

# International trade in goods and services in Turkey: overview

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## RECENT TRENDS

### 1. What are the recent trends affecting the regulation of international trade in your jurisdiction?

Turkey has been a member of the World Trade Organization (WTO) since 1995. Anti-dumping, anti-subsidy and safeguard investigations are conducted in compliance with WTO agreements and principles. In late 2014 and early 2015, Turkey began to take a positive approach to the rights granted by the WTO agreements regarding trade remedies.

The paragraphs below provide a summary of recent trade remedy measures and investigations in Turkey.

In its anti-circumvention investigation concerning imports of articulated chains and parts originating in Spain, India, Sri Lanka and Thailand, the Ministry of Trade determined that an existing measure against imports from China had been circumvented through shipments consigned from the subject countries or non-substantial transformations on the product subject to the existing measure (see Communiqué No. 2019/10 published on 9 March 2019). The Ministry extended the application of the existing anti-dumping duty to imports made from the subject countries and imposed USD1,200 per ton on non-cooperating companies. Co-operating parties have been granted an exemption.

Following an expiry review investigation, the Ministry of Trade imposed an anti-dumping measure ranging between 12% and 49% on imports of electric storage water heaters from China, Italy and Serbia (see Communiqué No. 2019/11 published on 12 April 2019).

As a result of an anti-circumvention investigation, the Ministry of Trade extended the application of the anti-dumping measure varying between 21.13% and 70.44% against imports of woven fabrics of synthetic filament from China to imports of the same products from Greece (see Communiqué No. 2019/15 published on 7 May 2019).

Through its Communiqué No. 2019/6 (published on 4 May 2019), the Ministry of Trade extended the anti-dumping duty (between USD1.64 per kilogramme (kg) and USD0.75 per kg) on imports of hinges from China to imports of similar products from India. The Ministry held that imports from Germany had not circumvented the relevant measure.

The Ministry also maintained an anti-dumping duty of 23% on imports of wall clocks originating in China following an expiry review investigation, after determining that dumping or injury is likely to reoccur if the measure is terminated (see Communiqué No. 2019/17 published on 23 May 2019).

On 4 August 2019, the Ministry of Trade concluded an expiry review concerning imports of polyester synthetic staple originating in Thailand, India, Taiwan, and South Korea. It decided to maintain an anti-dumping duty varying between 6.4% and 12% (see Communiqué No. 2019/26).

On 21 October 2019, through Communiqué No. 2019/1676, the Ministry concluded its safeguard investigation on yarns made of nylon or other polyamides. The Ministry considered that there had been a significant, substantial and sharp increase in imports of partially oriented yarns, drawn textured yarns and fully drawn yarns during the period of investigation. It observed that yarns made of nylon or other polyamides are imported in such increased quantities and under such conditions that they are causing or threatening to cause serious injury to domestic producers producing like or directly competitive products. The Ministry also took into consideration the public interest principle, and considered that the products under investigation constituted an input for the production of socks and many other products that are crucial for the production and export sectors. Consequently, to ease the effects of the safeguard measure on user industries, and taking into consideration the fact that price undercutting resulting from worldwide imports is lower than the price undercutting caused by imports from China and Taiwan the Ministry determined that a safeguard measure should be applied in the form of additional fiscal liability that will decrease over the course of three years. Imports of textured nylon yarns and other yarns are now subject to a duty of USD0.3 per kg and imports of partially oriented yarns and fully drawn yarns are subject to a duty of USD0.10 per kg in the form of additional fiscal liability.

The Ministry of Trade also conducted an anti-circumvention investigation to determine whether the anti-dumping duty imposed on imports of diethyl terephthalate from South Korea had been circumvented through imports of a slightly modified product from the same country. The Ministry held that there had been circumvention of the measure on the ground that there had been a change in pattern of trade between Turkey and South Korea with respect to diethyl terephthalate products. It decided to impose an anti-dumping duty of 12.57% on imports of the subject product (except for one co-operating company that will be subject to a duty of 7.99%) (see Communiqué No. 2019/32 published on 9 November 2019).

In its Communiqué No. 2019/33, announced on 4 January 2020, the Ministry decided to maintain the application of the anti-dumping duty on imports of instantaneous gas water heaters originating in China, with new rates that range between 20.12% and 59.65%.

On 4 January 2020, the Ministry of Trade concluded an expiry review investigation concerning imports of aluminium foils. The Ministry held that imports originating in China caused price depression and price undercutting and therefore determined that the absence of anti-dumping duty would be likely to result in the continuation or recurrence of dumping and injury. Therefore, the Ministry decided to maintain the anti-dumping duty of 22% on imports of aluminium foils originating in China (see Communiqué No. 2019/34).

On the same date, the Ministry completed its expiry review concerning imports of laminated floorings originating in China and Germany and determined that the expiry of the anti-dumping duty would be likely to result in the continuation or recurrence of dumping and injury. The Ministry consequently decided to impose anti-dumping duties ranging between USD0.30 and USD1.05 per

square metre on imports originating in Germany and between USD1.60 to USD2.40 per square metre on imports originating in China.

On 7 January 2020, the Ministry of Trade decided, in an expiry review concerning imports of pocket lighters, to continue applying an anti-dumping duty of USD0.05 per piece for refillable pocket flint lighters and of USD0.02 per piece for plastic parts of such lighters (see Communiqué No. 2019/35).

The anti-dumping measures against imports of blankets originating in China were terminated through Communiqué No. 2019/25 on 4 August 2019. The Ministry of Trade highlighted that the application of an additional 20% customs duty with a 12% customs duty had led to an increase in the price of the products and therefore diminished the effect of imports on the prices of domestic producers. It concluded that the deterioration of the domestic industry's economic indicators was not caused by imports originating in China.

On 31 January 2019, in Communiqué No. 2020/1, the Ministry of Trade announced the anti-dumping measures that will expire in 2020, which concern the following products:

- Primary fibre surface papers originating in the US.
- Suspension type of polyvinyl chloride originating in the US and Germany.
- Door locks originating in China.
- New pneumatic tyres of rubber and inner tubes of rubber used for bicycles originating in China, India, Thailand, Indonesia, and Malaysia.
- New pneumatic tyres of rubber and inner tubes of rubber used for motorcycles originating in China, Thailand, Indonesia, and Malaysia.
- Plastic ballpoint pens with liquid ink originating in China.
- Tempered or laminated safety glasses and laminated bullet-resistant safety glasses originating in China and Israel.
- Welding machines originating in China.

Ongoing anti-dumping investigations are as follows:

- Yarn of manmade or synthetic or artificial staple fibres originating in China, Indonesia, India, Malaysia, Pakistan, Thailand, and Vietnam (see Communiqué No. 2019/2 published on 31 December 2018).
- Plastic baby products originating in Thailand and China (see Communiqué No. 2019/23 published on 4 August 2019).
- Fully drawn yarn originating in China, Malaysia, and India (see Communiqué No. 2019/23 published on 4 August 2019).
- Polyester textured yarns originating in Vietnam, Thailand, Malaysia, Indonesia, and China (see Communiqué No. 2019/24 published on 4 July 2019).
- Tarpaulin made of polyethylene/polypropylene originating in China and Vietnam (see Communiqué No. 2019/30 published on 8 November 2019).
- Vulcanised rubber thread and cord originating in Malaysia (see Communiqué No. 2019/31 published on 16 November 2019).
- Woven fabrics of synthetic filament yarns originating in China, Taiwan, South Korea, Malaysia, and Thailand (Communiqué no. 2019/37 published on 4 January 2020).

