inspection,

¹ In order to comply with its obligations under the customs union with the EU, Turkey enacted Customs Law No. 4458 (published in the *Official Gazette* of 4 November 1999) and new Customs Regulations (Circular No. 2000/40).

² European Commission (2002).

risk management, and valuation auditing; (ii) modernizing the smuggling law³; and (iii) assessment of the Free Zone Law, regulations and procedures.⁴

9. The format of the Turkish customs declaration has been aligned on the single administrative document (SAD) used in the EU for customs procedures. All imported goods must be presented to customs through the SAD accompanied by pertinent documents. Form EUR1 is required for imports from non-EU countries with which Turkey has free-trade agreements. The fee is TL150,000 for the SAD, and TL120,000 for the EUR1. The customs authority may grant permission to simplify formalities and procedures (Simplified Procedure Authorization), including by waiving the requirement to present some of the documentation to customs.⁵ The use of a clearing agent is not compulsory.

10. It is obligatory to produce a summary declaration to the customs office before the end of the working day following the submission of goods to customs. This declaration, for imported and exported goods, contains all the information required for the description of the goods; it has a predetermined layout, and can be found in Annex 9 of the Customs Regulations.⁶ The most common method used for summary declarations is the computerized data processing technique (using BILGE); this requires a user code and a password, which are provided by the customs office.

11. Certain goods can be imported only through specialized customs offices. For example, customs formalities for motor vehicles, tractors, motorcycles, and their spare parts and accessories are carried out by Yesilkoy and Gebze Specialized Customs Directorates; textile fabrics, by Bursa and Halkali Specialized Customs Directorates; some petroleum products, by Gebze Specialized Customs Directorate; and plants and plant products, by Mersin Specialized Customs Directorate.⁷

12. Articles 23 to 31 of Customs Law No. 4458 provide for the value of goods for customs purposes.⁸ The customs value of imported goods is the transaction value, that is, the price actually paid or payable for the goods when sold for export to Turkey.⁹ If the transaction value cannot be determined, the customs value is to be calculated by proceeding sequentially through: (a) the transaction value of identical goods sold for export to Turkey and exported at or about the same time as the good being imported; (b) the transaction value of similar goods sold for export to Turkey and exported at or about the same date as the goods being valued; (c) the value based on the unit price at which the imported good, identical or similar imported goods are sold within Turkey, in the greatest

³ Law No. 1918 on Prohibition and Prosecution of Smuggling has been abolished with the promulgation of Law No. 4926 on Combating Smuggling (published in the *Official Gazette* of 18 July 2003). Combating smuggling is under the responsibility of the Undersecretariat of Customs.

⁴ Undersecretariat of Treasury (2001). The harmonization of Turkish free-zones legislation with that of the EU, and the assessment of the free-zones legislation are being conducted by the General Directorate of Free Zones of the Undersecretariat of Foreign Trade.

⁵ The simplified procedures are based on Article 71 of Customs Law No. 4458, and Articles 20-61 of Customs Regulations and General Customs Notification (Customs Procedures No. 15).

⁶ A manifest, a bill of landing, or other documents can also be accepted in lieu of the summary declaration. The Undersecretariat of Customs may allow the use of another internationally approved commercial or official document containing the details required for the identification of goods.

⁷ Exceptional circumstances for importation of these products through other Directorates are defined in the legislation establishing such specialized customs Directorates.

⁸ WTO document G/VAL/N/1/TUR/2 of 18 May 2000.

⁹ The currency for customs value of goods is the Turkish lira (TL). Foreign currencies on invoices and other documents are converted to TL using the exchange rate of the Central Bank of Turkey, on the date the customs debt occurs.

aggregate quantity, to persons not related to the sellers; and (d) a computed value.¹⁰ The order of (c) and (d) can be reversed if the request is deemed appropriate by the customs administration.¹¹ Under paragraph 3 of Annex III of the Customs Valuation Agreement, Turkey has reserved indefinitely the right not to reverse the deductive and computed valuation methods at the importer's request.¹²

13. Turkey intends to reduce physical inspection by its customs administration to no more than 15% of imports and 2% of exports. Import clearance generally takes a maximum of 24 hours (if all the required documents are in order), regardless of the mode of transportation. Import duties must be paid or guaranteed at the time of customs clearance.

14. 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.

(ii) Rules of origin

15. Turkey applies two different sets of rules of origin: non-preferential and preferential. As part of its obligations under the CUD, since 1 January 1996, Turkey applies the same rules of origin as the EU with respect to imports from third countries. The non-preferential rules of origin, set out in Articles 17 to 21 of Customs Law No. 4458, assign origin to the country where the good has been wholly obtained or where it underwent its "last substantial transformation and an important stage of manufacture".¹³

16. Preferential rules of origin, under various trade agreements, are based on the degree of processing or value-added criteria (Table III.2).¹⁴ One aspect of preferential rules of origin is the scope for cumulation, which counts inputs from Turkey or from its partners in regional trade as originating materials. Bilateral cumulation applies, for instance, under GSP (donor-country content) and in bilateral trade agreements. Since 1 January 1999, Turkey has been part of the diagonal Pan-European Origin Cumulation System for industrial goods, which allows traders to use originating material from any country within the zone (EU, EFTA, and central and eastern European countries) to produce an originating product while retaining preferential origin. The Mediterranean Origin Cumulation System is expected to be established in 2010 with the formation of the Euro-Mediterranean free-trade area.

¹⁰ The computed value consists of the sum of the cost or value of materials and fabrication or processing of the imported goods, and an amount for normal profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued, and other costs or values of specified goods (Article 27(1)(e) of Customs Law No. 4458).

¹¹ If the customs value cannot be determined on the previous basis, it can be calculated using data available in Turkey. According to Customs Law No. 4458, this has to be consistent with the Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation).

¹² WTO document G/VAL/2/Rev.15 of 21 October 2002.

¹³ Article 19 of Customs Law No. 4458.

¹⁴ Article 22 of Customs Law and Article 34 of the Customs Regulations.

Table III.2
Preferential rules of origin, September 2003

Agreement	Rules of origin
Customs Union with the European Community	Wholly obtained or sufficiently transformed products. ^a
Free-trade agreement with European Coal and Steel Community (ECSC)	Wholly obtained or sufficiently transformed products. ^a
Free-trade agreement with the European Free Trade Association (EFTA)	Wholly obtained or sufficiently transformed products. ^a
Economic Cooperation Organization (ECO) (Iran, Turkey, Pakistan)	Minimum of 50% of the f.o.b. value. ^b
Israel	Wholly obtained or sufficiently transformed products. ^a
Hungary, Lithuania, Romania, Czech Republic, Slovak Republic, Estonia, Latvia, Slovenia, Bulgaria, Poland, Macedonia (FYR of), Croatia, and Bosnia-Herzegovina ^c	Protocols on rules of origin based on the "Pan European Model" as concluded by the EU with the country: wholly obtained or sufficiently transformed products are eligible for preferences. ^a

a The criterion of sufficient transformation is centred on a change of tariff heading. Imported inputs are considered as sufficiently transformed if the four-digit tariff heading of the final product differs from that of the inputs. However, the criterion is subject to a wide range of product-specific qualifications specifying the use of certain inputs or value-added requirements.

b The minimum local content in the exporting country is expressed as a percentage of the imported product's factory cost.

c Macedonia (FYR of), Croatia, and Bosnia-Herzegovina are not currently parties to the Pan-European Cumulation System.

Source: WTO Secretariat, based on information provided by the Turkish authorities.

(iii) Tariffs, other duties, and taxes

(a) General features

17. As a result of the customs union with the EU, Turkey applies the EU common external tariff (CET) to all industrial products and to the industrial component of processed agricultural products imported from third countries (since 1 January 1996). On 1 January 2001, Turkey eliminated its tariffs that were above those specified in the CET on certain "sensitive" products (some 290 items at the HS twelve-digit level), including motor vehicles, bicycles, leather cases and bags, footwear and their parts, furniture, chinaware and ceramic ware, iron and steel wires and ropes not electrically insulated, and paper or paperboard sacks and bags for cement or fertilizers.

18. Goods imported into Turkey may be subject to five types of charges: customs tariffs, excise duties, the Mass Housing Fund (MHF) levy, the special consumption tax (SCT), and the value-added tax (VAT). The 2003 tariff is based on the 2002 Harmonized Commodity Description and Coding System (HS), and comprises 19,478 lines (19,590 in 1998) at the HS twelve-digit level (Table AIII.2).¹⁵ The tariff has 372 bands, including *ad valorem* equivalents.

19. Turkey accords at least MFN tariff treatment to imports from all trading partners, including non-WTO Members. Turkey does not have seasonal tariffs.

(b) MFN applied tariff structure

20. Turkey's tariff comprises *ad valorem* (98.5%, compared with 98.3% in 1998) and non-*ad valorem* rates. Moreover, although the tariff structure has been somewhat simplified since Turkey's last TPR, it still contains specific, mixed, compound, and formula duties, applying to 284 items at the HS twelve-digit level, down from 337 in 1998 (Table AIII.1). As can be seen in Table III.3, specific duties are levied on 30 items (down from 75 in 1998), including some alcoholic beverages, salt and cinematographic films. Mixed duties apply to 58 goods (66 in 1998), such as carpets, glass and glassware products, and watches. Compound duties are levied on 112 items (113 in 1998), mainly

¹⁵ See WTO (1998) for a full description of Turkey's national tariff.

processed agricultural products like yoghurt and pasta; whereas formula duties apply to 84 tariff lines (83 in 1998), such as butter, sugar confectionary, chocolate, malt, and prepared potatoes.

Table III.3
MFN tariff distribution, by type of duty, 2003

Type of duty	Number of lines (12-digit HS)	Examples (HS chapters)
<i>Ad valorem</i>	19,194	All chapters
Specific	30	22, 25 and 37
Compound	112	04, 07, 15, 17, 18, 19, 20, 21, 22, 35 and 38
Mixed	58	21, 33, 57, 70 and 91
Formula	84	04, 17, 18, 19, 20, 21 and 33
Total lines	19,478	

Note: Table AIII.1 lists all products subject to non-*ad valorem* tariffs.

Source: WTO Secretariat estimates, based on data provided by the Turkish authorities.

21. Since its last TPR, Turkey has reduced its simple average MFN tariff from 12.4% to 11.8% (excluding the MHF levy and taking into account the *ad valorem* equivalents of non-*ad valorem* rates) (Tables III.1 and AIII.2)). The coefficient of variation of 2.2 (up from 1.9 in 1998) reveals high dispersion of the tariff rates that range from zero to 227.5% (compared with 0-365.4% in 1998).¹⁶ Overall, the distribution of MFN rates is skewed towards rates between zero and 5%, which cover 55.7% of the tariff lines (up from 46% in 1998). Duty-free items represent some 20% of all tariff lines and include products under the Information Technology Agreement (358 items at the HS eight-digit level), pharmaceutical products, pulp of wood, some cement, and products of animal origin. More than three quarters of the tariff lines are subject to duties of up to 10%, while 5.7% of tariff lines have rates above 50% (Chart III.1). The most tariff-protected products include meat products and edible meat offal (227.5%; HS 02); and buttermilk, curdled milk and cream (170%; HS 0403).

22. The average MFN tariff rate is substantially higher in agriculture (25%; down from 26% in 1998) than in manufacturing (11.1%; down from 11.6% in 1998), and in mining and quarrying (0.2%; down from 2% in 1998). Using the WTO definition¹⁷, tariff protection is 43.3% on agricultural products (up from 42.8% in 1998), and 5.4% on non-agricultural products (down from 6.4% in 1998).

23. In aggregate, Turkey's tariff displays mixed escalation, negative from first-stage processed products, with an average tariff rate of 19% (up from 18.4% in 1998), to semi-finished goods, with an average rate of 6.4% (down from 7.9% in 1998); and positive from semi-finished to fully processed products, on which tariffs average 13.6% (down from 13.9% in 1998). This structure is strongly influenced by the high tariffs on raw agricultural products, and to a lesser extent, by the tariff structure in certain industries. The simple average MFN tariff on raw materials is about three times higher than on semi-processed products. Tariff escalation is positive from first-stage processed goods to semi-finished products, and negative from the latter to finished goods, in the following industries: wood

¹⁶ If calculated only on the tariff lines that carry *ad valorem* rates, the simple average MFN is 11.77%, the range is 0-227.5% and the coefficient of variation is 2.2.

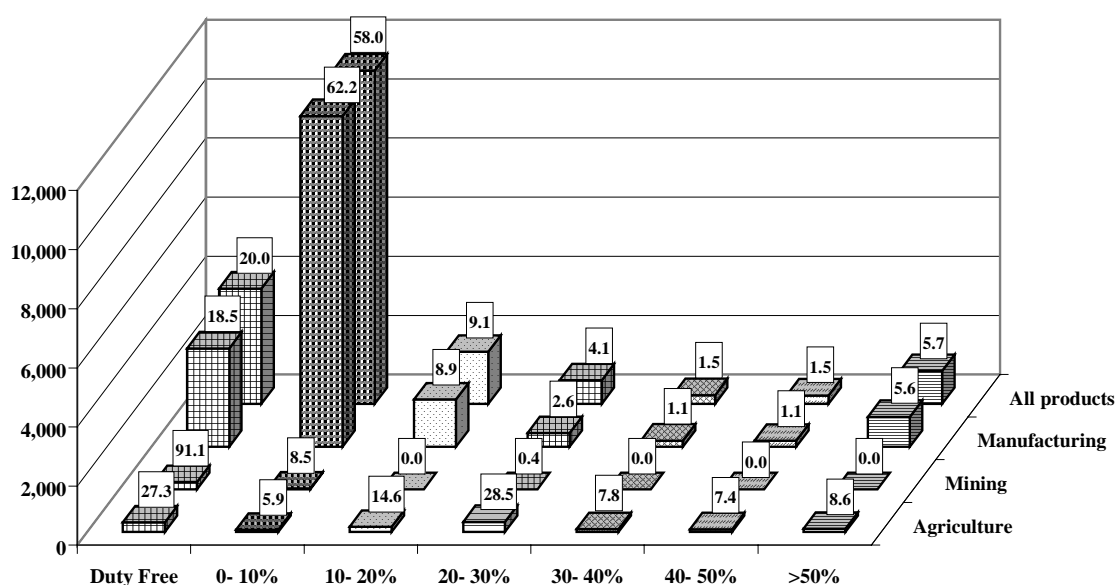
¹⁷ WTO definition of agriculture: HS Chapters 01-24 less fish and fishery products (HS 0301-0307, 0509, 051191, 1504, 1603-1605 and 230120) plus some selected products (HS 290543, 290544, 290545, 3301, 3501-3505, 380910, 382311-382319, 382360, 382370, 382460, 4101-4103, 4301, 5001-5003, 5105-5103, 5201-5203, 5301 and 5302).

products; paper, paper products, printing and publishing; and petroleum, coal, rubber, and plastics. It is positive in all other industries, with escalation most pronounced in food, beverages and tobacco products (Chart III.2). Therefore, further tariff rationalization, through simplification of the structure and reduction of rates, should introduce more transparency in the tariff regime and reduce the need for concessions.

Chart III.1

MFN tariff distribution by sector (ISIC1 definitions)^a, 2003

Number of lines



^a Labels are share of the total number of tariff lines, including non-*ad valorem* duties, by sector. Due to the non-use of some of the non-*ad valorem* duties in the calculations, the figures may not sum to 100%.

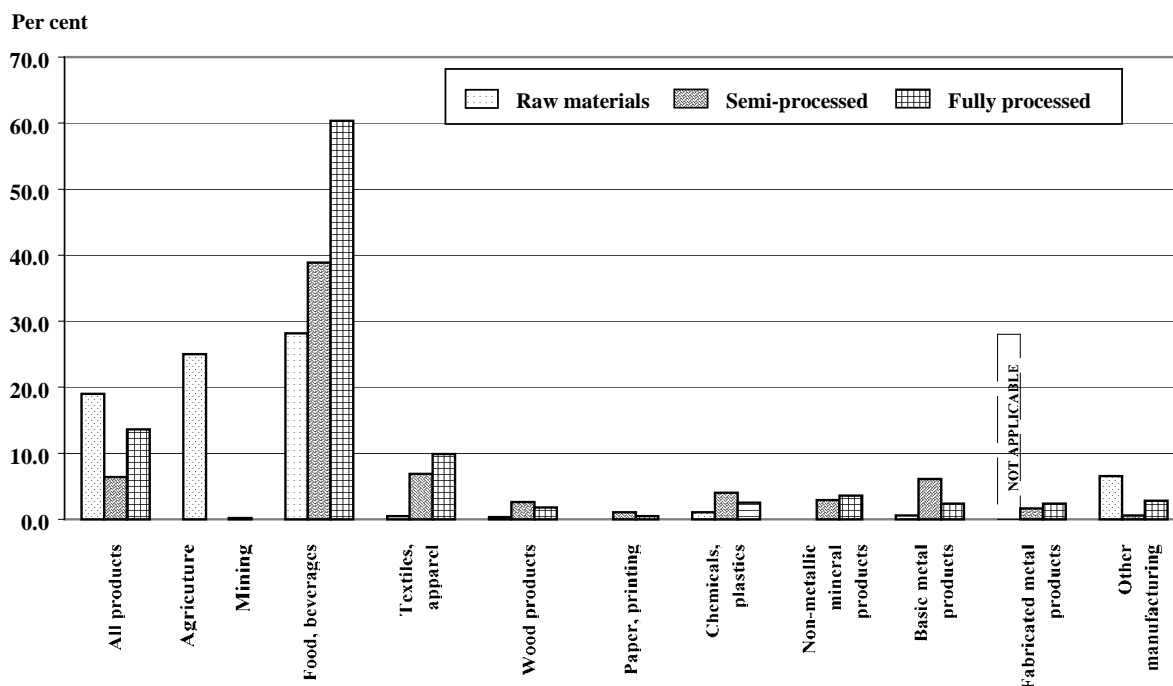
Source: WTO Secretariat calculations, based on data provided by Turkish authorities.

(c) MFN bound tariffs

24. As a result of the Uruguay Round negotiations, 46.3% of Turkey's tariff lines were bound (all tariff lines for agricultural products (WTO definition), and some 36% of the lines for non-agricultural products). In 2005, final bindings will range from zero to 225% on agricultural products, and from zero to 102% on non-agricultural goods. For certain products, applied rates are well below the bound rates, and even lower than the final bound rates, thus allowing Turkey margins to increase its import tariffs. The simple average bound rate is set to decline to 33.9% by 2005, compared with a simple average applied MFN rate of 11.8% in 2003.¹⁸ Furthermore, the imposition of non-*ad valorem* tariff rates does not ensure compliance by Turkey with its WTO binding commitments made at *ad valorem* rates. In practical terms, Turkey's tariff rates are largely bound at the same level as the EU bound rates, given that the CUD obliges Turkey not to impose tariffs higher than the EU common external tariffs except in areas where the CUD does not apply (mainly in agriculture).

¹⁸ The reduction in bound tariffs is to be implemented in equal annual instalments between 1995 and 2004. GATT (1994), Schedule XXXVII.

Chart III.2
Tariff escalation by ISIC 2-digit, 2003



Source : WTO Secretariat estimates, based on data provided by the Turkish authorities.

(d) Duty and tax concessions

25. Duty and tax concessions on imports are granted through two main programmes: the General Investment Encouragement Programme (GIEP)¹⁹; and Aids Granted to Small and Medium sized Enterprises (SMEs) Investments (section (4)(i)).²⁰ The Programme for Incomplete Investments and/or Non-Operating Enterprises was abolished on 30 June 2001. In addition, the inward-processing (IP) scheme benefits exporters. Imports of certain products for disabled persons or certain state administrations, financial leasing, project credit (from donors), and some temporary imports receive tariff concessions. All imports by the Ministry of National Defence in the context of the North Atlantic Treaty Organization (NATO) are exempt from payment of customs duties (Table III.4).²¹

26. Under the GIEP and the Aids Granted to SMEs Investments, feasible investment projects that are found to be eligible (by the Undersecretariat of Treasury and the intermediary banks assigned to receive SMEs' applications), can benefit from customs duty exemptions on all machinery and equipment to be used in the physical plant.²² Imports and local purchases of machinery and equipment within the scope of the approved global lists are also exempted from the VAT. Furthermore, investors who are committed to realize US\$1,000 of exports upon the completion of the investments are granted exemption (during the investment stage) from certain taxes, duties, and

¹⁹ Decree No. 2002/4367 published in the *Official Gazette* of 9 July 2002.

