

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) OVERVIEW

1. Over the past four years, Turkey has undertaken important trade- and trade-related reforms. The main liberalization has been undertaken on an MFN basis within the framework of the customs union decision (CUD) between the European Union and Turkey, which entered into force on 1 January 1996. The liberalization measures include a reduction of tariffs, simplification of customs procedures, a revamping of the export incentive system, the establishment of a competition authority responsible for overseeing the new competition legislation, the enactment of comprehensive legislation covering intellectual property rights, and harmonization of technical legislation on standards with that of the EU. Although the CUD provides for overall liberalization, Turkey has also put in place some new trade instruments, in particular tariff quotas and quotas on textiles and clothing. A number of products are subject to prior import licencing.

2. The introduction of Turkey's customs union with the EU resulted in a substantial reduction of Turkey's applied tariff rates, including the abolition of various import surcharges, except for a few lines which are still subject to a Mass Housing Fund (MHF) levy (section 2(ii)). The new import regime applies the EU common external tariff (CET) for most imports of industrial products and for the industrial component of processed agricultural products from third countries. The simple average MFN tariff (including the MHF levy) has, as a consequence, fallen from 26.7% in 1993 to 12.7% in 1998 (second half). However, tariffs on agricultural products other than processed items, are not required to be lowered by the CUD and some have even increased (Chapter IV); for a small number of items, mainly in agriculture, the use of specific, alternate and formula duties are so complex that the authorities are unable to calculate the *ad valorem* equivalents. Substantial tariff dispersion continues to exist, and the number of tariff bands (242) is unusually large. As a result of the Uruguay Round and the recently concluded ITA Agreement, Turkey bound the rates on a wide range of products, equivalent to almost half of all tariff lines. The bound rates are often well above the applied MFN rates; in principle, this would allow Turkey to unilaterally increase its tariffs, but the customs union with the EU sets an effective constraint on any such action.

3. Since the previous Trade Policy Review, Turkey has eliminated many of its export incentive programmes, including the energy incentive, the free wheat programme of the Turkish Grain Board (Table III.16), the pasta export subsidy, and the transportation subsidy. Turkey now relies heavily on a wide range of indirect measures to assist its exporters, including duty concessions, and export finance, insurance, guarantee, promotion and marketing assistance some of which may have a subsidy component.

4. Turkey's state aid system of tariff and other tax exemptions and concessional credit remains complex, non-transparent and generous, equivalent to some 2.3% of GDP in 1994. The amount of the incentive depends on a number of factors. Because of the complexity of the schemes, it is difficult to evaluate their impact. Moreover, the system may lead to unintended and undesirable effects on resource allocation. Recent reforms include: replacing sectoral targeting by a regional priority system providing enhanced incentives to less-developed regions, simplification of the duty exemption system, and limiting the concessional credit sub-programme to small- and medium-scale producers. In parallel to the export and investment incentive programmes, various schemes extend assistance on a sectoral basis in particular to agriculture (section 4 of this Chapter and Chapter IV, section (2)).

5. Closely linked to the incentive system is the continued heavy presence of state economic enterprises (SEEs), which accounted for 11% of GDP in 1994. They are heavily sheltered from competition and some SEE remain a severe drain on government funds. Recognizing the need to

increase efficiency and reducing the pressure on scarce resources, the Government has begun a privatization programme, but progress has been slow with court rulings often overturning projects, in particular, in the energy and telecommunications sectors. In order to comply with the CUD, Turkey may have to discontinue subsidizing some of the SEEs at the prevailing rates, and align its state aid policies to those of the EU. Thus, it has been noted that "unless the system of state aid is aligned to those in the EU and unless competition rules will be applied effectively to all private and public firms, EU could use commercial defence instruments (anti-dumping and countervailing duties) against Turkey".¹

6. Turkey made considerable improvements in its intellectual property rights regime in 1995. New laws in the area of patents, trade marks, industrial designs, geographical indications, and copyright, as well as adoption of a number of important international conventions governing intellectual property rights and advance implementation of the TRIPS Agreement, have given Turkey a modern, comprehensive legal framework for the protection of intellectual property rights. Notwithstanding these improvements, Turkey is on the "priority watch list" of countries that fail to protect U.S. firms' intellectual property rights as specified under the "special 301" provision of the 1988 Trade Act. This weaknesses in enforcement will need to be overcome by adequate staffing, training and increasing awareness of the new legal provisions.

7. Despite the general liberalization associated with the implementation of the CUD, trade policy harmonization has also led Turkey to introduce some new trade instruments. For example, the adoption of the EU external policy with respect to textiles and clothing led to the introduction of quotas on some of these products on 1 January 1996; without the quotas, exporters could have used Turkey as a bridge to the EU market. Under the CUD Turkey also applies tariff quotas on some agricultural and processed agricultural products, and the recently signed free-trade agreements (with Hungary, Israel, Lithuania and Romania) include a provision on tariff quotas.

8. Although import certificates were abolished on 1 January 1996, a number of goods (12 by broad categories) are subject to prior import licencing, including, *inter alia*, telecommunications equipment, some machinery, some motor vehicles, transmission apparatus, some chemicals and a number of items related to civil aircraft. The licences are used for a number of reasons: in addition to security, safety and environment, the stated purposes are to protect consumers, to assure that imported vehicles are suitable for domestic highways, and to prevent employment of import goods for other than their intended purpose on civil aircraft. However, the authorities have stated that such licences are issued automatically.

9. Turkey is one of the more active users of anti-dumping measures: by number of final measures imposed between 1989 and 1996, Turkey ranks sixth among WTO Members. On the other hand, there were no new cases initiated in 1995-96 nor were any new final measures introduced from 1995 to 1997. According to the authorities, the law is shortly to be brought into compliance with the WTO Agreement. No consideration has been given to the introduction of a "general interest clause" but the authorities say that the general interest of users, consumers and labour organizations are taken into account in practice.

¹ Togan (1997b).

(2) MEASURES DIRECTLY AFFECTING IMPORTS**(i) Customs procedures**

10. Since the previous Review, custom procedures have been streamlined and the system has been modernized. As part of the customs union decision (CUD) (Article 28) with the EU, Turkey adopted EU customs provisions in the fields of origin of goods; customs valuation of goods; introduction of goods into the territory of the customs union; customs declaration; release for free circulation; suspensive arrangements and customs procedures with economic impact; movement of goods; customs debt and right of appeal. Hence, Turkey's customs procedures commitments within the CUD go beyond Turkey's obligations *vis-à-vis* the WTO.

(a) Valuation, clearance and inspection

11. Turkey's legislation on customs valuation, the Turkish Customs Law No. 1615 of 1972, notified under the Tokyo Round Customs Valuation Agreement, remains valid under the WTO Agreement on Implementation of Article VII of GATT 1994 (the Customs Valuation Agreement).² However, Turkey invoked provisions available for developing countries under the Agreement related to computed value (Article 20.2 and Annex III, paragraph 3) and unit price of the imported good (Annex III, paragraph 4).³

12. In order to comply with the CUD, Turkey has presented to the Parliament a new draft customs law replacing Customs Law No. 1615. However, basic amendments have been implemented by Decree Law No. 564 (published in the Official Gazette of 26 July 1995). These amendments include the establishment of a legal basis for imports falling within the scope of intellectual and industrial property rights, according to which customs transactions may be suspended temporarily on request from the rightful owner (section (4)(vi)). Customs declarations may be submitted to the customs offices by means of data processing techniques. Owners of goods have the right to establish temporary storage in which to place their goods, but the Undersecretariat of Customs is entitled to decide on the time limit of such storage. The possibility of submitting an invoice instead of a manifest was introduced. Binding tariff information on the tariff position related to the goods is provided at the written request of the exporter. A right of importation of the goods subject to an auction by its owner has been inserted. The format of the Turkish customs declaration has been aligned to the single administrative document (SAD) used in the EU for customs procedures (see below).

13. Other improvements in the customs system include the establishment of specialized customs offices for the importation of certain goods.⁴ Recently the customs administration has also been going through extensive training programmes especially in the fields of rules of origin and tariff and risk analysis. The Turkish customs have started using a computerized system and plan to introduce on-line declaration systems. The system will make it easier for each customs point to have all the information on preferential trade agreements and anti-dumping regulations required to determine the correct amount of taxes to be collected.⁵

² WTO document G/VAL/N/1/TUR/1, 31 October 1995.

³ WTO document G/VAL/10, 8 January 1997.

⁴ Specialized customs offices in Mersin, for plants and plants products; Samsun, for wood and iron products; Gebze, for petrochemical products; Bursa, for textile products; Istanbul, for food products; Yesilkoy and Gebze, for automobiles and parts; and Halkah, for textile products.

⁵ Togan, S. (1997c).

14. As a result of the customs reforms, including green channel facilities, payment by bank transfers, computerized declarations, etc., there have been some time savings in customs procedures, however, the authorities were unable to provide statistics on the changes.

15. Appeals procedures are laid down in section II, part 4 of the Customs Law. Any person has the right to appeal against decisions taken by the customs authorities that relate to the application of customs legislation, and that concern him/her directly. Statistics are not available on the number of cases and the outcome of administrative and judicial appeals of customs decisions.

16. Turkey does not apply pre-shipment inspection for surveillance purpose.

(b) Registration and documentation

17. The 1996 Turkish import regime abolished the requirement for importers to obtain an import certificate from the Undersecretariat of Foreign Trade and an import authorization from a bank. However, certain imports may only be imported under licence; these include, *inter alia*, telecommunications equipment, some machinery, some motor vehicles, transmission apparatus, some chemical and a number of items used in civil aircraft. A more detailed list of the items and the reason for the licences is provided in Table III.10. As noted earlier, the authorities have stated that such licences are granted automatically. In addition, imports of certain agricultural, foodstuffs, pharmaceutical, and cosmetics products are subject to health and sanitary control; for these products registration is required with the concerned Ministry. Finally, conformity with Turkish standards is required for imported products that would be subject to compulsory standards if they had been domestically produced (section (4)(iii)).

18. Other documents required for importation and customs clearance are: a tax number; a commercial invoice; a certificate of origin; and a bill of lading or airway bill, depending on the method of shipment used.

19. Although Turkey has not acceded to the Common Transit Convention and the Single Administrative Document Convention, since 1 January 1996 implementing provisions of the Single Administrative Document Convention, identical to these of the EU, have been used, so that a single administrative document (SAD) is used for all customs procedures. At the time of the previous trade policy Review, the national form of declaration had been used on import, export and transit procedure. Form EUR1 is required for imports from third countries with which Turkey has a free-trade agreement. The fee, the so-called printing charge, for the SAD is TL 150,000, equivalent to less than US\$1, and TL120,000 for the EUR1 document.

(c) Rules of origin

20. Since 1 January 1996, Turkey has been applying the same preferential and non-preferential rules of origin as the EU with respect to imports from third countries. Non-preferential rules assign the origin to the country where the product has been wholly obtained or where it underwent its "last substantial working or processing" (Article 67 of the Customs Law No. 1615).⁶ The criterion can be applied in two ways: on a case-by-case basis to decide if the product has changed its characteristics through an operation and thus has acquired new properties; or when the first test proves difficult to implement the test is based on a value-added approach.⁷

⁶ GATT (1991), p. 86.

⁷ GATT (1991), p. 86.

21. Within the framework of several preferential agreements, Turkey applies similar rules of origin, based on the degree of processing or the value-added criteria (Table III.1). The texts of Turkey's bilateral free-trade agreements are parallel to those of the EU, accompanied by a joint declaration concerning the implementation of the new EU system of diagonal cumulation. By 1 January 1999 Turkey will be part of the diagonal cumulation of origin system for industrial goods. This system allows traders to use originating material from any country within the zone (EU, EFTA, and CEEC countries) to produce an originating product while retaining preferential origin.⁸

Table III.1
Rules of origin

Agreement	Rules of origin
<u>Customs Union with the European Community (EU)</u>	Industrial and processed agricultural products: free circulation rules are applied between EU and Turkey. Agricultural products: Sufficiently worked or processed based on conditions set out in the "processing list".
<u>Free-trade agreement with European Coal and Steel Community (ECSC)</u>	ECSC products: Sufficiently worked or processed based on conditions set out in the "processing list". ^a
<u>Free-trade agreement with the European Free Trade Association (EFTA)</u>	Sufficiently worked or processed, based on a change of tariff heading at the HS four-digit level or specific requirements in the "processing list". ^a
<u>Economic Co-operation Organization (ECO)</u> (Iran, Turkey, Pakistan)	Minimum of 50% of the f.o.b. value ^b
<u>Israel</u>	Sufficiently worked or processed based on conditions set out in the "processing list". ^a
<u>Hungary, Lithuania and Romania</u>	Protocols on rules of origin based on the "Pan European Model" as concluded by the EU with the country: sufficiently worked or processed based on conditions set out in the "processing list". ^a

a The criterion of sufficient transformation is centred on a change of tariff heading. Imported inputs are considered as being 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.

Note: The same rules of origin applying to Hungary will apply to the following agreements, which have not yet entered into force: Czech Republic, Estonia, Latvia, and Slovak Republic.

Source: WTO Secretariat based on information provided by the Government of Turkey; and GATT (1991), Trade Policy Review-European Union, Geneva.

(ii) Tariffs and additional duties

(a) General features

22. In conjunction with the formation of the customs union with the EU on 1 January 1996, Turkey adopted a new tariff regime, applying the EU common external tariff (CET) for most imports of industrial products and for the industrial component of processed agricultural products imported from third countries. Turkey will maintain rates of protection above those specified in the CET for certain "sensitive" products (equivalent to 290 items at the HS twelve-digit level) for up to five years; these items include motor vehicles with an engine capacity smaller than 2,000cc., 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. Turkey accords at least MFN treatment to imports from all trading partners, including countries not members of WTO.

⁸ WTO (1997).

23. The regime provides for duty-free imports of non-agricultural items of EU/EFTA origin. Fish and fishery products from EFTA countries are imported duty free, while EU-origin imports are subject to a rate of duty lower than that applied to third countries. The MFN rate is supplemented for some imports (fish and fishery products) by a surcharge, the MHF levy.⁹

24. The new national tariff of Turkey is complex, consisting of eleven lists comprising about 19,530 tariff lines classified at the HS twelve-digit level.¹⁰ List I displays customs duties applied to imports of agricultural products, excluding fish and fishery products. List II shows customs duties to be applied to imports of industrial products and products covered by the European Coal and Steel Community (ECSC).¹¹ Lists III, IV and V lay down customs duties applied to imports of processed agricultural products. List VI displays reduced customs duties applied to imports of natural gas, certain products used as raw materials in fertilizer and in the chemical industry (0-3% rate on eleven items). List VII lays down reduced (mostly zero) customs duties applied to imports of certain agricultural and industrial products originating from least-developed countries. List VIII shows either reduced or suspended customs duties applied to imports of certain products predominately used as raw material or intermediate inputs in chemical and electronic industries.¹² List IX displays customs duties and MHF levies applied to imports of fish and fishery products included in the Turkey-EFTA agreement. Lists X and XI lay down customs duties and MHF levies applied to imports of agricultural and industrial products and the agricultural component of processed agricultural products originating from Israel and Romania.

(b) Form of tariffs

25. Approximately 98% of Turkey's tariffs are set on *ad valorem* basis. Specific, formula and alternate duties apply to 337 items at the HS twelve-digit level. Specific duties apply to 188 items within the following categories: chocolate containing cocoa, milk products, sweet corn, margarine, sugar products, pasta, prepared foods, starches, salt, beverages, and spirits. Formula duties are levied on 83 processed agricultural goods, including certain products within the following categories: butter, sugar confectionary, food preparations containing cocoa, sweet biscuits, potatoes, and food preparations.¹³ Alternate duties apply to 66 items, including certain carpets, certain glass and glassware and certain watches. Within the framework of the customs union, Turkey applies non-*ad valorem* duties to comply with the CET for industrial products and to align the form of its tariff rates with that of EU for processed agricultural products.

(c) Average tariff levels and dispersion

26. Since its last Review, Turkey has more than halved its simple average MFN tariff from 26.7% in 1993 (including the MHF levy) to 12.7% in 1998 (Table III.2); both rates take into account the

⁹ The MHF was introduced in 1984 to finance the Government's low-cost housing schemes for poor and middle-income families. Customs duties collected from the agricultural component of processed agricultural goods are also transferred to the MHF.

¹⁰ Turkey has been implementing the Harmonized Commodity Description and Coding System (HS) since 1 January 1989.

¹¹ Under this agreement, Turkey freed the rate of duty for the majority of iron and steel products for EU/EFTA countries, while maintaining higher rates for 142 items that are considered sensitive by Turkey. The higher rates will be gradually reduced to zero by the end of 1998.

¹² The products covered by the list are goods not produced in Turkey or the EU. For these products zero or less than CET rates are applied. For the purpose of the following tariff analysis, only a few cases (34 items) have been included as the suspension in the other cases applies only to part of the tariff line.

¹³ The formula rate depends on the product's content of milk fat, milk proteins, and starch.

percentage equivalents of non-*ad valorem* rates.¹⁴ Substantial dispersion of the tariff rates continues to exist in the Turkish tariff structure, with a range of 0-365% and a standard deviation of 24 percentage points.¹⁵ Overall, the distribution of MFN rates is skewed towards rates between zero and 5%, which cover 46% of the tariff lines; about three quarters of the tariff lines are subject to a duty of up to 10% (Chart III.1). There is an unusually large number of tariff rates: 242 different rates excluding the *ad valorem* equivalents (AVEs), and 357 different rates including the AVEs.

Table III.2
Tariff structure of Turkey, 1993 and 1998
(Per cent)

	1993				1998 (second half)					
	MFN		EU/EFTA		MFN		EU		EFTA	
Whole economy	26.7	(9.5)	22.2	(5.0)	12.7	(12.1)	7.6	(7.0)	7.1	(6.5)
Standard deviation	13.1	(5.7)	12.9	(4.9)	24.0	(23.4)	24.1	(23.6)	(23.6)	(23.5)
Duty-free lines (%)	1.4	(1.8)	7.2	(10.3)	13.8	(13.8)	84.2	(84.2)	84.2	(86.9)
Maximum tariff	132.5	(117.0)	130.0	(106.0)	365.4	(365.4)	240.0	(240.0)	240.0	(240.0)
By sector:										
Agriculture (ISIC 1)	28.4	(7.1)	27.3	(6.0)	28.1	(26.0)	26.8	((24.6)	24.6	(22.4)
Mining (ISIC 2)	21.4	(5.1)	18.7	(2.4)	0.2	(0.2)	0.0	(0.0)	0.0	(0.0)
Industry (ISIC 3)	26.7	(9.7)	22.0	(5.0)	11.8	(11.4)	6.4	(6.0)	6.0	(5.5)

.. Not available.

Note: Data in parenthesis show duty excluding MHF levy. Tariff averages include *ad valorem* equivalents of specific, alternate and formula duties, as available. Tariff averages for ISIC 3 include food, beverages and tobacco manufacturing (ISIC 31).

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

27. The substantial reduction in the coverage as well as the level of the MHF levy has improved transparency; the coverage of the MHF levy has decreased from 87% of the tariff lines in 1993 to 3%. Currently the levy applies to fish and fishery products (equivalent to 514 items at the HS 12-digit level). In 1993 the levy increased the simple average MFN tariff from 9.5% to 26.7%, but in 1998 the overall increase was only half a percentage point, bringing the average to 12.7% (Table III.2). As in 1993, imports exempt from customs duty under incentive certificates are not liable for payment of the levy.

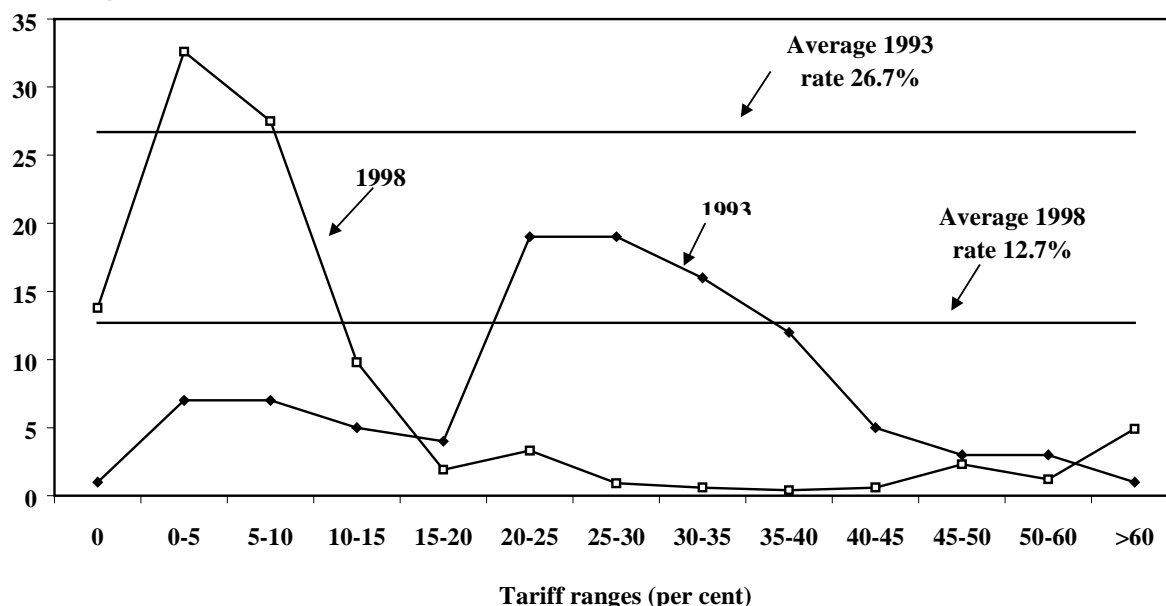
¹⁴ The 1998 tariff analysis is based on the second half of the year. The non-*ad valorem* duties have been treated in the following way: (i) based on customs revenue data, *ad valorem* equivalents (AVEs) of 120 specific duties were estimated by the authorities; (ii) based on unit prices, AVEs for 19 specific duties were calculated; where import data were not available (25 items), EU AVEs for 1997 (estimated by the EU) were applied. The remaining specific duties (24 items) were not included in the tariff analysis; (iii) based on unit prices, AVEs for 28 alternate duties were calculated. When import data were not available (38 items), only the *ad valorem* element of the alternate duty was applied; and (iv) 0% was applied to all 83 formula items. On balance, the analysis is likely to underestimate the true level of tariff protection. AVEs for formula rates, which range from 0% to high specific rates, have all been estimated at the lowest possible end of the range. Moreover, the specific rates in the formula duties are assumed to be zero. The 1993 tariff analysis (as presented in the last Trade Policy Review of Turkey) was based on AVEs for the non-*ad valorem* MHF rates: the specific rates and the specific component of the mixed rates were replaced by the mean of all of the *ad valorem* MHF rates. The remaining specific rate (lubricating oils) was not included in the tariff analysis.