Safeguard measures are currently being applied on the following products:

- Wallpapers from any country.
- Flat glasses, BOPP films, and polyester staple fibres originating in Iran.

- Polyethylene terephthalate (PET) originating in South Korea.
- Toothbrushes from any country.
- Yarns made of nylon or other polyamides from any country.

## TRADE AGREEMENTS

### 2. Is your jurisdiction a member of the World Trade Organization (WTO)? What are the main international, regional or bilateral trade agreements to which your country is a party?

Turkey is a member of the WTO. Turkey has signed and ratified the following free trade agreements (FTAs), bilateral investment treaties (BITs) and trade and co-operation agreements, among others:

- FTAs with Albania, Bosnia-Herzegovina, Chile, the European Free Trade Association (EFTA) countries, Egypt, the Faroe Islands, Georgia, Israel, Jordan, Lebanon, Macedonia, Malaysia, Mauritius, Moldova, Montenegro, Morocco, Palestine, South Korea, Singapore, Serbia, Syria (suspended since 2011) and Tunisia.
- BITs with Afghanistan, Albania, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, China, Croatia, Cuba, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Hungary, India, Indonesia, Iran, Israel, Italy, Japan, Jordan, Kazakhstan, Kyrgyzstan, Kuwait, Latvia, Lebanon, Libya, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Moldova, Mongolia, Morocco, The Netherlands, Oman, Pakistan, the Philippines, Poland, Portugal, Qatar, Romania, the Russian Federation, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Syria, Tajikistan, Thailand, Tunisia, Turkmenistan, the United Arab Emirates, Ukraine, the UK, the US, Uzbekistan and Yemen.
- Trade and co-operation agreements with Afghanistan, Argentina, Australia, Bangladesh, Brazil, China, Colombia, India, Indonesia, Israel, Kyrgyzstan, Lebanon, Malaysia, Mexico, Moldova, Mongolia, Oman, Pakistan, the Philippines, Qatar, the Russian Federation, South Korea, Syria, Thailand, Ukraine, Uruguay and Yemen.

In addition, Turkey is a member of the Organisation of Islamic Cooperation, the Economic Cooperation Organization, and the Organization of the Black Sea Economic Cooperation.

## TRADE NEGOTIATIONS

### 3. What are the authorities responsible for negotiating trade agreements? How long does it usually take to conclude a trade deal with your country?

The Ministry of Trade is responsible for the negotiation, conclusion and monitoring of the implementation of trade agreements. Additionally, the Ministry of Treasury and Finance is responsible for concluding and implementing agreements for the avoidance of double taxation.

The duration of trade negotiations varies greatly. For example, Turkey has been negotiating an FTA with the Russian Federation since 2014. By contrast, the negotiations for an FTA with Kosovo started in 2014 and came to a conclusion in 2015.

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#### 4. Does your country apply interim rules during trade negotiations?

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Turkey does not have an established practice as to the application of interim rules during trade negotiations. However, there are no legal restrictions that prevent Turkey from applying more favourable terms during trade negotiations. Interim rules may therefore be applied on a case-by-case basis. As a member of the WTO, Turkey otherwise applies WTO rules during trade negotiations.

### SUPPLY OF SERVICES

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#### 5. Is your jurisdiction a party to international agreements on cross-border trade in services? Is your jurisdiction taking part in the negotiations of the Trade in Services Agreement (TiSA)?

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Turkey signed and ratified the WTO General Agreement on Trade in Services (GATS) in 1994.

Some of Turkey's FTAs contain services provisions, such as those signed with Albania, Bosnia and Herzegovina, Egypt, Israel, Jordan, Macedonia, Montenegro, Morocco, Palestine, Syria, and Tunisia. Additionally, some BITs contain services provisions, such as those signed with Bangladesh, Bulgaria, China, Greece, Italy, Lebanon, The Netherlands, Oman, the Russian Federation, Singapore, Tunisia and the US.

Turkey is also actively engaged in the negotiations of the TiSA.

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#### 6. What domestic legislation and international rules apply to the supply of financial services, legal services and retail sales in your jurisdiction? What are the main requirements that suppliers must comply with?

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##### Financial services

The financial services sector in Turkey is broadly made of the banking, securities and insurance sectors. Turkey's specific commitments to the WTO relating to financial services under the GATS can be found under Turkey's Schedule of Specific Commitments (GATS/SC/88/Suppl.3).

As the financial services sector is a regulated sector, companies operating in this sector must comply with the conditions set out in the relevant legislation.

The following authorities regulate the financial services sector:

- The Central Bank of Turkey.
- The Undersecretariat of Treasury.
- The Capital Markets Board.
- The Banking Regulation and Supervision Agency (BRSA).
- The Savings Deposit Insurance Fund.
- The Banks Association of Turkey.
- The Istanbul Stock Exchange.

**Banking.** The banking sector in Turkey is strictly regulated. The legislation related to the banking sector in Turkey includes the following:

- Banking Law (numbered 5411).
- Bank Cards and Credit Cards Law (numbered 5464).
- Financial Leasing, Factoring and Financial Companies Law (numbered 6361).

- Law on Payment and Security Settlement Systems, Payment Services and Electronic Money Institutions (numbered 6493).
- Relevant secondary legislation such as regulations, communiqués and guidelines that are issued by the relevant authorities.

The main requirements that suppliers of banking services must comply with include obtaining banking licences. The procedures in this regard are heavily regulated by the Banking Law and the related regulations. The following licences must be obtained from the BRSA:

- An establishment permission, to establish a bank or a foreign bank's branch in Turkey.
- An operation licence, to carry out banking, financial leasing and/or factoring activities in Turkey.

In Turkey, banks must be established as joint stock companies with a minimum share capital of TRY30 million. Additionally, the establishment of a bank and opening of the first branch of a foreign bank require the BRSA's authorisation. There are therefore no nationality or residency requirements. However, there are some requirements relating to the founders (for example, not to have been declared bankrupt and not to have been sentenced for a felony). The shares in the bank must be issued against cash and to the name of the holder.

Once properly licensed, banks can carry out the following activities, depending on the type of bank:

- Accepting deposits.
- Accepting participation funds.
- Granting loans, in cash or non-cash.
- Carrying out payment and collection transactions, including cash and deposit payments and fund transfer transactions, corresponding bank transactions, or using cheque accounts.
- Purchasing transactions of commercial bills.
- Safekeeping services.
- Issuing payment instruments, such as credit cards, bank cards and travel cheques, and carrying out related activities.
- Carrying out foreign exchange transactions, trading money market instruments, trading precious metals and stones, and safekeeping these.
- Trading and intermediation of forward, future and option contracts, simple or complex financial instruments involving multiple derivative instruments based on economic and financial indicators, capital market instruments, goods, precious metals and foreign exchange.
- Purchase and sale of capital market instruments and repurchasing or resale commitments.
- Issuance or public offering of capital market instruments.
- Transactions for trading previously issued capital market instruments for intermediation purposes.
- Guarantee transactions, such as undertaking guarantees and other liabilities in favour of other persons.
- Investment counselling services.
- Portfolio operations and management.
- Primary market dealing for purchase-sale transactions, within the framework of liabilities assumed under contracts signed with the Treasury and/or Central Bank and associations of institutions.
- Factoring and forfeiting transactions.

- Intermediating fund purchase-sale transactions in the inter-bank market.
- Financial leasing services.
- Insurance agency and individual private pension fund services.
- Other activities to be determined by the BRSA.

However, regulated activities differ depending on the bank. For example:

- Deposit banks cannot engage in activities such as accepting participation funds or financial leasing services.
- Participation banks cannot engage in accepting deposits.
- Investment banks cannot accept deposits or accept participation funds.

