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Turkey: Law & Practice

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ACTECON

Turkey: Trends & Developments

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TURKEY



Law and Practice

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ACTECON provides advisory services to its local and international clients in the areas of competition rules, international trade and regulations. **ACTECON**'s practice in competition rules is focused on antitrust investigations, leniency applications, merger control, competition compliance programmes and providing day-to-day competition rules advice to its clients. **ACTECON** works especially with multinationals located in Turkey, with the perspective of corporate compliance basis and international service standards. In this respect, the firm implements competition rules compliance through

its custom-made Competition Compliance Programme. **ACTECON**'s international trade law and customs law team has extensive experience in trade remedies and customs problems, in-depth knowledge of the Turkish business world, and a well-established, excellent working relationship with Turkish public authorities (including the Turkish Ministry of Trade). **ACTECON** helps clients tailor solutions to execute industry-specific strategies and build strong cases in anti-dumping, safeguard, anti-circumvention investigations and customs applications.

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TURKEY LAW AND PRACTICE

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1. Trade Agreements

1.1 World Trade Organization Membership or Plurilateral Agreements

Türkiye is a founding member of the WTO and has been a contracting party of the General Agreement of Trade and Tariffs since 1951. Türkiye is party to the Information Technology Agreement. Türkiye is an observer of the Committee on Trade in Civil Aircraft and an observer of the Committee on Government Procurement.

1.2 Free Trade Agreements

Türkiye has 23 free trade agreements currently in force. These agreements are between Türkiye and the following countries/parties: Albania, Bosnia and Herzegovina, Chile, Egypt, European Free Trade Association (EFTA), Faroe Islands, Georgia, Israel, Kosovo, Malaysia, Mauritius, Moldova, Montenegro, Morocco, Macedonia, Palestine, Serbia, Singapore, South Korea, Tunisia, the UK, the UAE and Venezuela.

Türkiye also enacted a customs union agreement with the EU in 1995, which shapes the general framework of Türkiye's trade policy.

Türkiye has also enacted preferential trade agreements (PTAs) that grant lower customs duties for goods originating from its partners. In this context, Türkiye has PTAs with Iran, Azerbaijan, Uzbekistan and Pakistan.

1.3 Other Trade Agreements

Türkiye has been administrating a generalised system of preferences since 2002, in which it grants preferential access on three categories: developing countries, least-developed countries, and countries benefiting from special incentives.

1.4 Future Trade Agreements

The free trade agreements negotiated with Sudan, Lebanon and Qatar are in the ratification process and expected to enter into force in the near future.

Out of ten free trade agreements under official negotiations, free trade agreement negotiations with three countries (ie, Japan, Thailand and Indonesia) actively continue. Other countries/regions that Türkiye currently negotiates with are Mexico, Peru, Colombia, MERCOSUR, Ecuador, Cameroon, and the Gulf Co-operation Council.

1.5 Key Developments Regarding Trade Agreements

Türkiye ratified the free trade agreement it negotiated with UAE in 2023. The scope of the free trade agreements in force with Bosnia and Herzegovina, EFTA, and Serbia have also been revised and entered into force. Türkiye also enacted PTAs with Pakistan and Uzbekistan.

1.6 Pending Changes to Trade Agreements

Türkiye aims to modernise its customs union agreement with the EU, which requires Türkiye to align its trade policy with the EU. The customs union agreement that has been in force since 1995 is considered insufficient to address contemporary policy issues. Türkiye aims to find solutions to the systemic problems encountered under the customs union and to extend preferential trade and economic relations with the EU to new areas such as agriculture, public procurement, services and e-commerce with the modernisation of the agreement.

Additionally, the ratification process of the revised free trade agreement with Montenegro is ongoing. Meanwhile, it is expected that revisions of the free trade agreements with Georgia

and Malaysia will be concluded soon and that negotiations will commence for the revision of free trade agreements with Moldova and North Macedonia.

2. Customs

2.1 Authorities Governing Customs

Law No 4458 on Customs (the “Customs Law”), which lays down the general framework of customs legislation, is enacted by the Grand National Assembly of Türkiye. The secondary legislation that clarifies and enforces these rights and obligations is enacted by the Ministry of Trade; all these regulations, communiqués, decision, directives and guidelines must comply with the provisions of the Customs Law.

2.2 Enforcement Agencies Enforcing Customs Regulations

Customs law is enforced by the customs administration spread around the entry and exit points of Türkiye, such as borders, airports and ports. As per Article 3 of the Customs Law, central administration (the General Directorate of Customs established under the Ministry of Trade) is also customs administration responsible for administering and enforcing customs law.

2.3 Legal Instruments

Apart from the trade remedies regime of Türkiye, which is summarised in **5. Anti-dumping and Countervailing (AD/CVD)**, Türkiye does not have a comprehensive regime to address the negative impacts of other jurisdictions’ trade practices.

Domestic companies can report these barriers to the Ministry of Trade through its [website](#). However, neither the results of these petitions nor the initiatives of the government are publicly disclosed.

2.4 Key Developments in Customs Measures

There have not been any key developments in customs measures in 2023.