¹⁵ If calculated only on the tariff lines that carry *ad valorem* rates, the simple average MFN is 12.6%, the range is 0-240% and the standard deviation is 24 percentage points.

Chart III.1

Tariff structure by rates, 1993 and 1998 (second half)

Percentage share of tariff lines



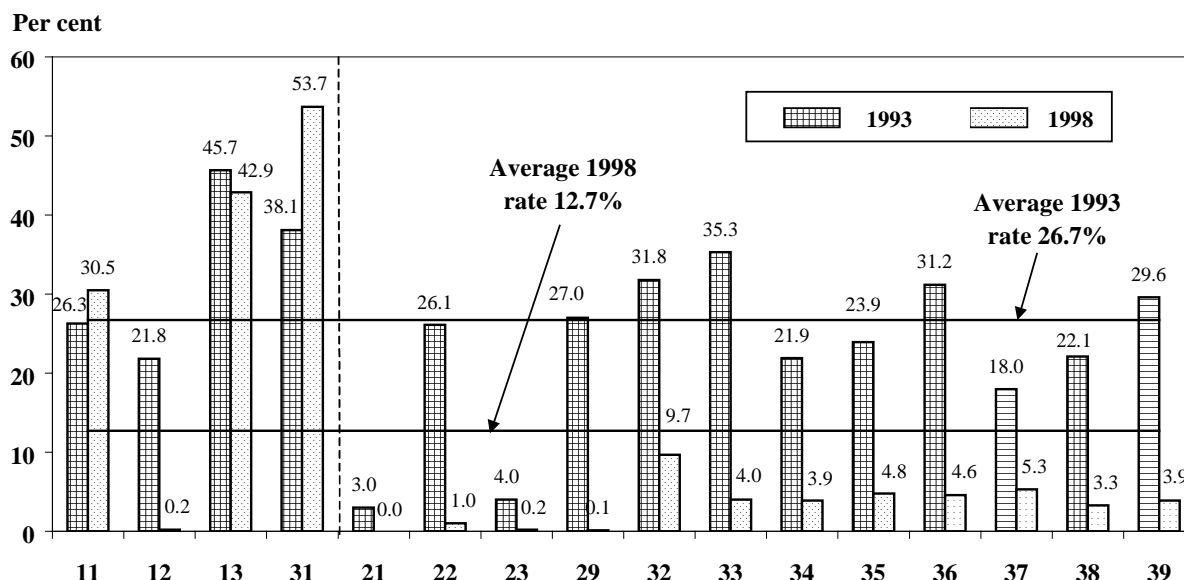
Note: 0-5 should be interpreted as tariff is larger than zero and less or equal to five.
Tariff averages (including MHF levy) include *ad valorem* equivalents of specific, alternate and formula duties, as available.

Source WTO Secretariat.

28. The average MFN tariff rate is substantially higher for agriculture than for manufacturing or mining. While the rates for manufacturing and mining have reduced gradually since Turkey's previous Review, the rate for agricultural has stayed more or less at the same level (Table III.2). MFN tariffs at the HS two-digit level are provided in Table AIII.1. Under an ISIC two-digit classification, the tariff profile shows peaks for agriculture and hunting (ISIC 11), fishing (ISIC 13) and manufacture of food, beverages and tobacco (ISIC-31) (Chart III.2). As noted above, the CUD does not require Turkey to align its MFN tariff with the CET for agricultural goods and agricultural component of processed agricultural goods. Sectoral tariffs are discussed in further detail in Chapter IV.

Chart III.2

Tariff structure by sector, 1993 and 1998 (second half)



ISIC Classification:

11	Agriculture and hunting	32	Textile, wearing apparel and leather industries
12	Forestry and logging	33	Wood and wood products
13	Fishing	34	Paper and paper products
21	Coal mining	35	Chemicals, rubber and plastic
22	Crude petroleum and natural gas	36	Non-metallic mineral products
23	Metal ore mining	37	Basic metal
29	Other mining	38	Fabricated metal, machinery and equipment
31	Manufacture of food, beverages and tobacco	39	Other products

Note: Tariff averages (including MHF levy) include *ad valorem* equivalents of specific, alternate and formula duties, as available.

Source: WTO Secretariat.

(d) Tariff escalation

29. Overall, Turkey's tariff displays negative escalation from raw materials to semi-processed products; the simple average MFN, including MHF surcharge, for raw materials, is about three times higher than for semi-processed products (Table III.3). This is a much greater differential than in 1993, when tariff protection did not differ significantly by stage of processing. This negative "escalation" or de-escalation implies lower effective protection for the next stage of processing than is evident from the nominal rates, unless processing industries are able to secure inputs at concessional rates to offset the much higher rates on their material inputs. De-escalation is evident in "other manufacturing" industries, including jewellery, musical industries, sporting and athletic goods (from raw materials through to fully-processed products); basic metal industries (from semi- to fully-processed products); manufacture of chemical and some related products (from semi- to

fully-processed products); and manufacture of paper and paper products, printing and publishing (from semi- to fully-processed products) (Chart III.3).

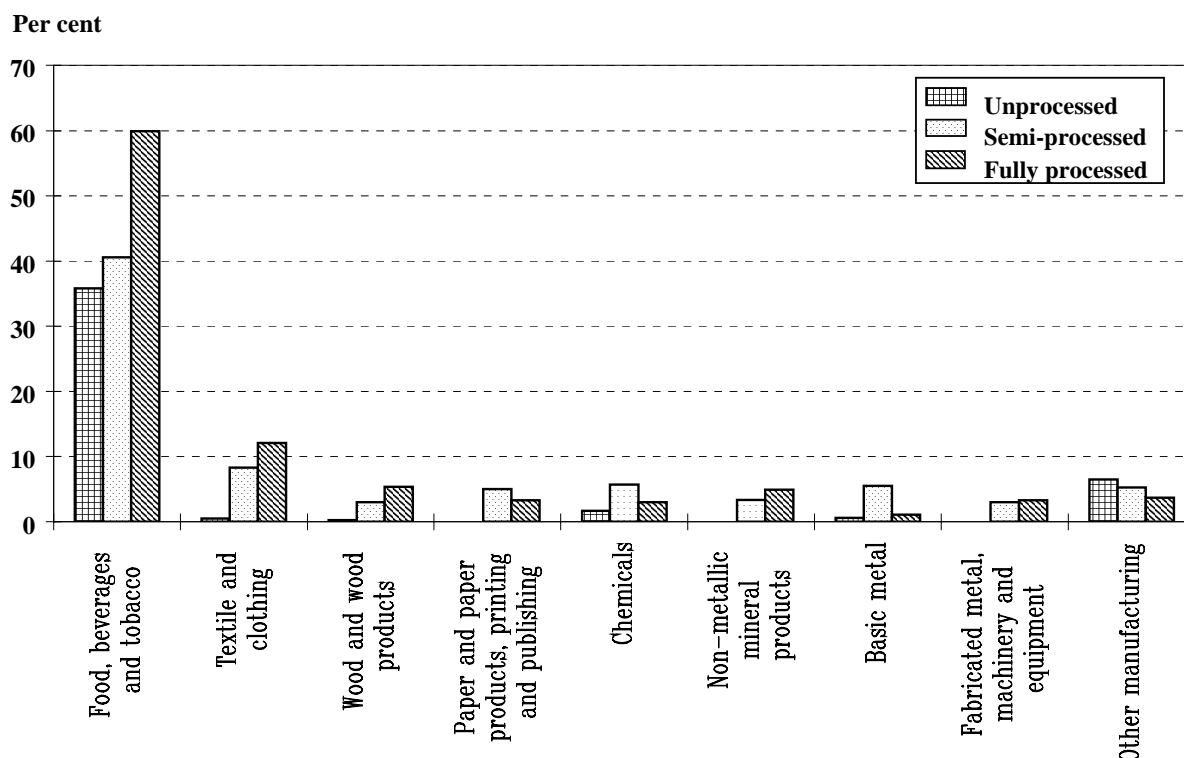
Table III.3
Tariff by stage of processing, 1993 and 1998
(Per cent)

	1993				1998 (second half)					
	MFN		EU/EFTA		MFN		EU		EFTA	
Raw materials	26.2	(6.5)	24.5	(4.8)	21.6	(18.4)	19.7	(16.6)	16.7	(13.5)
Intermediate processed	25.0	(8.5)	20.3	(3.8)	7.3	(7.1)	1.1	(0.9)	0.9	(0.7)
Processed goods	27.7	(10.8)	22.8	(5.9)	14.1	(13.9)	9.0	(8.8)	8.8	(8.7)

Note: Data in parenthesis show duty excluding MHF levy. Tariff averages include *ad valorem* equivalents of specific, alternate and formula duties, as available.

Source: WTO Secretariat calculations based on data provided by the Turkish authorities; and GATT (1994), *Trade Policy Review – Turkey*.

Chart III.3
Tariff escalation by 2-digit ISIC industry, 1998 (second half)



Note: Tariff averages (including MHF levy) include *ad valorem* equivalents of specific, alternate and formula duties, as available.

Source: WTO Secretariat.

30. However, significant tariff escalation is displayed in certain industries, thereby maintaining higher levels of effective protection to the manufacturing sector than indicated by the nominal rates. As shown in Chart III.3, tariff escalation is most pronounced in sectors such as food, beverages and

tobacco; textiles, wearing apparel and leather industries; non-metallic mineral products; and wood and wood products.

(e) Tariff concessions (exemptions and waivers)

31. Concessional duties on imports are granted mainly within the framework of the general investment aid programme (section (4)(ii)) or the inward-processing scheme targeting exporters. Imports related to disabled persons or certain state administrations, financial leasing, project credit (donor) and temporary imports also benefit from tariff concessions on a limited number of products, while all imports undertaken by the Ministry of National Defense and the North Atlantic Treaty Organization are exempt from payment of customs duties (Table III.4). No information was available on the operation of the Encouragement of Tourism scheme nor on the private laws regarding the exemptions scheme; however, 17.6% of total exempted imports in 1995 were exempted under the private laws scheme, while only a negligible amount was imported under the Encouragement of Tourism scheme. Since the previous Review, the housing fund exemption programme has been terminated. The programme, which was abolished on 1 January 1996, provided exemption from payment of the Mass Housing Fund (MHF) levy for the transportation of petroleum and its derivatives through Turkey to third countries, for grain imports by the Turkish Grain Board and for imports undertaken by the state-owned oil refineries. Customs duty exemptions provided to the public sector were also abolished on 1 January 1996.

32. Under the general investment aid programme, projects that introduce advanced and appropriate technology and meet the minimum economical capacities, as determined by the Undersecretariat of Treasury, are exempt from the customs duty (including surcharge) on all machinery and equipment that are part of an investment project.¹⁶ Reduced rates of duty are also available for investment goods, start-up raw materials, intermediary goods, and operating materials which are part of an investment project (Table III.4).

33. Under the inward-processing regime scheme (Decree No. 95/7615 published in the Official Gazette of 31 December 1995), exporters can import duty-free (including surcharge) either by suspension of duties until exports have materialized (the most frequently used sub-scheme), or re-imbursement of duties based on a drawback method or realization of exports with domestic inputs and imported inputs on which VAT is paid (but not customs duty) on equivalent domestically sourced inputs (Table III.4).¹⁷ An application may be turned down if the production would seriously injure producers already established in Turkey. At the time of the previous Review, exporters were allowed to import raw material inputs and packaging material duty-free up to 60% of the value of exports pledged and up to 80% in the case of temporary imports.¹⁸

¹⁶ WTO document G/SCM/Q2/TUR/2, 4 April 1997. The goods eligible for customs exemption are listed in the Custom Entrance Tariff Schedule published as an annex to Law No. 474 of 14 May 1964 and re-arranged with Law No. 3502 of 10 November 1988.

¹⁷ Firms that wish to benefit from the inward-processing regime measures apply to the Undersecretariat of Foreign Trade with an application form, an inward processing project form, book of authorized signature, written export undertaking, the balance sheet and profit-loss tables of the preceding year, the Trade Register gazette and other related documents indicated in the Communiqué of the Inward Processing Regime No. 96/1.

¹⁸ GATT (1994b), p. 72.

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

Scheme	Eligibility	Incentives	Performance requirement
1. <u>General investment aid programme</u>	Projects with advanced and appropriate technology	0% duty on all machinery and equipment that are part of the investment project Reduced duty on investment goods, start-up raw materials, intermediary goods, and operating materials part of the investment project ^a	None
2. <u>Inward processing regime</u>			
a. <u>Conditional exemption for imports</u>	Any exporter	Intended for goods to be re-export. Suspension of duty and VAT on raw materials, auxiliary materials, semi-finished and finished products, and packaging materials	None
b. <u>Use of equivalent goods</u>	Any exporter	After the realization of exports with domestic inputs, refund of VAT (but not customs duty)	None
c. <u>Repayment of duties collected on imports</u>	Any exporter	After realization of exports with imported inputs, refund of customs duty and VAT paid on imported inputs, based on a draw-back method	None
3. <u>NATO</u>	North Atlantic Treaty Organization	0% on all imports	None
4. <u>Defense</u>	Ministry of National Defense or by public institutions on behalf of the Ministry	0% on all imports	None
5. <u>Donation imports</u>	State administrations	Certain items to be used mainly for the public interest approved by relevant Ministries. Information on degree of incentives not available.	None
	Disabled persons	Vehicles produced especially for disabled persons	
6. <u>Financial leasing</u>	Vessels, air carriers, medical equipment and high-tech products	Suspension of all customs duties and taxes up to the date the leasing contract is over, VAT reductions.	None
7. <u>Temporary imports</u>	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. <u>Project credit (donor)</u>	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. <u>Encouragement of Tourism</u>	Not available	Not available	Not available
10. <u>Private (special) laws regarding exemptions</u>	Not available	Not available	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 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: in expansion or new investments that have a minimum capacity of 100,000 units per year of firms that will manufacture the automobiles that are considered as new models for a period of ten years after the date of their first production world-wide; 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 Government of Turkey.

34. Imports exempted from duty increased between 1993 and 1995. Data have not been collected since 1996, and the amount of forgone revenue attributed to the concessional entry schemes is not available. However, an indication of the magnitude can be appreciated by applying the average simple MFN tariff to the amount of exempted imports; the amount of forgone revenue (not including VAT and other charges) would be in the order of US\$2.0 billion in 1995 (equivalent to 1.1% of GNP) compared with US\$1.4 billion (equivalent to 0.8% of GNP) in 1993.

(f) Tariff bindings

35. Before the conclusion of the Uruguay Round negotiations, Turkey had bindings on some 31% of tariff lines, equivalent to 34% of non-oil imports. As a result of the Uruguay Round negotiations, 46% of Turkey's tariff lines were bound, with all tariff lines, except one, at existing levels; all agricultural lines, and some 36% of industrial products were bound. Turkey has agreed to further tariff cuts as part of the Information Technology Agreement (ITA), covering computers, telecommunications equipment, semi-conductors, semi-conductors manufacturing equipment, software, and scientific instruments. Its commitment includes duty-free treatment on 358 items at the HS eight-digit level by year 2000. Regarding agricultural items, final bindings in 2005 will range from 0 to 225%, while for non-agricultural goods the bindings will range from 0 to 92%.

36. Applied rates are generally well below the bound rates in 1998, and even lower than the final bound rates in 2005 (Table III.5), thus allowing Turkey the freedom to increase its import tariffs unilaterally.¹⁹ In 1998 the simple average bound rate is 35.7%, which is set to decline to 30.4% by 2005, compared with a simple average effective MFN rate of 12.7%.

Table III.5
Applied MFN rates and bound rates, 1998 and 2005
(Per cent)

	Applied MFN rate 1998 (second half) ^a	Bound rate by	
		1998	2005
Whole economy	12.7 (24.0)	35.7 (42.5)	30.4 (39.3)
<u>By sector:</u>			
Agriculture (HS 1-24)	47.9 (42.0)	73.8 (60.6)	66.5 (57.5)
Industry (HS 25-97)	5.4 (4.6)	19.9 (13.8)	16.3 (11.9)
<u>By stage of processing:</u>			
Raw material	21.6 (26.3)	38.1 (38.7)	32.7 (35.9)
Semi-processed	7.3 (8.0)	25.2 (20.6)	22.4 (18.4)
Processed	14.1 (29.0)	40.2 (50.1)	33.6 (46.1)

a Tariff averages include all tariff lines, bound and non-bound lines. *Ad valorem* equivalents of specific, alternate and formula duties are included, as available.

Note: Standard deviations are provided in parentheses.

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

37. Turkey has not re-bound its tariffs as a result of the customs union between Turkey and the EU. However, the CUD obliges Turkey not to impose higher tariffs than the EU common external tariff except in areas where the CUD does not apply (mainly in agriculture). Therefore, in practical terms, Turkey's applied rates are largely bound at the same level as the EU bound rates. The EU

¹⁹ It should be noted that applied rates in Table III.5 include all tariff lines, bound and unbound.

simple average tariff on industrial products (HS Chapters 25-97), which was scheduled to decline to 3.7% on 2000 as a result of the Uruguay Round, will be reduced to 3% as a result of the ITA.²⁰

(g) Seasonal tariffs

38. Turkey has no seasonal tariffs.

(h) Tariff quotas

39. Since the previous Review, Turkey has introduced a number of tariff quotas. In the context of the free-trade agreements with Israel, Romania, Hungary and Lithuania tariff quotas were opened for some agricultural goods and processed agricultural products (Table III.6). Quota allocations are made on the "first come, first served" principle. Under the agreements concluded with Slovenia, Estonia, and the Czech and Slovak Republics, Turkey will also open tariff quotas for certain agricultural and processed agricultural products. In-quota tariff rates will differentiate between duty-free and reduced MFN rates.

Table III.6
Tariff quotas on agricultural and processed agricultural products

Free trade agreement partner	Number of items	Examples of products affected
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
Lithuania	10 items at the HS six-digit level	Live bovine animals, meat, butter, cheese, potato seed, ice-cream, and beer
European Union	26 items at the HS twelve-digit level	Certain pasta products, sealing wafers, rice paper, dry dough, and pastrv

Source: Government of Turkey.

40. Tariff quotas also apply to a few processed agricultural products (equivalent to 26 items at the HS 12-digit level) originating from the EU. The quotas, which are allocated on a "first come, first served" basis, were introduced in response to the EU tariff reduction on agricultural components of macaroni originating in Turkey.

41. Since the second half of 1996, all exporters to Turkey have faced tariff quotas on dimethyl terephthalate and acrylonitril in order to balance the interests of Turkish producers with those of EU producers who benefit from EU preferential trade arrangements (such as the GSP). These tariff quotas are allocated on past performance.

(i) Plurilateral and bilateral tariff preferences

42. Since the previous Trade Policy Review, the importance of tariff preferences in Turkey's trade has increased (Chapter II(3)). Turkey's preferential trade agreements are listed in Table III.7. As part of the custom union decision, Turkey must adopt, by 1 January 2001 all the preferential agreements concluded by the EU with third countries. As a result, Turkey currently provides preferential tariff preferences to Hungary, Israel, Lithuania and Romania, while agreements have been signed, but not yet entered into force, with the Czech Republic, Estonia and the Slovak Republic. The majority of the agreements, which build on the design of the CUD, aim at reducing tariffs to 0% on industrial

²⁰ WTO (1997), p. 45.

products. In the context of the WTO Singapore Ministerial Conference, in December 1996, Turkey agreed to provide tariff preferences to least-developed countries on selected products. Tariff preferences within the ECO ceased to exist in January 1996 as the preferential rates (10% reduction from statutory rates) were higher than MFN rates. In consultation with the EU, the Government is studying the possibility of extending a preferential reduction of 10% below the MFN rates within the framework of the ECO.²¹ Although the overall differences between preferential rates and MFN rates have increased, these differences should decline over time as Turkey lowers its MFN rates in tandem with the EU common external tariff.

