Hergüner

Competition & Trade Quarterly

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Competition

Competition

International Trade

Turkish Competition Authority Approves Migros Acquisitions in Bilecik

The Turkish Competition Authority ("**TCA**") approved an application by Migros[1] , one of the largest supermarket chains in Türkiye,to acquire the control over four stores owned by Erfa AVM[2], a local market chain in Bilecik, in Bilecik province through the transfer of fixed assets and leasehold rights, as well as one store through the transfer of fixed assets and the establishment of a new lease agreement.

[1] *Migros Ticaret AŞ*

[2] *Elbin Gıda İnşaat Tekstil Hayvancılık Sanayi ve Ticaret Limited Şirketi*

Turkish Competition Authority Approves Migros Acquisitions in Bilecik

The Competition Board ("Board") treated Migros's acquisitions over the past three years in the same relevant product market as one single transaction in its turnover calculation, allowing the company to exceed the required turnover thresholds. The current transaction was subsequently approved, despite Erfa's turnover being below the thresholds stipulated in the Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board ("Communiqué No. 2010/4"). Of note in the legal assessment, referred to as the "8(5) rule" within Turkish competition law practise, this exceptional rule was introduced to keep control over anti-competitive concentrations in a specific market. This rule applies to transactions between the same parties or within the same relevant product market that have been recently consummated and do not individually exceed the notification thresholds, thus not requiring the Board's approval. Given its relatively exceptional nature and its creation of a broader oversight scope compared to the corresponding EU regime, this decision is considered significant for reminding the 8(5) rule.

In terms of the merits, the Board applied its usual approach in defining the relevant geographic market during its assessment, considering both the size of the store involved in the transaction and the driving distance between competing stores. This method is commonly used in the European Union and is frequently applied in its decisions regarding fast-moving consumer goods ("FMCG") retailers. Ultimately, the Board concluded that the transaction would not create competitive concerns and granted approval for the acquisition.

Competition Board Finds No Evidence of Violations by Jet Fuel Suppliers

The Board concluded its formal investigation into Petrofis[3], THY Opet[4], and Triple Star.[5] and found no evidence of competition law violations.

Based on a 2018 complaint, the Board conducted a preliminary investigation into Petrofis, THY Opet, and Triple Star but decided not to initiate a formal investigation ("**Preliminary Investigation Decision**"). However, the Ankara Regional Administrative Court annulled the Preliminary Investigation Decision citing inadequate examination, thus forcing the Board to launch a comprehensive investigation.

[3] *Petrofis Akaryakıt Dağıtım Hizmetleri AŞ*

[4] *THY Opet Havacılık Yakıtları AŞ*

[5] *Triple Star Aviation Ltd.*

Competition Board Finds No Evidence of Violations by Jet Fuel Suppliers

• Petrofis holds a dominant position in the jet fuel supply market,

• Petrofis abused this dominant position by discriminating among intermediaries in jet fuel sales by offering discriminatory prices to players engaged in jet fuel sales,

• Petrofis, THY Opet, and Triple Star engaged in an anti-competitive agreement aimed at excluding competitors, especially the Complainant, from the jet fuel sales intermediation market.

As the impacts of applying different prices to different undertakings and the concrete allegations of the Complainant regarding were not adequately investigated in the initial process, the Regional Administrative Court canceled the Preliminary Investigation Decision. Following a detailed assessment, the Board concluded:

- Consistent with the European Union's recent approach, each airport was defined as a separate geographic market, and Petrofis was found to hold a dominant position in 13 out of 18 airports subject to the investigation,,
- The Complainant and Triple Star were not in equivalent positions due to significant differences in their purchase volumes, therefore, the sole fact that Petrofis offers different prices to these two undertakings does not amount to a discrimination by Petrofis,
- While the alleged discriminatory behavior could constitute a refusal to supply violation, the specific conditions for abuse such as elimination of competition in submarket and probable consumer harm were not present in this case,
- The alleged coordinated actions and/or agreements among Petrofis, Triple Star, and THY Opet were found not to stem from an express or implied agreement but to stem from the unique economic market structure,
- Therefore, Petrofis, Triple Star, and THY Opet were not engaged in anti-competitive coordinated actions/agreements.

Mavili Elektronik Fined, Authorized Service Providers Cleared

The Board concluded its investigation into Mavili Elektronik[6] and its authorized service providers on April 13, 2023, ending a four-year investigation into allegations of competition-related violations.

Kare[7] filed a complaint with the Board in 2020, alleging that Mavili Elektronik abused its dominant market position by directing Kare to its authorized service provider, Filiz[8] (, and interfering in pricing based on buyers.

[6] *Mavili Elektronik Tic. ve San. AŞ*

[7] *Kare Yangın Otomasyon Sis. San. ve Tic. Ltd. Şti.*

[8] *Filiz Güvenlik Sistemleri Proje ve Sanayi Ticaret AŞ*

Mavili Elektronik Fined, Authorized Service Providers Cleared

The Board initially determined that no violation had taken place, however, the Ankara Regional Administrative Court issued an annulment regarding that decision, requiring the Board to reopen its investigation into Mavili Elektronik on allegations of resale price maintenance, customer and regional restrictions, and customer allocation.

During the investigation, the Board found that Mavili Elektronik:

- Sent price lists to its authorized service providers,
- Issued instructions regarding discount rates,
- Required approval for quotes to be provided by authorized service providers,
- Imposed sanctions on authorized service providers that did not comply with the instructions,
- Revised contracts to include penalties for authorized service providers that deviated from the instructions and pricing policy.

Furthermore, the Board initiated a separate investigation into Filiz and Yıldız[9] concerning allegations of customer allocation. It determined the undertakings did not engage in a customer-allocation agreement; instead, Mavili Elektronik allocated customers to them.

The investigation into Mavili Elektronik was resolved in a settlement, and the Board decided that no penalties would be imposed on Filiz and Yıldız.

Two Board members concurred with the decision regarding Mavili Elektronik but expressed dissenting opinions on the exclusion of its export figures from the turnover calculation based on the absence of a provision in the secondary legislation on the exclusion of foreign sales in calculating the fine amount. According to them, this approach would yield incorrect results by subtracting a gross value from a net value, therefore inaccurately reflecting the undertaking's economic power. In contrast, the Board has sometimes excluded revenues from export sales in penalty calculations, arguing they do not constitute turnover generated in Türkiye. Dissenting opinions highlight the need for a consistent approach to whether export revenues should be included in the turnover basis for administrative fines.

[9] *Yıldız Yangın Söndürme Sistemleri San. Tic. AŞ*

Exemption Granted to the Artı +1 Project

The Board evaluated SEM , a wholly-owned subsidiary of Sabancı Holding, regarding its request for exemption for the +1 Project ("**Project**") and the +1 Analysis and Consultancy Services Framework Agreement to be signed with potential customers.

[10] *SEM İnternet Reklam Hizmetleri ve Danışmanlık AŞ ("SEM")*

Exemption Granted to the Artı +1 Project

What is the +1 Project?

The Project aims to analyze consumer behavior using advanced data analytics and provide insights for marketing activities. Undertakings interested in participating in the Project submit their requests to SEM, then negotiate and sign a framework agreement. Under the Project, interested non-competing participants are informed about the theme which is determined based on demand and discuss datasets. Data is then collected from customers (with their consent) and from publicly-available sources. At the end of the Project, customized commercial or promotional insights are prepared and shared exclusively with each undertaking, after which the data is destroyed. Undertakings then use these insights to enhance their

Board's Assessments

The Board has examined the potential competition law risks of the Project based on data analytics under three main headings: (i) exclusivity, (ii) exchange of competitively sensitive information among competitors, and (iii) effects that enhance coordination among competitors.

The Board determined there are no competitive concerns regarding exclusivity, on the grounds that:

- Participants are not obliged to comply with SEM's insights,
- There is no element preventing undertakings from making decisions based on insights,
- Participants are not required to exclusively obtain SEM's services,
- Parties may contract with third parties.

