

Trade & Customs 2020

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Trade & Customs 2020

Contributing editor**Gary N Horlick**

Law Offices of Gary N Horlick

Lexology Getting the Deal Through is delighted to publish the eighth edition of *Trade & Customs*, which is available in print, as an e-book, and online at www.gettingthedealthrough.com.

Lexology Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting the Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Gary N Horlick of Law Offices of Gary N Horlick, for his continued assistance with this volume.

 **LEXOLOGY**
Getting The Deal Through

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Turkey

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ACTECON

LEGAL FRAMEWORK

Domestic legislation

1 | What is the main domestic legislation as regards trade remedies?

Turkey adopted its first legislation providing for trade remedies as early as 1989 to protect its domestic producers following the trade liberalisation (and the ensuing elimination of import restrictions) initiated in 1980. In this regard, Turkey's domestic legislation includes the following:

- Law No. 3577 on the Prevention of Unfair Competition in Imports (Law No. 3577);
- Regulation on the Prevention of Unfair Competition in Imports (Regulation on Unfair Competition);
- Decree on the Prevention of Unfair Competition in Imports (Decree on Unfair Competition);
- Regulation on Safeguard Measures in Imports (Regulation on Safeguards);
- Decree on Safeguard Measures in Imports (Decree on Safeguards);
- Communiqué No. 2008/6 on the Prevention of Unfair Competition in Imports; and
- Procedure and Principles of Implementation for Communiqué No. 2008/6 on Prevention of Unfair Competition in Imports.

This legislation may be found at: www.trade.gov.tr/legislation/import/trade-defence-policy.

International agreements

2 | In general terms what is your country's attitude to international trade?

From an international standpoint, being a party to the Agreement Establishing the World Trade Organization, Turkey is also bound by the annexed agreements, which include, among others, the General Agreement on Tariffs and Trade (GATT 1994), the Agreement on Implementation of article VI of GATT 1994 (Anti-Dumping Agreement), the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards.

Turkey is also a member of other international organisations, such as the OECD, the G20 and the United Nations Conference on Trade and Development, so that its policies regarding international trade are in line with the concerned organisations' rules and disciplines. As a candidate to join the European Union (EU), Turkey has been reforming its domestic legal order to progressively integrate the EU's *acquis communautaire*, thereby closely following the legal developments taking place in the EU. In addition, Turkey formed a customs union with the EU in 1995, which obliges Turkey to adopt the EU's common external tariff. Most importantly, Turkey must also (theoretically) align its trade policy with the EU's Common Trade Policy. It follows, inter alia, from these obligations

that Turkey must enter into a free trade agreement (FTA) with the countries with which the EU has signed such an agreement. It should, however, be indicated that Turkey is not under an obligation to include as such the provisions contained in the FTAs concluded by the EU, and may consider its industrial and trade priorities when negotiating.

There are currently 20 FTAs (EFTA, Israel, Macedonia, Bosnia and Herzegovina, Palestine, Jordan, Tunisia, Morocco, South Korea, Egypt, Albania, Georgia, Montenegro, Serbia, Chile, Mauritius, Malaysia, Moldova, Faroe Islands and Singapore) in force to which Turkey is a party. The FTAs signed with Kosovo, Venezuela, Qatar, Sudan and Lebanon are undergoing the ratification process, whereas the FTA entered into with Syria was suspended in 2011. Further, the FTA negotiations with Ghana are reported to be concluded and the FTA is expected to be signed soon. The scope of the FTAs in force with EFTA, Macedonia, Bosnia and Herzegovina, Albania, Montenegro, Moldova, Malaysia, Serbia and Georgia is planned to be revised and is currently in negotiation. Moreover, the countries and organisations with which Turkey is continuing its negotiations or talks to start such negotiations in order to sign an FTA are, respectively:

- Ukraine, Libya, the Gulf Cooperation Council, Djibouti, Democratic Republic of the Congo, Cameroun, Chad, the Seychelles, Japan, Pakistan, Thailand, Indonesia, Peru, Ecuador, Colombia, Mexico and MERCOSUR; and
- Algeria, South Africa, African Caribbean and Pacific Group of States, Vietnam, India, United States, Canada and Central America.