Table III.7
Preferential trading agreements, June 1998

Agreement/Country	Coverage by Turkey	Present preferential margin	Future reductions
<u>Customs Union with the European Community</u>	All industrial products Fish and fishery products Processed agricultural products	Duty free on industrial products; 75% of MFN rates on fish and fishery products; preferential specific and <i>ad-valorem</i> rates on processed agricultural products	Eliminate tariffs on industrial component of processed agricultural products by 1999
<u>Agreement between Turkey and the European Coal and Steel Community (ECSC)</u>	Coal and steel products (280 items at the HS eight-digit level)	Duty free on 213 items; 1.4-5.3% tariff on 67 sensitive items	Eliminate tariffs on sensitive products by 1999
<u>Free-trade agreement with the European Free Trade Association (EFTA)^a</u>	All industrial products Fish and fishery products Processed agricultural products	Duty free on industrial products; preferential specific and <i>ad valorem</i> rates on processed agricultural products and fish and fishery products	Eliminate tariffs on industrial component of processed agricultural products by 1999
<u>Economic Co-operation Organization (ECO)</u> (Iran, Turkey, Pakistan)	36 items at the HS four-digit level ^b	No preferential rates applied ^c	None agreed
<u>Least-developed countries^d</u>	556 items at the HS twelve-digit level	Duty free on 554 items; 11% tariff on coffee	None agreed
<u>Israel</u>	All industrial products Some agricultural and processed agricultural products (20 items at the HS four-digit level)	Duty free on industrial products, except 50, 34, or 25% of MFN tariffs on certain sensitive industrial products; tariff quotas on agricultural and processed agricultural products	Eliminate tariffs on all sensitive industrial products by 2000
<u>Romania</u>	All industrial products Some agricultural and processed agricultural products (31 items at the HS six-digit level)	Duty free on industrial products, except 75, 60, or 50% of MFN tariffs on certain sensitive products; tariff quotas on agricultural and processed agricultural products	Eliminate tariffs on all sensitive industrial products by 2002
<u>Hungary</u>	All industrial products Some agricultural and processed agricultural products (19 items at the HS six-digit level)	Duty free on industrial products, except 75 or 45% of MFN tariffs on certain items; tariff quotas on agricultural and processed agricultural products	Eliminate tariffs on all industrial products by 2001
<u>Lithuania</u>	All industrial products Some agricultural and processed agricultural products (10 items at the HS six-digit level)	Duty free on industrial products, except 75 or 50% of MFN tariffs on certain items; tariff quotas on agricultural and processed agricultural products	Eliminate tariffs on all industrial products by 2001

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.

d Agreed upon at the WTO Singapore Ministerial Conference.

Note: See Table III.1 for relevant rules of origin.

Source: Government of Turkey.

²¹ Article 16 of "Statements" section of Decision No. 1/95 of the Association Council.

(iii) Variable import levies

43. Turkey does not maintain any variable import levies.

(iv) Other levies and charges

44. The number of other levies and charges applied to imports has decreased since the previous Review. While the minerals surcharge has been abolished²² and the MHF levy has almost been eliminated (section (2)(ii)), several additional charges and taxes still apply: supplementary VAT; defence industry support fund; tax for education and health care services; liquid fuel price stabilization fund; petroleum consumption tax; motor vehicle purchasing tax (MVPT); supplementary MVPT; environmental fund; and stamp duty. These apply equally to imports and domestically produced goods. Moreover, the value-added tax (VAT), which is levied on all goods and services on a c.i.f. basis (including the customs duty), unless specifically exempted, has increased; in 1993, the VAT was levied at five rates ranging from 0 to 5%, while the present five rates range from 1 to 40%. Table III.8 provides an overview of the taxes and charges levied on imports and domestic goods.

Table III.8
Taxes levied on imports and domestic goods

Tax	Product	Rate (%)	Base	
			Imports	Domestic goods
Mass housing fund (MHF)	Fish and fishery products	Specific and <i>ad valorem</i> taxes	C.i.f. price	Not levied
Value-added tax (VAT)	All goods:		C.i.f. price plus all duties and charges	Sale price at all transaction levels
	Agricultural and essentials	1, 8, 15		
	Basic goods	1, 8		
	Industrial goods	15, 23		
	Luxury items (including cosmetics, furs, televisions and automobiles)	23, 40 ^a		
Supplementary VAT	Tobacco and alcohol ^b	100	Same as VAT base	Same as VAT base
	Beverages	10		
	Playing cards	60		
	X-ray films	60		
	All spirits and fuel oil	50		
Defence industry support fund	Tobacco, alcohols and beverages (excluding juices)	10	Same as VAT base	Same as VAT base
Tax for education and health care services	Tobacco, alcohols and beverages (excluding juices)	10	Same as VAT base	Same as VAT base
Liquid fuel price stabilization fund (LFPSF)	All petroleum products	15	Same as VAT base	Same as VAT base
Petroleum consumption tax	All petroleum products:		Same as VAT base (including LFPSF)	Sale price (not including VAT)
	Leaded	300		
	Unleaded	290		

Table III.8 (cont'd)

²² The minerals surcharge of 2.5%, introduced in 1985 on imports of minerals used for energy production (e.g. oil and coal), metallic minerals, industrial minerals and precious stones, was eliminated on 27 January 1996.

Tax	Product	Rate (%)	Base	
			Imports	Domestic goods
	Diesel	190		
	Gasoline	185		
	Fuel oil (for heating)	20, 75		
	LPG	1		
Motor vehicle purchasing tax (MVPT)	All motor vehicles	Specific taxes ^c	Same as VAT base	Same as VAT base
Supplementary MVPT	First retail sale or import of cars	12, 18 24 ^d	Same as VAT base	Same as VAT base
Environment Fund	All motor vehicles	25% of MVPT	Same as VAT base	Same as VAT base
Stamp duty	Documents: Given to the customs Related to financing - accredits - guaranteed letters, contracts	The amount written on the document 0.36 0.6	The amount written on the document	The amount written on the document

a Cars with a engine capacity of 2,000 cc or more.

b 40% or more of alcohol.

c Based on weight, type, model year and cylinder capacity.

d Tax of 12% for cars with an engine capacity of less than 1,600 cc; 18% for 1,600 to 2,000 cc.; and 24% for above 2,000 cc.

Source: Government of Turkey.

(v) Minimum import prices

45. Turkey does not apply minimum import prices.

(vi) Import prohibitions

46. The importation of some 11 items, by broad category, are prohibited by law for a variety of reasons such as environment, security, health, public morals or the fulfilment of international obligations (Table III.9). Moreover, in late 1996, Turkey imposed a temporary import ban on live animals (dairy and beef cattle, sheep, goats and poultry) and meat (beef, sheep, goat and poultry) in order to protect its livestock industry from epidemic diseases. Questions have been raised within the WTO about this measure.²³ Since the previous Review, the importation of the following products have also been added to the list of prohibited imports: colouring matters, items on Schedule I of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction; leaf, soil, stalk, grass and natural manure used for agricultural purpose; and counterfeit labels and products for packing. However, a certain number of products have been removed from the list: coins made of silver and other materials; antiques and archaeological works; angora goat; fig cuttings, wine stems, tobacco and hazelnut seedlings; Indian hemp; and tobacco seeds.

²³ WTO document G/AG/R/12, 31 October 1997.

Table III.9
Import prohibitions, June 1998

Description of item		Invocation of WTO Article	Domestic law
1.	Narcotics, hashish and prepared opium (2 items) ^a	Health, IA ^b (Article XX:b, h)	Law on the Control of Narcotics No. 2313; International Agreement on Narcotics Goods No. 1961
2.	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. 98/14 (Lists I, II and III)
3.	Colouring matters (1 item)	Health (Article XX:b)	Law on the Protection of the Public Health No. 1593; Regulation on Special Conditions of Foodstuffs and Supplies and Objects Concerning Public Health; Import Regime Communiqué 98/15 Add II (List)
4.	Schedule I 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. 98/17 (List I)
5.	Propellant powders, prepared explosives, fuses, caps igniters detonators ^a (3 items)	Security (Article XXI:b(ii))	Law of 1953 on Firearms No. 6136
6.	Measurement instruments not conforming to Turkish legal norms (non-metric or double standard) (6 items)	Compliance with domestic law (Article XX:d)	Law on Standards and Accords No. 3516
7.	Arms and ammunition ^a (3 items)	Security (Article XXI:b(i),(ii))	Law of 1953 on Firearms No. 6136; Import Regime Communiqué No. 98/2
8.	Gambling instruments (except for specified tourism purposes) ^a (1 item)	Public morals (Article XX:a)	Law on Gambling Instruments and Machines like Roulette, Tilt and Pinball No. 1072
9.	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 on the Protection of the Trademarks No. 556
10.	Leaf, soil, stalk, straw, grass and natural manure used for agricultural purpose (excluding turf and perlites cultivated in culture environment)	Health (Article XX:b)	Regulation on Agricultural Quarantine
11.	Counterfeit labels and products for packing (all industrial products)	Public moral (Article XX:a)	Customs Law No. 1615

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 Government of Turkey.

(vii) Import licensing and authorization

47. Currently, prior import licences are required for 12 groups of items (equivalent to 177 items at the HS four-digit level), including, *inter alia*, telecommunications equipment, some machinery, some motor vehicles, transmission apparatus, some chemicals, and a number of items related to civil aircraft (Table III.10). Importers of these items must obtain permission from the relevant authorities. The importation of some of the items, such as certain motor vehicles, require permission from two authorities. In addition to security, safety, and environment, the restrictions are intended to protect consumers, assure that imported vehicles are suitable for domestic highways²⁴, and, for a certain number of items (79 at the four-digit level) to prevent the use of imported goods for other than their intended purpose in civil aircraft. The importation of old, used, renovated, faulty and obsolete goods is subject to permission by the Undersecretariat of Foreign Trade. Imports of certain goods from China require an import licence; these goods include footwear, tableware and kitchenware of porcelain or china, ceramic tableware or kitchenware, and toys. Additional restrictions under Turkey's sanitary and phytosanitary regulations are discussed below (section (4)(iii)(c)).

48. It is difficult to evaluate the importance of import licensing since the low value of such imports may reflect either a lack of demand for such products or the restrictive effect of the licence itself.

Table III.10
Imports requiring a licence, February 1998

Description of items	Reason for licence
1. <u>Radioactivity related items</u> (11 items) Selected 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
2. <u>Telecommunications related items</u> (3 items) Selected items: electrical apparatus for line telegraphy, telephone answering machines	Imports only permitted with an Approval Document prepared by the Ministry of Transportation To assure that imports are in conformity with the national telecommunication network
3. <u>Machinery and related items</u> (33 items) Selected 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 Commerce 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
4. <u>Motor vehicles</u> (6 items) Selected 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 Commerce To assure the suitability of imported vehicles for highways

Table III.10 (cont'd)

²⁴ Communiqués Nos: 23217 of 31 December 1997 and SGM-8/21-22 of 13 May 1998 of the Undersecretariat of Foreign Trade, issued within the framework of the Consumer Protection Law No. 4077.

Description of items	Reason for licence
5. <u>Transmission related items</u> (5 items) Selected items: transmission apparatus, radar apparatus	Imports only permitted on approval by the General Directorate of Radio Communication To assure the frequency regulations in the framework of the national communication system
6. <u>Banknotes and related items</u> (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
7. <u>Explosives and related items</u> (12 items) Selected 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
8. <u>Chemicals and related items</u> (9 items) Selected items: benzol, toluene, solvent naphtha, petroleum oils, benzene	Imports only permitted on approval by the General Directorate of Petroleum Works in the Ministry of Energy and Natural Resources. Imports of toluene require approval both from the Ministry of Energy and Natural Resources and the Ministry of Agriculture and Rural Affairs.
9. <u>Products affecting worker health</u> (3 items) Selected items: asbestos, benzene	Imports only permitted on approval by the Institute of Workers' Health and Security in the Ministry of Works and Social Security
10. <u>Civil aircraft related items</u> (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 Aircraft in the Ministry of Transportation To prevent employment of imported goods for other than their purposes in civil aircraft
11. <u>Maps related items</u> (1 item) Maps and hydrographic or similar charts of all kinds	Imports only permitted on approval by the General Command of Cartography in the Ministry of Defence
12. <u>Items related to the manufacturing of chemical weapons</u> (13 items)	Imports only permitted on approval by the Undersecretariat of Foreign Trade

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

Source: WTO Secretariat based on information provided by the Government; and WTO documents G/LIC/N/3/TUR/2, 27 May 1998 and G/LIC/N/3/TUR/2/Corr.1, 4 June 1998.

(viii) Import quotas

49. Since the previous Review in 1994, Turkey has introduced import quotas on certain textile and clothing products as a requirement for harmonization of its import policy with that of the EU.²⁵ The quotas, which were not part of EU global quotas, were introduced on 1 January 1996 under Article XXIV of GATT 1994.²⁶ Within the context of the legislation on Surveillance and Safeguard Measures on Imports of Certain Textiles Products, the management of quotas and surveillance is realized under a double checking system for imports from 16 countries with which an agreement has been reached (Table III.11). A single-checking system is applied to textile and clothing imports from 21 countries with which no agreement has yet been reached. For 1998, preferential quotas for a variety of products (equivalent to 1,044 items at the HS eight-digit level or 29% of the tariff lines in the textile and clothing sector) were distributed among 15 WTO Members. 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).

²⁵ WTO document WT/REG22/7, 24 November 1997.

²⁶ However, as a consequence of recently signed free-trade agreements and harmonization of Turkish trade policy with that of the EU, the number of countries subject to quotas has decreased since its introduction.

Table III.11
Quota and surveillance on certain textile and clothing imports, June 1998

Countries subject to quota		Countries subject to surveillance	
under double checking	under single checking	under double checking	under single checking
Belarus	Argentina	Bangladesh	Armenia
China	Brazil	Egypt	Azerbaijan
Chinese Taipei	Hong Kong, China	Latvia	Estonia ^a
Egypt	India	Lithuania	Georgia
Indonesia	Peru	Macedonia	Kazakhstan
Korea, Rep. of	Philippines	Moldova	Kyrgyzstan
Macao	Singapore	Viet Nam	Mongolia
Malaysia	Thailand		Russian Federation
Pakistan	Ukraine		Tajikistan
Sri Lanka	Uzbekistan		Turkmenistan
Viet Nam			Ukraine
			United Arab Emirates
			Uzbekistan

a An agreement has been reached with Estonia, but has not yet entered into effect.

Source: Government of Turkey.

50. Turkey has also introduced quotas for imports of some products originating from China; these goods include footwear, tableware and kitchenware of porcelain or china, ceramic tableware or kitchenware, and toys.²⁷ The legislation applied to imports from China also applies to imports from some other non-member countries, but no quota has yet been introduced for those countries.²⁸ The authorities have indicated that Turkish practice is now identical with that of the European Union both in terms of third countries and categories of products subject to quantitative restrictions.

51. Within the WTO, some Members (Hong Kong, China; India; and Thailand) have expressed concern that the restrictions on certain textile and clothing products are not consistent with Turkey's obligations under the GATT/WTO.²⁹ At the request of India, a panel was established in March 1998 (Chapter II(3)(ii)).³⁰ Although textile and clothing imports by Turkey have been quite small (less than 6% of total merchandise imports in 1996), the customs union between Turkey and the EU may be perceived as a trading opportunity by countries wishing to export to the EU: goods exported to Turkey that are covered by the CUD may freely enter the EU.

52. Under the WTO Agreement on Textiles and Clothing (ATC), which became effective on 1 January 1995, Turkey has submitted the list of products included in the first and second phases of integration into GATT 1994.³¹ The list for the first phase of integration contains some 18% of the

²⁷ Legislation on Safeguard Measures and Surveillance for Imports of Products Originating from Certain Countries.

²⁸ Azerbaijan, Albania, Belarus, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Dem. Rep. of Korea, Mongolia, Uzbekistan, Russia, Tajikistan, Turkmenistan, Ukraine and Viet Nam.

²⁹ WTO documents WT/DS29/1, 15 February 1996, WT/DS34/1, 25 March 1996, WT/DS34/1, 26 June 1997 and WT/DS34/2, 2 February 1998.

³⁰ WTO document WT/DS34/3, 15 June 1998.

³¹ The sector will be integrated in four stages to be implemented by 1 January 1995, 1 January 1998, 1 January 2002 and 1 January 2005. Each member can choose which products to integrate at each of the four stages provided that they cover at least one product from each of the following groupings: tops and yarns, fabrics, made-ups and clothing.

volume of imports in 1990, comprising 54 HS six-digit items.³² The list for the second phase also covers some 18% of the volume of imports in 1990, including 23 categories of mostly tops and yarns (16.2% of the volume of imports), followed by fabrics (1.7%), made-up textile products (0.02%), and clothing (0.08%).³³

(ix) Imports by state economic enterprises

53. Currently, some alcohol and pharmaceutical products (equivalent to nine items at the HS four-digit level) can only be imported by specific government agencies or pre-approved organizations (Table III.12). Within the framework of the customs union with the EU, Turkey has terminated the special and exclusive rights and privileges granted to public enterprises and state monopolies of a commercial nature (Official Gazette of 31 December 1995, No. 22510 *bis*). As a result, the exclusive right granted to the Turkish Grain Board to trade in some agricultural goods (wheat, meslin, barley for the manufacture of malt, and barley other than as seed) and TEKEL's monopoly status for natural sparkling wine and whisky have been terminated.

Table III.12
Imports and exports restricted to government agencies or pre-approved organizations, June 1998

Items	Trader	Purpose of restriction
1. <u>6 items</u> : beer made from malt; wine of fresh grapes, incl. fortified wines, grape must; vermouth and other wine of fresh grapes flavoured with plants or aromatic substances; other fermented beverages mixtures of fermented beverages; undenatured ethyl alcohol; ethyl alcohol, and other spirits, denatured; spirits, liqueurs, and other spirituous beverages	TEKEL	To reduce the negative consequences of alcohol consumption
2. <u>3 items</u> : cinchona bark; potassium iodide; and alkaloids of cinchona and their derivatives (quinine)	Turkish Red Crescent	To enable the Red Crescent to fight the diseases of malaria and syphilis

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

Source: WTO Secretariat based on WTO documents G/STR/N/1/TUR, 20 July 1995 and G/STR/N/3/TUR, 9 September 1997.

54. Imports of goods allowed to be traded exclusively by government agencies as a share of total merchandise imports have remained at about the same low level of 0.07% as at the time of the previous Review. In 1996, such imports were dominated by undenatured ethyl alcohol goods, accounting for some 78% of imports realized by government agencies (Table AIII.2). However, imports of these goods by pre-approved organizations may also be permitted against a licence granted by the relevant state-trading enterprise. Imports undertaken by pre-approved organizations (including private agents) were about 9.5% of total merchandise imports in 1996.

(x) Import cartels

55. Export cartels are prohibited by Turkish competition law (Law No. 4054 on the Protection of Competition). The law (Article 4) states that agreements "which cause or may have as their object the prevention, distortion or restriction of competition in a market for goods and services are unlawful and prohibited."

(xi) Countertrade

56. Countertrade (such as barter, counter-purchase or indirect offsets) is regulated by the Export Regime Decree, and Communiqué No. 96/3 concerning Exportation Made through Counter Purchase

³² WTO document G/TMB/N/44, 28 April 1995.

³³ WTO documents G/TMB/N/228, 12 February 1997 and G/TMB/N/2228/Add.1, 28 May 1997.

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. Companies allowed to conduct indirect and direct offset purchases are defined in a guide published by the Undersecretariat of Defence. Applications are made to the Exporters' Union. In 1993, exporters were required to meet a minimum level of 50% domestic value added. This requirement has been abolished.

57. In 1997, barter trade amounted to US\$34 million and was undertaken by 33 companies. The concerned countries were mostly Azerbaijan, Germany, Macedonia, Russia and Ukraine; the trade covered items such as chemical equipment, textiles and food.

58. The Government can require ministries and public enterprises to include an offset provision in tender specifications when the estimated tender value is above US\$1 million; major military contracts are usually subject to such offset requirements. Countertrade proposals often play an important role in the decision to award a large contract, and direct offsets are preferred over indirect offsets. A memorandum of understanding, which expires in 1999, has been signed with Boeing providing for an 80% direct offset for the purchase of 49 aircraft worth some US\$862 million. Under the agreement, the Turkish Aerospace Industries (TAI) will produce some parts of the aircraft. No other contracts containing offset provisions are presently operating.

(xii) Local-content schemes

59. The authorities indicated that no local-content requirement is currently applied to foreign investors. However, in the automotive sector foreign investors usually accept a certain share of local content (see also section (4)(vi) of this Chapter).

(xiii) Anti-dumping and countervailing measures

60. Turkish legislation on anti-dumping and countervailing measures (Law No. 3577 of 1989 on Prevention of Unfair Competition in Importation including the related Decree and Regulation published in the Official Gazette on 27 September 1989) was enacted on 1 October 1989.³⁴ No investigations had been initiated prior to the enactment of this legislation. In order to bring the legislation into conformity with the relevant WTO Agreements, an amending law has been prepared but the domestic procedures for the enactment of the new legislation have not yet been completed. The draft law includes provisions on like product, subsidy, injury, specificity, the *de minimis* rule, negligible imports, newcomers, a sunset clause, and the duration of provisional and definitive duties.

61. No consideration has been given to a "general interest clause" in deciding whether to impose anti-dumping duties, although the authorities have indicated that, in practice, Turkey takes account of the general interest. Thus, the views of interested parties, such as downstream users, upstream producers, labour organizations, consumer groups or any other interested party are taken into consideration during the course of the investigation. Systematic application of the "lesser duty" rule is another indication of the attention given to general interest. Nevertheless the inclusion of such a clause in the legislation would formally enshrine the rights of consumers as well as industries that are users of the product under investigation. An anti-circumvention provision (similar to that of the EU anti-dumping legislation), allowing anti-dumping measures to be extended to imports of like products if an existing measure is circumvented, is not under consideration.³⁵ In dealing with possible

³⁴ WTO document G/ADP/N/1/TUR/2-G/SCM/N/1/TUR/2, 1 December 1995.