Regarding exchange of competitively sensitive information, the Board stated that backward-looking, anonymized, encrypted, and non-continuous data would not restrict competition. However, due to the potential for undertakings in digital markets to become competitors quickly, and lingering concerns about information exchange between competitors, the

Exemption Granted to the Artı +1 Project

Despite all potential concerns related to coordination risk and information exchange between competitors , the Board considered:

(i) the Project would reduce marketing and advertising costs, benefiting consumers;
(ii) consumers would find the desired product more easily;
(iii) efficiency would increase;
(iv) high sales made with low marketing budgets would also benefit consumers.

The Board granted individual exemption to the Project for five years, requiring an independent auditor to monitor the presence of competitor undertakings in applications, data collection, and relationships between applications to alleviate concerns.

Competition Board Accepts OBİLET's Commitments

OBİLET[11] has submitted a final commitment statement to the Board to address concerns arising from applications that could lead to the exclusion of competitors in the ticketing software for the bus transportation (IMS), the distribution of bus service data to the platforms (B2B), and the sale of bus tickets through the platforms (B2C) . The commitment covers exclusionary actions against its competitors and online advertising and communication restrictions stipulated in agreements with competitors in the B2C market.

[11] *Obilet Bilişim Sistemleri AŞ*

Competition Board Accepts OBİLET's Commitments

OBİLET instituted a policy where it stopped ticket sales on its platform for bus companies using Mydata Bilişim Ltd. Şti.'s ("**MYDATA**") IMS, then resumed sales with higher commission rates. This was designed to encourage firms utilizing MYDATA's IMS to transition to OBİLET's software. The Board found that this practice effectively linked OBİLET's IMS and B2C services. According to its commitment statement, OBİLET drafted and executed a standard agreement exclusively for the use of B2C services by bus companies utilizing IMS other than OBİLET/BİLETALL's[12] IMS or switching to them subsequently. Additionally, separate standard agreements were regulated for both B2C and IMS services with varying pricing. This addressed the Board's concern that distinct pricing mitigated the perception of IMS services being provided at no cost. OBİLET clarified that the clauses in the standard agreement concerning the end of sales via OBİLET's platform for bus companies would be evaluated independently of IMS usage.

In the Board's evaluation, it was noted that OBILET's imposition of an advertising ban on B2Cs using platforms such as Google Adwords could significantly restrict the online advertising channels of the companies concerned. Consequently, one of the commitments includes the removal of clauses from the contracts between OBILET and B2Cs that would result in such an advertising ban.

OBİLET amended the contract provisions regarding communication restriction and exclusive purchasing.

OBİLET committed to notifying relevant companies within the scope of these commitments.

The Board decided that OBİLET's commitments presented within the file sufficiently address competitive issues considered in the scope. The Board also decided that the commitments presented in the final commitment statement should also be applied to BİLETALL under OBİLET's authority.

[12] *OBİLET BİLETALL'ı devralmış ve bu iki şirket pazarda tek bir teşebbüs olarak faaliyet göstermiştir. Bu nedenle soruşturma OBİLET ve BİLETALL tek bir teşebbüs olarak kabul edilerek sürdürülmüştür.*

Koyuncu Elektronik Issued Fine for Evidence Tampering

The Board conducted an on-site inspection on September 6, 2023, after which competition experts informed Koyuncu Elektronik[13] that no correspondence or documents should be deleted from the company's computers, email accounts, or other data storage devices until the examination was completed.

Despite the notice, experts discovered that Koyuncu Elektronik's some employees had deleted some emails from their email accounts using the soft-delete method after the start of the on-site inspection. The correspondences were recovered subsequently using the "Recover Deleted Items From Server" method, allowing all of the deleted data to be examined by competition experts.

[13] Koyuncu Elektronik Bilgi İşlem Sistemleri Sanayi ve Dış Ticaret AŞ

Koyuncu Elektronik Issued Fine for Evidence Tampering

Koyuncu Elektronik officials claimed that the deleted emails were removed due to storage space issues or for email overload. They said the deleted emails generally consisted of promotional mail, shipment and training notifications, and business development notes. However, officials could not substantiate their claim that the deletion was a routine procedure.

Based on the Board's established jurisprudence, the disruption of any data (emails, WhatsApp correspondence, etc.) by an enterprise during on-site inspections, regardless of content, is considered tampering with evidence and is deemed to hinder the on-site inspection.

The Board subsequently imposed an administrative fine on Koyuncu Elektronik.

Board Revises Interim Measure Imposed on Maçkolik

Maçkolik and Nesine have been investigated due to agreements between the two companies containing exclusivity clauses.

As detailed in our September 2023 issue, the investigation into Nesine resulted in the Board issuing interim measures against Maçkolik to prevent damages ahead of a final decision. The Board's interim measures eliminated the distinction between Maçkolik's old and new websites, ordering the company to operate with a single website.

[14] Mackolik İnternet Hizmetleri Ticaret AŞ

[15] D Elektronik Şans Oyunları ve Yayıncılık AŞ

Board Revises Interim Measure Imposed on Maçkolik

Within the scope of Article 11 of Administrative Jurisdiction Procedure Law No. 2577 ("**Law No. 2577**"), Maçkolik submitted an application requesting the Board reconsider its decision. It stated that that any distinction between the old and new websites was purely aimed at end-users, emphasizing that the practice was implemented to avoid losing users who were dissatisfied with the design of the new website. Additionally, Maçkolik said it had taken measures on both sites to prevent actual exclusivity in advertising spaces, implementing a rotation system to ensure equal visibility and eliminate discrimination among its collaboration partners, virtual betting sites.

Maçkolik also argued in its application that the Board's decision represented a structural measure, rather than a temporary one, and that structural measures could not be imposed through temporary means.

The Board's evaluation found that Maçkolik's efforts to prevent actual exclusivity and provide equal conditions to its collaboration partners without discrimination was adequate. The Board also concluded that having two different sites simultaneously would not result in damages ahead of a final decision and so the temporary measure was revised to allow Maçkolik to continue operating through two sites. As the applications submitted to the Board under Article 11 of the Law on Administrative Procedure are evaluated by the Board, the outcome of the first decision is usually remains unchanged. Hence, the decision rendered regarding Maçkolik exceptionally resulted in a favorable outcome.

Two Board members issued dissenting opinions, highlighting that Maçkolik's role as a "gatekeeper" was not taken into consideration and noting that the new website might not be as user-friendly compared to the old site. They expressed concerns that Maçkolik may not take steps to improve its new site and that the effectiveness and traceability of the temporary measure could diminish as a result.

Final Examination Decisions for Two Acquisitions

The Board announced in April that it had initiated final examination processes, which is a rare practice, for two acquisitions, effectively suspending the deals until a final decision is issued.

The first transaction is an acquisition by Param Holding International Coöperatief U.A of Kartek Holding A.Ş. In 2024, approval of the Board was requested for two more acquisitions[16] in payment services sector, however, the Board has not decided on those cases.yet. The second transaction became subject to the final examination is the acquisition of Metser, a company in the iron and steel sector based in Germany, by Opta.

[16] *The acquisition of Paynet Ödeme Hizmetleri AŞ by iyzi Ödeme ve Elektronik Para Hizmetleri AŞ and the acquisition of Sofra Kurumsal ve Ödüllendirme Hizmetleri A.Ş. by Turkcell Ödeme ve Elektronik Para Hizmetleri A.Ş.*

Final Examination Decisions for Two Acquisitions

While it is relatively rare for merger/acquisition transactions to be subject to final examination by the Board[17], such cases indicate the need for a more in-depth examination regarding whether the transaction would create or strengthen a dominant market position, or significantly reduce effective competition. Particularly since the legal amendment in 2020, which introduced the prohibition criterion of "significant impediment to effective competition" in Turkish competition law practice, mirroring EU law, there has been an observed increase in the number of cases undergoing final review, especially concerning concentrations. Between 2014 and 2023, out of 1965 merger applications, final examination were conducted only for 23 of them and after the legislative change in 2020, 9 out of 991 transactions were taken into final review between 2020 and 2023.

Ultimately, enterprises do have an opportunity to submit commitments regarding the transaction during this phase.

