

## **II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES**

### **(1) OVERVIEW**

1. The customs union with the EU has become the main factor shaping Turkey's foreign trade policies and orientation within the wider WTO framework. The customs union decision (CUD) provides for generally free internal trade and a common external tariff (CET) for industrial and the industrial component of processed agricultural goods (there is no firm timetable for the integration of agriculture). To implement the CUD, Turkey has in a short time span enacted a wide range of trade and related legislation, aimed at bringing its practices into line with those of the EU. In this respect, the adoption of measures approximating the EU "*acquis communautaire*" will also provide improved and more secure trading conditions for third countries. Apart from the CET, Turkey also applies other external measures of the EU, such as restraints on imports of textiles and clothing, but anti-dumping measures are distinct and also apply on mutual trade. The CUD also requires Turkey to sign parallel agreements with countries that have free-trade agreements with the EU; Turkey has already signed free-trade agreements with Bulgaria, the Czech Republic, Estonia, Hungary, Israel, Latvia, Lithuania, Romania, the Slovak Republic, and Slovenia.

2. Turkey's legislation governing foreign direct investment has been revised, with a new law brought into effect in 1995. The already liberal foreign direct investment policies have been simplified and bureaucratic formalities streamlined. However, the continued macroeconomic imbalances, together with frequent changes in government, are likely to have discouraged foreign investment.

### **(2) THE INSTITUTIONAL FRAMEWORK**

#### **(i) General framework**

3. Since Turkey's previous Review, the structure of the legislative and executive bodies remain unchanged. Legislative power is vested in the Parliament, which has a single chamber (the Turkish Grand National Assembly). Elections must be held every five years, although Parliament may be dissolved earlier by the Prime Minister or on a vote of confidence. The Parliament is responsible for reviewing and changing statutes and law-amending ordinances, and elects the President for a seven-year term. Statutes and law-amending ordinances are prepared as bills by the relevant Ministries for presentation to the Parliament. After approval by Parliament and signature by all Ministers, the Prime Minister and the President, the bills become law, entering into force upon publication in the Official Gazette. Regulations are approved by the Council of Ministers. The President signs Decrees by the Council of Ministers, and appoints the Prime Minister and other Ministers.<sup>1</sup> The main executive power rests in the hands of the Prime Minister and the Council of Ministers.

4. Over the past four years, Turkey has enacted important trade and related legislation, in areas such as customs provisions, duty concessions, officially supported export credits, competition policy, state aid, intellectual property rights, standards, sanitary and phytosanitary measures, and foreign investment (Table II.1). Many of these have been adopted as a result of the customs union between EU and Turkey (discussed further below). Several new bilateral free-trade agreements (Israel, Hungary, Romania, and Lithuania) covering trade and other areas of cooperation have entered into force since 1993. The Marrakesh Agreement establishing the WTO was ratified in 1995. Changes have also been made for activities in several sector (Chapter IV).

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<sup>1</sup> Decrees which the President declines to sign do not enter into force. The President can only refuse to sign an Act once; if it is then readopted by the Parliament it is promulgated as law automatically.

Table II.1

## Turkey's main legislation related to trade, 1998

Area	Legislation
Main trade legislation	Foreign Trade Regulations Law (No. 2976 of 1984) is the main source of legislative action on imports and exports, including export promotion; it allows the Council of Ministers to authorize the imposition or removal of "additional financial obligations" on foreign trade transactions.
Import regulations	Import Regime Decree (No. 7606 of 1995)
Export regulations	Regulating the Various Measures Affecting Taxes That Promote Exports Law (No. 261 of 1963) Export Regime Decree and Regulation (Official Gazette No. 22532 of 23 January 1996) Export Communiqué (No. 12 of 1996) Quota and Tariff Quota Administration on Export Decree (No. 6814 of 1995) Inward Processing Regime Decree (No. 7615 of 1995) Outward Processing Regime Decree (No. 7617 of 1995)
Anti-dumping and countervailing duties	Prevention of Unfair Competition in Importation Law (No. 3577 of 1989)
Safeguard measures	Safeguard Measures and Surveillance for Imports Decree (No. 6814, 7348, 7432 and 7433 of 1995)
Customs	Customs Law (No. 1615 of 1972)
Free-trade zones	Free Zones Law (No. 3218 of 1985)
Subsidies	Adopting the Agreement on Interpretation and Application of the Articles IV, XVI and XXIII of the GATT (subsidies code) Decree (No. 9155 of 1985)
State aid	State Aids for Investments Decree (No. 6411 of 1994) State Aid for the Investment of Small and Medium-Sized Enterprises Decree (No. 8615 of 1996) State Aid on Exports Decree (No. 6401 of 1994)
Standards	Technical Arrangements and Standardization on Foreign Trade Decree (No. 7794 of 1996)
Sanitary and phytosanitary measures	Sanitary Law (No. 1593 of 1930) Agricultural Quarantine Law (No. 6968 of 1957) Production, Consumption and Control of Foods Decree (No. 560 of 1995) Turkish Foods Codex Regulation
Government procurement	Public Procurement (State Adjudication) Law (No. 2886 of 1984)
Protection of Competition	Protection of Competition Law (No. 4054 of 1994) Appointment of Competition Board Decree (No. 9090 of 1997) Communiqué No. 97/1 on the Mergers and Acquisitions which are subject to permission of the Competition Board Communiqué No. 97/2 on the Procedures and Principles on the Agreements, Concerted Practices, Decisions of Associations of Undertakings according to Article 10 of the Competition Law, related to exemption and negative clearance. Communiqué No. 97/3 on Group Exemption for Exclusive Distribution Agreements Communiqué No. 97/4 on Group Exemption for Exclusive Purchasing Agreements Communiqué No. 97/5 on the Establishment of the Organization of the Competition Authority Communiqué No. 97/6 on the Rights and Obligations of Undertakings and Associations of Undertakings which arise from the Law No. 4054 after the establishment of the organization of the Competition Authority Communiqué No. 98/3 on Group Exemption Concerning Motor Vehicle Distribution and Servicing Agreements
Competition law	Protection of Competition Law (No. 4054 of 1994) Appointment of Competition Board Law (No. 9090 of 1997)

Table II.1 (cont'd)

Area	Legislation
Intellectual property rights	Turkish Patent Institute Decree (No. 544 of 1994) Protection of Patent Rights Decree (No. 551 of 1995) Protection of Trade Mark Rights Decree (No. 556 of 1995) Protection of Industrial Designs Decree (No. 554 of 1995) Protection of Geographical Indicators Decree (No. 555 of 1995) Intellectual and Artistic Works Law (No. 5846 of 1954, amended by Law No. 4110 of 1995) Additional Penalty Provisions to the Decrees No. 551, 554, 555 and 556 (Law No. 4128) Amendment of the Transition Period of Patent Protection of Pharmaceuticals and Veterinary Products and Processes (Decree No. 566)
Consumer protection	Consumer Protection Law (No. 4077 of 1995)
Foreign Investment	Encouragement of Foreign Capital Law (No. 6224 of 1954, revised in July and August 1995) Foreign Capital Framework Decree (No. 6990 of 1995) Communiqué Concerning Foreign Capital (No. 2 of 1995)