³⁵ The custom union decision does not require Turkey to impose EU anti-dumping measures or vice versa. Circumvention is defined in EU legislation as a change in trade patterns due to a practice, process or work "for which there is insufficient due cause or economic justification, other than the imposition of the duty" (WTO, 1995).

circumvention Turkey does not have any special rules of origin requirements in respect of imported products identical to those subject to anti-dumping or countervailing duties. It should be noted that the WTO Agreements do not require a general interest clause nor an anti-circumvention provision.

62. Under the legislation, imports (i) causing material injury to an industry, (ii) constituting a threat of material injury to an industry, (iii) causing the market impairment of an industry to be newly established in Turkey, or (iv) causing physical retardation of an industry to be established in Turkey may be filed for investigation under Article 3 of the current Law.³⁶ (Item (iii) does not constitute injury in terms of the WTO Agreements and is excluded from the proposed new law). A dumped product is a product with an export price less than the "normal" value of an identical or like product; the normal value is defined as a comparable price actually paid in the ordinary course of trade for the identical or like product subject to consumption in the exporting country or the country of origin (Article 15 of the Regulation). A special anti-dumping unit in charge of, *inter alia*, the preliminary examination upon complaint, proposals on whether an investigation shall be initiated, and carrying out anti-dumping investigations has been formed in the Undersecretariat of Foreign Trade. However, the responsibility for initiating an investigation, acceptance of undertakings, decisions on the imposition of provisional or definitive duties and termination are made by the Board of Evaluation of Unfair Competition in Importation, which the authorities have indicated is independent of any government agency.

63. The examination of a complaint is required to be completed within 60 days (Article 4 of the Regulation) and decisions to initiate an investigation are published in the Official Gazette (Article 5 of the Regulation). The interested parties are notified on the initial day of the investigation and have a maximum of 30 days to respond; the time-limit may be extended by up to 15 days (Article 5 of the Regulation). 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 11 of the Regulation). The final measure shall remain in force as long as may be necessary to remove the effects of the injury (Article 5 of the Decree). The legislation provides for retroactive implementation of up to 90 days. Provisional anti-dumping measures may be adopted for a period of four months (which can be extended for two months) in case of existence of sufficient evidence (Articles 6 and 12 of the Law).

64. Turkey's legislation on anti-dumping and countervailing measures was reviewed in a joint special meeting in the WTO Committees on Anti-Dumping Practices and on Subsidies and Countervailing Measures in April 1996. During the review process, some Members noted that Turkey's legislation did not fully reflect the requirements of the agreements in certain areas. For example, it was argued that the legislation:

- did not include provisions on (i) the earliest time, after the initiation of an investigation, in which a provisional measure can be imposed; (ii) the standing of a complainant; (iii) *de minimis* dumping margins and negligible import volumes; (iv) granting new shipper reviews; and (v) the concept of "specificity";
- did not fully reflect provisions on (i) the termination of definite measures; (ii) the extension of provisional measures; and (iii) public notice and the explanation of determinations; and

³⁶ Turkey has neither initiated an investigation nor imposed any measures on the basis of market impairment criterion up until now.

- included an additional category (market impairment) not provided for in the definition of injury in the WTO provisions.³⁷

65. In response, the Government of Turkey stated that "international agreements duly put into effect carry the force of law" according to the Constitution of Turkey. Therefore, 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 law and the Agreement (Chapter II). This applies both in an ordinary and higher administrative courts.

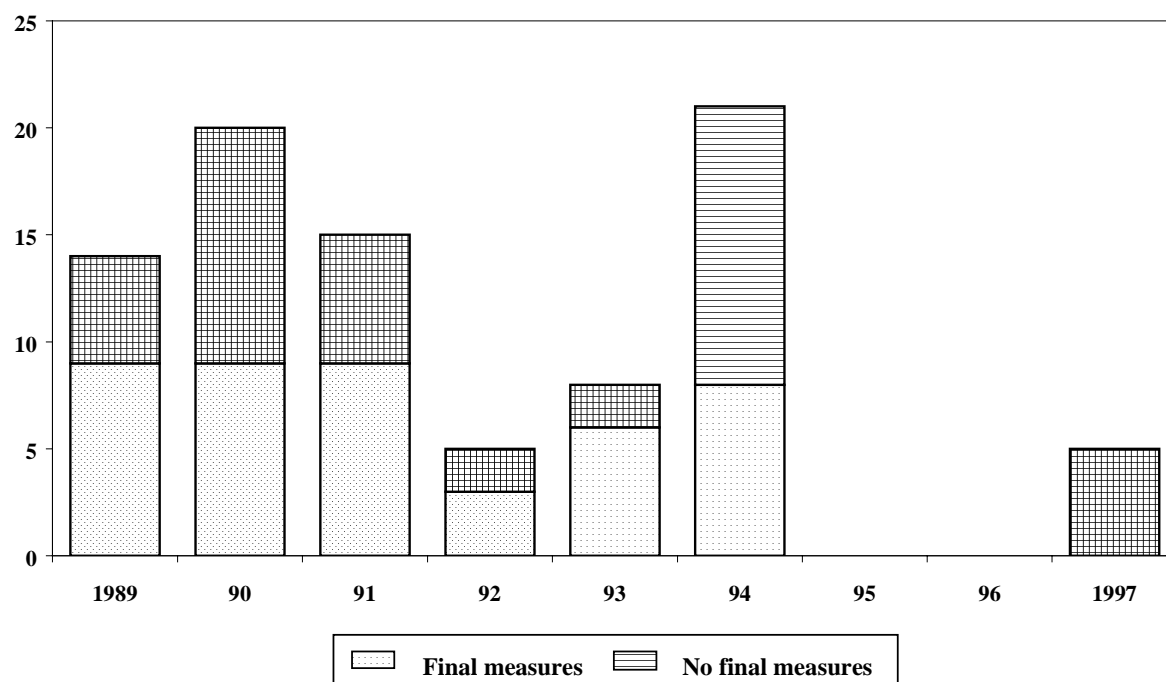
66. Turkey has been an active user of its anti-dumping legislation, although no new final measures have been introduced since 1995. By number of cases initiated (imposed) between 1989 and 1996, Turkey ranks eighth (sixth) among the WTO Members.³⁸ As shown in Chart III.4, in the period December 1989 to 1997 Turkey imposed definitive anti-dumping measures in 44 cases, out of a total of 88 investigations initiated. Final measures mainly affected textile products, and base metals and articles thereof. The countries most affected were Romania (23% of the measures), Russia (11%) and China (11%). The large build-up of cases initiated through 1994 may be explained by the overvalued domestic currency (see Chapter I), which, as in a number of other countries, might have caused domestic industries to seek protection through anti-dumping measures. Although the number of cases initiated has fallen considerably since 1995 (when a stable real exchange rate policy was adopted – Chapter I), the number of measures in force (presently 35) remains substantial (Table III.13). Almost half of the duties are levied on a specific basis; according to the authorities, specific rates are applied in order to ensure effective implementation of definitive measures. Twenty-five per cent of the *ad valorem* duties are as high as 100%. By May 1998, Turkey had not initiated nor imposed any countervailing measures.

³⁷ WTO document G/ADP/Q1/TUR/1-G/SCM/Q1/TUR/1, 17 July 1996.

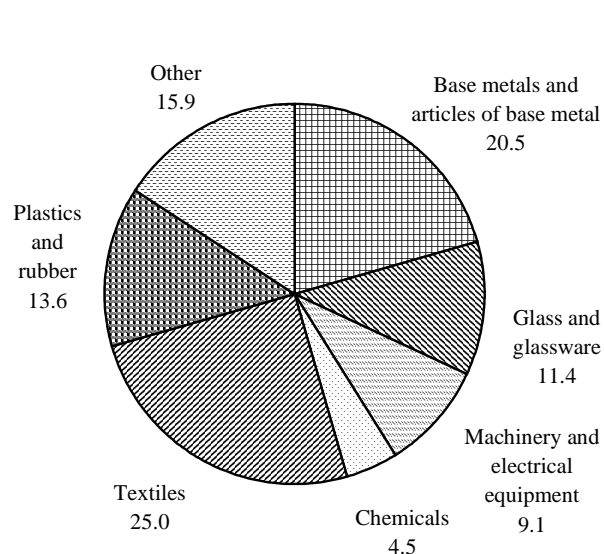
³⁸ Based on information provided by the Government of Turkey and data presented in Miranda and Torres (1998).

Chart III.4
Anti-dumping cases, 1989-97

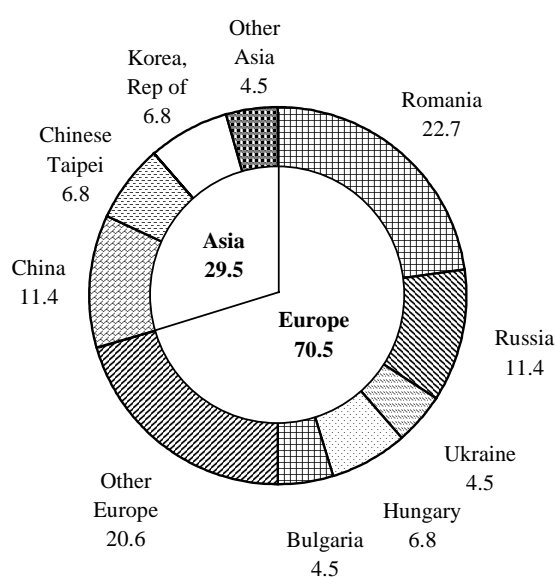
(b) By number of cases



(b) By product (final measures)
Per cent



(c) By origin (final measures)
Per cent



Source: Notifications by Turkey to the WTO.

Table III.13
Anti-dumping measures in force, December 1997

Product	Country	Initiation date of investigation	Date of imposition of final measure	Duty
Polyester synthetic staple fibers (not processed) (5503.20.00.00.00)	Chinese Taipei	7/12/1989	28/11/1990	20%
	Italy	9/7/1991	8/1/1993	9%
	Russia	30/7/1993	16/4/1994	19%
	Belarus	30/7/1993	16/4/1994	19%
Polyester synthetic staple fibers (processed) (5506.20.00.00.00)	Romania (review)	20/5/1992	19/11/1993	15%
Welding electrodes (8311.10.10.00.00)	Romania	7/12/1989	28/11/1990	50%
	Hungary	7/12/1989	28/11/1990	50%
	China	7/12/1989	28/11/1990	100%
Printing and writing papers (4802.52.20.10.00) (4802.52.80.10.00)	Finland (review)	20/5/1992	9/11/1993	5%
	Yugoslavia	7/12/1989	28/11/1990	20%
Lathe chucks (8466.20.91.00.11)	Poland	21/3/1990	30/1/1991	100%
	Czechoslovakia	21/3/1990		100%
Cast glass and rolled glass (70.03)	Romania	21/3/1990	21/2/1991	100%
Drawn or blown glass (70.04)	Romania	21/3/1990	21/2/1991	100%
	Bulgaria	1/10/1992	22/9/1993	US\$35/tonne
	Russia	7/1/1993	22/9/1993	US\$35/tonne
Roller chain (7315.11)	Chinese Taipei	21/3/1990	21/2/1991	30%
Articles of porcelain or china (69.11)	China	3/4/1990	21/2/1991	US\$2/kg
Slide fasteners (9607.19)	Chinese Taipei	13/7/1990	9/7/1991	15%
Lead-acid electric accumulators (8507.10.81.00.00) (8507.10.89.00.00)	Korea, Rep. of	22/5/1991	20/5/1992	12%
Glassware (70.13)	Indonesia	6/6/1991	5/6/1992	US\$0.1/kg
Universal lathes (8458.19.80.00.11)	China	22/6/1991	22/4/1992	50%
	Bulgaria (review)	26/1/1995	30/1/1996	50%
Benzoic acid (2916.31.00.90.11)	Netherlands	14/8/1991	1/9/1992	US\$0.29/kg
Low-density polyethylene (3901.10.90.00.11)	Russia	9/10/1993	26/1/1995	US\$280/tonne
	Bulgaria	9/10/1993	26/1/1995	US\$200/tonne
	Romania	9/10/1993	26/1/1995	US\$230/tonne
Polyvinyl chloride (3904.10.00.00.00)	Russia	28/1/1994	26/1/1995	US\$170/tonne
	Ukraine	28/1/1994	26/1/1995	US\$150/tonne
	Romania	28/1/1994	26/1/1995	US\$100/tonne
Citric acid (2918.14.00.00.00)	China	4/6/1994	6/5/1995	66%

Table III.13 (cont'd)

Product	Country	Initiation date of investigation	Date of imposition of final measure	Duty
Non-refillable pocket flint lighters (9613.10.00.00.00)	China	28/9/1994	6/5/1995	US\$0.08/piece
Steel billets, rolled or obtained by continuous casting (7207.11.14.00.13)	Russia	9/2/1994	6/5/1995	US\$24/tonne
(7207.11.16.00.13)	Ukraine	9/2/1994	6/5/1995	US\$17/tonne
(7207.20.15.00.13)	Moldova	9/2/1994	6/5/1995	US\$29/tonne
(7207.11.14.00.14)				
(7207.11.16.00.14)				
(7207.20.15.00.14)				

Note: Codes in parentheses refer to the Harmonized System.

Source: Government of Turkey.

(xiv) Safeguard actions

67. Turkey has neither initiated any investigation nor applied any measure against WTO Members within the framework of the GATT Article XIX. The legal authority in Turkey to take such measures is provided in Council of Ministers Decree No. 95/6814 of 30 April 1995, and the Regulation on Safeguard Measures and Surveillance for Imports of 1 June 1995.³⁹ Within the legal framework, 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. 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 measure.

(xv) Measures implemented in exporting countries

68. Turkish companies are not party to any restraint agreement with foreign countries to restrict imports to Turkey, nor are the authorities aware of any arrangements on the part of other countries to limit exports to Turkey.

(xvi) Balance-of-payments measures

69. Turkey has used restrictions for balance-of-payments reasons under Article XVIII:B of GATT at various times since 1967. Turkey disinvoked the Article on 1 January 1997.

(xvii) Import privileges extended to free zones

70. There are ten free zones in Turkey, accounting for about 3% of merchandise exports in 1997. All foreign imports into the zones benefit from zero duty, and exemption of corporate, income and value-added taxes. Details of the free zones are provided in section (3)(xii)(f).

³⁹ WTO document G/SG/N/1/TUR/2, 14 December 1995.

(3) MEASURES DIRECTLY AFFECTING EXPORTS**(i) Registration and documentation**

71. Since the previous Review, registration and documentation requirements have been simplified and streamlined. As part of the CUD with the EU, Turkey pledged to adopt EU standards on customs provisions. Hence, since 1 January 1996, Turkey's customs declaration has been re-aligned to the format of EU single administrative document (SAD), used in all customs procedures. The fee (the so-called printing charge) for the SAD is TL 150,000 (equivalent to less than US\$1); no other costs are involved in the documentation.

72. Prior to 1996, exporters were required to obtain an export certificate issued by the Undersecretariat of Treasury and Foreign Trade. The requirement was abolished in 1996. However, exporters are still required to register with the Exporters Association 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.

73. Exports of some products are subject to registration: (i) goods for which payments are made to the Support and Price Stabilization Fund (SPSF) or goods subject to the premium deduction to the SPSF⁴⁰; (ii) exports against natural gas imported under the bilateral agreement with the Russian Federation; (iii) exports within the framework of special accounts regarding the repayment of the installations established on credit through barter; (iv) exports of goods under restriction applicable to the countries that are practising quantitative restrictions on Turkish exports; (v) goods subject to international sanctions; (vi) goods with certificates under the Regulation on the Manufacturing of Vegetal and Animal Products Using Ecological Methods published in the Official Gazette No. 22145 of 18 December 1994; (vii) certain electrical equipment listed in the 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; (viii) goods covered by Wassenaar Arrangement; (ix) goods covered by Missile Technology Controlling Regime; (x) items included in the 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; (xi) exports of goods covered by the Vienna Agreement regarding the Protection of Ozone Layer as well as Protocols and Amendments pertaining to that charter, only to the countries that are the signatories of the arrangements in question; (xii) chemicals used in chemical weapons manufacture; (xiii) certain protein materials and their derivatives; (xiv) unprocessed olive oil, processed bulk or barrelled olive oil, unprocessed olive in bags, sacks or boxes, liquorice root, raw meerschaum and sample pipe; (xv) original bowel; and (xvi) live sheep and cattle. This registration is on a case by case basis at the time of each export transaction concerning these goods.

74. The Undersecretariat of Customs may authorize exporters to issue movement certificates, without submitting them for endorsement to the relevant authorities, in trade with the following countries: EU member countries (within the framework of the CUD, ECSC and agricultural products), EFTA countries, Israel, Hungary, Romania, and Lithuania. Such authorization can be granted to exporters: frequently making consignments; offering guarantees to verify the status of the goods to the satisfaction of the customs authorities; not involved in any serious or repeated offences against customs or tax legislation; and with records that can be checked by the custom authorities.

⁴⁰ The SPSF extends concessional credits to the agricultural sector.

(ii) Preshipment inspection and quality control

75. While Turkey does not apply preshipment inspection, quality is controlled at the export stage to improve the quality of some exported agricultural products. The Decree on the Regime of Technical Regulations and Standardization in Foreign Trade empowers the Government to make goods for export subject to quality control and inspection; specify the type of quality control and inspection applied to such commodities; and prohibit the export of these commodities unless accompanied by a certificate of export issued by the Undersecretariat of Foreign Trade. The Undersecretariat, set up under the Decree, is responsible for the enforcement of quality control and any necessary inspection of these commodities.

76. Currently, some 70 agricultural products (equivalent to 202 items at the HS 12-digit level) are subject to compulsory control on export, including, *inter alia*, citrus fruit, apples, ground nuts, a variety of edible oils, dried apricots, dried figs and some hazelnuts. The coverage is about the same as during the previous Review in 1994.

(iii) Export taxes, charges and levies

77. The number of commodities covered by export taxes has decreased since the previous Trade Policy Review from seven to two.⁴¹ Currently, export taxes apply to hazelnuts (in the form of deductions payable to the Support and Price Stabilization Fund (SPSF)) at the rate of US\$0.04 per kg. for unshelled hazelnuts and US\$0.08 per kg. for shelled hazelnuts.⁴² Exports of semi-processed leather are subject to a tax of US\$0.5 per kg. for environmental reasons, but the measure should also be beneficial to the leather goods industries.⁴³ No other levies and charges apply to exports.

(iv) Minimum export prices

78. Turkey no longer applies minimum export prices. At the time of the previous Review, Turkey applied minimum export prices to raisins. The measure, which was in accordance with EU regulations, was in order to meet minimum import prices set by the EU. Minimum export prices did not apply to any other product or country.

(v) Export prohibitions

79. As of June 1998, some 14 items, by broad category, were prohibited under law for various reasons, including environment, health or religious reason or to give effect to obligations arising from commitments to international conventions (Table III.14). Seven items have been added to the list since the previous Review in 1994: (i) flower bulbs; (ii) data dates; (iii) liquidamber orientalis; (iv) plants of grapevine, fig, hazelnut, pistachio and olive; (v) ozone-depleting substances; (vi) chemicals listed in Schedule I of the Chemical Weapon Convention to non-party States; and (vii) wood and wood charcoal.

80. Turkey maintains trade embargoes on Iraq, based on U.N. Security Council resolutions. Exports of some equipment of the oil and gas industry to Libya are prohibited, also based on U.N. Security Council resolutions.

⁴¹ In 1993, the following goods were subject to export taxes: hazelnuts, figs, liquorice root, pumice stone, raw leather, rye (export to the EU exempted), and untreated olive oil (export to the EU exempted).

⁴² Decree of the Council of Ministers published in the Official Gazette No. 89/10306 of 23 July 1997.

⁴³ Decree of the Council of Ministers published in the Official Gazette No. 89/13904 of 23 March 1989.

Table III.14
Export prohibitions, June 1998

Description of item	Invocation of WTO Article	Domestic law
1. Angora goats (1 item) ^a	Environment (Article XX:g)	Law on the Amelioration of Animals (7.6.1926)
2. 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 (8.3.1990)
3. Flower bulbs (1 item)	Environment (Article XX:g)	Export Regime Decree (22.12.1995)
4. Tobacco seeds and seedlings (2 items) ^a	Environment (Article XX:g)	Law on Tobacco and Tobacco Monopoly (9.5.1969)
5. Data dates (1 item)	Environment (Article XX:g)	Export Regime Decree (22.12.1995)
6. Indian hemp (1 item) ^a	Health (Article XX:b)	Law on the Controls of Narcotics (24.6.1933)
7. Pterocarya carpinifolia (1 item)	Environment (Article XX:g)	Export Regime Decree (22.12.1995)
8. Liquidamber orientalis (1 item)	Environment (Article XX:g)	Export Regime Decree (22.12.1995)
9. Plants of grapevine, fig, hazelnut, pistachio and olive (not available)	Environment (Article XX:g)	Export Regime Decree (22.12.1995)
10. 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
11. 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
12. 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 (24.4.1974)
13. Wood and wood charcoal (Ch. 44)	Environment (Article XX:g)	Export Regime Decree (22.12.1995)
14. Antiques and archaeological works (1 item) ^a	Natural treasures (Article XX:f)	Law on Ancient Works of Art (21.7.1983)

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 Government notification of 27 February 1996 and information provided by the Government of Turkey.