In addition, a bank can be subject to other licensing requirements under capital markets legislation, depending on its activities.

Establishing a representative office of a foreign bank also requires a licence from the BRSA. The operations of representative offices are restricted under the Licence Regulation and the BRSA Communiqué on the Principles and Procedures for the Activities of Representative Offices in Turkey. Representative offices can carry out the following activities:

- Provide publicity for the affiliated bank and its services.
- Improve relations with credit institutions or financial institutions established in Turkey.
- Conduct market research and report on collected data to the head office.

However, representative offices cannot:

- Accept deposits or participation funds.
- Provide loan facilities.
- Conduct any activities that can be carried out by banks (as defined in the Banking Law) or intervene in such actions.
- Have any income-bearing activities.
- Have any expense-bearing activities, other than compulsory expenditures and donations.

In Turkey, banks must:

- Apply the uniform accounting system set out in the principles and procedures determined by the BRSA in accordance with the opinion of the Public Oversight, Accounting and Auditing Standards Authority and institution associations.
- Account for all their transactions in line with their real characteristics, in accordance with the accounting and financial reporting standards published by the Public Oversight, Accounting and Auditing Standards Authority.
- Prepare their financial statements in a form and content that meet the demand of knowledge acquisition, in an understandable, trustable and comparable manner, in time and correctly, and in a manner suitable for auditing, analysing and interpretation.

Additionally, banks must not settle their balance sheets without ensuring that they correspond to the legal and auxiliary books and records of their domestic and foreign branches.

**Securities.** The securities sector in Turkey is mainly regulated by the Capital Markets Board and governed by the Capital Markets Law (numbered 6362). Additionally, communiqués issued by the Capital Markets Board constitute an important source of regulation of the sector.

Capital market institutions must be incorporated as joint stock companies, and all of their shares must be registered and issued for cash. Capital market institutions must obtain a permission from the Capital Markets Board to operate.

Capital market institutions that can operate in Turkey are as follows:

- Investment firms.
- Collective investment schemes.
- Independent audit firms, appraisal firms and credit rating agencies that are to perform activities in the capital market.
- Portfolio management companies.
- Mortgage finance institutions.
- Housing finance and asset finance funds.
- Asset leasing companies.
- Central clearing institutions.
- Central depository institutions.
- Trade repositories.
- Other capital market institutions, the establishment and activity principles of which are determined by the Board's common provisions.

Capital markets institutions must prepare and publish financial statements and reports, and comply with corporate governance principles. Under the Capital Markets Law, a capital market institution must prepare and submit financial statements and reports to be disclosed to the public, or as requested by the Capital Markets Board when necessary. These statements and reports must comply with the regulations established by the Capital Markets Board in the framework of the Turkish Accounting Standards in terms of format and content and be prepared in a timely, complete and accurate manner.

Capital market activities covered by the Capital Markets Law are as follows:

- Financial intermediation for the public offering or issuing of capital market instruments that are to be registered with the Capital Markets Board.
- Intermediation of previously issued capital market instruments.
- Financial intermediation for trading in futures contracts based on economic and financial indicators, capital market instruments, commodities, foreign currency and precious metals.
- Repo and reverse repo agreements.
- Portfolio management and investment consulting.
- Margin trading and securities lending, and short-selling of securities.
- Capital market activities of other capital markets institutions.

Intermediary institutions must obtain a licence from the Capital Markets Board to be able to deal in securities transactions. The Capital Markets Board determines the minimum conditions for authorisation and examines each licence application based on these requirements.

**Insurance.** The insurance and reinsurance sector in Turkey is regulated by the Insurance Association of Turkey and the Undersecretariat of Treasury. The main laws are the:

- Insurance Law (numbered 5684).
- Turkish Commercial Code (Sixth Book: Insurance Law) (numbered 6102).



- Private Pension Savings and Investment System Law (numbered 4632).
- Catastrophe Insurance Law (numbered 6305).

Companies intending to operate as insurance or reinsurance companies must obtain the prior approval of the Ministry of Trade for their incorporation, and be incorporated as joint stock companies or cooperatives. Foreign insurance and reinsurance companies can also operate in Turkey by establishing branches. No prior approval is required for the incorporation of branches of foreign insurance or reinsurance companies. Insurance and reinsurance companies can only engage in insurance and reinsurance activities. In addition, founders of these companies are subject to certain requirements (such as not being bankrupt or not having been convicted for a felony).

The incorporation procedure is completed through registration of the company in the relevant trade registry. The documents required for registration are defined in the relevant legislation.

An application must be made to the Treasury to obtain an operation licence within one year from the incorporation of the company in the relevant trade registry, failing which the company will not be allowed to use the terms "insurance" or "reinsurance" in its commercial title. Insurance companies can only operate in either the life insurance or the non-life insurance sector and must obtain the relevant licences for each separate branch in which they would like to operate.

On obtaining an operation licence, a company/branch must become a member of the Insurance Association, a professional organisation that has the status of a public legal entity. Membership is subject to payment of an entrance fee of TRY110,000 (for 2020) and subsequent yearly contributions calculated on the basis of each relevant insurance company's premium production.

The main ongoing requirements for insurance and reinsurance companies are as follows:

- **Corporate requirements.** Changes in the governance of companies (such as appointments/dismissals of board members, managers or auditors) and in their shareholding structure (such as share transfers/pledges, mergers, issuances of bonds, notes or capital market instruments) are subject to notification to, and/or approval by, the Treasury.
- **Financial requirements.** Insurance and reinsurance companies must maintain at all times a capital adequacy ratio meeting the requirements of the Treasury (and strengthening of their financial situation may be requested in this respect), as well as appropriate reserves to cover liabilities arising from their insurance contracts.
- **Reporting requirements.** Insurance and reinsurance companies must submit to the Treasury:
  - reinsurance reports on the conclusion of any new treaty;
  - quarterly reports on outsourced support services;
  - quarterly and yearly reports on their financial statements; and
  - yearly activity reports and independent audit reports.
  - The electronic submission of audit reports and reinsurance reports to the Treasury has been enabled.
- **Operational requirements.** Insurance and reinsurance companies must maintain at all times internal systems (control, audit and risk management) and IT systems that are appropriate for their level of activity.

## Legal services

**Regulatory framework.** The main law governing the provision of legal services is the Attorneyship Law No.1136 of 19 March 1969.

**Main requirements.** To become a licensed lawyer in Turkey, an individual must:

- Be a Turkish citizen.
- Be a graduate from a law faculty in Turkey or pass the related exams required by the Turkish Law Faculties (for foreign graduates).
- Obtain a certificate following completion of a one-year traineeship with a Turkish Bar.
- Have a legal domicile in the jurisdictional area of the bar association in the directory of which registration is sought.
- Not be in an unfit state for attorneyship under the current law (this includes provisions relating to criminal and disciplinary records, financial standing, mental and physical impairment, reputation, and incompatibility with other professions and activities).
- Take an oath.

The attorneyship licence need not be renewed.

An attorney cannot have more than one office. Attorneys working together cannot have separate offices. An attorney partnership cannot open a branch in Turkey. However, an attorney registered in the directory of a bar association is authorised to practise attorneyship in any part of Turkey, provided that such practice is not permanent (*Article 66, Attorneyship Law*). Limited liability and joint stock companies cannot operate in the legal sector under the current legal framework. However, some proposed amendments set out that joint stock and limited liability companies will be allowed to offer legal services.

The following activities are reserved to Turkish attorneys enrolled with bar associations:

- Providing opinions in legal matters.
- Litigating and defending the rights of real persons and legal entities before the courts, arbitrators, and other bodies invested with jurisdictional powers.
- Managing all documentation associated with such litigation.