2.5 Pending Changes to Customs Measures

Türkiye frequently amends its customs legislation – predominantly the secondary legislation enacted by the executive brands – to address contemporary issues. However, the general framework of customs law, which was enacted in 1999 and revised various times, is not expected to drastically change in the near future.

3. Sanctions

3.1 Sanctions Regime

To combat terrorist financing and proliferation financing, Türkiye implements United Nations (UN) targeted financial sanctions (TFS) regimes.

In the context of TFS for terrorist financing, Türkiye has implemented UN Security Council Resolutions (UNSCR) 1267/1989/2253 sanctions against ISIL, Da’esh and Al-Qaida, as well as the 1988 sanction regime for the Taliban. The 1267/1989/2253 sanctions regime for ISIL, Da’esh and Al-Qaida involves an arms embargo, a travel ban, and asset freezes for individuals and entities. The asset freeze extends to trade in various goods, including petroleum products, natural resources, chemical and agricultural products, weapons and antiquities. The 1988 sanctions regime for the Taliban includes measures such as freezing assets, imposing travel bans, and embargoes.

Concerning TFS for proliferation financing, Türkiye has implemented UNSCR 1718 and subsequent resolutions targeting economic and finan-

cial sanctions against the Democratic People's Republic of Korea. The 1718 sanctions regime involves various measures such as arms embargoes, nuclear and ballistic missile embargoes, sectoral sanctions on specific goods, financial sanctions, travel bans, and asset freezes for designated individuals and entities.

3.2 Legal or Administrative Authorities Imposing Sanctions

The Turkish President has the authority to impose embargoes. Customs-related sanctions are to be implemented by customs administration.

3.3 Government Agencies Enforcing the Sanctions Regime

The Ministry of Foreign Affairs has the authority and responsibility to propose individuals and entities for designation to both the 1267/1989 Committee and the 1988 Committee. The President of Türkiye serves as the competent authority to designate persons and entities in accordance with UNSCRs.

The Financial Crimes Investigation Board (*Mali Suçlar Araştırma Kurulu*, or MASAK) is in charge of processing incoming foreign requests. Requests may also be submitted to the Ministry of Foreign Affairs or the Ministry of Justice, which will then be forwarded to MASAK for further examination. The assessment commission responsible for freezing assets evaluates proposals for designations.

3.4 Persons Subject to Sanctions Laws and Regulations

Those subject to Türkiye's sanctions laws and regulations include government agencies, financial institutions, and designated non-financial businesses and professions.

3.5 List of Sanctioned Persons

Türkiye currently does not have an official list of persons targeted by financial sanctions. However, it must be emphasised that Türkiye imposes sanctions on persons who are sanctioned by organisations that Türkiye is a party to, as per the UN.

3.6 Sanctions Against Countries/Regions

Türkiye does not officially apply any sanctions or embargoes to any countries or regions. However, Türkiye follows the UN in their adopted sanctions against sanctioned countries.

3.7 Other Types of Sanctions

Türkiye does not maintain any other types of sanctions.

3.8 Secondary Sanctions

Türkiye does not apply or threaten sanctions in connection with transactions that have no nexus to Türkiye.

3.9 Penalties for Violations

Terrorist Financing Sanctions

Article 15 of Law No 6415 on Prevention of the Financing of Terrorism stipulates that individuals who do not comply with or neglect or delay to adhere to asset-freezing decisions made in accordance with UNSCR 1267/1988/1989 may face imprisonment ranging from six months to two years or be liable for a judicial fine corresponding to the respective imprisonment term. If these individuals hold positions of responsibility within legal entities – for example, directors or representatives – or act on behalf of the entity, their inaction may result in a heavy administrative fine, which may amount up to TRY100,000 for the legal entity.

Persons who solicit funds or offer financial services to individuals, entities or organisations

subject to an asset freeze decision are liable to imprisonment for one to three years or may incur a judicial fine corresponding to the relevant imprisonment term. In cases where these individuals have roles of responsibility within legal entities (eg, directors, representatives, or those acting on behalf of the entity), these individuals may face an administrative fine up to TRY2 million.

Proliferation Financing Sanctions

Article 5 of Law No 7262 on the Prevention of Proliferation of Weapons of Mass Destruction specifies that individuals not adhering to financial sanctions may face imprisonment lasting from one to five years or a judicial fine corresponding to the respective imprisonment term.

Individuals not in compliance with the prohibition on procuring materials may be subjected to imprisonment ranging from two to eight years or a judicial fine aligned with the applicable jail term.

Individuals not abiding by or neglecting/delaying compliance with asset-freezing decisions may be imprisoned for a period ranging from six months to two years or may be liable for a judicial fine in line with the respective imprisonment term.

If these individuals hold positions of responsibility within legal entities (such as directors or representatives) or act on behalf of the entity, their inaction may result in administrative fines up to TRY2 million for the legal entity. The legal entity may also be subject to security measures.

3.10 Sanctions Licences

The licences specified in the UNSCRs are applicable.

3.11 Compliance

Law No 5549 on Prevention of Laundering Revenues of Crime, along with the Regulation on Compliance Programmes for the Prevention of Laundering Revenues of Crime and the Financing of Terrorism mandates certain obligated institutions (including banks, capital markets intermediary institutions, insurance and pension companies, financing and factoring companies, portfolio management companies, precious metal dealers, electronic payment systems, and payment institutions) to establish compliance programmes tailored to sector-specific risks.

