

(vii) Government procurement

1. No major changes have been made to the government procurement regime in Turkey since its previous TPR. The regime comprises: (i) Public Procurement Law (PPL) No. 4734 of 2002, as amended; (ii) Public Procurement Contracts Law No. 4735 of 2002, as amended; (iii) Regulation on Implementation of Services Procurements; (iv) Regulation on Implementation of Goods Procurements; (v) Regulation on Implementation of Works Procurements; (vi) Regulation on Implementation of Consultancy Services Procurements; and (vii) Regulation on Administrative Applications against Procurements.¹ Some concerns have been expressed over the lengthy and often complicated tender procedures.² The Parliament is considering three government procurement draft laws that aim to, *inter alia*, simplify and accelerate the entire procurement process (e.g. by shortening the time limits for both review of complaints, and publication of notices); and regulate procurement procedures of entities operating in water, energy, transport, telecommunications, and postal services.³ These draft laws also aim to bring Turkey's domestic framework closer to the EC's *acquis*.

2. The PPL (Article 53) established the Public Procurement Authority (PPA) as an administratively and financially autonomous body with a link to the Ministry of Finance. The PPA's main responsibilities are to ensure the effective implementation of the PPL and the proper application of the rules and procedures during tender proceedings. The PPA is composed of the presidency, the Public Procurement Board (PPB), and service units. The PPB is the PPA's main decision-making body. It also examines complaints and may take corrective action and determine the remedies, cancel the tender decision, and terminate the tender proceedings, or decide that the complaint is irrelevant.⁴ Final decisions by the PPA/PPB are to be taken within 45 days after a complaint is made. During the last few years, the PPA has made efforts to train procurement officers across the country, and has a web site to disseminate information.⁵ Turkey is also planning to introduce modern procurement techniques, such as e-procurement.

3. The PPL covers most public entities and institutions governed by public law or under public control or using public funds (Articles 1 and 2); there is a separate section regulating the procurement of consultancy services (Articles 48-52). The exceptions to the PPL are: procurement of goods and services by certain public institutions (e.g. public banks⁶; operators in the telecom, transport, energy, and water subsectors); procurement related to defence, security, and intelligence needs; procurement to be carried out through foreign financing pursuant to international agreements; purchases of goods and services for research and development projects; procurement related to agriculture and livestock; purchases from the State Supply Office (DMO); and procurement by public entities abroad, such as embassies and consulates. The thresholds above which foreigners are entitled to participate in tenders opened in Turkey (Article 8) are: YTL 529,111 for of goods and services for entities operating under

¹ WTO (2003) describes the main changes introduced to Turkey's government procurement framework in 2002.

² USTR (2006).

³ These are: a draft law amending the PPL, a draft Law on Public Procurement for Utilities, and a draft Law on Assignment of Certain Investment and Services (including concessions).

⁴ The ten members of the PPB are appointed for five years (they cannot be re-elected) by the Council of Ministers.

⁵ PPA online information is available at: <http://www.kik.gov.tr>.

⁶ Procurement by public banks, for example, is subject to the Banking Act No. 4603. Nevertheless, construction tenders by banks are within the scope of the PPL.

the general or the annexed budget; YTL 882,352 for goods and services for other entities within the scope of the PPL; and YTL 19.4 million for construction for administrations covered by the PPL.⁷

4. Under Article 63 of the PPL, a 15% price preference is granted to domestic tenderers, if the PPA, the MIT, and other relevant departments conclude that the supplies are of domestic origin.⁸ However, this provision is not applicable to domestic bidders in joint-ventures with foreign tenderers.

5. Three tendering procedures are specified in the PPL: (i) open tenders (Article 19), where all tenderers may submit tenders, and notices are published not less than 40 days prior to the launch of the tendering process; (ii) restricted tenders (Article 20), where, following an open invitation to pre-qualify, tenderers are invited by the contracting entity to submit tenders⁹; and (iii) negotiated tenders (Article 21), which applied under certain conditions, for example if at the end of open or restricted procedures, no tender is submitted, and when it is impossible to define the technical and financial aspects.¹⁰ Open and restricted tenders are the main procedures. Direct procurement may be used under certain circumstances, for example, if the needs can be supplied by only one real or legal person, or when the procurement does not exceed YTL 28,800 for contracting entities within metropolitan municipalities, or YTL 9,624 for other contracting entities.¹¹

6. The contracting officer is required to notify the results of the bid evaluation to all those who have submitted tenders. In the event that the winning bidder does not take the contract, it is given to the second most advantageous bid. Furthermore, the Public Procurement Contracts Law sets out the principles and procedures concerning the issuance and implementation of the contracts awarded according to the PPL, and deals with contract issues such as required content, limitations to carrying-over, and regulations on their cancellation.

7. With the exception of certain products that it produces itself, the DMO procures goods (under the PPL framework) from the domestic and foreign markets if necessary, and resells them to public institutions at a price applicable across the country. The DMO was a central procuring entity and reseller to other public institutions even before the enactment of Law No. 4734; its procurement procedures are covered by the PPL. All public institutions covered by the PPL must purchase goods directly from the DMO if these goods are on a list announced by the DMO at the beginning of each year.¹² The goods include paper and cardboard products, stationery and office materials, office machines and tools, furnishings, lighting and heating apparatus, cleaning equipment, vehicles and

⁷ The thresholds and monetary limits specified in the PPL are updated annually by the Public Procurement Authority (PPA) on the basis of the Index of Wholesale Prices of the previous year. They are published in the *Official Gazette*, and are effective as of 1 February of each year. In cases of emergency, the thresholds may be further updated upon the proposal of the PPA subject to approval by the Council of Ministers (Article 67).

⁸ In order to receive the price preference, domestic tenderers must apply for a certificate of origin; this is issued by the chamber of commerce in the area where the goods were produced, on presentation of certain documents (e.g. industrial certificate of registration issued by MIT, food certificate of registration from MARA).

⁹ Pre-qualification notices are published not less than 14 days in advance of the deadline for the pre-qualification application, and a letter of invitation to tender is sent to all pre-qualified candidates at least 40 days before submission.

¹⁰ In these cases, the procurement process is conducted in two stages: initial proposals cover aspects such as technical details and methods for fulfilling the requirements of the contract; and then final offers are presented, including the tender price.

¹¹ There is no requirement to publish a tender notice in the case of direct procurement.

¹² Article 3(e) of PPL No. 4734. The notice on purchases from the DMO was first published by the Ministry of Finance in the *Official Gazette*, 25 February 2003.

their apparatus, and other office stocks. The DMO procures goods and services for the buyers specified under Article 6 of the Main Status of the State Supply Office.¹³

8. Since June 1996, Turkey has participated as an observer in the WTO Committee on Government Procurement.¹⁴

(viii) Local-content requirements

9. The authorities indicate that Turkey maintains no local-content requirements for incentive purposes. However, under the public procurement regime, supplies of Turkish origin are eligible for a price preference of up to 15% (section (vii)).

(ix) Countertrade

10. Turkey continues to use two main types of countertrade practices: barter/counter-purchase, and offset.¹⁵ Barter/counter-purchase is conducted through an official procedure¹⁶, whereas offset is managed by either the UFT or the Undersecretariat of Defence Industry (UDI).¹⁷ All companies are allowed to conduct barter and counter-purchase in accordance with established procedures. Applications are made to the Exporters' Union.

11. In 2005, barter/counter-purchase trade amounted to US\$6.2 million (US\$9.7 million in 2002), covering jewellery, ceramics, iron and steel, and sugar cane. Two offset projects in civil aviation, initiated in 1998 and 2000, are to be terminated in 2008 and 2010, respectively.

(x) Other measures

12. Turkey has used restrictions for balance-of-payments reasons under Article XVIII:B of GATT several times since 1967. Turkey last disinvoked this Article on 1 January 1997.

13. Turkey has no agreements with foreign governments or enterprises designed to influence the quantity or value of goods and services exported to Turkey. Furthermore, the authorities are aware of no such agreements between companies operating in Turkey and foreign enterprises.

14. Turkey applies no trade sanctions, either nationally or internationally, other than those endorsed by the United Nations Security Council or other regional organizations of which it is a member.

15. Compulsory reserve stocks are set for oil products (Chapter IV(3(iii)(b))).

¹³ Published in the *Official Gazette* No. 26512, 4 May 2007.

¹⁴ WTO document GPA/M/2 of 23 July 1996.

¹⁵ Barter/counter-purchase is used mainly with countries with an underdeveloped banking system or facing foreign exchange difficulties. Offset compensates import expenditures with export revenues, and helps to bring in new technology and high-tech investment.

¹⁶ Barter/counter-purchase practices are regulated by the Export Regime Decree, and Communiqué No. 4/2006 on Exportation Made through Counter-Purchase or Barter (published in the *Official Gazette* on 6 June 2006).

¹⁷ Offset practices are regulated by Communiqué No. 6/2007, replacing Communiqué No. 27/1998.

(3) MEASURES DIRECTLY AFFECTING EXPORTS**(i) Registration and documentation**

16. Similar registration and documentation requirements apply to exporters and importers (section (2)(i) above). In addition, exporters are required to register with the Exporters Union and their local chamber of commerce. A fee of between 0.05% and 0.5% of the f.o.b. value of exports is charged as a service commission.