²⁰ Decree No. 2000/1822 published in the *Official Gazette* of 18 January 2001.

²¹ See WTO (1998) for a description of the exemption programmes eliminated up to 1998.

²² WTO document G/SCM/N/71/TUR, 25 October 2001. Once the exemption is listed on the "certificate", the investor may import the machinery and equipment indicated on the approved list, i.e. the "global list", only for the purposes of the investment in question.

related fees for bank operations and other official dues such as land registration.²³ There is no difference between foreign and domestic investors in terms of the investment encouragement programmes.

Table III.4
Key features of the concessional entry schemes in Turkey, September 2003

Scheme	Eligibility	Incentives	Performance requirement
1. (a) General investment encouragement programme (b) Aids granted to small and medium-sized enterprises investment	Feasible investment projects that are found to be eligible by the Undersecretariat of Treasury and the assigned intermediary banks for receiving SMEs' applications within the set framework of the related decrees according to the criteria of reducing regional imbalances within the country, creating new employment opportunities, increasing competitiveness while using technologies with greater value added	Exemption from customs and fund levies for imported machinery and equipment that are part of the investment project, i.e. on the "list" approved by the Undersecretariat of the Treasury ^a VAT exemption for both imported and locally purchased machinery and equipment that is part of the investment project, i.e. on the "list" approved by the Undersecretariat of the Treasury	None
2. Inward processing regime (a) Conditional exemption for imports (b) Use of equivalent goods (c) Repayment of duties collected on imports	Any exporter Any exporter Any exporter	Intended for goods to be re-exported. Suspension of duty and VAT on raw materials, auxiliary materials, semi-finished and finished products, and packaging materials After the realization of exports with domestic inputs, refund of VAT (but not customs duty) After realization of exports with imported inputs, refund of customs duty and VAT paid on imported inputs, based on a drawback method	None None None
3. NATO	North Atlantic Treaty Organization	0% on all imports	None
4. Defence	Ministry of National Defence or by public institutions on behalf of the Ministry	0% on all imports	None
5. Donation imports	State administrations	Certain items to be used mainly for the public interest approved by relevant Ministries. Information on incentives not available.	None
6. Financial leasing	Disabled persons Vessels, air carriers, medical equipment, and high-tech products	Vehicles produced especially for disabled persons Suspension of all customs duties and taxes up to the date the leasing contract is over; VAT reductions.	None
7. Temporary imports	Any importer	Certain commercial or personal items: tariff suspension on temporary use in Turkey for 3 to 12 months without any substantial transformation	None
8. Project credit (donor)	Project evaluation criteria of Turk Eximbank	Terms and conditions of the project loan are in accordance with the provisions of the OECD Consensus	None
9. Encouragement of tourism
10. Private (special) laws regarding exemptions

.. Not available.

- a Goods imported at 20% duty: passenger vehicles, buses (excluding double-decker buses), tractors (excluding tractors conforming to Euro-1 or Euro-2 norms and having environment friendly engines), trailers (except refrigerated trailers), televisions, videos, mini-refrigerators, furniture, import of yachts (including motorboats), trucks, (excluding off-road truck types and rock type dump trucks that are not allowed on highways), mixers, and trans-mixers.
Goods imported at 18% duty: expansion of or new investments that have a minimum capacity of 100,000 units per year of firms that will manufacture automobiles considered as new models for a period of ten years after the date of their first production worldwide; the CKD components and parts within the scope of the product shall be subject to unlimited application for the first two years and maximum 30% for the subsequent years.
Goods imported at 10% duty: raw materials, intermediary goods, and operating materials to be imported for operational needs.
Goods imported at 5% duty: construction material.

Source: WTO Secretariat, based on information provided by the Turkish authorities.

²³ Implementation is temporarily in accordance with Article 2 of the Law No. 3505 (of 3 December 1988).

27. As a result of the new Customs Law, some changes have been made to the IP system.²⁴ This regime allows Turkish manufacturers/exporters to import materials free of duties (including surcharge) and other commercial policy measures. Goods imported under the IP scheme are intended for re-export from the customs territory of Turkey in the form of compensating products.²⁵ The system works through suspension of duties and VAT until exports are produced (the most frequently used system), or re-imburement based on a drawback method. The suspension system is used whenever there is a concrete intention to re-export the goods in the form of compensating products.²⁶ Under the drawback system, import duties and VAT have to be paid when the goods enter for free circulation into Turkey.²⁷

(e) Tariff preferences

28. Since its previous TPR, the importance of tariff preferences in Turkey's trade has increased due to new bilateral trade agreements with Estonia, Czech Republic, Slovak Republic, Latvia, Slovenia, Bulgaria, Poland, Macedonia (FYR), Croatia, and Bosnia-Herzegovina. In addition, Turkey provides tariff preferences to EU and EFTA countries, Israel, Hungary, Romania, and Lithuania, and agreements with other seven countries are under negotiation (Chapter II(4)). As part of its obligations under the CUD, Turkey is obliged to adopt all the preferential agreements concluded by the EU with third countries, including the GSP. The majority of the agreements, which build on the design of the CUD, have eliminated tariffs on all industrial products (HS Chapters 25-97) (Table III.5).

Table III.5
Preferential trading agreements, September 2003

Agreement/Country	Coverage by Turkey	Preferential margin
Customs Union with the European Community	All industrial products Fish and fishery products Processed agricultural products	Duty free on industrial products and on the industrial component of processed agricultural products; 75% of MFN rates on fish and fishery products
Agreement between Turkey and the European Union on preferential trade in agricultural products	Some agricultural products (57 items at HS six-digit level)	Preferential tariff quotas, most with zero duty
Agreement between Turkey and the European Coal and Steel Community (ECSC)	Coal and steel products (280 items at the HS eight-digit level)	Duty free on all 280 items
Free-trade agreement with the European Free Trade Association (EFTA) ^a	All industrial products Fish and fishery products Processed agricultural products	Duty free on industrial products and on the industrial component of processed agricultural products; preferential specific and <i>ad valorem</i> rates on fish and fishery products
Economic Cooperation Organization (ECO) (Iran, Turkey, Pakistan)	36 items at the HS four-digit level ^b	No preferential rates applied ^c
GSP	2,884 items at the HS twelve-digit level	2,174 duty free items for developing countries and 2,884 duty free items for least developed countries
Israel	All industrial products Some agricultural and processed agricultural products (20 items at the HS four-digit level)	Duty free on industrial products; preferential tariff quotas on agricultural and processed agricultural products
Romania	All industrial products Some agricultural and processed agricultural products (31 items at the HS six-digit level)	Duty free on industrial products; preferential tariff quotas on agricultural and processed agricultural products

Table III.5 (cont'd)

²⁴ Decree No. 99/13819 published in the *Official Gazette* of 27 September 2002.

²⁵ Compensating products are all goods obtained from processing operations. They are of two types: main compensating products obtained under inward processing, and secondary compensating products obtained as a result of processing operations.

²⁶ In the suspension system, manufacturers can use substitutes of the imported goods for the manufacture of compensating products.

²⁷ The goods are placed for inward processing subject to prior authorization. Repayment of the import duty and VAT can be reclaimed when the compensating products are exported.

Agreement/Country	Coverage by Turkey	Preferential margin
Hungary	All industrial products Some agricultural and processed agricultural products (19 items at the HS six-digit level)	Duty free on industrial products; preferential tariff quotas on agricultural and processed agricultural products
Lithuania	All industrial products Some agricultural and processed agricultural products (10 items at the HS six-digit level)	Duty free on industrial products; preferential tariff quotas on agricultural and processed agricultural products
Estonia	All industrial products Some agricultural and processed agricultural products (62 items at the HS six-digit level)	Duty free on industrial products; preferential tariff quotas on agricultural and processed agricultural products
Latvia	All industrial products Some agricultural and processed agricultural products (54 items at the HS six-digit level)	Duty free on industrial products; preferential tariff quotas on agricultural and processed agricultural products
Slovenia	All industrial products Some agricultural and processed agricultural products (57 items at the HS six-digit level)	Duty free on industrial products; preferential tariff quotas on agricultural and processed agricultural products
Bulgaria	All industrial products Some agricultural and processed agricultural products (91 items at the HS six-digit level)	Duty free on industrial products; preferential tariff quotas on agricultural and processed agricultural products
Poland	All industrial products Some agricultural, processed agricultural, and fishery products (108 items at the HS six-digit level)	Duty free on industrial products; preferential tariff quotas on agricultural, processed agricultural and fishery products
Macedonia (FYR of)	All industrial products Some agricultural and processed agricultural products (40 items at the HS six-digit level)	Duty free on industrial products; preferential tariff quotas on agricultural and processed agricultural products
Croatia	All industrial products Some agricultural and processed agricultural products (53 items at the HS six-digit level)	Duty free on industrial products; preferential tariff quotas on agricultural and processed agricultural products
Bosnia-Herzegovina	All industrial products Most agricultural and processed agricultural products, with a few exceptions (692 items at the HS six-digit level)	Duty free on industrial products; preferential tariff quotas on agricultural and processed agricultural products

- a A number of agricultural goods are covered under bilateral agreements between Turkey and individual EFTA countries.
- b Including, among others, certain marble, pharmaceuticals, detergents, leather products, paper and paperboard, canvas, centrifugal pumps for liquids, compressors, henna, and bentonite.
- c Preferential margin is 10% reduction from the statutory rates. As these rates are higher than MFN rates, preferential rates are not applied.

Note: Relevant rules of origin are detailed in Table III.2.

Source: Information provided by the Turkish authorities.

29. Tariff preferences on agricultural products granted under Turkey's trade agreements, are generally subject to quota (Tables III.5 and III.6). Turkey applies preferential tariff quotas to four non-agricultural products: dimethyl terephthalate, acrylonitril, monoethylen glycol, and terephthalic acid. The latter two were introduced after the last TPR of Turkey.

Table III.6
Preferential tariff quotas on agricultural and processed agricultural products, September 2003

Free-trade agreement partner	Number of items	Products affected
European Union	34 items at the HS six-digit level	Live bovine animals and their meat, butter, cheese, flower bulbs, live plants, fresh cut flowers, potato seed, apple, peach, tea, wheat, rye, barley, rice, cotton seed, crude and refined soya bean oil, sugar, crude sunflower oil, crude rape, colza and mustard oil, tomato paste, vinegar, dog or cat food and other animal feeds
Israel	20 items at the HS four-digit level	Avocado, mango, carrot, sweet corn, citrus fruit, orange juice, coffee, kosher-brandy, and vodka
Romania	31 items at the HS six-digit level	Live bovine animals and their meat, natural honey, potato seed, wheat, barley, crude sunflower oil, and apple juice
Hungary	19 items at the HS six-digit level	Live bovine animals, wheat, corn, sunflower seed, crude oil, apple juice, and sparkling wine

Table III.6 (cont'd)

Free-trade agreement partner	Number of items	Products affected
Lithuania	10 items at the HS six-digit level	Live bovine animals, meat, butter, cheese, potato seed, ice-cream, and beer
Estonia	7 items at the HS four-digit level	Sheep meat, salted-dried or smoked meats, butter, cheese, egg yolk, prepared or preserved meat, and canned mushroom
Czech Republic	17 items at the HS four-digit level	Live bovine animals, salted-dried or smoked meats, buttermilk, butter, cheese, crude rape, colza and mustard oil, margarine, sugar confectionery, chocolate, jams-marmalades, fruit and vegetable juices, soup, beer, sparkling wine, spirituous beverages, and dog and cat food
Slovak Republic	13 items at the HS four-digit level	Live bovine animals, butter, cheese, bean, crude and refined sunflower oil, sugar confectionery, chocolate, jams-marmalades, fruit and vegetable juices, soup, beer, sparkling wine, and spirituous beverages
Latvia	13 items at the HS four-digit level	Butter, cheese, mushroom, prepared or preserved meat, sugar confectionery, chocolate, bakers' wares, canned mushroom, tomato ketchup, mayonnaise, ice-cream, beer, and sparkling wine
Slovenia	13 items at the HS four-digit level	Cheese, egg, potato seed, apple, pear and quince, sugar confectionery, chocolate, pasta, bakers' wares, canned cucumber, jams-marmalades, fruit and vegetable juices, and wine
Bulgaria	59 items at the HS eight-digit level	Horse, fatty livers, meals and pellets of aquatic invertebrates, cheese, flower bulbs, live plants, sweet corn, bean walnut, some fruits, seeds of coriander and caraway, wheat-barley and maize for sowing, millet, canary seed, sunflower seed, spores used for sowing, poultry fat, crude sunflower and maize oil, sugar confectionery, pasta, bakers' wares, some canned vegetables (cucumber, mushroom, sweet corn, etc.), jams-marmalades, fruit and vegetable juices, tomato ketchup, water, wine, wheat bran, tobacco and cigarettes
Poland	34 items at the HS four-digit level	Live bovine animals, fish, buttermilk, whey, butter, cheese, potato seed, some fresh vegetables (onion, shallots, cabbages, carrots, etc.), apple, strawberry, rye, wheat, oat, crude rape, colza and mustard oil, prepared or preserved meat, sugar confectionery, chocolate, pasta, some canned vegetables, jams-marmalades, fruit and vegetable juices, soup, beer, spirituous beverages, dog or cat food and other animal feeds
Macedonia (FYR of)	15 items at the HS four-digit level	Some fresh vegetables (tomato, onion, shallots, cucumber, etc.), bean, watermelon, apple, rice, and canned vegetables
Croatia	18 items at the HS four-digit level	Cheese and curd; apples; maize; sugar confectionery; chocolate and other food preparation containing cocoa; malt extract; pasta; prepared foods obtained by swelling or roasting of cereals or cereal products, bread, pastry, cakes, biscuits and other bakers' wares; fruit and vegetable juices; sauces and preparations therefore; mixed condiments and mixed seasoning; soups and broths and preparations therefore; waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured; beer made from malt; wine of fresh grapes; undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher; preparations of a kind used in animal feed
Bosnia-Herzegovina	193 items	All agricultural products classified under HS Code 1-24 with the exemption of live bovine animals; live sheep and goats; live poultry (exclusively fowl of the species <i>Gallus domesticus</i>); meat of bovine animals; meat of sheep or goats; edible offal of bovine animals, swine, sheep, goats, horses asses, mules or hinnies; meat and edible offal of poultry (exclusively fowl of the species <i>Gallus domesticus</i>)

Source: Information provided by the Turkish authorities.

(f) Other duties and taxes

30. In addition to customs tariffs, certain products are also subject to: excise duties, the Mass Housing Fund (MHF) levy, the special consumption tax (SCT), and the value-added tax (VAT). In June 2002, the excise duty legislation was further aligned with the EU; a specific duty was introduced on mineral oils, and *ad valorem* duties on tobacco products.

31. The Mass Housing Fund (MHF) levy applies to imports of fish and fishery products (3% of the tariff lines or 555 items at the HS 12-digit level, up from 514 tariff lines in 1998).²⁸ It is the difference between the required tariff protection and the statutory tariff rate.²⁹

32. With a view to simplifying and harmonizing the indirect tax system with the EU's, a new SCT was put into effect as from 1 August 2002, abolishing the following taxes and charges: Petroleum Consumption Tax, Liquid Fuel Price Stabilization Fund, Motor Vehicle Purchasing Tax (MVPT), Environment Fund, Supplementary Motor Vehicle Purchasing Tax, Supplementary VAT, Defence Industry Support Fund, and Tax for Education and Health Care Services.³⁰ The SCT is structured as a single tax levied equally on both domestic production and imports of products such as alcoholic beverages, cigarettes, motor vehicles, and petroleum products.³¹

33. The VAT is levied at 1%, 8%, and 18% (down from five rates ranging from 1% to 40% in 1998).³² Agricultural and basic goods are charged 1% and 8%, while some non-agricultural products and "luxury" items (including cosmetics, furs, televisions, and automobiles) are charged 18%. The VAT applies to the duty-inclusive customs value of import, and to the delivery value of locally produced goods.

34. In December 2001, Turkey adopted a VAT law to eliminate double taxation of the supply of services in connection with imports where the value of such services is included in the taxable amount, thus providing for alignment with the relevant EU legislation.

35. For all products subject to binding commitments (except duty-free goods), Turkey bound other duties and charges at: 15% of customs duty (for the "municipality share"); and 3% (road, rail or air transport) or 4% (maritime transport) of the sum of the c.i.f value, customs duty, and other charges (for the "transportation infrastructure fee").³³

(iv) Import prohibitions, quotas, and licensing

36. The importation of 11 items, by broad category, is prohibited by law for reasons such as environment, public security, health, public morals or the fulfilment of international obligations (Table III.7).

²⁸ The MHF was introduced in 1984 to finance the Government's low-cost housing schemes for poor and middle-income families. Customs duties collected on the agricultural component of processed goods are also transferred to the MHF.

²⁹ Turkey has not bound import duties on fish and fishery products.

³⁰ See WTO (1998) for an overview of the coverage and rates of all previous charges and taxes.

³¹ In most cases, the SCT is charged at the factory gate, but in some cases, such as motor vehicles, it is charged at the level of the dealer, and in others, such as tobacco, the SCT is charged on the consumer retail price, but collected from the manufacturer.

³² In 1998, the VAT had five rates: 1%, 8%, 15%, 23%, and 40%. The 15% and 23% rates were increased to 17% and 25% as from 13 December 1999. These rates were again increased to 18% and 26% on 15 May 2001. With the introduction of the SCT, the rates of 26% and 40% were eliminated.

³³ GATT (1994), *Schedule XXXVII by Turkey in the Uruguay Round*, Geneva. Turkey does not currently impose these other duties and charges. The "transportation infrastructure fee" and the "municipality share" were abolished as from 1 January 1993 with the promulgation of Law No. 3284, published in the *Official Gazette* of 11 July 1992.

Table III.7
Import prohibitions, September 2003

Description of items	Invocation of WTO Article	Domestic/International legislation
Narcotics, hashish and prepared opium (2 items) ^a	Health, IA ^b (Article XX:b, h)	Law No. 2313 on the Control of Narcotics, and the International Agreement on Narcotics Goods (1961)
Ozone depleting substances (1 item) ^{a, c}	Environment (Article XX:b, d)	Montreal Protocol on Substances that Deplete the Ozone Layer; London Amendments to the Montreal Protocol; Kopenhagen Amendment to Montreal Protocol; Import Regime Communiqué No. 2003/14 (Lists I, II, and III)
Colouring matters (1 item)	Health (Article XX:b)	Law No. 1593 on the Protection of the Public Health; Regulation on Special Conditions of Foodstuffs and Supplies and Objects Concerning Public Health; Import Regime Communiqué 2003/15 Add II (List)
Schedule I and II of the Convention (4 items) ^c	Environment (Article XX:b, d)	The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction; Import Regime Communiqué No. 2003/17 (List I)
Measurement instruments not conforming to Turkish legal norms (non-metric or double standard) (6 items)	Compliance with domestic law (Article XX:d)	Law No. 3516 on Standards and Accords
Arms and ammunition, propellant powders, prepared explosives, fuses, caps igniters detonators ^a (3 items)	Security (Article XXI:b(i),(ii))	Law on Firearms (No. 6136 of 1953); Import Regime Communiqué No. 2003/2
Gambling instruments (except for specified tourism purposes) ^a (1 item)	Public morals (Article XX:a)	Law No. 1072 on Gambling Instruments like Roulette, Tilt, and Pinball
Products making illegal use of a trade mark (all industrial products)	Compliance with domestic law; IA ^b (Article XX:d,h)	Paris Convention 1883 annexed to the Law of 1930 on Accession to 1925 Hague Agreement on International Industrial Property (1925); Statutory Decree No. 556 on the Protection of the Trademarks
Soil, leaf, stem, straw, and natural manure used for agricultural purpose (excluding turf and perlites cultivated in culture environment)	Public morals (Article XX:a)	Customs Law (No. 4458 of 1999)
Spawn of silk-worm	Health (Article XX:b)	Regulation on Agricultural Quarantine
..	..	Law No. 859 on Cultivation and Sale of Silk-worm and Silk-worm Spawn

.. Not available.

a Prohibited except when imported by authorized government bodies.

b IA: Undertaken in pursuance of obligations under intergovernmental commodity agreements.

c Imports prohibited only from non-members of the international agreements.