The required compliance programme must encompass:

- the development of institutional policies and procedures for compliance;
- the formulation of a risk management policy;
- the establishment and execution of monitoring and control mechanisms;
- the appointment of a compliance officer and the establishment of a compliance department;
- conducting internal audits; and
- the provision of training for the personnel.

3.12 Sanction Reporting Requirements

Within a seven-day timeframe, individuals, financial institutions and designated non-financial businesses and entities – as well as designated institutions and organisations – must promptly report to competent authorities any assets linked to listed individuals or transactions within the scope of UNSCRs.

3.13 Adherence to Third-Country Sanctions

Türkiye does not have any blocking statutes, anti-boycott regulations, or other restrictions

that prohibit adherence to other jurisdictions' sanctions.

3.14 Key Developments regarding Sanctions

There have not been any noteworthy developments in law, regulatory activity, enforcement, litigation or public attention in Türkiye in 2023.

3.15 Pending Changes to Sanction Regulations

There are no significant pending changes on the horizon in Türkiye in the next 12 months pertaining to sanctions.

4. Exports

4.1 Export Controls

Turkish export legislation in the broad sense consists of the Customs Law, foreign exchange legislation, the Legislation on the Türkiye Exporters' Assembly and Exporters' Unions, relevant international conventions, Central Bank circulars, and the communiqués and circulars on the basis of these legislations.

Export legislation in the narrow sense includes the Export Regime Decree and Export Regulation, which regulate the general principles to be complied with in export transactions, and the Inward Processing Regime Decree, Outward Processing Regime Decree, and Export Communiqués on the basis of the Export Regime Decree.

4.2 Administrative Authorities for Export Controls

Pursuant to Export Regime Decree, the Ministry of Trade is the competent authority for exports. Public institutions and organisations are obliged to consult the Ministry of Trade when preparing

laws and decrees for the restriction or prohibition of exports in terms of quantity or period.

4.3 Government Agencies Enforcing Export Controls

The relevant regulations specify both the regulatory authorities responsible for overseeing the control of goods and the authorities responsible for granting approval for their exportation. Accordingly, the main authorities managing export control are the Ministry of Defence for military supplies and equipment, the Ministry of Agriculture and Forestry for live animals and some agricultural products, the Turkish Atomic Energy Authority for nuclear and nuclear dual-use materials, and the Ministry of Trade for other dual-use materials.

Generally, the inspectorates of standardisation for foreign trade have the authority to perform conformity assessments on exported products to verify their compliance with the required standards, technical regulations, and quality specifications.

4.4 Persons Subject to Export Controls

The following products are subject to export control:

- military equipment, weapons, war tools, explosive materials, and military technologies (Communiqué setting out the List regarding War Tools and Equipment, Weapons, Ammunitions and Spare Parts thereof, Military Explosive Materials and Technologies thereof established based on the Law No 5201);
- cultural and historical artifacts, certain animals, woods, certain agricultural products such as tobacco seeds and cannabis sativa, racing horses, and sugar (Communiqué No 96/31 on the Goods whose Export is Prohibited or Subject to a Pre-Authorisation; Com-

- muniqué No 2006/7 on the Goods whose Export is Subject to Registration);
- nuclear and nuclear dual-use goods (Communiqué No 2007/1 on the Warning List regarding Nuclear Transfer and the List of Nuclear Dual-Use Goods).

4.5 Restricted Persons

Türkiye does not have any export restriction or prohibition scheme. However, Türkiye adheres to the lists of sanctioned individuals and entities as defined by the UN.

4.6 Sensitive Exports

Specific certificates and analyses may be necessary, especially for plant and livestock exports. For unprocessed agricultural product exports, a phytosanitary certificate is required to confirm that the shipment complies with phytosanitary export standards, in accordance with the 1951 Treaty of Rome. Besides, all agricultural products must have a health certificate that aligns with the regulations of the purchasing country. The assessment of the inspection report and analysis results is based on either the purchasing country's requirements or the Turkish Food Codex.

4.7 Other Export Controls

Türkiye does not implement other export controls.

4.8 Penalties

Article 235/2 of the Customs Law provides for the consequences of violating export controls. Accordingly, where the exportation of a good is prohibited by an administrative act, an administrative fine of double the customs value may be imposed. Exporting goods that require a licence, meeting certain conditions, or obtaining approval may lead to an administrative fine worth 10% of the customs value.

In addition, pursuant to Article 3 of Law No 5607 on Anti-Smuggling, any person who exports goods the export of which is prohibited by law shall be imprisoned from one year to three years and face a judicial fine for up to 5,000 days, unless the act constitutes another offence requiring a heavier penalty.

4.9 Export Licences

There are three main licensing institutions in Türkiye:

- the Ministry of National Defence deals with the export control of military material and equipment;
- the Turkish Atomic Energy Authority deals with the export control of nuclear and nuclear dual-use material; and
- the Ministry of Economy deals with other dual-use material's export control.