17. Registration requirements are still in force for: exports of goods eligible for premium deduction under the Support and Price Stabilization Fund (SPSF); goods paid for by the SPSF; exports within the framework of special accounts for repayment of instalments established on credits through barter; exports under the Natural Gas Agreement between Turkey and the Russian Federation; exports of goods under restrictions applicable to countries that are implementing quantitative restrictions on Turkish exports; exports to countries under the UN economic sanctions resolutions; goods certified under the "Fundamentals and Implementation of Organic Farming" regulation¹⁸; exports of unprocessed olive oil and processed bulk or barrelled olive oil, liquorice root, raw meerschaum and sample pipe; exports of goods covered by the Vienna Agreement regarding the protection of the ozone layer, as well as the related protocols and amendments; and exports of unprocessed olive in bags, sacks or boxes, livestock, bulk conic pepper, raw olive (unfermented), scrap of copper and zinc, marble, gherkin, and cement. Registration is on a case-by-case basis at the time of each export transaction.¹⁹

18. For goods covered by the CUD and destined for EC member countries, the Undersecretariat of Customs may authorize exporters to issue movement certificates (known as A.TR), without submitting them for endorsement by the relevant authorities. Such authorization may be granted to exporters: that make frequently consignments, who have not been involved in any serious or repeated offence against customs or tax legislation, and with records that can be checked by the customs authorities. This kind of authorization is not yet possible for exports to Israel, Macedonia (FYR), Croatia, Bosnia-Herzegovina, Morocco, Palestinian Authority, Syria, Tunisia, and Egypt due to lack of detailed legislation; this is under preparation.

(ii) Export taxes

19. Turkey applies export taxes at a rate of US\$0.5 per kg on raw skins (HS 41.01, 41.02, and 41.03; excluding processed raw skins); and US\$0.04 per kg for unshelled hazelnuts, and US\$0.08 per kg for shelled hazelnuts.²⁰ The taxes finance the SPSF.

(iii) Export prohibitions, controls, and licensing

20. Turkey prohibits exports of 14 items (by broad category) for environment, health or cultural reasons, or to give effect to obligations under international conventions (Table III.14). Dual-use and "sensitive" goods are subject to export licensing by the UFT under the Export Control of Dual-Use and Sensitive Goods Communiqué.²¹ In addition, exports of chemicals, listed in annexes II and III of the Convention on the Control of Chemical Weapons, are subject to export licensing.

¹⁸ *Official Gazette* No. 25841, 10 June 2005.

¹⁹ These products are designated under Communiqué No. 2006/7, published in the *Official Gazette* No. 26190 of 6 June 2006.

²⁰ Decree of the Council of Ministers published in *Official Gazette* No. 89/10306 of 23 July 1997.

²¹ Communiqué No. 2003/12 of 2 December 2003.

21. Each firm producing oil products is subject to an export quota of 35% of production. An export licence is required for 25 categories of products (Table III.15). Exporters of these items must obtain permission from the relevant authorities.

22. The Decree on the Regime of Technical Regulations and Standardization for Foreign Trade empowers the Government to make goods for export subject to quality control; to set the type of quality control applicable to such commodities; and to prohibit exports of these commodities unless accompanied by a Control Certificate issued by the UFT. The UFT is responsible for enforcing quality control of these commodities. Some 200 agricultural products (at the HS 12-digit level) are subject to compulsory export controls for quality purposes. The coverage, broadly unchanged since Turkey's previous TPR in 2003, includes citrus fruit, apples, groundnuts, a variety of edible oils, dried apricots, dried figs, and some hazelnuts.

Table III.14
Export prohibitions, 2007

Description of item	Invocation of WTO Article	Domestic/International law
Angora goats (1 item) ^a	Environment (Article XX:g)	Law on the Amelioration of Animals (No. 904 of 7 June 1926)
All game and wild animals (except wild pig, wolf, jackal, fox, marten, badger, snake, turtle, and lizard) alive or meat and/or pieces and garments thereof (Ch. 1 and 2) ^a	Environment (Article XX:g)	Decision of the Council of Ministers (No. 234 of 8 March 1990)
Natural flower bulbs (1 item)	Environment (Article XX:g)	Export Regime Decree (No. 7623 of 22 December 1995)
Tobacco seedlings and tobacco plants (2 items) ^a	Environment (Article XX:g)	Law on Tobacco and Tobacco Monopoly (No. 1177 of 9 May 1969)
Dates "Phoenix the ophrasti center" (1 item)	Environment (Article XX:g)	Export Regime Decree (No. 7623 of 22 December 1995)
Indian hemp (1 item) ^a	Health (Article XX:b)	Law on the Controls of Narcotics (No. 2313 of 24 June 1933)
Pterocarya carpinifolia (1 item)	Environment (Article XX:g)	Export Regime Decree (No. 7623 of 22 December 1995)
Liquidamber orientalis (1 item)	Environment (Article XX:g)	Export Regime Decree (No. 7623 of 22 December 1995)
Plants of olive, fig, hazelnut, pistachio, and grapevine (sultanas seedless)	Environment (Article XX:g)	Export Regime Decree (No. 7623 of 22 December 1995)
Ozone depleting substances (1 item)	Health; IA ^b (Article XX:b,d)	Vienna Convention; Montreal Protocol on Substances that Deplete the Ozone Layer; London Amendments to the Montreal Protocol
Walnut, mulberry, cherry, pear, plum, badger, ash, elm, and lime in logs, in timber, in plank and in sketch (Ch. 44) ^a	Environment (Article XX:g)	Decision of the Council of Ministers (No. 8186 of 24 April 1974)
Wood and wood charcoal (excluding charcoal produced from covering of fruit) (Ch. 44)	Environment (Article XX:g)	Export Regime Decree (No. 7623 of 22 December 1995)
Antiques and archaeological works (1 item) ^a	National treasures (Article XX:f)	Law on Ancient Works of Art (No. 2863 of 21.7.1983)
Sahlep (powder and of all sorts)	..	Export Regime Decree (No. 7623 of 22 December 1995)

.. Not available.

a Export prohibited in 1993.

b IA: Undertaken in pursuance of obligations under intergovernmental commodity agreements.

Note: Number of items refers to the Harmonized System classification at the four-digit level.

Source: WTO Secretariat, based on information provided by the Turkish authorities.

Table III.15
Exports requiring a licence, 2007

Description of items	Authority responsible	Legal basis
Military weapons and ammunition (excluding sporting and hunting shotguns)	Ministry of National Defence	Law No. 5201 of 3 July 2004
Opium and poppy seeds	Ministry of Health	Law No. 2313 of 24 June 1933
Addictive and psychotropic substances	Ministry of Health	Law No. 2313 of 24 June 1933 Addictive substances stated in the Psychotropic Agreement dated 1961, revised in 1972; Psychotropic Agreement dated 1971; and UN Agreement (dated 1988) to prohibit addictive substances
Products subject to Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	Ministry of Environment and Forestry	Decree No. 94/5419 of 7 March 1994

Table III.15 (cont'd)

Description of items	Authority responsible	Legal basis
Living or non-living boars, wolves, jackals, foxes, martens, badgers, snakes, turtles, lizards, and identifiable parts of and clothing produced from them	Ministry of Environment and Forestry	Decree No. 90/234 of 8 March 1990
Fertilizers (excluding chemical fertilizers)	Ministry of Agriculture and Rural Affairs	Decrees No. 2/1771 of 27 December 1924; No. 6/4090 of 19 December 1964
Seeds (except forest-tree seeds)	Ministry of Agriculture and Rural Affairs	Law No. 5553 of 31 October 2006 Communiqué No. 96/31 of 19 September 1996
Fishing products subject to the prohibition derived from the principles of fishery (including leeches)	Ministry of Agriculture and Rural Affairs	Law No. 1380 of 22 March 1971 (as amended by Law No. 3288 of 28 May 1986)
Racehorses	Ministry of Agriculture and Rural Affairs	Law No. 904 of 7 June 1926
Feeds covered by the Feed Law	Ministry of Agriculture and Rural Affairs	Law No. 1734 of 29 May 1973
Agricultural medicine and equipment	Ministry of Agriculture and Rural Affairs	Law No. 6968 of 15 May 1957
Pharmaceuticals for veterinary purposes	Ministry of Agriculture and Rural Affairs	Law No. 3490
Export of natural flower bulbs subject to quota or any other kind restrictions	Ministry of Agriculture and Rural Affairs	Decree No. 95/7623 of 22 December 1995
Live animals kept for breeding	Ministry of Agriculture and Rural Affairs	Decree No. 95/7623 of 22 December 1995
Natural mushroom (only exports to EC countries)	Ministry of Agriculture and Rural Affairs	Decree No. 95/7623 of 22 December 1995
Live tuna fish (<i>Thynus thunnus</i>)	Ministry of Agriculture and Rural Affairs	Decree No. 95/7623 of 22 December 1995
Substances listed in the annexes to the Wassenaar Arrangement and the Australian Group	Undersecretariat for Foreign Trade	Wassenaar Arrangement list for Dual-use Goods and Technologies and in the Australian Group Chemical Precursors
Endangered species of wild fauna and flora	Ministry of Agriculture and Rural Affairs, and Ministry of Environment and Forestry	Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
Chemicals listed in the annexes to the Convention on the Control of Chemical Weapons	Undersecretariat for Foreign Trade	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction
Technology and equipment used for nuclear purposes	Turkish Atomic Energy Authority	Decree No. 23965 of 15 December 2000
Goods covered by the Missile Technology Controlling Regime	Ministry of National Defence	Decree No. 5201 of 29 June 2004
Natural gas	Energy Market Regulatory Authority	Law No. 4646 of 2 May 2001
Electricity	Energy Market Regulatory Authority	Law No. 4628 of 3 March 2001
Liquefied petroleum gases	Energy Market Regulatory Authority	Law No. 5307 of 13 March 2005

Source: Information provided by the Turkish authorities.