Note: Number of items refers to the Harmonized System classification at the four-digit level.

Source: WTO Secretariat, based on information provided by the Turkish authorities.

37. Since 1996, the Ministry of Agriculture and Rural Affairs has not issued "control certificates" to countries considered to be risks for diseases. According to the authorities, the decision was made "on sanitary grounds (to protect the domestic livestock industry from epidemic diseases such as Bovine Spongiform Encephalopathy (BSE) and foot and mouth disease (FMD))", and was based on the *Office International des Epizooties* (OIE) risk classification for live animals (dairy and beef cattle, sheep, goats, and poultry) and meat (beef, sheep, goat, and poultry).

38. Tariff quotas have been opened on an MFN basis for flat-rolled products of iron or non-alloy steel (hot and cold rolled). Quota allocations are made on "first come, first served" or past performance basis.

39. Since 1 January 1996, Turkey has been applying import quotas on certain textile and clothing products as a requirement for harmonizing its import policy with that of the EU.³⁴ If the exporting country agrees to a bilateral understanding, the quota is balanced in response to needs. Turkey applies quotas to products from ten countries under the double checking system (countries with which an agreement has been reached) and to goods from nine countries under the single checking system (countries with which an agreement has not been reached). It applies surveillance measures to imports from five countries under the double checking system and from 15 countries under the single checking system (Table III.8). Detailed information on the number of quota categories per country as well as the quota distribution system is provided in Chapter IV(4)(iii)(a). In addition, Turkey applies preferential quotas on certain products (section (iii)(e) above).

Table III.8
Quota and surveillance on certain textile and clothing imports, September 2003

Countries subject to quota		Countries subject to surveillance	
Under double checking	Under single checking	Under double checking	Under single checking
Belarus	Argentina	Bangladesh	Bosnia-Herzegovina
China (P.R.)	Brazil	Egypt	Cambodia
Chinese Taipei	Hong Kong, China	Macedonia (FYR of)	Croatia
Egypt	India	Moldova	Kazakhstan
Indonesia	Peru	Vietnam	Kyrgyzstan
Korea, Rep. of	Philippines		Laos
Macao	Singapore		Mongolia
Malaysia	Thailand		Nepal
Pakistan	Uzbekistan		Russian Federation
Vietnam			Sri Lanka
			Tajikistan
			Turkmenistan
			Ukraine
			United Arab Emirates
			Uzbekistan

Source: Information provided by the Turkish authorities.

40. Under the WTO Agreement on Textiles and Clothing (ATC), Turkey has submitted the list of products included in the first, second, and third phases of integration into GATT 1994.³⁵ The list for the third phase covers 42.4% of the volume of imports in 1990, including 66 categories of textile and clothing products.³⁶ According to the authorities, in 2002, 15 (out of 402 restricted) categories of products reached a quota utilization level of about 90%.

41. Prior import licences are required for 13 groups of items (201 items at the HS four-digit level, from 183 items in 1998), including telecommunications equipment, some machinery, some motor vehicles, transmission apparatus, some chemicals, and certain items related to civil aircraft (Table III.9). Importers of these items must obtain permission from the relevant authorities. In addition to security, safety, and environment reasons, the restrictions are intended to protect consumers, assure that imported vehicles are suitable for domestic highways, and, for certain items

³⁴ WTO document WT/REG22/7, 24 November 1997, "Legislation on Surveillance and Safeguard Measures on Imports of Certain Textiles Products".

³⁵ For a description of the first and second integration phases, see WTO (1998).

³⁶ WTO document G/TMB/N/364 of 5 January 2001.

(79 HS lines at the four-digit level) to prevent the use of imported goods for other than their intended purposes in civil aircraft.³⁷

Table III.9
Imports requiring a licence, September 2003

Description of items	Reason for licence
Radioactivity-related items (11 items) Uranium ores, isotopes, nuclear reactors, X-rays	Imports only permitted on approval by the Turkish Atomic Energy Authority: to assure patient security against the probable harmful effects of radioactivity
Telecommunications related items (8 items) Electrical apparatus for line telegraphy, telephone answering machines, radar, transmission, and reception apparatus	Imports only permitted with an Approval Document by the Institution of Telecommunication: to assure that imports are in conformity with the national telecommunication network
Machinery and related items (53 items) Air-conditioning machines, household type electrical refrigerators, clothes dryers, instantaneous gas water heaters, sewing machines of household types, machine-tools for drilling etc., vacuum cleaners, telex machines, some photocopying machines, certain motor vehicles	Imports only permitted with a certificate issued by the Ministry of Industry and Trade to the effect that after-sale services such as maintenance and repair are warranted on a regional basis and that maintenance service technicians and spare-part stocks are sufficient: to protect consumers
Motor vehicles (6 items) Road tractors for semi-trailers, station wagons, racing cars, trailers, special-purpose motor vehicles other than those designed for the transport of persons or goods	Imports only permitted with a pro forma invoice certified by the Ministry of Industry and Trade: to assure the suitability of imported vehicles for highways
Fertilizers (5 items) Animal or vegetable fertilizers, and mineral or chemical fertilizers	Imports only permitted on approval by the Ministry of Agriculture and Rural Affairs: to avoid damage to health of humans, animals or to the lifecycle of plants
Banknotes and related items (2 items) Banknotes and the like, securities	Imports only permitted on approval by the Central Bank of Turkey or the Board of Capital Markets: to assure the continuation of administrative order related to precious documents, e.g. shares, bonds
Explosives and related items (14 items) Technical ammonium nitrate, prepared explosives, some fuses, fireworks, some astronomical instruments	Imports only permitted on approval by the General Directorate of Security in the Ministry of Interior: to assure national security and public safety
Chemicals and related items (11 items) Hexane, white spirit, xylene, toluene, solvent naphtha, petroleum oils, benzene	Imports only permitted on approval by the General Directorate of Petroleum Affairs in the Ministry of Energy and Natural Resources. Imports of toluene require approval by both the Ministry of Energy and Natural Resources and the Ministry of Health: to protect consumers
Products affecting worker health (13 items) Asbestos, benzene	Imports only permitted on approval by the Institute of Workers' Health and Security in the Ministry of Works and Social Security: to protect workers' health
Civil aircraft related items (79 items) A wide range of items of a kind used on civil aircraft	Imports only permitted on approval by the General Directorate of Civil Aviation in the Ministry of Transportation: to prevent the use of imported goods in areas other than civil aviation
Maps related items (2 items) Maps and hydrographic or similar charts of all kinds, and digital maps and map information recorded on magnetic or optical media	Imports only permitted on approval by the General Command of Cartography in the Ministry of Defence, and the General Command of Naval Forces: national security
Items related to the manufacture of chemical weapons (22 items) A wide range of chemical products used in the production of weapons	Imports only permitted on approval by the Undersecretariat of Foreign Trade: to comply with the Convention on the Prohibition of Chemical Weapons
Energy Electricity and Natural Gas	Imports only permitted on approval by the Energy Market Regulation Authority (EMRA): to ensure effective operations in market activities and to comply with relevant EU Directives.

Note: Number of items refers to the Harmonized System classification at the four-digit level.

Source: WTO Secretariat, based on information provided by the Turkish authorities; and WTO document G/LIC/N/3/TUR/4, 21 September 2001.

³⁷ The import licences for electricity and natural gas are regulated under the Electricity and Natural Gas Market Laws and the complementary legislation enacted by the Energy Market Regulatory Authority (EMRA).

42. The importation of old, used, renovated, faulty and obsolete goods is subject to permission by the Undersecretariat of Foreign Trade. Measuring and weighing instruments to be released for free circulation in Turkey are subject to control by the Directorate General of Measures and Standards (Ministry of Industry and Trade); carrying materials comprising cinematographic and musical works are inspected and examined by the Directorate of Copyright and Cinema with the aim of combating piracy. Additional restrictions under Turkey's sanitary and phytosanitary regulations are discussed below (section (vi)(d)).

(v) Contingency trade remedies

(a) Anti-dumping and countervailing measures

43. In 1999, Turkey enacted new legislation on anti-dumping and countervailing measures aiming to bring it into conformity both with the relevant WTO Agreements and its CUD obligations. The new legislation comprises: (i) Law No. 3577 of 1989 on the Prevention of Unfair Competition in Imports, as amended by Law No. 4412, which entered into force on 27 May 1999; (ii) Decree No. 23861 on the Prevention of Unfair Competition in Imports, published in the *Official Gazette* dated 20 October 1999; and (iii) the relevant Regulation No. 23861 published in the *Official Gazette* dated 30 October 1999.³⁸ The provisions of the WTO Agreement on Subsidies and Countervailing Duties and the Agreement on the Implementation of Article VI of GATT 1994 would be observed in the case of any inconsistency between the domestic legislation and the WTO Agreements (Chapter II(2)).

44. The new legislative framework introduces provisions on, *inter alia*: *de minimis* dumping margins and negligible import volumes³⁹; like product⁴⁰; anti-circumvention⁴¹; and computing normal value in case of non-market economies.⁴² The new legislation also eliminated from the regime the concept of "market impairment" as an additional category causing dumping, which is not provided for by the relevant WTO Agreements.

³⁸ WTO document G/ADP/N/1/TUR/3 and G/SCM/N/1/TUR/3 of 17 April 2000.

³⁹ The dumping margin is the amount by which the normal value exceeds the export price. An investigation shall not be initiated where it is determined that the dumping margin, the amount of subsidy or the volume of imports is negligible. According to Article 28 of the Regulation, negligible rates as regards dumping investigations refers to cases where the margin of dumping is less than 2% of the export price; or the volume of dumped imports accounts for less than 3% of imports of the like product (when more than one country is involved, collectively the margin of dumping must be lower than 7% of imports of the like product). For subsidy investigations, negligible rates are when the amount of subsidy is less than 1% of the value of the product concerned; or for imports from developing countries, the amount of subsidy does not exceed 2% of the value of the product concerned, or the volume of subsidized imports accounts for less than 4% of the like product (where there is more than one developing country involved, collective imports must be lower than 9% of the total imports). No actions are taken in case of negligible rates.

⁴⁰ A like product is defined as a good that is similar to the product that is dumped or subsidized, or in the absence of such a product, another good with similar characteristics.

⁴¹ "Cases where there is evidence that, a change in the pattern of trade between a third country and Turkey, stemming from a practice, process or work for which there is insufficient due cause or economic justification other than to avoid the antidumping or countervailing duty". Practices that constitute circumvention are identified in Articles 2(i) of the Decree and 4(i) of the Regulation. See WTO document G/ADP/Q1/TUR/5 and G/SCM/Q1/TUR/5 of 10 January 2001.

⁴² In 2002, an amendment to the Regulation on non-market economies was put into force. Article 7 and Article 1 (Addendum 1) of the Regulation describe the different methods for determining normal value in the case of imports from non-market economies. See also WTO document G/ADP/N/1/TUR/3/Suppl.1 and G/SCM/N/1/TUR/3/Suppl.1 of 7 May 2002.

45. Imports causing material injury to an industry, constituting a threat of material injury to an industry, or causing material retardation of an industry to be established in Turkey may be filed for investigation under Article 3 of the new Law. A dumped product is a product with an export price lower than the "normal" value for the like product.⁴³ The export price is the price that is actually paid or payable for the product when sold for export, while the normal value is defined as a comparable price paid or payable in the ordinary course of trade for the like product when destined for consumption in the country of origin or export.⁴⁴

46. The Directorate General of Imports of the Undersecretariat of Foreign Trade is in charge of preliminary examination upon complaint or *ex officio*⁴⁵, where necessary; recommendations of possible investigations; carrying out such investigations; and acts as the secretariat of the Board of Evaluation of Unfair Competition in Importation. The Board, headed by the Director General of Imports or the Deputy Director General assigned by the latter, consists of representatives of the Ministry of Agriculture and Rural Affairs, Ministry of Industry and Trade (MIT), the Undersecretariat of the State Planning Organization, Undersecretariat of Customs, the Union of Chambers of Commerce, and Union of Chambers of Agriculture, and the relevant head of department in the Directorate General of Imports. The Board is responsible for deciding on initiation of investigation; submitting its decision on the adoption of provisional measures to the State Minister in charge of foreign trade affairs for approval; evaluating the results of an investigation and submitting a decision for definitive measures to the State Minister in charge of foreign trade affairs for approval; and making proposals in the course of an investigation.

47. Examination of a complaint or *ex officio* examination must be completed within 45 days (60 days in the previous legislation), and decisions to initiate an investigation must be published in the *Official Gazette*.⁴⁶ The complaint shall be considered to have been made by or on behalf of the domestic industry if it is supported by domestic producers whose collective output constitutes more than 50% of the total production of the like product, and not be less than 25% of total production of the like good by the domestic industry in Turkey. The interested parties are notified following the initiation of the proceedings. They are sent questionnaires and have a maximum of 37 days to respond⁴⁷; the time-limit may be extended upon request, provided that due cause is shown. The final decision is to be taken within one year from the initiation of the investigation, but, if necessary, this period can be extended by up to six months (Article 30 of the Regulation). Provisional measures shall be imposed no earlier than 60 days from the initiation of an investigation, and their duration shall be limited to four months. However, according to Article 12 of the Law, provisional measures may be extended to a period not exceeding six months upon request by exporters with a significant share of the exports of the product to Turkey. Definitive measures shall remain in force for five years from the date of the conclusion of the most recent review investigation that has covered both dumping and injury examination or from the date of their imposition.

⁴³ Article 4 of the Regulation.

⁴⁴ Articles 9 and 5, respectively, of the Regulation.

⁴⁵ In the case of fragmented industries involving an exceptionally large number of producers, the Turkish authorities may decide to initiate an investigation *ex officio* (without having received a written application by or on behalf of a domestic industry), provided there is sufficient evidence of dumping, injury, and a causal link (Article 4 of the Law and Article 20 of the Regulation). According to the authorities, so far Turkey has not initiated an investigation *ex officio*.

⁴⁶ Article 20 of the Regulation.

⁴⁷ Including seven days for the postal procedures.

48. Turkey reported initiation of anti-dumping investigations⁴⁸, and imposition of 33 anti-dumping measures during the period 1995-02. In terms of number of cases initiated, Turkey ranks eleventh among WTO Members (eighth at the time of the previous TPR).⁴⁹ As at 31 December 2002, Turkey had 27 definitive anti-dumping duties in force (Chart III.3 and Table III.10), compared with 37 at the end of 1996. During 1995-02, 25.6% of the anti-dumping investigations initiated by Turkey were against China (P.R.), 16.2% against members of the EU, and 9.3% each against the Republic of Korea, Thailand, and Chinese Taipei. Measures have affected mostly textiles and clothing, base metal products, plastics and rubber articles, and other manufactures such as lighters and pencils. Almost half of the duties are levied on a specific basis. Some *ad valorem* duties are as high as 100%.

Table III.10
Anti-dumping measures in force, September 2003

Country/customs territory	Product	Date of imposition of final measure	Duty
Belarus	Polyester synthetic staple fibres (not processed)	29 May 1998	19%
Belgium	Polyvinyl chloride	6 February 2003	US\$25/ton – US\$45/ton
Brazil	Fittings	27 April 2000	50%
China, P.R.	Refillable pocket flint lighters	29 May 1998	US\$0,12/piece
	Fittings	27 April 2000	95%
	Woven fabrics of synthetic and artificial staple fibres	15 February 2001	87%
	Wall clocks (battery accumulator or mains powered)	7 November 2001	US\$2,10/piece
	Woven fabrics of synthetic filament yarn	13 February 2002	70,44%
	Pocket lighters, gas-fuelled, non-refillable	8 May 2002	US\$0,05/piece
	Pocket lighters, gas-fuelled, refillable with electrical ignition system	8 May 2002	US\$0,05/piece
	Parts of lighter	8 May 2002	US\$0,03/piece
	Acrylic mink blankets	8 December 2002	US\$4/kg.
	Hook and loop	13 December 2002	US\$3,86/kg.
	Pencils with leads of graphite and pencils with leads of crayons encased in a rigid sheath	14 January 2003	US\$3,16/144 piece
	Bicycle tyres	30 April 2003	33%
	Bicycle tubes	30 April 2003	50%
	Motorcycle tyres	30 April 2003	37%
	Motorcycle tubes	30 April 2003	100%
	Door locks with cylinder	31 July 2003	US\$1,6/piece
	Other door locks	31 July 2003	US\$1,77/piece
	Padlocks, locks and cylinder for door locks only	31 July 2003	US\$0,74/piece
Chinese Taipei	Polyester textured yarn	28 June 2000	9.9% - 28.6%
	Self-drilling screws	10 November 2000	55%
	Woven fabrics of synthetic filament yarn	13 February 2002	13.91% - 30.84%
	Hook and loop	13 December 2000	US\$1,83/kg.
Finland	Polyvinyl chloride	6 February 2003	US\$45/ton
Germany	Polyvinyl chloride	6 February 2003	US\$25/ton – US\$45/ton
Greece	Polyvinyl chloride	6 February 2003	US\$45/ton
Hungary	Polyvinyl chloride	6 February 2003	US\$45/ton
India	Polyester textured yarn	27 June 2000	6.8% - 20.3%
	Bicycle tyres	30 April 2003	20%
	Bicycle tubes	30 April 2003	64%
Indonesia	Polyester synthetic staple fibres (not processed)	13 March 2000	6.2% - 37.4%

Table III.10 (cont'd)

⁴⁸ Excluding standard review or sunset review initiations.

⁴⁹ WTO (2002).

Country/customs territory	Product	Date of imposition of final measure	Duty
Israel	Polyvinyl chloride	6 February 2003	US\$25/ton – US\$45/ton
Italy	Polyvinyl chloride	6 February 2003	US\$25/ton – US\$45/ton
Korea, Rep. of	Polyester flat yarns	30 November 1999	0% - 21.2%
	Polyester synthetic staple fibres (not processed)	13 March 2000	11.9% - 24.6%
	Polyester textured yarn	28 June 2000	33.7%
	Woven fabrics of synthetic filament yarn	13 February 2002	3.51% - 40%
Malaysia	Woven fabrics of synthetic filament yarn	13 February 2002	3.23% - 15.93%
Moldova	Steel billets, rolled or obtained by continuous casting	17 October 2001	US\$7/ton
Netherlands	Polyvinyl chloride	6 February 2003	US\$45/ton
Rumania	Polyvinyl chloride	6 February 2003	US\$25/ton – US\$45/ton
Russian Federation	Steel billets, rolled or obtained by continuous casting	17 October 2001	US\$7/ton
Thailand	Woven fabrics of synthetic filament yarn	13 February 2002	8.67% - 30.93%
	Bicycle tyres	30 April 2003	100%
	Bicycle tubes	30 April 2003	100%
	Motorcycle tyres	30 April 2003	68%
	Motorcycle tubes	30 April 2003	100%
	Steel billets, rolled or obtained by continuous casting	17 October 2001	US\$4/ton
Ukraine	Pentaerythritol	4 September 2003	US\$693/ton
United States	Polyvinyl chloride	6 February 2003	US\$45/ton

Source: Information provided by the Turkish authorities.

49. Turkey has never initiated or imposed any countervailing measures.

(b) Safeguard measures

50. There have been no changes to the legal and institutional framework relating to safeguards in Turkey since its previous TPR. The Undersecretariat of Foreign Trade has the authority to propose, apply, and monitor surveillance and safeguard measures, as well as to determine the quantities and/or values of quotas, in order to protect domestic industries.⁵⁰ The Committee for the Evaluation of Safeguard Measures and Surveillance for Imports decides whether to initiate an investigation, and to adopt, review, extend, change or abolish any safeguard measure.