[17] *Between 2014 and 2023, out of 1965 merger applications, final examination were conducted only for 23 of them.*

Board Intervenes in Online Hub and Spoke Cartel

On April 13, 2023, the Board initiated an investigation against undertakings operating in cosmetics and personal care products, Evdeeczane[18] , Cosmed[19] , Farmakozmetika[20] and Bakım Kutusu[21], with allegation of being party to a hub-and-spoke cartel and also with the allegations of resale price maintenance and internet sales restriction against Cosmed.

[18] *Ayaz ve Ortakları Ltd. Şti*

[19] *Ege Teknoloji Kimya Mak. San. Tic. Ltd. Şti*

[20] *Farmakozmetika Sağlık Ürünleri ve Kozmetik Tic. Ltd. Şti*

[21] *SB Grup Kozmetik AŞ*

Board Intervenes in Online Hub and Spoke Cartel

Buybox, which is the name given to the box containing expressions such as "Buy Now" and "Add to Cart" on online sales platforms, refers to the system that determines which seller's product will be redirected when clicked.

With its Buybox system, Cosmed determine the products to be included in the system and the undertakings in the system can win Buybox by offering the products on the list at lower prices. The Board assessed that with the help of Buybox system;

- Bakım Kutusu, Evdeeczane and Farmakozmetika obtain competitively sensitive information about each other
- they intervene in each other's prices through Cosmed.
- they are able to understand that a competitor undertaking has requested such intervention as they act in the same way.
- Cosmed continuously monitors the Buybox system and intervenes in prices in case of deviation.

In light of these findings, the Board conclude that a hub-and-spoke cartel has been formed, with Cosmed being the "hub" and the other undertakings on the retailer level being "spokes", achieving horizontal coordination.

The Board also assessed that the provision in Cosmed's agreements with retailers, which seeks for Cosmed's approval for retailers to sell on online marketplaces and allows that the products can only be sold to end-users, constitutes internet sales and customer restriction.

Upon the undertakings' settlement requests, the investigations were ended in relation to the violations of forming a hub-and-spoke cartel and Cosmed's resale price maintenance, whereas the Board ended the investigation with a commitment regarding Cosmed's internet sales restriction to its retailers.

Discussions on Export Revenue in Administrative Fine Calculations

The Board initiated an investigation into Balparmak on March 9, 2023 based on allegations of resale price maintenance and following similar investigations into other FMCG businesses.

[22] *Altıparmak Gıda San. ve Tic. A.Ş*

Discussions on Export Revenue in Administrative Fine Calculations

During its investigation, the Board determined that Balparmak intervened in retailers' resale prices, setting minimum and maximum resale prices, ensuring retailers adjust their prices, coordinating price increases among retailers. Balparmak used different tactics to maintain prices, such as rejecting retailers' requests for discounts/promotions and withdrawing product supply. The Board also determined that such actions took place from 2017 until the investigation was initiated.

The Board determined that Balparmak had committed a competition violation and the case ended in a settlement on June 15, 2023. Two Board members provided dissenting opinions regarding the exclusion of export figures in the decision. Other members, however, highlighted that legislation, judicial decisions, and the Board's precedents did not include such figures and that such an approach was contrary "*based on the power of the undertaking in the market.*"

Uludağ Investigation Ends in Settlement; Export Figures not Considered in Fine Calculation

The Board launched an investigation into Uludağ[23] on May 5, 2023 based on allegations of resale price maintenance

[23] *Erbak Uludağ Pazarlama Satış ve Dağıtım AŞ*

Uludağ Investigation Ends in Settlement; Export Figures not Considered in Fine Calculation

The investigation revealed that Uludağ had monitored the retailers' sale prices, warning those selling below the desired price and ensuring that prices were raised to the communicated level. The Board also determined that Uludağ mandated discount rates and did not make deliveries to undertakings unless they adjusted their prices.

Retailers were complicit in the scheme, complaining to Uludağ about other retailers charging low prices and seeking Uludağ's approval to set prices. The Board concluded that Uludağ violated competition rules by maintaining resale prices and ended the investigation with a settlement.

Two Board members argued that Uludağ's export figures should have been included in the fine imposed on Uludağ. The members reiterated the reasons provided in the Mavili Elektronik decision in this edition of Competition & Trade Quarterly, stating there was nothing contrary in the legislation, judicial decisions and the Board's precedents suggesting otherwise and that export turnover should be included in the Uludağ's turnover, and therefore, in the calculation of the administrative fine..

Hot Topic in Digital Markets: Daily Administrative Fines - Part 1 - Google Decision

The Board imposed a TRY 482 million fine against Google in May 2024 for failing to adequately address competition violations relating to search results that appeared on its pages.

The Board determined in April 2021 that Google, a market leader in the general search services market, created entry barriers for potential competitors and activity barriers for current competitors by prioritizing its own position and display on its results page in terms of local search (Local Unit) and accommodation price comparison (Google Hotel Ads) services.[24] Further, the Board introduced certain measures for Google to take.

[24] Refers to the economic integrity consisting of Google Reklamcılık ve Pazarlama Ltd. Şti., Google International LLC, Google LLC, Google Ireland Limited and Alphabet Inc. as stated in the Board decision dated April 8, 2021 and numbered 21-20/248-105.

Hot Topic in Digital Markets: Daily Administrative Fines - Part 1 - Google Decision

Google, in light of the measures introduced, presented new proposed measures to the Board aimed at eliminating disadvantageous conditions for competitors and ensuring effective competition in the local search services market. On March, 2024, the Board accepted Google's proposed measures. Following the implementation of these measures by Google on April, 2024, the Board determined that the measures were applied only to local search services and not to measures related to comparing accommodation prices. Consequently, starting from April 15, 2024, daily administrative fines were imposed on Google.

As of May 21, 2024, Google introduced measures to eliminate the competition violation affecting accommodation queries and the Board terminated the daily fines, which had reached TRY 482 million

Hot Topic in Digital Markets: Daily Administrative Fines - Part 2 - Meta Decision

The Board announced on May 6 and May 8, 2024 that the daily administrative fines imposed on Meta[25] in two different cases were terminated..

[25] *Meta Platforms, Inc.*

Hot Topic in Digital Markets: Daily Administrative Fines - Part 2 - Meta Decision

The Board initiated an investigation into an allegation that Meta connected the Instagram and Threads applications and transferred the data of users between the two applications without the users' consent, thereby abusing its dominant position and Board issued a temporary injunction to prevent irreparable damage. The Board imposed a daily administrative fine on Meta that would continue until Meta submitted a proposed measure to address the concerns. Following this decision, Meta submitted proposals it offered users in the European Union such as "use without a profile". However, the Board did not accept Meta's proposals because they did not address the Board's concerns. The Board underlined that even with these measures in effect, data sharing will persist for existing Threads users, that it is compulsory to be an Instagram user for using Threads, and that use without a profile offers a low-quality experience, thus leading to a use with a profile. Meta then terminated the Threads application's operations in Türkiye on April 29, 2024 rather than applying temporary injunction upon the Board's request. The Board terminated the daily administrative fine applied until as of the said date and imposed a fine covering the intervening period because the temporary injunction had become irrelevant.

The other daily fine imposed on Meta within the scope of an investigation into whether Meta abused its dominant position by combining the data it collected through Facebook, Instagram and WhatsApp, by creating an entry barrier in the social networking services and online display advertising markets and making it difficult for competitors to operate. On October 22, 2022, the Board concluded the investigation, imposed certain obligations on Meta designed to create effective competition and terminate the infringement, and granted Meta until December 11, 2023 to take measures to resolve the Board's concerns regarding data combination. Meta submitted its proposals to the Board related to the imposition of temporary injunction, but the Board did not consider them sufficient and imposed a daily administrative fine on Meta until such time as it submitted proposals to address the Board's competition concerns. On April 5, 2024, Meta submitted proposals to the Board, stating that the data between applications could only be combined if users merged their accounts through the "Accounts Center", and that consent for the data combination would be sought from former users in June. The Board found the revised measures sufficient and announced that the daily administrative fine ended, but imposed a fine for the period between December 12, 2023 and April 4, 2024.