Turkey has also signed and ratified various bilateral investment treaties (BITs) (see the list of countries at www.trade.gov.tr/legislation/bilateral-investment-treaties) as well as trade and cooperation agreements with a large number of countries. On 8 June 2019, Turkey and Canada entered into a memorandum of understanding regarding the Joint Economic and Trade Commission (JETCO) in order to strengthen the economic ties between the two countries.

Turkey is a notable user of trade remedies and is expected to remain so under the current global protectionist tendency.

Trade defence investigations

Government authorities

3 | Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

Under the Turkish legislation regarding trade remedy investigations (question 1), the Directorate General for Imports of the Ministry of Trade (the Ministry) is authorised to conduct a preliminary examination *ex officio* or upon an application that is submitted by the domestic industry. The Department of Dumping and Subsidy, the Department of Safeguards and the Department for Monitoring and Assessment of Import Policies are the competent administrative units to conduct trade remedy investigations.

If the Directorate General for Imports is convinced that the initiation of an investigation is justified, it will present its recommendations to the

Board of Evaluation for Unfair Competition in Imports or the Board for the Evaluation of Safeguard Measures for Imports, and if the competent board resolves that an investigation should be initiated, it submits its resolution to the Minister of Trade for approval. Subsequently, the initiation notice will be announced in the Turkish Official Gazette and any interested party may find the relevant questionnaire at the Ministry's website. The case-handlers appointed for the concerned case will carry out all the analyses and examinations during the proceedings. The case-handlers will prepare a report on the basis of those analyses and examinations against which any cooperating party may present its comments.

Different authorities are competent for the enactment of anti-dumping and anti-subsidy measures and for safeguard measures.

After having decided whether to impose an anti-dumping or anti-subsidy measure, the Board of Evaluation for Unfair Competition in Imports transfers the proposed decision to the Minister of Trade, whose approval is necessary for the entry into force of the measure through the publication of a communiqué in the Official Gazette.

If the Board for the Evaluation of Safeguard Measures for Imports decides that a safeguard measure should be taken, it publishes a communiqué along with the Ministry's evaluations in the Official Gazette. This decision proposes to the Presidency of the Republic of Turkey that a safeguard measure should be imposed. If the Presidency of the Republic of Turkey is of the same opinion, a presidential decree is published in the Official Gazette to announce the entry into force of the safeguard measure.

Complaint filing procedure

4 | What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

A trade remedy investigation can be initiated upon an application of domestic producers or ex officio by the Ministry if there is sufficient evidence that dumped or subsidised imports of a certain product have caused injury to the domestic industry. The content of the application form varies depending on the requested trade remedy and can be accessed at the Ministry's website.

Application for the imposition of an anti-dumping or anti-subsidy measure

According to Law No. 3577, an application may be made by or on behalf of the domestic industry in writing. The complaint shall be considered to have been brought by or on behalf of the domestic industry if it is supported by the producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application and shall not be less than 25 per cent of the total production of the like product produced by the domestic industry in Turkey (the representativeness test). In the case of fragmented industries involving a large number of producers, the support and opposition of the domestic industry may be determined by using statistically valid sampling techniques.

Such an application must include, among other things, the following information and details: the applicant and the other domestic producers; the products concerned by the application; the production process of those products; like products; the market structure; the applicant's imports of those products; sales, cost and accounting structure of the applicant; pricing, the applicant's economic indicators (eg, productivity, sales, costs, profitability, employment, capacity usage rate, investment); known exporters and importers; and the dumping or subsidy, material injury, threat of material injury or material retardation of the establishment of an industry, and causation allegations (eg, dumping calculation; schedule, amount or characteristics of the subsidy; development of imports, both in absolute and relative terms; and imports' effects on

the domestic industry's prices). In addition, the applicant must provide a non-confidential version of the application and the Ministry is obliged to respect confidentiality under both the relevant domestic legislation and the Anti-Dumping Agreement. Upon the Ministry's first review of the application, potential deficiencies will be noticed to the applicant and missing or additional information will be required.