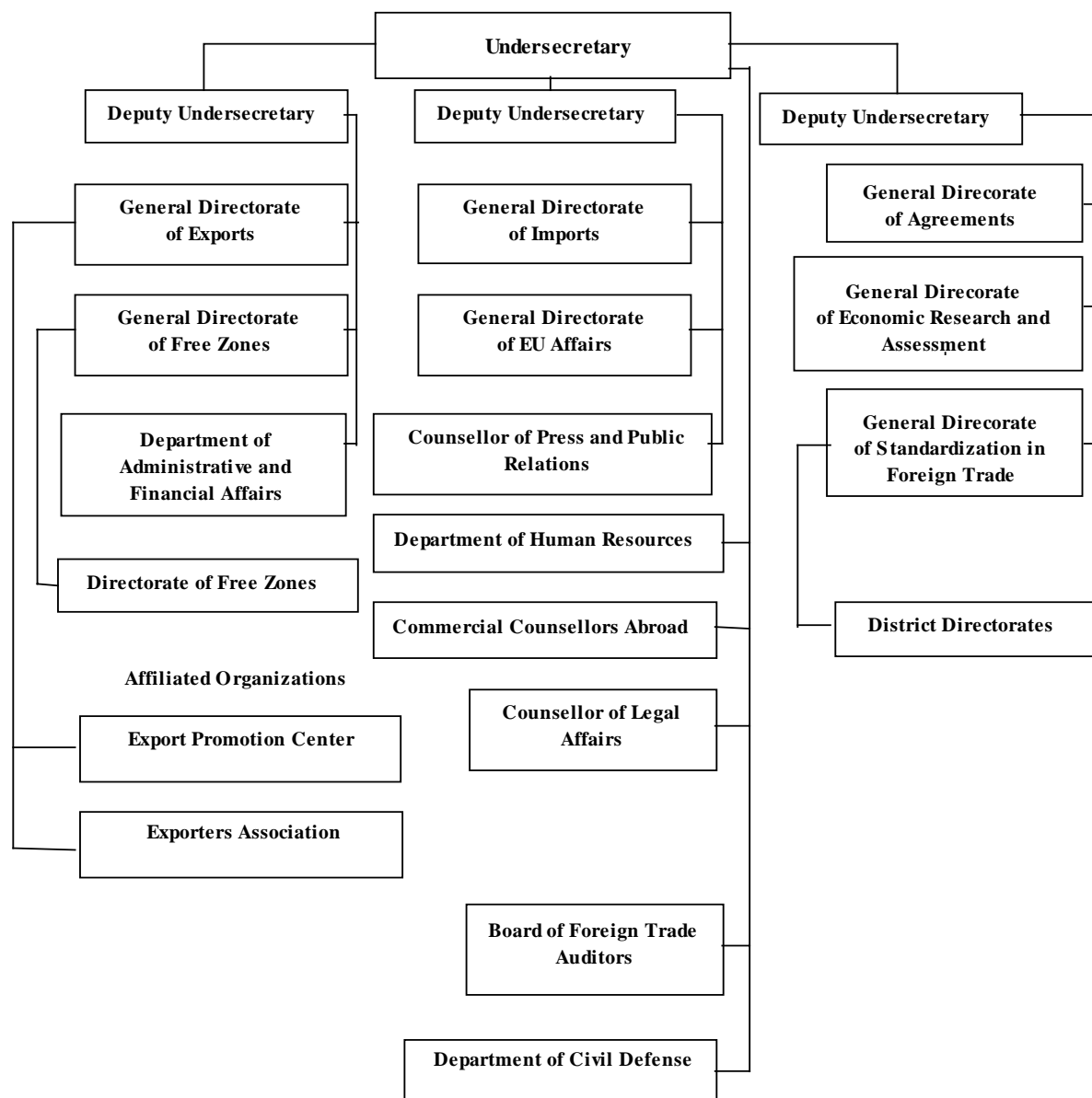
Source: Government of Turkey.

5. According to the Constitution of Turkey (Article 90), international agreements duly put into effect carry the force of law in Turkey. Moreover, no appeal to the Constitutional Court can be made with regard to these agreements, on the ground that they are unconstitutional. Therefore, as noted by the authorities, the provisions of the WTO Agreements would apply in the case of any inconsistencies between domestic law and the Agreements. However, several domestic laws have been or will be amended to reflect Turkey's international commitments.

## (ii) Economic and trade policy formulation

6. The main characteristics of Turkish institutions have broadly remained the same as described in the GATT Secretariat report for the previous Trade Policy Review. The Undersecretariat of Foreign Trade (UFT) (previously a combined Undersecretariat of Treasury and Foreign Trade in 1993) is the main governmental body responsible for the formulation and administration of trade policy within the framework of international and domestic laws (Chart II.1). The Undersecretariat is responsible for preparing decisions on trade policy, and to this end collects the views of other relevant Ministries, agencies and subsidiary bodies. Proposals are presented by the UFT to the Council of Ministers for their consideration. Decisions of the Council become decrees upon their publication in the Official Gazette. The Ministry of Finance, Undersecretariat of Treasury and the Undersecretariat of the State Planning Organization, the Undersecretariat of Customs, the Ministry of Industry and Trade, the Ministry of Agriculture and Rural Affairs, the Central Bank of Turkey, the Turkish Patent Institute and the Turkish Export-Import Bank take part directly or indirectly in foreign trade policy formulation and/or its implementation.

**Chart II.1**  
**Structure of the Undersecretariat of Foreign Trade, 1998**



Source: Government of Turkey.

7. The main legislation relating to international trade is the Foreign Trade Regulations Law (No. 2976 of 1984). The law provides for the development and regulation of foreign trade, including export promotion, as well as the imposition or removal of "additional financial obligations" on foreign trade transactions. The main import legislation is normally introduced on an annual basis. During the year, tariffs and other import regulations may be amended by the Council of Ministers, based on proposals by the UFT; these amendments are published in the Official Gazette. In preparing the import regime or amending tariffs, the UFT takes account of Turkey's commitments under multilateral, regional and bilateral trade agreements, as well as other factors such as the interest of Turkish citizens, and domestic industries.

8. The Ministry of Industry and Trade is responsible for the formulation and administration of trade-related laws in the areas of technical barriers to trade, protection of intellectual, industrial and commercial property rights (except copyright and neighbouring rights for which the Ministry of Culture is responsible) and protection of competition and consumer rights. Over the past four years, the Ministry has prepared the following laws: the Protection of Competition Law (No. 4054 of 1994), the Consumer Protection Law (No. 4077 of 1995), the Regulation Concerning the Type Approval of Motor Vehicles (No. 22982 of 1997), and the Turkish Patent Institute Decree (No. 544 of 1994), as well as formulating new intellectual property laws, which were enacted in 1995 in accordance with EU norms (patent, utility models, trade marks, industrial designs, geographical indications and copyrights). It is also empowered to enforce the industrial standards set by the Turkish Standards Institute (TSE) and is charged with overseeing quality control systems, test laboratories, instrument metrology and calibration facilities.

9. The Undersecretariat of the State Planning Organization (SPO) is responsible for preparing the five-year development plan. The current plan covers the period 1996 to 2000. It sets out the economic objectives and the priorities for the public investment programme. The SPO also implements incentive schemes for regional development and assists in indicative regional planning.