(*Article 35, Attorneyship Law*.)

The title of "*Avukat*" (attorney) is also protected.

Lawyers must also comply with the Professional Rules of the Union of Bar Associations of Turkey and the Prohibition of Publicity Regulations. Lawyers must join the collective insurance scheme.

Licences for both individuals and firms are issued by the relevant local bar association. The Union of Turkish Bars provides an appeal process where licences are refused. A link to all the Turkish local bar associations is available on the website of the Union of Turkish Bars.

Foreign lawyers can join foreign attorney partnerships and provide services related to foreign and international law. Foreign attorney partnerships and their partners must comply with the Attorneyship Law, the Turkish Bar regulations and professional rules. The Foreign Attorney Partnership Regulations also require reciprocal arrangements in the foreign attorney's home country.

There is no special licence granted to foreign lawyers other than the licence granted to the foreign attorney partnership. Each foreign partner in a law firm must receive approval from the relevant local bar by submitting a licence or certificate of authorisation from his or her home certifying body confirming that he/she is enrolled as a lawyer in the foreign country, and that there are no impediments to the practice of his/her profession. Additionally, reciprocity must be observed between Turkey and the home country of the foreign lawyer.

Foreign lawyers can undertake both international arbitration and mediation.

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## Retail sales

There are no specific regulations relating to the retail sales sector.

However, retailers must comply with certain sanitary, public health-related and environmental regulations issued by the relevant ministries.

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## 7. Are there restrictions on market access for specific services sectors?

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Certain services sectors are natural monopolies, including:

- Railroads.
- Postal services.
- Satellites.
- Production and distribution of electricity.
- Lottery.
- Highway services.

## IMPORTS

### Customs authority

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## 8. What is the authority responsible for enforcing customs laws and regulations?

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Customs legislation is enforced by both central and provincial organisations of the Ministry of Trade. In provincial organisations, the authority is carried out by customs offices.

According to the Ministry of Trade, any goods subject to high taxation or additional financial liability must undergo special examination procedures, including full inspection, laboratory analysis, appraisal report, and so on.

The main laws covering customs authorisation, investigations and legal proceedings are the:

- Anti-Trafficking Law.
- Customs Law.
- Turkish Criminal Law.

Administrative fines can be issued by customs offices in the case of attempt to evade tax (*Articles 234 and 238, Customs Law*) or other irregularities (*Articles 239 and 241, Customs Law*).

### Import duties, tariffs and rates

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## 9. What are the main customs import tariffs and duties?

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### General tariffs and rates

The main import customs duties are determined yearly by the Ministry of Trade along with any new import regimes. Customs duties are determined using the Harmonized Commodity Description and Coding System and consist of countervailing duties, excise duties and value added tax (VAT).

The following are examples of duties that can be imposed on imports:

- Customs duties (at an average rate of 5%).
- Additional customs duties (the scope of the additional customs duties was recently extended to include household appliances, cranes, tractors, diesel engines, pumps, generators, motorbikes, and bikes).

- Single and fixed taxes.
- Anti-dumping duties.
- Anti-subsidy duties.
- VAT (at 1%, 8% or 18%, depending on the product).
- Private consumption tax (the rates of private consumption tax have been recently increased for motor vehicles and e-bikes).
- Housing development fund.
- Tobacco fund.
- Resource utilisation support fund (this tax has been lifted for over 10,000 industrial products, most of which are raw materials).
- Environmental contribution margin.
- Countervailing duty.
- Banderol fee.

Tariff quotas may also be imposed by presidential decrees, which may set out certain quantitative quotas below which imported goods are subject to reduced customs duties or no customs duties.

### Preferential tariffs

Preferential tariffs apply under the following instruments and rules:

- Decision No 1/2006 of the EC-Turkey Association Council of 15 May 2006 on the implementation of Article 9 of Decision No 1/95 of the EC-Turkey Association Council on implementing the final phase of the Customs Union. This ensures the free movement of goods between Turkey and EU countries.
- The system of pan-Euro-Med cumulation of origin, which operates between the EU and the EFTA states (Iceland, Liechtenstein, Norway and Switzerland) and Turkey, among others.
- Cumulation of origin with the western Balkans, including Macedonia, Montenegro, Serbia, Albania and Bosnia and Herzegovina.
- Bilateral FTA with Malaysia.
- Bilateral FTA with South Korea.

### Non-tariff barriers to imports

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## 10. Are there non-tariff barriers to imports into your jurisdiction?

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Generally, a certificate of origin is not required for importing goods into Turkey. However, where a product or packaging includes a sign of a country that is different from the actual country of origin, the customs authority will not allow such product to enter Turkey freely. When imported goods (especially textile and apparel products) are subject to safeguard measures or additional customs duties, the customs authority will request a certificate of origin together with other documents.

Turkey has very strict safeguard mechanisms to protect the development of the domestic industry. The manufacturing of products in Turkey has increased markedly and some additional taxes have recently been imposed. Lately, it has been required in government tenders that 50% of products used must be local, complete with their certificates of origin. Additionally, Turkey has adopted plans to progressively achieve the national production of a substantial part of pharmaceutical products consumed in Turkey. To achieve this objective, Turkey requires foreign producers to commit to localise the production of certain pharmaceutical products in Turkey. If these commitments are not given, not accepted by Turkish authorities, or not fulfilled, the pharmaceutical products concerned

are excluded from the scheme for the reimbursement of pharmaceutical products sold by pharmacies to patients, which is operated by Turkey's social security system.

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### 11. Can customs decisions and import restrictions be challenged?

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Customs decisions can be challenged in court (*Article 242, Customs Law*).

## TRADE REMEDIES

### Regulatory framework

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### 12. What are the main regulations on trade remedies? What are the authorities responsible for investigating and deciding on trade remedies?

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#### Regulatory framework

As a member of the WTO, Turkey is bound by the Agreement Establishing the World Trade Organization and the agreements annexed to it (for example, the General Agreement on Tariffs and Trade 1994 (GATT 1994), the Agreement on Subsidies and Countervailing Measures, the Agreement on Implementation of Article VI of GATT 1994 and the Agreement on Safeguards).

Anti-dumping and anti-subsidy legislation includes:

- Law No. 3577 on the Prevention of Unfair Competition in Imports.
- Regulation No. 23861 on the Prevention of Unfair Competition in Imports.
- Decree No. 99/13482 on the Prevention of Unfair Competition in Imports.
- Communiqué No. 2008/6 on the Prevention of Unfair Competition in Imports.
- Rules and Principles on the Implementation of Communiqué No. 2008/6 on the Prevention of Unfair Competition in Imports.

Safeguard legislation includes:

- Decree No. 2004/7305 on Safeguard Measures in Imports.
- Regulation No. 25486 on Safeguard Measures in Imports (Safeguard Regulation).

Anti-circumvention measures are regulated by:

- Article 11 of Decree No. 99/13482 on the Prevention of Unfair Competition in Imports.
- Articles 4(4)(j) and 38 of Regulation No. 23861 on the Prevention of Unfair Competition in Imports.

Surveillance measures are regulated by:

- Decree No. 25476 on Safeguard Measures in Imports.
- Regulation No. 25486 on Safeguard Measures in Imports.

#### Regulatory authority

The Ministry of Trade is the authority competent for the initiation, conduct and termination of trade defence investigations. Customs offices have powers to implement and monitor these measures.

## Investigations and enforcement

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### 13. What are the requirements and procedure to start trade remedies investigations?