French High Schools Investigation Finalized

The Board concluded its investigation into the French private education institutions Istanbul Saint-Joseph French High School, Istanbul Saint Benoît French High School, Istanbul Notre-Dame de Sion French High School, Istanbul Saint-Michel French High School, and Istanbul Sainte Pulchérie French High School for allegedly acting in collaboration to fix school registration fees, the components of the school fees, and the salaries of Turkish teachers.

French High Schools Investigation Finalized

The investigation established that the French private education institutions had jointly determined the school registration fees and the elements constituting the school fees, and were not entitled to benefit from the individual exemption. For this reason the Board issue administrative fines to each institution separately.

The Board also determined that the institutions agreed on the salaries of Turkish teachers and for this reason could not benefit from the individual exemption for this behavior either. Due to this violation, the Board again imposed administrative fines on the institutions separately. With this decision, which sets an example for competition law practices in the labor market, it is once again demonstrated that violation decisions regarding the labor market may be issued in investigations initiated on different allegations.

An Investigation Initiated Against Apple During the Sector Inquiry into Mobile Ecosystems

The TCA has been conducting a Mobile Ecosystems Sector Review to determine the structure of the mobile smart devices and software sector for these devices and competition issues in the sector. As part of this study, the TCA suspected that Apple[26] was acting in a restrictive manner with regard to payment systems for application developers in the App Store.

[26] *Apple Inc. ve Apple Teknoloji ve Satış Limited Şirketi*

An Investigation Initiated Against Apple During the Sector Inquiry into Mobile Ecosystems

The Board suspected that Apple restricted app developers from informing users about alternative payment channels within the app and decided it should examine whether consumers' access to better price options was being restricted.

Apple also imposed another restriction on app developers by requiring they use its payment system, In-App Purchase ("**IAP**"), for in-app purchases and charged a 30% commission on sales made through IAP. The Board determined it was necessary to examine whether these restrictions limited the freedom of application developers and whether the IAP payment system prevented competitors from entering the ecosystem.

The Board subsequently initiated an investigation into Apple for prohibiting the use of payment systems other than IAP in the App Store and subjecting mobile application developers to anti-steering provisions.

Board's Approach Regarding Territorial Restrictions Imposed on Dealers

As part of its preliminary investigation into the tractor production and marketing sector, the Board initiated an investigation on January 5, 2023, into KUBOTA[27] and TÜMOSAN[28], concerning restrictions on passive and/or active sales by dealers.

[27] *Kubota Turkey Makine Tic. Ltd. Şti*

[28] *Tümosan Motor ve Traktör Sanayi A.Ş.*

Board's Approach Regarding Territorial Restrictions Imposed on Dealers

During the investigation, the Board determined that TÜMOSAN's dealership agreements allocated specific territories to dealers, restricting active sales conducted outside these exclusive territories. Additionally, it noted that dealers were prohibited from offering price quotes to customers outside their exclusive territories and were required to direct them to dealers located in their respective areas. Furthermore, the Board reported that TÜMOSAN cancelled premiums for dealers who made sales outside their designated territories without finalizing the assessment of active – passive sales, thereby limiting both active and passive sales.

TÜMOSAN stated in its commitment text that in the Framework Dealership Agreement, dealers are restricted from making active sales outside their exclusive territories but were allowed to make passive sales. TÜMOSAN also agreed that it would only cancel the premiums earned by the dealers for sales if active sales were made outside the designated exclusive territory, but that this practice would not be applied to passive sales. Finally, TÜMOSAN stated it would not prohibit passive sales outside dealers' exclusive territories in an announcement addressed to the dealers. The Board considered the TÜMOSAN Framework Dealership Agreement to be appropriate and sufficient because it distinguished between active and passive sales, prohibited only active sales in the exclusive territories allocated to dealers, and explicitly stated that the restriction did not cover passive sales.

Board's Approach Regarding Territorial Restrictions Imposed on Dealers

The Board found the commitment in the Framework Dealership Agreement to be adequate because the clause stating that the premiums awarded to the dealers would be cancelled only if dealers made active sales to customers outside the exclusive territory was clear and comprehensible. Furthermore, the Board found the announcement TÜMOSAN would send to dealers stating that passive sales to customers outside their exclusive territory that were made without any active effort by the dealers would not constitute any infringement was sufficient to address any concerns about anti-competitive behavior.

However, during the investigation, correspondence was uncovered indicating that KUBOTA cautioned dealers that made offers to customers outside their territories that they would only be accepted with the consent of the dealer within the customer's region. The Board found that the premiums and retail support offered by KUBOTA to dealers were only valid for in-territory sales. Unlike TÜMOSAN, KUBOTA's dealership agreements do not grant exclusivity in terms of territory. Accordingly, the commitment text submitted by KUBOTA stated that the dealership agreements would not include restrictions on active or passive sales.

Moreover, KUBOTA committed to sharing a notice clarifying that no active or passive sales restriction existed in the dealership agreements, that it would not apply such a restriction in practice, and that it pledged to provide forms signed by dealers that confirmed they understood the announcement. The Board concluded that KUBOTA's actions, which could potentially prevent competition due to restrictions on active and passive sales, would be mitigated by its commitments.

Hergüner

International Trade

Türkiye Suspends All Trade with Israel

On 9 April 2024, the Ministry of Trade of the Republic of Türkiye ("**Ministry**") suspended the export of 54 categories of goods to Israel with immediate effect, until Israel announces a ceasefire in Gaza and allows sufficient and uninterrupted humanitarian aid to the Gaza Strip. This initial restriction was implemented by having customs officials' refuse to register customs declarations for goods destined to Israel.

(i) It was unexpected,

(ii) It was implemented by a press release rather than a legislative / regulatory act,

(iii) Although the Ministry had listed 54 categories of goods as being within the scope of the restrictions, they did not provide the exact Harmonized System / Common Nomenclature codes of these products – so the exporters did not know if their product was within the scope of the restriction until the goods arrived at the Turkish customs. A further announcement from the Ministry clarified that there were a total of 1019 separate goods subject to the restrictions – but again did not share the respective product codes, and

(iv) There was no grace period / exception for the goods that were in bonded warehouses / en route when the restrictions were implemented.

On 2 May 2024, the Ministry announced that the restriction would be extended to the import and export of all products from / to Israel. Companies reported that the country code of Israel in the Turkish customs system had disappeared, making it impossible for them to submit customs declarations for any goods originating in / destined to Israel. This step effectively stopped all trade in goods between the two countries.

Protecting Turkish Exporters from the Ban

On 6 May 2024, the Ministry provided an extension for Turkish exporters who had undertaken to complete a specific amount of exports due to:

(i) Inward processing regime,

(ii) Outward processing regime,

(iii) Tax cuts and exemptions related to exports, and

(iv) Export credits.

All of these exemptions were subject to the exporters proving they were affected by either these restrictions or the congestion in the Suez Canal. The Ministry did not provide any other grace period or exception to the restriction.

Press Announcement Instead of Legislation

Because the restriction is not based on specific legislation, it is difficult to understand its exact scope. For example, some companies sell the goods they purchased from third countries to Israel, ship these goods directly from the third country to Israel but invoice the purchasing Israeli entity. It is difficult to predict whether the Ministry would consider these transactions as a circumvention of the restrictions and sanction the companies.

Ban Vis-à-vis Türkiye's International Obligations

The ban on trade with Israel also appears to violate Türkiye's obligations towards Israel under the General Agreement on Tariffs and Trade ("**GATT**") – specifically Article I (Most Favoured Nation) and Article XI (General Elimination of Quantitative Restrictions) thereof. Furthermore, Article 7 of the free trade agreement between Israel and Türkiye ("**TIFTA**") explicitly prohibits new "*prohibitions or restrictions on imports or exports into Türkiye from Israel or into Israel from Türkiye made effective through quotas, import licenses or other administrative measures and requirements restricting trade*".