(iv) Export subsidies, finance, assistance, and promotion

23. In addition to duty and tax concessions (section (2)(ii)(c)), various incentives schemes are available to exporters, although some have been eliminated.²² Under the Export Subsidy Programme for Agricultural Products²³, 16 agricultural or processed agricultural products receive debts deductions, based on a percentage of the quantity of goods exported (Chapter IV(2)(ii)).

²² In the Uruguay Round, Turkey committed itself to reduce export subsidies by 24% in value and by 14% in volume for 44 agricultural products (WTO definition) in equal instalments over a ten-year period starting on 1 January 1995 (SWTO, 1998).

²³ Decree No. 2007/1 of the Money-Credit and Coordination Council published in the *Official Gazette*, 22 March 2007, which replaced Decree No. 2006/1.

24. The Export Credit Bank of Turkey (Turk Eximbank), a state-owned bank established in 1987, and Turkey's only official export credit agency, still operates a large number of export credit, guarantee, and insurance schemes.²⁴ Turk Eximbank's main objectives are: increasing the volume of Turkish exports; developing new export markets; increasing the share of Turkish exporters in international trade; diversifying exports of goods and services; and supporting Turkish exporters, investors, and overseas contractors. Turk Eximbank regularly presents its annual programmes to the Supreme Advisory and Credit Guidance Committee, chaired by the State Minister in charge of the bank's activities. This Committee fixes upper limits of credit to be extended by the bank, guarantees to be issued, and insurance transactions to be effected, either as a total amount or by country, sector, and programme.²⁵ In 2006, Turk Eximbank's credit programmes amounted to about US\$7.8 million, and provided financial support for over 9% of Turkey's total annual exports.²⁶

25. Turk Eximbank supports exporters, export-oriented manufacturers, and foreign investors with short-term export credit, and medium- and long-term export credit programmes (Table AIII.4). Moreover, export receivables are discounted in order to promote sales on deferred payment conditions, and to increase export volume. Short-term financial assistance is made available to exporters at the pre-shipment and post-shipment stages with a term up to 360 days (for credits in YTL) and 540 days (for credits in foreign currency).²⁷ Credits are allocated through the Turkish commercial banks or directly by the Turk Eximbank.²⁸ In 2006, 67% of short-term credits offered by Turk Eximbank were extended via intermediary Turkish commercial banks, and 33% directly. At the end of 2006, short-term export credit facilities accounted for 90% of Turk Eximbank's total loans.

26. Turk Eximbank's medium and long-term financial support programmes have been developed mainly for the export of capital goods and turnkey investment projects to be undertaken by Turkish and Turkey-based contractors. The majority of these programmes involve extending financing facilities to buyers outside of Turkey for purchase Turkish goods and/or services. For many medium- and long-term operations (e.g. project finance loans), a sovereign guarantee in favour of Turk Eximbank has been a pre-requisite for extension of the facility.

27. The Turk Eximbank also offers Turkish exporters, investors, and overseas contractors a variety of insurance policies against commercial and political risks (Table III.16). Commercial risk-based losses, are indemnified by Turk Eximbank from its own resources, while political risks are, in principle, backed by the Government. Since 2000, short-term political risks have also been ceded to the reinsurance panel within certain country limits. Premium rates for insurance programmes range from 0.19% to 4% (comprehensive for commercial and political risks), or from 0.05% to 4% (for political risks only), and vary according to the risk category of the buyer's country, the payment term, and the status of the buyer (private, public or sovereign).

²⁴ Turk Eximbank is under the responsibility of the Prime Ministry or such other State Ministry nominated by the Prime Minister. Turk Eximbank's main sources of funds are direct funding from the Turkish Treasury (through capital injections), and borrowing from commercial banks and international financial markets.

²⁵ The programmes may be revised, eliminated, or extended according to the requirements of Turkish exporters and international rules and regulations (WTO document G/SCM/N/123/TUR of 12 January 2006).

²⁶ Turk Eximbank reformed its short-term credit programmes in early 1996 to bring them into conformity with the WTO Agreement on Subsidies and Countervailing Measures.

²⁷ Pre-shipment financing is required by an exporter especially to meet working capital needs, whereas post-shipment financing is needed by exporters to offer sales on deferred payment conditions due to competition in international markets.

²⁸ If the credits are allocated through commercial banks, the banks are responsible for the default risk of the borrowers. If they are allocated directly by Turk Eximbank to the customer, then collateral and/or a bank guarantee is required. Commercial banks are allowed to charge a spread of up to 1% per annum for credits denominated in YTL, and 0.5% per annum for credits in foreign currency.

28. Under the UFT, the Export Promotion Centre (IGEME) remains the main public organization for export promotion. IGEME acts as an intermediary in establishing business contacts between foreign importers and Turkish exporters. Its activities can be grouped into five main categories: research and development training (training programmes, seminars, and workshops); trade information (computerized trade information system, and library); publicity and promotion (organizing national participation in international trade fairs, and other promotional activities through publications and internet); project management; and international relations. In parallel to IGEME's activities, the UFT has carried out trade missions and buyers programmes since 1995. The market and sectoral coverage of the programmes are based on Turkey's production and export-related capacity, potential markets, and trade possibilities.

Table III.16
Key features of the export insurance programmes, 2007

Programme	Coverage
Short-Term Export Credit Insurance	Up to 90% of losses incurred as a result of commercial and political risks on shipments made by an exporter within one year, with payments deferred up to 360 days. Comprehensive cover is available, including pre-shipment period (180 days maximum); post-shipment cover is compulsory where applicable. Premium rates vary according to, <i>inter alia</i> , the risk category of the buyer's country, the legal status of the buyer, and the relevant payment term and maturity.
Specific Export Credit Insurance	Comprehensive pre- and post-shipment insurance against commercial and political risks for the export of capital and/or semi-capital having at least 60% Turkish content and sold on credit terms up to five years. Cover is available up to 95% of 85% of the contract value, with the foreign buyers required to make a cash payment equal to at least 15% of the contract value. Premium rates are specifically calculated taking into account the above-mentioned criteria.
Specific Export Credit Insurance Post-shipment Political Risk	Cover against political risks in the post-shipment period for receivables from sales on credit terms relating to the export of capital and semi-capital goods with at least 60% domestic content. Cover is up to 95% of 85% (in principle 90% or less) of the contract value, with 15% of the contract value to be paid in advance. Premium rates are specifically calculated taking into account the above-mentioned criteria.
Specific Export Credit Insurance Comprehensive Post-shipment Risk Policy	Same as Specific Export Credit Insurance Post-shipment Political Risk, except that political and commercial risks are both covered.
Insurance Programme for Unfair Calling of Bonds	Cover applies to bid bonds, advance payment and performance bond for Turkish contractors in order to eliminate the risk of unfair calling of bonds. Bonds are issued by a bank in favour of the public buyer based in the borrowing countries for projects undertaken by Turkish contractors or subcontractors. Turk Eximbank is responsible for identifying the Turkish contractor, where a call is made under the bond by reason of events or circumstances beyond the contractor's control.

Source: WTO Secretariat, based on information provided by the Turkish authorities.

29. The public agency for the development of SMEs (KOSGEB), established in 1990 as a non-profit organization affiliated to the MIT, is financed under the general budget and has several support schemes for improving Turkish SMEs' competitiveness and promoting their exports. KOSGEB assists SMEs in, *inter alia*, participation in domestic and international fairs, as well as in business trips abroad to promote exports (50% of the expenses are covered, up to YTL 10,000); creating their own brands; and in export promotion credits. KOSGEB also provides SMEs with business matching models, a mechanism through which local and foreign SMEs are brought together in a common database, and business matching opportunities are assessed by a qualified operator company.

30. As part of its obligations under the CUD, Turkey has been harmonizing its legislation with that of the EC with respect to officially supported export credits (Article 12 of the CUD). Within this framework, the OECD Consensus principles on officially supported export credits with a repayment term of two or more years have been adopted. Turk Eximbank is a full member of the Berne Union (the international association of export credit insurers), and represents Turkey in the Group on Export

Credits and Credit Guarantees (ECG) and in the Participants Group (PG) of the OECD Trade Committee.²⁹

(v) Free zones

31. The General Directorate of Free Zones, under the UFT, is in charge of Turkey's 20 free zones. The enterprises established in the zones are active in a wide range of areas, including high-technology investments, leather products, and storage facilities.