(vi) Export licensing

81. Turkey does not apply export licensing.

(vii) Export quotas

82. Turkey does not presently apply export quotas. However, from time to time quotas have been implemented for certain products. In the 1995/96 season, the export of raw cotton was restricted to 100,000 tonnes to ensure a continuous flow of high-quality, Turkish raw cotton to the domestic textile industry, as well as to stabilize raw cotton prices.

(viii) Exports by state-economic enterprises

83. Turkey does not grant any exclusive export rights to state economic enterprises or government agencies.

(ix) Export cartels

84. Export cartels are prohibited by Turkish law on competition (Law No. 4054 on the Protection of Competition). Article 4 states that agreements "which cause or may have as their object the prevention, distortion or restriction of competition in a market for goods and services are unlawful and prohibited".

(x) Voluntary restraints, surveillance and similar measures

85. According to the Turkish authorities, outside the area of textiles and clothing, Turkey does not participate in any arrangements designed to curb or control exports to third countries at the request of foreign governments. Under the WTO Agreement on Textiles and Clothing, Turkey maintains restraint agreements on certain exports of textiles and clothing to Canada and the United States.

(xi) Measures maintained by importing countries

86. Turkey monitors measures maintained by importing countries that it believes restrict its exports. Areas of concern include anti-dumping and countervailing measures and quantitative restrictions. As noted earlier, Turkish exporters of certain textiles and clothing products are faced with quotas on the U.S. market (currently quotas on 21 textile categories and 21 clothing categories) and the Canadian market (currently quotas on five clothing and textile categories). Steel, polyester fibre, unbleached grey cotton and some food products are among the products affected by anti-dumping and countervailing actions (Table AIII.3).

(xii) Subsidies and other financial support to exporters

87. As a result of the customs union between EU and Turkey as well as Turkey's commitments *vis-à-vis* the WTO, Turkey has progressively revamped the incentives provided to exporters. Changes include the abolition of most direct export subsidies, streamlining of its duty-concession programmes, elimination of corporate tax exemption, and the introduction of new export credit, guarantee and insurance programmes.

88. The export incentive programmes have been costly, running at above 1% of GDP (Table III.15). The recent shift from direct payments to general exemptions complicates the task of estimating the total cost attributable to the incentives, and the Turkish Government has not estimated the amount of forgone revenue attributed to the exemptions.

Table III.15
Fiscal cost of export incentive programmes, 1992-94
(Per cent of GDP)

	1992	1993	1994
Total	1.4	1.2	1.2
Forgone taxes ^a	0.7	0.7	0.7
Subsidized credits	0.5	0.3	0.2
Direct subsidies ^b	0.2	0.2	0.3

a Customs duty and tax exemptions.

b Cash grants, energy and transport subsidies.

Source: World Bank (1996), *Turkey - Challenges for Adjustment*, Washington D.C., April.

(a) Export subsidies

89. Since the previous Trade Policy Review, Turkey has eliminated most of its explicit subsidy programmes (Table III.16). However, Turkey has a wide range of support measures, including duty concessions, and export finance, insurance, guarantee, promotion and marketing assistance.

Table III.16
Export subsidy programmes eliminated since the previous Trade Policy Review

Programme	Date of elimination	Main feature
1. <u>Energy incentive programme</u>	1 January 1996 (Council of Ministers Decree, published in Official Gazette of 31 December 1995)	The aim of the programme was to compensate for high energy costs, <i>vis-à-vis</i> the average world energy cost levels. Firms manufacturing the final products to be exported could purchase electricity, natural gas and liquified petroleum (LPG), consumed in the production of exported final products, at discounted prices taking into account the energy prices in EU countries. Also, for fuel-oil, an exemption from payment of customs duty and all fund levies collected on imports was implemented.
2. <u>Free wheat programme</u>	Beginning of 1996	Companies signed contracts with the state economic enterprise, Turkish Grain Board (TMO), committing themselves to export a certain amount of their product in return for a predetermined amount of durum wheat. After the exportation, the company provided invoices and other export documentation to the TMO. Upon examination and approval of the documents by the TMO, free wheat was delivered to the company.
3. <u>Transportation subsidy</u>	1 January 1996	This subsidy was applied to exports of some agricultural products between 1 October and 31 December 1995 (Decree of the Money-Credit and Coordination Council No. 95/13). The programme provided US\$35 per tonne for exports to North and South America and the Far East; and US\$25 per tonne to Europe, the Middle East, North Africa and other destinations.

Note: The coverage of the agricultural and processed agricultural export subsidy programmes have changed in coverage since the previous Trade Policy Review.

Source: WTO Secretariat based on WTO document G/SCM/Q2/TUR/6, 4 April 1997 and information provided by the Government of Turkey.

90. The only remaining cash subsidies apply to a limited number of agricultural and processed agricultural products. Currently, such export subsidies are extended to two agricultural products. The "rebates", which are paid in the form of cash grants, range between 10% and 20% of export values, depending on the commodity. Export subsidies granted on 13 processed agricultural products are provided to producers or exporters by deducting their debts to public corporations (taxes, social insurance premium costs, energy costs and telecommunications costs) from their subsidy entitlement (Chapter IV(2)(ii)).

(b) Duty and tax concessions

91. Exporters benefit from a number of duty concessions on imported inputs, raw materials and capital goods, which according to the authorities are aimed at neutralizing the duties paid on these items. The features of these schemes are described in section (2)(ii)(e) and summarized in Table III.4.

92. Until 31 December 1993, export income was exempted from the payment of corporate income tax.⁴⁴ The programme allowed exporters and producer-exporters to deduct a certain amount of their export earnings from their revenue, thus allowing them to pay less corporate tax. The reduction, which had been progressively reduced, was 20% and limited to the following activities; (i) revenue earned abroad and brought to Turkey from services such as repairs, and construction facilities; and (ii) producer-exporter companies' revenue from exports of industrial products above US\$250,000 a year.

(c) Export finance and guarantee

93. Exporters can take advantage of a large number of export credit schemes, operated by the Export Credit Bank of Turkey (Turk Eximbank). Through its credit and guarantee programmes, the Turk Eximbank currently provides support for 15-20% of Turkey's total exports. 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. As a result of this revision, the target market credit programme and export credits extended to priority sectors were abolished.

94. After the establishment of the customs union between Turkey and the EU at the beginning of 1996, Turkey made necessary arrangements to harmonise its legislation with that of the EU in related fields, including officially supported export credits (Article 12 of the customs union decision). Within this framework, the OECD Consensus principles on officially supported export credits with a repayment term of two or more years have also been adopted.⁴⁵ These principles cover, *inter alia*, guidelines for calculating the degree of concession, as well as on repayment periods and minimum interest rates. Turkey has recently become a member of the Group on Export Credits and Credit Guarantees (ECG), a subsidiary body of the OECD Trade Committee.

95. Since the previous Review in 1994, the number of export credit programmes has increased from 12 to 14.⁴⁶ Table III.17 provides the key features of the export credit programmes, such as the eligibility, conditions and the amount of credit provided under each scheme. The current interest rates on short-term credits extended in Turkish Lira vary between 55 and 75%, while the interest rates on short-term foreign currency credits vary between LIBOR and LIBOR plus two percentage points, depending on the repayment period; a discount of ten percentage points is applied to short-term Turkish Lira credits.

⁴⁴ Export income tax exemption is included in the illustrative list of export subsidies (Annex I) of the WTO Agreement on Subsidies and Countervailing Measures.

⁴⁵ Export Communiqué 96/12 was published on 23 January 1996, based on the provisions set out by the Council Decision of EU 96/112/EEC on officially supported credits.

⁴⁶ New programmes are: (i) the performance-related Turkish Lira export credit programme; (ii) the performance-related foreign currency export credit programme; (iii) the short-term export credit discount programme; (iv) the tourism marketing credit programme; (v) the IDB import trade financing operations; (vi) the overseas chain stores investment credit programme; (vii) the specific export credit programme; and (viii) the letter of guarantee programme for shipbuilding and exporting. The following programmes have been abolished: (i) the export finance credit programme; (ii) the revolving export finance credit programme; (iii) the target market credit programme; (iv) the letter of guarantee programme for ship-building and exporting; (v) the specific export credit programme; and (vi) export credits extended to priority sectors.

Table III.17
Key features of the export credit and guarantee programmes, June 1998

Scheme	Eligibility	Conditions	Amount of credit
1. <u>The Pre-Shipment Turkish Lira Export Credit Programme</u> (PSEC TL)	Exporters, manufacturer-exporters	Interest rate: determined by Turk Eximbank in accordance with developments in money markets and varies according to repayment period plus intermediation charges ^a Maturity maximum 120 days Maximum 100% of f.o.b. export commitments and TL 300 billion per company	1997: US\$732 million
1.a <u>Small and Medium-Scale Enterprises Export Credit Programme</u> ^b	Small and medium-scale manufacturer-exporters of up to 200 employees	Same as PSEC TL	1997: US\$214 million
1.b <u>Priority Development Areas Export Credit Programme</u> ^b	Priority development areas (mainly eastern and south-eastern provinces)	Same as PSEC TL	1997: US\$39 million
2. <u>Pre-Shipment Foreign Currency Export Credit Programme</u>	Exporters, manufacturer-exporters	Interest rate: varies in accordance with repayment period and is linked to LIBOR/FIBOR ^c Maturity maximum 180 days Maximum 100% of f.o.b. export commitments Maximum US\$10 million per company	1997: US\$1,126 million
3. <u>Foreign Trade Companies Short-Term Export Credit Programme</u>	All companies that qualify as Foreign Trade Corporate Companies (FTCC) or have been granted Sectoral Foreign Trade Companies (SFTC) ^d status by Treasury	Interest rate: determined by Turk Eximbank in accordance with developments in money markets and varies according to repayment period Maturity maximum 120 days Maximum 100% of f.o.b. export commitments	1997: US\$126 million
4. <u>Foreign Trade Companies Short-Term Foreign Currency Credit Programme</u>	All companies that qualify for FTCC or SFTC ^d status by Treasury	Interest rate: varies in accordance with repayment period and is linked to LIBOR/FIBOR Maturity maximum 180 days Maximum 100% of f.o.b. export commitments	1997: US\$415 million
5. <u>Performance Related Turkish Lira Export Credit Programme</u> ^e	Export-oriented manufacturers, manufacturer-exporters and exporters, except FTCC and SFTC, that have exported more than US\$500,000 worth of goods in the previous year	Interest rate: determined by Turk Eximbank in accordance with developments in money markets and varies according to repayment period Maturity maximum 120 days Maximum 100% of f.o.b. export commitments and TL 500 billion per company	1997: US\$85 million
6. <u>Performance Related Foreign Currency Export Credit Programme</u> ^e	Export-oriented manufacturers, manufacturer-exporters and exporters, except FTCC and SFTC, that have exported more than US\$500,000 worth of goods in the previous year	Interest rate: varies in accordance with repayment period and is linked to LIBOR/FIBOR Maturity maximum 180 days Maximum 100% of f.o.b. export commitments and US\$10 million per company	1997: US\$395 million

Table III.17 (cont'd)

Scheme	Eligibility	Conditions	Amount of credit
7. <u>Short-Term Export Credit Discount Programme^e</u>	Exporters, manufacturer-exporters	Discount rate: LIBOR Maturity maximum 180 days	1997: US\$12 million
8. <u>Tourism Marketing Credit Programme^e</u>	Tourism companies selected by Ministry of Tourism and those attracting more than US\$1 million worth of currency to Turkey annually	Interest rate: 75% Maturity maximum 180 days Maximum 40% of project cost and TL equivalent of US\$500,000	1997: US\$15 million
9. <u>Islamic Development Bank (IDB) Longer-Term Trade Financing Scheme</u>	Exports to OIC ^f members, min. 40% domestic content	Mark-up is determined by IDB within a margin of 5.5-6% Maturity 12 to 60 months Up to 100% of shipment amounts for transactions up to ID ^g 3 million (approx. US\$4.5 million) and 80% of shipment amounts for transactions exceeding ID 3 million	1997: US\$3 million
10. <u>IDB Import Trade Financing Operations^e</u>	Imports of raw materials, semi-capital and capital goods that are used in the production of export goods; export commitment is required	Mark-up rate is 6% for imports from OIC members and 7% from non-member countries Maturity maximum 30 months for capital goods and 25 months for other goods Maximum 80% of c.i.f. imports	1997: US\$13 million
11. <u>Overseas Chain Stores Investment Credit Programme^e</u>	Turkish entrepreneurs' overseas investments for the establishment of shopping malls and chain stores	Interest rates: determined specifically for each project Maturity maximum 7 years Maximum 75% of investment amount if local content is 50% or more, otherwise 60%	1997: US\$8 million
12. <u>Specific Export Credit Programme^e</u>	Exporters, manufacturer-exporters for their foreign currency generating projects in Turkey or abroad at pre-shipment stage	Terms (interest rate and maturity) are determined on project basis Average maturity 2 years	1997: US\$7 million
13. <u>Letter of Guarantee Programme for Shipbuilding and Exporting^e</u>	Turkish firms involved in shipbuilding and/or the export of ships	Maximum maturity 2 years The amount of letter of guarantee is determined by Turk Eximbank The amount of counter guarantee is determined on a project basis	1997: US\$5 million
14. <u>Project Credits Programmes^h</u>	Foreigners buying Turkish goods and services, min. 50% domestic content	Interest rate: depends on the countries' relative credit risk standing and is calculated in relation to LIBOR Maturity 2 years or more Deferred payments Maximum 85% of the goods and services provided from Turkey	1977: US\$113 million

- a Intermediation charges by commercial banks usually bring an additional four points to the interest charged, while commercial banks are permitted to add a maximum of three points to the interest rates determined by Turk Eximbank.
- b These programmes are sub-programmes of PSCEC TL. A minimum of 30% of the general limit that is allocated to commercial banks has to be extended to small- and medium-scale enterprises, while intermediary banks are required to extend between 5 and 25% of their general limit to credit demands for firms in priority development areas.
- c Commercial banks are permitted to add a maximum of 0.75 points to the interest rates determined by Turk Eximbank.
- d Foreign trade companies established by export-oriented manufacturing firms in the same sector.
- e Programme introduced after 1993.
- f OIC = Organization of Islamic Conference.
- g ID = Islamic Dinar.
- h Buyers Credit and Guarantee Programme was renamed Project Credits Programme; mostly project financing is provided under this programme.

Note: Export credit insurance has been voluntary since 17 February 1997. However, if beneficiaries of the Pre-Shipment Export Credit Programmes, Foreign Trade Companies Export Credit Programmes and Performance Related Export Credit Programmes are also short-term export credit insurance policy holders, they receive discount on interest rates (4 points discount on TL credits and 0.5 point discount on foreign currency credits).

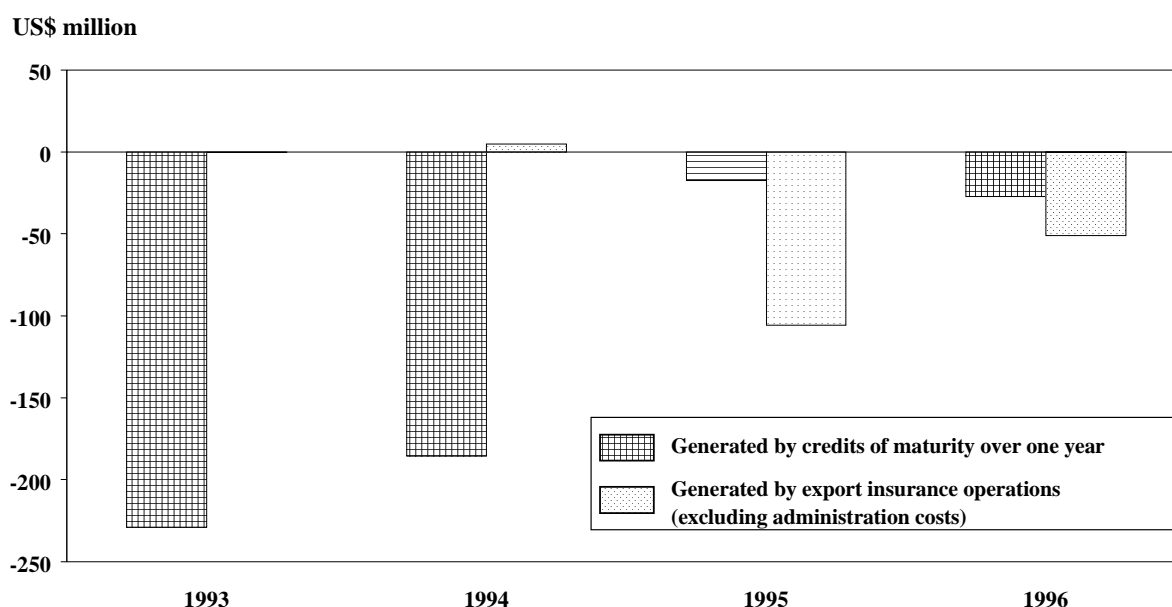
Source: Government of Turkey.

96. The Turk Eximbank has taken an active role in short-term credit activities. The bank makes an effort to ensure 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. If they are allocated through commercial banks, the banks are responsible for the default risk of the borrowers. If the credit is allocated directly by the Turk Eximbank to the customer, then collateral and/or a bank guarantee is required.

97. The Turk Eximbank has in recent years shown substantial negative net operating cash flows associated with its large export credit and guarantee programmes with repayment periods of more than one year (Chart III.5). In 1993, the negative net operating cash flow was US\$229 million, but by 1997 this had fallen to US\$27 million. According to the authorities, the premiums are adequate to cover the long-term operating costs and losses of the programmes.

Chart III.5

Net-operating cash flows of the Export Credit Bank of Turkey, 1993-96



Note: Net-operating cash flow generated by export insurance operations in 1993 was US\$-0.24 million.

Source: Export Credit Bank of Turkey.

(d) Export insurance

98. As in 1993, the Turk Eximbank offers a variety of insurance policies for Turkish exporters, investors and overseas contractors against commercial and political risks. Three of the seven current schemes have been introduced since the previous Review (Table III.18). The insurance programmes of the Eximbank are, according to the authorities, not concessional; however, net operating cash flows generated by export insurance operations have been negative in recent years (Chart III.5). For the export guarantee covering political and commercial risk insurance, the exporter is charged an amount of premium according to the risk classification of the buyer's country, payment terms and the

type of buyer (sovereign or private). Only political risk is under the guarantee of the State; the losses due to commercial risk are indemnified by the Eximbank from its own resources. The Eximbank has entered into re-insurance arrangements to reduce its exposure.⁴⁷

Table III.18
Key features of the export insurance programmes, April 1998

Programme	Coverage
1. <u>Short-Term Export Credit Insurance</u>	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
2. <u>Specific Export Credit Insurance</u>	Generally up to 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
3. <u>Overseas Contractors' Services Insurance</u>	Up to 90% of 85% of the Turkish portion of the contract value against commercial and political risks
4. <u>Overseas Investment Insurance</u>	Up to 90% of losses against political risks of new direct investments by Turkish firms in overseas enterprises
5. <u>Post-Shipment Export Credit Programme^a</u>	Political and commercial risks in the post-shipment stage; discount the export receivables related to shipments covered under programme no. 1
6. <u>Post-shipment Political Risk Insurance^a</u>	Up to 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
7. <u>Specific Export Credit Insurance Comprehensive Post-Shipment Risk Policy^a</u>	Political and commercial risks of medium- and long-term exports of capital and semi-capital goods

a Programme introduced since 1993.

Source: WTO Secretariat based on information provided by the Government of Turkey; and WTO document G/SCM/N/3/TPR, 3 August 1995.

(e) Export promotion and marketing assistance

99. Attached to the Undersecretariat of Foreign Trade, the Export Promotion Centre (IGEME) is the main public organization in the field of export promotion. IGEME acts as an intermediary in establishing business contacts between foreign importers and Turkish exporters. Its activities can be grouped into four main categories: research and development training (training programmes, seminars and workshops); trade information (computerized trade information system, and library); publicity and promotion (international trade fairs, and other promotional activities related to foreign markets); and project management and international relations. In 1997, the budget allocation for IGEME was TL 384 billion, equivalent to some US\$1.9 million (or 0.005% of consolidated government expenditure), compared with TL 34 billion in 1993. The main single expenditure item in 1997 was personnel (63% of expenditure), followed by fairs (23%).

100. In parallel to IGEMEs activities, the Undersecretariat of Foreign Trade has carried out, since 1995, the Trade Missions and Buyers programmes. 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 18 different countries, while nine buyer missions programmes have been organized in Turkey. The annual average budget is about US\$0.6 million.

⁴⁷ Ministry of Foreign Affairs web site (www.mfa.gov.tr/GRUPC/for1.htm).

(f) Free zones

101. With the objective of promoting export-oriented investment and production, the Government of Turkey has established ten free zones. The enterprises established in the zones are active in a wide range of areas, including high-technology investments, leather products, and storage facilities.⁴⁸ A new initiative is the Istanbul Stock Exchange International Securities Market Free Zone, which commenced operation in the first half of 1997. Its main objective is to create an international finance centre operating in the field of stock purchases/sales, stock barter, maintenance and other transactions within the body of the Istanbul Stock Exchange.