Are there any legal exceptions that could justify the trade ban? Article XXI of the GATT provides a national security exception, which has been interpreted to grant a broad exemption to World Trade Organization ("**WTO**") members in this respect. Article 31 of the TIFTA also includes a similar exemption. Article XX of the GATT, which provides for exceptions for measures taken to uphold certain values like public morals and protection of human life provides for more convoluted justifications. Article 12 of the TIFTA also includes similar language.

The Ministry's announcement on 9 April 2024 refers to resolutions of United Nations Security Council, General Council and Human Rights Council as well as the orders of the International Court of Justice dated 26 January 2024 and 28 March 2024 – emphasizing that the resolutions of the Security Council and orders of the International Court of Justice are legally binding. The reference to these resolutions is reminiscent of the vivid academic debate surrounding the hierarchy of norms between the WTO agreements and the rest of the public international law. As the Appellate Body of the WTO famously put it in the US – Gasoline case: GATT is "*not to be read in clinical isolation from public international law*".

Israel's Response

Israel has filed a complaint regarding Türkiye's unilateral ban on trade with the Organization for Economic Co-operation and Development and not the WTO Dispute Settlement Body. This may be due to a number of reasons - including the current state of the Appellate Body – but in so doing it deprived international trade observers from watching a very interesting dispute unfold.

Israel seemingly preferred a more direct route on 16 June 2024, announcing that it intends to subject import of goods from Türkiye to a licensing requirement. This move seems like a direct response to Türkiye's trade ban. However, it is not clear how this measure will nudge Türkiye into easing the trade ban because Turkish producers cannot export anything to Israel as it stands. Maybe the licensing requirement will apply to Turkish origin goods, irrespective of whether the goods are exported to Israel directly from Türkiye or via third countries.

According to some news outlets, Israel may also be looking to abolish the TIFTA and imposing additional duties to products originating in Türkiye in the rate of 100%.

Conclusion

Türkiye's trade ban was abrupt and caused disarray for Turkish importers and Israeli exporters alike. Israel will seemingly retaliate directly by making it more difficult to export Turkish goods to Israel. The case demonstrates that the rule-based multilateral trading system the WTO members worked so hard to establish is actually quite fragile.

Türkiye to Impose Additional Duties on Chinese Passenger Cars

Effective 8 July 2024, Türkiye will impose additional duties of either 40% ad valorem or USD 7,000 per item, whichever is higher, on internal combustion engine and hybrid passenger cars of Chinese origin. Türkiye has been collecting an additional 40% ad valorem duty on electric vehicles of Chinese origin. Thus, as of 8 July 2024, all passenger cars imported from China will be subject to additional duties.

The actual impact on the prices could have been much higher than 40% because the cars are also subject to the special consumption tax and value added taxes, which are calculated on the basis of the sales price of the car – in which the customs duty is usually embedded. However, some news outlets report that the Chinese companies will absorb most of the extra cost the duties will create.

Türkiye's Motives for Imposing the Additional Duties

The Ministry of Trade's announcement of the additional duties gives some important clues to the reasoning behind the increase in duties:
"... in order to increase and protect the share of domestic production in the domestic market, taking into account the developments regarding the foreign trade balance and our current account deficit targets, as well as to encourage domestic investment and production ... we decided to impose additional customs duties on the import of conventional (internal combustion) and hybrid passenger cars originating from the People's Republic of China."

Clue 1- "the share of domestic production in the domestic market":

Between 1 January 2024 and 31 May 2024, Chery's Tiggo 8 Pro was reportedly the 5th highest-selling passenger car model in Türkiye totaling 11,331 units. Türkiye's own TOGG's T10X fell behind Tiggo 8 Pro by a slight margin. Chery's Tiggo 7 Pro was 9th and Omoda 5 was 11th highest-selling model, while MG's HS took 16th place.

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[1] *(Available only in Turkish) https://www.linkedin.com/posts/ticaretbakanligi_ticaret-bakan-l%C4%B1%C4%9F%C4%B1-taraf%C4%B1ndan-%C3%A7in-halk-cumhuriyeti-activity-7205104947808448512-kQsU?utm_source=share&utm_medium=member_desktop*

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Additional data helps clarify the rationale behind the increase in duties and highlight how big of an achievement this is:

- In 2022, Chery was not in the top-15 list of the highest selling brands.
- In 2023, Chery ranked the 11th highest selling brand representing only 3.29% of all cars sold in Türkiye.
- In the first 5 months in 2024, only the four domestically produced models could best Tiggo 8 Pro's sales numbers and approximately 8.85% of all passenger cars sold in Türkiye were imported from China.

These figures indicate a sharp increase in the market share of Chinese cars in Türkiye.

After Türkiye imposed additional duties on Chinese electric vehicles, the Chairman of the Turkish Automotive Industry Association Cengiz Eroldu almost immediately called for additional measures to be imposed on the remaining Chinese passenger cars, stating that: "*It is unlikely that it will be possible to deal with the damage with a number of measures applicable to electric cars alone, because 78% of imported cars have internal combustion engines.*"

[2] *(Available only in Turkish) https://x.com/eozpeynirci/status/1797903942686511264?s=46, https://www.gazetepencere.com/kose-yazilari/bir-da-ha-boyle-rekor-gelir-mie28189efb88f-530663h*

[3] *(Available only in Turkish) https://www.gazetepencere.com/kose-yazilari/sadece-elektrige-tebdir-yetmez-537482h*

Clue 2 – "the foreign trade balance and our current account deficit targets"

Although Türkiye's annualized current account deficit has been decreasing, Türkiye recorded a net current account deficit of USD 2,761 million in January, USD 3,652 million in February, USD 4,427 million in March, and USD 5,285 million in April 2024. Lowering the deficit is one of the priorities in the economic recovery plan of the Turkish government devised by Mehmet Şimşek, the Minister of Treasury and Finance.

For years the Turkish automotive industry has been a powerhouse for generating foreign exchange revenue for the Turkish economy. However, after 8 consecutive years of current account surpluses, the industry recorded a deficit of USD 6.5 billion in 2023. The industry recorded a further deficit of USD 1.2 billion in the first three months of 2024, marking a staggering increase of 317% compared to the same period in the previous year.

Türkiye's trade with China plays a major role in creating this problem. In the first three months of 2023, China was the 10th largest source of car imports to Türkiye with only USD 75 million of imports. In the first three months of 2024, car imports from China exceeded USD 409 million, representing an increase of 443%. China became the 3rd largest source of car imports to Türkiye, a share of 10.8% of the total imports.

For this reason Foreign Minister Hakan Fidan's visit to China in early June should not be a surprise. During the visit Fidan reportedly made "proposals aimed at reducing the trade deficit between the two countries".

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[4] *https://www.aa.com.tr/en/economy/turkiye-runs-current-account-deficit-of-45b-in-march/3217812*

[5] *https://evds2.tcmb.gov.tr/index.php?/evds/serieMarket/collapse_36/5122/DataGroup/english/bie_odeayrsunum6/*

[6] *https://www.hurriyetdailynews.com/current-account-deficit-will-be-less-than-forecast-in-2024-simsek-192208*

[7] *(Available only in Turkish.) https://www.gazetepencere.com/kose-yazilari/cinden-itha-lat-artti-acik-iyice-buyudu-611853h#:~:text=8%20y%C4%B1l%20aran%C4%B1n%20ard%C4%B1ndan%202023,kattan%20fazla%20artmas%C4%B1%20etkili%20oldu*

[8] *https://www.aa.com.tr/en/asia-pacific/turkish-foreign-minister-discusses-economic-ties-global-issues-during-china-visit/3241559*

Clue 3 – "to encourage domestic investment and production"

In mid-May 2024, the Turkish Minister of Industry and Technology reported that he had engaged in "advanced talks" with BYD and Chery regarding a potential investment in Türkiye. His remarks were rather cautious, noting that the potential investors are "… ultimately evaluating all processes. They are also evaluating different alternatives together with us." Fidan's discussions in China were also partly aimed at "encouraging more Chinese companies to invest in Türkiye".