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Domestic producers who make a complaint under the Law on the Prevention of Unfair Competition in Imports can initiate anti-dumping, anti-subsidy, expiry/interim review, anti-circumvention, and/or safeguard investigations.

The Ministry of Trade provides the following questionnaires for complaint/application (all correspondence must be in Turkish):

- Dumping and subsidy investigations complaint guide and form (<https://ticaret.gov.tr/data/5bb71aa113b87613d802b783/Damping%20ve%20S%C3%BCbvansiyon%20Soru%C5%9Fturmas%C4%B1%20Ba%C5%9Fvuru%20Formu%202019.rar>).
- Expiry review investigation complaint form ([https://ticaret.gov.tr/data/5bb71aa113b87613d802b783/NGG\\_S\\_Basvuru\\_Formu-2019%20V1.zip](https://ticaret.gov.tr/data/5bb71aa113b87613d802b783/NGG_S_Basvuru_Formu-2019%20V1.zip)).

Certain procedural requirements apply to the Ministry during trade defence investigations. Accordingly, the Ministry must ensure transparency, protect the relevant parties' confidential information and allow them to defend themselves.

Relevant parties are expected to submit any requested data to the Ministry together with a non-confidential summary of their responses to the questionnaire. They must allow the Ministry to conduct a verification visit.

Interested parties wishing to co-operate with the Ministry can take the following steps:

- Responding to the Ministry's questionnaires within the deadlines.
- Providing comments about investigations to the Ministry.
- Receiving non-confidential versions of information provided to the Ministry by other parties.
- Presenting arguments against/in favour of the Ministry's findings/evaluations.
- Requesting a public or private hearing.
- Suggesting price undertakings to the Ministry.

When parties do not co-operate, the Ministry of Trade makes its determinations/findings on the basis of the facts available. Failure to co-operate with the Ministry can result in less favourable outcomes.

## Appeals

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### 14. Is there a right of appeal against the authority's decision? What is the applicable procedure?

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Decisions of the Ministry of Trade can be challenged through the following procedures:

- Submission of an application to the Ministry requesting the annulment, withdrawal or revision of the Ministry's decision.
- Appeal before the competent court for the annulment or suspension of execution of the Ministry's decision.

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## EXPORTS

### Regulatory framework

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#### 15. What are the main requirements to export goods from your jurisdiction? What are the authorities responsible for enforcing export regulations and controls?

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Export transactions require a customs declaration and certificate of origin. Additionally, exporters must be members of an export association and pay an annual membership fee. Assessments of compliance with export requirements are subject to a thorough analysis conducted on a case-by-case basis.

The relevant regulations include the:

- Export Regime Decree (22 December 1995 No. 95/7623).
  - Export Regulation (published in the *Official Gazette* dated 6 June 2006 No. 26190).
- 

#### 16. Are certain categories of goods subject to specific export quotas, restraints or other controls?

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Specific export rules and controls include the following:

- Payment to the support and price stabilisation fund for export of substances subject to premium cuts (for example, hazelnuts in shell are subject to export payments of 0.04USD per kg and shell-free hazelnuts are subject to export payments of 0.08USD per kg).
- Special accounts for export of assets acquired under loan facilities.
- Exportation under the Natural Gas Agreement between Turkey and Russia.
- Exports to countries that apply quantity restrictions to Turkey's exported goods.
- Exports to countries that are subject to economic sanctions under a decision of the United Nations.
- Regulation Regarding Organic Agriculture Essentials and Implementation, which provides a list of goods requiring a certification.

### Penalties

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#### 17. What are the consequences of non-compliance with export regulations?

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Under anti-smuggling laws, any person that takes prohibited goods outside the country can be subject to a prison sentence of between one to three years or can be fined to the equivalent of 5,000 calendar days. Under Article 52(2) of the Turkish Criminal Law, the amount of a fine equivalent to one day varies between TRY20 and TRY100 and must be determined on the basis of the economic situation and other personal characteristics of the concerned person.

The penalties for non-compliance with export regulations are as follows:

- When export is prohibited under general regulatory administrative acts: a fine equivalent to twice the product's customs value plus duties.
- When a good is exported without the necessary compliance certificate or conditions: a judicial fine equivalent to the product's customs value plus duties.

## INTERNATIONAL TRADE RESTRICTIONS

### Trade sanctions

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#### 18. Are there specific restrictions on trade with certain jurisdictions?

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Turkey determines its trade restriction policies in accordance with the UN and WTO principles and rules. Additionally, Turkey may apply additional customs duties through the publication of a decree. Turkey suspended its FTA with Syria in 2011.

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#### 19. What is the authority responsible for imposing trade restrictions?

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The Ministry of Trade is responsible for adopting most trade restrictions. Customs offices are authorised to apply the Ministry's decisions.

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#### 20. What are the consequences of non-compliance with trade restrictions?

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Non-compliance with trade restrictions can result in imprisonment, criminal fines or administrative fines (*Article 3, Anti-Trafficking Law; Articles 234 and 235, Customs Law*).

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#### 21. Are businesses subject to specific compliance requirements? What practical steps should a business take to ensure compliance with trade restrictions?

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There are no specific compliance requirements for businesses. It is common for the relevant ministries and offices as well as non-governmental organisations to schedule occasional training/compliance programmes.

### Foreign trade barriers

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#### 22. What is the procedure for local exporters to complain against foreign trade barriers contrary to the WTO or other trade agreements?

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Interested parties can complain to the Directorate General for Exports of the Ministry of Trade about foreign trade barriers. There is no specific procedure.

## DEVELOPMENTS AND REFORM

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#### 23. Are there impending developments or proposals for reform affecting international trade in goods and services?

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Turkey has not yet implemented the Union Customs Code (UCC) (*Regulation (EU) 952/2013*), UCC Implementing Act (*Regulation (EU) 2015/2447*), and UCC Delegated Act (*Regulation (EU) 2015/2446*), which entered into force in 2017. Therefore, the Turkish Customs Law and its implementing regulations are still based on Regulation (EEC) 2913/92 establishing the Community Customs Code and the provisions for its implementation. The Turkish Government is currently discussing draft customs legislation and it is likely that the rules to be enacted will be more harmonised with EU rules. Additionally, the Ministry of Trade has recently been working on achieving customs digitalisation, modernisation and transparency to facilitate safe trading and fight smuggling.



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Following Turkey's retaliatory additional duties on USD1.78 billion of US imports, the Office of the US Trade Representative announced on 3 August 2018 the initiation of a review of Turkey's eligibility for the US Generalized System of Preferences (GSP) programme. The allegation underlying this review is that Turkey no longer complies with the market access criterion, requiring Turkey to ensure the US reasonable and equitable access to its market. As a result of this review, Turkey was expelled from the US GSP programme on 19 May 2019 through Proclamation 9887.

Other recent and impending developments include the following:

- In June 2019, Turkey and Canada entered into a Memorandum of Understanding establishing a Joint Economic and Trade Committee (JETCO) to strengthen the economic ties between the two countries.

- Turkey is currently focusing on a potential FTA with Japan.
- Turkey is closely monitoring developments in the Brexit process and is discussing all the precautions that can be taken to avoid potential trade barriers post-Brexit. In this context, the Presidency of the Republic of Turkey published on 1 February 2020 Circular no 2020/1 on the Transition Period Concerning the UK's Departure from the EU on the UK withdrawal from the EU. This provides that all public institutions should treat the UK as an EU member state until the end of transition period, which is expected to last until 31 December 2020, and reaffirms that the purpose of the transition period is to ensure legal continuity and certainty after the realisation of Brexit until a new legal instrument that governs the relationship between the UK and the EU comes into force.