10. There are no formal arrangements for channelling economic and trade policy advice from academia or the private sector to the relevant government bodies. However, consultation is sometimes sought from universities and research institutions, such as the Economic and Development Foundation (IKV), the Scientific and Technical Research Council of Turkey (TUBITAK), the Foreign Economic Relations Board (DEIK), the Foreign Trade Association of Turkey (TURKTRADE), and the Export Promotion Centre (IGEME). The private sector provides inputs to trade policy formulation by communicating its views either directly to the UFT or through the Union of Chambers, and Commodity Exchanges of Turkey (TOBB), the Turkish Industrials' and Businessmen's Association (TUSIAD), as well as individual and local chambers of commerce and exporters' associations.

### **(3) TRADE RELATIONS**

#### **(i) Trade policy objectives**

11. The entry into force of the customs union between Turkey and the EU on 1 January 1996, with the final goal of accession to the EU, has been the most important factor affecting the Turkish trading system in recent years.<sup>2</sup> With its far-reaching and comprehensive scope, the customs union has given renewed impetus to the liberalization process in Turkey. Apart from the elimination of customs duties on goods imported from the EU, the adoption of EU CET for most imports from third

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<sup>2</sup> Article 28 of the Ankara Agreement states that "as soon as the operation of the Agreement has advanced far enough to justify envisaging full acceptance by Turkey of the obligations arising out of the Treaty establishing the Community, the Contracting Parties shall examine the possibility of accession of Turkey to the Community".

countries resulted in lowered customs duties as well as improved and more secure access for third countries to the Turkish market for most industrial products. Turkey is also progressively aligning its tariffs with the preferential customs regime of the EU. In addition to frontier measures, the agreement includes important provisions on the prevention of unfair competition, payments, state monopolies, intellectual property, public procurement, state aids, structural adjustment and institutional arrangements.

12. The engagements Turkey has undertaken towards the EU are much more comprehensive than the engagements with the WTO. Hence, as these commitments are parallel to its commitments *vis-à-vis* the WTO, these measures should facilitate and accelerate Turkey's implementation of the WTO provisions.<sup>3</sup>

13. Notwithstanding the important liberalization measures undertaken within the framework of the CUD and the associated positive economic impact, it is unclear to what extent bilateral trade expansion will come at the expense of trade between Turkey and non-EU members (trade diversion), but the magnitude of the MFN liberalization and other measures suggests that the overall thrust will also be beneficial to third countries. However, increased concentration on the EU market will increase Turkey's dependence on EU economic booms and vulnerability to its recessions. As noted in Chapter I, about half of Turkey's exports were destined to EU members in 1997, while more than half of Turkey's foreign direct investment inflows came from EU members.

## (ii) Turkey and the WTO

14. Turkey was an active member of the GATT and became a founding member of the WTO on 26 March 1995.<sup>4</sup> Although the WTO Agreements have the force of law, Turkey is committed to amending its legislation to bring it into conformity with the results of the Uruguay Round. To this aim, Turkey has already amended legislation in the areas of intellectual property, and safeguards, while legislation on anti-dumping and countervailing measures was expected to be amended in second half of 1998.

15. As a result of the Uruguay Round, the share of bound tariff lines increased from 31% to 46%, with all agricultural lines bound (Chapter III (2)(f)). However, applied rates are generally well below bound rates: simple average MFN tariff of 13% in 1998 compared with 36% bound rate of duty, and a further reduction to 30% by year 2005. In principle, this would provide Turkey with freedom to unilaterally increase its import tariffs, but the customs union with the EU puts an effective constraint on any such action. In the area of agriculture, Turkey has committed to reduce budgetary outlays for export subsidies by 24%, and subsidies volumes by 14% between 1995 and 2004, in equal instalments.

16. Turkey has also made extensive commitments under the General Agreement on Trade in Services (GATS); its schedule covers 72 activities out of a total of 161 in nine sectors.<sup>5</sup> It also became a party to the Interim Agreement on Financial Services in 1995, the 1997 Information Technology Agreement (ITA), the 1997 Agreement on Telecommunication Services, and the 1997 Agreement on Financial Services. Table AIV.4 contains a summary of Turkey's specific commitments in the services sector, excluding the 1997 Financial Services Agreement (which will enter into force on 1 March 1999). In the context of the ITA, by 2000 duty-free treatment will apply

<sup>3</sup> Statement by the Turkish Minister of State for Foreign Trade at the WTO Ministerial Conference in Singapore, December 1996.

<sup>4</sup> The full text of the Agreement establishing the WTO was published in the Official Gazette No. 22213 dated 25 February 1995 (WTO document G/TBT/2/Add.33, 18 June 1997).

<sup>5</sup> GATT (1994a).

to 358 tariff lines at the HS eight-digit level in the area of computers, telecommunications equipment, semiconductors, semiconductors manufacturing equipment, software, and scientific instruments.

17. Turkey has not signed any of the plurilateral WTO Agreements, but participates as an observer in the Committees on Government Procurement and Trade in Civil Aircraft.<sup>6</sup>

18. Turkey has fulfilled most of its WTO notification obligations, but in June 1998 had yet to complete such notifications, including in respect of the non-existence of measures, in the areas of GATS, SPS, and SCM. A survey of the status of selected notifications made by Turkey is contained in Table II.2, which provides a brief description of the notification obligations and periodicity.

19. At the time of completion of this report (July 1998), Turkey's trading partners had requested four consultations regarding Turkey's trade measures. One dispute, concerning the imposition of tax on box-office receipts of foreign film revenues, has been concluded; of three other cases, all of which involve quantitative restrictions on imports of textile and clothing products, one has led to the establishment of a panel (Table II.3); in the other two cases, complainants participated in the panel procedure as interested third parties. Turkey has had an interest in two disputes as a third party; panel reports were adopted on the United States "Measures affecting the importation, internal sale and use of tobacco" and on the United States "Measures affecting imports of woven wool shirts and blouses". Turkey is not engaged in any trade dispute outside the WTO framework.

20. During the WTO Ministerial Conference in Geneva in May 1998, Turkey reiterated its support for the WTO and the liberal international trading system based on the principles of free competition, non-discrimination and elimination of trade barriers. It stressed the need for due consideration of the special needs and development requirements of the developing and the least-developed countries. Turkey expressed satisfaction regarding attainments reached within the framework of the ITA, the Agreement on Financial Services, the Agreement on Telecommunications Services, and the Working Groups on Trade and Competition as well as on Trade and Investment. The importance attached to the full implementation of the TRIPS Agreement and the need for the initiation of negotiations under Article 24 aimed at increasing the protection of individual geographical indications were emphasized.<sup>7</sup>

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<sup>6</sup> The Agreements on Bovine Meat and International Dairy ceased to exist on 31 December 1997. Turkey had not signed any of these agreements.

<sup>7</sup> Statement by the Turkish Minister of State at the WTO Ministerial Conference in Geneva, May 1998.