Almost immediately after the additional duties were imposed, reports of additional Chinese investment in Türkiye started surfacing. Chery's Türkiye Chairman Si Fenghuo reportedly stated that the company will "start production in Türkiye as soon as possible", and is "intensively conducting feasibility studies regarding building a factory and producing in Türkiye in collaboration with the relevant ministries". The CEO of Doğan Trend Otomotiv, the distributor of MG in Türkiye, also stated that they are working to ensure MG's first factory in Europe will be built in Türkiye.

Just 3 days before the effective date of the duties, a Presidential Decree clarified that the companies with an investment incentive certificate would be exempt from the duties – making Türkiye's motives even more clear. Shortly after, news outlets reported that BYD decided to invest up to USD 1 billion in a factory they will build in Türkiye.

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[9] *(Available only in Turkish.) https://www.bloomberght.com/cinli-byd-ve-chery-turkiye-ye-yatirimin-esiginde-2353067*

[10] *https://www.aa.com.tr/en/asia-pacific/turkish-foreign-minister-discusses-economic-ties-global-issues-during-china-visit/3241559*

[11] *(Available only in Turkish.) https://www.dunya.com/sektorler/otomotiv/chery-vergisi-geldi-haberi-731425*

[12] *(Available only in Turkish.) https://www.ekonomim.com/sirketler/son-dakika-cin-otomotiv-devi-turkiyeye-1-milyar-dolar-yatirim-yapacagini-acikladi-haberi-752841*

Additional Duties in Light of Türkiye's International Obligations

Are the additional duties in line with Türkiye's obligations towards China under the General Agreement on Tariffs and Trade ("**GATT**")? Article I of the GATT obliges Türkiye to provide any advantage with respect to customs duties accorded to a product originating in a World Trade Organization ("**WTO**") member to similar products originating in all other WTO member countries. In other words, Türkiye cannot impose additional duties on Chinese origin cars without imposing the same duties on similar products originating from other WTO members. This principle is known as the principle of most-favored-nation treatment. The WTO Appellate Body in Canada – Autos dispute, the goal of this provision "is to prohibit discrimination among like products originating in or destined for different countries". On 14 June 2024, the spokesperson of the Chinese Ministry of Commerce stated that the additional duties Türkiye imposed on Chinese vehicles violated the principle of most-favored-nation, and are clearly prohibited by WTO rules.

Moreover, as per Article II of the GATT, Türkiye must accord to its commerce with the other WTO members treatment no less favorable than that provided for in the Schedule of Concessions annexed to the GATT. In other words, Türkiye cannot apply a customs duty higher than the bound rate specified in its Schedule of Concessions to a good originating from a WTO member. However, Türkiye does not have bound duties for the products that fall within the scope of the additional duties.

[13] *Appellate Body Report, Canada – Autos para. 84*

[14] *https://www.globaltimes.cn/page/202406/1314134.shtml, (Available only in Chinese) http://www.mofcom.gov.cn/article/xwfb/xwfyrth/202406/20240603516544.shtml*

Are The Additional Duties A Safeguard Measure In Disguise?

When the United States of America ("**USA**") imposed additional duties on steel and aluminum products on 23 March 2018 based on national security grounds, Türkiye challenged the duties before the WTO Dispute Settlement Body. Türkiye argued that the measures were in fact safeguard measures, adopted in violation of Article XIX of the GATT and the WTO Agreement on Safeguards. Türkiye based its argument mainly on the fact that the USA, while imposing the additional duties, referred to increased imports that caused injury to the domestic industry – which are the basic requirements for adopting a safeguard measure.

Ironically, Türkiye's announcement of the additional duties on cars also refer to the increasing imports and the injury they cause to the domestic industry. Could China criticize Türkiye's measures with the same reasoning?

The panel rejected Türkiye's argument about US safeguard measures because the USA referred to the measures it took in the context of national defense requirements, meaning the USA's measures could not be characterized as safeguard measures. Türkiye's announcement regarding Chinese vehicle imports does not refer to a national security justification. However, the panel ruled that USA's measure violated Articles I and II of the GATT, among others.

Conclusion

Türkiye's additional duties on Chinese cars seems like an attempt at protecting its export-champion car manufacturing industry against the influx of imported Chinese cars. Whether these duties comply with Türkiye's obligations towards China is doubtful. Nevertheless, the measures appear to have succeeded in nudging the Chinese companies into investing in Türkiye.

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[15] *A safeguard measure is an emergency exception provided under the GATT, allowing the WTO members to temporarily increase import tariffs above their bound rates if, as a result of unforeseen developments, a product is being imported in such increased quantities as to cause or threaten serious injury to domestic producers of like products.*

[16] *Panel Report, US — Steel and Aluminum Products (Turkey) para. 7.112*

[17] *Ibid para. 7.113 – 7.115. GATT and the Understanding on the Balance-Of-Payments Provisions of GATT allow developing WTO members to adopt tariff-based measures to address balance of payments issues. However, assessment of Türkiye's duties vis-à-vis these provisions would further prolong this article – which is already longer than we're allowed. Maybe one for the next issue.*

The EU's New Waste Shipment Regulation Could Be Advantageous For Turkish Steel Producers

The European Union's ("**EU**") new regulation on waste shipments, which also applies to scrap iron, entered into force on 20 May 2024. The regulation is important for Turkish steel producers because Türkiye is the largest importer of scrap iron from the EU, producing 72% of its steel from steel scrap.

Exporting waste from the EU to countries other than the members of Organization for Economic Cooperation and Development ("**OECD**") will be prohibited as of May 2027, unless the importing country proves that they are able to recycle imported waste in an environmentally sound manner. India, another major importer of scrap steel from the EU and not a member of the OECD, will be affected directly. The European steel industry had reportedly lobbied for the prohibition to apply to OECD members too, with Türkiye being the main target of the prohibition.

Türkiye will also be affected but it will be subject to more lenient rules because it is an OECD member. The EU will start monitoring the potential environmental damage caused by waste exports to OECD members. If the exports are likely to cause environmental damage, the EU will first engage with the OECD member but if the problem cannot be solved through dialogue, the EU may suspend the export of waste to that country.

[18] *https://www.cib.org.tr/en/about-us-why-turkish-steel.html*

[19] *https://think.ing.com/articles/why-is-ferrous-scrap-a-strategic-raw-material/*

[20] *https://steelnews.biz/eu-parliament-votes-for-scrap-export-ban/*

Trade Remedy Highlights

Heavy Plate: Another Steel Product in the Cross Hairs

On 2 April 2024, the Ministry of Trade ("**Ministry**") launched a dumping investigation into "hot-rolled flat steel not in coil (heavy plate)" originating from the Republic of South Korea ("**Korea**") following a complaint by Ereğli Demir ve Çelik Fabrikaları T.A.Ş.'s ("**Erdemir**").

Summary of the Complaint

- Erdemir is the sole producer of the product in Türkiye and therefore has the standing to lodge the complaint. Erdemir is capable of producing steel of the same quality as imports from Korea and has the capacity to cover 99% of the imports from Korea. However, Erdemir is currently unable to produce two types of special heavy plates, but the demand in Türkiye for these products is very low and being met by the European Union instead of Korea.
- 28 out of the 32 HS codes that are the subject of Erdemir's complaint include both heavy plates and cut-to-length steel. Although the two products may seem similar at first, they respond to different customer needs and can only be differentiated by mill test certificates.
- Demand in the Turkish market for the product has increased steadily since 2019, but Erdemir's sales have been decreasing. Erdemir argues a "drastic" decrease occurred in the first 9 months of 2023 due to imports. To prove its point, Erdemir relied on the 37% increase in imports from Korea between the first nine months of 2022 and the first nine months 2023. Erdemir claimed Korean producers are under significant pressure from Chinese imports in the Southeast Asian market, making the Turkish market more attractive for them.
- The usual profitability margin for heavy plate products is 20%. Erdemir and Korean producers' material costs are the same (ferrous raw material and coal). The remaining costs are not enough to justify the lower prices of the imported products because Erdemir believes the Korean producers' costs are higher. Erdemir proposed imposition of a dumping margin of 45%.