An investigation shall not be initiated where it is determined that the dumping or subsidy margin is de minimis or that the import volume is deemed negligible. The criteria used in this regard are as follows:

- regarding dumping investigations, cases where:
 - the margin of dumping expressed as a percentage of the export price is less than 2 per cent; or
 - the volume of dumped imports from the concerned country is found to account for less than 3 per cent of imports of the like product and, where more than one country is involved, imports from countries accounting for less than 3 per cent individually do not account collectively for more than 7 per cent of imports of the like product; and
- regarding subsidy investigations, cases where:
 - the amount of subsidy is less than 1 per cent of the value of the product concerned; or
 - as regards imports from developing countries:
 - the amount of subsidy does not exceed 2 per cent of the value of the product concerned; or
 - the volume of subsidised imports from the concerned country is found to account for less than 4 per cent of the total imports of the like product and, where more than one developing country is involved, imports from developing countries accounting for less than 4 per cent individually do not account collectively for more than 9 per cent of the total imports.

Within 45 days following the proper submission of a complete application, the Directorate General for Imports must conclude its examination and submit its proposal (whether to initiate an investigation) to the Board of Evaluation for Unfair Competition in Imports. If the Board of Evaluation for Unfair Competition in Imports resolves to start an investigation, this will be presented to the Minister of Trade's approval. Afterwards, the relevant country is notified about the initiation of an investigation and an initiation notice is published in the Official Gazette. On the other hand, if the Board of Evaluation for Unfair Competition in Imports decides not to conduct an investigation, only the applicant(s) will be notified.

As regards the initiation of an expiry review investigation, the Ministry announces through a communiqué the measures that will expire on a given date. Producers may require the extension of the applicable measures at the latest within the three months prior to the expiry date. Such applications should be substantiated by documents demonstrating that dumping or subsidy and injury are likely to continue or recur. Moreover, once the measures have been in force for one year, an interim review investigation may be requested by an exporter, importer or domestic producer on the ground that a change took place regarding dumping, subsidy or injury.

Application for the imposition of a safeguard measure

The Regulation on Safeguards stipulates that the relevant natural or legal persons or the professional organisations or chambers with which they are affiliated may submit a written application for the imposition of a safeguard measure. This form may be obtained from the Directorate General for Imports.

The application must mainly consist of the following information and details: the applicant and the other domestic producers; the products concerned by the application; the production process of those products; customers; the market structure; the factors influencing the

demand and competition; development of imports, both in absolute and relative terms; unforeseen developments, serious injury or threat of serious injury and causation allegations; the applicant's costs and economic indicators (eg, productivity, sales, costs, profitability, employment, capacity usage rate, investment); and adaptation plan to the new competition environment to be created if a safeguard measure is brought into force.

Afterwards, the Directorate General for Imports will conduct a preliminary examination, in the course of which additional information or documents could be requested. The outcome of this preliminary investigation is then presented to the Board for the Evaluation of Safeguard Measures. The Board could either decide that an investigation should be launched (in which case an initiation notice is published in the Official Gazette and is notified to the WTO) or that an investigation is unwarranted (in which case the applicant is notified of the Board's decision).

Contesting trade remedies

5 | What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

The relevant country is notified that an investigation has been initiated and a communiqué is published in the Official Gazette (see question 4). Initiation communiqués address the following subjects: the subject products, the country of origin or consignment, allegations made regarding the concerned imports and the timeframe imposed on interested parties to submit their responses to the questionnaire.

The usual period of investigation is 12 months, but an additional six-month extension can be applied by the Ministry. In most cases the Ministry concludes the investigation by the end of the 12 months. The use of an extra six months depends on the number of cooperating firms, as well as the number of subject countries and subject products.

After the initiation of an investigation, questionnaires are sent to known importers and exporters of the subject product, and to the embassies in Turkey of the countries subject to investigation. Any parties that are willing to cooperate with the investigating authority should submit their responses to the questionnaire within 37 days in the case of anti-dumping and anti-subsidy investigations (which may be extended by the Directorate General for Imports upon request) and at most 40 days in the case of safeguard investigations. During those investigations, the interested parties may submit their comments (in writing) against the evaluations and allegations made by the case-handler or the domestic industry. Additionally, parties may also present their comments orally during potential hearings.

Finally, the Ministry indicates in initiation notices that the responses to the questionnaires, all the documents and observations must be submitted in Turkish.

