

OECD REVIEWS OF REGULATORY REFORM

REGULATORY REFORM IN TURKEY

**ENHANCING MARKET OPENNESS THROUGH
REGULATORY REFORM**



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Enhancing Market Openness through Regulatory Reform* analyses the institutional set-up and use of policy instruments in Turkey. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Turkey* published in November 2002. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, specific sectors such as electricity and telecommunications, and on the domestic macroeconomic context.

This report was principally prepared by Sophie Bismut in the Trade Directorate of the OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Turkey. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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ACRONYMS

BSEC	Black Sea Economic Co-operation
CEN	European Commission for Standardisation
CENELEC	European Committee for Electrotechnical Standards
EA	European co-operation for Accreditation
ECO	Economic Co-operation Organisation
ECOSOC	Economic and Social Council
EFTA	European Free Trade Association
ETSI	European Telecommunications Standardisation Institute
EU	European Union
FDI	Foreign Direct Investment
FIAS	Foreign Investment Advisory Service
GDFI	General Directorate of Foreign Investment
GDP	Gross Domestic Product
IAF	International Accreditation Forum
IEC	International Electrotechnical Commission
ILAC	International Laboratory Accreditation Co-operation
IPR	Intellectual Property Rights
ISO	International Standardisation Organisation
KOSGEB	Small and Medium-Sized Industry Development Organisation
MFN	Most Favoured Nation
OECD	Organisation of Economic Co-operation and Development
PTA	Preferential Trade Agreement
TA	Telecommunications Authority
TBT	Agreement on Technical Barriers to Trade
TRIPS	Agreement on Trade-related Aspects of Intellectual Property Rights
TSE	Turkish Standards Institution
TT	Türk Telekom
TURKAK	Turkish Accreditation Council
UFT	Undersecretariat of Foreign Trade
WCO	World Customs Organisation
WTO	World Trade Organisation

Executive Summary

Background Report on Enhancing Market Openness through Regulatory Reform

As traditional barriers to trade have fallen, the impact of domestic regulations on international trade and investment has become more apparent than ever before. While regulations aim at improving the functioning of market economies in a range of fields, such as market competition, the labour market, consumer protection, public health and safety, the environment, they may directly or indirectly distort international competition and prevent market participants from taking full advantage of competitive markets. Maintaining an open world trading system requires regulation that promotes global competition and economic integration, thereby avoiding trade disputes and improving trust and mutual confidence across borders. This report assesses how the Turkish regulatory system performs from these perspectives and how regulatory reform may contribute to enhancing market openness and the benefits which consumers and producers can reap from open markets.

For the past two decades, strategies for economic development in Turkey have shifted towards increased reliance on market forces and exposure to international competition. Commitments in the framework of the Uruguay Round and the entry into force of the customs union with the EU have resulted in a significant decrease in trade barriers. However, governments have failed to achieve macroeconomic stabilisation, and successive crises have hit the economy. Economic and political instability has undermined the attractiveness of the country to foreign investors. Despite liberalisation measures, inflows of FDI have remained low throughout the 1990s. The severe financial and economic crisis that the country has gone through since the collapse of the IMF-backed stabilisation programme in February 2001 has highlighted the need for strong structural reforms. The economic programme of the government has included reforms to tackle structural weaknesses and reinforce the market orientation of the economy, in combination with fiscal and monetary policies.

Turkey has achieved some progress in integrating the efficient regulation principles for market openness defined by the OECD in its regulatory framework. The country has a liberal investment legislation, in which foreign investors receive national treatment. Progress is also ongoing with regard to the use of international standards and mutual recognition, mainly through the requirements of the customs union with the EU and the process of accession to the EU. Strengthened transparency in decision-making has been set as a major objective of the reform programme in Turkey. The most notable example is the law on public procurement of January 2002, which aims at bringing Turkish legislation in line with international standards of transparency. The reduction of administrative burdens has been another part of the announced reforms, as time-consuming and cumbersome administrative procedures appear as a significant impediment to making business in Turkey, which has affected the capacity of the country to attract foreign investment.

Reforms in recent years have involved key areas for trade and investment, such as product regulation, customs procedures, intellectual property rights, international arbitration and customs procedures. They have gone in the direction of strengthening market conditions and creating better conditions for trading and investing. However, much remains to be done to better apply the efficient regulation principles for market openness in the regulatory framework. In particular, transparency and avoidance of unnecessary trade restrictiveness appear insufficiently embedded in the decision making process, creating uncertainties and inefficiencies that undermine investment and trade. The rulemaking process in Turkey does not include any regulatory impact assessment. Efforts have been made in recent years to better disseminate information and consult with the private sector, but the practice of consultation remains below international standards. Frequent ambiguities in regulations and insufficient co-ordination between government bodies lead to unpredictability in the implementation of rules. A system of extensive inspection still frequently prevails over an effective enforcement of laws. Some initiatives have been taken to improve the regulatory framework, in particular the regulatory environment for business, but their results still need to materialise.

Promoting a trade-and-investment friendlier regulatory framework can significantly contribute not only to attracting needed foreign investment, but also to creating an internationally competitive economy. These efforts face serious challenges, including the need to build credibility in reforms and to apply efficient regulation principles, not only in regulations but also in the daily operation of the administration. This requires a long-term and sustained effort to move towards increased co-operation between the government and the private sector.

The globalisation of production and the resulting deeper integration of national markets have reinforced the link between domestic policies and trade liberalisation. As border barriers to trade have fallen around the world, the impact of domestic regulations on international trade and investment has become more apparent than ever before. Although regulations aim at achieving objectives in a range of fields such as health, safety and the environment, that are in the public interest, they may at the same time directly or indirectly distort international competition and lead to negative effects on the economy. Thus regulations should be made in a way consistent with an open trading system and support international competition. This chapter considers how the Turkish regulatory environment affects the access of foreign firms to the Turkish market, whether they do it through exporting goods and services, or through setting up their own presence to operate in the market. Another issue – whether and how inward trade and investment affect the fulfilment of legitimate policy objectives reflected in social regulation – is beyond the scope of this review.

1. MARKET OPENNESS AND REGULATION: THE POLICY ENVIRONMENT IN TURKEY

1.1. Structural reforms in Turkey

For the past two decades, strategies for economic development in Turkey have shifted towards increased reliance on market forces and exposure to international competition. At the turn of the 1980s the government replaced its import substitution strategy in favour of a market-oriented economic policy. Trade liberalisation was given a new impetus in the mid 1990s with the signature of the customs union with the European Union (EU), which has strengthened Turkey's economic ties with Europe. Governments have however failed to achieve macroeconomic stabilisation. For two decades, fiscal imbalances have fuelled high inflation and undermined growth. At the end of 1999, the government launched a reform programme, supported by the World Bank and the International Monetary Fund (IMF), to stabilise the economy. The programme collapsed with the financial crisis in November 2000 and February 2001. Since the end of the crawling-peg exchange rate mechanism in February and the devaluation of the domestic currency, the economy has undergone a severe recession.

These developments have highlighted the difficulty to implement tight monetary and fiscal policies while strong structural weaknesses persist, and given a new impetus to structural reforms. The economic programme of the government has thus entailed structural policies to provide a better environment for the economy. The overall objective is to enhance the efficiency of the economy through a reduction of the pervasive role of the government in the economy, enhanced transparency of policy making and a strengthened regulatory framework. The government's programme focuses on the banking sector, fiscal transparency (including with a new public procurement legislation), privatisation and more generally an increased involvement of the private sector in the economy.

1.2. Turkey's foreign trade and trade policy

In 2000, exports and imports accounted for 40% of Turkish GDP, up from 9% in 1979 and 25% in 1993. For the past two decades the trade balance has always shown a deficit, but the size of the deficit has fluctuated widely with volatile domestic growth rates, in particular due to strong fluctuations of imports. The share of manufacturing in exports has increased to reach over 80% in 2000 (Table 1), up from 68% in 1990. Trade with OECD countries, in particular European countries, has intensified since the late 1980s, while trade with neighbouring Asian countries has been undermined by political and economic dislocations in the region. In 2000, EU countries accounted for 52.2% of Turkish exports and 48.8% of its imports (Table 2). Its first trading partner, Germany, cumulated 19% of exports and 13% of imports.

Table 1. **Foreign trade by commodities**

Year 2000 – In per cent

	Exports	Imports
Food and tobacco	12.3	2.8
Crude materials, except fuels	2.8	6.1
Mineral fuels	1.2	17.5
Animal & vegetable oils	0.4	0.7
Chemicals	4.5	13.6
Manufactured goods	29.6	15.5
Machinery and transport equipment	20.7	37.6
Miscellaneous manufactured articles	28.5	6.2

Source: Turkish Undersecretariat of Foreign Trade.

Table 2. **Foreign trade by region**

Year 2000 – In per cent

	Exports	Imports
Europe	65.6	65.1
Asia	11.4	17.4
North America	12.1	7.7
Africa	4.9	5.0
Others	6.0	4.8
OECD	69.1	65.3
EU	52.2	48.8

Source: Turkish Undersecretariat of Foreign Trade.

The liberalisation of trade in Turkey dates back to 1980 when the government undertook a major reform programme to open the Turkish economy to competition. Since the 1930s, the state had pursued an inward-looking policy, based on state-run companies, with extensive protection against foreign competition. The 1980 programme included cutbacks on subsidies and price controls, liberalisation of the foreign exchange regime, interest rate deregulation and trade liberalisation with a view to encouraging private sector development and promoting export-oriented growth. Full convertibility of the domestic currency was achieved in 1989.

A second major step in Turkey's foreign trade policy was the Customs Union with the European Union, which entered into force in January 1996. Following the agreement, Turkey eliminated tariffs on manufactured imports from the EU, adopted the EU common external tariff for manufacturing products and the industrial component of processed agricultural food, and aligned to the EU's preferential trade regime. Accordingly, Turkey signed bilateral free-trade agreements with Central and Eastern European countries, Baltic States, and Israel (Box 1). The decision of the EU to accept the candidacy of Turkey to the Community at the European Council of Helsinki in December 1999 has given a new incentive to structural reforms. The customs union and the longer term goal of accession require Turkey to adopt the *acquis communautaire*. This entails far-reaching structural and legislative reforms in many areas, such as customs, duty concessions, competition policy, state aid, intellectual property rights, standards and sanitary and phyto-sanitary measures.

Following these international, regional and bilateral agreements, tariff barriers to trade have significantly decreased. As a result of the Uruguay Round negotiations, the share of bound tariff lines increased from 31% in to 46%. Applied tariffs are generally below bound rates. Following the customs union with the EU, Turkey eliminated duties on imports of industrial products originating from EU countries, and adopted the EU external tariff on imports of industrial countries from third countries, which involved a substantial reduction in tariff on most imports. The average MFN tariff declined from 26.7% in 1993 to 12.7% in 1998 and 5% in 2001. The reduction has been particularly significant on industrial products, for which applied MFN rates dropped from 11% in 1996 to 4% in 2000. Agricultural products have however remained out of the scope of the customs union, and Turkey maintains higher tariff rates on many agricultural and food products, with an average MFN rate of 28.1% in 2001, and some tariff rates exceeding 100% for products considered as sensitive (such as sugar and meat).

1.3. *Foreign direct investment*

Foreign direct investment (FDI) has remained at a low level in Turkey over the past twenty years. While in the 1990s FDI surged over the world, the level of FDI inflows remained stable in Turkey. FDI increased in the 1980s following the liberalisation measures implemented at the beginning of the decade, but growth in FDI stopped in the 1990s, with inflows averaging less than 0.5% of GDP. In the same time, Central European countries, which are considered as Turkey's main competitor in the region for attracting foreign investment, scored much higher inflows (in 1999, FDI inflows accounted for 9% of GDP in the Czech Republic, 3.9% in Hungary and 4.2% in Poland).