102. 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. They are designed to promote foreign direct investment and joint ventures in export-oriented enterprises, provide easy access to stocks of importable raw materials and equipment on favourable terms, increase employment, and promote international finance and banking by permitting offshore banking development. Free-trade zones also aim 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 make 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. The licence period can be prolonged to 99 years for certain types of investment. Strikes and lock-outs are prohibited for a period of ten years from the beginning of operation of each zone. In contrast to most free-trade zones in the world, sales into the domestic market, subject to the foreign trade regime (including the duty), and barter trade is allowed.⁴⁹

103. A wide range of financial benefits are extended to the free zones. These include, *inter alia*, 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-trade zones are generally undertaken through a mix of government and private partnership (often realized within the framework of "build, operate and transfer" schemes). Investors are also free to construct their own premises, while zones have office spaces, workshops, or warehouses available for rental on attractive terms. Goods may be stored, assembled, repaired, tested, or repackaged for export in the free zones. Budgeted government expenditure in 1998 for the free zones is TL1 trillion. Data are not available on the amount of forgone revenue attributable to these fiscal benefits.

104. Turkey's free zones mainly consist of domestic companies; in March 1998, only 312 out of 1,740 free-zone companies in operation were foreign. Another distinctive feature of the zones is their low level of exports and highly developed links to the domestic market; combined exports by companies established in the free-trade zones were US\$0.8 billion in 1997, equivalent to 3% of merchandise exports, while "exports" from the free zones to Turkey were as high as US\$2 billion.

⁴⁸ Those in operation include Aegean, Antalya, Erzurum Eastern Anatolia, Istanbul Ataturk Airport, Istanbul International Stock Exchange, Istanbul Leather, Mardin, Menemen Leather, Mersin, and Trabzon.

⁴⁹ Sales to the domestic market are subject to a fee of 0.5% of the transaction value.

(4) OTHER MEASURES AFFECTING PRODUCTION AND TRADE

(i) Competition policy and related issues

(a) Competition laws and regulations

105. As part of the CUD with the EU, Turkey pledged to adopt EU standards concerning competition. The country's first competition (anti-trust) law (Law No. 4054 on the Protection of Competition) was passed in 1994.⁵⁰ An independent Competition Authority, responsible for the implementation and the enforcement of the prohibitions set out in the law, started operating in October 1997.⁵¹

106. The key features of the competition law, which covers both goods and services, are presented in Table III.19. All articles covering the significant provisions are based on EU competition law: (i) agreements, decision and concerted practices in restraint of competition (Article 4); (ii) abuse of dominant position (Article 6); and (iii) mergers and acquisitions (Article 7/1). Without regard to the place of operation, if the agreement, decision, concerted practice, abuse of dominance, merger or acquisition impair the market within the territory of Turkey, they fall 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 made outside Turkey, as is the case in the EU.

107. As noted above, the Competition Authority began its duties in October 1997. The Board, consisting of 11 members including the Director and the Vice-Director, has been granted substantial powers in relation to the investigation and imposition of penalties against prohibited practices. It may also 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 (Article 16, 17, 18, and 19). As part of the competition legislation, the Competition Board has published certain communiqués, including on the categories of mergers and acquisitions which, to be considered as legally valid, require prior notification to the Board (Notification No. 97/1).

108. All sectors are treated equally under the law. However, Article 5 empowers the Board to issue notifications granting block exemptions for a period of up to five years for certain categories of agreements.⁵² So far, notifications by the Board have been issued concerning, *inter alia*, group exemptions for exclusive distribution agreements (Communiqué No. 97/3, which is similar to EEC Regulation No. 83/84), for exclusive purchasing agreements (Communiqué No. 97/4, which is similar to EEC Regulation No. 84/83) and for motor vehicle distribution and services agreements (Communiqué No. 98/3, which is similar to EEC Regulation No. 95/1475). Neither of the group exemptions, for exclusive purchasing or distribution, is applied on a sectoral basis.

⁵⁰ Prior to November 1994, competition was regulated by the 1982 Constitution (as amended from time to time); Article 167 states that "The State shall take measures to ensure the sound and orderly functioning of the money, credit, capital, goods and services markets; and shall prevent the formation, in practices or by agreement, of monopolies and cartels in the market."

⁵¹ The Competition Board, the decision organ of the Competition Authority, was constituted by a Decree of Council of Ministers published in Official Gazette No. 22918 of 27 February 1997.

⁵² 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.

Table III.19
Substantial provisions of Turkey's competition law

Prohibition	Examples of prohibitions
Agreements, Decisions and Concerted Practices in Restraint of Competition (Art. 4 = Art. 85/1 of EEC Treaty)	<ul style="list-style-type: none"> - Fixing the purchase or selling price or factors such as cost or profit - Sharing the markets for goods and services or the sources and elements of the market - Controlling the quantities of supply and demand or determining these figures outside the market conditions - Eliminating or preventing new competitors or impeding their activities - Applying dissimilar conditions to equivalent transactions with other trading parties - Making the conclusion of contracts subject to the acceptance of unreasonable conditions
Abuse of Dominant Position (Art. 6 = Art. 86 of EEC Treaty)	<ul style="list-style-type: none"> - Preventing new competitors or impeding the activities of already existing competitors - Applying dissimilar conditions to equivalent transactions (thereby creating direct or indirect discrimination) - Making the conclusion of contracts subject to the acceptance of some (unjust) conditions - Using the financial, technological and commercial advantages of a dominant position in a market for goods and services to detriment of a competition in another market - Restricting production, marketing or technical development which would cause a disadvantageous position for consumers
Mergers and Acquisitions (Art. 7/1 and Communiqué No.1/97 = EEC Reg No. 4064/89)	<ul style="list-style-type: none"> - Creating or strengthening the dominant position as a result of which competition would be significantly impeded - Operations that would be assumed as "mergers and acquisitions": <ul style="list-style-type: none"> - mergers of two independent undertakings - acquisitions by one or more persons or undertakings, already controlling at least one undertaking - concentrative joint ventures - Thresholds for "mergers and acquisitions": <ul style="list-style-type: none"> - if the entire market share of the merging undertakings in relevant market exceed 25% or the entire turnover of the merging undertakings exceeds TL 25,000 billion (equivalent to US\$125 million)

Source: WTO Secretariat based on information provided by the Competition Authority.

109. Although the experience so far appears encouraging, it is too early to evaluate the Board's performance. Actions against restrictive business practices have just started. Between 5 November 1997 and 31 December 1997, there were 58 applications in total, 50 of which concerned the infringement of competition rules, and the rest were notifications on mergers and acquisitions. Of the 50 infringement applications, the initial examination has been completed on 16 cases, the investigation has started on three cases, one is still under the preliminary investigation process and the rest are under the initial examination process. Five of the examined notifications on mergers and acquisitions (according to Article 7 and the related Notification No. 97/1) have been given permission while three are still in the examination process.

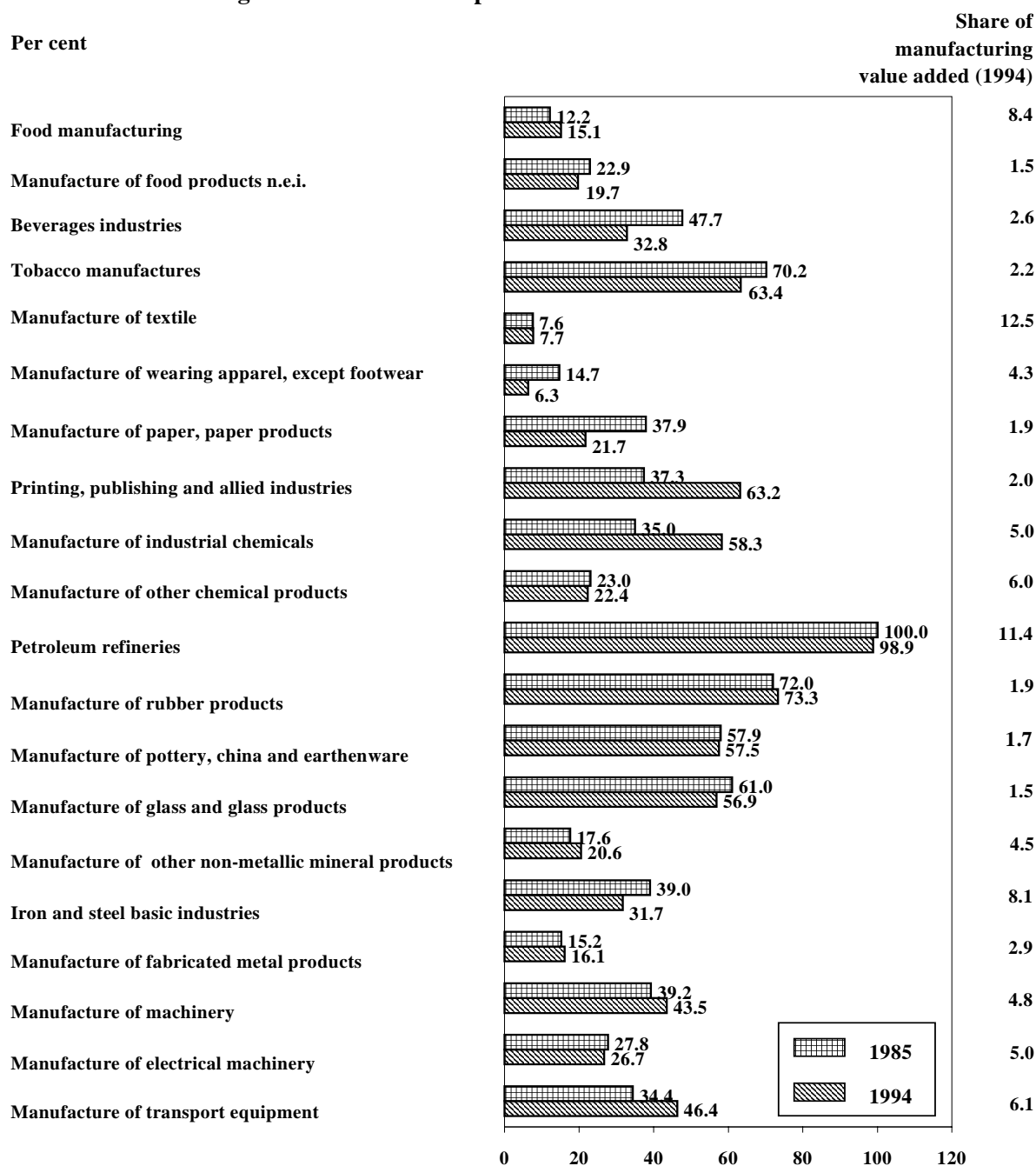
(b) Changes in sectoral concentration

110. Available data indicate that concentration in the Turkish manufacturing industry is relatively high by international standards.⁵³ Many important industries (food manufacturing; printing, publishing and allied industries; manufacturing of industrial chemicals; and manufacturing of transport equipment) show a high and increasing degree of concentration (Chart III.6). In addition to the fairly high levels of concentration, ownership of assets across product groups is concentrated through the predominance of a few large industrial holding companies and associated banks.⁵⁴ However, concentration has declined over time in several sectors. This decline in concentration may be attributable to an increase in competition in several sectors as well as the overall reform programme initiated in the early 1980s. Privatization (section (c) below), some abolition of public monopolies, the liberalization of the foreign direct investment regime, as well as the stiffening of competition via trade liberalization may have encouraged new entrants.

⁵³ UNIDO (1995).

⁵⁴ UNIDO (1995).

Chart III.6
Concentration in industry, 1985 and 1994
Share of the four largest firms in total output



Note: Private sector data for 1985 include firms where 25 or more persons are engaged and data for 1994 include firms of 10 or more.

Source: WTO Secretariat based on data supplied by the State Institute of Statistics.

(c) Privatization - reforming public sector enterprises

111. State economic enterprises (SEEs) have played a significant role in Turkey's economy since the early 1930s. Initially, the SEEs performed well but, over time political interference in their operations, as well as policy and institutional weaknesses, led to large losses, contributing to the fiscal deficit, thereby causing high inflation and overall macroeconomic instability. However, since 1995, a number of SEEs have started to turn a profit as a result of personnel reductions, greater flexibility to adjust prices to market conditions, and the overall improvement in the financial situation (Chapter I).⁵⁵ The main SEEs that still run losses are TCDD (railways), TTK (hard coal) and TDCI (iron and steel); together these three SEEs accounted for 75% of the budgetary transfers to SEEs in 1996.

112. Building on international experience - which shows that privatization, in addition to reducing or eliminating transfers from the Government, often increases efficiency in the delivery of these essential services and hence encourages growth - the Government made privatization an important component of its reform programme in the mid-1980s.⁵⁶ However, until recently, privatization has been slow, with the courts often overturning projects, and the main progress so far has been with sales of small and medium-sized firms.⁵⁷

113. By sector, the SEEs are concentrated in manufacturing, accounting for almost half of the SEEs total output, and in the communication and transport sector, where they account for 28% (1996) (Table III.20). Data on the SEEs' share of value added in the manufacturing sector (at the ISIC-three digit level) are presented in Chapter IV section (4).

Table III.20
Composition of state economic enterprises by sector, as a share of their total production, 1985-96
(Per cent)

Sectors	1985	1989	1990	1991	1992	1993	1994	1995	1996
Agriculture	0.5	0.6	0.7	0.7	0.5	0.6	0.5	0.7	0.8
Mining	16.5	11.3	11.8	9.8	6.0	9.1	10.0	7.5	5.8
Manufacturing	35.9	35.4	33.3	30.8	27.1	26.0	28.8	38.3	48.2
Energy	15.8	13.2	14.2	4.4	11.3	16.5	17.5	18.9	14.2
Communication and transport	24.9	34.1	33.3	37.3	39.2	41.5	34.7	31.5	28.3
Commerce	6.4	5.4	6.7	17.0	15.8	6.2	8.5	3.1	2.7
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Government of Turkey (data 1991-1996); and Aktan (1996), Public Enterprises in Turkey, *Annals of Public and Cooperative Economics* 67:1, Table 2.

114. There are currently 211 fully- or majority-owned SEEs (Table III.21), dominated by a few large enterprises. The main SEEs, employing 85% of SEEs labour force, are in the Treasury portfolio, reporting to "line" ministries (i.e. ministries with substantive responsibilities in their

⁵⁵ Annual average borrowing requirement of 2.5% of GNP between 1984-1988, rising to 4.1% of GNP 1991-1992, and 2.8% of GNP in 1994 (World Bank, 1996). However, the borrowing requirement decreased to 0.08% in 1996 (information supplied by the Government of Turkey).

⁵⁶ Lessons of privatization experiences can be found in Kikeri et al (1992) and Nellis (1994). Reports on various country experiences can be found at the World Bank's web-site (www.worldbank.org).

⁵⁷ Total gross privatization revenues by the beginning of May 1998 amounted to only US\$3.8 billion.

respective areas) and the Undersecretariat of the Treasury, and operating under Decree Law No. 233. This law regulates the structure of the management of the boards, investment and financing programmes, and the acquisition and sale of a company, affiliated partnership or joint venture.⁵⁸ As noted by Aktan (1996), weaknesses in Decree Law No. 233 include: (i) the fact that the SEEs are not subject to the Commercial Code, and, therefore, to the bankruptcy law, and standard reporting and auditing rules are not applicable; (ii) the law limits effective performance monitoring and management autonomy (supervision of management is partially delegated to management itself, and political interference is allowed in appointment of management); and (iii) management autonomy in areas such as pricing, employment and investment decisions is restricted by formal or sometimes informal arrangements.

Table III.21
Turkey's state economic enterprises, June 1998

	SEEs	Companies	Affiliated Partnerships
<u>Treasury Portfolio</u>	26	87	54
State Enterprises	20	81	50
Public Economic Institutions	6	6	4
<u>Privatization Portfolio</u>	10	11	23
Total	36	98	77

Note: In the context of this table: an SEE is fully owned by the Government and acts as a parent-holding of a group of "companies", which it fully owns, and of "affiliated partnerships" in which it owns a majority share.

Source: Government of Turkey.

115. The remainder of the SEEs are under the control of the Privatization Administration, set up by a new privatization law (No. 4046) in November 1994. This body is responsible for implementation, and acts as an owner of enterprises in its portfolio. The privatization law also established the Privatization High Council, chaired by the Prime Minister, as the ultimate decision-making body.

116. The enterprises slated for privatization cover a variety of sectors including telecommunications, power, textiles, petrochemicals, oil and refining, agro-industry, shipping and shipbuilding, maritime, airlines, tourism, iron and steel, pulp and paper industry, insurance, mining and banking. The 1998 privatization programme targets gross sales of US\$12 billion, including US\$7.6 billion earmarked for the Budget. It includes cellular phone licences and some large enterprises, notably Türk Telekom (TTAS), ISBANK, TUPRAS (three oil refineries), POAS (petroleum marketing and distribution), PETKIM (petrochemicals), ISDEMIR (iron and steel) and a number of projects in the energy sector. The privatization of TTAS - the jewel in the Government's privatization programme - has been slow. The Government had expected to receive substantial revenues in 1997 but these never materialized; in early 1997, an advisory agreement was signed with Goldman Sachs for the initial sale of the TTAS, with 10% of the shares (possibly worth US\$3.3 billion) to be sold in the first tranche. Ultimately 49% of equity in the company will be sold, of which 34% will be offered on the domestic and international markets, 10% will go to the country's postal services, and 5% will be served for TTAS employees and for other small investors. The recent approval of a pricing system of ex-refinery oil products reflecting market conditions will facilitate the delayed privatization of TUPRAS and POAS.

117. The Ministry of Energy and Natural Resources has been made responsible for involving the private sector in meeting Turkey's energy requirements. This involves the transfer of operating rights

⁵⁸ World Bank (1996).

for 25 regions of power distribution network. Several tenders have been announced, attracting a large number of bids from domestic and international investors.

(ii) Investment incentives - state aid

(a) Overview

118. Since Turkey's previous Review in 1994, a switch in policies regarding the general investment aid programme has taken place.⁵⁹ Sectoral targeting has been replaced by a regional priority system, providing enhanced incentives to the less-developed regions of Turkey. The duty-exemption scheme has been simplified, reducing the number of concessional rates from four to one, providing complete exemption. The concessional credit component has been eliminated, except that credits at concessional rates continue to be provided through a new sub-programme to small and medium-sized enterprises. Although some of the recent reforms have been implemented with a view to bringing Turkey's investment incentives in line with the requirements of EU policy on investment incentives, Turkey and the EU are yet to decide on the exact legal requirements stemming from the customs union decision.⁶⁰

119. Notwithstanding the recent reforms, Turkey's state-aid system of tariff duty and tax exemptions and concessional credit continues to be complex, non-transparent and generous. The level of incentives depends on a variety of factors: the project's location and size, the use of debt-financing, the source of machinery (domestic versus imported) and the expected inflation rate over the lifetime of the project; these factors make it very difficult for an investor to quantify *a priori* the value of the benefits.⁶¹ According to the World Bank, the incentives have largely failed to achieve their objectives of stimulating and re-orienting investment; some create a bias toward capital-intensive production, running counter to employment objectives and labour-intensive production.⁶² While it is difficult to estimate, the total cost of the general investment aid programme appears to have been substantial (Table III.22). The authorities have made an estimate of some US\$800 million in taxes forgone under the whole incentive programme.

⁵⁹ It should be noted that 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)(xii)), the agricultural sector (including support purchases, input subsidy payment on fertilizers, and livestock incentive payments), the energy sector (such as subsidies for the production of hard coal), maritime (tax incentives), and tourism (including, among other things, corporate income tax exemption) (see Chapter IV).

⁶⁰ The CUD (Article 34) notes that any aid through state resources, which distorts or threatens competition by favouring certain undertakings or the production of certain goods, to the extent it affects trade between the Community and Turkey, is incompatible with the function of the customs union. Aid to promote economic development of Turkey's less developed regions, provided that such aid does not adversely affect trading conditions between EU and Turkey, will be allowed until 1 January 2001.

⁶¹ Arslan (1997).

⁶² World Bank (1996). Turkkan (1993) shows that the Government's use of tax incentives has been inefficient and a relatively expensive way of promoting economic activities.

Table III.22
Fiscal cost of general investment aid programme, 1990-94
(Per cent of GDP)

	1990	1991	1992	1993	1994
Tax incentives	1.1	0.9	0.9	0.8	0.9
Customs duty exemptions	0.7	0.6	0.5	0.5	0.5
Investment allowance	0.2	0.2	0.2	0.2	0.3
Financial tax exemption	0.1	0.1	0.1	0.0	0.0
Finance Fund	0.1	0.0	0.1	0.1	0.1
Fund-based credit	0.0	0.0	0.0	0.1	0.1
Direct subsidy ^a	0.2	0.3	0.2	0.1	0.0
Total	1.3	1.2	1.1	1.0	1.1

a Includes cash grants and incentive premium.

Source: Arslan, I. (1997), "Investment Incentives in Turkey", Table 4 in *Turkey and Central and Eastern European Countries in Transition: Comparative Study with a View to Future Membership of EU*, eds. S. Togan and V. N. Bulasubramanyan, Macmillan Press Ltd. (forthcoming).

120. The incentives provided under the general investment aid programme are listed below⁶³:

- complete exemption from customs duties and other surcharges for imported machinery and investment part of the investment project; reduced duty on certain imports;
- exemptions from stamp duties and certain other financial charges;
- tax credits (so-called Investment Allowance) allowing a certain percentage of the initial investment to be deducted from the tax base;
- corporate tax postponement (so-called Financing Fund);
- postponement of value-added tax (VAT) on imported investment goods; and
- VAT refunds from domestically produced capital goods and equipment.