WTO rules

6 | Are the WTO rules on trade remedies applied in national law?

Yes, Turkey is a member of the WTO. Article 90 of the Constitution of the Republic of Turkey provides that international agreements duly put into effect have the force of law. Turkey has signed and ratified the Agreement Establishing the WTO (and all the agreements annexed) so that those agreements are legally binding legal instruments.

Appeal

7 | What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

The decisions taken in respect of trade remedies are administrative acts over which the Council of State exercises sole jurisdiction.

Turkish law confers on the investigating authority a wide discretion and that approach is generally backed by the Council of State's case law. It is therefore important to be cautious of the likelihood of success of an appeal procedure against a decision of the Ministry. Judicial review success in trade remedy cases is thus dependent on the quality of supporting evidence and on the nature of the investigating authority's errors in making its determinations.

In this regard, it should be noted that the Council of State had annulled Communiqué No. 2015/28 on the Prevention of Unfair Competition in Imports through its decision (dated 28 December 2017 and numbered 2015/6922 E., 2017/6614 K.) on the grounds that there was no concrete and sufficient evaluation regarding injury and causation. However, the concerned decision was overturned upon the Ministry's appeal by the majority of the members' votes of the Plenary Assembly of the Tax Law Division.

Review of duties/quotas

8 | How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

The Regulation on Unfair Competition allows interested parties to request the initiation of the following investigations:

- interim review investigation – exporters, importers or domestic producers may request the review of a definitive measure after one year of the entry into force. The request must be supported by sufficient evidence demonstrating that the review is warranted. Additionally, the request must be submitted in writing to the Directorate General for Imports;
- expiry review investigation – measures about to expire are announced in the Official Gazette in the last year of the five-year validity period of the concerned measures. Domestic producers of the subject product may request the initiation of an expiry review investigation at the latest three months before the end of the validity period. The request must be supported by sufficient evidence and must be submitted in writing to the Directorate General for Imports;
- new exporter or shipper review investigation – exporters or producers that have not exported the product subject to measures to Turkey during the period of investigation may request in writing the determination of individual dumping or subsidy margins from the Directorate General for Imports. To this end, the applicant should prove that it is not related to any of the exporters or producers subject to the measures in question and that it has exported the subject product to Turkey after the period of investigation or has concluded an irrevocable contractual obligation to export a significant quantity;
- anti-absorption reinvestigation – the domestic industry may request such an investigation in writing on the ground that the definitive measures have been neutralised due to a fall in export prices. The request shall contain sufficient evidence of the measures being absorbed; and
- anti-circumvention investigation – the domestic producers claiming that an applicable measure is being circumvented may submit a written request for the initiation of an anti-circumvention investigation to the Directorate General for Imports (along with the documents demonstrating that there is a change in the pattern of trade between a third country and Turkey or the country subject to measures and Turkey or individual companies in the country subject to measures and Turkey, stemming from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the applicable measure, and the remedial effects of the duty are being undermined or nullified).

Furthermore, the Regulation on Safeguards sets out that a safeguard measure may be imposed in the form of customs duties, additional financial charges, quantity or value restrictions, tariff quotas or a combination of these measures. The duration of safeguard measures shall not exceed four years, including the duration of any provisional measure, unless it is extended. The duration of the measure may be extended in accordance with the results of a new investigation to be initiated, provided it is determined that the safeguard measure continues to be necessary to prevent or remedy serious injury and there is evidence that the domestic producers are adjusting to the conditions of the market. An extended measure shall not be more restrictive than it was at the end of the initial period and shall continue to be liberalised. The total period of application of a safeguard measure shall not exceed 10 years.

Lastly, a refund application must be submitted within six months of the collection date of the measures. The application must be supported by the evidence concerning the following subjects: the dumping or subsidy margin for a representative period; the amount of refund of taxes claimed; customs documentation regarding the calculation of the measures; and the producer's or exporter's normal value and export prices to Turkey for a representative period. A refund application must be submitted in writing to the Directorate General for Imports. The Directorate General for Imports must take its decision within 12 months, but this timeframe can be extended by six months. If the decision is positive, the relevant authorities must grant a refund within 90 days from the date of the refund decision.

