
Multilateral Trading System Under Strain: The U.S. and Turkish Measures May Hit Trade Between the Two Countries

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Introduction

The recent political tensions between the United States of America ("U.S.") and Turkey have affected in a significant way the trade relations between the two countries in a context of already heated global trade environment (some even describe it as a trade war).

In order to summarize the current state of the trade relations between the two countries, (i) the context in which the debated trade tensions emerged will be identified, (ii) Turkey's retaliatory measures in this context will be described, and (iii) the U.S. response to Turkey's retaliation will be briefly dealt with.

1. The U.S. Context of the Current Trade Tensions

The U.S. Department of Commerce's ("DOC") reports to the U.S. President Donald Trump released during the month of January 2018 may properly be considered as the trigger of the current so-called trade war¹. Indeed, the DOC conducted two investigations pursuant to Section 232 of the Trade Expansion Act of 1962 in the effect of imports of, respectively, steel and aluminum². As far as Turkey is concerned, the report on steel imports recommended an alternative to appropriately satisfy national security requirements:

- to impose a global quota on all imported steel products at 63% of the 2017 import level, applied on a country and steel product basis or a global duty rate on of 24% all imported steel products (in addition to any trade remedy measure already applicable); or
- to impose a duty rate of 53% on steel imports from a subset of 12 countries, including Turkey (in addition to any trade remedy measure already application to any steel products from those countries), together with a 100% quota to the imports made from each other country in 2017³.

In fact, Donald Trump's proclamations⁴ of 8 March 2018 establishing global duties on steel and aluminum imports of, respectively, 25% and 10% echoed the recommendations made by those reports. Those proclamations stipulate that, except as otherwise provided, the concerned duties will become applicable as from 23 March 2018, except for countries benefiting from an exemption.

2. Turkey's Retaliatory Response to the U.S. Additional Duties on Steel

In retaliation to the U.S. duties on the imports of steel and aluminum imposed through the presidential proclamations of 8 August 2018, the Turkish Council of Ministers had issued on 11 June 2018 the *Decision no 2018/11973 on the Implementation of Additional Financial Charges to the Imports Originating in the United States of America*⁵ (although the duty rates notified by Turkey to the WTO are not consistent with those published in this decision, only those latter are deemed valid). Nevertheless, as Donald Trump took the decision⁶ to double the additional duties imposed on the imports of steel originating in Turkey – due to the political crisis between the two countries and to the fall of the Turkish Lira against the US Dollar – the Turkish President held with its *Decision no 21 Amending the Decision no 2018/11973 on the Implementation of Additional Financial Charges to the Imports Originating in the United States of America*⁷ to almost double all the retaliatory duties previously adopted. In the end, the additional duties introduced by the Turkish government are as follows:

Combined Nomenclature Code	Product	Additional Duties (%)
08.02	Nuts	20
10.06	Rice	50
2106.90	Food preparations (Others)	20
22.08	Undenatured ethyl alcohol of an alcoholic strength of less than 80%; spirits, liqueurs and other spirituous beverages (excluding compound alcoholic preparations of a kind used for the manufacture of beverages)	140
24.01	Unmanufactured tobacco; tobacco refuse	60
27.01	Coal; briquettes, ovoids and similar solid fuels manufactured from coal	13,7
2704.00	Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon	10
2713.11	Petroleum coke, non-calcined	4
33.04	Beauty or make-up preparations and preparations for the care of the skin, incl. sunscreen or suntan preparations (excluding medicaments); manicure or pedicure preparations	60
3904.10	Poly (vinyl chloride), in primary forms, not mixed with any other substances	50

3908.10	Polyamides -6, -11, -12, -6,6, -6,9, -6,10 or -6,12, in primary forms	10
39.26	Articles of plastics and articles of other materials of heading 39.01 to 39.14	60
44.01	Fuel wood, in logs, billets, twigs, faggots or similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms	10
48.02	Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non-perforated punch-cards and punch-tape paper, in rolls or in square or rectangular sheets, of any size, and handmade paper and paperboard (excluding newsprint of heading 48.01 and paper of heading 48.03)	20
48.04	Uncoated kraft paper and paperboard, in rolls of a width > 36 cm or in square or rectangular sheets with one side > 36 cm and the other side > 15 cm in the unfolded state (excluding goods of heading 48.02 or 48.03)	20
48.11	Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface-coloured, surface-decorated or printed, in rolls or in square or rectangular sheets, of any size (excluding goods of heading 48.03, 48.09 and 48.10)	50
5502.10	Artificial filament tow of acetate	60
7308.90	Structures and parts of structures, of iron or steel	60

	(excluding bridges and bridge-sections, towers and lattice masts, doors and windows and their frames, thresholds for doors, props and similar equipment for scaffolding, shuttering, propping or pit-propping)	
8413.70	Centrifugal pumps, power-driven (excluding those of subheading 8413.11 and 8413.19, fuel, lubricating or cooling medium pumps for internal combustion piston engine and concrete pumps)	20
8479.89	Machines and mechanical appliances	20
87.03	Motor cars and other motor vehicles principally designed for the transport of persons, incl. station wagons and racing cars (excluding motor vehicles of heading 87.02)	120
9022.19	Apparatus based on the use of X-rays (other than for medical, surgical, dental or veterinary uses)	10

Furthermore, Turkey lodged a request for consultation before the WTO on 20 August 2018 following the doubling of the additional duties imposed on its exports of steel to the U.S.⁸. If those consultations (which are mandatory) with the U.S. fail to produce a satisfactory solution within 60 days, Turkey will be entitled to request the establishment of a panel.