121. The Government has also approved a number of other measures, such as exemption from building and construction charges, moving subsidies, land allocation, contribution towards the cost of a foreign letter of credit, expenses covered for quality and standardization certificates, and subsidized credits. These are yet to be implemented.

122. To qualify for the general investment aid programme, potential investors have to apply for an investment incentive certificate, which is non-transferable. Any investment project, whether foreign or domestic, receives the same treatment.⁶⁴ Prior to 1993, incentive certificates were issued on sectoral criteria, but incentives have since been mainly region- rather than sector-specific. Incentives undertaken in less developed regions receive a higher income or corporate tax exemption (at the rate

⁶³ Decree No. 94/6411 Concerning State Aids for Investments of 26 December 1994, as amended, and the Related Communiqué published in the Official Gazette on 4 April 1995.

⁶⁴ However, the administration differs: foreign investment applications are handled by the General Directorate of Foreign Investment, while domestic investor applications are handled by the General Director of Incentive and Implementation.

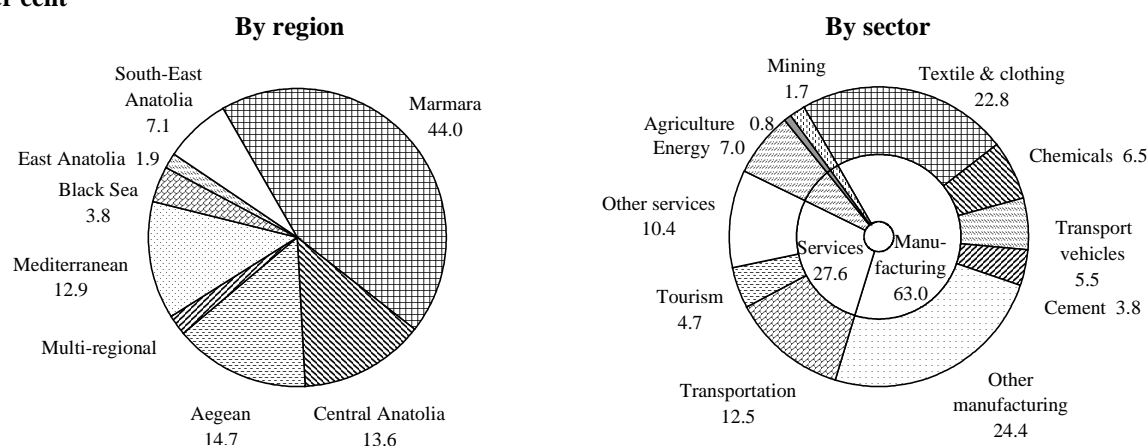
of 100% compared with the normal 30%), a higher incentive premium (ten percentage points) on domestically sourced goods, and lower proportions of output must be exported to qualify for exemption from stamp duties and certain other financial charges. The required minimum amount of investment for eligibility is TL 30 billion; the minimum required investment for R&D and environment as well as investment by financial leasing companies is half of the normal requirement. In addition to the geographical location, priority is given to infrastructure, services, tourism, yacht and shipbuilding sectors. Where the investment is not realized as foreseen by the incentive, the funds are returned with interest.

123. Chart III.7 shows the breakdown of investment incentive certificates issued in 1996. It can be noted that the poorest ("priority") regions (mainly located in East Anatolia, Central Anatolia and South-East Anatolia) received in value terms almost one-quarter of the certificates. By sector, the value of certificates issued for manufacturing projects declined from 70% in 1993 to 63% in 1997. Services, on the other hand, increased their share from 21% to 28%. Data on investment realized with these certificates are not available.

Chart III.7

Breakdown of investment incentive certificates, 1997

Per cent



Total: TL 3,303 trillion

Source: State Planning Organization (1998), *Main Economic Indicators*, January.

(b) Credit policies

124. As noted above, in mid-1994 Turkey discontinued the concessional credit programme within the framework of the general investment aid programme. However, under a new programme, small and medium-sized enterprises continue to receive credits at concessional rates: the interest rate is 20% (priority regions) or 30% (other regions) with no payment in the first year; the non-subsidized interest rate on one year Treasury paper is in the order of 110% (May 1997).⁶⁵ Applications for incentive certificates are submitted to the Undersecretariat of the Treasury through the public bank,

⁶⁵ Decree No. 96/8615 Concerning State Aid for the Investment of Small and Medium-Sized Enterprises and Written Notice No. 96/3 Related to State Aid for Small and Medium-Sized Enterprise Investments.

Turkish Halk Bankasi. To benefit from the programme, an investor should be engaged in the manufacturing industry, provide employment for a maximum of 150 workers, and have total net assets of up to TL 50 billion.⁶⁶

(c) Customs duty concession

125. Under the general investment aid programme, projects that introduce advanced and appropriate technology and meet the minimum economical capacities, as determined by the Undersecretariat of Treasury, are exempt from the payment of customs duty on all machinery and equipment covered by the investment project (section 2(i)(e)).⁶⁷ As noted above, there are also customs duty exemptions for imports of investment goods, start-up raw materials, intermediary goods and the operating material part of the investment project.

(d) Tax concessions

126. As mentioned earlier, a number of tax concession programmes are provided to investors holding investment certificates. First, subject to certain export obligations, exemptions from stamp duties (pursuant to Law No. 448) and certain financial charges (such as charges for banking, notary, land registry, L/C proceedings etc. pursuant to Law No. 492) are provided. As a condition, US\$100,000 worth of exports for investments undertaken in priority development regions, US\$200,000 for normal regions and US\$300,000 for developed regions, have to be fulfilled over five years.

127. Second, the investment allowance programme grants tax exemption to income or corporate tax payers. The allowances, which were reduced in mid-1994 to 70% for under-developed regions and 20% for developed regions, were increased to their original levels of 100% and 30%, respectively, in mid-1995 to encourage investment, especially in under-developed regions.⁶⁸ Investments in the field of research and development are 100% tax deductible.

128. Third, under the Financing Fund scheme, upon presentation of an incentive certificate, eligible investors may block up to 25% of their declared profits at the Central Bank where it earns interest at the rate paid on government bonds.⁶⁹ The amount set aside cannot exceed the total cost of the investment. Corporate tax is paid on the remaining portion of the company's profit. The deposited amount (with no adjustment for inflation) is added to the company's tax base in the following year.⁷⁰

129. Fourth, a scheme entitled Postponement of VAT on Imported Goods, was introduced in 1994. VAT on imports of investment goods, as indicated by the incentive certificates, is postponed until the importers' VAT payable account is equal to deferred amounts. At that time, the nominal value of VAT on imports is payable. Hence, investors end up paying almost no VAT as a result of the erosion of its value by inflation.

130. Finally, in order to create levels of treatment equal to the investment aid measure towards imported machinery, domestically sourced investment goods may also be exempted from payment of

⁶⁶ The amount increases at the beginning of each year according to the Decree of the Tax Procedure Law No. 213.

⁶⁷ WTO document G/SCM/Q2/TUR/2, 4 April 1997. The goods eligible for customs exemption are listed in the Custom Entrance Tariff Scheduled published as an annex to Law No. 474 of 14 May 1964 and rearranged with Law No. 3502 of 10 November 1988.

⁶⁸ IMF (1996), p. 4.

⁶⁹ Law No. 2362.

⁷⁰ WTO document G/SCM/Q2/TUR/6, 4 April 1997.

VAT. Under the programme, VAT Support for Purchases of Machinery and Equipment, an amount, determined by adding ten percentage points to the pre-paid VAT on new machinery and equipment manufactured locally, is paid to the investors from Encouragement Fund resources; the additional ten percentage points is to compensate for the high inflation.⁷¹ Investment to be made in the priority regions benefit from an extra ten percentage points of the VAT on domestically obtained machinery and equipment.

(e) Other support

131. The Government maintains additional support to small and medium-sized enterprises. First, KOSGEB was established in 1990 as a non-profit organization with the objective of upgrading the effectiveness and expanding the small and medium-scale enterprises' share of total production. At an annual cost of some US\$12 million (1997), it provides services related to production, marketing quality control, machinery and equipment support, technology development, training and information supply; it also prepares and executes projects. The KOSGEB is responsible for two recently approved schemes, within the framework of state incentives for exports. The employment-creation aid programme will support part of the cost of the salary of applicants with university degrees in special fields (70 % of the salary with an upper limit of five times the gross minimum salary, and duration of maximum six months). The training aid scheme will support part of the cost of training (half of the training expenditure, duration of maximum one year, and any one enterprise can benefit a maximum three times from the programme) in various fields extending from packaging, and standards for products and environment, to leadership and organizational management.

132. Second, the government-financed (US\$275 million in 1997) organized industrial zones date back to early 1960s. These zones, which offer subsidized industrial plots, constructed infrastructure, and transportation and communication facilities, also provide subsidized credits (nominal interest rate ranging from 25% to 50% depending on the degree of development of the area) towards the cost of infrastructure investments. The enterprises established in the zones, of which there were 41 at the end of 1997, are of medium size.

133. Finally, the small-scale industrial estates scheme provides aid (budgetary outlays of US\$27.9 million in 1997) towards the construction of modern workshops with sanitary conditions; by the end of 1996, 291 estates had been completed.

(iii) Standards and other technical regulations

134. Technical regulations in Turkey cover health, safety, environment and consumer protection. As part of the Single Undertaking of the Uruguay Round, Turkey became bound by the WTO Agreement on Technical Barriers to Trade (TBT) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). The Undersecretariat of Foreign Trade is responsible for the implementation and the administration, except for standards, of the TBT Agreement. The national enquiry point foreseen in Articles 10.1 and 10.3 of the TBT Agreement is the Turkish Standards Institute (TSE). The obligation of relevant national authorities to meet the requirements on notification procedures under the TBT Agreement is incorporated into the regulation published in the Official Gazette No. 22965 dated 15 April 1997. On 6 March 1996, Turkey notified the WTO Secretariat of its acceptance of the Code of Good Practice for the preparation, adoption and

⁷¹ The VAT Support for Purchases of Machinery and Equipment replaced two schemes: "Incentive Premium on Domestically Produced Goods" and "Rebate of VAT on Domestically Sourced Machinery and Equipment".

application of standards. The national enquiry point foreseen in paragraph 10 of Annex B of the SPS Agreement is the Ministry of Agriculture and Rural Affairs.⁷²

(a) Standards, testing and certification

135. Turkey has recently enacted a decree, aimed at meeting its commitments arising from the TBT Agreement and filling the gap that may arise from the five-year transition period for adoption of EU legislation on technical barriers to trade. The Decree on the Regime of Technical Regulations and Standardization in Foreign Trade entered into force on 1 February 1996 and is revised annually. The aim of the regime is to prevent technical legislation, specifications and standards applied in foreign trade from constituting an obstacle to international trade; to ensure that exported products do not harm the environment and conform to health and safety norms; and to increase their competitiveness and quality; and in the case of imports, to ensure the same treatment of imported and domestic products, and protect human health, safety, animal and plant life, and the environment.⁷³

136. The TSE sets standards for products manufactured in or imported into Turkey. TSE is a non-governmental organization, established in 1960 (by Law No. 132), with sole authority and responsibility for preparing and publishing Turkish standards for all types of materials, products, and services in Turkey. The TSE is a full member of the International Organisation for Standardisation (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). All standardization work is, according to the authorities, carried out in parallel to ISO/IEC standards in line with the TBT Agreement. After 1993, the TSE also started to focus on adopting and harmonizing its standards with those of the EU, while taking into consideration the customs union arrangements between EU and Turkey. The aim is to harmonize Turkey's legislation on a wide range of technical regulations under 32 main topics, such as foodstuffs, electrical equipment, machinery, etc., with those of the EU by the end of 2000.⁷⁴ Since 1993, 90% of EU standards have been adopted as Turkish standards. Recognition of testing procedures has been assured by mutual agreements concluded between Turkey and EU member States. In total, Turkey has concluded mutual recognition of testing procedures and information exchange agreements with 56 countries, compared with 28 in 1993.

137. Currently, Turkey has almost 17,000 standards of which 1,042 are obligatory (Table III.23). The obligatory standards, of which only about one quarter are equivalent to international standards, are most frequent in the construction materials and building sector (15% of the obligatory standards), food technology (13%), electrical engineering (10%) and health care technology (9%).

⁷² WTO document G/SPS/ENQ/2, 17 May 1995.

⁷³ The web-site of the Undersecretariat of Foreign Trade (<http://www.foreigntrade.gov.tr/english/trade/standard.htm>). Two Communiqués within the scope of the regime have been published addressing quality and health (Standardization in Foreign Trade No. 96/4, Communiqué Relative to the Control of Imported Goods in Respect of Quality and Health) and protection of the environment (Standardization in Foreign Trade 96/3, Communiqué Relative to Items Kept Under Control for Environmental Protection).

⁷⁴ In this regard, the Regulation on the Type Approval of Motor Vehicles entered into force on 7 May 1997.

Table III.23
Official Turkish standards and their equivalence with international standards

Area (ICS classification)	Total number of Turkish standards	Number of obligatory standards	Number of Turkish standards equivalent to international	Equivalence (Per cent)
Generalities, terminology, standardization	669	6	3	50.0
Sociology, services, company organization, management, administration	350	9	0	n.a.
Mathematics, natural science	96	0	n.a.	n.a.
Health care technology	590	98	20	20.4
Environment and health protection, safety	943	17	9	52.9
Meteorology, measurement, physical phenomena	365	15	3	20.0
Testing	193	1	1	100.0
Mechanical systems and components for general use	406	71	41	57.7
Fluid systems and components for general use	634	81	22	27.2
Manufacturing engineering	511	25	3	12.0
Energy and heat transfer engineering	162	12	6	50.0
Electrical engineering	947	104	48	46.2
Electronics	437	3	2	66.7
Telecommunication	444	14	9	64.3
Information technology, office equipment	386	0	n.a.	n.a.
Image technology	98	0	n.a.	n.a.
Precision mechanics, jewellery	13	0	n.a.	n.a.
Road vehicle engineering	221	19	1	5.3
Railway engineering	24	0	n.a.	n.a.
Shipbuilding and marine structures	147	0	n.a.	n.a.
Aircraft and space vehicle engineering	414	0	n.a.	n.a.
Materials handling equipment	192	4	0	n.a.
Packaging and distribution of goods	170	6	0	n.a.
Textile and leather technology	608	40	1	2.5
Clothing industry	71	4	2	50.0
Agriculture	1,022	18	0	n.a.
Food technology	1,024	134	6	4.5
Chemical technology	1,150	29	5	17.2
Mining and minerals	272	1	0	n.a.
Petroleum and related technologies	621	26	6	23.1
Metallurgy	799	26	7	26.9
Wood technology	313	13	0	n.a.
Glass and ceramics industries	234	17	5	29.4
Rubber and plastics industries	720	18	7	38.9
Paper technology	104	4	0	n.a.
Paint and colour industries	219	15	6	40.0
Construction material and building	818	153	34	22.2
Civil engineering	80	19	4	21.1
Military engineering	107	0	n.a.	n.a.
Housekeeping, entertainment, sports	356	40	13	32.5
TOTAL	16,930	1,042	264	25.3

n.a. Not applicable.

Source: Government of Turkey.

138. Conformity with Turkish standards is required of imported products that would be subject to compulsory standards if they had been domestically produced. No distinction is made between imports of different origin or between domestic and imported products. Testing and certification procedures on imported industrial products are performed by the TSE, for environment-related products by the Ministry of Environment, for some agricultural products by the Undersecretariat of Foreign Trade, for other agricultural products (including processed) and foodstuffs by the Ministry of Agriculture and Rural Affairs, and for medical products, cosmetics and detergents by the Ministry of Health.

139. Importers must obtain an Inspection Certificate from the TSE before importation when inspections are carried out to ensure compliance with the requirements for protection of human health, safety, animal and plant health, and the environment laid down in the relevant standards. The process of obtaining the TSE hallmark complies with the ISO family fifth certification scheme. During the import process, a number of facilities are provided to producers of goods carrying the TSE hallmark and those who have quality system certificates such as TS-ISO 9000, AQAP and GMP. Producers that own certificate of TS-EN-ISO 9000, AQAP, and GMP are exempt from inspection as long as they import for their own needs. Producers manufacturing the TSE hallmark are also exempt from inspection if they use the imported materials in order to produce those TSE hallmarked goods. About 9,364 TSE standard-marked product certificates have been issued.

140. Export controls and import controls on some products (equivalent to 201 items at the 12-digit level as well as all items under heading 51.01) are made by the Group Leadership of the Controllers of Standardization in Foreign Trade. Products include, *inter alia*, certain edible vegetables, roots and tubes (HS Chapter 7); certain edible fruit and nuts, peel of citrus fruit or melons (Chapter 8); not carded or combed wool (Chapter 51.01); and certain fine animal hair. Laboratory analyses are also made by the Commercial Analysis and Standardization Laboratories of the provincial organization of the Undersecretariat of Foreign Trade. These laboratories have the necessary technical capacity to perform the controls in conformity with the technical requirements of the EU.⁷⁵ Currently some 70 agricultural products (equivalent to 202 items at the HS 12-digit level) are subject to compulsory export quality control.

141. The General Directorate of Measures of Quality Control within the Ministry of Industry and Trade is empowered to enforce the industrial standards set by the TSE.⁷⁶ It is also responsible for quality control systems and establishes and operates test laboratories, instruments of metrology, and calibration facilities.

142. The National Quality and Accreditation Control body was established in July 1995 under the chairmanship of the TSE. A draft law has been prepared to establish an independent accreditation council working in accordance with EU practices and to ensure the acceptance of Turkish laboratories, testing and certification bodies.⁷⁷ The aim of the draft law is to establish an impartial and independent accreditation council that will ensure the technical competence of the testing laboratories and certification institutions in accordance with EN 45000 standards.

(b) Marking, labelling and packaging

143. While almost all voluntary standards cover details on marking, labelling and packaging, there are three major obligatory standards related to marking, labelling and packaging, all complying with ISO standards; TS 4331 on marking and labelling of packages of materials and products that are supplied into the market as packaged, TS 1418 on labelling of textile products and standards, and TS 6429 on marking by using colours or alphanumeric system for electrotechnical use. On labelling, all imported products should be labelled with the country of origin, the quality and the price of the product (Article 12 of Law No. 4077 on Consumer Protection). Except for a few products, the operating, user and maintenance instructions manual, in Turkish, must accompany each industrial

⁷⁵ The web-site of the Undersecretariat of Foreign Trade (<http://www.foreigntrade.gov.tr/english/trade/standard.htm>).

⁷⁶ Measurement and Calibration Law No. 3516 of 1989.

⁷⁷ The draft law was submitted to the Turkish grand national assembly in December 1996 and is still being discussed in the industry sub-committee of the assembly.

product (Article 14 of Law No. 4077 on Promotion and User's Guide).⁷⁸ Moreover, imported goods that may pose a danger to health or the environment, must be accompanied by users' instructions (Article 18 of Law No. 4077 on Destructive and Dangerous Goods and Services). The same marking, labelling and packaging requirements apply to domestic and imported products.

144. 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 Decree referring to Law No. 3977. These regulations apply both to domestically produced and imported goods. According to the authorities, all regulations are based on international regulations.

(c) Sanitary and phytosanitary regulations

145. The importation and production of pharmaceuticals, drugs, some consumable medical products, cosmetics, detergents, foodstuffs, and agricultural, animal and veterinary products are subject to health and sanitary controls. The main legislation is the Sanitary Law No. 1593 of 1930 and the Agricultural Quarantine Law No. 6968 of 1957. No distinction is made between domestically produced goods and imported goods. According to Communiqué No. 98/4 Related to the Control of Imported Goods in Respect of Quality and Health, imports require a control certificate issued by Ministry of Health (for pharmaceutical products, drugs, some consumable medical products, cosmetics and detergents) or the Ministry of Agriculture and Rural Affairs (for foodstuffs, and agricultural, animal and veterinary products). In order to obtain a control certificate, depending on the type of the product, the following must be presented to the 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 public authorities of the producer country. Documents should be in the original language and a translation is required for each document. Control Certificates can be obtained prior to import and should be presented to custom authorities at the actual import stage. The period of validity of the control certificates ranges from four to 12 months, depending on the product.

146. Since the previous Review, Turkey has harmonized its sanitary and phytosanitary regulations with EU norms. Decree No. 560 on Production, Consumption and Control of Foods (published in the Official Journal on 24 June 1995) and the Turkish Foods Codex Regulation (FCR) (published in the Official Journal on 16 November 1997) harmonize Turkish food norms with the norms of the EU as well as Codex Alimentarius Commission and other international norms. Within the framework of the harmonization of Turkish-EU regulations, the Decree on Medical Equipment, the Decree on Insertable Active Medical Equipment and the Decree on Toys have been drafted.

147. As in 1993, an inspection certificate is required for the importation of goods subject to health and sanitary controls. The certificate, which is required by customs at the time of the entry, is filed with the Ministry in charge. In some cases, the inspection certificate can be waived if the importer assures the authorities that the products are destined for the specified purposes or for the manufacturer's own use.

⁷⁸ Exempted products include: certain kinds of metal, PVC, polyethylene, plastic pipes, connecting parts, bolts, handcuffs, screws, nuts, nails, pins, and similar connecting elements; hammers, mallets, tongs, saws, chisels, axes, and similar products; 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 oils, anti-freeze, hydraulic oil, matches, fertilizers and some chemical products; paints, cements, lime and similar products; food and drink; cleaning products; and coal and similar products.

148. Turkey has signed cooperation agreements in order to prevent animal diseases from entering the country during the import-export and transit of live animals and animal products, veterinary medications, fodder, and other products that may affect animal health.⁷⁹ 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.