60% of cumulated FDI has gone to the services sector. However, inflows of FDI in the service sector has remained at low levels. Foreign-owned banks still have a limited role in the Turkish banking sector. In the utilities sector, delays in privatisation and liberalisation have also limited foreign investment. In the manufacturing sector, the role of foreign firms is more significant among large firms. They account for 37% of exports and 20% of employment of the 500 largest firms in Turkey, but inflows have also remained at a relatively low level in the 1990s.

Table 3. Inflows of Foreign Direct Investment

In USD million^a

Year	Inflows
1980-1990	6 423
1991	1 967
1992	1 820
1993	2 063
1994	1 477
1995	2 938
1996	3 836
1997	1 678
1998	1 647
1999	1 700
2000	3 060
2001 ^b	1 196

On the basis of certificates issued by GDFI

As of the end of June

Source: Turkish Undersecretariat of Treasury.

The lack of interest of investors contrasts with the assets that Turkey could have in attracting investors. Geographically, its strategic location between Europe, the Middle East and Asia could enable it to work as an economic gateway for the region, in particular since the entry into force of the customs union with the EU. With a population of 65 million people and a GDP reaching \$220 billion, the country also offers a potential large domestic market and scores high in the availability of skilled labour and of high-quality suppliers. Turkey has generally liberal foreign investment legislation dating back to the adoption of Law 6224 concerning the encouragement of foreign capital in 1954. A major obstacle to foreign investment was removed with the establishment of full currency convertibility in 1989. Foreign investment legislation was revised in 1995, and a new decree was issued that further simplified the process for investing in Turkey.¹ In addition to general legislation, Turkey has signed bilateral investment promotion and protection treaties with 65 countries, 41 of which have been ratified.

However, continued macro-economic instability, with sporadic growth and high and variable inflation rates, along with political instability and numerous changes in governments giving rise to frequent unexpected policy changes and slow implementation of structural reforms, have badly hurt the attractiveness of Turkey as a place to invest. In addition to economic and political instability, weaknesses in the regulatory environment for business seem to play a role as an impediment to FDI in Turkey. Administrative procedures are often lengthy and unpredictable, significantly raising the costs and risks associated with investments. Investors surveys have outlined a number of issues relating to business regulations, including gaps in regulation, inconsistent application of laws, extensive red tape, and unpredictable and lengthy judicial enforcement.²

2. THE APPLICATION OF THE SIX EFFICIENT REGULATION PRINCIPLES FOR MARKET OPENNESS

The OECD Report on Regulatory Reform of 1997³ described six “efficient regulation principles”, developed in the OECD Trade Committee, that should be built into domestic regulations and administrative practices to ensure that regulations do not unnecessarily reduce the openness of the market to international competition. Trade policy makers have identified these principles, which underpin the multilateral trading system, as key to market-oriented, trade-and-investment-friendly regulations. The objective of this review is not to examine the extent to which Turkey has complied with international commitments, but to assess whether and how domestic regulations and administrative procedures give effect to these principles.

The six efficient regulation principles for market openness are the following:

- **Non-discrimination.** This refers to equality of competitive opportunities between like products and services, irrespective of the country of origin.
- **Transparency.** Foreign investors, seeking access to a market, must have adequate information on existing and new regulations to base decisions on accurate assessments of potential costs, risks and market opportunities.
- **Avoidance of unnecessary trade restrictiveness.** Governments should use regulations that are not more trade restrictive than necessary to fulfil the objectives of the regulations.
- **Use of international standards.** Compliance with different standards and technical regulations can significantly raise costs when selling products in different markets. When appropriate and feasible, domestic regulations should be based on internationally harmonised measures.

- **Recognition of equivalence.** When the use of international standards is not possible or not considered necessary, the negative effects of cross-country disparities in regulation and of duplicative conformity assessment requirements can be reduced by recognising the equivalence of measures taken by other country, such as the results of conformity assessment performed in other countries.
- **Application of competition principles.** Market access can be reduced by regulatory action condoning anti-competitive conduct or by failure to correct anti-competitive private actions.

2.1. *Non discrimination*

General application

Application of non-discrimination principles, most-favoured-nation (MFN) and national treatment in making and implementing regulations aims at providing effective equality of competitive opportunities between like products and services irrespective of country of origin and thus at maximising efficient competition in the market. In the field of economic relations, Turkey has subscribed to the MFN and national treatment principles through its membership to the World Trade Organisation (WTO). With the ratification by the Turkish Grand National Assembly of the agreement establishing the WTO and its annexes, the commitment to non-discrimination that are contained in these texts have become part of the Turkish legal system, and override any inconsistent provisions of domestic regulation.

Investment legislation

Legislation governing foreign investment ensures equal treatment for domestic and foreign investors. The principle was stated in the first major law that established the general legal framework for foreign investment in 1954 (Law 6224). Article 10 of the law stipulates that “*all rights, exemptions, privileges and facilities recognised for domestic firms shall be equally applicable to foreign capital and foreign enterprises in comparable fields of business*”. The foreign capital framework decree of 1995 considers all firms and branch offices established according to the Turkish Commercial Code and registered in the National Trade Registry as Turkish firms and branch offices. Available incentives for investment, such as customs duty exemptions or investment allowances, apply to foreign and domestic investors alike, and there are no incentives specifically designed for foreign investors.

Foreign investors are however subject to specific requirements in establishing a company in Turkey. Some of the procedures were simplified in 1995. In particular, approval by the Council of Ministers for investments above US\$ 150 million was removed. However, there is still a total capital minimum requirement of US\$ 50 000 per foreign investor, whether a legal or individual person, and foreign investors still need to obtain a Certificate of Permission from the General Directorate of Foreign Investment (GDFI) of the Undersecretariat of Treasury. Foreign investors are only allowed to carry out activities listed in the certificate issued by GDFI and any change in activities requires a new certificate. A capital increase of existing establishments with foreign capital also requires permission, except if the participation ratio of foreign partners remains unchanged. The main objective of this certificate is to collect data on FDI and to check that the investment meets the threshold. In practice, the certificate requirement does not prevent foreign investment, but adds up another step to the registration procedure. The Turkish government has recently taken action to eliminate those unnecessary administrative obstacles. A new law of foreign direct investment, which was prepared in the first half of 2002 and is to be submitted to Parliament, provides for the elimination of the GDFI certificate as well as the capital minimum requirement that apply to foreign investors.

Table 4. Legal restrictions on FDI

Type of restriction	Sector	Legal source
Up to 20% equity participation	Broadcasting	Establishment and Broadcasting of Radio and Television Law 3984
Up to 49% equity participation	Aviation ^a	Civil Aviation Law 2920
	Maritime transportation ^b	Cabotage Act 815, Turkish Commercial Code 6762
	Port services ^c	Cabotage Act 815, Turkish Commercial Code 6762, Privatisation Law 4046
	Fish-processing ^d	Fishing Law 1380, Bylaw on Fishing Products 6710, Turkish Commercial Code 6762
Special permission	Financial sector ^e	Banks Act 4389 as amended by Law 4672, Capital Market Law 2499 amended by Law 3794 and relevant Communiqués, Financial Leasing Law 3226, Law on Accountancy, Financial Advisory and Certified Financial Advisory 3568, Insurance Supervision Law 7397 amended by Statutory Decree No.539
	Petroleum ^f	Petroleum Law 6326
	Mining ^g	Mining Law 3213
Closed to foreign investment	Retail trade (except hypermarkets)	Administrative practices of the Undersecretariat of Treasury
	Real-estate trading ^h	Village Law 442, Tourism Incentive Law 2634, Administrative practices of the Undersecretariat of Treasury
	Fishing ^d	Fishing Law 1380, Bylaw on Fishing Products 6710, Turkish Commercial Code 6762

a Licences to operate airlines are only granted to locally incorporated companies whose management is under the control of Turkish citizens and majority of voting shares are owned by Turkish citizens. Airlines, of which majority of shares are controlled by foreigners, are not permitted to carry passengers from one national airport to another.

b Cabotage is reserved to national flag carriers. Registration of commercial ships is granted only to locally incorporated companies whose management is under the control of Turkish citizens and majority of voting shares are owned by Turkish citizens.

c Only Turkish citizens, and companies that are majority owned by Turkish citizens, which are managed and represented by Turkish citizens with a majority, and majority voting is held by Turkish citizens, may exercise the rights related to the ports.

d Foreign-owned enterprises may engage in fish processing, but cannot obtain a fishing license. Fishing vessels may not register in Turkey unless owned by Turkish nationals or by companies of which majority of voting shares are owned by Turkish citizens.

e Banks may only be established as joint-stock companies. Establishment of a bank or opening the first branch of a foreign bank in Turkey requires the approval from the Banking Regulation and Supervision Board. Only intermediary institutions in Turkey can perform security activities. Mutual funds may be founded only by authorised banks, insurance companies, intermediary institutions and pension funds established in Turkey. The majority of the members of the board of directors of an investment company must be Turkish nationals. Portfolio management and advisory services in securities may be performed only by intermediary institutions established in Turkey. Also, portfolio management services can be performed by portfolio management companies established in Turkey. In order to perform financial advisory services, foreign partners have to be citizens of countries which have officially codified the principles of the profession of financial advisory, and authorisation by the Prime Minister is required. In insurance, foreign commercial presence or presence of foreign natural persons regarding services auxiliary to insurance is permitted only for consultancy and risk-management services. Establishment of an insurance or reinsurance company and opening a branch of a foreign insurance or reinsurance company in Turkey are subject to prior permission of the Ministry of State. Foreign investment in banking by opening a branch may be subject to a reciprocity requirement. Performance of financial advisory services by non-residents requires a reciprocity condition.

f Foreign enterprises may invest in marketing and sales activities without restriction. They may invest in exploration and exploration activities provided they are not controlled or owned by a foreign State (this restriction may be lifted by the Council of Ministers). Petroleum-related activities can be carried out through locally incorporated stock companies or Turkish branches of stock companies incorporated abroad. For investment in refining, transportation through pipelines and storage, approval by the Council of Ministers is required.

g Foreign nationals and companies may invest only through locally incorporated companies.

h Foreign acquisition of real estate outside of municipal boundaries is restricted. The restriction can be lifted by the Council of Ministers for the Creation of tourism centres.

Source: WTO (1998 Trade Policy Review of Turkey) and information provided by the Government of Turkey.

Sectors of the economy open to private domestic investors are also open to foreign participation, without any limit on the participation ratio of foreign capital, except for some sectors, mostly service sectors, which are subject to specific restrictions. In the context of the WTO General Agreement on Trade in Services (GATS), Turkey has taken commitments to market access and national treatment in 72 activities out of a total of 161. In general, these commitments bind the existing policy framework. Foreign participation is limited to 20% in radio and television broadcasting, and to 49% in air transportation, maritime transportation, ports and fish-processing (Table 4). In addition, foreign investors need permission from the government to establish in financial services, mining and petroleum sectors. Foreign acquisition of real estate outside of municipal boundaries is restricted, and the Council of Ministers can lift this restriction for the creation of tourism centres.

Presence of foreigners in the services market as self-employed persons is also largely restricted. Conditions of nationality apply in many sectors, particularly professional services. Only Turkish citizens can work as medical professionals (doctor, dentists, nurse, midwife, pharmacist, optician, veterinary), as public notary, certified public accountant, attorney, manager of hospitals and pharmaceutical factories. The Law on Crafts and Services also contains nationality requirements for a large number of non-professional service activities and fields of employment.⁴

2.2. *Preferential trade agreements*

As preferential agreements give more favourable treatment to specified countries, they constitute inherent departures from the MFN principle. Transparency of these agreements towards third countries is essential for reducing the potential of discriminatory effects. In addition, substantive approaches to regulatory issues such as standards and conformity assessment can introduce potential for discriminatory treatment if, for example, standards recognised by partners in a preferential agreement would be difficult to meet by third countries.