51. Under Articles 12.3 and 12.4 of the Agreement on Safeguards, following consultations between the European Communities (EC) and Turkey (on 27 September 2002), on provisional and definitive safeguard measures imposed by the EC on certain steel products, Turkey stated, on 6 March 2003, via a joint notification, that it had reserved all its rights regarding the pursuit of remedies provided under Article 8 of the Agreement.⁵¹

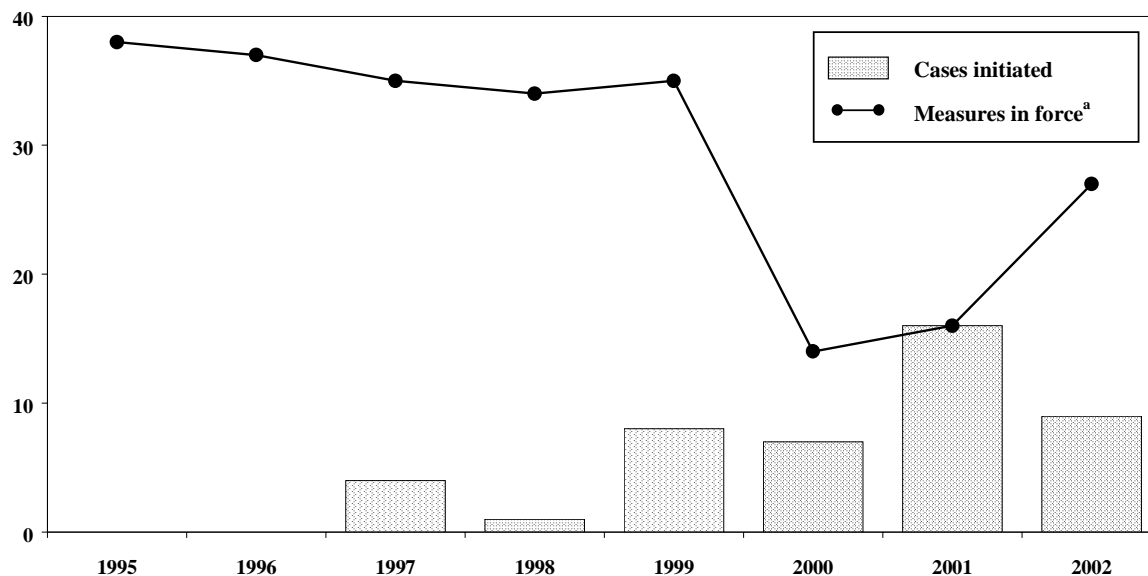
52. Turkey has not so far taken any action under GATT Article XIX.

⁵⁰ Council of Ministers Decree No. 95/6814 of 30 April 1995 (as amended by the Decree No. 95/7432 of 24 October 1995), and the Regulation on Safeguard Measures and Surveillance for Imports of 1 June 1995 (as amended in 1 November 1995). See WTO documents G/SG/N/1/TUR/2, 14 December 1995 and G/SG/N/1/TUR/2/Rev.1, 11 July 1997.

⁵¹ See WTO document G/SG/N/12/TUR/1 of 12 December 2002. The EU measures were notified in WTO documents G/SG/N/8/EEC/1 and G/SG/N/10/EEC/1 of 11 September 2002.

Chart III.3
Anti-dumping measures, 1995-02

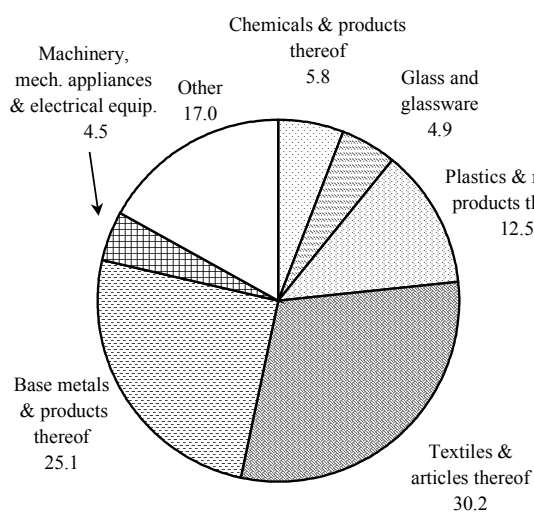
(a) Number of cases initiated and measures in force



^a Anti-dumping measures in force on 31 December.

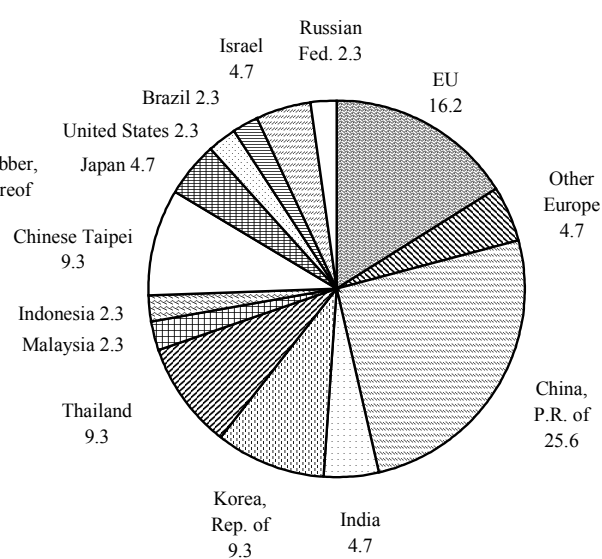
(b) Initiations by product

Per cent



(c) Initiations by origin

Per cent



Source : Notifications to the WTO; and information provided by the Turkish authorities.

(vi) Standards and other technical requirements

(a) Overview

53. Since its previous TPR, Turkey has continued transposing the various elements of the EU technical requirements into its domestic legal system by enacting a new legislative framework. This new framework consists of the Law on the Preparation and Implementation of Technical Legislation on Products, which entered into force on 11 January 2002⁵²; the Regulation on the Notification of the Technical Legislation and Standards between Turkey and the EU, which entered into force on 3 May 2002⁵³; the Regulation on the Affixing and Use of the EU Conformity Marking on the Products; the Regulation on Conformity Assessment Bodies and Notified Bodies; and Regulation Relating to the Market Surveillance and Inspection of Products.⁵⁴

54. The main provisions of the new legislation include: (i) producers can place only safe goods into the market; (ii) goods complying with the technical regulations are presumed to be safe; (iii) in the absence of technical regulations, the producer is obliged to comply with voluntary international or national standards, or with the codes of good practice in the sector concerned, or with the state of science and technology, or with the safety that consumers may reasonably expect; (iv) pre-market controls can be carried out by conformity assessment bodies designated by and responsible to the public authorities in relevant sectors; (v) post-market controls will be carried out by public authorities to ensure the existence of only safe products in the market; and (vi) information on draft technical regulations prepared outside the regulated area of the EU and on measures taken during market surveillance activities will be exchanged between Turkey, the Commission, and its member states.

55. In the framework of the CUD, Turkey has harmonized 259 out of 560 EU directives regarding technical legislation. The MIT expects to complete the transposition of the remaining EU directives into Turkish legislation that fall under its scope by the end of 2003.⁵⁵

56. There have been no changes in Turkey's institutional framework relating to standards and other technical regulations since its last TPR. Technical regulations are for health, safety, environment, and consumer protection.⁵⁶ Turkey has accepted the Code of Good Practice for the preparation, adoption and application of standards. The national enquiry point for TBT, concerning standards, is the Turkish Standards Institution (TSE); and for SPS measures, the General Directorate of the Protection and Control of the Ministry of Agriculture and Rural Affairs (MARA).⁵⁷

⁵² The Framework Law No. 4703 published in the *Official Gazette* No. 24459 of 11 July 2001.

⁵³ *Official Gazette* No. 24715 of 3 April 2002.

⁵⁴ The last three Regulations were published in the *Official Gazette* No. 24643 of 17 January 2002, and entered into force on 11 January 2002.

⁵⁵ The MIT has harmonized 152 out of 161 directives that are under its responsibility. Some of the EU directives already transposed by Turkey refer to pressure vessels, machinery and toy safety, motor vehicles and their trailers, textiles, crystal glasses, and electrical equipment. The completion of alignment of other legislation, for example, regarding pharmaceuticals and cosmetics is foreseen for 2003, while that on dangerous substances and preparations is expected by 2005. European Commission (2002).

⁵⁶ In accordance with the Regulation on the Implementation of the Notifications Foreseen in the TBT Agreement, which was put into force on 15 April 1997, the Undersecretariat of Foreign Trade, as the national enquiry point of TBT for notifications of technical regulations, is responsible for receiving and notifying the WTO about draft technical regulations.

⁵⁷ WTO document G/SPS/ENQ/2, 17 May 1995.

(b) Standards, testing, and certification

57. The Regime for Technical Regulations and Standardization for Foreign Trade consists of a Decree (No. 96/7794), a Regulation, and Communiqués. It was first put into force in 1995 and continues to regulate standardization activities. It is a transitional regime and is revised annually in light of the progress in the adoption of the EU's legislation. The regime aims to increase the competitiveness and quality of exports, and ensure that they do not harm the environment and conform to health and safety norms; and, in the case of imports, to ensure the same treatment to imported and domestic products, and protect human health, safety, animal and plant life, and the environment.

58. The Turkish Standards Institution (TSE) has been implementing standards for products manufactured in or imported into Turkey since 1960. It is an independent institution (not funded by the state budget), responsible for the preparation and publication of standards for all types of materials, products, and services in the country, industrial metrology and calibration, and conformity assessment and certification. The TSE is a full member of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC); it is also an affiliate member of the European Committee for Standardization (CEN) and European Committee for Electrotechnical Standardization (CENELEC).⁵⁸ The TSE is adopting and harmonizing its standards with those of the EU on 41 product categories, including foodstuffs, electrical equipment, and machinery; this is to be completed by the end of 2003. Recognition of testing procedures has been assured by mutual agreements concluded between Turkey and EU member States. In 1999, TSE became a signatory to various mutual recognition arrangements (MRAs) under the Low Voltage Directive (LVD), i.e. the CENELEC Certification Agreement (CCA), the Agreement on the use of commonly agreed marking for cables and cords complying with harmonized specifications (known as HAR), and the common mark of CEN and CENELEC (Keymark). According to the authorities, TSE has already initiated operations in connection with these schemes, accepting applications for certification. In 1998, TSE also joined the IEC System for Conformity Testing and Certification of Electrical Equipment (known as the CB Scheme), to ensure mutual recognition of results of tests performed in conformity with IEC standards on safety of electrical appliances.

59. Turkey has almost 23,790 standards (up from 16,930 in 1998), of which 1,264 are obligatory (Table III.11).⁵⁹ The compulsory standards, of which 25.6% are equivalent to international standards, are most frequent in activities such as image technology, materials handling equipment, mining and minerals, and paper technology.

60. Compulsory standards apply equally to imports (regardless of the origin) and locally produced goods. Testing and certification procedures are performed by the TSE on imported industrial products, by the Ministry of Environment on environment-related products, and by the Ministry of Health for medical products, cosmetics and detergents. Controls of, *inter alia*, imported animals, plants, foodstuffs, seeds, and veterinary products, are conducted through evaluation, based on risk analysis methods, by the MARA. In addition, commercial quality controls of certain agricultural products, such as fresh fruit and vegetables, dried fruits, edible oils, and cereals, are performed by Inspectorates of Standardization for Foreign Trade (inspection units working under the Undersecretariat of Foreign Trade) at the import and export stages. Controls of agricultural products

⁵⁸ The TSE has applied for full membership of CEN and CENELEC, but these applications have not yet been accepted. European Commission (2002).

⁵⁹ Since a standard may be classified under more than one International Standard Industrial Classification (ISIC) code, the numbers of total and obligatory standards that appear in Table III.11 are different from those in the text.

at the export stage are carried out under the Decree No. 6/7677 concerning the implementation of Turkish standards. Currently, 72 agricultural products (at the HS 12-digit level) are subject to compulsory export quality control. According to the authorities, the standards applied for these controls are in conformity with the UN-ECE standards, and the control procedures comply with the OECD scheme. There are 56 groups of inspectors of standardization for foreign trade working under eight regional directorates. UFT has also five commercial analysis and standardization laboratories, which perform the necessary laboratory analysis for export controls.

Table III.11
Official Turkish standards and their equivalence with international standards, September 2003

Area (ISIC classification)	Total Turkish standards	Compulsory standards	Turkish standards equivalent to international standards	Equivalence ^a (per cent)
Generalities, terminology, standardization	1,012	10	498	49.21
Sociology, services, company organization, management, administration	787	12	65	8.26
Mathematics, natural science	192	0	52	27.08
Health care technology	942	113	130	13.80
Environment and health protection, safety	1,513	40	287	18.97
Meteorology, measurement, physical phenomena	613	21	213	34.75
Testing	237	0	44	18.56
Mechanical systems and components for general use	581	133	148	25.47
Fluid systems and components for general use	1,031	122	242	23.47
Manufacturing engineering	954	33	288	30.19
Energy and heat transfer engineering	327	16	114	34.86
Electrical engineering	1,401	159	281	20.06
Electronics	714	2	209	29.27
Telecommunication	1,389	20	151	10.87
Information technology, office equipment	370	1	103	27.84
Image technology	175	0	133	76.00
Precision mechanics, jewellery	26	0	8	30.77
Road vehicle engineering	568	23	187	32.92
Railway engineering	100	3	12	12.00
Shipbuilding and marine structures	243	0	116	47.74
Aircraft and space vehicle engineering	935	2	117	12.51
Materials handling equipment	380	2	226	59.47
Packaging and distribution of goods	282	7	51	18.08
Textile and leather technology	833	50	256	30.73
Clothing industry	146	5	15	10.27
Agriculture	1,378	11	187	13.57
Food technology	1,409	104	408	28.96
Chemical technology	1,441	32	726	50.38
Mining and minerals	374	2	202	54.01
Petroleum and related technologies	829	36	178	21.47
Metallurgy	1,105	42	267	24.16
Wood technology	389	22	80	20.56
Glass and ceramics industries	351	31	65	18.52
Rubber and plastics industries	1,005	29	396	39.40
Paper technology	201	4	102	50.75
Paint and colour industries	306	20	102	33.33
Construction material and building	1,392	204	139	9.99
Civil engineering	209	26	6	2.87
Military engineering	139	0	0	0.00
Housekeeping, entertainment, sports	662	58	80	12.08
TOTAL	26,941	1,395	6,884	25.55

a Number of Turkish standards, equivalent to international standards, as a percentage of the number of Turkish compulsory standards.

Source: Information provided by the Turkish authorities.

61. Importers must obtain an inspection certificate from the TSE (the TSE Mark) before importing goods subject to compulsory standards for protection of human health, safety, animal and plant health, and the environment. The Quality Management Office of the TSE, set up in 1986, was reorganized on 1 June 2001 as the Quality and System Certification Department to carry out certification activities more efficiently. It carries out TSE certification services related to TS-EN-ISO 9000/1-2-3:1994; TS-EN-ISO 9001:2000; TS-EN-ISO 14001; TS 13001 (HACCP); and TS 18001 (OHSAS).⁶⁰ Producers with such certificates are exempt from inspection as long as they import for their own needs. Manufactured products bearing the TSE mark are also exempt from inspection if these imported materials are used in their production. About 29,800 TSE standard-marked product certificates have been issued as of August 2003. The Personnel Certification Department of the TSE was founded in 2000 to train and certify personnel in quality, environment, health, and safety.

62. Under Law No. 1705, the General Directorate of Measures and Standards of the MIT is authorized to implement the industrial standards set by the TSE; it is also responsible for quality control systems concerning legal metrology, establishment of calibration systems of test laboratories and operating private laboratories in accordance with the law.⁶¹

63. The Turkish Accreditation Authority (TURKAK), established on 4 November 2000 through Law No. 4457, started operations in March 2001. It is responsible for accrediting domestic and foreign bodies and making sure that they carry out laboratory, certification, and inspection services, in conformity with national and international standards. TURKAK is a full member of the European Cooperation for Accreditation (ECA), and became an associate member of the International Laboratory Accreditation Cooperation (ILAC).

(c) Marking, labelling, and packaging

64. There has been no major change in the marking, labelling and packaging legislation in Turkey since its previous TPR. While almost all voluntary standards cover details on marking, labelling, and packaging, there are three major obligatory standards related to these issues, all complying with ISO standards: TS 4331 on marking, labelling and packaging of materials and products that are supplied packaged into the market; TS 1418 on labelling of textile products; and TS 6429 on marking by colours or alphanumeric system for electrotechnical purposes. It is obligatory to affix clearly legible and visible labels on retail goods placed on the market, their packaging or their containers, displaying their price, place of production, and distinctive characteristics. Where it is not possible to affix such labels on a particular good, it is obligatory to prepare and display clearly visible and accessible lists containing the same information.⁶² All imported products must be labelled with their country of origin, quality and price.⁶³ Except for a few products, the operating, user, and maintenance instruction manual must be in Turkish and accompany each industrial product.⁶⁴ Moreover, shoes offered for sale

⁶⁰ Certificates under the scope of TS-EN-ISO 9000 and TS-EN-ISO 14001 standards have been granted to 2,130 and 85 companies, respectively.

⁶¹ Measurement and Calibration Law No. 3516 of 1989.

⁶² Article 12 of Law No. 4077 on Consumer Protection, as amended by Law No. 4822 of 2003.

⁶³ Article 5 of Implementing Regulation on Labels, Tariffs and Price Lists, and Article 12 of the Consumer Protection Law.

⁶⁴ Article 5 of Implementing Regulation on the Application Principles of Introductory Users Guide, which was issued based on Article 14 (Law No. 4077) on Promotion and User's Guide. Exempted products include: certain kinds of metal, PVC, polyethylene, plastic pipes, connecting parts, bolts, handcuffs, screws, nuts, nails, pins, and similar connecting elements; paper, erasers, pencils, and similar stationary materials; shovels, pickaxes, rakes, barrows, and similar agricultural products; towels, belts, trousers suspenders, buttons, zip fasteners and similar clothing parts; some construction materials; some households appliances; handicrafts, jewellery and similar products; and the following products sold in a package with a usage description: mineral

must display information about their main parts. For safety reasons, where goods and services offered to consumers may constitute a threat to the consumer's physical or mental health or the environment, it is obligatory to include information and warnings concerning this threat in a clearly legible and visible manner on the good or in the attached users' guides.⁶⁵ The same marking, labelling, and packaging requirements apply to domestic and imported products. Marking, labelling, and packaging of a product can be carried out at customs.⁶⁶

65. The marking, packaging, and labelling of pharmaceuticals are regulated by the Decree on Labelling and Packing referring to Law No. 1262. Marking, packaging, and labelling of cosmetics are regulated by the Decree referring to the Law No. 3977. These regulations apply both to domestically produced and imported goods and, according to the authorities, are based on international regulations.

(d) Sanitary and phytosanitary regulations

66. The importation and production of pharmaceuticals, drugs, some consumable medical products, cosmetics, detergents, foodstuffs, fishery products, and agricultural, animal, and veterinary products are subject to health and sanitary controls. Turkey's main legislation in this area is contained in: Sanitary Law No. 1593 of 1930, Agricultural Quarantine Law No. 6968 of 1957, the Law on Animal Health Control (Law No. 3285 of 1986, as amended by Law No. 4648 of 2001), Decree No. 560 on Production, Consumption and Control of Foods, and Fishery Law No. 1380 as amended by Law No. 3288 of 1986. No distinction is made between domestically produced goods and imported goods.

67. Imports of agricultural products and foodstuffs require a control certificate issued by the MARA; imports of pharmaceutical products, drugs, certain consumable medical products, cosmetics and detergents require a control certificate issued by the Ministry of Health.⁶⁷ In order to obtain a control certificate, depending on the type of product, the following documents must be presented to the relevant Ministry: a *pro forma* invoice, a health certificate, a certificate of analysis, a formula or list of contents of the product, a pedigree certificate, and a radiation analysis report. All documents should be obtained from and/or approved by the relevant authorities in the producer country. Documents should be in the original language; a translation into Turkish is required for each document. Control certificates can be obtained prior to import and should be presented to customs authorities upon import. The period of validity of the control certificates ranges from four to 12 months, depending on the product.

68. Since its previous TPR, Turkey has continued harmonizing its sanitary and phytosanitary regulations with EU norms, as well as with those of the Codex Alimentarius Commission, the Office International des Epizooties (OIE), and other international norms. This has been done on the basis of the Decree No. 560 on Production, Consumption and Control of Foods (published in the *Official Gazette* on 24 June 1995) and the Turkish Foods Codex Regulation (FCR) (published in the *Official Gazette* on 16 November 1997). Turkey has transposed some of the EU *acquis communautaire* by adopting legislation on packaging materials and food for particular nutritional uses.⁶⁸

oils, anti-freeze, hydraulic oil, matches, fertilizers, and some chemical products; paints, cements, lime, and similar products; food and drinks; cleaning products; and coal and similar products.

⁶⁵ Article 18 of Law No. 4077 on Consumer Protection Law, as amended by Law No. 4822.

⁶⁶ Article 102 of the Customs Law and Article 292 of the Customs Regulation.