Initial Findings of the Ministry While Deciding to Initiate an Investigation

- The investigation period was defined as 1 October 2022 to 30 September 2023, while the injury period as 1 October 2020 to 30 September 2023.
- The Ministry calculated the normal value of the imported goods by adding general, administrative and sales expenses, financing expenses and a reasonable profit to the unit manufacturing cost of similar goods in Türkiye.
- The Ministry made the following observations regarding material injury:

    (i) Imports increased in both absolute and relative terms,
    (ii) Imports depressed domestic prices from 1 October 2020 until 30 September 2022, and undercut as well as depressed domestic prices from 1 October 2022 until 30 September 2023,
    (iii) Economic indicators like production, domestic sales, employment and the market share of the domestic producers deteriorated during the injury period, and therefore the allegedly dumped imports from Korea caused material damage to domestic producers.

Conclusion

This investigation seems to be a follow-up on the dumping investigation into hot rolled flat steel and the safeguard investigation into wire rods the Ministry initiated last year. Considering that the European Union recently decided to extend the safeguard measures it applies to steel products until 2026, steel will seemingly continue being a sensitive industry for economies around the world, with Türkiye being no exception.

Domestic Producers Apply For the Extension of Polystyrene Measures To 5 More Countries

On 14 May 2024, the Ministry launched a dumping investigation into "polystyrene (others)" originating from the People's Republic of China ("**China**"), Chinese Taiwan ("**Taiwan**"), the Republic of India ("**India**"), Korea, the Russian Federation ("**Russia**") and the Kingdom of Thailand ("**Thailand**") following a complaint by Aschem Petrokimya Sanayi A.Ş. ("**Aschem**") t, that was supported by another domestic producer.

Summary of the Complaint

- Aschem has limited information on the production technologies of the countries subject to the complaint, but believes their products are virtually the same as the imported products. Aschem can compete with imports from other countries, like the members of the European Union.
- The prices of products originating in the countries that are the subject of the complaint is generally lower than that of products originating in other countries.
- The product is imported under two HS codes. Imports under one of these HS codes increased ~13% between 2021 and 2023, while imports of the other increased by only ~1%. During the same period, domestic consumption and production remained almost the same. However, the market share of the domestic production decreased by 15% for the first product and 32% for the second product. Therefore, Aschem will likely be asked to explain the reason for the loss of market share.
- Aschem reports that their prices are so suppressed that their profitability per unit in 2023 fell to 1% of their profitability per unit in 2021.

Initial Findings of the Ministry While Deciding to Launch an Investigation

-The investigation period is specified as the year 2023, and the injury period as 1 January 2021 to 31 December 2023.

-The Ministry could not calculate the domestic sales prices of the products for the countries subject to the complaint. Therefore, it used International Trade Centre data regarding the export prices of a comparable third country to determine the normal price. However, the Ministry was unable to obtain data pertaining to exports from Taiwan, India and Russia and therefore calculated the normal value of the products from these countries by adding general, administrative and sales expenses, financing expenses and a reasonable profit to the unit manufacturing cost of similar goods in Türkiye.

-The Ministry made the following observations regarding the material injury:

(i) Imports originating from all the countries that were the subject of the complaint increased significantly in both absolute and relative terms between 2021 and 2023.

(ii) Imports originating in China did not depress or undercut domestic prices, but the trend is worrying. However, imports originating in Taiwan, Korea and Thailand started depressing and undercutting domestic prices during the injury period preventing domestic producers from increasing their prices sufficiently and their profitability started to suffer.

- The Ministry still does not recognize China as a market economy, unless the producers there can prove otherwise. The Ministry will continue to use Türkiye as an appropriate substitute market.

Conclusion

In 2018, Aschem succeeded in securing anti-dumping duties of 11.3% ad valorem on polystyrene originating from the Islamic Republic of Iran. The measures resulted in a significant decrease in the market share of these imports. Aschem has applied for an expiry review of the measure, but its new application targets 5 more countries – all of which are World Trade Organization Members. It will be interesting to watch if they succeed this time.

Safeguard Investigation into Ethyl Acetate in Progress

On 6 April 2024, the Ministry launched a safeguard investigation into the imports of "ethyl acetate" at the request of Adokim Kimya Sanayi ve Ticaret A.Ş. ("**Adokim**").

Summary of the Application

- Adokim's products are like the imported products subject to the investigation because there is no difference in terms of production processes, and technical and physical properties. Adokim's products are preferred in the domestic market and the European Union market because of their high quality.
- In absolute terms import of the product increased ~35% between 2021 and 2023, and the relative import of the product increased ~250% during the same period. The unit price of imported products decreased by 21% in 2023 because of the following unforeseen developments:
  - (i) Demand in Russia and Ukraine decreased due to the conflict between the two countries,
  - (ii) Excess capacity in China, Mexico, Saudi Arabia and the United Kingdom was diverted to the Turkish market because of decreasing demand in the European Union and Chinese markets.
- The domestic producers' economic indicators deteriorated due to the increase in imports and the price undercutting and depression caused by the imports. For example, profitability decreased by 171%, the capacity utilization rate decreased by 61%, domestic sales decreased 60% and production decreased by 41%.

The Hearing Stage

Three interested parties attended to the public hearing held on 30 May 2024. The following are highlights of their submissions:

(i) Adokim: Customers do not analyze whether the prices they are offered are sustainable and thus may prefer predatorily priced products. After Brexit, the European Union became a net importer of the product and does not need protection. However, Türkiye has its own production capacity requiring protection from cheap products. A number of companies that have obtained investment incentives to produce the product are holding off until a fair market is established.

(ii) Ak-taş Dış Ticaret Anonim Şirketi: The company apparently imports the product and supplies it to end users in Türkiye and abroad. They are worried that if safeguard measures are adopted, they will not be able to maintain the security of their supply at competitive prices from Turkish producers who will become de facto monopolies. This would in turn hurt Turkish exporters that use the product as input.

(iii) The United Kingdom of Great Britain and Northern Ireland ("**UK**"): The UK noted that this was the fourth safeguard investigation the Ministry had initiated in the last 8 months – despite safeguard measures being intended as emergency exceptions. It claimed that Adokim's assertion that there had been an increase in imports was not supported by data in the Trade Map and Trade Data Monitor. The UK also claimed that the applicant failed to demonstrate a causal link between the increase in imports and the material injury. The UK requested that if the Ministry decided to adopt safeguard measures, it should allocate a tariff rate quota to the United Kingdom.

Conclusion

The Turkish producers' awareness of trade policy measures as a tool to maintain their competitiveness, even in a relatively small industry, is noteworthy. Adokim's submission indicates a substantial injury. However, considering the high thresholds for adopting safeguard measures, it remains to be seen whether the Ministry will be convinced by Adokim's arguments regarding the increase in imports and their impact.

The Ministry of Trade Safeguard Investigation into Wire Rods Is Concluded

On 3 November 2023, the Ministry of Trade (“**Ministry**”) launched a safeguard investigation into wire rod products categorized under 33 different HS Codes (“**Investigation**”) following complaints by numerous Turkish producers. The President ordered a temporary safeguard measure in the form of an additional duty of 175 USD/ton for 200 days beginning 31 December 2023.

The Ministry concluded its Investigation on 30 June 2024 and decided to adopt safeguard measures on products categorized under 28 HS Codes. The safeguard measures will amount to 175 USD/ton from 15 June 2024 to 6 January 2025, 170 USD/ton from 7 January 2025 to 6 January 2026, and 165 USD/ton from 7 January 2026 until 6 January 2027.

Exemption

Numerous interested parties requested the Ministry to exclude their products. The Ministry decided to exempt only the products categorized under the HS Code 7213.91.20.00.00 (tire cord) and the HS Code 7213.20 (flat-rolled iron) because the Ministry found that:

(i) Domestic producers could not produce the goods traded under HS code 7213.91.20.00.00,

(ii) Domestic producers could produce the goods traded under HS Code 7213.20, but not in sufficient quantities, and

(iii) Domestic producers could produce the rest of the products subject to the Investigation.