Export controls of dual-use and sensitive materials are carried out by the Ministry of Economy in accordance with the provisions of the Communiqué on Export Control of Dual-Use and Sensitive Substances numbered 2003/12 and Communiqué on Export of Chemical Substances Annexed to the Chemical Weapons Convention numbered 2002/12. Within the scope of the application, the exporter company applies to the General Secretariat of Istanbul Mineral and Metals Exporters' Associations (IMMIB) for a licence.

For the export controls applied in transit trade, within the scope of the circular issued by the Central Bank of the Republic of Türkiye:

- in requests for transit trade of goods subject to the Missile Technology Control Regime, it is necessary to submit a form with a note from the IMMIB regarding the registration of the relevant sale;

- in requests for transit trade of chemical substances other than the substances included in the Annexes of the Chemical Weapons Convention from the substances included in the Australian Group Chemical Precursors List, the IMMIB's letter stating that the sale has been registered must be submitted; and
- in requests regarding the transit trade of the substances included in the annexes of the Chemical Weapons Convention, the letter of conformity/permission of the IMMIB must be submitted.

4.10 Compliance

There is no separate regulation on export control compliance in Türkiye. Exporting companies are required to comply with export legislation in the broad sense. If companies are subject to export restrictions for the products they are exporting, they must also comply with specific regulations on these restrictions.

4.11 Export Reporting Requirements

There is no separate export reporting requirement.

4.12 Key Developments Regarding Exports

Significant developments at the legislative level in the last 12 months are as follows.

- The Communiqué dated 21 December 2022 and numbered 2022/55 on the Export List of Natural Flower Bulbs for 2023 established the list of flower bulbs that are forbidden to be collected from nature and exported or whose production is limited by quota for the year 2023.
- With the Communiqué dated 28 April 2023 and numbered 2023/4 on the Export of Substances that Deplete the Ozone Layer and Fluorinated Greenhouse Gases, the export of

the products in the annex of the communiqué is prohibited in order to comply with the Declaration of the United Nations Conference on the Human Environment and the Plan of Action on the Ozone Layer of the United Nations Environment Programme.

- With the regulation dated 28 January 2023 on the Export and Import of Some Harmful Chemicals, chemicals subject to export notification have been determined for the purpose of implementing the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

4.13 Pending Changes to Export Regulations

There are no pending significant changes pertaining to export controls on the horizon in Türkiye in the next 12 months.

5. Anti-dumping and Countervailing (AD/CVD)

5.1 Authorities Governing AD/CVD

The Board of Evaluation of Unfair Competition in Imports (the "AD/CVD Board") evaluates outcome of the AD/CVD investigations conducted by the General Directorate of Imports and decides on whether a measure will be imposed. Similarly, the Board of Evaluation of Safeguard Measures in Imports (the "Safeguards Board") evaluates the outcome of safeguard investigations conducted by the General Directorate of Imports and decides on whether a measure will be imposed.

5.2 Government Agencies Enforcing AD/CVD Measures

Customs authorities administer and enforce AD/CVD duties and safeguard measures at the point of importation.

5.3 Petitioning for a Review

The Regulation on the Prevention of Unfair Competition in Imports (the “Trade Remedy Regulation”) allows domestic companies to request a review of existing measures on the following grounds.

- Interim review investigation – after the lapse of the first year of a measure, domestic industry can request an interim review provided that the existing measure is not (or is no longer) sufficient to counteract the dumping or subsidy that is causing injury. During the course of this investigation, it is possible to examine whether the circumstances regarding the dumping or subsidy and injury have changed significantly or whether the existing measures are achieving the intended results in removing the injury previously established.
- Expiry review investigation – before the expiry of measures (AD/CVD measures are generally enacted for five years whereas safeguard measures are enacted for three years), domestic industry can request an expiry review by providing sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping or subsidy and injury.
- Reopening of an investigation – if definitive duties were neutralised owing to a fall in export prices, domestic industry can request reopening of an investigation by providing sufficient evidence showing that measures have led to no movement or insufficient movement in sales prices of the product subject to measures in the Turkish market.

5.4 Ad Hoc and Regular Reviews

The review investigations can be initiated on an ex officio basis. Domestic industry can submit petitions if the conditions provided in the Trade Remedy Regulation and/or time limitations are fulfilled. However, investigations are generally initiated pursuant to a request from the domestic industry.

5.5 Non-domestic Company Participation

Exporting producers, industry associations, and government bodies of the country subject to the investigation can participate in investigations. Other non-domestic parties can participate if they can show a legitimate interest in the case.

5.6 Investigation and Imposition of Duties and Safeguards

An AD/CVD investigation is usually initiated pursuant to a complaint/petition of domestic companies fulfilling the representativeness test. Safeguard investigation can also be requested by professional organisations and chambers representing interested parties.

For new AD/CVD investigations, a representativeness test exists to ensure that the investigation has sufficient support from the domestic industry producing the subject product. At least 25% of total domestic production must support the complaint/request and domestic producers representing more than 50% of the domestic production must not express opposition.