⁶⁷ In some cases, the certificate can be waived if the importer assures the authorities that the products are destined for specified purposes or for the manufacturer's own use.

⁶⁸ European Commission (2002).

69. Turkey has signed cooperation agreements to prevent animal diseases from entering the country through trade in and transit of live animals and animal products, veterinary medications, fodder, and other products that may affect animal health.⁶⁹ Moreover, bilateral agreements on a product by product basis have been signed with Belgium, France, Germany, Italy, Netherlands, New Zealand, the United Kingdom, and the United States in relation to the use of sanitary and phytosanitary certificates.

70. According to the authorities, to prevent the expansion of epidemic diseases (including BSE), Turkey maintains a 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 (Article 7 of the Law on Animal Health). Since 2002, a new BSE surveillance system has been in place in Turkey.⁷⁰

71. Since its last TPR, three concerns have been raised against Turkey in the WTO SPS Committee.⁷¹ The first was on Turkey's import ban on livestock, related to foot-and-mouth disease (FMD), raised by the United States in June 1998, and then by Hungary in June 2000.⁷² The second, was raised by Hungary in March 2001, on Turkey's ban on pet food imports from all European countries related to transmissible spongiform encephalopathy (TSEs) as a result of the BSE epidemic.⁷³ The third case was raised by Ecuador in March 2001 about Turkey's control certificates for banana imports. This case has been settled bilaterally.⁷⁴

(vii) Government procurement

72. Turkey enacted two new laws on government procurement (Public Procurement Law (PPL) No. 4734 of 2002, and Law on Public Sector Procurement Contracts (No. 4735 of 2002), which entered into force on 1 January 2003⁷⁵, replacing Public Procurement (State Adjudication) Law No. 2886 of 1983. The new laws provide for, *inter alia*, additional transparency, and accountability, competition, while ensuring a more effective and efficient utilization of public resources in the country, and further harmonizing the domestic legislation with the *acquis communautaire*.

73. The PPL (Article 53) established the Public Procurement Authority (PPA) as an administratively and financially autonomous body with a link to the Ministry of Finance. The PPA's main responsibilities are to ensure the effective execution of the PPL and the proper application of the rules and procedures during tender proceedings. The PPA is composed of the presidency, the Public

⁶⁹ Turkey has signed cooperation agreements with Algeria, Bulgaria, Germany, Iran, the Netherlands, Syria, and Tunisia. Negotiations continue with Albania, Azerbaijan, Croatia, Czech Republic, Georgia, Kuwait, Macedonia, Russia, Slovakia, and Ukraine.

⁷⁰ It consists of inspection and monitoring of samples taken randomly from cattle that died or were slaughtered after showing neurological symptoms, and cattle slaughtered at 30 months and above. In total, some 3,000 BSE diagnostic tests have been carried out (European Commission, 2002).

⁷¹ WTO document G/SPS/GEN/204/Rev.3 of 26 March 2003.

⁷² This complaint was supported by Australia, EU, New Zealand, and Uruguay. In July 2001 the United States reported that its concerns were resolved (WTO document G/SPS/GEN265), while in October 2001 Hungary indicated that its concerns were outstanding.

⁷³ Hungary requested consultations under the DSU on 5 May 2002. Although some progress has been made, the problem is still pending.

⁷⁴ Formal consultations were requested by Ecuador on 10 September 2001. The notification to the Dispute Settlement Body (DSB) of a mutually agreed solution is contained in WTO document WT/DS237/4 of 29 November 2002.

⁷⁵ Certain articles of the new laws entered into force on the date of publication (January 2002) in the *Official Gazette*.

Procurement Board (PPB), and service units. The PPB is the main decision-making body of the PPA. It also examines complaints and may take corrective action and determine the remedies, cancel the tender decision, and terminate the tender proceedings, or decide that the complaint is irrelevant.⁷⁶ Final decisions by the PPA/PPB are to be taken within 60 days after a complaint is made.

74. Other main changes introduced by the PPL refer to, *inter alia*, the scope of public procurement, exceptions to the regime, and the thresholds. The scope (Articles 1 and 2) has been extended to cover most public entities and institutions governed by public law or under public control or using public funds. The new PPL also includes a separate section regulating the procurement of consultancy services (Articles 48-52). The exceptions to the PPL (public purchases not governed) are: procurement of goods and services by certain public institutions (such as public banks⁷⁷; operators in the energy, water, transportation, and telecommunications subsectors); procurement related to defence, security, and intelligence needs; procurement to be carried out through foreign financing pursuant to international agreements; purchases of goods and services for research and development projects; procurement related to agriculture and livestock; purchases by entities covered by the PPL from the State Supply Office (DMO); and procurement by public entities abroad, such as embassies and consulates. The thresholds above which foreign tenderers are entitled to participate in tenders opened in Turkey (Article 8) are: TL 350 billion for procurement of goods and services by contracting entities operating under the general or the annexed budget; TL 583 billion for purchase of goods and services by other contracting entities within the scope of the PPL, and close to TL 13 billion for constructions for administrations covered by the PPL.⁷⁸

75. Under Article 63 of the PPL, a 15% price preference is granted to all domestic tenderers in the procurement of goods, services, and works, if the PPA, the MIT, and other relevant departments are of the view that the supply is of domestic origin. However, this provision is not applicable to domestic bidders who participate in the tender proceedings by forming joint-ventures with foreign tenderers.

76. Three tendering procedures are specified in the PPL: (i) open tenders (Article 19), as the main procedure, where all tenderers are allowed to submit tenders, and notices are published not less than 40 days prior to the receipt of tenders; (ii) restricted tenders (Article 20), where following an open invitation to pre-qualify, tenderers are invited by the contracting entity to submit tenders⁷⁹; and (iii) negotiated tenders (Article 21), applied under certain conditions, for example if at the end of open or restricted procedures, no tender is submitted, and when it is impossible to define objectively the technical and financial aspects.⁸⁰ Direct procurement may be applied under certain circumstances, for

⁷⁶ The ten members of the PPB were appointed for five years (they cannot be re-elected) by the Council of Ministers on 29 March 2002.

⁷⁷ Procurement by public banks, for example, is subject to the Banking Act No. 4603. Nevertheless, construction tenders by banks are within the scope of the PPL.

⁷⁸ The thresholds and monetary limits specified in the PPL (with the exception of those below TL 1 million) shall be updated by the Public Procurement Authority (PPA) on the basis of the Index of Wholesale Prices of the previous year. They shall be published in the *Official Gazette* in February, and will be effective as of 1 February of each year. In cases of emergency, the thresholds may be further updated upon the proposal of the PPA subject to approval by the Council of Ministers (Article 67).

⁷⁹ Pre-qualification notices are published not less than 14 days in advance of the deadline for the pre-qualification application, and a letter of invitation to tenders is sent to all pre-qualified candidates at least 40 days before the submission of the tenders.

⁸⁰ In these cases, the procurement process is conducted in two stages: initial proposals cover aspects such as technical details and methods for fulfilling the requirements of the contract; and then final offers are presented, including the tender price.

example, if it is established that the needs can be supplied by only one real or legal person, or when the contract does not exceed TL 5 billion.⁸¹

77. Where it is not possible to determine the most economically advantageous tender on the basis of the price, other factors are taken into account such as operation and maintenance costs, cost-effectiveness, productivity, quality, and technical merit (Article 40 of the PPL). These factors are expressed in monetary terms where possible and, if not, their relative weights are indicated in the tender documents. The contracting officer is required to notify the results of the evaluation to all those who have submitted tenders (Article 41). In the event that the winning bidder decides not to take the contract, it is given to the second most advantageous bid.

78. The PPL specifies certain obligations for the contracting entities before opening a tender for goods, services, or works (Article 62): financial planning to ensure that there is an appropriation in the budget (on a yearly basis) regarding a particular tender, with the aim of completing the investment projects within the planned period of time; and the allocation proposed cannot be less than 10% of the cost of the project, while the allocation portions initially programmed for the following years cannot be cut in the future.

79. The Public Sector Procurement Contracts Law sets out the principles and procedures concerning the issuance and implementation of the contracts awarded according to the PPL, and deals with contract issues such as required content, limitations to carrying-over, and regulations on their annulment.

80. With the exception of certain products that it produces itself, the DMO procures goods (under the PPL framework) from the domestic and foreign markets if necessary, and resells them to public institutions at single prices applicable across the country. The DMO was a central procuring entity and reseller to other public institutions even before the enactment of Law No. 4734.

81. DMO's procurement procedures are covered by the new PPL; they were not covered by the previous legislation. All public institutions covered by the PPL must purchase goods directly from the DMO provided that the goods are on a list announced by the DMO at the beginning of each year.⁸² The goods include paper and cardboard products, stationery and office materials, office machines and tools, furnishings, lighting and heating apparatus, cleaning equipment, vehicles and their apparatus, and other office stocks.

82. Since June 1996, Turkey has participated as an observer in the WTO Committee on Government Procurement.⁸³

(viii) Local-content requirements

83. The authorities indicated that there are no local-content requirements for incentive purposes. However, under the public procurement regime, supplies of Turkish origin are eligible for a price preference of up to 15% (section (vii)). Moreover, in the automotive subsector, foreign investors usually accept a certain share of local content, although it is not compulsory (Chapter IV(4)(iii)(d)).

⁸¹ In the case of direct procurement, there is no requirement to publish a tender notice.

⁸² Article 3(e) of PPL No. 4734. Notice dealing with purchases from the DMO was published by the Ministry of Finance in the *Official Gazette* of 25 February 2003.

⁸³ WTO document GPA/M/2, 23 July 1996.

(ix) Countertrade

84. Turkey continues to use two main types of countertrade practices: barter/counter-purchase, and offset.⁸⁴ Barter/counter-purchase is conducted through an official procedure, whereas offset is managed by either the Undersecretariat of Foreign Trade (UFT) or the Undersecretariat of Defence Industry (UDI). Countertrade arrangements are regulated by the Export Regime Decree, and Communiqué No. 96/3 concerning Exportation Made through Counter-Purchase or Barter, published in the *Official Gazette* on 6 January 1996. All companies are allowed to conduct barter and counter-purchase in accordance with established procedures. Applications are made to the Exporters' Union.

85. In 2002, barter/counter-purchase trade amounted to US\$9.7 million. Turkey has two offset projects in operation in civil aviation; the projects will be terminated in 2008.

(xi) Other measures

86. Turkey has used restrictions for balance-of-payments reasons under Article XVIII:B of GATT several times since 1967. The last time Turkey disinvoked this Article was on 1 January 1997.

87. Turkey has no agreements with foreign governments or enterprises designed to influence the quantity or value of goods and services exported to Turkey. Furthermore, the authorities are aware of no such agreements between companies operating in Turkey and foreign enterprises.

88. Turkey applies no trade sanctions, either nationally or internationally, other than those endorsed by the United Nations Security Council or other regional organizations of which it is a member.

89. Compulsory reserve stocks are set for beet sugar (Chapter IV(2)(ii)), and oil products (Chapter IV(3)(iii)(b)).

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Registration and documentation

90. Similar registration and documentation requirements apply to exporters and importers in Turkey (section (2)(i) above). In addition, exporters are required to register with the Exporters Union and their local Chamber of Commerce. A fee of 0.05% of the f.o.b. value of exports is charged as a service commission.

91. Exports of the following products continue to be subject to registration: goods for which payments are made to the Support and Price Stabilization Fund (SPSF)⁸⁵; re-exportation of natural gas previously imported under the bilateral agreement with the Russian Federation⁸⁶; goods subject to international sanctions; goods with certificates under the Regulation on the Manufacturing of Vegetal and Animal Products Using Ecological Methods, published in *Official Gazette* No. 22145 of

⁸⁴ Barter/counter-purchase is used mainly with countries with an underdeveloped banking system or facing foreign exchange difficulties. Offset compensates import expenditures with export revenues, and helps to bring in new technology and high-tech investment.

⁸⁵ The SPSF extends concessional credits to the agriculture sector.

⁸⁶ The agreement between Turkey and the former USSR, of 18 September 1984, on the delivery of natural gas to Turkey, requires that 70% of the total value of natural gas is used for the purchase of Turkish goods and services. According to the authorities, this agreement has not been implemented since 1994.

18 December 1994; certain electrical equipment listed in Communiqué No. Export 88/29; centrifuges, motors, generators, rotary electrical converters, certain accessories and parts suitable for use in machines, transformers, static converters, condensers, and electronic lamps, tubes, and valves; goods covered by the Wassenaar Arrangement; goods covered by the Missile Technology Controlling Regime; items included in annexed Lists 2 and 3 of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction; exports of goods covered by the Vienna Agreement regarding the Protection of the Ozone Layer as well as protocols and amendments pertaining to that charter, only to the countries that are signatories to the arrangements in question; chemicals used in chemical weapons manufacture; certain protein materials and their derivatives; unprocessed olive oil, processed bulk or barrelled olive oil, unprocessed olive in bags, sacks or boxes, liquorice root, raw meerschaum and sample pipe; original bowel; and live sheep and cattle. Registration is on a case by case basis at the time of each export transaction.

92. In trade with EU member countries, the Undersecretariat of Customs may authorize exporters to issue movement certificates (known as A.TR), without submitting them for endorsement to the relevant authorities. Such authorization can be granted to exporters frequently making consignments; not involved in any serious or repeated offences against customs or tax legislation; and with records that can be checked by the customs authorities. This kind of authorization is not yet possible for trade with Israel, Hungary, Romania, Lithuania, Czech Republic, Slovak Republic, Estonia, Latvia, Slovenia, Bulgaria, Poland, Macedonia (FYR), Croatia, and Bosnia-Herzegovina, due to lack of detailed legislation, which is currently under preparation.

(ii) Export taxes

93. Three commodities are currently covered by export taxes: a Support Price Stability Fund (SPSF) tax of US\$0.50 per kg. on the exportation of raw skins (HS 41.01, 41.02, and 41.03) has been introduced since the previous TPR of Turkey. Export taxes continue to apply to: hazelnuts (in the form of deductions payable to the SPSF at the rate of US\$0.04 per kg. for unshelled hazelnuts, and US\$0.08 per kg. for shelled hazelnuts)⁸⁷; and semi-processed leather (US\$0.50 per kg. for environmental reasons).⁸⁸ Moreover, a 0.01% fee is levied on the f.o.b. value of exports subject to registration (section (i) above).

(iii) Export prohibitions, controls, and licensing

94. Since Turkey's last TPR, the introduction of a prohibition on orchis increased the number of prohibited items (by broad category) to 15 (Table III.12). Exports are prohibited under law for various reasons, including environment, health or religious reasons or to give effect to obligations under international conventions.

⁸⁷ Decree of the Council of Ministers published in *Official Gazette* No. 89/10306 of 23 July 1997.

⁸⁸ Decree of the Council of Ministers published in *Official Gazette* No. 89/13904 of 23 March 1989.

Table III.12
Export prohibitions, September 2003

Description of item	Invocation of WTO Article	Domestic/International law
Angora goats (1 item) ^a	Environment (Article XX:g)	Law on the Amelioration of Animals (No. 904 of 7.6.1926)
All game and wild animals (except wild pig, wolf, jackal, fox, marten, badger, snake, turtle and lizard) meat or alive and/or pieces and garments thereof (Ch. 1 and 2) ^a	Environment (Article XX:g)	Decision of the Council of Ministers (No. 234 of 8.3.1990)
Natural flower bulbs (1 item)	Environment (Article XX:g)	Export Regime Decree (No. 7623 of 22.12.1995)
Tobacco seedlings and tobacco plant (2 items) ^a	Environment (Article XX:g)	Law on Tobacco and Tobacco Monopoly (No. 1177 of 9.5.1969)
Dates "Phoenix the ophrasti center" (1 item)	Environment (Article XX:g)	Export Regime Decree (No. 7623 of 22.12.1995)
Indian hemp (1 item) ^a	Health (Article XX:b)	Law on the Controls of Narcotics (No. 2313 of 24.6.1933)
Pterocarya carpinifolia (1 item)	Environment (Article XX:g)	Export Regime Decree (No. 7623 of 22.12.1995)
Liquidamber orientalis (1 item)	Environment (Article XX:g)	Export Regime Decree (No. 7623 of 22.12.1995)
Plants of grapevine, fig, hazelnut, pistachio, and olive (not available)	Environment (Article XX:g)	Export Regime Decree (No. 7623 of 22.12.1995)
Ozone depleting substances (1 item)	Health; IA ^b (Article XX:b,d)	Vienna Convention; Montreal Protocol on Substances that Deplete the Ozone Layer; London Amendments to the Montreal Protocol
Chemicals listed in Schedule I of the Chemical Weapons Convention States, not party to the Convention (4 items)	IA ^b (Article XX:d)	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction
Trunk, log, lumber and wooden beams of walnut, mulberry, cherry, pear, plum, elm, ash, linden, and yew trees (Ch. 44) ^a	Environment (Article XX:g)	Decision of the Council of Ministers (No. 8186 of 24.4.1974)
Wood and wood charcoal (Ch. 44)	Environment (Article XX:g)	Export Regime Decree (No. 7623 of 22.12.1995)
Antiques and archaeological works (1 item) ^a	National treasures (Article XX:f)	Law on Ancient Works of Art (No. 2863 of 21.7.1983)
Orchis (dust, tablet or any forms)	..	Export Regime Decree (No. 7623 of 22.12.1995)

.. Not available.

a Export prohibited in 1993.

b IA: Undertaken in pursuance of obligations under intergovernmental commodity agreements.

Note: Number of items refers to the Harmonized System classification at the four-digit level.

Source: WTO Secretariat, based on information provided by the Turkish authorities.

95. An export quota limited to 35% of production by each firm applies to oil products (Chapter IV(3)(iii)(b)). An export licence is required for 20 categories of products (Table III.13). Exporters of these items must obtain permission from the relevant authorities (Chapter IV(3)(iii)(a)).

96. The Decree on the Regime of Technical Regulations and Standardization for Foreign Trade empowers the Government to make goods for export subject to quality control and inspection; to set the type of quality control and inspection applicable to such commodities; and to prohibit exports of these commodities unless accompanied by a Control Certificate issued by the Undersecretariat of Foreign Trade. Within the framework of the Decree, the Undersecretariat is responsible for the enforcement of quality control and any necessary inspection of these commodities. Some 72 agricultural products (at the HS 12-digit level) are subject to compulsory export controls for quality purposes. The coverage, broadly unchanged since the previous TPR in 1998, includes citrus fruit, apples, ground nuts, a variety of edible oils, dried apricots, dried figs, and some hazelnuts.

Table III.13
Exports requiring a licence, September 2003

Description of items	Authority responsible	Legal basis
Military weapons and ammunitions (excluding sporting and hunting shotguns)	Ministry of National Defence	Law 3763 of 3/1/1940
Opium and poppy seeds	Ministry of Health	Law 2313 of 12/6/1933
Addictive and psychotropic substances	Ministry of Health	Law 2313 of 24/6/1933 Addictive substances stated in the Psychotropic Agreement dated 1961, revised in 1972; Psychotropic Agreement dated 1971; and UN Agreement (dated 1988) to prohibit addictive substances
Products subject to Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	Ministry of Environment ^a	Decree 94/5419 of 7/3/1994
Living or non-living boars, wolves, jackals, foxes, martens, badgers, snakes, turtles, lizards, and identifiable parts of and clothing produced from them	Ministry of Forest ^a	Decree 90/234 of 8/3/1990
Fertilizers (excluding chemical fertilizers)	Ministry of Agriculture and Rural Affairs	Decrees 2/1771 of 27/12/1924; 6/4090 of 19/12/1964
Seeds (except forest-tree seeds)	Ministry of Agriculture and Rural Affairs	Law 308 of 21/8/1963 Communiqué 96/31 of 19/09/1996
Fishing products subject to the prohibition derived from the principles of fishery (including leeches)	Ministry of Agriculture and Rural Affairs	Law 1380 of 22/3/1971 (as amended by Law No. 3288 of 28/05/1986)
Racehorses	Ministry of Agriculture and Rural Affairs	Law 904 of 7/6/1926
Feeds covered by the Feed Law	Ministry of Agriculture and Rural Affairs	Law 1734 of 29/5/1973
Agricultural medicine and equipments	Ministry of Agriculture and Rural Affairs	Law 6968 of 15/5/1957
Pharmaceuticals for veterinary purposes	Ministry of Agriculture and Rural Affairs	Law 3490
Export of natural flower bulbs subject to quota or any other kind restrictions	Ministry of Agriculture and Rural Affairs	Decree 95/7623 of 22/12/1995
Live animals kept for breeding	Ministry of Agriculture and Rural Affairs	Decree 95/7623 of 22/12/1995
Sugar	General Directorate of Sugar Factory	Law 6747 of 22/6/1956
Natural mushroom (only exports to EU countries)	Ministry of Agriculture and Rural Affairs	Decree 95/7623 of 22/12/1995
Export control list of Australian Group	Undersecretariat for Foreign Trade (General Directorate of Exports)	Decree 95/7623 of 22/12/1995
Live tuna fish (<i>Oreocynus</i>)	Ministry of Agriculture and Rural Affairs	Decree 95/7623 of 22/12/1995
Electricity	Energy Market Regulatory Authority (EMRA)	Law 4628 of 20/02/2001 Law 4646 of 18/04/2001
Endangered species of wild animals and plants, samples of these species subject to CITES agreement	Ministry of Agriculture and Rural Affairs (I-A, II-A, III-A Lists) Ministry of Forest ^a (I-B, II-B, III-B Lists) Ministry of Environment ^a (I-C, II-C, III-C Lists)	Decree 96/78125 of 27/04/1996

^a Once separate Ministries, the Ministry of Environment and the Ministry of Forestry have been merged to form the Ministry of Environment and Forestry with the adoption of the Law on the Organization and Responsibilities of the Ministry of Environment and Forestry (Law No. 4856 of 1 May 2003).