**Table II.2**  
**Status of selected notification requirement to the WTO, June 1998**

WTO Agreement	Area of notification requirement	Periodicity	WTO document <sup>a</sup>	Comment
<u>Agreement on Agriculture</u>				
(Articles 10 and 18.2; ES:1+)	Export subsidies	Annual, 90 days after end of calendar year	G/AG/N/TUR/5/Rev.1, Oct. 1997	
(Article 18.2; DS:1+)	Domestic support	Annual, 90 days after end of calendar year	G/AG/N/TUR/6, Apr. 1998	
(Article 18.2)	Green box measures	Annual, 90 days after end of calendar year		Turkey has not notified any measures.
<u>Anti-dumping</u> (Agreement on Implementation of Article VI of GATT 1994)				
(Article 16.4)	Anti-dumping actions	Twice annually	G/ADP/N/35/TUR, Feb. 1998	
(Article 16.5)	Competent authorities	Once	G/ADP/N/14/Add.6, Mar. 1998	
(Article 18.5)	Laws and regulations	March 1995, then changes	G/ADP/N/1/TUR/2, Dec. 1995	
<u>Customs Valuation</u> (Agreement on Implementation of Article VII of GATT 1994)				
(Article 22.2)	Laws and regulations	Once, then changes	G/VAL/N/1/TUR/1, Oct. 1995	
<u>General Agreement on Trade in Services</u> (GATS)				
(Article III:3)	Notification of significant changes over the past year in the rules governing scheduled sectors.	Annual	Not received	
(Article III:4 or IV:2)	Contact/enquiry points	Once	S/ENQ/23, Sep. 1996	
(Article VII:4)	Recognition measures	Within 12 months of WTO Agreement	Not received	
<u>General Agreement on Tariffs and Trade</u> (GATT) 1994				
(Article XXVIII:5)	Reservation of right to modify schedule and concessions	Ad hoc	G/MA/13, Nov. 1996	.
<u>Agreement on Import Licensing Procedures</u>				
(Articles 1.4(a) and 8.2(b))	Laws and regulations	Once, then changes	G/LIC/N/1/TUR/1, Aug. 1996 and G/LIC/N/1/TUR/2/Rev.1, Jun. 1998	
(Article 7.3)	Replies to questionnaire on procedures	Annual	G/LIC/N/3/TUR/2, May 1998	
<u>Agreement on Preshipment Inspection</u>				
(Article 5)	Laws and regulations	Once, then changes	Not received	
<u>Quantitative Restrictions</u> (Decisions on Notification Procedures for Quantitative Restrictions)				
(Decision of the Council for Trade in Goods (G/L/59))	Non-tariff measures	Every two years, beginning Jan. 1996	G/MA/NTM/QR/1, Feb. 1996	
<u>Agreement on Rules of Origin</u>				
(Article 5.1 and Annex II(4))	Preferential rules of origin	Within 90 days of WTO Agreement	G/RO/N/8, Jan. 1996	
<u>Agreement on Safeguards</u>				
(Article 12.6)	Laws and regulations	Once, then changes	G/SG/N/1/TUR/2/Rev.1/Corr.1, Aug. 1997	

Table II.2 (cont'd)



WTO Agreement	Area of notification requirement	Periodicity	WTO document <sup>a</sup>	Comment
(Article 12.7)	Pre-existing Article XIX measures	March 1995, then changes	No notification because no pre-existing Article XIX measures.	Turkey does not maintain any safeguard measures relating to this article.
<u>Sanitary and Phytosanitary Measures</u> (Agreement on the Application of)				
(Article 7, Annex B)	Enquiry point and notification authority	Ad hoc	G/SPS/ENQ/6, Oct. 1997	Turkey has not notified any measures.
<u>State Trading</u> (Understanding of the Interpretation of Article XVII of GATT 1994)				
(Article XVII:4(a))	State-trading activities	Annual	G/STR/N/3/TUR, Aug. 1997	
<u>Agreement on Subsidies and Countervailing Measures</u>				
(Article 25.1 – GATT 1994 Article XVI:1)	Specific subsidies	Annual	G/SCM/N/3/TUR/Corr.2, Dec. 1995	
(Article 25.11)	Countervailing measures	Twice annually	G/SCM/N/35/Add.6, Mar 1998	
(Article 25.12)	Competent authority		G/SCM/N/18/Add.6, Mar. 1998	
(Article 32.6)	Laws and regulations	Once by 15 March 1995, then changes	G/SCM/N/1/TUR/2, Dec. 1995	
<u>Agreement on Technical Barriers to Trade</u>				
(Article 2)	Technical regulations	Ad hoc	G/TBT/Notif. 98.274, Jun. 1998	
(Articles 10.1 and 10.3)	Enquiry point	Once, then changes	G/TBT/ENQ/11, Apr. 1998	
(Article 15.2)	Laws and regulations	Once, then changes	T/TBT/2/Add.33, Jun. 1997	
(Annex 3(c))	Acceptance of Code	Once, then changes	G/TBT/CS/N/35, Mar. 1996	
<u>Agreement on Textile and Clothing</u>				
(Article 2.7)	First integration	Once	G/TMB/N/44, Apr. 1995	
(Article 2.11)	Second integration	Once	G/TMB/N/228/Corr.1, Apr. 1997, and G/TMB/N/228/Add.2, Aug. 1997	
(Article 6.1)	Transitional safeguards	Once before 1 March 1995	G/TMB/N/18, Feb. 1995	Turkey retains the right to use the safeguard provision of Article 6.
<u>Agreement on Trade-Related Aspect of Intellectual Property Rights (TRIPs)</u>				
(Article 63.2 and decisions of the TRIPS Council of 21 Nov. 1995)	Laws and regulations	Within 30 days of WTO Agreement	IP/N/1/TUR/1, May 1995 and IP/N/1/TUR/1/Add.1, May 1997	
(Article 69)	Contact points	1 Jan. 1996	IP/N/2/REV.2/ADD.2, Jan. 1997	
<u>Agreement on Trade-Related Investment Measures (TRIMs)</u>				
(Article 5.1)	TRIMs inconsistent with the Agreement.	Within 90 days of WTO Agreement		Turkey has not notified any measures.
(Article 6.2)	Publications in which TRIMs may be found	Once	G/TRIMS/N/2/REV.1, Jul. 1997	
<u>Plurilateral Trade Agreements</u>				
				Turkey is not a party to the Agreements on Trade in Civil Aircraft and on Government Procurement.

a The table refers to the latest notification made under each Agreement.

Source: WTO documents.

**Table II.3**  
**Cases involving Turkey under WTO dispute settlement provision, July 1998**

Dispute	Raised by/against	Actions	Outcome
Restrictions on imports of textile and clothing products	Hong Kong/Turkey	Consultation requested under GATT Articles XI, XIII and XXIV as well as WTO ATC Article 2 on 12 February 1996 (WT/DS29/1).	Pending consultation
Restrictions on imports of textile and clothing products	India/Turkey	Consultation requested under GATT Articles XI and XIII as well as WTO ATC Article 2 on 21 March 1996 (WT/DS34/1). Establishment of panel requested on 2 February 1998 (WT/DS34/2). DSB agreed to establish a panel on 13 March 1998 (WT/DSB/M/43).	Active panel
Restrictions on imports of textile and clothing products	Thailand/Turkey	Consultation requested under GATT Articles I, II, XI and XIII as well as WTO ATC Article 2 on 20 June 1996 (WT/DS47/1).	Pending consultation
Taxation of foreign film revenues	United States/Turkey	Consultation requested under GATT Article III on 12 June 1996 (WT/DS43). Establishment of panel requested on 9 January 1997 (WT/DS/M28). DSB agreed to establish a panel on 25 February 1997 (WT/DS/M/29).	Notification of mutually agreed solution on 14 July 1997 (WT/DS43/3/G/L/77).