Following a complaint or ex officio review in AD/CVD investigations, the General Directorate of Imports should complete its review in 45 days and refer the case to the AD/CVD Board to decide on whether initiation of an investigation is necessary. If the AD/CVD Board decides to initiate an investigation, it is published on the Official

Gazette with a communiqué providing the details of the investigation, such as the countries concerned, the product scope, and the procedure of the investigation. Interested parties are given 37 days to submit their responses to the questionnaires and become interested parties. After the submission of the questionnaires, the General Directorate of Imports evaluates the information and documents provided by the interested parties and may conduct verification visits. Based on its evaluations and the comments provided by the interested parties, the General Directorate of Imports prepares a final notice containing its determinations and suggestions to the AD/CVD Board and invites interested parties to submit their views/comments. Interested parties can also request a public hearing to submit their arguments orally. The investigation process should be completed within a year but can be extended for six months under special circumstances. After the conclusion of the investigation phase, an investigation report is prepared by the General Directorate of Imports to be submitted to the AD/CVD Board for the final evaluation. Based on the information contained therein, the AD/CVD Board decides on whether a measure can/should be imposed and publishes its decision via a communiqué in the Official Gazette.

For safeguard investigations, the Safeguards Board conducts a preliminary analysis based on the information provided in a complaint or by the General Directorate of Imports in ex officio cases, and decides whether initiation of a safeguard investigation is necessary. If the Safeguards Board decides to initiate an investigation, the decision is published in the Official Gazette with a communiqué inviting interested parties to fill out the questionnaires in order to be considered as interested parties within 40 days. Similar to the AD/CVD investigations, the General Directorate of Imports evaluates the informa-

tion and comments provided by the interested parties and may conduct verification visits. The investigation phase must be completed within nine months, which can be extended for another six months. The final decision of the Safeguards Board is published on the Official Gazette with a communiqué, which recommends that the President impose specific measures. Pursuant to the communiqué and usually in line with the recommendations of the Safeguards Board, a Presidential decree imposing a safeguard measure is published in the Official Gazette.

5.7 Publishing Reports

The reports of the General Directorate summarising the findings of the investigations are published as annexes of the implementing legislation. The final disclosure reports in the context of the investigations are also published on the Ministry of Trade's website.

5.8 Jurisdictions with No Imposition of Duties and Safeguards

In principle, AD/CVD duties and safeguard measures can be imposed against any jurisdiction and cover any product.

5.9 Frequency of Reviews

AD/CVD duties can be implemented for a maximum of five years and lapse after the expiry of this period. Domestic industry may request an expiry review for the extension of existing measures.

Safeguard measures may last up to four years. Where they exceed three years, they must be reviewed at mid-term and can be extended once for up to a maximum of ten years in total against the members of the WTO.

5.10 Review Process

Upon request of domestic industry three months before the expiry of the measure or at the discretion of the Ministry of Trade, an expiry review for the extension of the existing measures can be initiated, provided that sufficient evidence is present demonstrating that the expiry of the measures would be likely to result in a continuation or recurrence of dumping or subsidy and injury. The process and timeline that applies vis-à-vis initial investigations is also applicable to the expiry reviews.

5.11 Appeal Process

As per Article 24 of Law No 2575 on the Council of State, annulment of Presidential decisions (covering decrees implementing safeguard measures) and legislations enacted by the administrative authorities with nationwide application (covering communiqués implementing AD/CVD measures) can be requested within 60 days of their publication.

5.12 Key Developments Regarding AD/CVD Measures

The Ministry of Trade has been actively initiating and concluding investigations with the aim of protecting the interests of the domestic industry. As of November 2023, the Ministry of Trade has applied or extended eight AD/CVD measures and initiated 14 investigations – most of which are expiry review investigations.

5.13 Pending Changes to AD/CVD Measures

There are currently no pending changes related to trade remedies on the horizon in Türkiye in the next 12 months.

6. Investment Security

6.1 Investment Security Mechanisms

The primary legal framework with regard to foreign direct investment in Türkiye includes international treaties, the Foreign Direct Investment Law No 4875 (the “FDI Law”), and the Regulation on the Implementation of the Foreign Direct Investment Law (the “FDI Regulation”).

Under the FDI Law, investors need to:

- notify the Ministry of Treasury and Finance of their investment (eg, greenfield investment, share transfer or otherwise);
- notify the amount of foreign capital brought to Türkiye; and
- register certain information (such as shareholding structure, share transfers and/or increase or decrease of the share capital) on an online platform – namely, the Electronic Incentive Application and Foreign Investment Information System (“E-TUYS”).

The FDI Law stipulates principles such as the freedom to invest, valuation of non-cash capital and the employment of foreign personnel. Foreign investors can freely establish an entity, open a branch and/or acquire shares of an existing company and conclude know-how/technical assistance agreements with domestic companies. Companies with foreign shareholding that are established in line with the Turkish Commercial Code are treated equally to companies with local shareholding.

Türkiye, aside from its FDI Law, has entered into numerous bilateral and multilateral investment treaties. As of November 2023, Türkiye has entered into bilateral investment treaties (BITs) with 98 countries – of which, 76 are presently active. The participating nations encompass all

EU member states (excluding Ireland) and all OECD member countries, with the exceptions of Iceland, Canada, Norway, and New Zealand. Türkiye is actively engaged in a programme to both establish new BITs and revise existing ones to align with evolving developments.