Compliance strategies

9 | What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

Depending on the commercial terms used by the parties, importers in Turkey are generally liable for the payment of the customs duties on imports. Accordingly, importers will benefit from close cooperation with exporters in order to take all the appropriate precautions and to minimise the risks associated with the implementation of trade remedies. Moreover, any activity violating the customs legislation could potentially trigger the application of hefty administrative fines along with the retroactive collection of the duties and in certain circumstances the application of criminal sanctions.

Finally, any strategy that will closely monitor the subject products, market structures (including upstream and downstream markets), competitiveness, cost-price analysis, pricing policy and Turkey's approach may be useful for potential review cases (see question 8 for review and refund investigations).

CUSTOMS DUTIES

Normal rates and notification requirements

10 | Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments, if so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Lists containing the applicable customs duty rates can be accessed in Turkish at the Ministry's website (www.ticaret.gov.tr/ithalat/ithalat-rejimi). Additionally, binding tariff information or an advance ruling can be given by the Customs Undersecretariat upon a taxpayer's written request. Importers may request binding tariff information concerning:

- the determination of import or export taxes: calculation of export tax refunds in the scope of the agricultural policy and all payments given to import or export; and

- usage of import, export or prior consent documents: binding tariff information is binding from the date the information is given and valid for six years from the date the information is given.

The exemptions from custom duty and exceptions are listed under article 167 of the Customs Law, whose fourth paragraph regulates the exemption for low-value shipments. As a general practice, the President of the Republic determines the exemptions, including the exemption for low-value shipments, in accordance with Turkey's current trade policy. Currently, article 45 of the Decree on the Implementation of Certain Articles of the Customs Law (the Decree) stipulates that books or printed publications sent by post or fast cargo for personal use whose value does not exceed €150 for each shipment are exempt from customs duty. In addition, article 62 of the Decree sets out the following customs duty rates for goods and books or printed publications for personal use sent by post or fast cargo and for the goods referred to in article 59 of the Decision brought into Turkey by passengers:

- 18 per cent for those consigned from the EU;
- 20 per cent for those consigned from other countries;
- 0 per cent for books or similar printed publications; and
- 20 per cent in addition to the above-mentioned rates for the goods listed in Annex IV of the Special Consumption Tax Law no 4760.

However, books or printed publications that are sent to or procured by public institutions and organisations, libraries and museums, as well as organisations engaging in educational or scientific research, are exempt from customs duty. Turkey's customs tariff system (Customs Tariff Statistics Positions) is based on the World Customs Organization's Harmonized System and is updated and approved every year by the President of the Republic. The Customs Tariff Statistics Positions establishes 12-digit codes for the identification and classification of imported and exported products.

Special rates and preferential treatment

11 | Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

Reduced customs duty rates are published in the lists annexed to the Import Regime Decree and are provided for in the FTAs concluded by Turkey. Article 16 of Decision No. 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union obliges Turkey to harmonise its tariffs so as to align with the EU's preferential customs regime.

The EU's regime is only partly applied, and thus certain countries that are covered by the EU's GSP regime are not included in Turkey's GSP regime. Those countries may be considered either as third countries or beneficiaries from special incentive arrangements. (See the Annex 4 to the Import Regime Decree for the list of GSP beneficiary countries: www.resmigazete.gov.tr/eskiler/2019/05/20190510-15.pdf.) The lists of applicable customs duty rates depending on the concerned country's status (GSP or not) are provided in Turkish at the Ministry's website (www.ticaret.gov.tr/ithalat/ithalat-rejimi).

Turkey currently benefits from the GSP regimes of Japan, Russia, Belarus, Kazakhstan, New Zealand, Australia and Canada. The US recently expelled Turkey from its GSP regime.

12 | How can GSP treatment for a product be obtained or removed?

GSP treatment for a product can be obtained from and removed by the Directorate General for Imports within the Ministry.

Pursuant to the Import Regime Decree, Turkey takes any necessary measure for countries, establishments and companies that disturb the

balance of commerce and payments in Turkey's commercial relations, breaching their obligations determined by international agreements or acting contrary to the principle of universality within the context of international agreements.

13 | Is there a duty suspension regime in place? How can duty suspension be obtained?

Turkey has a tariff suspension system. The products that are free of customs duties are listed in Appendix V of the Import Regime Decree.