The most important preferential agreement signed by Turkey is the Customs Union with the EU, which has not only resulted in the elimination of duties and quantitative restrictions on industrial products as of January 1996, but has also involved a common commercial policy. Turkey has adopted the EU common customs tariff applied to third countries and undertaken to align its policies with the preferential trade agreements (PTA) concluded between the EU and third countries (EFTA member states, Central and Eastern European countries, Mediterranean countries and autonomous regimes such as the Generalised System of Preferences, Lomé Convention and regimes applied to former Yugoslav Republics – see Box 1).

The main channel for information on Turkey's PTAs is notification to the WTO. The WTO Committee on Regional Trading Agreements reviews all preferential agreements, in a process that consists, among other things, of written questions and answers. Within this context, recourse is available for third countries that consider they are prejudiced by these agreements. The Committee periodically reviews the operation of preferential agreements following their entry into force. While involving different treatment between trading partners, the application of PTAs in Turkey has gone in line with increased liberalisation of the trade regime. The application of the customs union with the EU has resulted in substantial decrease in protection rate on industrial products from third countries. It has also driven changes towards increased transparency in a number of areas, including standards and certification, that are likely to improve access to the market (see Section 2.2).

Box 1. Turkey's preferential agreements

European Union

The Decision 1/95 of the Association Council established a Customs Union between the EU and Turkey. It provided for the elimination of tariffs on imports of industrial goods and for the alignment of Turkish trade policy with the EU policy, in particular:

- Elimination of customs duties and quantitative restrictions on mutual trade in industrial goods by 1 January 1996 (with a phased out elimination for coal and steel products, and industrial components of processed agricultural goods by 1 January 1999).
- Adoption of the EU common external tariff by Turkey against third country imports of industrial goods by 1 January 1996
- Adoption of all preferential agreements concluded by the EU with third countries by 1 January 2001.
- Approximation by Turkey of EU trade policy, adoption of EU customs provisions, competition rules by 1 January 1996, of legislation relating to technical barriers to trade by 1 January 2001, of legislation in the field of intellectual property rights.

EFTA

On 10 December 1991, Turkey signed a free-trade agreement with countries of the European Free Trade Association (EFTA). Upon entry into force in April 1992, EFTA countries abolished all customs duties on imports of industrial goods from Turkey (except textiles and apparel goods, for which tariffs were eliminated on 1 January 1996). The agreement provided that Turkey grants imports of industrial products from EFTA countries the same tariff treatment as imports from the EU. From January 1993 to the end of 1995, Turkey gradually abolished all customs duties and charges having equivalent effects.

ECO

Turkey is a signatory to the Economic Co-operation Organisation (ECO), together with Pakistan and Iran, which now counts 10 members.⁵ The objective of the agreement is to liberalise trade between its members. Tariff preferences, that are granted only on trade between the founding members, consisted in a 10% tariff reduction on imports of specified items, but ceased on January 1996 with the adoption by Turkey of the EU common external tariff, as preferential rates became higher than MFN rates.

BSEC

The Declaration on Black Sea Economic Co-operation (BSEC), signed on 25 June 1992 by Turkey and 10 other countries of the region, established multilateral economic co-operation, such as exchange of statistical data and economic information in various fields. Although the BSEC does not provide for preferential trade agreements, in February 1997, its members adopted a declaration of intent for the establishment of a BSEC free-trade area.

GSP

The Customs Union with the EU provides for the application by Turkey of EU preferences under the General System of Preferences (GSP), which Turkey has not yet adopted. Authorities expect Turkey to assume the Generalised System of Preferences by the beginning of 2002.

Bilateral agreements:

- Since 1997, Turkey has signed free trade bilateral agreements with Israel (entry into force on 1/5/97), Romania (entry into force on 1/2/1998), Lithuania (entry into force on 1/3/98), Hungary (entry into force on 1/4/1998), the Czech Republic and the Slovak Republic (entry into force on 1/9/1998), Estonia in June 1997 (entry into force on 1/7/1998), Bulgaria (entry into force on 1/1/1999), Poland (entry into force on 1/5/2000), Slovenia (entry into force on 1/6/2000), Latvia (entry into force on 1/7/2000) and Macedonia (entry into force on 1/9/2000).

- These agreements provide for a phased reduction of tariffs on industrial goods to complete elimination by 2001 (by 2000 for Israel, by 2002 for Romania, Bulgaria and Macedonia). All agreements include provisions on right of establishment and supply of services, internal taxation, structural adjustment, dumping, state monopolies, rules of origin, competition rules, state aid, balance-of-payment measures, intellectual property protection, and government procurement.
- In addition, Turkey has granted Bosnia-Herzegovina the EU's unilateral preferences since end June 1999 and Croatia since 2002. Negotiations are underway with the Faroe Island. Turkey has also engaged negotiations with Mediterranean countries with a view to participating in the proposed Euro-Mediterranean Free Trade Area launched at Barcelona. Free-trade agreements have been discussed with Egypt, Morocco, Tunisia and the Palestinian Authority since 1998. Draft agreements have been sent to Malta, Jordan, Mexico and South Africa and Turkish trade authorities sent a draft agreement to Algeria at the end of 2001.

Overview

In general, Turkey has a liberal investment regime in which foreign investments receive national treatment. Formal discriminatory elements mainly concern services. Their effects can be significant given the growing role of services in the economy. In addition, while the laws themselves respect the non-discrimination principle, surveys of foreign investors show a perception that large firms, frequently foreign-owned, are subject to tighter treatment in the implementation of laws and regulations, in particular with regards to taxes, customs and import procedures, certification requirements and labour standards. The cost of compliance with regulations, that are numerous, complex, but insufficiently enforced (see section 2.3 and Chapter 2), tends to be borne more heavily by large firms with high visibility.

Transparency

In order to ensure international market openness, the process of creating, implementing, or amending regulations needs to be transparent and open to all market participants. First, transparency requires an open decision-making process, which offers well-timed opportunities for public comment, and mechanisms to ensure that these comments are given due consideration. Second, transparency means availability of information to offer a clear picture of the rules on the basis of which the market operates, enabling investors to base their decisions on an accurate assessment of potential costs, risks and market opportunities. It is also a safeguard of equal competitive opportunities, which enhances security and predictability of the market. Such transparency can be achieved through a variety of means, including systematic publication of proposed rules prior to entry into force and use of information technologies. Third, a transparent regulatory system requires that regulations are implemented in a predictable way, with appropriate access to appeal procedures to voice concerns about the application of existing regulations. This sub-section discusses the extent to which these three aspects of transparency are applied in the Turkish regulatory system. It also provides insights into two specific areas, technical regulations and government procurement.

Information dissemination

Information on adopted regulations is primarily provided through publication in the Official Gazette, which is accessible on the web site of the Prime Minister's Office. Publication in the Official Gazette is mandatory for laws and statutory decrees prior to entry into force as well as for decisions taken by independent regulatory authorities, but not for by-laws (communiqués, directives, circulars), although in practice they are also published. There is no legal rule providing for a mandatory minimum period of time between publication and entry into force. When the law does not contain specific provisions, entry into force takes place 45 days after publication. The date of entry into force can be decided through a specific provision of the law, which in general is the publication date, but can extend from three months to one year.

In addition to official publication, the use of the Internet for disseminating information has spread among public authorities. Laws and regulations are displayed on the web site of the Grand National Assembly free of charge, and ministries and other public bodies have developed web sites that frequently include main pieces of legislation. There is however no central registry of laws and by-laws. The scope of available regulatory information, and translation in English, varies according to the ministries and agencies. While some agencies, such as the Competition Authority display regulations in Turkish and English, in most cases information on regulation is limited.

As part of a policy to attract investors, in particular foreign investors, many countries have established investment promotion agencies, which typically advertise the country as a place to invest, provide potential investors with information on the domestic regulatory and institutional framework for investment, help them identify market opportunities and potential suppliers, and support firms in the implementation stage, in particular by helping them going through the various administrative procedures. In Turkey, there is no such central government office responsible for promoting investment. The General Directorate of Foreign Investment provides some information on investment legislation, but has not been conceived as a promotion agency for investment, and does not have the capacity to play the role of intermediary with other governmental bodies. The creation of the Small and Medium-sized Industry Development Organisation (KOSGEB) in 1990 can be considered as a step in this direction. It provides SMEs with development and support services,⁶ holds meetings with related organisations on prospective legislative developments and helps foreign companies identifying domestic suppliers. However, its main objective is to support the development of domestic SMEs, and attracting foreign investment stands only as an indirect objective. The Turkish Treasury is now considering the opportunity for setting up a specific unit in charge of investment promotion.

Public consultation

While the process of making regulations provides that drafting authorities should obtain opinions of related governmental authorities and ministries, it does not require consultation with other parties that will be affected by the legislation.⁷ In recent years, some drafting authorities have sought the opinions of related parties in writing or orally, for example through the organisation of conferences and workshops. The scope of consultation is left to each ministry which establishes its own informal networks and standards for getting comments. In principle, consultation practices are open to all parties, whether they are domestic or foreign, but their informal nature can lead to the exclusion of “outsiders” over specific interest groups that have established privileged links with authorities.

In general, the quality and predictability of regulations is affected by a lack of participation of the private sector in the law-making process. The lack of consultation mechanisms has led stakeholders to develop lobbying activities on the final texts of the cabinet and Parliament, exerting political pressure rather than contributing to increasing quality of the text. Business organisations often complain that they are not consulted when the government prepares regulations affecting the business environment, and when they provide comments, that these comments are not given consideration. Legal changes often come by surprise, without time for providing comments. For decades, the administration has favoured a paternalistic approach in making and implementing laws while interest groups could exert influence through informal and political channels. The frequently suspicious attitude of officials against the private sector has been underpinned by an overall lack of understanding of the private sector.

More established forms of consultation have however been recently created, mostly in relation to labour and social security issues. The Economic and Social Council (ECOSOC) was first established in 1995 and its composition and role redefined in April 2001.⁸ It provides for the typical tripartite model of discussion forum, bringing together the administration, trade unions and traditional employers

representatives, with however a particular strong representation of the government compared to similar bodies in OECD countries.⁹ Its role is to promote social co-operation in the preparation of economic and social policies. It can be considered as an improvement in the opening of the rule making process in Turkey. Its interest in promoting transparency appears however limited with regard to businesses, in particular foreign businesses.

Some more established and open consultation procedures have recently emerged but public consultation still appears as a new concept in Turkey. Further development in that direction entails a deep change in mindset, both in the administration and the private sector, to move away from mutual distrust towards co-operation needed to create a more competitive regulatory environment for business. More transparent consultation practices could significantly contribute to building such confidence, encouraging the private sector to provide inputs, and fostering the understanding by the public administration of the private sector.

Implementation of regulations and access to appeal procedures

Improvement in the regulatory making process cannot yield any results on the overall regulatory environment unless regulations are implemented in an effective and predictable way. Poor implementation of laws appears as the main problem of investors with the Turkish regulatory framework. They complain about delays in taking decisions, incoherent application and low level of enforcement of regulations. Getting a decision from the administration is an uncertain process, which can take several months, sometimes years, and can contradict other administrative rules. Cases arise for example in import procedures, business registrations, applications for business licenses and investment incentives. As a result, implementation of rules is seen as a largely unpredictable and unreliable process, raising risks and costs associated with investment decisions.

The problem partly stems from numerous loopholes and ambiguities in regulations, which give way to various and sometimes conflicting interpretations. It also reflects the absence of explicit administrative guidelines, clear decision-making criteria and deadlines, and is amplified by discontinuities in the administration following government changes. Deficiencies in the implementation of rules are not addressed by effective means of recourse. With regard to appeals against administrative decisions, the 1982 Constitution clearly states that “*all acts and actions of the administration shall be subject to judicial review*”. The first step is to address a request to the relevant administration, as provided by the Administrative Jurisdiction Procedure Act. The law requires government authorities to make a decision within 60 days. It does not require the authorities to justify their decision. In the absence of a response within two months, it is then possible to appeal to administrative courts. In practice, however, the process is very lengthy as courts are overloaded, which seriously undermines the accountability of the administration.