Apart from domestic legislation and BITs, Türkiye is actively pursuing engagement in various multilateral investment treaties to enhance economic cooperation with other nations. In this context, Türkiye is a participant in the Agreement on Trade-Related Investment Measures within the WTO, the UN Convention on Contracts for the International Sale of Goods, and the Energy Charter Treaty.

6.2 Agencies Enforcing Investment Security Measures

According to the FDI Law, certain information related to foreign investors must be reported to the Ministry of Industry and Technology by foreign companies through the Incentive Implementation and Foreign Capital Directorate.

The Ministry of Industry and Technology is authorised to take precautions, make regulations in line with the provisions of the implementation of the FDI Law, examine and conclude special and obligatory situations, resolve potential disputes through administrative means, and address issues arising from technical reasons in implementation.

6.3 Transactions Subject to Investment Security Measures

Foreign-capital (foreign-partnered) companies and their branches in Türkiye are required to make notifications.

6.4 Mandated Filings/Notifications

In Türkiye, direct foreign investments have become liberalised, transitioning from a system requiring approval and/or permission to a notification system.

6.5 Exemptions

Companies that are entirely domestically owned and fall outside the scope of the FDI Law become subject to notification if a foreign investor participates in the company or if a capital increase is made with the participation of a foreign investor outside the company.

6.6 Penalties and Consequences

There are no penalties or consequences applicable for failure to file necessary notifications.

6.7 Fees

There is no fee to be paid when submitting the notification.

6.8 Key Developments Regarding Investment Security

There has not been a significant development in the investment security regime of Türkiye, as it already adopts a lenient regime.

6.9 Pending Changes to Investment Security Measures

There are no pending changes to investment security measures on the horizon in Türkiye in the next 12 months.

7. Other Measures Affecting Production and Trade

7.1 Subsidy and Incentive Programmes for Domestic Production

The Decision No 2012/3305 on State Aids in Investments (the “State Aids Decision”) and

its secondary legislation govern the general framework government incentives in Türkiye, which aims to decrease trade deficit, support high and medium-high technology investments, promote development in least developed areas/cities, and increase efficiency of investments. The State Aids Decision employs the following incentives programmes, each of which subject to different types of incentives.

- Regional investment incentive scheme – the State Aids Decision provides a list dividing regions of Türkiye into six separate categories based on the development level of these areas and provides various incentives in varying amounts based on the amount of the investment and its location.
- Priority investment incentive scheme – the scheme is provided for high technology investments, such as:
 - (a) pharmaceuticals;
 - (b) office, accounting and computing machinery;
 - (c) radio, TV and communications equipment;
 - (d) medical, precision and optical instruments; and
 - (e) aircraft and spacecrafts.

These investments benefit from the incentives provided for Region 5 regardless of their location.

- Strategic investment incentive scheme – the scheme provides specific incentives for the investments to be made for the production of intermediate or final products of which more than 50% are supplied through imports. Energy investments and investments approved by the Technology Focused Industry Movement Programme are also considered as strategic investments.

- General investment incentive scheme – regardless of the location of the investment, the scheme is available for all investments that fall outside of the scope of the aforementioned schemes, provided that the investment meets the minimum fixed investment thresholds (which differ based on the location).

Depending on the type of the applicable incentive scheme and the location of the investment, the following subsidies are available, with varying rates in the context of the State Aids Decision:

- VAT exemption;
- customs duty exemption;
- tax deduction;
- social security premium support (employee and employer shares);
- interest/profit-share support;
- land allocation; and
- VAT refund.

In addition to the incentives provided by the State Aids Decision, the Scientific and Technological Research Council of Türkiye (*Türkiye Bilimsel ve Teknolojik Araştırma Kurumu*), and the Small and Medium Industry Development Organisation (*Küçük ve Orta Ölçekli İşletmeleri Geliştirme ve Destekleme İdaresi*) can provide project-based incentives for smaller investments.

7.2 Standards and Technical Requirements

Law No 7223 on Product Safety and Technical Regulations governs the main principles in the application of standards and technical specifications, and provides the main responsibilities of manufacturers, importers and distributors. The said law, which was renewed in 2020 to align Turkish legislation with that of the EU, is clarified

and enforced through product-specific regulations that lay down the specific requirements.

7.3 Sanitary and Phytosanitary Requirements

Law No 5996 on Veterinary Services, Plant Health, Food and Feed and its secondary legislation enacted in line with Codex Alimentarius form the basis of sanitary and phytosanitary requirements. To the best of the authors' knowledge, there is no requirement employed in these regulations that aims at reducing imports and/or encouraging domestic production.

7.4 Policy and Price Controls

There is no de jure price control policy and regulation in Türkiye. However, surveillance measures adopted by the Ministry of Trade with communiqués pursuant to the Decision on Surveillance Measures in Imports provide a base price level for imports whereby importers of goods falling below specified prices must obtain a surveillance licence from the Ministry of Trade.

7.5 State and Privatisation Measures

There is no privatisation measure employed by Türkiye that aims to reduce imports and/or encourage domestic production.

7.6 "Buy Local" Requirements

Article 63 of Law No 4734 on Public Procurement grants preference to local companies whereby 15% of price advantage can be granted to these companies in the event of a tender.