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### Recent transactions

- Represented Essilor Group in relation to the merger control filing of Essilor's merger with Luxottica Group.
- Represented EssilorLuxottica in relation to the merger control filing of EssilorLuxottica's acquisition of Granvision.
- Represented GIC Group in relation to the merger control filing of GIC Group's acquisition of four luxury hotels from Oxford Properties Group.

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- Non-governmental agent of the Turkish Competition Authority to the International Competition Network.
- Board Member at the Turkish Ethics & Reputation Society.
- Associate Member of the American Bar Association (ABA).
- Member of the Antitrust and M&A Committees and national reporter of the International Antitrust Committee.
- Lectures EU and Turkish competition law at the Marmara University EU Institute and lectures occasionally on "mergers and acquisitions", "international trade remedies" and "competition law aspects of EU and Turkish environmental law".

### Publications

- *Merger Control in the EU and Turkey, A Comparative Guide, published by Wolters Kluwer, co-author (2019).*
- *Trade & Customs: Turkey – Getting the Deal Through (2015, 2016, 2018, 2019 and 2020).*
- *Private Antitrust Litigation: Turkey – Getting the Deal Through (2015, 2016, 2017, 2018, 2019 and 2020).*
- *Competition Compliance: Turkey – Getting the Deal Through (2017, 2018 and 2019).*
- *Transparency of the Regulatory Authorities: An Analysis of Transparency of Competition Investigations in Turkey, Freedom Research Association, 2016.*
- *Regulation, Deregulation and Competition Law in Liberal Professions (Rekabet Dergisi/Competition Journal, 2013).*
- *Turkish Competition Law Enforcement: An Ounce of (Compliance) Prevention is Better than a Pound of (Enforcement) Cure, (American Bar Association/ International Antitrust Bulletin, 2011).*
- *Merger Control in Turkey: The "Catch-up All" Threshold Mechanism needs an Adjustment, (American Bar Association/ International Antitrust Bulletin, 2009).*
- *Competition Law Aspects of Mergers and Acquisitions in the EU and Turkish Law: Does Turkey Call for a Merger Reform? The Answer and a Policy Proposal, 2007, PhD Thesis.*
- *The International Trade Law Review, Turkey Chapter (4th and 5th Editions).*

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- Represented Essilor Group in relation to the merger control filing of Essilor's merger with Luxottica Group.
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- *Competition Compliance: Turkey – Getting the Deal Through (2017, 2018 and 2019).*
- *"The European Antitrust Review 2011", Turkey Chapter, Global Competition Review.*
- *"The Evaluation of the Presumption of Concerted Practices in the Turkish Competition Act and of its Utilization under the Case Law of The European Court of Justice", Turkish Competition Journal, July 2009.*

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# Sale and storage of goods in Turkey: overview

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## CONTRACTS FOR THE SALE OF GOODS

### Legislative framework

1. **What domestic legislation and international rules apply to a sale of goods contract in your jurisdiction? Are standard international contractual terms commonly used?**

#### Domestic legislation

The main domestic legislation that applies to a sale of goods contract is as follows:

- Turkish Code of Obligations (published on 4 February 2011 in the *Official Gazette no. 27836*).
- Turkish Commercial Code (published on 14 February 2011 in the *Official Gazette no. 27846*).
- Turkish Civil Code (published on 8 December 2001 in the *Official Gazette no. 24607*).
- International Private and Procedural Law (published on 12 December 2007 in the *Official Gazette no. 26728*).
- Civil Procedural Law (published on 4 February 2011 in the *Official Gazette no. 27836*).
- Law for the Protection of Consumers (published on 28 November 2013 in the *Official Gazette no. 28835*).
- Turkish International Arbitration Law (published on 5 July 2001 in the *Official Gazette no. 24453*).

#### International rules

Turkey is a party to the following international conventions:

- Vienna Convention on Diplomatic Relations 1961.
- UN Convention on Contracts for the International Sale of Goods 1980 (CISG).
- Customs Convention on the International Transport of Goods under Cover of TIR Carnets 1975.
- Convention for the Unification of Certain Rules for International Carriage by Air 1999.

#### Standard contractual terms

The following are commonly used in Turkey:

- International Chamber of Commerce International Commercial Terms (Incoterms) 2020.
- UNIDROIT Principles of International Commercial Contracts (PICC).
- Uniform Customs and Practice for Documentary Credits (UCP).
- Uniform Rules for Demand Guarantees (URDG).

### Formation

2. **What are the essential requirements to create a legally enforceable contract for the sale of goods?**

#### Substantive requirements

Turkish law on obligations requires a valid offer and acceptance to form a legally enforceable contract.

A valid offer must contain the essential components of the contract, including:

- The nature of the good(s).
- The consideration.
- An intention to exchange the item.
- An intention to create legal relations.

Following the acceptance of a valid offer, a legally enforceable contract is formed. Remaining silent on receipt of a valid offer is generally considered as a rejection. Additionally, if an acceptance includes a counter-offer, the counter-offer must be accepted by the other party to create a legally enforceable contract.

The agreement is established with the consensus of the parties. If there is a consensus on the essential components of the contract (see *above*), the contract is considered enforceable even if it does not contain secondary components (*Articles 1 and 2, Turkish Code of Obligations*).

#### Formal requirements

Valid contracts are legally enforceable under Turkish law. In principle, a contract does not need to be in writing to be valid (*Article 12, Turkish Civil Code*). However, there are some exceptions for certain transactions. For example, the sale of immovable property must be in an official written form to be enforceable (*Article 705, Turkish Civil Code*).

Although there is no language requirement affecting the validity of contracts, foreign companies must use Turkish in contracts entered into with Turkish nationals, Turkish companies or the Turkish Government. Foreign companies must also submit their documents and books to public institutions in Turkish (*Article 2, Law on the Compulsory Use of Turkish in Economic Institutions*).

Additionally, anyone wishing to submit a document in a foreign language during court proceedings must also provide the Turkish translation of the document (*Article 223, Turkish Procedural Law*).

### Price and payment

3. **If price provisions are not agreed by the parties, does local law impose requirements in relation to price (for example, the time, method and place of payment)?**

If the seller does not mention a price, the price is decided in accordance with the average market value at the place of payment



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at the time of the formation of the contract (*Article 233, Turkish Code of Obligations*).

Unless otherwise agreed by the parties, payment must be in local currency (*Article 99, Turkish Code of Obligations*) and must be made at the seller's place of residence (*Article 89, Turkish Code of Obligations*).

### **Delivery**

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#### **4. If delivery provisions are not agreed by the parties, does local law impose requirements in relation to delivery (for example, the time, method and place of delivery)?**

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Unless otherwise agreed by the parties to a sales contract, the seller has a duty to deliver the goods and the buyer has a duty to accept them. Failure by either party to perform these duties constitutes a breach of contract.

Contractual obligations are due immediately if a time of delivery is not agreed by the parties (*Article 90, Turkish Code of Obligations*).

When a consumer orders goods from a seller under a distance selling contract, the seller must deliver the goods within 30 days from receiving the order, unless otherwise agreed by the parties (*Article 16, Distance Contracts Regulation*).

The place of delivery is:

- The place where the goods are located, for generic goods.
- The residence of the buyer, for other goods.

(*Article 89, Turkish Code of Obligations*.)

The Turkish Code of Obligations contains substitute provisions for cases where the parties do not agree on a method of delivery. For example, unless it is in the creditor's interest, the debtor does not need to perform the contract personally (*Article 83, Turkish Code of Obligations*).

A debtor can fulfil its obligation partially but if the full debt is due and certain, the creditor does not have to accept partial fulfilment (*Article 84, Turkish Code of Obligations*).