More generally, deficiencies in the judicial system affect the business environment in Turkey as investors can meet serious difficulties in having their rights enforced. Commercial cases are subject to long procedures, mainly resulting from insufficient human and technical resources. Arbitration is legally possible under the Civil Procedure Code of 1927 to resolve disputes between private undertakings, but is not a common practice. International arbitration is also recognised. However until 1999 it had been prohibited by the Constitution with regard to concession contracts between the Turkish government and private entities. Following a constitutional amendment, Law 4501 of 2000 introduced international arbitration and removed a major impediments for foreign investors in some sectors. The implementation decree was adopted in July 2001. Another improvement has been brought by the amendment of the Constitution in October 2001, which will allow foreign nationals residing in Turkey to file a petition and to receive a response in writing when they want to challenge or clarify decisions taken by tax officials. So far, they had had no efficient available means of recourse.

Transparency in technical regulations

Transparency in the field of standards and technical regulations is essential to firms facing diverging national product regulations, as transparency reduces uncertainties over applicable requirements and thus facilitates access to markets. In Turkey, standards are developed by the Turkish Standards Institution (TSE) established by Law 132 in 1960, while the responsibility for issuing technical regulations lies in various ministerial departments. Turkey provides information to its trading partners through notifications of draft standards and technical regulations, that are not based on international standards, to the WTO Secretariat and other WTO members in accordance with the obligation laid down by Article 2.9 of the WTO Agreement on Technical Barriers to Trade (TBT). Other notifications are required under other WTO provisions (such as Article 7 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, or regular notifications in the framework of WTO agreements on agriculture, rules of origin, import licensing, etc.)

Transparency at the international level will be reinforced by the EU accession process. In the framework of the Association Council Decision 2/97, Turkey must adopt EU rules relating to the provision of information in the field of technical regulations.¹⁰ According to this rule, EU Member States must notify all draft technical regulations and standards that are not transposition of EU directives. The Directive also provides for a standstill period during which other Member States can examine the effects of these regulations on the Single Market. The adoption of this rule can contribute to enhancing transparency of Turkish technical regulations and standards and identifying potential barriers to trade. Such result will require that administrative capacities are being put in place to ensure that rules are effectively notified and comments taken into account.

Participation in the process of making standards is open to all parties, including foreign parties. The Turkish standardisation body publishes an annual work programme for standardisation, which is submitted to the Board of Directors and the General Assembly. Draft standards prepared by specialised committees are sent to targeted parties (public sector, private sector, academics) for comments. The preparation of technical regulations, which can rely on Turkish standards, is made by relevant ministerial authorities. Consultation follows the usual process for making regulation. The drafting authority identifies interested parties and experts, sends them the draft for written comments and/or invite them to participate in initial preparatory meetings. Adopted technical regulations are published in the Official Journal. TSE with regard to standards and UFT with regard to technical regulations serve as enquiry points in the framework of WTO agreements.

Transparency in public procurement

As part of the Transition Programme adopted in the aftermath of the February 2001 crisis, the Turkish government announced a reform in public procurement to ensure transparency and accountability in resource allocation in the public sector. The objective of the public tender law is to establish a more transparent, competitive and effective tendering system, which will comply with international standards. Amendment to the current law on public procurement¹¹ has also been made necessary by the requirements of EU accession and provisions contained in some bilateral free-trade agreements. A new procurement law was adopted by the Parliament in January 2002.

Under the previous legislation, five types of procurement procedures were applied in Turkey: sealed enveloped tendering (which is the normal procedure), selective limited tendering, oral tendering, negotiated procurement, and direct competition procedure. The choice of the procedure was mostly based on the type of procurement, rather than amounts, and gaps in the law tended to create some ambiguities. Only in the case of sealed enveloped tendering and oral tendering were procuring entities required to

advertise tenders in newspapers or the Official Journal. The pre-qualification stage of restricted procedures was thus generally not advertised. Results of bidding had to be published according to a circular, but the requirement was usually not observed. The time-limit for responding to open procedures was usually 10 days, much below international standards. The law enabled the Council of Ministers to authorise procuring entities to award contracts without competition. It also provided it with the power to grant a 15% price advantage to domestic suppliers. This possibility was however not used in practice, according to Turkish authorities. With regard to appeal procedures, no administrative body was responsible for receiving complaints relating to public procurement. The means of appeal was to go to courts, which in practice left little effective means of recourse against decisions given the lengthy nature of most court procedures.

The amendment to the law involves an overhaul of the system. Major changes are the following:

- The law adopts the standard definition of procurement procedures and resorts to thresholds for the choice of the procedure, as in the EU directives.
- It applies to all types of procurement. It covers the delivery of goods, services and construction work, except tenders related to purchase of goods in the agricultural sector, in the defence sector, tenders for the purchase of goods and services backed by foreign financing.
- It provides for the establishment of an independent Office for public procurement, responsible *inter alia* for preparing implementation decrees, collecting statistics, receiving complaints, organising training programmes.
- In the case of open procedures, it increases the time limit to make a tender to 40 days, and to 52 days if the tender is announced internationally.
- It extends the publicity requirement to all procedures. This includes the requirement to publish criteria for selecting tenders and the result of the tender.
- It establishes a dispute settlement procedure with the Office for public procurement responsible for receiving complaints.

The new law maintains some limits on the participation of foreign firms in public procurement. The procuring entity may exclude foreign firms from the tenders in the case where the amount of the project is below the threshold of EUR 13.5 million. Above the threshold, the law provides domestic suppliers an advantage, as the offer of a local firm is equal to the offer of a foreign firm that offers a price up to 15% lower. In case of partnership with a foreign partner, Turkish firms cannot benefit from this protection. A draft law is to be submitted to Parliament, which provides for a reduction in this threshold and the extension of minimum time limits for contracts below thresholds. In addition, accession to the EU would require additional amendments to replace those thresholds with those specified in EU legislation for bidders from EU countries.

These changes should bring Turkish legislation in line with international standards in terms of transparency. This progress is essential as insufficient transparency has so far favoured corruption or at least created a widespread suspicion over possible corruption. The key issue will be to ensure the adequate implementation and enforcement of the law. This requires not only a rapid preparation of implementation decrees, but also special attention to the following issues: 1) training of procuring entities as well as information to business, which are not familiar with the new system; 2) close monitoring of public procurement, including through collection of statistics, which do not exist for the moment; 3) existence of means of action against procuring entity that would not abide by the law. The creation of a public

procurement office could help in this respect as it would provide a central point for inquiries, would be responsible for training and collecting data. Its capacity at fulfilling this role will depend on its independence and adequate human and technical resources.

Overview

Strengthened transparency in decision-making has been set as a major objective of the reform programme in Turkey. The new law on public procurement includes significant steps towards the adoption of international standards of transparency. Ministries have started to develop some forms of public consultation. However transparency of the decision making process remains low relatively to practices observed in most OECD countries. A lot remains to be done to ensure that complete, accurate and timely information, as well as real opportunities for comment, are offered to all market participants in the process of making regulations. This requires a deep transformation in the relations between the administration and the private sector. Fostering consultation could however go a long way to improving the regulatory framework and adapting to market rules.

2.3. *Avoiding unnecessary trade restrictiveness*

Policy makers should favour regulations that are not more trade restrictive than necessary to fulfil their objective, taking account of the risks that non-fulfilment would create. This principle is included in several WTO agreements and applies accordingly in Turkey. However, its implementation into the regulatory framework requires that the process of making rules integrates an international dimension. Assessing the impact of planned regulations on trade and investment, through *ex ante* analysis of planned regulations and consultation with trade experts and traders allows to identify potential issues, search for alternative solutions and prevent the creation of barriers to trade. Reducing the burdens created by administrative procedures on business operations can also contribute to facilitating access to the market, while maintaining the objective of the underlying regulations. This section examines how these two avenues for avoiding unnecessary trade restrictiveness are considered in Turkey, and examines the example of customs procedures, an area in which many countries have endeavoured to simplify procedures with a view to facilitating trade flows.

Assessing the impact of regulations on trade and investment

The rule making-process in Turkey does not provide for any specific instruments for assessing the impact of planned regulations. Draft regulations contain a general justification of the law, which outlines the expected benefits of the law, but no detailed analysis of their social and economic effects. There are no guidelines for drafting these justifications. If any, impact analysis is mostly limited to budgetary implications. Proponent ministers are required by law¹² to consult with “relevant” institutions and agencies before submitting draft laws to the Council of Ministers. A government communiqué of 2000 has also set the obligation to consult the Competition Authority systematically on draft laws and regulations about issues covered by the Board. In the context of inter-ministerial consultation, the General Directorate of Laws and Decrees of the Prime Minister’s Office, which is responsible for co-ordinating all legal texts submitted to the Council of Ministers, checks the compatibility of draft regulations with WTO commitments and EU rules, and can request the redrafting of a text that would violate international obligations. Its role however mainly consists in mediating between ministries and bridging conflicting interests, rather than carrying out assessments of the impact of the regulation.

The international dimension of planned regulations is thus mostly considered through legal considerations, and limited attention is given to assessing economic effects and searching for more efficient alternatives. As a result, regulations frequently tend to have restrictive effects on business operations, which are disproportionate to the aim of the regulation and induce non-compliance. Setting up impact analysis mechanisms when making regulations entails a deep change in the mindset of policy makers and government officials, who for decades have had limited exposure to market mechanisms. It should also go along with the development of public consultation, which would provide policy makers with better knowledge of market conditions.

Reducing administrative burdens

Administrative procedures frequently result in significant delays, uncertainties and costs for businesses. Accordingly, the simplification of the legal framework for undertaking and conducting business has become a significant aspect of international competitiveness. The reduction of administrative burdens has been part of the reforms undertaken in many OECD countries to promote an internationally competitive business environment. This is a particular challenging issue in Turkey as time-consuming and cumbersome administrative procedures appear as one of the major impediments to making business, which affects the capacity of the country to attract foreign investment.

Various business surveys have outlined the major difficulties with regard to administrative procedures. In the survey conducted in 2001 by the Foreign Investment Agency Service (FIAS) at the request of the Turkish government,¹³ 92% of investors ranked complexity along with non-transparency in regulatory policies as a serious constraint to business operations. Areas where over 60% of investors reported serious problems included i) taxation administration, ii) excessive documentation requirements throughout the process of establishment and operations, iii) customs procedures, iv) municipal regulations and operations, v) industrial standards and certification. Business registration requirements, licensing procedures, export and investment incentives and land/building regulations were reported as other specific areas of serious difficulties. The general view given by the FIAS survey is confirmed by the 2000 survey of the World Economic Forum, which ranked Turkey at place 49 out of 59 countries with regard to time spent with bureaucracy.

With regard to company registration, the establishment of a company in Turkey involves 19 steps, including for foreign investors the requirement to obtain a certificate of permission from the General Directorate for Foreign Investment. Each step requires specific documentation and takes from 1 or 2 days to 15 days. The procedure averages two months and a half, but can take much longer in some cases. As the steps of the registration procedure are largely sequential and interdependent, the whole process can be made considerably longer by any delay or mistake in one of the steps. The documentation requirements are considerable, with many duplications. One example is the certificate of permission for foreign investors which imposes additional documentation requirements and time, that seem excessive in comparison with its objective of collecting data. This requirement also questions the overall attitude of the administration towards foreign investors and points the need to seriously reconsider the whole process.

In addition, administrative actions tend to privilege extensive pre-controls and inspections over effective enforcement of laws. Firms can be subject to numerous and burdensome inspections and controls by the administration, while at the same time, laws are insufficiently enforced in many areas, in particular tax, labour and intellectual property legislation. With regard to intellectual property rights (IPR), there has been little awareness of rules, including among officials responsible for its enforcement, and counterfeits have been common in the Turkish market. In recent years, Turkey has made some progress in providing better protection, a necessary step not only for fulfilling obligations stemming from the customs union and the TRIPS agreement, but also for attracting investors, in particular in high technology industries. In

addition to an overhaul of the legislative framework, which started with a new law in 1995, Turkish authorities have taken specific action to improve the implementation of rules, starting with anti-piracy campaign and education programmes for businesses, judges and prosecutors in 1998. The amendment to the 1995 IPR law adopted by the Parliament in May 2001 has strengthened enforcement capacities, through reinforced sanctions and the establishment of specialised courts. In 2002, the government has also undertaken to prepare a law to strengthen the Patent Institute. Here again, those actions cannot yield results without strong and co-ordinated action of all public bodies involved.