Note: Reference to WTO document is made within parenthesis.

Source: WTO Secretariat.

### (iii) Plurilateral agreements

#### (a) Customs union with the European Union

21. Covering TRIPS, competition policies, commercial policies, customs provisions and technical barriers to trade, the customs union between Turkey and the EU goes far beyond a basic customs union with free internal trade and a CET, and has given a new impetus to the liberalization process in Turkey. A process of bilateral trade liberalization, initiated in 1963, preceded the CUD (Box II.1).

22. The CUD, covering a broad range of areas, requires Turkey to implement the measures listed below (Turkey has already adopted a wide range of EU trade and trade-related legislation (Table AII.1))<sup>8</sup>:

- elimination of customs duties and charges having equivalent effect in mutual trade in industrial goods, by 1 January 1996; phase-out of duties and charges on the remaining 142 coal and steel products (HS twelve-digit level) (covered by the European Coal and Steel Community (ECSC)) by 1 January 1999; and phase-out of the duties on the industrial component of processed agricultural goods and adjustment of duties on the agricultural component, by 1 January 1999;
- adoption of the CET against third country imports of industrial goods and the industrial component of processed agricultural goods, by 1 January 1996 (except for a few items listed in the annex of the Association Council's Decision 1/95)<sup>9</sup>, and

<sup>8</sup> WTO document WT/REG22/1, 13 February 1996; and Togan (1997a).

<sup>9</sup> Turkey will maintain rates of protection above those specified in the CET for certain "sensitive" products equivalent to 290 items at the twelve-digit level for up to five years (passenger cars with engines smaller than 2,000 cm<sup>3</sup>, 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 fertilizers).

- adoption of all of the preferential agreements concluded by the EU with third countries, by 1 January 2001;
- elimination of quantitative restrictions or measures having equivalent effect in trade of industrial goods with EU, by 1 January 1996;
  - approximation and implementation of the EU commercial policy (including external textiles) regulations, by 1 January 1996, including, *inter alia*, common rules for imports, procedures for administering quantitative quotas, and for officially supported export credits;
  - adoption of EU customs provisions, by 1 January 1996, in the fields of origin of goods; customs value of goods; introduction of goods into the territory of the customs union; customs declaration; the release of goods for free circulation; suspensive arrangements and customs procedures with economic impact; movement of goods; customs debt; and rights of appeal;
  - adoption of EU competition rules, by 1 January 1996.
  - incorporation into its legislation of the EU instrument relating to the removal of technical barriers to trade, by 1 January 2001;
  - ensurance of adequate and effective protection and enforcement of intellectual, industrial, and commercial property rights; adoption of most measures immediately, and on 1 January 1999 adopt patentability of pharmaceuticals, utilizing a transition period ending on 31 December 1999 under the Agreement on Trade-Related Aspect of Intellectual Property Rights (TRIPS);

23. Turkey has not only eliminated its tariffs and levies on imports of manufacturing products originating in the EU, but now also applies the EU CET on imports from third countries, involving a substantial reduction of tariffs on most imports. This latter effect is because the simple average MFN tariff of the EU is only about 10% (1997), and Turkey will provide preferential access to its markets to all countries to which the EU grants preferential access.<sup>10</sup> Moreover, since preferential access agreements typically are negotiated reciprocally, Turkish exporters can expect improved access to countries to which EU grants preferential access.

24. The scope of the CUD, however, excludes Turkey from some of the crucial aspects of the common market: the common agricultural policy (CAP), including the freedom of movement of agricultural products; the free movement of labour and capital; and moves towards a single currency. Unlike countries in the European Economic Area (EEA), Turkey may also be subject to anti-dumping measures by the EU. The financial support originally envisaged from the EU to Turkey has not yet been made available.<sup>11</sup> As a result, as noted by the authorities, the relationship between the two parties was seriously affected.

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<sup>10</sup> Reflecting the tariffication of previous variable levies and import restrictions under the WTO Agreement, agricultural tariffs show considerably higher averages: the simple average for industrial products was 4.9% in 1997, while 20.8% for agricultural products (WTO, 1997).

<sup>11</sup> Europe Information Service (1998).

**Box II.1: Steps leading up to customs union with the EU**

Turkey's application for the association with the European Economic Community (EEC) was made in 1959. The application ultimately resulted in a signing of the Association Agreement in 1963 (Ankara Agreement), which entered into force on 1 December 1964. The agreement provided for the association to be implemented in three phases: a preparatory stage, a transitional stage and a final stage. During the preparatory stage (1964-1973) the EEC granted unilateral concessions to Turkey in the form of agricultural tariff quotas and financial assistance. In the meantime, Turkey did not have to undertake trade liberalization.

In 1967 Turkey lodged its application for negotiations on entering the transitional stage. The Additional Protocol to the Ankara Agreement was signed in 1970, and became effective on 1 January 1973. The basic aim of the Additional Protocol was to establish the customs union (CU) with the EU. The following trade preferences were extended:

- since 1971 industrial products of Turkish origin have been exempted from customs duties and charges having equivalent effect in the Communities. For exports of textiles and clothing to the Communities, the EU undertook to phase out duties, and, for some products, to establish tariff quotas, over a 12-year period. The EU also abolished all quantitative restrictions on such products, with some exceptions. The provisions on the CU contained in the Additional Protocol do not apply to agricultural products. Turkey's exports of agricultural products, which in the EU, are governed by the common agricultural policy, were exempt from EU import duties from 1 January 1987 but not from variable levies. For certain products the customs duty exemption was accompanied by quantitative restrictions, seasonal quotas, or a requirement to observe reference prices, minimum import prices and voluntary export restrictions;
- tariffs on products originating in the EU were calculated as successive percentage reductions of the duties prevailing on 23 November 1970 (date of signature of the Additional Protocol). In 1993, for example, duties were equivalent to 20% or 30% of these basic duties.

The final stage: In 1995, it was agreed at the Association Council meeting to create a CU between Turkey and the EU starting on 1 January 1996.

25. The trade liberalization taking place within the framework of the CUD is expected to have a significant economic impact. A study by Harrison *et al.* (1996), estimates the gain to be in the range of 1.0 to 1.5% of GDP per year with the largest gains coming from improved access to third countries. The actual benefits are likely, however, to be higher, as a result of dynamic effects stemming from, *inter alia*, improved resource allocation. The study also points out that the CUD poses several challenges to the Turkish economy (Chapter I). One of these is the revenue losses as a result of lower duties; estimated at about 1.4% of GDP per year.

26. The long-standing trade preferences between Turkey and the EU have resulted in EU being not only the most important market for Turkey (47% of Turkey's merchandise exports in 1997), but also one of the main sources of imported goods (51% of Turkey's merchandise imports in 1997) (Chart II.2 and Tables AI.6 and AI.7). Some 97% of Turkey's merchandise imports from the EU in 1996, and 85% of its exports were covered by the customs union.