### **Passing of title and risk**

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#### **5. If not agreed by the parties, when does title to the goods pass to the buyer?**

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Title to the goods passes to the buyer when the seller transfers possession of the goods to the buyer (*Article 210, Turkish Code of Obligations*).

Title to immovable goods passes when the relevant registration is made regarding the land being transferred (*Article 705, Turkish Civil Code*).

All ships are considered to be movable property regardless of whether they are registered (*Article 936, Turkish Commercial Code*).

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#### **6. Are retention of title clauses enforceable in your jurisdiction? If so, what are the requirements to create a legally enforceable retention of title clause?**

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Retention of title clauses are only enforceable for sales of movable goods (except for animals, which are considered goods under Turkish law). To create a legally enforceable retention of title clause, the contract must be recorded in a specific registry by a notary in the buyer's residential area (*Article 764, Turkish Civil Code*).

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#### **7. If not agreed by the parties, when does risk in relation to the goods pass to the buyer?**

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If not agreed by the parties, risk passes to the buyer when possession is transferred (for movable goods) or when the sale is registered (for immovable goods) (*Article 208, Turkish Code of Obligations*).

Risk passes to the buyer when he/she takes over the goods or, if he/she does not do so in due time, from the time when the goods are placed at his/her disposal and he/she commits a breach of contract by failing to take delivery (*Article 69, CISG*).

Where the contract of sale involves the carriage of the goods:

- If the seller is not bound to hand over the goods at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer.
- If the seller is bound to hand over the goods to a carrier at a particular place, the risk passes to the buyer when the goods are handed over to the carrier at that place.

(*Article 67, CISG*.)

### **Enforcement and remedies**

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#### **8. What are the seller's obligations in relation to the description and quality of the goods?**

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A seller must deliver goods that are of the quantity, quality and description required by the contract (*Article 35, CISG; Article 219, Turkish Code of Obligations*).

A seller is also responsible for any defects of quality or quantity that eliminate or significantly reduce the benefits that the buyer expects from the goods (*Article 219, Turkish Code of Obligations*).

In a consumer contract, the seller must deliver the goods in accordance with the contract (*Article 9, Turkish Code for Protection of Consumers*).

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#### **9. What are the main remedies and rules for losses and damages for breach of a sale of goods contract?**

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The main remedies for breach of contract are as follows:

- Performance and compensation for delay.
- Waiving the right to claim specific performance and asking for compensation for positive damages.
- Avoiding the contract and asking for compensation for negative damages.

Positive damages are damages incurred by the creditor because the debtor has not performed his/her obligation, or has not performed them as required.

Negative damages are losses suffered by the creditor because he/she relied on the validity of the contract.

The creditor must give a reasonable time to the debtor and a chance to perform the obligation, or the creditor can ask a judge to grant such a time. There are exceptions to this rule (*Articles 123 and 124, Turkish Code of Obligations*).

Evidence showing that the debtor is at fault is required when asking for compensation (for delay, positive or negative damages). The debtor is not held responsible if he/she proves that he/she is not at fault.

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## 10. What are the buyer's remedies for breach of a sale of goods contract?

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If the seller fails to perform his/her obligations, the buyer can ask for:

- Performance.
- A price reduction.
- Avoidance (if the breach is fundamental).
- Damages.

(CISG; Article 227, Turkish Code of Obligations.)

If the goods do not conform to the contract, the buyer can:

- Require the delivery of substitute goods if the lack of conformity constitutes a fundamental breach of the contract and the relevant notice is given (Article 46(2), CISG).
- Require the seller to remedy the lack of conformity by repair (with notice) (Article 46(3), CISG).
- Ask for a price reduction (Article 50, CISG).

In cases of non-delivery, the buyer can ask for performance and provide additional time for it (Article 47, CISG). If the seller does not deliver the goods within the additional time, the buyer can avoid the contract (Article 49, CISG).

When delivery is late, even if it is not a fundamental breach, the buyer can avoid the contract within a reasonable time after becoming aware that delivery was made (Article 49(2)(a), CISG).

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## 11. What are the seller's remedies for non-payment or late payment?

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A seller can request performance and give the buyer additional time to perform (Articles 62 and 63, CISG). If the buyer fails to pay within the additional time, the seller has a right to avoid the contract. The seller can also ask for damages.

Remedies for non-payment and late payment include:

- Requesting and giving additional time for performance.
- Avoiding the contract.
- Damages.

(Articles 235 and 236, Turkish Code of Obligations.)

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### Exclusion of liability

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## 12. Are exclusion clauses enforceable in your jurisdiction? If so, what are the requirements to create a legally enforceable exclusion clause?

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Exclusion clauses are enforceable under Turkish law. However, a clause made before contractual liability arises is only enforceable if it refers to a negligent breach. An exclusion clause for gross negligence and intentional breach will only be valid if agreed after contractual liability arises (Article 115, Turkish Code of Obligations).

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### Choice of law

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## 13. Will local courts recognise a choice of foreign law in a sale of goods contract? Are there any mandatory local rules that apply, despite a choice of foreign law?

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The local courts recognise a choice of foreign law unless the chosen law violates Turkish public policy. Judges apply chosen foreign laws *ex officio* (Article 2, Turkish International Private and Procedure Law). In practice, the courts generally appoint an expert on the relevant foreign law, who is responsible for identifying the applicable provisions under that law.

Contracts for the sale of immovable goods are subject to the law of the country where the real estate is located (Article 25, Turkish International Private and Procedure Law).

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## 14. If the parties do not make a choice of law, what rules determine the law applicable to a sale of goods contract?

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Where the parties have not made a choice of law, the law that applies is the one most closely connected to the contract (Article 24(4), Turkish International Private and Procedure Law).

The grounds for deciding which law is most closely connected include:

- The habitual residence of the debtor of the characteristic performance of the contract.
- The workplace of the debtor if the contract is connected to a commercial or professional activity. If this is not the case, the debtor's residential area.
- If the debtor has more than one workplace, the premises that are most connected to the agreement.

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### Choice of jurisdiction

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## 15. Will local courts recognise a choice of foreign jurisdiction in a sale of goods contract? Are there any mandatory local rules that apply, despite a choice of foreign jurisdiction?

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If jurisdiction has not been determined by mandatory local rules, parties can choose a foreign jurisdiction (Article 47, Turkish International Private and Procedure Law). An agreement that chooses a foreign jurisdiction is valid if it is supported by documentary evidence.

The Turkish courts have exclusive jurisdiction over rights *in rem* relating to real estate in Turkey (Article 12, Turkish Procedure Law). Therefore, a foreign court order relating to real estate in Turkey is not enforceable in Turkey.

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## 16. If the parties do not make a choice of jurisdiction, what rules determine the jurisdiction applicable to a sale of goods contract?

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If the parties do not make a choice of jurisdiction, Turkish domestic procedure law will apply to determine whether there is international jurisdiction (Article 40, Turkish International Private and Procedure Law).

Generally, the court of the defendant's residential area has jurisdiction over the matter (Article 6, Turkish Civil Procedure Law).

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There are also certain rules relating to jurisdiction for lawsuits arising from contracts, torts, right *in rem* over immovable goods, and so on (Articles 7 to 16, Turkish Civil Procedure Law).

## **Arbitration**

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### **17. Are arbitration clauses commonly included in sales of goods contracts in your jurisdiction?**

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Under Turkish law, an arbitration agreement is an agreement under which the parties agree to resolve either a part or all of a dispute arising from their contract before an arbitral tribunal (Article 4(3), Turkish International Arbitration Law). Arbitration awards that are final and binding on the parties must be ratified to be enforceable in Turkey (Article 60, Turkish Private and Procedure Law).