Reducing administrative burdens has been an objective of successive governments, with some programmes dating back to the 1960s. However, these actions have not produced sufficiently tangible results for businesses, which still face complicated and unpredictable administrative procedures. A more comprehensive approach has been recently adopted, with the assistance of the World Bank. Upon request of the Turkish government, the Foreign Investment Advisory Service (FIAS) of the International Finance Corporation / World Bank completed a study in June 2001, which identifies administrative barriers to investment in Turkey. This study is to serve as a basis for an overall action plan to reduce administrative barriers in Turkey and facilitate investment, in particular but not only, foreign investment. A workshop involving various government bodies was held in September 2001, and nine technical committees were set up in October 2001, to implement reforms based on the conclusions of the FIAS report. They are co-ordinated by the "Investment Climate Improvement Co-ordination Council" that is to report the Council of Ministers on a quarterly basis. The technical committee in charge of establishment of firms has undertaken to streamline those procedures with the objective of reducing the number of steps to six, and possibly two.

Trade facilitation: the case of customs procedures

A wide-scope overhaul of the Turkish customs system has been undertaken since the mid-1990s, following obligations stemming from the customs union with the EU. The Decision of the EC-Turkey Association Council of March 1995 establishing the customs union required that Turkey apply the same customs duties as the Community for all products covered by the Decision and align its customs system with EU legislation. Basic amendments were implemented by decree in 1995, and in 2000, the Parliament adopted a comprehensive new customs law.¹⁴ Turkey adopted EU customs provisions in the fields of origin of goods, customs valuation of goods, introduction of goods into the territory of the customs union, customs declaration, release for free circulation, suspensive arrangements and customs procedures with economic impact, movement of goods, customs debt and right of appeal.

The harmonisation work has taken place within an ambitious reform programme to improve the efficiency of the customs system, which was launched in 1993. Along with the legislative work for modernising customs regulations along those of the EU, the reform aims at simplifying and harmonising documents, procedures and control techniques with those recommended by the World Customs Organisation (WCO),¹⁵ introduce a comprehensive computerised system in all major customs offices, streamline the organisational structure of the customs, and upgrade customs infrastructure and equipment.

Since 1999, the Turkish customs administration has introduced simplified procedures for the release of goods at the border. It can grant firms the right to use "blue channel" clearance. Declarations submitted by these firms are given automatic clearance by the customs without any physical inspection or documentary verifications. Control is performed through a periodic post-auditing of the firms' books, records and system. Another simplified procedure that gives automatic clearance at the border is the "green channel", which provides for the performance of documentary controls within a time limit following the release of goods. In all cases, firms remain subject to random physical and documentary inspection and post-clearance audits. The criteria for obtaining the right to go through simplified procedures mostly relate to past performance with customs administration. As of November 2001, 297 firms had been granted the right for blue channel clearance, and 14% of declarations were going through this channel.

Computerisation of customs formalities has also progressed in the framework of the modernisation programme of the customs administration. The automated system BILGE (Computerised Customs Activities), based on the French automated customs system, was introduced in 1998. It permits brokers and traders to submit declarations using electronic data interchange from the customs office or from their own office. The declaration data are processed automatically against random and/or specific risk criteria and assigned a clearance channel (blue channel, green channel, documentary verification, physical inspection). Once the automated system is generalised, it will integrate the control and follow-up of transit trade.

The reform program also provides for a reorganisation of the customs administrative structure to improve the efficiency of the administration. A comprehensive plan for restructuring was approved by the Council of Ministers presented to Parliament in Summer 2001, where it has undergone examination by the relating subcommittee. It provides for: 1) the simplification of the administrative structure and a decrease in the number of customs offices (250 as of end-2000) as some of them are under-productive; 2) a change in the status of customs officials to allow for pay increases; 3) the hiring of inspectors to perform auditing of firms that are granted blue channel clearance. Streamlining of the administrative structure has been carried out in five regions.¹⁶ In September 1999, 120 customs offices deemed inefficient were closed and resources were re-affected to other offices.¹⁷

The reform programme has significantly reduced the time for clearance of goods at the customs. In September 2001, 73% of declarations were processed within 24 hours. The use of simplified procedures has progressed, with some variations according to the customs office. At the end of 2000, 75% of all customs formalities were carried out through BILGE and customs authorities expect this proportion to reach 98% by the end of 2001. The automation not only reduces the number of steps for submitting and processing declarations, it also puts a limit on the discretion of customs officials in performing controls. Some action has also been taken to fight abuse of discretion by customs officials, through the publication of a code of conduct for customs officials.

Despite progress, investors still report outstanding issues related to customs procedures, including implicit or explicit requirements for bribes, excessive paperwork, and lengthy delays. While clearance is performed within 24 hours in most cases, it can take up to one month in some cases. Delays are mostly due to lengthy and complex testing and certification procedures (see section 2.4). They also stem from the lack of co-ordination and common strategy between the different administrations involved at the customs. Co-ordination is for example insufficiently developed between customs officials and tax officials. There can be some overlaps in their operation, with duplicative documentary requirements or inspections. Progress has been made in modernising customs formalities and steps have also been made to improve the infrastructure. However, these progress will not produce tangible results for traders, unless all formalities related to imports and exports, in particular tax and standards-related inspections are streamlined and made more efficient. A recent step has been done in this direction with the protocol signed between the Undersecretariat of Customs and the Ministry of Finance, which provides for the weekly exchange of information on customs export declarations, thereby enabling a reduction in the delay for VAT refund payments.

2.4. *Use of international standards and recognition of other countries' measures*

The application of different standards and technical regulations¹⁸ for like products in different countries – often explained by natural and historical reasons relating to climate, geography, natural resources or production traditions – presents firms that export to different markets with significant and sometimes prohibitive costs. Manufacturers face additional costs stemming from the need to adjust to different technical specifications and to demonstrate compliance with applicable regulations following

specific procedures. Hence, when appropriate and feasible, reliance on internationally harmonised standards, as the basis of domestic product regulations, can facilitate trade flows. In cases where the harmonisation of regulations is not considered feasible or necessary, the recognition of equivalence of other countries' regulatory measures in attaining the same regulatory objective may be the most appropriate avenue for reducing technical barriers stemming from divergence in regulations. Recognising the equivalence of test results or conformity certificates issued by foreign bodies can greatly contribute in reducing these costs. Such international co-operation requires confidence of market players and regulatory authorities in the quality of the testing, certification and accreditation systems.

Turkish product legislation

The Turkish regime on Technical Regulations and Standardization for Foreign Trade¹⁹ aims at ensuring that imported products are in conformity with the requirements relating to health and safety and protection of environment, and at increasing the competitiveness and quality of exported products. Another mentioned objective is to prevent standardisation from creating unnecessary obstacle to trade.

According to this regime, prior to imports and exports, some agricultural products (such as fresh fruit and vegetables, edible oils and cotton) are subject to inspection by units related to the Undersecretariat of Foreign Trade. Around 70 standards are applied in the agricultural field. The inspections are carried out in conformity with the UN/ECE standards and the OECD Scheme. As regard industrial products, the Turkish Standards Institution (TSE) is mandated to perform conformity assessment. At the import stage, traders must obtain conformity certificates of conformity with the standards that are mandatory in the domestic market. Those certificates are delivered by TSE. Upon request of the importer, TSE can perform conformity assessment with relevant international and EU standards upon the request of the importer.

Other products are subject to control certificates from the Ministry of Health, the Ministry of Agriculture and Rural Affairs, and the Ministry of Environment. The Ministry of Health performs sanitary controls on pharmaceuticals, cosmetic products, some medical devices, detergents, etc. The Ministry of Agriculture and Rural Affairs performs sanitary and phytosanitary controls on live animals, animal products, foodstuffs, seeds, veterinary products, etc. The Ministry of Environment performs controls on products which are considered risky for the environment such as scrap metals, some chemicals, coals, etc. The Ministry of Environment also regulates the trade of wastes in accordance with the international agreements. Some documents such as analysis certificate and health certificate and their translations can be required for the issuance of control certificates by relevant governmental bodies.

Reforms of product legislation

Major reforms have been undertaken in Turkey to reform regulations relating to standards and technical regulations, following commitments arising from the WTO TBT Agreement and from EU requirements. The Association Council Decision of 1/95 that established the Customs Union between Turkey and the European Union provided for harmonisation of Turkish legislation with the Community *acquis*, and co-operation between parties in the fields of quality, standardisation, certification, metrology and calibration. The Association Council Decision 2/97 listed a number of regulations to be harmonised with EU legislation by the end of 2000, and the Council Decision on the Accession Partnership with Turkey of March 2001 broadened the scope for harmonisation.

In July 2001, the Turkish Grand National Assembly adopted the Law on the Preparation and Implementation of Technical Regulations (also known as the "Framework Law"), which will enter into force in January 2002. A transitional regime with respect to harmonisation with EU rules had been established through a decree lastly amended in 1996, which had put Turkish legislation in line with the

principles for standardisation of the WTO TBT Agreement.²⁰ These regulations make explicit mention of principles underlying the use of international standards. The Framework Law specifies that Turkish product regulation aims at preventing technical legislation, specifications and standards from constituting an obstacle to international trade.

The reform not only is about the transposition of EU technical regulation and standards, but also covers the conditions of placing on the market of the products, the obligations of producers and distributors, the role of conformity assessment bodies and notified bodies, market surveillance and inspection, prohibition of marketing, withdrawal and destruction of marketed products, and notifications relating to these arrangements. These requirements underlie the adoption of the EU New Approach and Global Approach to standardisation and certification (Box 2). As EU New Approach Directives are transposed, products will have to conform to essential requirements defined by the relevant directive, but the producer will be able to choose the relevant standard that ensures such conformity and the production method for meeting conformity. Each regulation will specify the conformity assessment procedures to be followed, ranging from declaration of conformity by the supplier to third party examination. When third party assessment is required, authorities will notify bodies that are entitled to perform the assessment. Implementation of suppliers' declaration of conformity also requires legislative work in the area of consumers' protection to develop market surveillance. A number of initiatives have been taken in recent years in fields such as advertising and labelling, but a general consumer protection system still needs to be developed. In this context, the Under-secretariat of Foreign Trade has prepared five implementing regulations that have not taken effect yet.²¹

Box 2. Harmonisation in the European Union: The New Approach and the Global Approach

The need to harmonise technical regulations when diverging rules from Member States impair the operation of the common market was recognised by the Treaty of Rome in Articles 100 to 102 on the approximation of laws. By 1985, it had become clear that relying only on the traditional harmonisation approach would not allow the achievement of the Single Market. As a matter of fact, this approach was encumbered by very detailed specifications that were difficult and time consuming to adopt, burdensome to implement and required frequent updates to adapt to technical innovation. The adoption of a new policy towards technical harmonisation and standardisation was thus necessary to actually ensure the free movement of goods instituted by the Single Market. The way to achieve this was opened by the European Court of Justice, which in its celebrated ruling on *Cassis de Dijon*²² interpreted Article 30 of the Treaty as requiring that goods lawfully marketed in one Member State be accepted in other Member States, unless their national rules required a higher level of protection on one or more of a short list of overriding objectives. This opened the door to a policy based on mutual recognition of required levels of protection and to harmonisation focusing only on those levels, not the technical solution for meeting the level of protection.