(b) Free trade agreement with the EFTA

27. On 10 December 1991 Turkey signed a free-trade agreement with countries of the European Free Trade Association (EFTA), which entered into force on 1 April 1992.<sup>12</sup> The agreement covers industrial products, fish and processed agricultural products (within HS chapters 25 to 97) with the

<sup>12</sup> EFTA is comprised of Iceland, Liechtenstein, Norway and Switzerland.

exception of nine agriculture-based tariff items at the HS six-digit level including mannitol, sorbitol, casein, and egg and milk albumin and three items at the HS four-digit level including natural cork, flax and true hemp. The agreement also covers rules on intellectual property, competition, state aid and dumping.

28. The agreement is based on an asymmetrical model similar to Turkey's agreement with the EU. Since 1 January 1993, Turkey has granted imports from EFTA countries the same customs duty treatment as imports from the EU, except for fish and fishery products. Thus, in the period up to the end of 1995, Turkey gradually abolished all customs duties and charges having equivalent effect on industrial products from the EFTA countries. Trade in processed agricultural goods follows the same system as between Turkey and the EU, i.e. that the Mass Housing Fund (MHF) levy on agricultural components of processed agricultural goods is to be reduced by 1 January 1999 to achieve "target agricultural components".

29. On 1 April 1992, EFTA countries abolished all customs duties on imports and any charges having equivalent effect on products from Turkey, except on textiles and apparel goods. For textiles and apparel products, tariffs were eliminated on 1 January 1996.

30. Trade between Turkey and the EFTA members countries is shown in Chart II.2. Some 99% of Turkey's merchandise imports from EFTA in 1996 and 77% of its exports were covered by the free-trade agreement.

(c) Economic Co-operation Organization (ECO)

31. Turkey is a signatory to the Economic Co-operation Organization (ECO), together with Pakistan and Iran. While ECO members expanded in 1992 to include ten countries, tariff preferences are granted only on trade between the founding member countries.<sup>13</sup> In accordance with the Additional Protocol on Preferential Tariff and its Annex II a 10% tariff reduction of the statutory rates was granted on 37 items at the HS four-digit line, including, *inter alia*, certain marble, pharmaceuticals, detergents, leather products, paper and paperboards, canvas, centrifugal pumps for liquids, compressors, henna and bentonite (Chapter III(2)(i)). However, tariff preferences within ECO ceased on January 1996 as the preferential rates were higher than MFN rates. The Government is reviewing the possibility of extending a preferential reduction of 10% below the MFN rates within the framework of ECO. The ultimate objective of the agreement is to liberalize trade among the member States, but no timetable has yet been agreed upon. Trade between the ECO signatory members countries is shown in Chart II.2.

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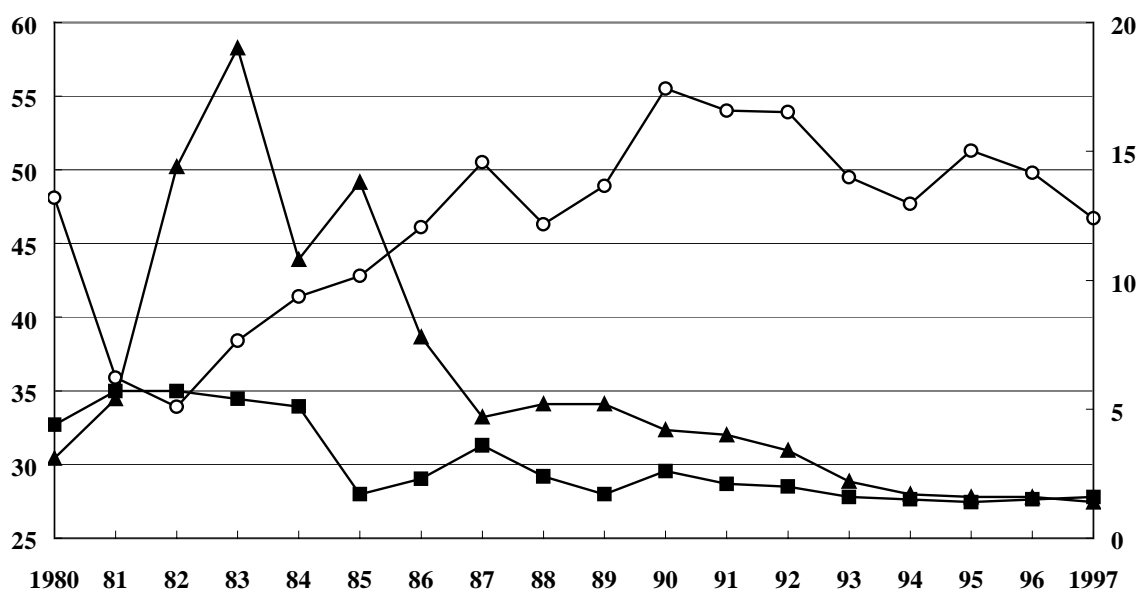
<sup>13</sup> ECO member countries are Afganistan, Azerbaijan, Islamic Republic of Iran, Kazakhstan, Kyrgyz Republic, Pakistan, Tajikistan, Turkey, Turkmenistan and Uzbekistan.

## Chart II.2

## Turkey's trade with free-trade agreement partners, 1980-97

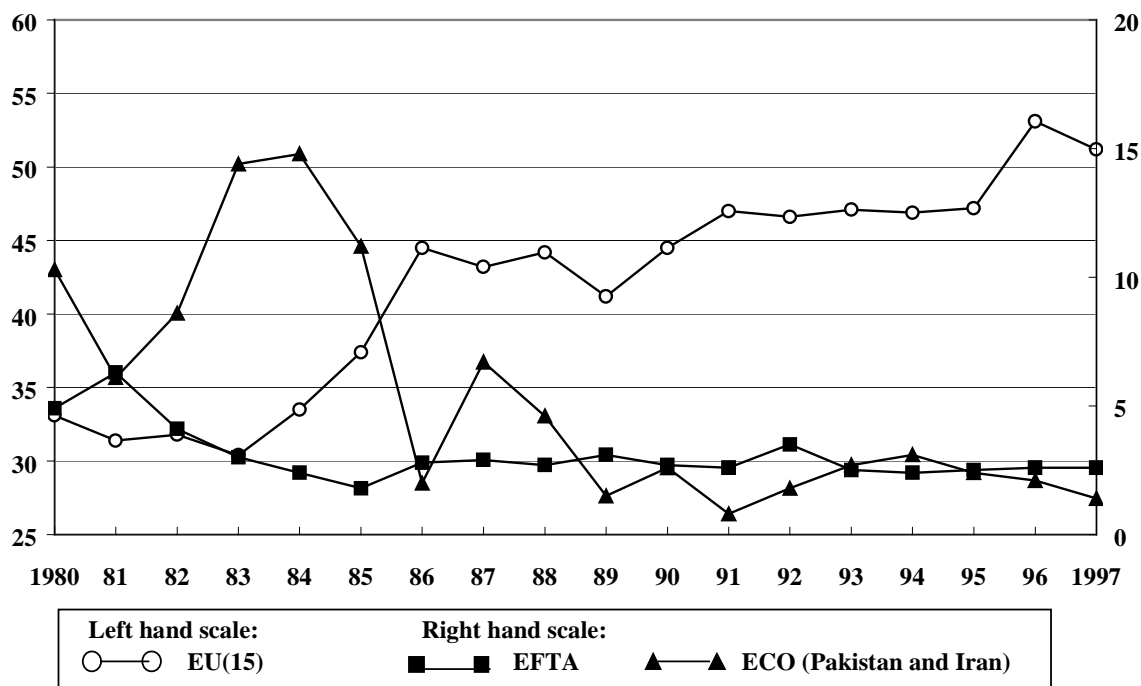
## (a) Exports to free-trade agreement partners

Per cent of Turkey's total merchandise exports



## (b) Imports from free-trade agreement partners

Per cent of Turkey's total merchandise imports



Note: Austria, Finland, Sweden and unified Germany are included in the EU(15) for the whole period.