32. Since Turkey's last TPR, it has introduced new arrangements for tax incentives in free zones through the enactment of Law No. 5084 of 29 January 2004 on the Encouragement of Investments and Employment, and amendment of certain acts.³⁰ Under Law No. 5084, only free zone users that operate under a production licence are exempted from the income or corporate taxes until the end of the taxation period of the year in which Turkey becomes a full member of the EC. For other free zone users that obtained an operating licence before 6 February 2004, the income or corporate tax exemption will apply for the validity period of the operating licence, and income tax on wages will not be paid until 2009. Free zone users that obtained an operating licence other than for production after 6 February 2004, do not enjoy income or corporate tax exemption.

33. Free Zones Law No. 3218 of 15 June 1985, and the Free Zones Regulation of 1993 complete the framework for operations and practices in the zones. The legislation is designed, *inter alia*, to promote foreign direct investment and joint-ventures in export-oriented enterprises, provide easy access to imports of raw materials and equipment on favourable terms, and increase employment. Free zones are also targeted at regional development. The validity period of an operating licence is a maximum of ten years for tenant users, and 20 years for users who wish to build their own offices in the zone; if the operating licence is for production, the terms are 15 and 30 years for tenant users and investors, respectively. Sales into the domestic market and barter trade are allowed without limitation, subject to the foreign trade regime (including duty payment and a fee of 0.5% of the transaction value to finance infrastructure).³¹

34. Financial incentives are available to free zone companies. These include exemption from payment of customs duties and fees; exemption from corporate, income, and value-added taxes; no restrictions on profit transfer; and for exchange transactions. The foundation and operation of the free zones are generally currency convertibility through government and private partnership (often with "build, operate, transfer" schemes, such as in the Aegean, Kocaeli, Adana-Yumurtalik, Samsun Free Zones). Investors are also free to construct their own premises, while zones have office space, workshops, or warehouses available for rental on attractive terms. Goods may be stored, assembled, repaired, tested, or repackaged for purchasing or sale in the free zones.

35. Under Article 10 of the Free Zones Regulation, all industrial, commercial and service operations deemed appropriate by the Supreme Planning Board (SPB) may be conducted in free zones; off-shore banking, insurance business, and customs brokers are not allowed. Under Article 32 of the Regulation, the entry of fire arms and their ammunition, radioactive substances, dangerous and toxic wastes to the zones is prohibited. Inflammables, explosives, combustibles, fire-inducing substances or materials dangerous to other substances, can only be brought into the zones provided there is a special arrangement or construction for that purpose. The movement of narcotic substances,

²⁹ Turkey has been a member of ECG since April 1998, and an observer of PG since November 2006.

³⁰ Law No. 5084 was published in the *Official Gazette* on 6 February 2004.

³¹ The 0.5% fee, on goods brought to the zone from abroad and/or sold from the zone to Turkey, is not paid by users that obtained operating licences after 6 February 2004. Sales into the domestic market are subject to Turkey's MFN imports regime.

psychotropic substances and the related chemical substances, and their preparations in and out of the zone are subject to national and international laws implemented by the Ministry of Health. The resident companies supplying inputs and/or services to free zone companies are not eligible for the same incentives.

36. There is no limitation on foreign capital participation in investment within the free zones, and 100% repatriation of capital is allowed without prior permission, tax, duty, or fee. Despite this, Turkey's free zones consist mainly of domestic companies: of the 3,876 firms in the free zones, 648 (16.7%) are foreign. According to the authorities, after the recent legislative amendments to the free zones regime, many foreigners cancelled their investment decisions. Total free zones trade increased from US\$11.1 billion in 2002 to US\$23.8 billion in 2006 (Table III.17); almost 40% of this trade is with OECD and EC countries.

Table III.17
Trade in free zones, 2002-06
(US\$ million)

	2002	(%)	2003	(%)	2004	(%)	2005	(%)	2006	(%)
Free zones to domestic market	3,729	34	5,406	33	7,465	34	7,888	34	7,939	33
Domestic market to free zones	1,528	14	2,119	13	2,882	13	3,160	14	3,071	13
Other countries to free zones	3,589	32	5,638	34	7,520	34	7,704	32	7,951	34
Free zones to other countries	2,257	20	3,445	21	4,243	19	4,610	20	4,863	20
Total	11,103	100	16,608	100	22,110	100	23,363	100	23,824	100

Source: Information provided by the Turkish authorities.

(vi) Other measures

37. According to the authorities, Turkey does not participate in any arrangements designed to curb or control exports to third countries at the request of foreign governments/companies.

38. According to Decree No. 32 on the Protection of the Value of the Turkish Currency, export earnings must be transferred to Turkey, through the banking system, within 180 days of the date of exportation.

39. Export cartels are covered, but are not exempt from a general prohibition of cartels, by Law No. 4054 on the Protection of Competition (section (4)(iii)).

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Incentives

40. Few changes have been introduced to the Turkish investment incentive regime since its last TPR.³² The Investment Encouragement Programme (IEP) which merged the General Investment Encouragement Programme (GIEP), and the Aids Granted to SMEs Investments, is now the only programme.³³ The purpose of IEP is to encourage and orient investments, in order to reduce regional imbalances within the country, and create new employment opportunities, while using technologies

³² Several incentive schemes run in parallel to the overall investment aid programme. These include assistance to exporters (such as duty concessions, export finance, insurance, guarantee, promotion, and marketing assistance) (section (3)(v)), to the agriculture sector (including input subsidy payments), to the energy subsector (e.g. subsidies for the production of hard coal), to maritime activities (tax incentives), and to tourism (including corporate income tax exemption).

³³ Decree No. 2006/10921 of 28 August 2006, published in *Official Gazette* No. 26311, 6 October 2006.

with greater value-added. To qualify for the IEP, potential investors must apply for an investment encouragement certificate. In addition, under Law No. 5084 on Encouragement of Investments and Employment, Turkey provides support ranging from 20-50% of energy costs to companies established in provinces with per capita GDP of US\$1,500 or less (as of 2001), and provinces that have a negative socio-economic development index.³⁴

41. In order to obtain an investment encouragement certificate under the IEP, an investor should present, *inter alia*, a receipt for the deposit of YTL 400 in the Central Bank. Incentives under the IEP are: (i) exemption from customs duties and fund levies on imported machinery and equipment that are part of the investment project and appear on the Machinery and Equipment List approved by the Undersecretariat of Treasury; (ii) VAT exemption for imported and locally purchased machinery and equipment; (iii) "interest support", by certain percentage points of the interest rate, on credits obtained on commercial terms by investors to finance their investment projects³⁵; and (iv) electricity cost support for tourism investments and establishments. SMEs investments can also benefit from the encouragement measures offered under the IEP.³⁶

42. Under Ministerial Council Resolution on State Aids Related to Exports (No. 6401 of 27 December 1994), Turkey has nine state aid programmes, some of which are only for SMEs. Various public bodies/institutions and organizations in Turkey carry out these programmes (Table III.18).

43. Turkey also offers five additional support programmes. On the basis of regional development, organized industrial zones (OIZs) are offered subsidized industrial plots³⁷; infrastructure, including transportation and communication facilities; and subsidized credits. Since its establishment in 1962, about 93 OIZs have been created; credit granted during 2003-06 amounted to US\$175.9 million.

44. The small-scale industrial estates scheme, which dates back to 1965, provided credit of US\$103.9 million between 2003 and 2006, towards the construction of modern workshops with sanitary conditions. At the end of 2006, 403 estates and 88,025 workshops had been constructed; the main activities are car repair works, metal manufacturing, and wooden industry. On the basis of regional development, these estates are granted, *inter alia*, infrastructure facilities and subsidized credits.³⁸

Table III.18
Key features of the state aid programmes, 2007

³⁴ See WTO document G/SCM/N/123/TUR of 12 January 2006.

³⁵ To benefit from "interest support", investments should be in priority development regions or by SMEs, or in the fields of R&D or environmental protection. The rate of compensation is 5 percentage points for YTL credits, and 2 percentage points for foreign currency credits. Maximum total interest support for investment credits is : YTL 300,000 for R&D and environmental protection investments, YTL 200,000 for investments by SMEs, and YTL 1 million for investments made in priority development regions. To enhance investments in R&D, credits for purchases of operating supplies are also eligible for interest support (to a maximum of is YTL 100,000).

³⁶ SMEs are defined as enterprises with less than 250 employees, and with net annual sales or annual financial statements not exceeding YTL 25 million (Decree No. 2005/9617, 19 November 2005).

³⁷ The Law on Organized Industrial Zones (No. 4562 published in the *Official Gazette* of 15 April 2000) determines the principles for the establishment, structure, and administration of OIZs. The size of industrial plots varies between 4,000 and 70,000 square metres. They are sold to industrialists at the cost of the land and infrastructure, without profit. An advance payment of 10%-25% of the cost of the plot must be made, and the rest is paid between four and ten years. The MIT pays up to 99% of the infrastructure cost, depending on the development level of the region. The credit interest rate ranges from 10% to 20%, and maturity is between nine and 15 years depending on the degree of development of the area.

³⁸ The interest rate for the credit ranges from 10% to 20%, and the maturity is 11 years with a one year grace period.