In 1985, the Council adopted the "New Approach", according to which harmonisation would no longer result in detailed technical rules, but would be limited to defining the essential health, safety and other requirements²³ which industrial products must meet before they can be marketed. This "New Approach" to harmonisation was supplemented in 1989 by the "Global Approach" which established conformity assessment procedures, criteria relating to the independence and quality of certification bodies, mutual recognition and accreditation. Since the New Approach calls for essential requirements to be harmonised and made mandatory by directives, this approach is appropriate only where it is genuinely possible to distinguish between essential requirements and technical specifications; where a wide range of products is sufficiently homogenous or a horizontal risk identifiable to allow common essential requirements; and where the product area or risk concerned is suitable for standardisation. Furthermore, the New Approach has not been applied to sectors where Community legislation was well advanced prior to 1985.

On the basis of the New Approach manufacturers are only bound by essential requirements, which are written with a view to being generic, not requiring updating and not implying a unique technical solution. They are free to use any technical specification they deem appropriate to meet these requirements. Products, which conform to these essential requirements, are allowed free circulation in the European market.

For the New Approach, detailed harmonised standards are not indispensable. However, they do offer a privileged route for demonstrating compliance with the essential requirements. The elaboration at the European level of technical specifications which meet those requirements is no longer the responsibility of the EU government bodies but has been entrusted to three European standardisation bodies mandated by the Commission on the basis of general orientations agreed between them and the Commission. The CEN (European Committee for Standardisation), CENELEC (European Committee for Electrotechnical Standards) and ETSI (European Telecommunications Standardization Institute) are all signatories to the WTO TBT Code of Good Practice. When harmonised standards produced by the CEN, CENELEC or ETSI are identified by the Commission as corresponding to a specific set of essential requirements, the references are published in the Official Journal. They become effective as soon as one Member State has transposed them at the national level and retracted any conflicting national standards. These standards are not mandatory. However, conformity with them confers a presumption of conformity with the essential requirements set by the New Approach Directives in all Member States.

The manufacturer can always choose to demonstrate conformity with the essential requirements by other means. This is clearly necessary where harmonised European standards are not (or not yet) available. Each New Approach directive specifies the conformity assessment procedures to be used. These are chosen among the list of equivalent procedures established by the Global Approach (the so-called “modules”), and respond to different needs in specific situations. They range from the supplier’s declaration of conformity, through third party type examination, to full product quality assurance. National public authorities are responsible for identifying and notifying competent bodies entitled to perform the conformity assessment, but do not intervene in the conformity assessment. When third party intervention is required, suppliers may address any of the notified bodies within the European Union. Products which have successfully undergone the appropriate assessment procedures are then affixed the CE marking, which grants free circulation in all Member States, but also implies that the producer accepts full liability for the product.²⁴

The strength of the New Approach and the Global Approach lies in limiting legal requirements to what is essential and leaving to the producer the choice of the technical solution to meet this requirement. At the same time, by introducing EU-wide competition between notified bodies and by building confidence in their competence through accreditation, conformity assessment is distanced from national control. The standardisation system, rather than being a means of imposing requirements set by the government, is put at the service of industry to offer viable solutions to the need to meet essential requirements, which however are not in principle binding. The success of the New and Global Approaches in creating a more flexible and efficient harmonised standardisation process in the European Union heavily depends on the reliability of the European standardisation and certification bodies and on the actual efficiency of control by Member States. First, European standardisation and certification bodies need to have a high degree of technical competence, impartiality and independence from vested interests, as well as to be able to elaborate the standards necessary for giving concrete expression to the essential requirements in an expeditious manner. Second, each Member State has the responsibility to ensure that the CE marking is respected and that only products conforming to the essential requirements are sold on its market. If tests carried out by a notified body are cast in doubt, the supervisory authorities of the Member State concerned should follow this up.

Progress in the use of international standards

Progress in harmonisation has well advanced with regard to voluntary standards developed by TSE. As a member of the International Standardisation Organisation (ISO) and International Electrotechnical Commission (IEC) since 1954, TSE has had a long practice of international co-operation in the development of standards. In the field of certification, TSE uses internationally recognised ISO/IEC Guides. The harmonisation process of Turkish standards with international standards has however gained momentum with the entry into force of the customs union with the EU. 90% of Turkish standards are now based on European and international standards, and over 80% of EU standards have been adopted as Turkish standards.

Harmonisation work with EU rules has also started in the area of technical regulations. Various governmental bodies are involved in the process, which is co-ordinated by the Under-secretariat of Foreign

Trade. Out of 400 identified regulations that need to be aligned with EU rules, some 150 have been transposed into Turkish regulations. Transposition of food-related regulations began in 2000 (Table 5).

Progress in mutual recognition

The Turkish certification regime takes some account of international standards and conformity certificates issued in other countries. TSE has become a signatory of several EU schemes that enable mutual recognition of test results in conformity assessment, such as the CB certificate in the electrotechnical field. For the import of industrial products that are produced in conformity with an international or European standard (ISO, CEN, IEC, CENELEC, ETSI) but have no conformity certificate issued by a third party, conformity assessment is required but may be realised, upon request, according to these international and European standards.

The main progress with regard to recognition of foreign certificates stems from the customs union with the European Union. Products which are certified according to regulations of the European Communities and bear EU certificate marks are directly granted a conformity certificate by TSE and the Ministry of Health. In this case, traders submit a technical file and the declaration or certificate of conformity 15 days prior to importation, and can go through shortened procedures at the customs. This concerns products having been placed into free circulation in the European Union. In some cases, however, delays have persisted due to inspection at the border. According to Turkish authorities, the objective of these inspections is to check the technical files and the correct application of the EU certificate mark, "CE mark". Inspections also concern the technical files. This practice of extensive controls at the border could decline as market surveillance, for which a regulation is under preparation, enters into force and control at the market place replaces control at the border.

Table 5. Progress in Harmonisation with EU Technical Rules

As of September 2001

	Number of EU rules to be harmonised			Foreseen date of completion	Government body responsible for harmonisation
	Total	Fully harmonised	In process		
Motor vehicles	65	31	34	2001	MIT
Agricultural and forestry tractors	23	11	12	2001	MIT
Lifting and mechanical handling appliances	5	0	5	2001	MIT
Household appliances	3	0	3	2001	MIT
Gas appliances	3	1	2	2001	MIT
Construction plant and equipment	10	0	10	2001	
Lawn-movers	1	0	1	2001	MIT
Pressure vessels	6	5	1	2001	MIT
Measuring instruments	28	6	22	2001	MIT
Electrical material	9	0	9	2001	MIT
Textiles	4	3	1	2001	MIT
Foodstuffs	72	27	45	2003	MH MARA
Medicinal products	21	4	17	2003	MH MARA
Fertilisers	7	0	7	2002	MARA
Dangerous substances	20	1	19	2005	ME MH MARA
Cosmetics	7	1	6	2003	MH
Environment Protection	7	2	5	2005	ME MT UB
Information technology, telecommunications and data processing	15	14	1	End 2003	MT TA
General provisions in the field of technical barriers to trade	7	1	6	2001	UFT MIT

Construction products	2	0	0	2001	MPWR
Personal protective equipment	1	0	0	2001	MLSS
Toys	1	0	1	2001	MH
Machinery	1	0	1	2001	MIT
Tobacco	2	0	2	2001	TEKEL
	Number of EU rules to be harmonised			Foreseen date of completion	Government body responsible for harmonisation
	Total	Fully harmonised	In process		
Spirit drinks	6	0	6	2003	MARA
Cultural goods	1	0	1	2003	MC
Explosive for civil use	1	0	1	2001	MIT
Medical devices	1	0	1	2001	MH
Recreational craft	1	0	1	2002	UM
Miscellaneous	2	1	1	2001	MIT

MIT: Ministry of Industry and Trade

MARA: Ministry of Agricultural and Rural Affairs

MH: Ministry of Health

ME: Ministry of Environment

MT: Ministry of Transport

UFT: Undersecretariat of Foreign Trade

MPWR: Ministry of Public Works and Resettlement

MLLS: Ministry of Labour and Social Security

TEKEL: State monopoly for tobacco

MC: Ministry of Culture

UM: Undersecretariat for Maritime Affairs

TA: Telecommunications Authority

Source: Information provided by the Government of Turkey.

Accreditation

In 1999, Turkey reformed the institutional framework for accreditation, a necessary step for building the confidence of market participants in the Turkish certification system and reaping the benefits of mutual recognition agreements. Accreditation is used to assess and to audit at regular intervals laboratories, certification and inspection bodies by a third party as to their technical competence against published criteria. They provide confidence on the competence of conformity assessment bodies, which is essential for the success of mutual recognition. In that sense, international co-operation on accreditation is also seen as an important supporting measure to promote recognition of equivalence in regulatory frameworks. International accreditation organisations (IAF, ILAC, EA) aim at promoting confidence in the accreditation systems and at reducing obstacles to trade by supporting the development and implementation of ISO/IEC standards and guides, exchanging information and establishing multilateral agreements on the equivalence of accreditation programmes operated by their members. Under these agreements, based on peer evaluation, accreditation bodies accept each other's accreditation systems, recognise and promote the equivalence of each others' certificates and reports issued by bodies accredited under these systems. The need for multiple assessments is thereby reduced or eliminated, as a supplier will only need one certificate or report to satisfy several markets.

The 1999 law on the organisation and functions of the Turkish Accreditation Council (TURKAK) established a specific government body responsible for accreditation. Until then, accreditation had been limited to some certificates of laboratories issued by foreign institutions. The General Secretary and other officials were designated at the first general assembly of the council in May 2000. Since the beginning of 2001, TURKAK has started to hire staff and develop its activities. It has in particular carried out a survey to examine the demand for accreditation and organised seminars around the country. It has also set up a web site to provide information on the law, fees, technical specifications and to give access to

application forms. It has also developed relations with international accreditation bodies and aims at getting recognised by EA by the end of 2001, which would enhance its credibility as an accreditation body.

Overview

The adoption of the framework law on technical regulations represents a move away from a system of mandatory technical regulations with extensive controls performed by governmental bodies, to a more flexible and market-oriented system. Since 1999, significant progress has been made to adapt the legislative framework with the adoption of laws on technical regulations, consumers protection, accreditation. As Turkey incorporates New Approach directives into its domestic legislation, the number of products that are regulated by mandatory technical rules will decrease and conformity assessment will be simplified. Effective reduction in technical barriers to trade will thus depend on progress in transposition of directives. It will also require sustained efforts in implementation as involved officials need to adapt and change systems, in particular with regard to testing and conformity assessment, and the development of effective and adequate market surveillance.

2.5. Competition

The benefits of market access may be reduced by regulatory action condoning anti-competition behaviour or by failure to correct anti-competitive private actions that have the same effect. It is therefore important that regulatory institutions make it possible for both domestic and foreign firms affected by anti-competitive practices to present their positions effectively. The existence of procedures for hearing and deciding complaints about regulatory or private actions that impair market access and effective competition, the nature of the institutions that hear these complaints, and adherence to deadlines (if they exist) are thus key issues from an international market openness perspective. This sub-section focuses on these issues, while Chapter 3 provides a detailed discussion of the application of competition principles in the context of regulatory reform.

Turkey's competition law was passed in 1994. Articles relating to anti-competitive agreements and practices, abuse of dominant position and mergers and acquisition are based on EU competition law. The 1994 law established an independent Competition Authority, responsible for the implementation and the enforcement of the law, which started operating in 1997. The Authority and the Competition Board may request information, open investigations and impose penalties. It has published a certain number of communiqués, including one describing the categories of mergers and acquisitions that require prior notification.

Following article 2 of the law, agreement, decision, concerted practice, abuse of dominance, merger or acquisition, which impair competition conditions in the Turkish market fall under the competition law, regardless of the place where the decision was made. What matters is not that the concerned undertaking operates within the borders of Turkey, but that its action has effects in the Turkish market. On the other hand, there does not seem to be any particular provision in the law for the case where a firm with market power in Turkey impairs competition in other markets, a situation similar to what is seen in most countries.