7.7 Geographical Protections

Pursuant to Article 33 of Law No 6769 on Industrial Property, food, agricultural, mining, handi-craft and industrial products that are formed with natural and anthropic elements in Türkiye can qualify for geographical indications.

8. Other Significant Issues

8.1 Other Issues or Developments

There have been no significant issues or developments in Turkish international trade law in 2023.

Trends and Developments

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ACTECON

ACTECON provides advisory services to its local and international clients in the areas of competition rules, international trade and regulations. ACTECON's practice in competition rules is focused on antitrust investigations, leniency applications, merger control, competition compliance programmes and providing day-to-day competition rules advice to its clients. ACTECON works especially with multinationals located in Turkey, with the perspective of corporate compliance basis and international service standards. In this respect, the firm implements competition rules compliance through

its custom-made Competition Compliance Programme. ACTECON's international trade law and customs law team has extensive experience in trade remedies and customs problems, in-depth knowledge of the Turkish business world, and a well-established, excellent working relationship with Turkish public authorities (including the Turkish Ministry of Trade). ACTECON helps clients tailor solutions to execute industry-specific strategies and build strong cases in anti-dumping, safeguard, anti-circumvention investigations and customs applications.

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TURKEY TRENDS AND DEVELOPMENTS

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Bahadır Balki of ACTECON is known for his excellent work discipline together with his intriguing and effective defences. In the past ten years, he has been involved in virtually

every significant cartel and abuse of dominance investigations launched by the Turkish Competition Authority concerning insurance, banking, iron and steel, automotive, cement, telecommunications, broadcasting rights, ro-ro transportation, fast-moving consumer goods (FMCG), alcoholic beverages, media audit, port services, etc. Clients also benefited from Bahadır's extensive experience in global merger cases in a variety of industries (ie, eyewear and lenses, titanium dioxide, crop protection business, iron and steel, FMCG, ground handling, aviation, port management services, ro-ro transportation, cement, and movie theatres).



Ertuğrul Can Canbolat has extensive knowledge of and experience on all aspects of competition law, antitrust and international trade remedies. He provides advisory services

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Legislative Landscape

The economic landscape of Türkiye underwent a significant transformation in the 1980s, prompted by the economic contraction and foreign exchange challenges of the preceding decade. This is when Türkiye embarked on a journey towards economic liberalisation, shifting from its import-substitution industrialisation policy to one centered around export-led growth. This transition necessitated the suppression of barriers, including import authorisations and foreign exchange controls. With a strong need to protect its domestic industries, Türkiye adopted the first legislation providing for trade defence instruments in 1989. These instruments were designed not only to protect domestic industries but also to counter actions impacting its exports. In furtherance, Türkiye advanced its liberalisation efforts by entering into a customs union with the EU in 1995, involving the adoption of the EU's common external tariff and mandatory alignment with the EU's Common Trade Policy.

As a member of the WTO, Türkiye is bound by various agreements, including the General Agreement on Tariffs and Trade (GATT 1994), the Agreement on Subsidies and Countervailing Measures, the Anti-Dumping Agreement,

and the Agreement on Safeguards. Türkiye has emerged as a prominent user of trade defence instruments within the WTO framework. In fact, it ranks among the top WTO members applying anti-dumping measures. The year 2021 saw Türkiye take the third position globally in terms of the number of anti-dumping investigations initiated and measures imposed, primarily targeting imports of plastics, rubber, textiles, and base metals.

Currently, Türkiye enforces a substantial number of trade defence measures, including 190 anti-dumping and anti-subsidy measures, along with nine safeguard measures. The proactive stance continued into 2022 and the first half of 2023, marked by the initiation of three new anti-dumping investigations, and the undertaking of 25 expiry review investigations, six circumvention investigations, and one new safeguard investigation.

Global Challenges Shaping Trade Policy

The evolving global trade landscape, characterised by the weakening of the multilateral trade system and increased protectionist measures, has compelled Türkiye to respond dynamically. The COVID-19 pandemic, along with tensions

between the USA and China, war between Russia and Ukraine, as well as Israel and Palestine have further complicated international trade.

As of March 2023, Türkiye has implemented a ban on exporting sanctioned goods originating from the EU, the USA, and the UK to Russia. Türkiye, alongside its traditional use of trade defence measures, has implemented additional customs tariffs on certain products (heavy machinery, iron and steel, construction materials, power installation products, car spare parts, glass products, water heaters, jewellery, white appliances, sanitary products, game consoles, ceramics, chemicals, plastics, furniture, textiles, shoes, personal protective equipment, etc). This strategic move aims to mitigate the adverse effects of the pandemic on Türkiye's economy and shield domestic producers from the pressures of heightened imports.

Modernisation of EU – Turkey Customs Union

A crucial aspect of Türkiye's trade policy is the ongoing modernisation of the customs union with the EU. Despite the freeze in accession negotiations, officials from both sides engage in discussions to revive talks. The Pre-Accession Economic Reform Programme (2023-25) was published in January 2023, which is derived from the Medium-Term Programme (MTP) (2023-25) and the 2023 Presidency Annual Programme. It is intended to serve as a crucial framework during the transition to the upcoming Twelfth Development Plan (2024-28).