Programme	Aim and beneficiaries	Support	Implementing institutions
State aid for research and development projects	To support companies conducting R&D projects, regardless of size; all industrial companies and firms that produce software	(1) 50% grant for R&D activities for three years; or (2) soft loan for capital support (to be paid back in US\$ with Libor plus interest) for two years	The Turkish Scientific and Technical Research Council, Technology Monitoring and Evaluation Board, and the Turkish Technology Development Foundation
State aid for environmental protection activities	To support expenses of SMEs during certification of quality assurance, environmental management systems, and CE marking; all SMEs manufacturing and software companies	50% of the relevant certification expenses	Exporters' Unions
State aid for participation in international fairs and exhibitions	To increase participation in fairs abroad and promote Turkish exports; companies, sectoral foreign trade companies, producers/manufacturers organizations	(1) 50% of participation fees (in the case of national participation); (2) 50% of the rental cost of empty stand, and 50% of transportation costs (in the case of individual participation)	Exporters' Unions
State aid for organizing domestic fairs with international participation ^a	To promote international fairs organized in Turkey and to foster international participation; companies that organize international fairs in Turkey	50% of promotional activities; 50% of transportation expenses of representatives of foreign companies; and 50% of expenses regarding activities during the fair	Exporters' Unions
State aid for market research projects	To create new export markets; companies, sectoral foreign trade companies, producers/manufacturers organizations	Buying market research projects, reports, and statistics; financial assistance for companies participating in trade missions abroad, and for becoming members of B2B web sites so as to market their products abroad	Export Promotion Centre and Exporters' Unions
State aid for operating stores abroad	To promote companies operating stores abroad; companies and sectoral foreign trade companies	50% of the advertisement, rent, office inventory and decoration expenditures of companies operating a store abroad	Exporters' Unions
State aid for encouraging employment in sectoral foreign trade companies	To promote employment; sectoral foreign trade companies	75% of the pre-tax salary for one manager and two staff with professional experience, for one year	Undersecretariat for Foreign Trade
State aid for vocational training	To support trade training and trade consultancy needs of companies in international trade business	(1) Subjects are: quality, productivity, management techniques, design, international marketing, and foreign trade operations (2) 90% of training costs for programmes up to six months (3) 75% of consultancy services costs up to one year (4) One year tuition costs of selected designers	Export Promotion Centre and Exporters Union
State aid for promoting Turkish trade marks and improving the image of Turkish goods	To support brand creation and positioning activities, as well as marketing activities abroad; companies and sectoral foreign trade companies	50% of consultancy fees, rental fees, advertisement, certification expenses and fees for the registration of trade marks	Exporters' Unions and Undersecretariat for Foreign Trade

a The fair must be organized at least three years in advance, a minimum of 100 companies is required (25 of which must be foreign), and a fair cannot be supported more than twice.

Source: Information provided by the Turkish authorities.

45. With the objective of upgrading SME's effectiveness and expanding their share of total production, the KOSGEB provides services related to production, marketing, quality control, machinery and equipment support, technology development, training, and information; it also

prepares and executes projects. The KOSGEB has several support schemes for the improvement of Turkish SMEs exports (section (3)(iv)).

46. The Technology Development Zones Law (No. 4691), approved by the Grand National Assembly of Turkey on 26 June 2001, promotes the use of high/advanced technologies and the development/production of technology or software in technology development zones, and related R&D capabilities, through cooperation between universities, research institutions, and producers. Financial support is granted for, *inter alia*, land procurement, infrastructure, and construction of administrative buildings. Income and corporation tax exemptions are being granted until the end of 2013. Researchers, software engineers, and R&D personnel working in the zone are exempt from all types of tax, also until the end of 2013.

47. The Industrial Zones Law (No. 4737, published in the *Official Gazette* of 19 January 2002), which amended the Law on Industrial and Organized Industrial Zones, aimed to promote domestic and foreign investment by offering incentives and removing red tape for investors. Industrial zones (IZs) are established by the Council of Ministers, upon proposals from the MIT, at locations designated by the Coordination Committee for Industrial Zones. The acquisition of land and the preparation of the infrastructure required for the construction of IZs are funded by the MIT. The Council of Ministers determines, within the framework of the investment incentives decrees, the incentives that will be applied to investments in IZs.

(ii) State trading, state-owned enterprises and privatization

48. Since Turkey's previous TPR, the public sector has decreased its influence on the economy, mainly through the privatization of state-owned enterprises (SOEs).³⁹ Some of the most important SOEs in operation (Table III.19) still operate under monopoly or hold exclusive rights in many sectors (e.g., banking, transportation, agricultural processing, and energy), and run losses, with consequent budgetary transfers. As a result, Turkey is implementing an ambitious privatization programme aimed at relieving the financial burden of SOEs on the national budget, addressing over-employment, ensuring a sustainable growth path, and a market-based and competitive production system, while meeting the EC's pre-accession economic criteria.

49. The privatization programme in Turkey, which started in 1984, involves not only the sale of the companies but also their *ex ante* restructuring in accordance with Privatization Law No. 4046 of November 1994, as amended by Law No. 4971 of 2003. The two main institutions in charge are the Privatization High Council (chaired by the Prime Ministry), which decides on the list of companies to be included in (or excluded from) the privatization portfolio, and the Privatization Administration (PA), which carries out the programme. However, privatization of some specific PEs is undertaken jointly with the relevant ministries and public authorities, for example the Banking Regulation and Supervision Agency in the case of state banks, and the independent Tender Committee in the privatization of Turk Telekom. In addition, certain privatizations are monitored by the Competition Authority.⁴⁰

³⁹ SOEs in Turkey comprise both financial and non-financial companies. Non-financial SOEs are divided in two groups: state economic enterprises (SEEs) that operate in sectors where competition is possible, and public economic institutions (PEI), i.e. monopolistic firms that have some special rights on operational issues in their areas of activities (e.g. railway, coastal safety, air traffic control, and postal services).

⁴⁰ Under the Turkish competition law, broad merger control provisions (Article 7 of the Competition Law) are also applicable to privatization transactions conducted by the State. To ensure timely review of such transactions, the Board issued a communiqué in September 1998 (Communiqué 1998/4) to specifically address

Table III.19
Selected public enterprises, 2007

PE	Activity	State ownership	Related law
Manufacturing			
MKEK	Machinery and chemicals	100.00%	Decree Law No. 233
DMO	Office supplies	100.00%	Decree Law No. 233
SUMER HALI	Hand carpet	100.00%	Decree Law No. 233
SUMER HOLDING	Textiles	100.00%	Law No. 4046
TDCI	Iron ore	100.00%	Law No. 4046
Mining			
ETI MADEN ISLETMELERI	Mining industry	100.00%	Decree Law No. 233
TTK	Coal mining	100.00%	Decree Law No. 233
TKI	Lignite mining	100.00%	Decree Law No. 233
KBI	Copper	100.00%	Law No. 4046
Electricity			
TEIAS	Electricity transmission	100.00%	Decree Law No. 233
EUAS	Electricity generation	100.00%	Decree Law No. 233
TETAS	Electricity contracting & wholesale	100.00%	Decree Law No. 233
TEDAS	Electricity distribution & retail sale	100.00%	Decree Law No. 4046
TEMSAN	Electromechanic equipment	Subsidiary	Decree Law No. 233
YENİKÖY ELEKTRİK ÜRETİM	Electricity generation	100.00%	Decree Law No. 233
KEMERKÖY ELEKTRİK ÜRETİM	Electricity generation	100.00%	Decree Law No. 233
YATAĞAN ELEKTRİK ÜRETİM	Electricity generation	100.00%	Decree Law No. 233
Petroleum			
TPAO	Crude oil exploration and production	99.98%	Decree Law No. 233
BOTAS	Crude oil transportation and natural gas import, transportation, distribution and sale	100.00%	Decree Law No. 233
PETKİM	Petrochemicals	65.50%	Law No. 4046
Agriculture			
TSFAS	Sugar processing	99.99%	Decree Law No. 233
TMO	Soil products	100.00%	Decree Law No. 233
CAYKUR	Tea processing	100.00%	Decree Law No. 233
TEKEL	Tobacco and alcoholic beverages	100.00%	Law No. 4046
EBK	Meat, fish processing	100.00%	Law No. 4046
Transportation			
TCDD	Railway services	100.00%	Decree Law No. 233
TUDEMŞAS	Railway transportation equipment	Subsidiary	Decree Law No. 233
TULOMŞAS	Railway transportation equipment	Subsidiary	Decree Law No. 233
TUVASAS	Railway transportation equipment	Subsidiary	Decree Law No. 233
DHMI	Airports administration	100.00%	Decree Law No. 233
KIYEM	Coast security	100.00%	Decree Law No. 233
TDI	Seaports administration	100.00%	Law No. 4046
THY	Airlines	49.12%	Law No. 4046
Communication			
PTT	Post, telegraph	100.00%	Decree Law No. 233
TURK TELEKOM	Telecommunication	45.00%	Laws Nos. 4046 and 4673
TURKSAT	Satellite communication and cable TV	100.00%	Law No. 5189
Banking			
TC ZIRAAT BANKASI	Banking (agricultural support credits)	100.00%	Laws Nos. 4603 and 5411
T. HALKBANKASI A.S.	Banking	74.98%	Laws Nos. 4603 and 5411

Table III.19 (cont'd)

privatization proceedings administered by the PA. This was amended to cover all privatization transactions carried out by any public institution or organization. The Communiqué 1998/4 requires that pre-notification be made to the Turkish Competition Authority before tender conditions are announced to the public if the entity being privatized: (i) has a market share over 20%, or (ii) has turnover exceeding YTL 20 million, or (iii) possesses a legal monopoly, or (iv) enjoys statutory or *de facto* privileges not accorded to private firms in the relevant market. The pre-notification allows the Board to make its views known for the preparation of tenders. When the successful bidders are determined following a tender, authorization by the Competition Board is required to make the privatization transaction legally effective: (i) where pre-notification of the transaction is compulsory or, (ii) even if pre-notification is not required, where the acquiring firm has a pre-transaction market share above 25% or turnover exceeding YTL 25 million.