Firms wishing to advance complaints against alleged anti-competitive horizontal or vertical agreements, and abuse of dominance must take their complaints to the Competition Authority. The law applies equally to all firms, whether domestic or foreign, and there are no rules that restrict the rights of foreign firms in regard of competition rules. The Board of the Authority may also take its own initiative to act against anti-competitive practices. Decisions of the Board may be appealed to Conseil d'État (Council of State).

3. SELECTED SECTORS

This section examines the implications for international market openness arising from Turkish regulations in three sectors: automobiles, telecommunications and electricity. Each subsection draws out the effects of sector-specific regulations on international trade and investment.

3.1. *Automobiles*

In recent years, the development of the automobile sector has played an increasing role in Turkish industry, and in its foreign trade in particular. Turkey is the only country of the region which has a fully integrated motor vehicle industry. Foreign car manufacturers have invested in Turkey, attracted by its geographic situation, the potential domestic market, the availability of local suppliers and the relatively low labour costs. There are currently 16 motor vehicle manufacturers in Turkey, including seven manufacturers of passenger cars that all have foreign participation. The two largest manufacturers, Oyak and Tofas, which are in partnerships with Renault and Fiat respectively, accounted for 54% of total production of passenger cars in 2000. Four new passenger car manufacturers have established since 1990 (Opel in 1990, Toyota in 1995, Hyundai in 1997 and Honda in 1998).

Following the entry into force of the customs union with the European Union, the Turkish motor vehicle industry has been exposed to increased competition. Tariffs on passenger cars have been eliminated on imports from EU countries, and the adoption of the EU common external tariff has resulted in a decrease in tariffs on imports from third countries from 58% in 1993 to 13.9% in 1998.²⁵ Some protective measures have however been maintained for a limited period, including the ban on imports of used cars.

The reduction in border protection resulted in a surge in imports in 1997, when imports more than doubled while sales of locally manufactured cars increased by 25%. In 2000, imports nearly doubled again, but sales of locally manufactured cars also grew strongly (Table 6). The share of EU and EFTA countries has significantly increased in total imports of passenger cars, from 64% in 1997 to 87% in 2000 (Table 7). The share of imports from Asia has dropped from 33% to 4% in the same time interval. Japanese and Korean manufacturers have at the same time developed local production. The customs union with the EU has also been followed by an increase in exports since 1998. Exports of passenger cars tripled in 1999, and rose by 16% in 2000, accounting for approximately 8% of total exports.

Imports of most motor vehicles are subject to an import licensing system, whereby importers must submit a pro-forma invoice which is certified by the Ministry of Industry and Trade. Technical regulations on motor vehicles have undergone significant changes with the adoption of EU technical regulations. Turkey has to harmonise its legislation with 65 Council Directives related to motor vehicles. Harmonisation work has progressed since 1999. Thirty-four directives remain to be incorporated by the end of 2001. Progress in this area should result in a decrease in technical barriers to imports of cars.

Table 6. **Production and foreign trade of passenger cars**

	1996	1997	1998	1999	2000
Production (units)	207 757	242 780	239 937	222 041	297 476
Imports (units)	57 479	125 025	111 536	131 215	258 987
Exports (units)	33 404	22 612	25 380	77 753	90 135
Share of imports in domestic market (in per cent) ²⁶	24.8	36.2	34.2	47.6	55.5
Share of exports in total production (in per cent)	16.1	9.3	10.6	35.0	30.3

Source: Automobile Manufacturers Association (OSD).

Table 7. Imports of passenger cars by geographical area

	1996		1997		1998		1999		2000	
	Units	Per cent	Units	Per cent	Units	Per cent	Units	Per cent	Units	Per cent
EU and EFTA	36 275	63.1	80 590	64.5	96 773	86.8	109 689	83.6	226 734	87.5
Central and Eastern Europe	3 262	5.7	2 514	2.0	2 145	1.9	10 088	7.7	21 031	8.1
Asia	17 942	31.2	41 921	33.5	12 618	11.3	11 438	8.7	11 222	4.3
Total	57 479	100.0	125 025	100.0	111 536	100.0	131 215	100.0	258 987	100.0

Source: Association of Turkish Distributors of Import Cars.

3.2. Telecommunications

Turkey has engaged a reform process to liberalise the telecommunications sector. A rapid upgrade of this industry has become vital to the competitiveness of the Turkish economy. In January 2000, the Parliament adopted the New Telecom Law,²⁷ which paved the way for a restructuring of the sector over a four-year period. It planned for the privatisation and restructuring of the state-owned incumbent operator, Türk Telekom (TT), introduced competition in the provision of value added and wireless services, and established an independent regulatory authority for telecommunications, the Telecommunications Authority (TA). The law allowed TT to maintain its monopoly over fixed-line services, including national and international voice telephony, until the end of 2003. TT has also maintained its monopoly over establishment and operation of all telecommunications infrastructures, other than private infrastructures established following concession agreements or allocation of licences or authorisations. The provisions of the Telecommunications Law of 2001 provided for an acceleration of the liberalisation process relatively to the commitment made by Turkey in the WTO negotiations on Basic Telecommunications Service, whereby Turkey was to provide market access and national treatment for all services by the end of 2005. According to this law, once the share of the State in TT's capital goes under 50%, the monopoly rights of Türk Telekom will terminate, even if this takes place before end 2003.

A key step in the restructuring of the telecommunications sector was the adoption of a law on privatisation of TT in May 2001.²⁸ The law reduces the power of the Communications Minister over the telecommunications sector by transferring to the independent regulator the authority of granting licenses and authorisations, and concluding concession agreements. It also provides for the opening of fixed line services to competition once more than half of the company is privatised. It gives a tender commission the responsibility for setting a timetable and method of sale. Two major restrictions are to be noted in the privatisation process. First the state will keep one golden share for stated reasons of national security and public benefit. Second, it limits foreign ownership to a maximum of 45%.

While monopoly has been maintained on the provision of fixed telephony services, competition has developed in mobile telephony. The Telecom Law adopted in 1994²⁹ enabled the Ministry of Transport to grant licenses to undertakings for the provision of a number of value-added telecommunications services (data transmission, mobile telephony, paging and cable TV). Licensing conditions have included the requirement to share revenues with TT, and mobile operators must reverse 15% of benefits to the Treasury. In 1994, two private operators (Turkcell and Telsim) started GSM service following an agreement with TT. They were allocated a licence in April 1995, following the adoption of Law 4161. In early 2000, a tender for two licenses was made to increase competition in the market. One license was sold to Aria, a Turkish-

Italian consortium, and the second tender failed as bidders were discouraged by high price. Finally, a GSM license was allocated to TT. Its subsidiary Aycell started its operations in December 2001.

The mobile market has quickly expanded since the end of the 1990s. The number of mobile subscribers surged from 3.5 millions in 1998 to 19.2 millions at the end of 2001. In the same time, the expansion of fixed lines has been more moderate in recent years. The number of lines per 100 inhabitants rose from less than 5 in 1985 to 25 in 1997 and 28 in 2001 (against an average of 52 in OECD countries).

Important steps have been taken to introduce further competition in the telecommunications sector. However competition has yet to be introduced in fixed telephony. In addition, the privatisation process of TT retains limits on the openness of the sector to foreign investors.

The telecommunications equipment industry has expanded in recent years, with the development of mobile networks and upgrading of the fixed network. The sector is largely dominated by global equipment suppliers, many of which have established production units in the country. Imports of telecommunications equipment have risen from 1.2 billions in 1998 to nearly 2.5 billions in 2000, as the country has developed its communication infrastructure. Exports have also expanded and accounted for 30% of domestic production in 2000 (Tables 8 and 9).

The customs union with the EU has led to a decrease in border protection. Tariffs on imports from EU countries have been eliminated and the EU common external tariff adopted for imports from third countries. Turkey is in the process of harmonising its technical regulations on telecommunications equipment with relevant EU directives. For a number of equipment listed in TA regulations, imports are subject to the delivery of a certificate of conformity by TA (a responsibility taken over from the Ministry of Industry since 2000). In other cases, the regulator accepts the conformity document issued in line with EU rules. Imports still have to submit a number of documents, including documents demonstrating that the importer has an authorised distributor in Turkey and a TA certificate on its maintenance and repair services.

Table 8. **Foreign trade in telecommunications equipment***

	USD million			
	1997	1998	1999	2000
Exports	138	152	150	192
Imports	835	1 200	2 002	2 463

* Telecommunications equipment include telephone and telegraph systems, user-end equipment, transmission equipment, receivers, telecommunication cables.

Source: TESID.

Table 9. **Foreign trade in telecommunications equipment by geographical area***

	In per cent	
	Exports	Imports
Europe	31.5	88.1
– of which EU	23.8	84.8
CIS	18.2	0.2
Middle East and North Africa	24.2	0.5
North America	7.9	2.7
Asia	3.9	6.3
Others	14.2	2.2

* Telecommunications equipment include telephone and telegraph systems, user-end equipment, transmission equipment, receivers, telecommunication cables.
Source: TESID.

3.3. *Electricity*

Turkey has been increasingly dependent on imported primary energy sources, in particular oil and gas. Two-thirds of consumption are covered by imports. Electricity generation accounts for about 10% of domestically produced energy. Since 1997, Turkey has also imported small amounts of electricity from Bulgaria, Iran and Georgia. The generation and transmission company, TEAS has been split into three companies, which are the Electricity Generation Company, the Turkish Electricity Trading Company, and the Turkish Transmission Company. Those companies and the distribution company, TEDAS, are owned by the state and their management is controlled by the government, which has maintained a policy of low retail prices. The sector has been largely inefficient, with low investment, some disruption in supplies, high losses by state-owned enterprises and inefficiencies in the use of energy.

The government has tried to involve the private sector through build-operate-transfer contracts as budgetary constraints limited its capacity to make needed investment in generation capacities. Under these contracts, the private investor is responsible for construction and operating costs but signs a long-term power purchase agreement with the Turkish Electricity Trading Company (previously TEAS), in which the latter commits itself to buy the output of the firm over a usually 20-year period at a fixed price in foreign currency. Along with the development of auto-production, the BO and BOT schemes have permitted to expand electricity supply.

The efficiency of the policy has however been undermined by serious deficiencies. Expensive agreed prices for purchased power have led to raising liabilities in the government budget. Private investors have faced numerous uncertainties due to insufficient transparency of the legal framework, with changes in scheme designs, and delays in the contracting process. Foreign investors have also been deterred from concluding BO and BOT contracts by the lack of competition in the distribution market and insufficiently transparent appeal procedures. Until the recent adoption of legislation on international arbitration, they could not have recourse to international arbitration in the event of a dispute arising in concession contracts with the government.

The Electricity Market Law, which was adopted by the Parliament in February 2001, will progressively introduce major structural reforms in the electricity sector. It creates an independent regulatory authority, paves the way for privatisation of state-owned electricity companies and provides for gradual liberalisation of the market, eventually allowing distribution companies to buy from any generators and generators to sell to any distribution companies and other large consumers. The adoption of the law was prompted by the conditions set for obtaining international loans and supported by a World Bank programme. The capacities to attract foreign investors will partly depend on the transparency and predictability of the legal framework and its implementation.

The law specifies some transparency requirements regarding the activities of the new regulator, including the obligation to consult agencies and firms concerned when preparing regulations, without any distinction between local and foreign-owned companies. The law does not set any specific conditions for organising consultation. Transparency will thus depend on the policy adopted by the regulator in its future operations, in particular with regard to the criteria for choosing entities to be consulted and method of consultation.

4. CONCLUSIONS

4.1. *General assessment*

Faced with a severe financial and economic crisis, the Turkish authorities have engaged reforms to eliminate structural weaknesses and reinforce the market orientation of the economy, in combination with fiscal and monetary policies. These reforms have renewed efforts undertaken over the last two decades to liberalise the economy and open it to international competition. Reduction of tariff barriers to trade, convertibility of the currency, the customs union with the EU and the launch of a privatisation programme have represented major steps towards increased openness. A number of measures have been recently taken or are under preparation to create a regulatory framework that supports the restructuring of the economy.