Turkey is a party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), which was published in the *Official Gazette* on 25 September 1991 and numbered 21002.

In Turkey, arbitration clauses in sale of goods contracts are not as common as they are in other European jurisdictions. There are very few decisions of the Court of Cassation (the highest court in the Turkish judicial system) on arbitration clauses, which confirm that arbitration clauses are not widely used. However, with the recent establishment of the Istanbul Arbitration Centre, the use of, and familiarity with, arbitration clauses among Turkish parties are expected to increase significantly.

## **STORAGE OF GOODS**

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### **18. How is title to goods in storage protected and evidenced? Are warehouse receipts recognised as documents of title in your jurisdiction?**

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In customs warehouses, goods are under the responsibility of the warehouse operator. Goods are given a bill of entry and then registered in the stock book.

In any event, goods stored in a warehouse must be insured. The insurance must also cover customs tax.

It is the operator's responsibility to ensure the security of the goods. The operator is held liable if the goods stored in the warehouse are stolen or damaged.

Warehouse receipts cannot be negotiated or delivered. Warehouse receipts are not recognised as documents of title. As there is only a bailment agreement between the warehouse keeper (bailee) and the warehouse user/owner of the goods (bailor), there is no transfer of title (ownership) to the goods. Customs declaration(s) or inventory records can be used as evidence when a dispute arises between the parties.

The warehouse operator is authorised to transfer the goods. The goods can be transferred at the request of the owner of the goods, and warehouse stock books must be updated accordingly.

The goods in a customs warehouse can be transferred to a third party through a sales agreement (Article 333, Customs Regulation).

### **19. What conditions and formalities must warehouse receipts comply with?**

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A declaration must be issued to customs if goods are imported. This declaration is in addition to detection reports issued by customs.

Warehouse declarations that are not issued in accordance with the customs office administrative procedures are under no circumstances valid.

A warehouse proof of receipt is stored electronically and the holder of the goods is given a copy. Warehouse receipts must be registered in the customs information system and a registration date and number is provided by customs.

Penalties under the Customs Law are only applied where a receipt has not been properly arranged.

Warehouse receipts are uniform and not negotiable.

### **20. Are other interests over goods in storage recognised?**

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A storage fee is required under the agreement with the warehouse manager.

No assurance is provided by the owner of the goods to customs in a type A general storehouse. There are two main types of customs warehouse in Turkey, public warehouses and private warehouses. Types A, B and F are sub-types of public warehouses. A type A warehouse is operated by a warehouse keeper keeping inventory records. In this context, the warehouse keeper (operator) is liable to pay the applicable customs duties in the case of any deficiencies in the goods stored in the warehouse. Therefore, in practice, only the type A warehouse keeper provides assurance for the goods stored in the warehouse. For this reason, the owner of goods stored in a type A general warehouse is not generally required to submit a separate assurance to the customs authority. However, there may be cases where the assurance is provided by the owner of the goods stored in a type A general warehouse.

## **REFORM**

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### **21. Are there impending developments or proposals for reform of national legislation affecting sale of goods contracts and/or storage of goods in your jurisdiction?**

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There are no impending developments or proposals for reform of national legislation affecting sale of goods contracts and/or storage of goods. However, the number of sale of goods contracts that include an arbitration clause is expected to increase following the recent establishment of the Istanbul Arbitration Centre.

## Practical Law Contributor profiles

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- Associate Member of the American Bar Association (ABA).
- Member of the Antitrust and M&A Committees and national reporter of the International Antitrust Committee.
- Lectures EU and Turkish competition law at the Marmara University EU Institute and lectures occasionally on "mergers and acquisitions", "international trade remedies" and "competition law aspects of EU and Turkish environmental law".

#### Publications

- *Merger Control in the EU and Turkey, A Comparative Guide, published by Wolters Kluwer, co-author (2019).*
- *Trade & Customs: Turkey – Getting the Deal Through (2015, 2016, 2018, 2019 and 2020).*
- *Private Antitrust Litigation: Turkey – Getting the Deal Through (2015, 2016, 2017, 2018, 2019 and 2020).*
- *Competition Compliance: Turkey – Getting the Deal Through (2017, 2018 and 2019).*
- *Transparency of the Regulatory Authorities: An Analysis of Transparency of Competition Investigations in Turkey, Freedom Research Association, 2016.*
- *Regulation, Deregulation and Competition Law in Liberal Professions (Rekabet Dergisi/Competition Journal, 2013).*
- *Turkish Competition Law Enforcement: An Ounce of (Compliance) Prevention is Better than a Pound of (Enforcement) Cure, (American Bar Association/ International Antitrust Bulletin, 2011).*
- *Merger Control in Turkey: The "Catch-up All" Threshold Mechanism needs an Adjustment, (American Bar Association/ International Antitrust Bulletin, 2009).*
- *Competition Law Aspects of Mergers and Acquisitions in the EU and Turkish Law: Does Turkey Call for a Merger Reform? The Answer and a Policy Proposal, 2007, PhD Thesis.*
- *The International Trade Law Review, Turkey Chapter (4th and 5th Editions).*

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**Areas of practice.** Competition; anti-trust; regulation; international trade and government affairs.

**Languages.** Turkish, English

#### Recent transactions

- Represented Essilor Group in relation to the merger control filing of Essilor's merger with Luxottica Group.
- Represented EssilorLuxottica in relation to the merger control filing of EssilorLuxottica's acquisition of Granvision.
- Represented GIC Group in relation to the merger control filing of GIC Group's acquisition of four luxury hotels from Oxford Properties Group.

#### Professional associations/memberships

- Non-governmental agent of the Turkish Competition Authority to the International Competition Network.
- Member of the Turkish Ethics & Reputation Society.
- Istanbul Bar Association.

#### Publications

- *Merger Control in the EU and Turkey, A Comparative Guide, published by Wolters Kluwer, co-author (2019).*
- *Trade & Customs: Turkey – Getting the Deal Through (2015, 2016, 2017, 2018, 2019 and 2020).*
- *Private Antitrust Litigation: Turkey – Getting the Deal Through (2015, 2016, 2017, 2018, 2019 and 2020).*
- *Competition Compliance: Turkey – Getting the Deal Through (2017, 2018 and 2019).*
- *"The European Antitrust Review 2011", Turkey Chapter, Global Competition Review.*
- *"The Evaluation of the Presumption of Concerted Practices in the Turkish Competition Act and of its Utilization under the Case Law of The European Court of Justice", Turkish Competition Journal, July 2009.*



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**Professional qualifications.** Customs Consultant; Certified International Trade Adviser (CITA), UK Institute of Export

**Areas of practice.** Customs; international trade.

**Non-professional qualifications.** BA, Anadolu University; Postgraduate degree in international trade, Istanbul Commerce University; PhD candidate in international trade, Istanbul Commerce University

**Experience.** Over 28years' experience in handling customs transactions and providing advice to numerous companies on customs and trade.

**Languages.** Turkish, English

**Professional associations/memberships**

- Istanbul Customs Consultants Association.
- UK Institute of Export.

**Professional qualifications.** Certified International Trade Adviser (CITA), UK Institute of Export

**Areas of practice.** Customs; international trade; forensic document examination; ethics and compliance with customs and international trade regulations.

**Non-professional qualifications.** Postgraduate degree in international trade, Istanbul Commerce University; PhD candidate in International Trade, Istanbul Commerce University

**Languages.** Turkish, English

**Professional associations/memberships.** UK Institute of Export.