PE	Activity	State ownership	Related law
T.KALKINMA.BANKASI A.S.	Banking (development)	99.08%	Laws Nos. 4456 and 5411
T. IHRACAT KREDI BANKASI A.S. (T. EXIMBANK)	Banking (export credit)	100.00%	Laws Nos. 3332 and 5411
T. VAKIFLAR BANKASI T.A.O.	Banking	58.64%	Laws Nos. 6219 and 5411

Source: Information provided by the Turkish authorities.

50. Privatization is through one or more of the following methods: (i) sale; (ii) lease; (iii) grant of operational rights; (iv) establishment of property rights other than ownership; and (v) profit sharing model and other legal provisions depending on the nature of the business.⁴¹ In the case of privatization of public service organizations through a transfer of ownership, separate laws (other than Law No. 4046) have to be used.⁴² Under Law No. 4046, value assessment commissions are established for privatizations; these commissions must use at least two valuation methods⁴³, as well as various criteria such as industrial, commercial, and social features, sector and market specifications, and technological structure. If more than 49% of the capital shares of the following entities are privatized, golden shares must be established due to their "strategic importance": Turkish Airlines (THY), Ziraat Bankasi, Halk Bankasi, Soil Product Office, and Turkish Petroleum Corporation (TPAO).⁴⁴

51. State shares in 244 companies were brought into the privatization portfolio during 1984-07. In addition, 22 "incomplete" plants, six toll motorways, two Bosphorus bridges, six ports, 393 real estate properties, and 29 electricity plants have been included in the programme.⁴⁵ In total, 195 companies have been privatized. The State has withdrawn from certain activities such as cement, animal feed, milk processing, and airport ground handling services. More than 50% of the privatized shares were in tourism, iron and steel, textiles, sea freight, and meat processing. In a number of cases, state shares were offered to the public through the Istanbul Stock Exchange, which has thus been helped by the process.⁴⁶

52. After more than a decade's delay, large-size privatizations only began in 2004-05. Some of the most important PEs privatized since then are: Turk Telekom (55% of the shares sold for €5.5 billion)⁴⁷, TUPRAS (51% for €3.5 billion), Erdemir (49.29% for €2.5 billion), Ataturk airport (15.5 years of operating rights for €2.5 billion), Vakiflar Bankasi (25.18% for €1.1 billion), Eti Aluminium (99.99% for €255 million), Petkim (34.5% for €234 million), and THY (28.75% for €173 million). Privatization proceeds, on a commitment basis, totalled around €10.4 billion in 2005 and €6.7 billion in 2006 (compared with actual revenues of about €10 billion during 1986-02).⁴⁸

⁴¹ Article 18 of Law No. 4046 of 24 November 1994.

⁴² These include companies with national and supplemental budgets and their properties, such as hospitals, ports, and highways; public economic enterprises offering public services under monopoly; and enterprises with national and supplemental budgets that are in the form of an exclusive monopoly and/or public economic enterprises that serve within the framework of their original establishment tasks.

⁴³ The methods are: net present value, book value, net asset value, depreciated replacement value, liquidation value, price/cash flow ratio, price/profit ratio, market capitalization value, market/book value, and expertise value.

⁴⁴ WTO (2003).

⁴⁵ Some of the companies were subsequently removed from the portfolio for a range of reasons. Privatization Administration online information. Viewed at: <http://www.oib.gov.tr/yayinlar/publications.htm>.

⁴⁶ Privatization Administration online information viewed at: <http://www.oib.gov.tr/yayinlar/publications.htm>.

⁴⁷ Turk Telecom (the remaining 45% of the shares) is one of the main companies that remains in the privatization portfolio.

⁴⁸ During 2005-06, the Privatization Administration transferred €5.56 billion to the Treasury with the aim of reducing the public debt stock.

53. In October 2002, the state-owned electricity company TEAS was separated into three companies (generation, wholesale, and transmission activities), while the privatization process of retail activities owned by TEDAS and three of its twenty electricity distribution companies was initiated (Chapter IV(3)(iii)(b)).⁴⁹ Turkey has also launched tendering processes for the ports of Bandirma, Derince, İzmir, Samsun, Mersin and İskenderun; the technical processes for Mersin and İskenderun have already been completed. Among the most important PEs listed for privatization are: TEKEL⁵⁰; Petkim (tendering for the sale of 51% of the shares was announced on 16 March 2007); the National Lottery; sugar processing plants; certain public utilities companies; some banks (the privatization of Halk Bankası has been approved, and Ziraat Bankası will follow); as well as other smaller holdings, such as Tasucu Paper and Pulp Plant, hotels, and land/real estate holdings.

54. Four pharmaceutical products (at the HS four-digit level), i.e. cinchona bark (used to fight malaria and syphilis); potassium iodide; alkaloids of cinchona and their derivatives (quinidine); and primaquine diphosphate continue to be imported only by the Turkish Red Crescent, which is one of the two state trading enterprises still operating in the country; the other is TEKEL⁵¹

(iii) Competition policy and price controls

55. The Law on the Protection of Competition No. 4054 (*Official Gazette*, 13 December 1994) remains the main legal basis covering competition in both goods and services; its main objective is to create an efficient competitive environment in Turkey.⁵² In 2005, amendments to Law No. 4054, through Law No. 5388⁵³, *inter alia*, abolished the compulsory notification of agreements, and concerted practices or decisions that are within the scope of Article 4 of Law No. 4054 in order to receive exemption⁵⁴; abolished fines applicable for failure to notify these agreements, concerted practices and decisions; and clarified that fines will be applicable in cases of mergers or acquisition transactions that are subject to authorization and are undertaken without the authorization of the Competition Board. The number of Board members was reduced from eleven to seven.⁵⁵ Turkey has also continued to adopt secondary legislation with a view to further aligning its legislation on the EC *acquis*.

56. Turkey's competition legislation addresses three main categories of issues: (i) agreements, decisions, and concerted practices that hinder, distort or restrict competition (Article 4, Law No. 4054); (ii) abuse of dominant position (Article 6); and (iii) mergers and acquisitions that distort the competitive structure of the market (Article 7). Pursuant to Article 4, all agreements that distort, restrict or prevent competition are prohibited, except where an exemption is granted by the

⁴⁹ As part of the privatization process, on 1 March 2005, distribution segments in 21 regions and 20 electricity distribution companies began operations.

⁵⁰ The part of TEKEL dealing with alcoholic beverages was sold in 2004, while TEKEL tobacco is scheduled to be privatized soon.

⁵¹ WTO document G/STR/N/11/TUR, 15 December 2006.

⁵² The substantial provisions of Turkey's competition law are described in detail in WTO (1998).

⁵³ Law No. 5388, entitled "The Law on an Amendment to Particular Articles of the Law on the Protection of Competition."

⁵⁴ This amendment enabled the Competition Authority to grant exemptions to agreements, concerted practices and decisions for a specified or an unspecified period *ex officio* provided that all the conditions under Article 5 of Law No. 4054 are satisfied. Moreover, the exemption decisions now have retroactive effect: "exemption decisions will be valid as of the date of concluding an agreement or committing a concerted practice or taking a decision of an association of undertakings".

⁵⁵ Board members are also now prohibited from participation in investigations of potential breach of competition rules.

Competition Board (Article 5).⁵⁶ It may grant negative clearance (Article 8), which confirms that the practice is not considered to be contrary to the competition rules. Any practice that affects the Turkish market falls within the scope of the law), including agreements between Turkish and foreign companies or even between foreign companies, even when the agreements are concluded outside Turkey (the effects doctrine). Except for certain types of merger in banking, all sectors are treated equally under Law No. 4054.

57. Since November 1997, the Competition Authority (CA) has been responsible for the implementation and the enforcement of the law.⁵⁷ The decision-making body of the CA is a seven-member Board; its budget is financed from a 0.04% levy on capital increases of companies. It may request information that it deems necessary from all public institutions and organizations, undertakings and associations of undertakings (Article 14), perform on-the-spot inspections at undertakings and associations of undertakings (Article 15), carry out investigations (Articles 40 to 49), and impose penalties (Articles 16-17). Article 5 also empowers the Competition Board to issue communiqués that ensure block exemptions for agreements on specific matters.