The reforms have involved key areas for trade and investment, such as product regulation, customs procedures, intellectual property rights, international arbitration and customs procedures. Increasing transparency has been set as a major element of the government's policy strategy. This has been in particular reflected in the ongoing reform of public procurement. The government has also taken steps to tackle deficiencies in the business environment. With the assistance of the World Bank, it has requested a detailed study to be conducted on administrative procedures affecting businesses in order to highlight administrative barriers to investment and start initiatives to streamline some procedures. The customs union with the EU and the recognition of the candidate status of Turkey have backed efforts to adopt international standards and introduce mutual recognition in the area of product regulation.

These reforms reflect a progressive move away from state control over the economy to a market-based economy, in which the government plays a role of guarantor of the framework conditions. As reform strengthens market principles, the conditions for trading and investing in Turkey will improve. However, much remains to be done to leap away from past regulatory practices. In general, the efficient regulation principles for market openness still appear insufficiently embedded in the decision making process and regulatory framework, creating uncertainties and inefficiencies that undermine investment and trade. Initiatives to better disseminate information and consult with the private sector have emerged, but remain still very below international standards. Turkey has yet to consider introducing regulatory impact assessment in the rulemaking process. Efforts undertaken to build a more coherent set of legislation for business and to ensure their effective implementation still need to materialise.

In addition, progress has been impeded by serious deficiencies in ensuring effective implementation of rules. A lack of comprehensive approach to reforms combined with insufficient co-ordination between governmental agencies has frequently undermined the efficiencies of the reforms. Finally, a major weakness seems to stem from the general climate of mistrust between the private sector and the public sector, which has favoured over-regulation, and tended to undermine enforcement by compromising the capacity to effectively implement reforms.

4.2. *Main challenges*

The experience of Central European countries over the past decade has demonstrated that foreign investment can significantly contribute to the restructuring and modernisation of the economy. Foreign investors have brought in capital, technology, expertise and management know-how, which have resulted in productivity gains and product innovation.³⁰ Increased inflows of foreign direct investment could play a critical role in the economic development of Turkey in future years. However, the challenge goes beyond attracting foreign investment to creating an internationally competitive economy. FDI can contribute to enhancing this competitiveness. It should also be noted that the underlying factors for attracting FDI are also those necessary for the competitiveness of domestic firms and their development in the global economy.

The move towards an increasingly market oriented regulatory framework can create more competitive conditions for investment. However, efforts in this direction cannot produce tangible results unless they go along with increased economic and political stability. Continuous progress in economic and political stability will be essential for reducing the risks associated with investing in Turkey, increasing its capacity to compete with other countries in attracting export-oriented investments, and fulfilling its potential capacity as a strategic place to invest. There have been frequent attempts at reforms in the past, whose results have fallen short of expectations, which has undermined the confidence of investors in the capacity of governments to make changes. Building credibility requires sustained efforts in policy making and implementation of reforms.

As seen in other candidate countries, the accession process to the EU can act as an incentive to reforms, but this cannot produce results without a strong commitment to reforms at the national level. Reforms in Turkey can be stimulated by candidacy to the EU, but the approach to reform cannot be limited to meeting EU standards and rules. The development of a market-oriented regulatory framework requires a comprehensive approach to reforms. A clear reform strategy and stronger co-ordination between government bodies is needed to avoid piecemeal approaches and conflicting measures. Managing crisis can make such long-term approach difficult, but crisis can also act as a strong opportunity for overcoming reluctance to changes.

A last challenge is to build market principles not only in regulations, but also in the daily operation of the administration. Principles set in laws and regulations need to be effectively transposed at each level at the administration. At a time of crisis when many measures are being taken, this can turn out an even more difficult task. The experience of other candidate countries to the EU also shows the difficulties in achieving harmonising and implementing a wide scope of new regulations, based on concepts with which officials are not always familiar. Making progress in the implementation of laws requires better training of officials, increased monitoring of administrative actions and accountability. More generally, this involves a long-term and sustained effort to change the mindset of the administration and the private sector, to move away from mutual mistrust to co-operation.

4.3. Policy options

This section identifies avenues for future action. The following recommendations are based on the assessment presented above and the policy recommendations set out in the 1997 OECD Report to Ministers on Regulatory Reform. Founded on international consensus on good regulatory practices and on concrete experiences in OECD countries, they aim at enhancing the adaptation of the regulatory environment in Turkey to the conditions of a global economy.

- ***Improve the transparency of the regulatory framework and widen the opportunities of concerned constituencies to provide input to the rulemaking process.***

Prospective regulation should be made available to concerned constituencies for information and comments through formal channels. Consultation with respect to proposed regulations should be organised in a timely manner so as to allow meaningful interaction between constituencies and the administration. Sufficient time needs to be provided for comments and the process should take place at an early stage so that the comments can effectively be taken into account.

More attention should be paid to the clarity and quality of regulations, to reduce the risk of subsequent differences in interpretations and to ensure consistent enforcement.

Specific attention should also be paid to ensuring transparency at the international level, not only through international obligations, particularly at the WTO, but also through more developed and easily accessible information on the Internet for example.

- ***Continue and accelerate initiatives undertaken to streamline administrative procedures affecting business and eliminate unnecessary restrictions to business operations and trade flows.***

The Turkish government has undertaken an initiative to identify administrative barriers to business operations. The first step, which has been the production of a detailed report identifying and analysing administrative barriers, has been made. Efforts will now be required to ensure that this initiative leads to effective streamlining of administrative procedures. The tax system, requirements for setting up businesses, requirements concerning conformity assessment call in particular for action.

Attention to the cost for business of administrative procedures will be essential in future development of regulations to ensure that the results of ongoing streamlining efforts are not reduced by barriers created by new regulations.

Weaknesses often stem not from regulations themselves, but rather from their unpredictable implementation. The streamlining of administrative procedures needs to be complemented by more efficient implementation of rules. Deadlines, motivations, specifications of criteria for making decisions should be made more general practice throughout the administration. The emphasis should be on better training of officials and on reinforced monitoring of administrative actions.

- ***Develop a consistent practice for assessing the impact of proposed regulations on business and on trade and investment.***

Regulatory impact analysis should be introduced for all new and amended regulations. This should include an initial screening stage whereby regulation warranting further scrutiny would be identified on the basis of predetermined criteria. The screening would prevent holding up resources, which could be used on a more efficient assessment of analysed regulations. Expertise in assessing the impact of proposed regulation and identifying alternatives should be progressively built through training in all parts of the administration in charge of rulemaking.

In order to make regulations that are better adapted to market conditions, such assessment should include analysis of the impact on business, and on trade and investment, and refer to the six efficient regulation principles. Its application should be combined with publication and comment procedures.

- ***Promote transparency in public procurement***

The new regulation on public procurement represents a major step towards increased transparency. Its implementation requires specific attention to training of officials and information of business, as well as monitoring to ensure that publication and competition requirements are effectively put into practice. Developing information and public consultation in this area could contribute to embed transparency in this area.

- *Enhance efforts in the adoption of international standards and use of mutual recognition*

Progress in this area needs to be pursued through attention to testing and conformity assessment requirements so as to eliminate unnecessary barriers to trade. Attention also needs to be paid to review existing requirements once EU directives are introduced to ensure that unnecessary requirements are effectively repealed.

- *Promote efficiency of customs procedures*

Efforts undertaken in the area of customs procedures need to be pursued through increased co-ordination with other agencies, in particular with tax authorities and conformity assessment bodies.

NOTES

1. Decree on Foreign Capital Framework 95/6990 of 1995.
2. For an overview of various surveys of investors, see FIAS, “Turkey – A Diagnostic Study of the Foreign Direct Investment Environment”, Foreign Investment Advisory Service, February 2001.
3. OECD (1997), “International Market Openness and Regulatory Reform”, in *The OECD Report on Regulatory Reform, Volume II: Thematic*, Paris.
4. Nationality requirements apply for the following activities: peddler, musician, photographer, barber, typesetter, broker, garment, cap and footwear producer, stock exchange broker, salesman of goods produced by state monopolies, interpreter, guide, highway worker, driver, watchman, office boy, doorkeeper, waiter, singer, construction worker, worker in iron and woodwork industries.
5. ECO member countries are Afghanistan, Azerbaijan, the Islamic Republic of Iran, Kazakhstan, the Kyrgyz Republic, Pakistan, Tajikistan, Turkey, Turkmenistan and Uzbekistan.
6. Under Law 3624.
7. “Provisions Relating to the Drafting of Laws, Statutory Decrees, By-Laws and Regulations”, published in the Official Gazette on 8 September 1992.
8. Code on the Foundation and Working Principles and Procedures of Economic and Social Council 4641, dated 11 April 2001.
9. The Council will be composed of representatives of various ministerial departments, three representatives from the Turkish Union of Chambers of Commerce and Industry and the Confederations of Labour and Employers, Turkish Tradesman and Craftsmen Confederation, Turkish Union of Agricultural Chambers, Hak-İs and Confederation of Revolutionary Labour Unions, under the chairmanship of the Prime Minister.
10. Directive 98/34 which has codified Directive 83/189.
11. Public Procurement Law 2886 of 1 January 1984.
12. “Principles on Preparation of Laws, Decrees Having Force of Law, Regulations and Draft By-Laws” published in the Official Gazette on 8 September 1992.
13. FIAS (2001), “Turkey – Administrative Barriers to Investment”, Foreign Investment Advisory Service (June).
14. Customs Law 4458, which came into force on 5 February 2000. Previously to the law, first changes had been introduced in 1996 through government order 564.
15. The objective of the “International Convention on the Simplification and Harmonisation of Customs Procedures” (the so-called “Kyoto Convention”) that entered into force in 1974 was to simplify and harmonise customs procedures across countries. In June 1999, the Council of the WCO adopted a revised text to adapt the convention to the development of international trade. The new procedures will increase transparency and harmonisation of customs procedures by using new information technology and modern clearance techniques based on risk analysis. The revised convention is now open for signatures. It shall enter into force three months after forty contracting parties will have signed the amendment protocol without reservation. As of end-June 2000, ten members of the WCO had signed it. Turkey foresees to sign it, following signature by the European Union.

16. İzmir, Kapıkule, Gürbulak, Habur and Sarp.
17. Decree of the Council of Ministers 99/13314 of 10 September 1999.
18. In accordance with the terminology of the WTO Agreement on Technical Barriers to Trade, mandatory technical specifications are referred to as “technical regulations”, while voluntary technical specifications are referred to as “standards”.
19. The Council of Ministers adopted the “Decree on Regime on Technical Regulations and Standardization for Foreign Trade” in March 1995. The Decree was amended by another decree, which is still in force, in January 1996. The communiques which are put into force based on this decree are revised every year. The relevant communiques for the year 2001 were published in the Turkish Official Gazette in December 2000.
20. The Council of Ministers adopted the “Decree on the Regime of Technical Regulations and Standardisation for Foreign Trade” in March 1995. The Decree was amended by another decree in January 1996. Communiqués based on this decree are revised every year. The relevant communiqués for the year 2001 were published in the Turkish Official Gazette in December 2000.
21. They concern market surveillance, exchange of information on national measures derogating from the principles of the free movement of goods, use and affixing of the CE mark, notification procedures between Turkey and the EC regarding technical legislation, working principles and procedures for conformity assessment bodies and notified bodies.
22. Decision of 20 February 1979, Cassis de Dijon, Case 120/78.
23. Energy-efficiency, labelling, environment, noise.
24. See the Council Directive 85/734/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the liability for defective products.
25. Motor vehicles for transport of less than ten people.
26. Gross approximation, which does not take stock variations into account.
27. Law 4502 of 27 January 2000.
28. Law 4673 of May 2001.
29. Law 4000 of 10 June 1994.
30. See OECD, Regulatory Reform in Hungary, Regulatory Reform in the Czech Republic.