Producers located in Turkey can request tariff suspension for raw materials, semi-finished goods or components to be used in their production and that are not available either in the EU or in Turkey. Additionally, the amount of import duty saved must be at least €15,000.

All the requests are forwarded to the Economic Tariff Questions Group within the European Commission. Those requests are first evaluated by this group and the outcome is sent to the Commission. After the final decision by the Commission, suspension updates enter into force in the EU and Turkey simultaneously. Suspension decisions are valid for five years.

Challenge

14 | Where can customs decisions be challenged in your jurisdiction? What are the procedures?

An application can be made either before the competent mediation commission within 30 days after the notification or before the Head Directorate within 15 days from the date of notification.

If the Head Directorate refuses the application, the relevant parties can appeal the decision before the administrative courts within 30 days from the date of notification of the concerned decision.

TRADE BARRIERS

Government authorities

15 | What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

According to the Regulation on Trade Barriers, complaints from domestic exporters are handled by the Turkish Trade Barrier Notification Centre.

Complaint filing procedure

16 | What is the procedure for filing a complaint against a foreign trade barrier?

The relevant parties can file a complaint regarding a foreign trade barrier on the website of the Ministry. A working group on trade barriers reviews whether the notified issue constitutes an actual trade barrier. After sufficient data is gathered on the issue in order to provide a legal basis in light of international treaties, the issue will be submitted to the relevant units to take legal action. The complainant will be informed of any legal issues and actions with regard to its complaint.

The relevant parties may also file a complaint against a foreign technical barrier on the website of the Turkish Trade Barrier Notification Centre.

Grounds for investigation

17 | What will the authority consider when deciding whether to begin an investigation?

The authority will consider whether all the documents and information sent by applicants constitute sufficient evidence to justify initiating an investigation.

Measures against foreign trade barriers

18 | What measures outside the WTO may the authority unilaterally take against a foreign trade barrier? Are any such measures currently in force?

Turkey has signed and ratified treaties with the EU, China, the EFTA countries, Israel, Russia, Ukraine, Iran, Lebanon and Bulgaria. Some measures may be taken against foreign trade barriers in accordance with these treaties.

Private-sector support

19 | What support does the government expect from the private sector to bring a WTO case?

The government does not have any known expectations in this regard from the private sector.

Notable non-tariff barriers

20 | What notable trade barriers other than retaliatory measures does your country impose on imports?

Imports of the products listed in the annexes of Communiqué No. 2019/1 on Product Safety and Inspection are inspected by the Inspectors for Standardisation of Foreign Trade for commercial quality. A Control Certificate is given to the importers if the products meet the required standards.

Agricultural products are inspected by the Ministry of Agriculture and Rural Affairs pursuant to Communiqué No. 2019/1 on Product Safety and Inspection published by the Directorate General for Product Safety and Inspection. Before importing these agricultural products, a Control Certificate is required from the ministry. Upon inspection by the ministry, a Letter of Conformity is issued to the importer provided that the products in question do not constitute any health risks.

As to plants and animals, a phytosanitary certificate issued by the country of origin is additionally required for plants and related products, and health certificates may be required for livestock and animal products, depending on the country of origin.

EXPORT CONTROLS

General controls

21 | What general controls are imposed on exports?

Products listed in Appendix 1 of the Regulation on Trade Barriers and Standardisation of Foreign Trade are subject to mandatory standards and quality controls. Exporters must apply to the relevant Group Presidency of Inspectorates for the Standardisation of Foreign Trade to export the listed products. A Control Certificate is issued by the Group Presidency of Inspectorates for the Standardisation of Foreign Trade if the products meet the required standards.

Government authorities

22 | Which authorities handle the controls?

In general, the inspectorates of standardisation for foreign trade are empowered to conduct conformity assessments of the exported products against required standards, technical regulations and quality. Those are also competent to deliver the relevant documentation in this regard. Furthermore, the administrative authorities in charge of controlling and those in charge of approving the exportation of the goods subject to control are mentioned in each of the relevant regulations. The main authorities administering export control are the Ministry of National Defence for military materials and equipment, the Turkish

Atomic Energy Authority for nuclear and nuclear dual-use materials, and the Ministry of Trade for other dual-use materials.