58. The CA has played an important role in moving the Turkish economy forward to greater reliance on competition-based and consumer-welfare oriented market mechanisms.⁵⁸ Moreover, since the last TPR of Turkey, the CA has sought to improve coordination with Turkey's regulatory institutions, for example the Telecommunications Authority, and the Energy Market Regulatory Authority (EMRA) (Table III.20). The CA has also worked closely with the PA on the privatization of a number of SOEs.⁵⁹ Some of the most serious problems for competition law and policy in Turkey are, *inter alia*, the lack of a mechanism to control state aids, and the fact that some SOEs are vested with monopoly concessions or anti-competitive privileges.⁶⁰

59. From 2000 to 2006, 1,633 cases were handled by the CA and 99% were resolved (Table III.21). Mergers and acquisitions represented 54.1% of cases resolved, followed by competition infringements (29.9%), and exemptions and negative clearance (16%).

60. Certain products, such as energy, and services, mainly utilities, are subject to price controls. Tariffs for electricity transmission, distribution, and wholesale (for TETAS, state-owned wholesale company), and for retail to "non-eligible consumers" are subject to EMRA Board approval. The pricing methods under the EMRA regulation (with price subject to approval by EMRA Board) are "revenue cap" for transmission tariff, "hybrid" for distribution tariff, and "cost based" for TETAS tariffs; the "price cap" method is used for the retail sale tariff applicable to non-eligible consumers. For natural gas, wholesale, retail sale, transmission, storage, and city distribution tariffs are subject to approval by EMRA Board; a price cap is determined in accordance with principles and procedures set by EMRA. Petroleum and LPG prices are determined freely according to world prices; however, in case of competition abuse, EMRA is authorized to control the price for two months. Coal prices are set by the producers (Chapter IV(3(iii)(b))). The opening price for the auction of locally produced

⁵⁶ Exemptions will be granted by the Board, if the agreements: promote or enhance technical and economic production of certain goods or services; benefit the consumer; do not eliminate competition in a significant section of the market; and do not restrict competition beyond what is required to achieve the first two objectives. Competition Authority online information. Viewed at: <http://www.rekabet.gov.tr/word/ekanun.doc>.

⁵⁷ The CA was constituted by a Decree of Council of Ministers published in *Official Gazette* No. 22918 of 27 February 1997. The structure of the CA was announced by Communiqué No. 1997/5.

⁵⁸ OECD (2005b).

⁵⁹ Privatization Administration online information viewed at: <http://www.oib.gov.tr/yayinlar/publications.htm> [20 June 2007].

⁶⁰ OECD (2005b).

tobacco for sale is determined by TAPDK. Turkey also maintains price controls on certain pharmaceutical products (section (ii) above), and telecommunication services (Chapter IV(5)(iii)).

Table III.20
Independent regulatory institutions, 2007

Institution	Law No./Year	Sectors	Task
Capital Market Board	2499/1981	Capital markets	Regulating and supervising the capital markets and protecting the rights and interests of investors
Radio and Television Supreme Council	3984/1994	Radio and television broadcasting	Regulating radio and television broadcasting
Competition Authority	4054/1994	Goods and services markets (all sectors)	Prohibiting agreements, decision and concerted practices that restrict competition, and any abuse of dominant position by one or more undertakings; controlling mergers and acquisitions; establishing a competition culture as part of its competition advocacy role
Banking Regulation and Supervision Agency	4389/1999	Banking	Protecting the rights and interests of depositors; laying down principles regarding the establishment, management, operation, acquisition, merger, liquidation, and supervision of banks in order to ensure efficient operation of the credit system with due regard to the requisites of economic development, and confidence and stability in the financial market
Telecommunications Authority	4502/2000	Telecommunications	Constituting a dynamic and strong market based on fair competition; contributing to the sectoral policy-making process; taking measures to protect consumer rights; ensuring efficient and productive use of scarce resources in the sector, such as frequency and numbers
Electronic Signature Law	5070/2004	Information Technology	Defining the principles for the legal and technical aspects and application of electronic signatures
Energy Market Regulatory Authority	4628/2001 4646/2001 5015/2003 5307/2005	Electric energy Natural gas Petroleum Liquefied Petroleum Gas (LPG)	Constituting a financially strong, stable and transparent energy market operating under private law in a competitive environment to provide adequate, refined, continuous and environment-friendly electricity and natural gas; ensuring independent regulation and supervision in the market Regulate the guidance, surveillance and supervision activities in the delivery of petroleum and LPG, to ensure the transparent, non-discriminatory, and stable supply from domestic and foreign resources to consumers, directly or after processing in a cost-effective manner
Sugar Authority	4634/2001	Sugar, starch-based sweeteners	Regulating the sugar regime through establishment of procedures and principles regarding sugar production, and the conditions and methods of marketing
Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Authority	4733/2002	Tobacco, tobacco products, and alcoholic beverages	Regulating the procedures and principles regarding production, domestic and external purchase and sale of tobacco and tobacco products
Public Procurement Authority	4734/2002	All public institutions	Determining the procedures and principles to be applied in public procurements; examining the complaints concerning all public procurements

Source: Information provided by the Turkish authorities.

Table III.21
Cases handled by the Competition Authority, 2000-06

	2000	2001	2002	2003	2004	2005	2006	Total
Competition infringements								
Investigations	43	44	55	70	78	84	108	482
Cases resolved	40	40	53	54	91	97	108	483
Mergers/acquisitions								
Investigations	102	81	110	113	118	164	199	887
Cases resolved	100	86	103	106	122	170	186	873
Negative clearance/exemption								
Investigations	27	21	29	44	62	45	36	264
Cases resolved	11	27	26	36	76	50	33	259
Total								
Investigations	172	146	194	227	258	293	343	1,633
Cases resolved	151	153	182	196	289	317	327	1,615

Source: Information provided by the Turkish authorities.

(iv) Protection of intellectual property rights

(a) Overview

61. As part of its harmonization efforts towards EC legislation on intellectual property rights (IPRs), and in accordance with its commitments under the WTO TRIPS Agreement, Turkey has introduced some changes to its intellectual property regime since its last TPR. Some of the main changes include: (i) enactment of Law No. 5101, which entered into force on 13 March 2004, and amended various laws on IPRs, including Law No. 5846 on intellectual and artistic works⁶¹; (ii) amendment of Decree Law No. 551 on the Protection of Patent Rights to, *inter alia*, increase the penalties for infringement (section (g) below); (iii) enactment of data protection legislation, in 2006, in response to concerns from pharmaceutical companies to provide data exclusivity for confidential test data; and (iv) establishment of 13 more courts (currently there are 21) specialized in intellectual property matters in Istanbul, Izmir, and Ankara, where infringement cases are larger than in other Turkish cities. Turkey is still on the U.S. Special 301 Priority Watch List, due to concerns about loopholes in the new data protection legislation, and continued high levels of piracy and counterfeiting of copyright and trade mark materials.⁶² The Turkish intellectual property legislation was reviewed by the WTO TRIPS Council in November 2000.⁶³

62. Intellectual property rights legislation in Turkey is composed mainly of: Patent Rights Protection Decree (No. 551); Industrial Design Decree (No. 554); Geographical Indications Decree (No. 555); Trade Mark Protection Decree (No. 556); Law on Intellectual and Artistic Works (No. 5846), amended by Laws Nos. 4630 and 5101; Law on Evaluation, Classification and Support of Films (No. 5224, in force since July 2004); Amending Law of Patent, Design, Geographical Indications and Trade Mark Decree (No. 4128); Law for the Establishment and Functions of the Turkish Patent Institute (TPI) (Law No. 5000, in force since November 2003); Law on the Protection of Plant Breeder's Rights for New Plant Varieties (Law No 5042, in force since January 2004); Law

⁶¹ The main goal of Law No. 5101 is to harmonize the domestic regime with international legislation against piracy activities.

⁶² USTR (2006).

⁶³ WTO document IP/Q-Q4/TUR/1 of 12 April 2001 contains the introductory statement made by Turkey, as well as the questions posed and answers given during the review.

on the Protection of Integrated Circuit Topographies (No. 5147, in force since April 2004); Seed Law (No. 5553, in force since October 2006); and Law Amending the Decree-Laws on the Protection of Patent, Industrial Designs, Geographical Indications and Trade Mark (No. 5194).⁶⁴

63. The main institutions responsible for intellectual property matters are: the Turkish Patent Institute (TPI), for patents, trade marks, geographical indications, designs, and chip topographies; the Directorate-General of Copyrights and Cinema in the Ministry of Culture and Tourism for copyright and related rights; the Directorate-General of Customs in the Undersecretariat of Customs for border measures; the Ministry of Agriculture for plant breeders' rights; and the Ministry of Justice for enforcement before the courts.⁶⁵

64. Turkey has joined various IPR conventions and treaties since its last TPR (Table III.22).

Table III.22
Membership in international agreements, conventions, and treaties, 2007

Name	Date of membership
Paris Convention on the Protection of Industrial Property (1883)	10 October 1925
Berne Convention for the Protection of Literary and Artistic Works (1886)	1 January 1952
Convention establishing WIPO (1967)	12 May 1976
Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)	8 April 2004
Nice Agreement concerning the International Classification of Goods and Services for the purpose of Registration of Marks (1957)	1 January 1996
Patent Co-operation Treaty (1970)	1 January 1996
Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973)	1 January 1996
Strasbourg Agreement Concerning the International Patent Classification (1971)	1 October 1996
Budapest Treaty on the International Recognition of the Deposit of Micro-Organisms for the Purpose of Patent Procedure (1977)	30 November 1998
Protocol relating to Madrid Agreement (1996)	1 January 1999
Locarno Agreement Establishing an International Classification for Industrial Designs (1968)	30 November 1998
European Patent Convention (1973)	1 November 2000
Hague Agreement (International Deposit of Industrial Designs)	1 January 2005
Trademark Law Treaty	1 January 2005
Singapore Treaty on the Law of Trademarks	28 March 2006
WIPO Copyright Treaty	8 May 2007
WIPO Performances and Phonogram Treaty	8 May 2007

Source: Information provided by the Turkish authorities.