149. As noted earlier, in order 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).

150. Turkey has not notified any sanitary and phytosanitary measures to the WTO.

(d) Forthcoming changes to technical regulations

151. In the context of responsibilities arising from the customs union with the EU, the draft law on the Preparation of Technical Legislation Related to the Products which will be Supplied to the Market has been prepared by the Undersecretary of Foreign Trade. It is expected to enter into force in 1998 at which time technical regulations in the following areas will be in conformity with the Customs Union's technical legislation: standardization, quality, conformity assessment, tests and certification. In addition, as noted above, a draft law to establish an accreditation council has been prepared by the Undersecretary of Foreign Trade.

(iv) Government procurement

152. Since Turkey's previous Trade Policy Review, there has been no major change to the law on public procurement applying to general, provincial and local government (the Public Procurement (State Adjudication) Law No. 2886 of 1 January 1984). The state economic enterprises and certain government entities have their own government procurement regulations.⁸⁰ Since June 1996 Turkey has participated as an observer in the WTO Committee on Government Procurement.⁸¹ The Customs Union between Turkey and EU recognizes the importance of public procurement but does not specify any specific arrangements.⁸² Also, the recently signed free-trade agreements with Israel, the Baltic States (Estonia, Latvia and Lithuania) and some Eastern European countries (Bulgaria, Hungary, Romania, Czech Republic, Slovak Republic and Slovenia) contain similar provisions on public procurement.

153. The State Supply Office (DMO) is the main government purchasing agency, although the majority of government procurement is conducted by the individual government entities in accordance with the law. Some small purchases (such as vehicles, tables, chairs, and other office supplies) are sometimes handled by the DMO.

⁷⁹ Turkey has signed cooperation agreements with Algeria, Bulgaria, Germany, Iran, Netherlands, Syria and Tunisia. Negotiations continue with Albania, Azerbaijan, Croatia, Czech Republic, Georgia, Kuwait, Macedonia, Russia, Slovakia and Ukraine.

⁸⁰ However, Law No. 2886 covers: production, transport and distribution services of drinking water; and transport services by trolley bus are provided by the municipalities.

⁸¹ WTO document GPA/M/2, 23 July 1996.

⁸² Article 48 states that "As soon as possible after the date of entry into force of this Decision, the Association Council will set a date for the initiation of negotiations aiming at the mutual opening of the Parties' respective government procurement markets".

154. Government procurement in Turkey is generally conducted through the issue of public tenders. Five main procurement procedures are applied in Turkey: closed and sealed envelopes; selective limited tendering; public bidding; negotiated procurement; and direct competition procedure. Closed and sealed envelope tendering is normally followed, but other procedures are used according to the value of procurement and/or the type of procurement (Table III.24). In the case of selective tendering, a company may be included in the pre-approved vendor list by developing a reputation as a quality, reliable and experienced supplier.⁸³ Certain construction work up to TL 16 billion may be procured by the concerned Ministry using the so-called "force account commission" procedure (Table III.24). The law provides an escape clause from the normal procurement procedures. According to Article 89, contracts may be awarded without competition if agencies are authorized by the Council of Ministers. Data are not available on the amount of procurement by procedure.

155. Procurement using the following methods is not required to be advertised in newspapers or the Official Gazette: negotiated procedure, selective limited tendering by other, force account commission, and works of a peculiar nature (Table III.24). Other procurement procedures must be advertised in newspapers; procurement above certain values must be published in the Official Gazette. In general these public notices are in Turkish. Potential suppliers are required to have a legal residence and a notification address in Turkey, and to be registered with the Chamber of Commerce.⁸⁴

156. The time interval between appearance of the first advertisement in a newspaper and the date of bidding is typically short (minimum of ten days according to Article 17 of the law). It is therefore important for foreign companies to become familiar with the procedures of various government organizations.

157. Bid bonds and performance bonds are required; bid bonds 3% of the total estimated work to be completed (Article 25); the winning bidder must submit a completion performance bond at the rate of 6% of the contract value (Article 54), after which the bid bond is released. The performance bond is refunded upon completion of the contract. Both bonds must be guaranteed by a Turkish national bank.

158. Government purchasing agencies may request company representatives submitting bids to provide additional information and to lower their price proposals when the tender proposal is evaluated. Some tenders, especially for projects involving co-production and those based on the Build-Operate-Transfer (BOT) model, are frequently opened, closed, revised and opened again.

159. In general, the criterion followed in the award of tenders is that of the most attractive bid in terms of price, although the quality of equipment, services, delivery schedule, availability of spare parts and after-sale service, and previous experience with the suppliers all influence the decision. The availability of supplier credit may determine bid awards for some major procurement schemes. All credit offers must be screened by the Undersecretariat of Treasury, which has responsibility for final credit decisions.

160. There are no laws or regulations that give preference to domestic over foreign goods. However, the legislation (Article 28) provides the Council of Ministers with the power to grant preferences to domestic goods. Nevertheless, the authorities have indicated that, in practice, preferences are generally not provided to domestic suppliers.

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

⁸⁴ Foreign companies that have no branch in Turkey are required to register with the Chamber of Commerce in their own country; registration also requires approval by the Turkish Consulate or by the Turkish Ministry of Foreign Affairs.

Table III.24
Key features of Turkey's procedures on government procurement

Method	Procedure	Instances when the method is applied
<u>Procurement procedures</u>		
1. Closed and sealed envelopes (Article 36)	Written (closed and sealed envelopes)	Procedure normally followed
2. Selective limited tendering (Article 44)	Written (closed and sealed envelopes) offers from at least three candidates	Procurement of aircraft, warships, war ammunition, electronic equipment, military installations and supplies, weapon and supply systems, activities concerning defence industry, dams, power stations, irrigation systems, harbours, docks, airfields, railways, locomotives, highways, tunnels, bridges, fuel storage facilities, construction work of peculiar nature, works of art having esthetic and technical characteristics, plans for the city road nets, city maps, master and housing plans, water and sewerage systems and energy facilities
3. Public bidding (Article 45)	Oral offers ^a	Contracts up to TL 40 billion (or US\$1.02 million in February 1998)
4. Negotiated procedure (Articles 43, 49 and 51)	Oral offers from at least one candidate ^a	Contracts up to TL 2.5 billion (or US\$0.1 million in February 1998) or If closed and sealed envelopes procedure or selective tendering or public bidding fail; or for police or army requirements, urgent or secret works and a few other special instances (as defined in Article 51)
5. Direct competition procedure (Article 52)	Negotiation	Supervision of study, planning and project works, and works related to fine arts
6. Force account commission (Article 81(a))	Written (closed and sealed envelopes)	Construction contracts for less than TL 16 billion. Laying ballast in railway construction and road construction materials; telegraph, telephone, and power transmission line construction; and certain construction work related to development of villages and military garrisons, or secret construction work, and a few other construction related works
7. Works of peculiar nature (Article 89)	Case-by-case procedure	When it is not possible to enforce the provisions of the law, the provisions may be disregarded by the Council of Ministers upon the proposal by the Ministry concerned. The procedures and rules are determined by the concerned administration and become final on approval of the Ministry concerned
<u>Advertisement requirement:</u> (Advertisement not required: negotiated procedure, selective limited tendering, force account commission and works of peculiar nature.)		
1. Local daily newspaper (Article 17(1))		All contracts
2. Nationwide daily newspaper (Article 17 (2))		Contracts above TL 12 billion
3. Official Gazette (Article 17 (3))		Contracts above TL 36 billion

a Written (closed and sealed envelopes) are also allowed.

Note: The thresholds, which are revised annually, refer to 1998. The articles refer to Public Procurement Law No. 2886.

Source: WTO Secretariat based on information provided by the Turkish authorities; and the Public Procurement Law No. 2886

161. While the Government normally follows competitive bidding procedures, it occasionally requires ministries and public enterprises to include an offset provision in tender specifications when the estimated tender value is more than US\$1 million. Military procurement often requires an offset provision in tender specifications⁸⁵, but such offsets are not a requirement of the general procurement

⁸⁵ Bureau of National Affairs (1997).

law (No. 2886). Countertrade proposals often play an important role in the decision to award a large contract (section 2(xi) above).

162. The authority that issues the invitation to tender is required to publish details about the award (such as who the contract was awarded to, the nature of the work, value of the contract) in the Official Gazette. Parties may lodge complaints against the award of a contract with the issuing authority. However, if the issuing authority does not accept the complaint the complainant cannot lodge an appeal with the courts.

(v) Price and distribution controls

163. Price and distribution controls apply to the agricultural and the energy sectors and to pharmaceutical products. In order to ensure stability in farm incomes through remunerative farm-gate prices, the Government maintains a system of pricing and domestic marketing arrangements over some agricultural commodities. Since Turkey's previous Review in 1994, the coverage of price controls has decreased substantially, from 24 to three agricultural commodities (cereals, including wheat, barley, rye, oats and maize; tobacco; and sugar beet). The support prices for these products are fixed annually by the Government. The relevant SEE purchases the output from the farmers using its own resources, and then charges the Treasury with the amount of purchase plus a 10% margin (termed "duty loss"). About 12 months after completion of audit, compensation is made from Budget appropriation (see Chapter IV(2) for further details).

164. Price controls also apply to a number of energy items: crude oil, natural gas, hard coal, lignite and electricity. The Government sets the prices directly for electricity produced by private distribution utilities or, for some products, the price charged by the SEE is influenced by Government policies. The price of ex-refinery oil products are currently set in line with Italian c.i.f. prices plus or minus 3%. Distribution of electricity, oil and oil products are not monopolized, but the activities are dominated by state economic enterprises (Chapter IV(3)).

165. In the pharmaceutical industry, prices of all locally made products are subject to the approval of the Ministry of Health. Restrictions on profits apply to imported pharmaceuticals, whether imported by domestic or foreign companies.

(vi) Trade related investment measures (TRIMs)

166. The Turkish authorities have not notified to the WTO any application of measures in violation with the WTO Agreement on Trade-Related Investment Measures. The authorities indicated that investors in the automotive sector have accepted as a "gentlemen's agreement", without any legal obligation, to incorporate a certain share of local content (Chapter IV(4)(iii)(d)).

(vii) Trade Related Intellectual Property Rights (TRIPS)

(a) Overview

167. As part of its harmonization with EU legislation on intellectual property rights and the WTO Agreement on TRIPS, Turkey introduced important changes to its intellectual property regime in 1995. The new laws on patents, trade marks, industrial designs, geographical indications and copyright, as well as a number of important international conventions governing intellectual property rights (Table III.25) and Turkey's advance implementation of the TRIPS Agreement, have given Turkey a comprehensive, modern legal framework for protecting intellectual property rights. Notwithstanding these improvements, as a result of difficulties in enforcement, Turkey remains on the U.S. "priority watch list" of countries that fail to protect American firms' intellectual property rights,

as specified under the "Special 301" provision of the 1988 Trade Act.⁸⁶ The weaknesses in enforcement will need to be overcome by adequate staffing, training and increasing awareness of the new legal provisions.

Table III.25
Turkey's status in International agreements, conventions and treaties

Name	Number of parties	Turkey's status
1. Paris Convention on the Protection of Industrial Property (1883)	143	Member since 1925
2. Berne Convention for the Protection of Literary and Artistic Works (1886)	130	Member since 1952
3. Convention establishing WIPO (1967)	165	Member since 1976
4. Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)	57	Member since 1995
5. Berne Convention for the Protection of Literary and Artistic Works (1971)	130	Member since 1995
6. Nice Agreement concerning the International Classification of Goods and Services for the purpose of Registration of Marks (1957)	51	Member since 1 January 1996
7. Patent Co-operation Treaty (1970)	94	Member since 1 January 1996
8. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973)	10	Member since 1 January 1996
9. Strasbourg Agreement Concerning the International Patent Classification (1971)	38	Member since 1 October 1996
10. Budapest Treaty on the International Recognition of the Deposit of Micro-Organisms for the Purpose of Patent Procedure (1977)	41	Participation from 1998
11. Protocol relating to Madrid Agreement (1996)	17	Participation from 1998
12. Locarno Agreement Establishing an International Classification for Industrial Designs (1968)	29	Participation from 1998

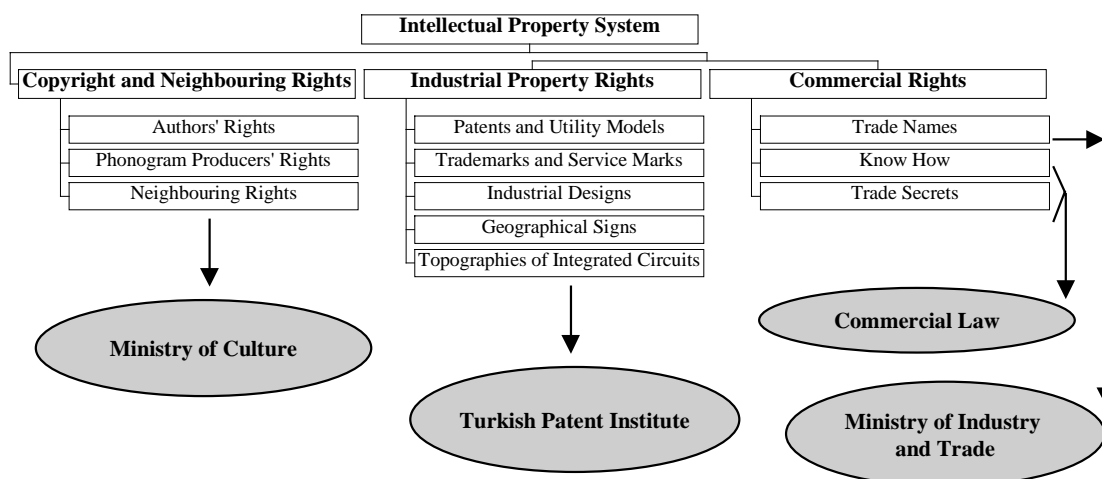
Source: Government of Turkey.

168. Chart IV.8 provides an overview of Turkey's system of intellectual property rights and the agency in charge. Turkey has provided the WTO Council for TRIPS with the data required under Article 69 of the TRIPS Agreement on contact points: the Turkish Patent Institute for issues related to industrial property; the Directorate-General of Copyrights and Cinema in the Ministry of Culture for issues related to copyright and neighbouring countries; and the Directorate-General of Customs in the Undersecretariat of Customs for issues related to border measures.⁸⁷

⁸⁶ Bureau of National Affairs (1998).

⁸⁷ WTO document IP/N/3/Rev.2/Add.2, 31 January 1997.

Chart III.8
Overview of Turkey's Intellectual Property System



Source: Turkish Patent Institute.

(b) Protection in selected areas

Patents

169. In June 1995, a new patent law came into effect, replacing Turkey's 19th century patent law.⁸⁸ The law includes: the possibility of converting a patent application into a utility model, and vice-versa (utility model certificate)⁸⁹; the granting of patents by examination and non-examination system; patentability criteria (novelty, inventive activity/step, industrial applicability); publications of the applications; opposition by third parties; patent rights of seven years for non-examined patents, ten years for utility model certificates, and 20 years for examined patents, none of which are extendable; 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. Foreigners are entitled to the same rights and privileges and are subject to the same obligations as nationals.

170. Pharmaceutical products and processes have been excluded from patent protection up to 1 January 1999, as allowed by Turkey's commitments under the customs union with the EU.⁹⁰ Nevertheless, the Turkish Patent Institute receives patent applications for inventions in the field of

⁸⁸ Decree Law No. 551 of 27 June 1995 regarding the Protection of Patent Rights (as amended by Decree Law No. 566 of 22 September 1995, and amended, added to and partly repealed by Law No. 4128 of 7 November 1995).

⁸⁹ A utility model differs from inventions of patents in two respects: first, in the case of an invention called "utility model", the technological progress required is smaller; and, second, the maximum term of protection provided in the law for a utility model is generally much shorter (WIPO, 1995).

⁹⁰ This is within the time period set out in the TRIPS Agreement since, because of its developing country status, Turkey has five years from the entry into effect of the Agreement to apply the provisions of the Agreement.

pharmaceutical products in accordance with the "mail-box" provision contained in Article 70.8 of the TRIPS Agreement; applications for process patents are received in the same way. The number of pharmaceutical (products and processes) patent applications received by the Institute between 1 January 1995 and 1 December 1997 totalled 584; nationals of the United States were the single largest group of applicants, accounting for 30% of total applications, while Turkish nationals only ranked seventh. If an applicant has a patent certificate and marketing approval in another country, exclusive marketing rights are provided for a period of five years in accordance with Article 70.9 of the TRIPS Agreement.⁹¹ The new law (Article 83.3) also provides protection for test data submitted to the Institute to support applications for marketing approval of pharmaceutical and agricultural chemical products that utilize new chemical entities, as required by Article 39.3 of the TRIPS Agreement.

Trade marks

171. In June 1995, Turkey amended its trade mark law.⁹² The protection, which is extended to marks distinguishing goods and services, guarantee marks and collective marks, 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.

Industrial designs

172. In June 1995, a new industrial designs law also came into effect.⁹³ Protection is provided to a design that is 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 at a time up to a total protection period of 25 years.

Copyright

173. The Turkish Parliament also passed a Bill in June 1995 amending its 1951 copyright law (Intellectual and Artistic Works Law No. 5846).⁹⁴ The Bill provides for copyright protection during the lifetime of an author plus 70 years after his/her death (the previous protection period was 20 years), extends the coverage to include software as a literary work, and provides for the establishment of more than one professional union in the same area. In the field of neighbouring rights, a new regulation was introduced in 1995 providing detailed arrangements concerning protection of mutual rights of broadcasting organizations, phonogram producers and performers.⁹⁵ The regulation introduced mandatory affixation of banderols on non-periodicals publishing (books and encyclopaedias), which can be obtained from the Directorates of Culture at the provincial level.⁹⁶ Affixation of banderols on audiovisual works has been carried out since 1986. Moreover, each TV

⁹¹ WTO documents IP/N/1/TUR/1, 22 May 1995 and IP/N/TUR/1Add.1, 1 May 1997.

⁹² Decree Law No. 556 of 27 June 1995 regarding the Protection of Trade Marks Rights (as amended by Act No. 4128 of 7 November 1996; and Regulations of 5 November 1995 concerning Decree Law No. 554).

⁹³ Decree Law No. 554 of 27 June 1995 regarding the Protection of Industrial Designs (as amended by Act No. 4128 of 7 November 1996; and Regulations of 5 November 1995 concerning Decree Law No. 554).

⁹⁴ Amended by Law No. 4110 on 7 June 1995.

⁹⁵ Regulation of 12 July 1995 on Marking Intellectual and Artistic Works.

⁹⁶ Banderols are labels affixed on the covers of the published copies of the works to control the number of duplications of the work.

organization has to obtain a certificate from the Ministry of Culture, proving payments to the rights holder.⁹⁷

174. In order to implement the TRIPS Agreement, a draft law is being prepared by the Ministry of Culture to provide for harmonization of the duration of protection, higher non-suspendable fines and jail terms in case of the violation of intellectual property rights, and seizure of counterfeit goods at customs. In cases of repetition of the violation, it is proposed to increase fines and jail terms. The draft law also includes regulations for the protection of the rights of the owners of broadcasts on radio, TV or other means.

Other areas

175. Turkey provides protection for geographical indications⁹⁸, topographies of integrated circuits, trade names, know-how and trade secrets.

(c) Enforcement of intellectual property rights

176. The infringement of patents (Part X of Decree Law No. 551), copyrights (Part V of Decree Law No. 4110), 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. Foreign nationals can also challenge Turkish and foreign patent holders in Turkish courts. In the process of granting an intellectual property right, persons making false statements or those removing without authority the sign indicating an industrial property right on a product or those falsely presenting themselves as the proprietor of an industrial property application right are subject to a fine and imprisonment for a period of up to four years (Article 73A).

177. Efforts are reportedly under way to educate businesses, consumers, judges, prosecutors, and others regarding the implications of the new laws. The Government intends to establish a number of special courts to hear intellectual property related cases under the new laws. According to the USTR, the Turkish judicial system, however, remains over-burdened and it may be some time before the necessary elements for a smoothly functioning system are in place.⁹⁹

(d) Parallel and counterfeit imports, and compulsory and contractual licensing

Parallel imports

178. 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 enable the rights holders to prevent parallel importation of protected products put on the market in other countries.¹⁰⁰ This principle also applies to the customs union agreement between Turkey and the EU (Annex 8 of Association Council Decision 1/95).

⁹⁷ Notification of 16 September 1997.

⁹⁸ Decree Law No. 555 of 27 June 1995 regarding the Protection of Geographical Indications.

⁹⁹ United States Trade Representative (1997).

¹⁰⁰ 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 the exhaustion of intellectual property rights, provided that the national treatment and MFN treatment obligations are met.

Border enforcement

179. Counterfeit imports are regulated by Turkish law (Decree No. 564 of 26 July 1995) and an implementing regulation (in force since 1 January 1996). For the suspension of such goods at the border, a complaint by the rights holder rather than the customs official is required. Small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments are not covered by the law.

Compulsory licensing

180. In the case of patents, provision is made for granting compulsory licences on the grounds that the 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). In the case of other IPR areas, there are no compulsory licence provisions. In practice, however, compulsory licences are rarely invoked. To date, the Turkish Patent Institute has received no requests for a compulsory licence.

Anti-competitive practices in contractual licensing

181. The legislation related to intellectual property rights does not carry provisions on anti-competitive practices in contractual licences. This subject is governed by the Protection of Competition Act. Pursuant to Article 4, all agreements which 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.