3. The USTR's GSP Eligibility Review

Following Turkey's retaliatory additional duties on USD 1.78 billion of U.S. imports⁹ (before the amendments of 15 August 2018), the Office of the U.S. Trade Representative¹⁰ ("USTR") announced on 3 August 2018 that it initiates on its own motion a review of Turkey's eligibility to participate in the *Generalized System of Preferences* ("GSP") program. The stated objective of this program is the promotion of economic growth in designated developing countries by providing duty-free entry to the U.S. market for certain products. In this regard, approximately 3,500 different products from Turkey are eligible to enter the U.S. duty-free under the GSP program.

The allegation underlying this review is that Turkey no longer complies with the "*market access criterion*"¹¹ requiring Turkey to assure the U.S. reasonable and equitable access to its market.

According to the USTR's press release, the U.S. imported USD1.66 billion in 2017 from Turkey under the GSP program, representing 17.7% of total U.S. imports from Turkey¹². The most imported products by the U.S. from Turkey under the said program have been vehicles and vehicle parts, jewellery and precious metals, and stone articles.

The USTR then published on 8 August 2018 a notice on the *Federal Register* announcing the public hearing and comment period for the concerned review¹³. This notice provides contact information for those interested to make their comments to the USTR in order for this latter to address them in the context of the review announced. Accordingly, the interested parties will have to respect the following deadlines:

- 12 September 2018 for submission of comments, pre-hearing briefs, and requests to appear at the public hearing for the GSP country practice review of Turkey that will take place on 26 September 2018 under the auspices of the GSP Subcommittee of the Trade Policy Staff Committee; and
- 17 October 2018 for submission of post-hearing briefs.

Moreover, in support of its review, the USTR indicates in the concerned notice that Turkey has recently established a series of trade barriers that have a negative bearing on U.S. trade. The notice points out that Turkey has imposed additional duties¹⁴ *only* to products originating in the U.S. and that the additional duties imposed by Turkey exceed the tariff concessions granted by Turkey under WTO rules (the so-called WTO schedule of concessions) in respect of some of the products concerned.

Conclusion

The foregoing demonstrates that import-restrictive policies have lately underpinned the use of trade defence instruments. In this context, nobody knows when and how the current political imbroglio between Turkey and the U.S., two long-standing allies, will end. What is certain at this point is that it contributed to the escalation of the ongoing trade confrontation. What is uncertain is the WTO's capacity to resolve the current tensions affecting global trade given the U.S. blocking of the appointment of the Appellate Body's members. Against the backdrop of a weakened multilateralism, the developments of trade relations will then be dependent on the evolution of the political landscape. In an environment where trade defence instruments are being increasingly used with protectionist purposes, the efficient functioning of the WTO dispute settlement mechanism will prove extremely valuable.

Footnotes

1. See the DOC's following reports that have respectively been submitted to Donald Trump on 11 January 2018 on 17 January 2018: "*The Effect of Imports of Steel on the National Security*", published on 16 February 2018

(https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf) (accessed on 28 August 2018); "*The Effect of Imports of Aluminum on the National Security*", published on 16 February 2018

(https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf) (accessed on 28 August 2018).

2. Section 232 lays down rules allowing the establishment of import restrictions for the protection of national security, so that Section 232 investigations "*help to determine the effects of imports on U.S. national security and give the President the ability to address any threats to national security by restricting imports through tariffs*" (See "*What You Need To Know: Section 232 Investigations and Tariffs*", published on 8 March 2018) (<https://www.whitehouse.gov/briefings-statements/need-know-section-232-investigations-tariffs/>) (accessed on 28 August 2018)).

3. According to the report, this second option would enable the domestic industries concerned to reach 80% of their capacity utilization rate at 2017 demand levels (including exports); See Secretary Ross' press release regarding the reports on steel and aluminum in which the concerned capacity utilization rate is considered to be the "*minimum rate needed for the long-term viability of the [steel] industry*" (<https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination>) (accessed on 28 August 2018).

4. See the Presidential Proclamation 9705 on Adjusting Imports of Steel into the United States, published on 8 March 2018 (<https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states/>) (accessed on 28 August 2018) and the Presidential Proclamation 9704 on Adjusting Imports of Aluminum into the United States, published on 8 March 2018 (<https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states/>) (accessed on 28 August 2018).

5. See the Turkish Official Gazette dated 25 June 2018 and numbered 30459.

6. See the Presidential Proclamation 9772 Adjusting Imports of Steel Into the United States, published on 10 August 2018 (<https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states-5>) (accessed on 28 August 2018), effective as of 13 August 2018.

7. See the Turkish Official Gazette dated and numbered 30510.

8. See file:///C:/Users/hasan.guden/Downloads/564-1%20(2).pdf (accessed on 28 August 2018).

9. See the Council of Ministers' decision dated 11 June 2018 and numbered 2018/11973.

10. The Office of the U.S. Trade Representative is responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy, and overseeing negotiations with other countries.

11. See Trade Act of 1974, Title V, §503 (d)(2)(A)

(<https://ustr.gov/sites/default/files/files/gsp/GSP%20statute%20updated%20to%202017.pdf>) (accessed on 28 August 2018).

12. See <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/august/ustr-announces-new-gsp-eligibility> (accessed on 28 August 2018).

13.
See <https://www.federalregister.gov/documents/2018/08/16/2018-17712/generalized-system-of-preferences-gsp-notice-regarding-the-initiation-of-country-practice-review-of> (accessed on 19 August 2018).

14. See the retaliatory measures imposed on 25 June 2018 through the Turkish Council of Ministers' Decision no 2018/11973, as amended by the Turkish President's Decision no 21.