65. Parallel imports of goods and services containing any form of intellectual property rights are prohibited in Turkey. Turkish legislation on copyright, trade marks, designs, and patents provides for national exhaustion of distribution rights, which enables the right holders to prevent parallel

⁶⁴ The Seed Law aims to, *inter alia*, upgrade productivity in plant production, promote quality of seedlings, and develop and upgrade the seed subsector. It is based on EC legislation, and makes it compulsory to both register and certify seeds before they can be sold. Other laws and regulations that contain provisions on intellectual property law are: Contract Law (No. 818), Turkish Commercial Code (No. 6762), Regulation on Pharmaceutical Products, Civil Servants Law (No. 657), Customs Law (No. 4458), Civil Procedure Law (No. 1086), Criminal Procedure Law (No. 1412), and the Turkish Constitution (regarding provisions on judiciary). See WTO document IP/N/1/TUR/2 of 3 July 2000.

⁶⁵ See WTO (1998).

importation of protected products put on the market in other countries.⁶⁶ In 2000, the Competition Board of Turkey decided that parallel imports cannot be prohibited. This decision was later challenged and the case is before the Council of State, the body of last instance.

(b) Patents

66. Decree Law No. 551 on the Protection of Patent Rights, which entered into force on 27 June 1995, is the main patent legislation. It provides for the possibility of converting a patent application into a utility model, and vice-versa⁶⁷; the granting of patents by examination and non-examination; patentability criteria (novelty, inventive activity/step, industrial applicability); publication of applications; opposition by third parties; non-renewable protection for seven years for non-examined patents, ten years for utility model certificates, and 20 years for examined patents; employee inventions; penalties against infringement; and the establishment of special courts. An applicant not living in Turkey must appoint a local patent agent. Subject to this, foreigners are entitled to the same rights and privileges and are subject to the same obligations as nationals.

67. Micro-organisms and microbiological processes are patentable in Turkey. Pharmaceutical products and processes have had patent protection since 1 January 1999, in accordance with Turkey's commitments under both the TRIPS Agreement and the CUD.

68. Provision is made for granting compulsory licences on the grounds that a patent was not put into use or that the delay in the use thereof was not due to justifiable/legitimate reasons or that the use has been suspended during an uninterrupted period of three years (Article 100 of Decree Law No. 551). Articles 39 and 40 of the Implementing Regulation set out the provisions related to proof of use, which also includes the importation of patented products.

(c) Trade marks

69. Decree Law No. 556 on the Protection of Trademarks, which entered into force on 27 June 1995, includes a registered trade mark protection system for goods and services, guarantee marks, and collective marks. Protection is for ten years from the date of application and can be renewed at the end of each consecutive ten-year period. A licence may be exclusive or non-exclusive, but is non-exclusive unless otherwise stated in the contract. Turkey does not require a trade mark to be registered in the home country or any other country.

(d) Copyright

70. The main legislation on copyright is Law No. 5846 on Intellectual and Artistic Works, which entered into force on 5 December 1951; it was last amended by Law No. 5101 of 3 March 2004. Copyright protection is for the lifetime of an author plus 70 years. The main changes introduced by Law No. 5101 include: ministerial certification of facilities that manufacture, record, reproduce, and sell materials for the fixation and reproduction of intellectual and artistic works; a graduated penalty system, and extending the judicial discretion; granting *ex officio* authority to the police in fighting against piracy; and banning the sale of legally reproduced materials at open spaces like streets, squares, pavements. Law enforcement authorities are entitled to take action without a prior complaint by a right holder. Moreover, sanctions were modified, and currently consist of three months to six

⁶⁶ Article 6 of the TRIPS Agreement provides that, for the purposes of dispute settlement, nothing in the Agreement shall be used to address the issue of exhaustion of intellectual property rights, provided that the national treatment and MFN treatment obligations are met.

⁶⁷ Utility models differ from inventions of patents in two respects: less technological progress is required; and the maximum term of protection is generally much shorter.

years imprisonment or fines of YTL 5,000-250,000 or both considering the severity of the infringement.⁶⁸

(e) Industrial designs

71. Decree Law No. 554 on Industrial Designs, which entered into force on 27 June 1995 provides for the protection of designs that are new and distinctive. A design is considered new if, before the date of application, no identical design has been made available to the public anywhere in the world. A registered design is protected for five years from the filing date, and protection may be renewed for periods of five years, to a maximum of 25 years. Protection for unregistered designs is provided through the unfair competition provisions of the Turkish Commercial Code.

(f) Other areas

72. Turkey also provides protection for geographical indications through Decree Law No. 555 on the Protection of Geographical Signs, which entered into force on 27 June 1995. Protection is based on registration and covers all goods, in addition to wines and spirits. Protection for unregistered geographical indications is provided through the unfair competition provisions of the Turkish Commercial Code.

73. Turkey's new data protection legislation provides data protection for pharmaceutical products in any EC member. The protection period cannot extend beyond the period granted for patents, and products registered after 1 January 2001 can be protected. Generic products can only be registered in exceptional cases, where public health is affected, and generic applications filed after 1 January 2006 are deemed to be valid.

74. Under Law No. 5042, Turkey protects new varieties of plants for 25 years after registration, and trees, vines, and potatoes for 30 years. The legislation provides a grace period of one year in Turkey, four years abroad, and six years for trees and vines.⁶⁹

75. The Turkish legislation on intellectual property rights does not provide for anti-competitive practices in contractual licences. This subject is governed by the Protection of Competition Act (section (iii) above)).

(g) Enforcement

76. Infringements of patents (Part X of Decree Law No. 551, as amended), copyrights (Part V of Law No. 5846), trade marks (Part VIII of Decree Law No. 556), industrial designs (Part VI of Decree Law No. 554), geographical indications (Part IV of Decree Law No. 555), new varieties of plants (Part 7 of Law No. 5042), and integrated circuit topographies (Part 7 of Law No. 5147), can be challenged in a domestic court. Foreigners can also challenge patent holders in Turkish courts. There are 21 specialized IPR courts (up from eight in 2003; nine are criminal and twelve civil), in Istanbul, Izmir, and Ankara. In addition, general civil and general criminal courts are competent to deal with IPR cases in cities where there are no specialized IPR courts.

77. Persons making false statements during the process of granting an industrial property right, or those removing, without authority, the sign indicating an industrial property right on a product, or falsely presenting themselves as the owner of an industrial property right are subject to a maximum

⁶⁸ In the event of recurrence, jail sentences can no longer be postponed or converted into a fine.

⁶⁹ Law No 5042 was influenced by the agreement reached between the International Union for Protection of New Varieties of Plants and WIPO, and, according to the authorities, is based on EC legislation.

fine of YTL 27,000 and imprisonment for up to two years. In the case of patents, the maximum fine was changed to YTL 46,000 and imprisonment for up to four years or both, and closure of the business for at least one year. Concerns have been expressed about provisions that delay the initiation of infringement suits until after the patent is approved and published.⁷⁰

78. The Turkish Constitution stipulates that cases should be dealt with expeditiously and with the least possible cost. The losing party pays the costs, including attorneys' fees. The State bears the cost of criminal proceedings, but the convicted person pays the expenses at the end of the procedure. The number of penal actions brought under IPR legislation rose from 4,318 in 2001 to 6,504 in 2006; the number of civil actions decreased from 2,558 to 2,117 over the same period. Approximately half of total actions were in Istanbul.

79. Article 57 of the Customs Law sets out a procedure to enable a right holder or his/her representative to apply for the suspension of customs procedures for counterfeit trade mark or pirated copyright goods.⁷¹ Customs authorities may also suspend the procedure on their own initiative, where solid evidence is available.

80. A public anti-piracy campaign was begun in 1998, and efforts have been made to educate businesses, consumers, judges, prosecutors, and others on the implications of the IPR legislative framework. Several training programmes have taken place over the last few years in selected IPR institutes in Europe; a documentation centre was set up at the IP Research Institute, under the umbrella of the University of Ankara; and preparations are continuing for the establishment of a network between IPR courts, the Ministry of Justice, customs administration, and the documentation centre.

⁷⁰ USTR (2006).

⁷¹ The customs procedures for goods infringing trade marks, geographical indications, and industrial designs, and rights covered by the Intellectual and Artistic Works Law are regulated by Article 57 of the Customs Law No. 4458.