Source: UNSD, Comtrade database (SITC Rev.1).

(d) Black Sea Economic Co-operation (BSEC)

32. The Declaration on Black Sea Economic Co-operation (BSEC), signed on 25 June 1992, has sought to expand economic cooperation between its eleven members.<sup>14</sup> Although the BSEC provides for multilateral cooperation in various fields it does not as yet provide for preferential tariff concessions; the areas of cooperation range from banking and finance to the exchange of statistical data and economic information in areas such as energy, transport, telecommunications, trade and industry, agriculture and agro-industry, environmental protection, tourism, and science and technology.<sup>15</sup> In time, the BSEC may become a forum for the elaboration of approaches to the development of trade relations. On 7 February 1997, a declaration of intent for the establishment of a BSEC free-trade area was adopted. The declaration envisages the examination of the ways and means for the progressive establishment of such an area, taking into account each country's existing and future links with the EU. Recently, the Heads of State or Government of the participating States of the BSEC agreement assessed the progress of the agreement and signed the Charter of the BSEC organization. This act transforms the existing inter-governmental mechanism into a fully-fledged regional economic organization.

(e) Generalized System of Preferences (GSP)

33. As noted earlier, Turkey will, as part of the CUD with the EU, adopt all of the preferential agreements the EU has concluded with third countries, by 1 January 2001. This includes, *inter alia*, the application of EU preferences under the GSP, which Turkey has not yet adopted.

34. Turkish exports receive preferential treatment under the GSP schemes of Australia, Canada, Japan, New Zealand, Russia and the United States. The preference extended by Russia is 75% of MFN rates on all products except those on a negative list, while the United States extends duty-free treatment on 744 products.

(f) Global System of Trade Preferences (GSTP)

35. Turkey is not a member of the Global System of Trade Preferences scheme.

**(iv) Bilateral agreements**

36. Turkey has signed bilateral free-trade agreements with ten countries (Table II.4). These bilateral free-trade agreements, which have similar features to the customs union agreement between the EU and Turkey, were concluded as a result of Turkey's obligations to the CUD. Negotiations with Poland are in progress. Free-trade agreements are being discussed with Tunisia, Egypt, Morocco and Palestine.

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<sup>14</sup> The BSEC member countries are: Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldavia, Romania, Russian Federation, Turkey and Ukraine.

<sup>15</sup> The Republic of Turkey's web-site ([www.turkey.org/turkey/keid.htm](http://www.turkey.org/turkey/keid.htm)).

**Table II.4**  
**Turkey's bilateral trade agreements, 1998**

Country	Date of agreement	Entry into force	Major Turkish exports and imports covered by the agreement <sup>a</sup>	Other areas of co-operation
Israel	14/3/1996	1/5/1997	Phased reduction of tariffs on industrial goods; complete elimination on industrial goods by 2000	All agreements include provisions on right of establishment and supply of services, internal taxation, structural adjustment, dumping, state monopolies, rules of origin, payments, rules of competition, state aid, balance-of-payments difficulties, protection of intellectual property, and government procurement.
Hungary	8/1/1997	1/4/1998	Phased reduction of tariffs on industrial goods; complete elimination on industrial goods by 2001	
Romania	29/4/1997	1/2/1998	Phased reduction of tariffs on industrial goods; complete elimination on industrial goods by 2002	
Czech Republic	3/10/1997		Phased reduction of tariffs on industrial goods; complete elimination on industrial goods by 2001	
Slovak Republic	20/10/1997		Phased reduction of tariffs on industrial goods; complete elimination on industrial goods by 2001	
Lithuania	2/6/1997	1/3/1998	Phased reduction of tariffs on industrial goods; complete elimination on industrial goods by 2001	
Estonia	3/6/1997		Tariffs on industrial goods will be abolished by the entry into force of the Agreement	
Latvia	16/6/1998		Tariffs on industrial goods will be abolished by the entry into force of the Agreement (reduction of tariffs on limited number of textile products by 2000)	
Slovenia	5/5/1998		Phased reduction of tariffs on industrial goods; complete elimination on industrial goods by 2001	
Bulgaria	11/7/1998		Phased reduction on industrial goods; complete elimination on industrial goods by 2002	

a See Table III.7 for details on the coverage and the preferential margin.

Source: Government of Turkey.

#### **(4) FOREIGN DIRECT INVESTMENT POLICY<sup>16</sup>**

##### **(i) The legislative framework**

37. Since the previous Trade Policy Review, Turkish legislation governing foreign investment has been revised, and a new law has been put into effect.<sup>17</sup> The already liberal foreign investment policies were simplified and bureaucratic formalities were streamlined. The screening and approval process seems to be routine and non-discriminatory, which does not impede investment or limit competition.<sup>18</sup> However, the number of sectors subject to foreign direct investment restrictions are the

<sup>16</sup> Recent trends in foreign investment flows, by country and sector, are provided in Chapter I.

<sup>17</sup> Law No. 6224 of 18 January 1954 Concerning the Encouragement of Foreign Capital has been revised twice (July and August 1995) and Decree No. 92/2789 of 4 March 1992 was replaced by Decree No. 95/6990 of 7 June 1995. A new regulation was put into effect in 1995 - Communiqué No. 95/2 of 24 August 1995 Concerning Foreign Capital - laying out principles concerning the application for permits and implementation.

<sup>18</sup> USTR (1997).



same as at the time of the previous Review. The continued imbalances at the macroeconomic level, along with frequent changes in government, are likely to have restrained foreign investment.

38. Foreign direct investment in Turkey requires permission from the General Directorate of Foreign Investment (GDFI), Undersecretariat of the Treasury. The GDFI acts as a "one-stop shop" for promoting foreign direct investment, issuing permission, registration, granting incentives to investors, and cancelling permission certificates and registration. Since 1995, responsibility for the organization and coordination of investments under BOT (build, operate and transfer) and BOO (build, operate and own) models has been added to the functions of the GDFI.<sup>19</sup> Other changes to the legislation on foreign direct investment include, *inter alia*: (i) all foreign investments are now evaluated by the GDFI, whereas previously the approval of the Council of Ministers was required for investments in which foreign share capital exceeded US\$150 million; (ii) a capital increase of existing establishments with foreign capital in Turkey can be realized without permission if participation ratios of foreign partners do not change; previously, this required the permission of the Undersecretary; (iii) real and legal persons resident abroad can buy or sell the shares of existing companies in Turkey in accordance with the principals defined by the Undersecretary; previously, the Undersecretariat of Treasury determined the value of the shares; and (iv) foreign exchange brought from abroad for the purpose of establishing corporations, increasing capital or buying the shares of existing Turkish companies can now be blocked in a Foreign Exchange Deposits Account, whereas before it was necessary to convert foreign exchange to local currency.