Summary of the Findings of the Ministry in Implementing Safeguard Measures

- The Ministry found that import of the products subject to the Investigation increased both in absolute and relative terms. From 2019 to 2023, the quantity of imports increased by 160% and the value of imports increased by 198%.
- The Ministry cited:
  (i) Section 232 tariffs imposed by the United States of America on wire rods,
  (ii) The war between Russia and Ukraine, and
  (iii)The worldwide overcapacity problem in the steel industry as unforeseen developments that led to the increase in imports.
- The Ministry found that import unit prices did not undercut or depress domestic prices until 2023, but an undisclosed price depression ratio started in the year 2023.

The Ministry's Examination of Interested Parties' Claims

- Some interested parties claimed that rather than an increase in imports, the earthquake in southern Türkiye caused injury to the domestic industry. The Ministry rejected this claim arguing that the producers in the earthquake zone continued to produce rapidly after the earthquake.
- Some interested parties claimed that the unforeseeable developments cited by the domestic producers were not recent and therefore were foreseeable. The Ministry rejected this claim because the temporal criterion for foreseeability was the time when Türkiye became a member of the World Trade Organization, and the developments were therefore unforeseeable.

Conclusion

The new measure is yet another protectionist step taken in the already protectionist global steel market. However, even when adopting a protectionist measure, the Ministry responded to Turkish producers' calls for an exemption for certain products that cannot be produced in Türkiye at all or in sufficient quantities.

US Initiates Dumping and Countervailing Duty Investigations against Türkiye and China

On 20 June 2024, the United States International Trade Commission ("**Commission**") launched a dumping and countervailing duty investigation ("**Investigations**") into brake drums imported from Türkiye and China.

At the first stage, the Commission will determine whether there is a reasonable indication that an industry in the US is materially injured or threatened with material injury, or the establishment of an industry in the US is materially delayed due to the imports.

EU Extends Safeguard Measures Applicable To Iron and Steel Products

On 25 June 2024, the European Commission ("**Commission**") extended safeguard measures applicable to iron and steel products until 30 June 2026.
The Commission relied on three factors to justify the extension:

(i) High levels of overcapacity in the iron and steel industry,

(ii) Trade measures imposed by third counties, and

(iii) The decrease in demand in the EU.

The safeguard measure takes the form of a tariff-rate-quota, above which a 25% duty applies.

Turkish Companies Should Prepare for the EU's Deforestation Regulation

The European Union's ("**EU**") deforestation regulation ("**Regulation**") will go into effect as of 31 December 2024. In summary, EU-based companies trading in certain commodities like cattle, wood, soy, palm oil, rubber, cocoa and coffee, as well as certain by-products such as leather, chocolate, furniture, printed paper products and palm oil-based derivatives will have to prove that their goods did not originate in recently deforested land.

With 31 December 2024 approaching, compliance with the Regulation is becoming an urgent matter for many businesses. In this article, we will summarize the key obligations under the Regulation and the effects the Regulation might have on Turkish businesses.

Prohibited: No More Deforestation-Causing Products on or from the EU Market

The Regulation prohibits the commodities in scope being placed on the EU market or exported from the EU market unless they are:

(i) Deforestation-free,

(ii) Produced in accordance with the legislation of the country of production, and

(iii) Covered by a due diligence statement.

What Qualifies As "Deforestation"?

The Regulation defines deforestation as conversion of forest to agricultural land after 31 December 2020, whether human-induced or not. Therefore, the Regulation also targets deforestation that is legal under the laws of the country of production.

In the case of wood products, the key criterion is for wood to be harvested without inducing forest degradation. The Regulation defines forest degradation as the conversion of primary forests or naturally regenerating forests into plantation forests or into other wooded land, or the conversion of primary forests into planted forests.

Cornerstone Obligation: Due Diligence

The Regulation requires "operators"[21] and "traders"[22] to submit a due diligence statement with the governing authorities before placing the commodities on the market or exporting them. By submitting a due diligence statement, operators and traders will assume the responsibility for the compliance of the commodities with the Regulation.

These actors will have to request comprehensive information from their suppliers and purchasers regarding their commodities, including the manufacturers of goods, specifics about the product like the name of species if the product in question is wood, and coordinates of the plots of land on which the goods have been produced.

The actors must take into account the risk profile of the country of production during their due diligence exercise. A country's risk profile will depend on the presence of forests, the presence of indigenous peoples and the extent of deforestation. The EU Commission will classify all countries by 30 December 2024. Due diligence requirements will be more lenient if the commodities are originating in low-risk countries.

Although Türkiye has numerous laws against deforestation, it is still a prevalent practice. According to the Global Forest Watch, Türkiye lost approximately 7% of its tree cover from 2000 to 2023.[23] Therefore, it is still unclear whether the EU Commission will classify Türkiye as a low-risk country, and whether Turkish producers will be able to benefit from the simplified due diligence process.

[21] *An operator is defined in the Regulation as "any natural or legal person who, in the course of a commercial activity, places relevant products on the market or exports them" as per Article 2/13 of the Regulation.*

[22] *A trader is defined in the Regulation as "any person in the supply chain other than the operator who, in the course of a commercial activity, makes relevant products available on the market" pursuant to Article 2/17 of the Regulation. Traders that are small and medium-sized undertakings are subject to more lenient obligations.*

[23] *https://www.globalforestwatch.org/dashboards/country/TUR/?category=forest-change&location=WyJjb3VudHJ5IiwiVFVSIl0%3D*

Penalties

The Regulation requires EU member states to lay down penalties for violation of the Regulation. The penalties may include a fine proportional to the environmental damage and corresponding to at least 4% of the total annual turnover of the actor in the EU, confiscation of the relevant products, temporary exclusion from public funding, and temporary exclusion from the EU markets – with the final decision being taken by the relevant member state.

How Will Turkish Business Be Affected?

In the long term, the Regulation may increase the demand for more sustainable products and alternatives that do not contain the listed raw materials. For example, purchasers in the EU market may turn to sunflower oil instead of palm oil.

More cynical observers view the Regulation as a protectionist measure, protecting European alternatives like sunflower oil at the expense of the imported palm oil.[24] Turkish producers may benefit from this dynamic because Türkiye produces much more olive oil, sunflower oil and hazelnut oil than palm oil.

What Should Turkish Producers Do?

The EU is Türkiye's biggest export market. Therefore, Turkish producers should start preparing to comply with the Regulation to avoid being prevented from exporting their products to the EU. Producers that use deforested land for production may consider moving their production elsewhere. And finally, producers that use input that is produced on deforested land may consider shifting their supply chain to comply with the Regulation.

Stricter inspection at every stage of the supply chain will necessitate more transparency on the Turkish producers' part. This may entail providing detailed information about the manufacturer, the production location coordinates, and using satellite monitoring tools such as Treemap.[25]

Because the primary responsibility lies with the company placing the products in the EU market (i.e., the EU-based importers), communication with the European partners will be key.

[24] *https://eastasiaforum.org/2023/10/10/european-union-palming-off-deforestation-regulation-to-smallholders-in-indonesia/*

[25] *https://www.hurriyetdailynews.com/exports-to-eu-to-require-anti-deforestation-certification-197383*

Which Sectors Will Be Impacted The Most?

The below table shows the total value of the exports of the affected goods from Türkiye to the EU for the last 3 years in USD:[26]

	2021	2022	2023
Cattle	61.627.858	61.097.626	54.733.142
Cacao	59.375.463	58.406.109	70.354.818
Coffee	4.397.910	4.769.362	5.711.972
Palm Oil	17.910.530	12.268.466	29.116.684
Rubber	1.520.941.451	1.592.230.522	1.644.053.263
Soy	8.220.341	5.237	3.799.934
Wood	981.438.039	1.221.722.297	1.327.947.303

Accordingly, the hardest-hit industries will seemingly be wood and rubber.

[26] *Data sourced from: https://biruni.tuik.gov.tr/medas/?kn=62&locale=tr*

Conclusion

The Regulation is another ambitious step by the EU to align global supply chains with EU's rules. It may cause some industries to change their supply chains, or change their place or methods of production. Among the Turkish industries, the wood industry is likely to be hit the hardest but Turkish companies can prepare for the Regulation in advance. Communication with their European business partners is the key to achieving compliance.

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