Source: Information provided by the Turkish authorities.

(iv) Export subsidies, finance, assistance, and promotion

97. In addition to duty and tax concessions (section (2)(ii)(f)), various incentives schemes are available to exporters; some have been eliminated.⁸⁹ Under the Export Subsidy Programme for Agricultural Products⁹⁰, export subsidies are granted for 16 agricultural or processed agricultural products in the form of deduction of debts, on the basis of a percentage of the quantity of the product exported, or in cash (a fixed amount per ton in US dollars) (Chapter IV(2)(ii)(a)).

98. The Export Credit Bank of Turkey (Turk Eximbank), a state-owned bank established in 1987, and the sole official export credit agency in the country, still operates a large number of export credit, guarantee, and insurance schemes. Through its credit programmes, the Turk Eximbank provided support to 14% of Turkey's total exports in 2002 (down from 23% in 1998).⁹¹ Turk Eximbank supports exporters, export-oriented manufacturers, and foreign investors with short-, medium-, and long-term cash and non-cash credit programmes. Moreover, export receivables are discounted in order to promote sales on deferred payment conditions, and to increase export trade volume. Turk Eximbank regularly presents its annual programmes to the Supreme Advisory and Credit Guidance Committee, chaired by the State Minister in charge of the bank's activities. This Committee fixes upper limits of credits to be extended by the bank, guarantees to be issued, and insurance transactions to be effected, either as total amount or by country, sector, and programme-wise.⁹²

99. Since the previous TPR of Turkey, the Turk Eximbank has introduced six new export credit programmes: (i) the Short-term Pre-shipment Rediscount Programme, a finance facility put into effect in 1998 (within the framework of an additional limit extended to Turk Eximbank by the Central Bank of Turkey); (ii) the International Transportation Marketing Credit Programme, consisting of two sub-programmes, the first introduced in December 2001 regarding road transportation companies, and the second in February 2002 for shipping companies; (iii) the Credit Programme for Foreign Currency Earning Services, introduced in July 2002 and aimed at contributing to Turkey's foreign exchange earnings through financing companies resident in Turkey for both their foreign- currency-earning services abroad and the export of services such as software projects and consultancy services; (iv) the Letter of Guarantee Programme for Overseas Contractors' Services, introduced in July 2002 and aimed at strengthening the competitiveness of Turkish contractors in international markets; (v) the Export Finance Intermediation Loan (EFIL), introduced in 1999, using a credit facility from the World Bank; and (vi) the Pre-export Small and Medium Scale Enterprises (SMSEs) Credit Programme, introduced in April 2003, which is aimed at strengthening the competitiveness of SMSEs in international markets by providing financial support in the preparatory stage of their exports. In addition, the Performance Related Export Credit Programme was renamed as Pre-export Credit Programme in April 2003, enabling new exporters to benefit from this programme. Table AIII.3 provides the key features of Turkey's export credit programmes.

⁸⁹ In the Uruguay Round, Turkey committed itself to reduce export subsidies by 24% in value and by 14% in volume for 44 agricultural products (WTO definition) in equal instalments over a ten-year period starting on 1 January 1995. See WTO (1998).

⁹⁰ Decree No. 2000/5 of the Money-Credit and Coordination Council published in the *Official Gazette* dated 25 March 2000, which replaced Decree 1998/30.

⁹¹ The Turk Eximbank reformed its short-term credit programmes in early 1996 to bring them into conformity with the WTO Agreement on Subsidies and Countervailing Measures.

⁹² The programmes may be revised, eliminated, or extended according to the requirements by Turkish exporters and international rules and regulations (WTO document G/SCM/N/71/TUR of 25 October 2001).

100. The Turk Eximbank ensures that credits are available to small and medium-scale enterprises, which may experience difficulties getting credits from commercial banks because of a lack of adequate collateral, among other factors. Credits are allocated through the Turkish commercial banks or directly by the Turk Eximbank.⁹³ In 2002, 64% of short-term credits offered by Turk Eximbank were extended via intermediary Turkish commercial banks, and 36% directly. The banks supported approximately 6% of Turkey's exports through short-term credits in 2002.

101. The Turk Eximbank offers a variety of insurance policies for Turkish exporters, investors, and overseas contractors against commercial and political risks (Table III.14). Commercial risk-based losses, 70% of which is delegated to the reinsurance panel, are indemnified by Turk Eximbank from its own resources, while political risks are, in principle, backed by the Government. Since 2000, short-term political risks have also been ceded to the reinsurance panel within certain country limits. The premium rates of insurance programmes range between 0.9% and 3.5%, and vary according to the risk category of the buyer's country, the tenor and the payment term, and the status of the buyer (private, public or sovereign).

Table III.14
Key features of the export insurance programmes, September 2003

Programme	Coverage
Short-Term Export Credit Insurance (SECI)	Up to 90% of losses incurred as a result of commercial and political risks on shipments made by an exporter within one year, with payments deferred up to 360 days. Premium rates vary according to, <i>inter alia</i> , the risk category of the buyer's country, and the legal status of the buyer and the relevant payment term and maturity.
Specific Export Credit Insurance	Principally 90% of 85% of the contract value against commercial and political risks on the export of capital and semi-capital goods with at least 60% domestic content for up to five years; both pre- and post-shipment coverage. Premium rates are specifically calculated taking into account the above-mentioned criteria.
Overseas Contractors' Services Insurance	Up to 90% of 85% of the Turkish portion of the contract value against commercial and political risks
Overseas Investment Insurance/Guarantee	Up to 90% of losses against political risks of new direct investments by Turkish firms in overseas enterprises.
Specific Export Credit Insurance Post-shipment Political Risk	Principally 90% of losses incurred as a result of political risks in the post-shipment stage for receipts from exports of capital and semi-capital goods with at least 60% domestic content and with credit terms up to five-year maturity. Premium rates are specifically calculated taking into account the above-mentioned criteria.
Specific Export Credit Insurance Comprehensive Post-Shipments Risk Policy	Same as Specific Export Credit Insurance Post-shipment Political Risk, except that both post shipment political and commercial risks are covered.

Source: WTO Secretariat, based on information provided by the Turkish authorities.

102. Under the Undersecretariat of Foreign Trade, the Export Promotion Centre (IGEME) remains the main public organization for export promotion. IGEME acts as an intermediary in establishing business contacts between foreign importers and Turkish exporters. Its activities can be grouped into five main categories: research and development training (training programmes, seminars and workshops); trade information (computerized trade information system, and library); publicity and promotion (organization of national participation in international trade fairs, and other promotional activities through publications and internet); project management; and international relations.

⁹³ If the credits are allocated through commercial banks, the banks are responsible for the default risk of the borrowers. If they are allocated directly by the Turk Eximbank to the customer, then collateral and/or a bank guarantee is required.

103. In parallel to IGEME's activities, the Undersecretariat of Foreign Trade has carried out trade missions and buyers programmes since 1995. The market and sectoral coverage of the programmes are determined by considering Turkey's production and export-related capacity, potential markets, and trade possibilities. Until now, trade missions have been undertaken to 44 different countries, while 112 buyer missions programmes have been organized in Turkey. The annual average budget for both trade missions and buyer missions is about US\$788,000.

104. The public agency for the development of SMEs (KOSGEB), established in 1990 as a non-profit organization under the MIT, has several support schemes for improving Turkish SMEs' exports: (i) the training aid scheme supports part of the cost of training in various fields including packaging, standards for products and environment, and leadership and organizational management; (ii) the foreign market research support for enterprises, sectoral unions or vocational unions involved in the Contractual Package Support Programme (60% of foreign market research expense should not exceed specified amounts); (iii) support for participation in export-oriented business trips abroad for enterprises and sectoral foreign trade companies; and (iv) support for participation in national or foreign fairs by enterprises. KOSGEB also offers to enterprises: participation support in a permanent showroom abroad; support for participation in domestic and international industrial fairs; support for KOSGEB fairs; and support for export orientation, trade mark creation, and promotion campaign activities.

105. As part of its obligations under the CUD, Turkey has been harmonizing its legislation with that of the EU with respect to officially supported export credits (Article 12 of the CUD). Within this framework, the OECD Consensus principles on officially supported export credits with a repayment term of two or more years have been adopted. Turk Eximbank is a full member of the Berne Union (the international association of export credit insurers), and represents Turkey in the Group on Export Credits and Credit Guarantees (ECG) of the OECD Trade Committee.

(v) Free zones

106. The number of free zones increased from 14 at the end of 1998 to 21 in 2003.⁹⁴ There are no free points in Turkey. The enterprises established in the zones are active in a wide range of areas, including high-technology investments, leather products, and storage facilities.

107. The Free Zones Law No. 3218 of 15 June 1985, and the Turkish Free Zones Regulation of 1993 set out the framework for operations and practices in the zones. The legislation is designed to promote foreign direct investment and joint-ventures in export-oriented enterprises, provide easy access to imports of raw materials and equipment on favourable terms, increase employment, and promote international finance and banking. Free zones are also targeted at regional development and employment creation. The validity period of an operating licence is a maximum of ten years for tenant users, and 20 years for users who wish to build their own offices in the zone; if the operating licence period is for production, the terms are 15 and 30 years for tenant users and investors, respectively. Subject to the foreign trade regime (including duty payment and a fee of 0.5% of the transaction value), sales into the domestic market and barter trade are allowed without limitation.

⁹⁴ The free zones are: Mersin (1987), Antalya (1987), Ege (1990), Istanbul Ataturk Airport (1990), Trabzon (1992), Istanbul Leather and Industry (1995), Eastern Anatolia (1995), Mardin (1995), ISE Istanbul International Stock Exchange (1997), Izmir-Menemen Leather (1998), Rize (1998), Samsun (1998), Istanbul Trakya (1998), Kayseri (1998), European (1999), Gaziantep (1999), Adana Yumurtalik (1999), Denizli (2001), Bursa (2001), Tubitak-Marmara Research Centre (2002), and Kocaeli (2001). The parentheses indicate the years the zones began operation.

108. A wide range of financial benefits are extended to the free zones. These include exemption from the payment of customs duties and fees; exemption from corporate, income, and value-added taxes; no restrictions on profit transfer; and convertible currencies for exchange transactions. The foundation and operation of the free zones are generally undertaken through a mix of government and private partnership (often realized within the framework of "build, operate, transfer" schemes, such as in the Aegean, Kocaeli, Adana-Yumurtalik, Samsun Free Zones). Investors are also free to construct their own premises, while zones have office space, workshops, or warehouses available for rental on attractive terms. Goods may be stored, assembled, repaired, tested, or repackaged for purchasing or selling in the free zones. In 2002, government-budgeted expenditure for free zones was TL 340 billion, down from TL 1 trillion in 1998. Data on the amount of forgone revenue attributable to these fiscal benefits are not available.

109. There is no limitation on foreign capital participation in investment within the free zones, and 100% repatriation of capital is allowed without prior permission, tax, duty, or fee. Despite this, Turkey's free zones consist mainly of domestic companies; in 2003, 562 companies out of 3,440 free-zone companies in operation were foreign. Total trade volume of Turkish free zones increased from US\$7.7 billion in 1998 to around US\$11.1 billion in 2002, and almost 30% of this trade is with EU countries.⁹⁵

(vi) Other measures

110. According to the authorities, Turkey does not participate in any arrangements designed to curb or control exports to third countries at the request of foreign governments/companies. However, on the basis of bilateral agreements with the United States and Canada, Turkey maintains export quotas on 39 textile and five clothing categories (Chapter IV(3)(iii)(a)).

111. According to the Decree No. 32 on the Protection of the Value of the Turkish Currency, export earnings must be transferred to Turkey, through the banking system, within 180 days of the date of exportation.

112. Export cartels are covered, but not exempted from general prohibition of cartels, under Law No. 4054 on the Protection of Competition (section (4)(iii)).

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Incentives

113. Various public bodies/institutions and organizations in Turkey carry out state aid independently. State aid is aimed at investments (domestic and foreign), and is under the responsibility of the Undersecretariat of Treasury. The eligibility criteria depend on the regional development status and the size of the enterprise. Since tax exemptions are the major instrument in this system, it is difficult for an investor to quantify *a priori* the value of the benefits.

⁹⁵ In 2002, free-zone companies were involved in the following activities (number of companies in parentheses): purchasing-selling (2,296); production (523); renting (253); storage (92); underwriting (70); banking-insurance (56); assembling-disassembling-maintenance (43); founder operator/operator (21); and others (85).

114. Few changes have been introduced to the overall Turkish investment incentive programme, which became region- rather than sector-specific in 1993.⁹⁶ The Programme for Incomplete and/or Operating Enterprises was abolished on 30 June 2001. There are two main investment encouragement programmes: the General Investment Encouragement Programme (GIEP), and Aids Granted to Small and Medium-sized Enterprises (SMEs) Investments. The purpose of these programmes is to encourage and orient investments, in order to reduce regional imbalances within the country, and create new employment opportunities, while using technologies with greater value added. To qualify for any of these programmes, potential investors have to apply for an investment incentive certificate, which is non-transferable. In addition, regional programmes, designed to address specific needs of under developed regions, are put into force for specified periods as necessary.

115. In order to obtain an investment encouragement certificate under the GIEP, an investor should present, *inter alia*, a receipt for the deposit in the Central Bank, of an amount between TL 200 million and TL 400 million depending on the developmental status of the location, and the amount of fixed investment. The incentives provided under the GIEP are:

- (a) exemption from customs duties and fund levies for imported machinery and equipment that are part of the investment project indicated in the "List" approved by the Undersecretariat of Treasury;
- (b) fixed assets used in production and subject to depreciation, with a value above TL 5 billion, can benefit from investment allowance automatically under general tax laws;
- (c) VAT exemption for imported and locally purchased machinery and equipment;
- (d) investors who are committed to realize at least US\$1,000 of exports upon the completion of the investment are granted, during the investment stage, an exemption from taxes, duties and related fees for bank operations, and other official dues such as land registration, and company registration⁹⁷; and
- (e) credit allocation from the budget to encourage investments aiming at regional development⁹⁸, R&D, environmental protection, priority technology, and technology development.⁹⁹

116. Under the Aids Granted to SMEs, companies entitled to receive investment incentives are those: operating in manufacturing, agri-industry, tourism, education and health, mining, and software industries; employing up to 250 workers; and holding assets not exceeding TL 600 billion. The incentives are the same as under the GIEP, except that different ceilings are set for the amount of

⁹⁶ Several incentive schemes run in parallel to the general investment aid programme. These include assistance provided to exporters (such as duty concessions, export finance, insurance, guarantee, promotion, and marketing assistance) (section (3)(v)), to the agriculture sector (including input subsidy payments), to the energy sector (such as subsidies for the production of hard coal), to maritime (tax incentives), and to tourism (including corporate income tax exemption). See Chapter IV for details.

⁹⁷ According to Law No. 4842, the obligation to have an incentive certificate and to realize US\$1,000 of exports to benefit from this measure will be abolished as from 1 January 2004.

⁹⁸ In this case, the credit limit is 30% of the fixed investment (not exceeding TL 4.5 trillion), at an interest rate of 20%, and a term structure of six years with a three-year grace period.

⁹⁹ In these four cases the credit limit is 50% of the fixed investment (not exceeding TL 400 billion), at an interest rate of 20%, and a term structure of five years with a one-year grace period.

credit to be allocated and the interest rate to be applied depending on the regional location of the investment.¹⁰⁰

117. Turkey also offers five additional support programmes (two created since its last TPR). First, on the basis of regional development, organized industrial zones (OIZs) are offered subsidized industrial plots¹⁰¹; infrastructure, including transportation and communication facilities; and subsidized credits. Since its establishment in 1962, 70 OIZs have been created, and the credit granted during 1962-02 amounted to US\$546 million. By the end of 2006, it is aimed to increase the number of OIZs to 80.

118. Second, the small-scale industrial estates scheme, which dates back to 1965, has provided credit of US\$1,228 million between 1965 and 2002, towards the construction of modern workshops with sanitary conditions. At the end of 2002, 358 estates and 82,797 workshops had been constructed (by 2006 the target is to build 500 estates and 125,000 workshops); the main activities are car repair works, metal manufacturing, and wooden industry. On the basis of regional development, these estates are granted, *inter alia*, infrastructure facilities and subsidized credits.¹⁰²

119. Third, with the objective of upgrading the effectiveness and expanding the SMEs' share of total production, the KOSGEB provides services related to production, marketing, quality control, machinery and equipment support, technology development, training, and information; it also prepares and executes projects. The KOSGEB has several support schemes for the improvement of Turkish SMEs exports (section (3)(iv)).

120. Fourth, on 26 June 2001, the Technology Development Zones Law (No. 4691) was approved by the Grand National Assembly of Turkey. The legislation promotes the use of high/advanced technologies and the development/production of technology or software in technology development zones, and the related R&D capabilities, through cooperation between universities, research institutions, and producers. Financial support is granted for, *inter alia*, land procurement, infrastructure and construction of administrative buildings. Income and corporation tax exemptions are granted for five years; the Council of Ministers can extend this time up to ten years for certain technological areas and selective products. Researchers, software engineers, and R&D personnel working in the zone are exempt from all types of tax for ten years.

121. Fifth, the Industrial Zones Law (No. 4737, published in the *Official Gazette* of 19 January 2002), amended the previous Law on Industrial and Organized Industrial Zones, aiming to promote domestic and foreign investment by offering incentives and easing administrative procedures (such as removing red tape) for investors. Industrial zones (IZs) are established by the Council of

¹⁰⁰ The investment credit limit allocated to SMEs is TL 300 billion, with a 10% interest rate in priority development regions and 15% in other regions, and maturity of four years. The operational credit limit for SMEs is TL 120 billion, with a 15% interest rate in the priority development regions and 25% in other regions, and maturity of two years. With the investment credits, no repayment is made in the first year.

¹⁰¹ A new Legislation on Organized Industrial Zones (No. 4562 published in the *Official Gazette* of 15 April 2000) determines the principles for the establishment, structure, and administration of OIZs. The size of industrial plots varies between 4,000 and 70,000 square metres. They are sold to industrialists at the cost of the land and infrastructure, without profit. An advance payment of 10%-25% of the cost of the plot has to be made, and the rest is paid between four and ten years. The Ministry of Industry and Trade pays up to 99% of the infrastructure cost, depending on the level of development of the regions. The interest rate of the credit ranges from 10% to 20%, and the maturity between nine and 15 years depending on the degree of development of the area.

¹⁰² The interest rate of the credit ranges from 10% to 20%, and the maturity is 11 years with a one year grace period.

Ministers, upon proposals from the Ministry of Industry and Trade (MIT), at locations designated by the Coordination Committee for Industrial Zones. The acquisition of land and the preparation of the infrastructure required for the construction of IZs are funded by the MIT. The Council of Ministers determines, within the framework of the investment incentives decrees, the incentives that will be applied to investments in IZs.