39. Almost all sectors of the economy open to private domestic investors are also open to foreign participation (Table II.5). The equity participation ratio of foreign shareholders is restricted to 20% in broadcasting and, subject to certain conditions, 49% in aviation, maritime transportation, ports, fish-processing and value-added telecommunications services. Foreign investors are not allowed to engage in retail trade (except hypermarkets) and real-estate trading, while establishments in the financial, petroleum and mining sectors require special permission. In other sectors where domestic private investment is permitted, 100% foreign participation is allowed. To establish corporations, foreign investors must bring at least US\$50,000 of capital per person to become partners in existing companies and to open branch offices in the Turkish private sector.

40. Where foreign investment is permitted, Article 10 of Law No. 6224 allows for national "equal" treatment for domestic and foreign investors. Investment incentives, such as tariff duty exemptions, investment allowances and subsidized credits, are equally available to foreign and domestic investors (Chapter III(3)(xii) and (4)(ii)). There are no special incentives available only to foreign investors. In recent years, the Government has been encouraging foreign as well as domestic investor participation using BOT or BOO schemes. The schemes have been used in the construction and operation of airports, energy, ports, and bridges.

41. Outward foreign direct investment in excess of US\$5 million requires permission by the Ministry of Finance.

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<sup>19</sup> A private investor is granted the right and the obligation to provide an infrastructure service under terms and conditions specified in a contract. The investor takes over operational responsibility and at least part of the commercial risk.

**Table II.5**  
**Sectors subject to foreign direct investment restrictions, 1998**

Sectors where foreign investment is restricted	Legal source
A. Up to 20% equity participation: Broadcasting	Establishment and Broadcasting of Radio and Television Law No. 3984
B. Up to 49% equity participation:	
Aviation <sup>a</sup>	Civil Aviation Law No. 2920
Maritime transportation <sup>b</sup>	Cabotage Act No. 815, Turkish Commercial Code No. 6762
Port services <sup>c</sup>	Cabotage Act No. 815, Turkish Commercial Code No. 6762, Privatization Law No. 4046
Fish-processing <sup>d</sup>	Fishing Law No. 1380, Bylaw on Fishing Products No. 6710, Turkish Commercial Code No. 6762
Value-added telecommunications services <sup>e</sup>	Privatization Law No. 4000
C. Special permission:	
Financial sector <sup>f</sup>	Banks Act No. 3182, Capital Market Law No. 2499 amended by Law No. 3794 and the relevant Communiqués, Financial Leasing Law No. 3226, Law No. 3568 on Accountancy, Financial Advisory and Certified Financial Advisory dated 1989, Insurance Supervision Law No. 7397 and amended by Statutory Decree No. 539 of 1994.
Petroleum <sup>g</sup>	Petroleum Law No. 6326
Mining <sup>h</sup>	Mining Law No. 3213
D. Sectors closed to foreign investors:	
Retail trade (except hypermarkets)	Administrative practices of the Undersecretariat of Treasury
Real-estate trading <sup>i</sup>	Village Law No. 442, Tourism Incentive Law No. 2634, Administrative practices of the Undersecretariat of Treasury
Fishing <sup>d</sup>	Fishing Law No. 1380, Bylaw on Fishing Products No. 6710, Turkish Commercial Code No. 6762

- a Licences to operate airlines are only granted to locally incorporated companies whose management is under the control of Turkish citizens and majority of voting shares are owned by Turkish citizens. Airlines, of which majority of shares are controlled by foreigners, are not permitted to carry passengers from one national airport to another.
- b Cabotage is reserved to national flag carriers. Registration of commercial ships is granted only to locally incorporated companies whose management is under the control of Turkish citizens, and majority of voting shares are owned by Turkish citizens.
- c Only Turkish citizens, and companies that are majority owned by Turkish citizens, which are managed and represented by Turkish citizens with a majority, and majority voting is held by Turkish citizens, may exercise the rights related to the ports.
- d Foreign-owned enterprises may engage in fish processing, but cannot obtain a fishing licence. Fishing vessels may not register in Turkey unless owned by Turkish nationals or by companies of which majority of voting shares are owned by Turkish citizens.
- e The following value-added services have been opened up: mobile telephone, pager, packet-switched data transmission, circuit-switched data transmission, facsimile services, data networks, intelligent network, cable televisions, coin-operated telephone, satellite systems, similar value-added services and direct printing services.
- f Banks may only be established as joint-stock companies. Establishment of a bank or opening the first branch of a foreign bank in Turkey requires the approval from the Council of Ministers. Only intermediary institutions established in Turkey can perform securities activities. Mutual funds may be founded only by authorized banks, insurance companies, intermediary institutions and pension funds established in Turkey. The majority of the members of the board of directors of an investment company must be Turkish nationals. Portfolio management and advisory services in securities may be performed only by intermediary institutions established in Turkey. Also, portfolio management services can be performed by portfolio management companies established in Turkey. In order to perform financial advisory services, foreign partners have to be citizens of countries which have officially codified the principles of the profession of financial advisory, and authorization by the Prime Minister is required. In insurance, foreign commercial presence or presence of foreign natural persons regarding services auxiliary to insurance is permitted only for consultancy and risk-management services. Foreign investment in banking by opening a branch may be subject to a reciprocity requirement. Performance of financial advisory services by non-residents requires a reciprocity condition.
- g Foreign enterprises may invest in marketing and sales activities without restriction. They may invest in exploration and exploration activities provided they are not controlled or owned by a foreign State (this restriction may be lifted by the Council of Ministers). Petroleum related activities can be carried out through locally incorporated stock companies or Turkish branches of stock companies incorporated abroad. For investment in refining, transportation through pipelines and storage, approval by the Council of Ministers is required.
- h Foreign nationals and companies may invest only through locally incorporated companies.
- i Foreign acquisition of real estate outside of municipal boundaries is restricted; the restriction can be lifted by the Council of Ministers for the creation of tourism centres.

Source: Government of Turkey.

**(ii) International investment agreements**

42. By June 1998, Turkey had signed 53 bilateral agreements for the promotion and protection of foreign direct investment<sup>20</sup>, of which 26 have been signed since 1993.

43. Turkey has been a member of the International Centre for Settlement of Investment Disputes and the Multilateral Investment Guarantee Agency since 1987. Turkey has also actively participated in the OECD's negotiations on a multilateral agreement on investment (MAI). Since Turkey's foreign direct investment regime is already liberal being party to a prospective MAI would simply create a new formal, comprehensive regime rather than regimes the adoption of new liberalizing measures.

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<sup>20</sup> Albania, Algeria, Argentina, Austria, Azerbaijan, Bangladesh, Belarus, Bosnia-Herzegovina, Belgium, Bulgaria, China, Croatia, Cuba, the Czech Republic, Denmark, Egypt, Estonia, Finland, Georgia, Germany, Holland, Hungary, Indonesia, Iran, Israel, Italy, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Lithuania, Macedonia, Malaysia, Moldova, Morocco, Nigeria, Pakistan, Poland, Republic of Korea, Romania, Russian Federation, Spain, Sweden, Switzerland, Tajikistan, Tunisia, Turkmenistan, Ukraine, the United Kingdom, the United States and Uzbekistan.