The previous Turkish trade policy, set out in both the Exports Strategy for 2023 and the Eleventh Development Plan (2019-23), was focused on transforming the economy into an export-oriented system. The new programme's structural reform priorities will undergo a review once the Twelfth Development Plan is implemented. The

costing of these reforms and their alignment with current guidance were determined through workshops involving institutional stakeholders, conducted in collaboration with the Presidency of the Republic of Türkiye, Presidency of Strategy and Budget, and the Centre of Excellence in Finance (CEF).

Developments Caused by EU's New Generation Trade Agreements

However, challenges arise due to the widening qualitative gap between the existing customs union agreement and the EU's "new generation" trade agreements. In a notable development, Türkiye embraced the EU Green Deal on 16 July 2021. The "Green Deal Action Plan" outlined in a Presidential Decree aligns Türkiye with sustainable and green economic practices, ensuring compatibility with the EU Green Deal within the Türkiye-EU Customs Union framework. This plan encompasses 32 objectives and 81 actions, addressing areas such as carbon border adjustments, green and circular economy, green finance, clean energy supply, sustainable agriculture, smart mobility, climate change mitigation, green diplomacy, and information and awareness-raising activities.

As part of the Green Deal Action Plan, Türkiye contemplates a carbon pricing mechanism and support mechanisms for domestic sectors facing rising costs. The evaluation of monitoring systems for greenhouse gas emissions, in line with the EU's methodology, is on the agenda. The Ministry of Trade also aims to assess the impact of the EU's carbon border adjustment mechanism (CBAM) on Türkiye's sectors and formulate strategies to incentivise emission reduction in energy-intensive sectors. According to the results of the study by the Turkish Ministry of Environment, Urbanisation and Climate Change in March 2023, it is estimated that the

iron and steel sector would be the most affected by CBAM, and the cement sector will be the second most affected sector in Türkiye.

Highlights of Trade Disputes

Türkiye also faces trade disputes with major partners, notably the EU and the USA. The results of the disputes, “Türkiye – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products” (DS583) and “United States – Certain Measures on Steel and Aluminium Products” (DS564), were published by the WTO. In the former dispute, which was initiated on 2 April 2019 upon a complaint from the EU, the latter claimed that various Turkish measures concerning the production, importation and marketing of pharmaceutical products amounted to:

- localisation requirements;
- technology transfer requirements;
- an import ban on localised products; and
- prioritisation measures.

In response to allegations raised by the EU, Türkiye was accused of breaching several provisions of international agreements, including the General Agreement on Tariffs and Trade (GATT) 1994, the Agreement on Trade-Related Investment Measures (TRIMs Agreement), the Agreement on Subsidies and Countervailing Measures, and the Agreement on Trade-Related Aspects of Intellectual Property Rights. The panel, in its report, supported the EU’s contentions and recommended Türkiye to bring its measures into conformity with its obligations under GATT 1994. Subsequently, Türkiye – dissatisfied with the panel’s findings – invoked the arbitration process in accordance with the Agreed Procedures for Arbitration between the EU and Türkiye. The arbitration proceedings centered on Türkiye’s challenge to the panel’s determination regard-

ing the localisation requirement, with arbitrators upholding – albeit for different reasons – the panel’s conclusion that the requirement violated national treatment obligations.

In the “United States – Certain Measures on Steel and Aluminium Products” dispute, published on 25 January 2019, Türkiye sought the formation of a panel. The measures, rooted in Section 232 of the US Trade Expansion Act of 1962 and investigations by the US Department of Commerce, were based on concerns about the impact on the US internal economy and national security. The panel’s findings deemed the duties inconsistent with Article II:1 of GATT 1994, as they surpassed the bound tariff rates in the US WTO schedule of concessions. Additionally, the panel found that exemptions granted to specific countries violated the requirement of Most-Favoured-Nation (MFN) treatment under Article I:1 of GATT 1994. The panel further ruled that quotas on steel and aluminium products from certain countries were incompatible with the obligation to eliminate quantitative restrictions under Article XI:1 of GATT 1994.

Anti-dumping Measures

On 9 February 2023, the EC imposed definitive anti-dumping measures on imports of ceramic tiles originating from India and Türkiye; these are valid for a duration of five years. This decision followed an investigation initiated in December 2021. Following the investigation, the EC imposed individual dumping margins on the products concerned, ranging from 4.8% to 20.9% for imported ceramic tiles from Türkiye.

On 18 April 2023, the EC extended the anti-dumping measures on imports of stainless-steel hot-rolled coils (SSHR) from Indonesia to imports of SSHR from Türkiye. The extension of measures follows an investigation that showed

that EU anti-dumping duties on imports of SSHR from Indonesia were being circumvented by imports sent for final completion to Türkiye and then shipped to the EU.

In conclusion, Türkiye's trade policy has undergone a transformative journey, evolving from import-substitution to export-led growth. The nation actively utilises trade defence instruments, positioning itself as a significant player in global trade. The integration of sustainability goals, as evident in the Green Deal Action Plan, demonstrates Türkiye's commitment to aligning its economic practices with contemporary environmental standards. However, ongoing trade disputes and challenges in the customs union's modernisation underscore the dynamic nature of Türkiye's trade policy as it navigates the complexities of the global economic landscape.

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