(ii) Public enterprises and privatization

122. Since Turkey's previous TPR, the public sector has continued to exert a direct and strong influence on the economy, mainly through public enterprises (PEs).¹⁰³ Most of these still operate under monopoly or hold exclusive rights in many sectors, including banking, transportation, agricultural processing, energy, and telecommunications. Table III.15 lists some of the most important PEs in operation. The contribution of PEs to Turkey's GDP was around 6.2% in 2002, only slightly less than at the beginning of the 1990s, and their share in total employment was about 2% in the same year.¹⁰⁴ With World Bank assistance, Turkish authorities completed a study on PEs that revealed overstaffing amounting to 45,800 employees (out of 385,000).¹⁰⁵ Moreover, many of these companies still run losses with the consequent budgetary transfers.

Table III.15
Public enterprises, September 2003

PE	Activity	State ownership	Related law
Manufacturing			
MKEK	Machinery and chemicals	100.00%	DL No. 233 ^a
DMO	Office supplies	100.00%	DL No. 233 ^a
SUMER HALI	Hand carpet	100.00%	DL No. 233 ^a
SUMER HOLDING	Textiles	100.00%	Law No. 4046
GERKONSAN	Iron and steel construction	Subsidiary	Law No. 4046
SEKA	Pulp and paper	100.00%	Law No. 4046
DİVHAN	Iron ore	100.00%	Law No. 4046
TDCI	Iron ore	100.00%	Law No. 4046
Mining			
ETİ HOLDING	Mining industry	100.00%	DL No. 233 ^a
TTK	Coal mining	100.00%	DL No. 233 ^a
TKİ	Lignite mining	100.00%	DL No. 233 ^a
KBI	Copper	100.00%	Law No. 4046
ETİ KROM	Chrome mining	100.00%	Law No. 4046
ETİ BAKIR	Copper mining	100.00%	Law No. 4046
ETİ GUMUS	Silver mining	100.00%	Law No. 4046
ETİ ELEKTROMETALURJİ	Metallurgy	100.00%	Law No. 4046
ETİ ALUMİNYUM	Aluminium	100.00%	Law No. 4046
Electricity			
TEİAŞ	Electricity transmission	100.00%	DL No. 233 ^a
EUAS	Electricity generation	100.00%	DL No. 233 ^a
TETAS	Electricity contracting & wholesale	100.00%	DL No. 233 ^a
TEDAS	Electricity distribution & retail sale	100.00%	DL No. 233 ^a
TEMSAN	Electromechanic equipment	Subsidiary	DL No. 233 ^a
YENİKÖY ELEKTRİK ÜRETİM A.Ş.	Electricity generation	100.00%	Law No. 4046
KEMERKÖY ELEKTRİK ÜRETİM A.Ş.	Electricity generation	100.00%	Law No. 4046
YATAĞAN ELEKTRİK ÜRETİM A.Ş.	Electricity generation	100.00%	Law No. 4046

Table III.15 (cont'd)

¹⁰³ PEs in Turkey comprise both state economic enterprises (SEEs) and state-owned enterprises (SOEs). In general, SEEs are part of the Government's budget and are obliged to report to the Treasury and the SPO, whereas SOEs fall under the Commercial Code and have a more independent planning administration.

¹⁰⁴ OECD (2002b).

¹⁰⁵ This estimate excludes 15,000 workers who retired under a voluntary scheme introduced in December 2001 (IMF, 2002).

PE	Activity	State ownership	Related law
Petroleum			
TPAO	Crude oil exploration and production	99.98%	DL No. 233 ^a
BOTAS	Oil pipeline	100.00%	DL No. 233 ^a
PETKIM	Petrochemicals	95.86%	Law No. 4046
TUPRAS	Petroleum refineries	65.80%	Law No. 4046
DITAS	Maritime tanker transport	Subsidiary	Law No. 4046
ESGAZ	Natural gas distribution	100.00%	Law No. 4046
BURSAGAZ	Natural gas distribution	100.00%	Law No. 4046
Agriculture			
TSFAS	Sugar processing	99.99%	DL No. 233 ^a
TMO	Soil products	100.00%	DL No. 233 ^a
CAYKUR	Tea processing	100.00%	DL No. 233 ^a
TIGEM	Agricultural production	100.00%	DL No. 233 ^a
IGSAS	Fertilizer	Subsidiary	Law No. 4046
TUGSAS	Fertilizer	100.00%	Law No. 4046
TEKEL	Tobacco and alcoholic beverages	100.00%	Law No. 4046
EBAS	Meat, fish processing	100.00%	Law No. 4046
KÜTAHYA ŞEKER FABRIKASI	Sugar processing	100.00%	Law No. 4046
Transportation			
TCDD	Railway services	100.00%	DL No. 233 ^a
TUDEMSAS	Railway transportation equipment	Subsidiary	DL No. 233 ^a
TULOMSAS	Railway transportation equipment	Subsidiary	DL No. 233 ^a
TUVASAS	Railway transportation equipment	Subsidiary	DL No. 233 ^a
DHMI	Airports administration	100.00%	DL No. 233 ^a
KIYEM	Cost security	100.00%	DL No. 233 ^a
TDI	Seaports administration	100.00%	Law No. 4046
THY	Airlines	98.17%	Law No. 4046
Communication			
PTT	Post, telegraph	100.00%	DL No. 233 ^a
TURK TELEKOM A.Ş.	Telecommunication	100.00%	Law No. 4046; Law No. 4673
Banking			
ZERBANK	Banking (agricultural support credits)	100.00%	Law No. 4603; Law No. 4389
HALKBANK	Banking	99.99%	Law No. 4603; Law No. 4389
T.KALK.B.	Banking (development)	99.08%	Law No. 4456; Law No. 4389
EXIMBANK	Banking (export credit)	100.00%	Law No. 3332; Law No. 4389

a Law Empowered Decree No. 233

Source: Information provided by the Turkish authorities.

123. Given this situation and building on international experience, which shows that countries with more advanced divestiture and liberalization achievements have been enjoying significant welfare gains deriving from productivity enhancement of privatized firms, a series of structural reforms were launched in 2000. These include the downsizing of the public sector through privatization, aimed at relieving the financial burden of PEs on the national budget, ensuring a sustainable growth path, and a market-based and competitive production system, while meeting the EU's pre-accession economic criteria.

124. The privatization programme in Turkey started in 1984. It involves not only the sale of the companies but also their *ex ante* restructuring in accordance with Privatization Law No. 4046 of November 1994. The two institutions in charge are the Privatization High Council (chaired by the Prime Ministry), which decides on the list of companies to be included in (or excluded from) the privatization portfolio, and the Privatization Administration (PA), which carries out the programme. However, privatization of some specific PEs is undertaken jointly with the relevant ministries and public authorities, such as the Banking Regulation and Supervision Agency in the case of state banks, and the independent Tender Committee in the privatization of Turk Telekom.

125. Companies within the privatization portfolio are privatized through one or more of the following methods: sale¹⁰⁶; lease¹⁰⁷; grant of operational rights; establishment of property rights other than ownership; and profit sharing model and other legal provisions depending on the nature of the business. In the case of privatization of public service organizations through a transfer of ownership, separate laws (other than Law No. 4046) have to be adopted.¹⁰⁸ Under Law No. 4046, Value Assessment Commissions are established for the privatization of companies. The Commissions must use at least two value methods¹⁰⁹, as well as various criteria such as industrial, commercial, and social features, sector and market specifications, and technological structure. If and when more than 49% of the capital shares of the following entities are privatized, golden shares must be established due to their "strategic importance": Turkish Airlines (THY), Ziraat Bankasi, Halk Bankasi, Soil Product Office, Alcoholic Factory, and Turkish Refinery Corporation (Tupras).¹¹⁰

126. Turkey's privatization programme has proceeded much more slowly than in other emerging countries, mainly due to the economic crisis of recent years and adverse international conditions. Actual revenues of the Privatization Administration totalled around US\$11.2 billion during 1986-02, of which US\$1.3 billion (18.6% of the total) from foreign investors; whereas total expenditures (such as transfers to the companies and to the treasury, and capital increase) reached US\$11 billion.

127. The State has withdrawn from certain activities such as animal feed, milk processing, cement, petroleum distribution, and airport ground handling services. Furthermore, in other subsectors, such as textiles, tourism, meat and fish products, and maritime transportation, the "decisive" role of the State has also been transferred to the private sector; some steps have also been taken to reduce State influence in the financial sector.¹¹¹

128. In January 2003, the Government announced an ambitious privatization programme for the year, expecting the programme to yield sales of US\$4 billion¹¹², with cash proceeds reaching US\$2.1 billion by the end of 2003 (quarterly indicative targets have been set to monitor progress in raising privatization proceeds).¹¹³ Some 130 companies (employing around 64,000 people) are in the privatization portfolio (Table III.16). Among the most important PEs listed for privatization in the coming years are¹¹⁴: Turk Telekom, Tekel (the tobacco and alcohol monopoly), THY, Tupras, Petkim

¹⁰⁶ Sale is the transfer of ownership of units of goods and services of the assets of companies in full or partially, or transfer of all or some of the shares of these companies through domestic or international public offerings, block sales to real and/or legal entities, block sales including deferred public offerings, sales to employees, sales on the stock exchanges by standard or special orders, and sales to investment funds and/or securities investment partnerships, taking into consideration the prevailing conditions of the companies.

¹⁰⁷ Lease is the grant of the right of use of all or some of the assets of the companies for a defined period of time.

¹⁰⁸ These include companies with national and supplemental budgets and their properties, such as hospitals, ports, and highways; public economic enterprises offering public services under monopoly; and enterprises with national and supplemental budgets that are in the form of an exclusive monopoly and/or public economic enterprises that serve within the framework of their original establishment tasks.

¹⁰⁹ The methods are: net present value, book value, net asset value, depreciated replacement value, liquidation value, price/cash flow ratio, price/profit ratio, market capitalization value, market/book value, and expertise value.

¹¹⁰ Privatization Administration (2002).

¹¹¹ Privatization of public banks commenced with Summerbank and continued with Etibank, Denizbank, and Anadolu Bank. The international and domestic offering of the 12.3% state shares in Is Bank in May 1998 has been the largest public offering in Turkey (Privatization Administration, 2002).

¹¹² This figure is about half of the total privatization revenue of the past 17 years.

¹¹³ IMF (2003).

¹¹⁴ Some of the privatizations are expected to be finalized by end-2003.

(petrochemical industry), Tugsas/affiliates and its subsidiary Igsas (fertilizer companies), National Lottery (the relevant law was enacted recently), as well as some public banks (Halk Bankasi and Vakıflar Bankasi), and the electricity generation and distribution facilities. The sugar industry as a whole is being liberalized, and privatization is envisaged in the near future. Tupras will be privatized via block sale; Tekel through a combination of block sale and asset sale; and in the case of THY a tender announcement is planned for the first quarter of 2004, for privatization through block sale and public offering. Preparations for the sale of Turk Telekom, which has long been in the privatization portfolio, will continue, but a detailed schedule has not been disclosed.

Table III.16
Selected companies in the privatization portfolio, October 2003

Company name	Share owned by privatization administration	Field of activity	Privatization method
Companies in the privatization programme^a			
EBK Et ve Balık Ürünleri A.Ş. ^b	100.00	Meat, fish, poultry	Asset sale/block sale
SÜMER Holding A.Ş. ^{b,c}	100.00	Textile, leather, ceramics, carpet	Asset sale/block sale
TDİ-Türkiye Denizcilik İşletmeleri A.Ş. ^b	100.00	Maritime	Transfer of management rights for port and urban lines. Asset sale of ferries and lands, sale of maritime lines
SEKA-Türkiye Selüloz ve Kağıt Fab. A.Ş. ^b	100.00	Pulp and paper production	Asset sale
TÜGSAŞ-Türkiye Gübre San. A.Ş. ^b	100.00	Fertilizer	Block sale
ETİ Bakır A.Ş.	100.00	Copper	Sale
ETİ Gümüş A.Ş.	100.00	Silver	Block sale
ETİ Krom A.Ş.	100.00	Chrome	Block sale
ETİ Elektrometalürji A.Ş.	100.00	Electrometallurgy	Block sale
TDÇİ-Türkiye Demir ve Çelik İşletmeleri A.Ş.	100.00	Iron and steel	In process of liquidation
TEKEL-Tütün, Tütün Mamülleri, Tuz ve Alkol İşl. A.Ş. ^b	100.00	Alcohol and tobacco production	Asset sale/block sale
DİV-HAN/Divriği Hekimhan Madenleri San. ve T.A.Ş.	100.00	Mining	Sale, transfer of management rights, hire and/or combination of all
ESGAZ-Eskişehir Şehiriçi Doğalgaz Dağıtım, Tic. ve Taah. A.Ş.	100.00	Gas distribution	Block sale
BURSAGAZ-Bursa Şehiriçi Doğalgaz Dağıtım, Tic. ve Taah. A.Ş.	100.00	Gas distribution	Block sale
YEAŞ-YENİKÖY Elektrik Üretim ve Tic. A.Ş.	100.00	Electricity generation	Sale
KEMERKÖY Elektrik Üretim A.Ş.	100.00	Electricity generation	Sale
KBİ-Karadeniz Bakır İşletmeleri A.Ş. ^b	99.99	Copper	Sale
ETİ Alüminyum A.Ş.	99.99	Bauxite	..
GERKONSAN-Gerede Çelik Konstrüksiyon ve Teçhizat Fab. San. ve Tic. A.Ş.	99.95	Iron and steel construction	Block sale
THY-Türk Hava Yolları A.O.	98.17	Air transport	Block sale/public offering
PETKİM Petrokimya Holding A.Ş. ^b	88.86	Petrochemicals	Block sale
TÜPRAŞ- Türkiye Petrol Rafinerileri A.Ş. ^b	65.76	Petroleum refining	Block sale
ATAKÖY Turizm Tesisleri ve T.A.Ş.	58.59	Tourism	Block sale
ATAKÖY Otelcilik A.Ş.	56.49	Tourism	Block sale
Baha Esat Tekand Kütahya Şeker Fab.A.Ş.	56.00	Sugar processing	Block sale
KTHY-Kıbrıs Türk Hava Yolları Ltd. Şti.	50.00	Air transport	Sale
Türkiye- Libya Ortak Tarım ve Hayvancılık A.Ş.	49.70	Agriculture and livestock	Block sale
GÖNEN Gıda Sanayii A.Ş.	49.00	Food	In process of liquidation

Table III.16 (cont'd)

Company name	Share owned by privatization administration	Field of activity	Privatization method
ERDEMİR-Ereğli Demir ve Çelik Fabrikaları T.A.Ş. ^b	46.12	Iron and steel	Block Sale/Public Offering
ÇAYELİ Bakır İşletmeleri A.Ş.	45.00	Copper	Sale
Yeni Çeltek Kömür ve Madencilik A.Ş.	16.00	Coal and mining	Block sale
ATAKÖY Marina ve Yat İşletmeleri A.Ş.	15.07	Tourism	Block sale
Amasya Şeker Fabrikası A.Ş.	15.00	Sugar processing	Block sale
Companies in the scope of privatization^a			
TŞFAŞ-Türkiye Şeker Fabrikaları A.Ş.	99.99	Sugar processing	Sale of the plants arranged in groups
TİGEM Tarım İşletmeleri Genel Müdürlüğü	..	Agriculture	..
Entities in the privatization programme			
YATAĞAN Elektrik Üretim Tesisi	..	Electricity generation	..
Araç Muayene İstasyonları	..	Motor vehicle inspection	..
Entities in the scope of privatization			
Manavgat Çayı İçme Suyu Tesisi	..	Fresh water production	..
Edirne-İstanbul-Ankara Otoyolu	..	Highway	..
Pozantı-Tarsus-Mersin Otoyolu	..	Highway	..
Tarsus-Adana-Gaziantep Otoyolu	..	Highway	..
Toprakkale İskenderun Otoyolu	..	Highway	..
İzmir-Çeşme Otoyolu	..	Highway	..
İzmir-Aydın Otoyolu	..	Highway	..
Boğaziçi Köprüsü	..	Bridge	..
Fatih Sultan Mehmet Köprüsü	..	Bridge	..
Thermal power plants (11)	..	Energy	..
Hydroelectric power plants (16)	..	Energy	..
Stream power plants (55)	..	Energy	..
Distribution areas (19)	..	Energy	..
Companies to be privatized according to their own laws			
Türk Telekomünikasyon A.Ş.	100 % state-owned	Telecommunications	..
Milli Piyango İdaresi Genel Müdürlüğü	..	Lottery	..

.. Not available.

a Organizations in the scope of privatization, which are to undergo financial and legal preparatory work for privatization, will retain their existing status and remain associated to the related Ministries or institutions until the completion of the restructuring process. The related financial and legal restructuring process for privatization will be carried out by the organization(s) to be designated by the Privatization High Council. Upon completion of restructuring for privatization, organizations will then be included in the privatization programme through a new decision of the Council. Organizations that are taken directly into the privatization programme and organizations that are restructured for privatization (excluding the capital shares and assets of their subsidiaries and the capital shares and assets of the organizations that are not in the nature of a subsidiary, but have a majority of the capital owned by the state) will be deemed to have been transferred to the Administration as of the date of the Council's decision without any further transaction or payment of any consideration. Organizations taken into the privatization programme and transferred to the Administration will be deemed to have been disassociated from their related Ministry or organization and brought within the range of the Administration, as of the date of the Council's decision.

b Some of the shares/assets of these companies have been privatized.

c Fifteen Participation Shares were transferred to Sümer Holding on 12 March 2001.

Source: Information provided by the Turkish authorities.

129. The authorities hope that the privatization process will contribute to Turkey's fiscal consolidation programme. However, if past trends continue, privatization may reduce public liabilities only marginally. According to the OECD, to encourage the privatization programme, Turkey should, *inter alia*, remove all obstacles for wider involvement of foreign investors, such as existing limits to

their participation in some PEs; give greater operational autonomy to the PA; and broaden its mandate to include the privatization of major PEs currently carried out by ministries and subject to political stalling.¹¹⁵

130. Since its previous TPR, the number of products that can be imported only by specific state trading enterprises (STE) in Turkey has dropped from nine to three (at the HS four-digit level). The exclusive rights of the Turkish state monopoly (TEKEL), on the importation of ethyl alcohol, and certain spirits and beverages containing alcohol, including beer, wine, liquors, and other spirituous beverages, were terminated by Law No. 4619 (published in the *Official Gazette* of 20 January 2001).¹¹⁶ Three pharmaceutical products (cinchona bark, used to fight malaria and syphilis, potassium iodide, and alkaloids of cinchona and their derivatives (quinine)) continue to be imported only by the Turkish Red Crescent (TRCS), which is one of only two STEs still operating in the country; the other is TEKEL.

(iii) Competition policy and price controls

131. No major changes have been made to the competition policy framework in Turkey since its last TPR.¹¹⁷ The Law on the Protection of Competition (No. 4054 published in the *Official Gazette* of 13 December 1994) remains the main legal basis covering competition in both goods and services; its main objective is to create an efficient competitive environment in the country. Moreover, Turkey has adopted secondary legislation with a view to aligning its legislation on the EU's *acquis communautaire*. Since October 1997, the Competition Authority (CA) has been responsible for the implementation and the enforcement of the law.¹¹⁸

132. The law addresses three main categories of issues: (i) agreements, decisions, and concerted practices that hinder, distort or restrict competition among enterprises (Article 4); (ii) abuse of dominant position by enterprises (Article 6); and (iii) mergers and acquisitions that distort the competitive structure of the market (Article 7). Pursuant to Article 4, all agreements that distort, restrict or prevent competition are prohibited, except where an exemption is granted by the Competition Board in accordance with Article 5 of the Act. Without regard to the place of operation, any agreement, decision, concerted practice, abuse of dominant position, merger or acquisition that impairs the Turkish market falls within the scope of the law. Thus, agreements between Turkish and foreign companies or even between foreign companies may fall within the scope of the law if they affect market conditions in Turkey, even when the agreements are concluded outside Turkey.

133. The CA still consists of an eleven-member Board; it is financed mainly under the total budget of the MIT and from a 0.04% levy on capital increases of companies. The Board may grant negative clearance (Article 8), which confirms that the behaviour concerned is not considered to be contrary to the competition rules. It may request information (Article 13), open investigations (Article 15), and impose penalties (Articles 16, 17, 18, and 19). All sectors are treated equally under the law. However,

¹¹⁵ OECD (2002b).