Special controls

23 | Are separate controls imposed on specific products? Is a licence required to export such products? Give details.

Specific certificates and analysis may be required in particular in cases of plant and livestock exports. The details are as follows:

- phytosanitary certificate – export of unprocessed agricultural products requires a phytosanitary certificate in order to attest that the consignment meets phytosanitary export requirements. The certificate is prepared in line with the 1951 Rome Treaty; and
- health certificate – all agricultural products require a health certificate based on the requirements of the purchasing country. The evaluations of the inspection report and analysis results are based either on the requirements of the purchasing country or on the Turkish Food Codex.

There are also additional procedures, such as the EU's requirement for an analytical report as well as a health certificate to show that aflatoxin levels are acceptable in the case of exportation of nuts and dried fruits, or the requirement of a radiation analysis to prove that radiation levels are below the limits for exportation of mushrooms.

The Russian Federation also requires additional analysis when exporting fresh fruits and vegetables. Exports of livestock and animal products may also differ from country to country. Under the Regulation on the Protection of Export of Dual-Use and Sensitive Products and Communiqué on the Export of Chemical Products that are listed in the Appendix of the Chemical Weapons Agreements, the Ministry controls the export of dual-use and chemical products. According to the legislation, the exporter must apply to the Istanbul Mining and Metals Exporters Union's Secretary General to obtain a licence.

Additionally, Turkey is a party or member to the Wassenaar Arrangement, the Chemical Weapons Convention, the Missile Technology Control Regime, The Australia Group, the Zangger Committee and the Nuclear Suppliers Group.

Supply chain security

24 | Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

Turkey is a party to the WCO's SAFE Framework of Standards Agreement. According to article 5/A of the Customs Law no 4458, the AEO status can be granted by the Customs Undersecretariat to economically active residents who have the requisite qualifications, such as financial capability.

Applicable countries

25 | Where is information on countries subject to export controls listed?

The following communiqués establish lists of products subject export control:

- the Communiqué setting out the List regarding War Tools and Equipment, Weapons, Ammunitions and Spare Parts thereof, Military Explosive Materials, and Technologies thereof established on the basis of the Law No. 5201;
- Communiqué No. 96/31 on the Goods whose Export is Prohibited or Subject to a Pre-Authorization;
- Communiqué No. 2006/7 on the Goods whose Export is Subject to Registration; and

- Communiqué No. 2007/1 on the 'Warning List regarding Nuclear Transfer' and the 'List of Nuclear Dual-Use Goods', which indicate the items of the goods falling under the regulation on the granting of the document that will serve as a basis for the approval of the use of nuclear and nuclear dual-use goods.

Named persons and institutions

26 | Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad? Give details.

No, there is no scheme restricting or banning exports in Turkey. Nevertheless, Turkey implements the lists of sanctioned individuals and entities established by the United Nations and by the EU.

Penalties

27 | What are the possible penalties for violation of export controls?

The violation of an export control rule can lead to the imposition of an administrative fine that is double the customs value of the goods whose exportation is prohibited by a general administrative act (article 235(2) of Law No. 4458 on Customs). The exportation of goods whose exportation is subject to the granting of a licence, to the satisfaction of a condition or to an approval may lead to an administrative fine worth the customs value.

From a criminal viewpoint, Anti-Smuggling Law No. 5607 provides that, unless the behaviour concerned constitutes an offence requiring a heavier punishment, persons who export goods whose exportation has been prohibited can be subject to imprisonment for from one to three years and to a judicial fine which is equivalent to 5,000 days. According to article 52(2) of the Turkish Penal Law, the amount of a fine equivalent to one day varies between 20 lira and 100 lira and must be determined on the basis of the economic situation and other personal characteristics of the person concerned.

FINANCIAL AND OTHER SANCTIONS AND TRADE EMBARGOES

Government authorities

28 | What government offices impose sanctions and embargoes?

The President of the Republic is authorised to impose embargoes. Any customs-related sanctions are to be applied by customs authorities and deputies.

Applicable countries

29 | What countries are currently the subject of sanctions or embargoes by your country?

There are currently no official sanctions or embargoes applied by Turkey. On the other hand, Turkey applies the sanctions taken by the United Nations against certain countries.