¹¹⁶ In addition to this, a new autonomous board, the Tobacco, Tobacco Products and Alcoholic Beverages Market Monitoring Boards, was established by Law No. 4733 (*Official Gazette* of 9 January 2002, No. 24635) for monitoring and supervising the production, sale, and trade of alcoholic beverages.

¹¹⁷ The substantial provisions of Turkey's competition law are described in detail in WTO (1998).

¹¹⁸ The CA was constituted by a Decree of Council of Ministers published in *Official Gazette* No. 22918 of 27 February 1997. It has a total staff of 319 (7 managers, 90 experts, and 222 auxiliary staff). The decision-making body of the CA is the Competition Board.

Article 5 empowers the Board to issue notifications granting block exemptions, for a period of up to five years, to certain categories of agreements.¹¹⁹

134. Some of the independent regulatory institutions that exist in Turkey date from 1981 (Table III.17). Steps are being taken to coordinate the activities of the CA with those of regulatory authorities such as EMRA¹²⁰, and the Telecommunications Authority.¹²¹ Apart from energy and telecommunications, regulatory bodies have been set up for the capital market, radio and television broadcasting, banking, sugar, and tobacco and alcoholic beverages, with the aim, *inter alia*, of regulating and supervising markets, and protecting consumers against monopolistic behaviour. The regulatory body for telecommunications was set up specifically to regulate the market during the privatization process. Likewise, the regulatory body for energy has been set up to regulate and monitor the electricity and natural gas markets during and after the privatization process through mechanisms such as licensing, price controls, and dispute settlement.

Table III.17
Independent regulatory institutions in Turkey, September 2003

Institution	Law No./Year	Sectors	Task
Capital Market Board	2499/1981	Capital markets	Regulating and supervising the capital markets and protecting the rights and interests of investors.
High Audiovisual Board	3984/1994	Radio and television broadcasting	Regulating radio and television broadcasting.
Competition Authority	4054/1994	Goods and services markets (all sectors)	Preventing agreements, decision and concerted practices, and abuse of dominant position by undertakings which hinder, distort or restrict competition in goods and services markets; facilitating the regulation and supervision to protect competition; controlling mergers and acquisitions.
Banking Regulation and Supervision Agency	4389/1999	Banking	Protecting the rights and interests of depositors; laying down the principles regarding the establishment, management, operation, acquisition, merger, liquidation, and supervision of banks in order to ensure efficient operation of the credit system with due regard to the requisites of economic development, and confidence and stability in financial market.
Telecommunications Authority	4502/2000	Telecommunications	Constituting a dynamic and strong market based on fair competition; contributing to the sectoral policy-making process; taking measures to protect consumer rights; ensuring efficient and productive use of scarce resources in the sector such as frequency and number.

Table III.17 (cont'd)

¹¹⁹ Article 4 (outlining certain prohibited practices) can be declared inapplicable if an activity (a) contributes to the improvement of production or distribution of goods, and provides services or promotes technical or economic progress; (b) allows consumers a fair share of the resulting benefit; (c) does not eliminate competition in a substantial part of the relevant market; and (d) induces a restraint on competition that is more than necessary for the attainment of the objectives referred to in (a) and (b) above.

¹²⁰ In 2001, the Electricity Market Regulatory Authority was renamed Energy Market Regulatory Authority (EMRA) and its powers were extended to include natural gas. EMRA seeks advice and opinion of the Turkish Competition Board for its regulatory legal instruments, and the latter provides it with technical assistance in competition-related matters. In general, the competition authority is responsible for general competition issues (e.g. mergers, collusion), while technical and specific issues are handled by the relevant regulatory bodies.

¹²¹ The Telecommunication Authority and the CA signed a Protocol to inform each other and seek respective opinions about competition-related cases. However, because of the overlapping responsibilities arising from the Telecommunications Law and Law No. 4054 concerning competition investigations, further clarification is needed to determine who holds the real power in matters involving competition concerns. OECD (2002).

Institution	Law No./Year	Sectors	Task
Energy Market Regulatory Authority	4628/2001 4646/2001	Electric energy Natural gas	Constituting a financially strong, stable and transparent energy market operating under private law in a competitive environment to provide adequate, refined, continuous and environment-friendly electricity and natural gas; ensuring independent regulation and supervision in the market.
Sugar Board	4634/2001	Sugar, starch-based sweeteners	Regulating the sugar regime through establishment of procedures and principles regarding sugar production, and the conditions and methods of price setting and marketing.
Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Authority	4733/2002	Tobacco, tobacco products, and alcoholic beverages	Regulating the procedures and principles regarding production, domestic and external purchase and sale of tobacco and tobacco products.
Public Procurement Authority	4734/2002	All public institutions	Determining the procedures and principles to be applied in public procurements; examining the complaints concerning all public procurements.

Source: Information provided by the Turkish authorities.

135. From 1997 to May 2003, 2,218 cases were handled by the CA and 1,822 (82.1%) were resolved (Table III.18). Cases of competition infringements represented 58.5% of all cases during the period, followed by mergers and acquisitions (22.1%), and exemptions and negative clearance (19.4%).

Table III.18
Cases handled and resolved by the Competition Authority, 1997-May 2003

	1997	1998	1999	2000	2001	2002	2003 ^a	Total
Competition infringements								
Investigations	22	177	220	255	213	265	146	1,298
Cases resolved	9	44	306	262	211	217	112	1,161
Mergers/acquisitions								
Investigations	8	59	80	103	82	115	43	490
Cases resolved	5	52	76	101	88	102	44	468
Negative clearance/exemption								
Investigations	0	245	44	41	42	35	23	430
Cases resolved	0	12	64	23	52	35	7	193
Total								
Investigations	30	481	344	399	337	415	212	2,218
Cases resolved	14	108	446	386	351	354	163	1,822

a Up to 31 May.

Source: Information provided by the Turkish authorities.

136. Certain products, such as cereals, energy, and services, mainly utilities, are subject to price controls. For electricity, tariffs for transmission, distribution, and wholesale (for TETAS, state-owned wholesale company), and for retail to "eligible consumers" are subject to EMRA Board approval. The pricing method under the EMRA regulation (with price subject to approval by EMRA Board) is "revenue cap" for transmission tariff, "hybrid" for distribution tariff, and "cost based" for TETAS tariffs; the "price cap" method is used for the retail sale tariff applicable to non-eligible consumers. For natural gas, wholesale, retail sale, transmission, storage, and city distribution tariffs are subject to approval by EMRA Board; a price cap is determined in accordance with principles and procedures set by EMRA. Petroleum products subject to price control are gasoline, kerosene, diesel oil, heating oil, fuel oil (1% sulphur), fuel oil (3.5% sulphur), and LPG. Coal prices are set by SEEs operating in the industry; the prices may be influenced by the Government (Chapter IV(3)(iii)(b)). The "opening" price of locally produced tobacco for sale outside contracts and/or auction is determined by TAPDK.

(iv) Protection of intellectual property rights

(a) Overview

137. As part of its harmonization efforts towards adopting EU's legislation on intellectual property rights (IPRs), and in accordance with its commitments under the WTO TRIPS Agreement, Turkey has introduced some changes to its intellectual property regime since its last TPR. The changes include: (i) extension of patent protection to pharmaceutical products (since 1 January 1999); (ii) enactment of Law No. 4630, which entered into force on 3 March 2001 and amended Law No. 5846 on intellectual and artistic works¹²²; (iii) establishment (in 2001) of two courts specialized in intellectual property matters in Istanbul, where infringement cases are relatively larger than in other Turkish cities; and (iv) establishment of 81 Anti-piracy Inspection Commissions in March 2002.¹²³ In recognition of Turkey's progress in the TRIPS area the United States removed Turkey from its Special 301 Priority Watch List, in 2001, and placed the country on its Watch List. However, the same year private industries reported piracy of 58% in software and 30% in music.¹²⁴

138. Intellectual property rights legislation in Turkey is composed mainly of: the Establishment and Functions of the Turkish Patent Institute Decree (No. 544), Patent Rights Protection Decree (No. 551), Industrial Design Decree (No. 554), Geographical Indications Decree (No. 555), Trade Mark Protection Decree (No. 556), Amending Law of Patent, Design, Geographical Indications and Trade Mark Decrees (No. 4128), Law on Intellectual and Artistic Works (No. 4630), and Law on Cinema, Video and Musical Works (No. 3257). The Bill on Breeder Protection Rights for New Plant Varieties, and the Bill on the Protection of Layout-Designs of Integrated Circuits are awaiting adoption.¹²⁵ The Turkish intellectual property legislation was reviewed by the WTO TRIPS Council on 27-30 November 2000.¹²⁶

139. The main institutions responsible for intellectual property matters are: the Turkish Patent Institute (TPI) for issues related to industrial property, such as patent, trade mark, geographical indications, designs, and chip topographies; the Directorate-General of Copyrights and Cinema in the

¹²² The amended Law No. 4630 provides for retroactive protection; rearranges the right of communication to the public; rearranges provisions related to the rights of authors, and financial and moral rights of related right owners, and fundamental and excluded rights, such as protection and transmission (film producers have also been accepted among the related right owners); protect codes representing information contained in works specified by authors or right owners during communication and transmission of works of art to the public (additional Article 4) in accordance with the WIPO Treaties; and increases penalties against piracy. WIPO Copyright Treaty, Articles 11 and 12, and WIPO Performances and Phonograms Treaty, Article 18 and 19.

¹²³ These Committees consist of ministry, local government, and police staff, and representatives of the professional associations, which monitor piracy cases within individual districts. An information campaign has also been launched to raise awareness of the need to combat fraud and piracy. European Commission (2002).

¹²⁴ European Commission (2002).

¹²⁵ Other laws and regulations that contain provisions on intellectual property law are: Contract Law (No. 818), Turkish Commercial Code (No. 6762), Regulation on Pharmaceutical Products, Civil Servants Law (No. 657), Customs Law (No. 4458), Civil Procedure Law (No. 1086) and Criminal Procedure Law (No. 1412), and the Turkish Constitution (regarding provisions on judiciary). See WTO document IP/N/1/TUR/2 of 3 July 2000.

¹²⁶ WTO document IP/Q-Q4/TUR/1 of 12 April 2001 contains the introductory statement made by Turkey, as well as the questions posed and answers given during the review.

Ministry of Culture and Tourism for issues related to copyright and related rights¹²⁷; the Directorate-General of Customs in the Undersecretariat of Customs for issues related to border measures; the Ministry of Agriculture for plant breeders' rights; and the Ministry of Justice for enforcement before the courts.¹²⁸

140. Table III.19 indicates the status of Turkey in international agreements, conventions and treaties related to intellectual property rights. In November 2000, Turkey acceded to the European Patent Convention (EPC). The process of accession to the WIPO Copyrights Treaty and the WIPO Performances and Phonograms Treaty is not completed yet but it is on the agenda of the Ministry of Culture and Tourism. This also applies to industrial property rights with respect to accession to the Geneva Text of the Hague Agreement on International Registration of Industrial Designs, and WIPO's Trademark Law. Draft laws for participation in such agreements, as well as on protection of the topographies on the integrated circuits, are currently under consideration by the Prime Minister. Adherence to the International Union for the Protection of New Varieties of Plants (UPOV) Convention is to be made after promulgation of the Bill on the Protection of Plant Breeders' Rights.

Table III.19

Turkey's participation in international agreements, conventions, and treaties, September 2003

Name	Turkey's status
Paris Convention on the Protection of Industrial Property (1883)	Member since 1925
Berne Convention for the Protection of Literary and Artistic Works (1886)	Member since 1952
Convention establishing WIPO (1967)	Member since 1976
Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)	Member since 1995
Nice Agreement concerning the International Classification of Goods and Services for the purpose of Registration of Marks (1957)	Member since 1 January 1996
Patent Co-operation Treaty (1970)	Member since 1 January 1996
Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973)	Member since 1 January 1996
Strasbourg Agreement Concerning the International Patent Classification (1971)	Member since 1 October 1996
Budapest Treaty on the International Recognition of the Deposit of Micro-Organisms for the Purpose of Patent Procedure (1977)	Participation from 1998
Protocol relating to Madrid Agreement (1996)	Participation from 1999
Locarno Agreement Establishing an International Classification for Industrial Designs (1968)	Participation from 1998
European Patent Convention (1973)	Participation from 1 November 2000

Source: Information provided by the Turkish authorities.

141. Parallel imports of goods and services containing any form of intellectual property rights are prohibited in Turkey. Turkish legislation on copyright, trade marks, designs, and patents provide for national exhaustion of distribution rights, which enables the right holders to prevent parallel importation of protected products put on the market in other countries.¹²⁹ In 2000, the Competition Board of Turkey decided that parallel imports cannot be prohibited. This decision was later challenged and the case is before the Council of State, the body of last instance.

¹²⁷ The Ministry of Culture and the Ministry of Tourism have been merged into the Ministry of Culture and Tourism with the adoption of the Law on the Organization and Responsibilities of the Ministry of Culture and Tourism (Law No. 4848 of 16 April 2003).

¹²⁸ For details, see WTO (1998).

¹²⁹ Article 6 of the TRIPS Agreement provides that, for the purposes of dispute settlement, nothing in the Agreement shall be used to address the issue of exhaustion of intellectual property rights, provided that the national treatment and MFN treatment obligations are met.

(b) Patents

142. Decree Law No. 551 on the Protection of Patent Rights, which entered into force on 27 June 1995, is the main legislation. It provides for the possibility of converting a patent application into a utility model, and vice-versa¹³⁰; the granting of patents by examination and non-examination; patentability criteria (novelty, inventive activity/step, industrial applicability); publication of applications; opposition by third parties; non-renewable protection periods of seven years for non-examined patents, ten years for utility model certificates, and 20 years for examined patents; employee inventions; penalties against infringement; and the establishment of special courts. An applicant not living in the country has to appoint a local patent agent. Subject to this, foreigners are entitled to the same rights and privileges and are subject to the same obligations as nationals.

143. Micro-organisms and microbiological processes are patentable in Turkey. Pharmaceutical products and processes have had patent protection since 1 January 1999, in accordance with Turkey's commitments under both the TRIPS Agreement and the CUD.¹³¹

144. Provision is made for granting compulsory licences on the grounds that a patent was not put into use or that the delay in the use thereof was not due to justifiable/legitimate reasons or that the use has been suspended during an uninterrupted period of three years (Article 100 of Decree Law No. 551). Articles 39 and 40 of the Implementing Regulation set out the provisions related to proof of use, which also includes the importation of patented products.

145. New patent legislation is currently under preparation, and is aimed at completing harmonization of the Turkish patent system with the EU system. During the preparation of the new patent legislation, provisions of the European Patent Convention and Patent Law Treaty are also taken into consideration.

(c) Trade marks

146. Decree Law No. 556 on the Protection of Trademarks, which entered into force on 27 June 1995, is the main legislation, and includes a registered trade mark protection system for goods and services, guarantee marks, and collective marks. The protection is effective for ten years from the date of registration and can be renewed for similar periods. A licence may be exclusive or non-exclusive, and, unless otherwise provided in the contract, the licence shall be understood to be non-exclusive. Turkey does not require the trade mark to be registered in the home country or in any other country.

(d) Copyright

147. The main legislation on copyrights is Law No. 4630 on Intellectual and Artistic Works, which entered into force on 3 March 2001 and amended Law No. 5846. The main aim of the Law is to fulfil Turkey's obligations under both the *acquis communautaire* and the TRIPS Agreement by increasing the penal provisions (from three months to three years imprisonment and maximum fines of TL 600 million) previously to 2-6 years imprisonment and TL 10-150 billion, and by amending the rights of the author and related rights, such as performers having neighbouring rights, producers of

¹³⁰ Utility models differ from inventions of patents in two respect: first, less technological progress is required for invention of a utility model; and, second, the maximum term of protection provided by the law for a utility model is generally much shorter.

¹³¹ Because of its developing-country status, Turkey had five years from the entry into effect of the TRIPS Agreement to apply the provisions of the Agreement.

phonograms and broadcasting organizations, and rights of film producers. Protection is for lifetime of an author plus 70 years.

148. The law includes software as a literary work, and provides for the establishment of more than one professional union in the same area. Right of communication to the public has been added through the amendment to Article 25 of the Law. This arrangement will enable electronic commerce of a work of art, upon permission by the author. An amendment to Article 80 of the Law has rearranged provisions related to the rights of authors, and financial and moral rights of owners and fundamental and exclusive rights such as reproduction, and transmission. Within this arrangement, film producers have been accepted as related right owners.

149. An additional Article 4 to the law aims to protect information related to works and the codes representing this information, as specified by the authors or right owners, during communication of these works to the public. Furthermore, mechanisms and penalties have been set up to combat piracy. Within this framework, anti-piracy inspection commissions have been set up in 81 cities. Specialized courts have been set up, penalties for the repetition of crime related to piracy have been increased, and arrangements have been put in place allowing for closure businesses that reproduce pirated copies; sanctions range from 2-6 years imprisonment and fines of TL 10-150 billion in case of infringement.

(e) Industrial designs

150. Decree Law No. 554 on Industrial Designs, which entered into force on 27 June 1995, is the main legislation; it provides for the protection of designs that are new and distinctive. A design is considered new if, before the date of application, no identical design has been made available to the public anywhere in the world. A registered design is protected for five years from the filing date, and protection may be renewed for periods of five years, with a total protection period of 25 years. Protection for unregistered designs is provided through the unfair competition provisions of the Turkish Commercial Code.

(f) Other areas

151. Turkey also provides protection for geographical indications through the Decree Law No. 555 on the Protection of Geographical Signs, which entered into force on 27 June 1995. Protection is based on registration and covers all goods, in addition to wines and spirits. Protection for unregistered geographical indications is provided through the unfair competition provisions of the Turkish Commercial Code.

152. Draft laws on the protection of semiconductor chip topography and on the protection of plant breeders' rights were introduced to Parliament in 2001, and are expected to enter into force in 2004.

153. The Turkish legislation on intellectual property rights does not provide for anti-competitive practices in contractual licences. This subject is governed by the Protection of Competition Act (section (iii) above)).

(g) Enforcement

154. Infringements of patents (Part X of Decree Law No. 551), copyrights (Part V of Decree Law No. 4630), trade marks (Part VIII of Decree Law No. 556), industrial designs (Part VI of Decree Law No. 554), and geographical indications (Part IV of Decree Law No. 555) can be challenged in a domestic court of law. Foreigners can also challenge patent holders in Turkish courts. There are four specialized penal courts and three specialized civil courts. Persons making false statements during the process of granting an industrial property right, or those removing, without authority, the sign

indicating an industrial property right on a product, or falsely presenting themselves as the owner of an industrial property right are subject to a maximum fine of TL 1 billion and imprisonment for up to four years (in case of copyright, the maximum fine is TL 150 billion and imprisonment for up to six years).

155. The Turkish Constitution stipulates that cases should be dealt with expeditiously and with the least possible cost. The party who loses a case pays the costs including the attorney's fees. The State bears the cost of carrying out criminal proceedings, but the convicted person pays the expenses at the end of the procedure. The number of penal actions brought under IPR legislation increased from 1,837 in 2000 to 4,318 in 2001, and the number of civil actions rose from 1,308 to 2,558. Approximately half of total actions were in Istanbul.

156. Article 57 of the Customs Law sets out a procedure to enable the right holder or his/her representative apply for the suspension by customs authorities of the customs procedures for goods complying with the description counterfeit trade mark or pirated copyright goods.¹³² Customs authorities may also suspend the procedure on their own initiative, where solid evidence is available. Article 57 also authorizes Customs to secure the value of goods in question from the applicant and regulates the liability of customs authorities, obligation of the right holder to initiate a legal proceeding leading to a decision on the merits of the case or precautionary measures by a duly empowered authority, destruction or disposal of the goods after suspension of the related customs procedures. The Article does not apply to goods bearing a trade mark with the consent of the trade mark holder or protected by a patent, or by a copyright which have been manufactured by the consent of the right holder but are going through customs procedures without the right holder's consent, or to goods of a non-commercial nature, and travellers personal luggage or goods sent in small consignment.

157. A public anti-piracy campaign was begun in 1998 and efforts have continued towards educating businesses, consumers, judges, prosecutors, and others regarding the implications of the IPR legislative framework.

¹³² The customs procedures of the goods infringing intellectual property rights regarding trade marks, geographical indications, and industrial designs and the rights covered by the Intellectual and Artistic Works Law are regulated by Article 57 of the Customs Law No. 4458, and entered into force on 5 February 2000.