However, the practice in Turkey can differ for foreign-originating companies in Turkey (Turkish companies with foreign partners and companies working with EU countries or the US). Foreign-originating companies may refrain from working with countries such as Iraq, Iran, Syria, China, Lebanon, North Korea, Liberia and Zimbabwe owing to sanctions or embargoes applied in the country where they originate.

Specific individuals and companies

30 | Are individuals or specific companies subject to financial sanctions?

There is currently no official list of individuals or specific companies subject to financial sanctions applied by Turkey.

However, practice in Turkey can differ for foreign-originated companies in Turkey, Turkish companies with foreign partners and companies working with EU countries or the US. Foreign-originated companies may refrain from working with persons, groups and entities subject to financial sanctions in the country in which they originate.

OTHER RELEVANT ISSUES

Other trade remedies and controls

31 | Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

There are no measures or import or export controls that are not covered above.

UPDATE & TRENDS

Key developments

32 | Are there any emerging trends or hot topics in trade and customs law and policy in your jurisdiction?

Turkey's approach to global trade in the middle of protectionist tendencies

On 7 May 2019, the Turkish Ministry of Trade published its decision to close the safeguard investigation concerning imports of certain iron and steel products without imposition of any measures due to the finding that there had not been an increase (either absolute or relative to domestic production) in imports of the subject products and a serious injury or threat of serious injury due to the increase in imports had not been established.

The above-mentioned safeguard investigation had been initiated by the Turkish Ministry in April 2018 as a response to the ongoing worldwide protectionist approach in the international trade regime as regards steel imports, and more particularly, immediately after the US's Section 232 tariffs and the EU's initiation of a safeguard investigation concerning imports of certain iron and steel products. Furthermore, similar to the EU's approach, the Turkish Ministry had imposed a provisional safeguard measure that took the form of a system of tariff rate quotas in excess of which an additional duty of 25 per cent was paid.

The Ministry's closing decision is of significance given the recent events suggesting that nations are more and more following a protectionist tendency. This also shows Turkey's attachment to its commitments under WTO rules and its determination not to jeopardise trade liberalisation. Indeed, the Minister of Trade highlighted in the recent G20 Ministerial Meeting on Trade and Digital Economy held on 8–9 June 2019 that even though the adoption protectionist measures could be considered as a response to short-term difficulties, those may also distort the global supply chains and diminish trust in the global trading system.

Furthermore, Turkey and Canada entered into a memorandum of understanding regarding JETCO in order to strengthen the economic ties between the two countries. Turkey is currently focused on a potential FTA with Japan, is closely monitoring developments in the Brexit process and is discussing all the precautions that could be taken to avoid potential trade barriers post-Brexit.

On the other hand, the Ministry of Trade follows a strict approach regarding circumvention practices in imports and has lately initiated



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several anti-circumvention investigations. Moreover, Turkish customs authorities have deployed all available resources concerning the problem of a possible circumvention of the duties applicable to imports.

New draft customs law

Turkey has not yet implemented the UCC, the UCC Implementing Act, and the UCC Delegated Act which entered into force in 2017, so that the Turkish Customs Law and its implementing regulations are still based upon the old Council Regulation 2913/92 on the Community Customs Code and the provisions for its implementation. On the other hand, the Turkish government is currently discussing drafting new customs legislation and it is likely that the rules to be enacted will be more harmonised with EU customs legislation.

In the meantime, the Ministry of Trade has recently been working to achieve digitalisation, modernisation and transparency in customs in order to facilitate safe trading and to fight smuggling.

Finally, the economic sanctions adopted by the US against Iran, the implementation of those sanctions by US authorities and the potential effects of those sanctions on Turkish companies doing business with Iran have pushed them to implement a compliance programme in this regard.

Ending of Turkey's designation to the US's GSP programme

Following Turkey's retaliatory additional duties on US\$1.78 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 assure the US reasonable and equitable access to its market. As a result of this review, Turkey was expelled on 19 May 2019 from the US GSP programme through Proclamation 9887 (www.federalregister.gov/documents/2019/05/21/2019-10761/to-modify-the-list-of-beneficiary-developing-countries-under-the-trade-act-of-1974).

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