

***TURKEY – MEASURES AFFECTING THE
IMPORTATION OF RICE***

(WT/DS334)

**ANSWERS OF THE UNITED STATES OF AMERICA
TO THE QUESTIONS OF THE PANEL FOLLOWING
THE FIRST SUBSTANTIVE MEETING WITH THE PARTIES**

November 30, 2006

Q1. (Both Parties) The United States has provided statistics on, inter alia, Turkish production, consumption and imports of milled rice in Exhibit US-45 attached to its first submission. Could the United States confirm the source of this data. The statistics provided by the United States go from 2001/2002 to 2006/2007. Can the United States confirm which of these figures correspond to actual events and which are projections.

1. The United States Department of Agriculture (USDA) official production, supply, and demand (PSD) is the source for the data provided in Exhibit US-45. For production numbers, USDA takes into account official Turkish production estimates; satellite imagery; weather (precipitation and temperatures) information and models; analysis from USDA personnel who travel to production areas within Turkey; and other sources of crop information. For trade numbers, USDA analyzes, evaluates, and cross-checks a variety of data sources, including customs data from the Turkish Statistics Corporation (TUIK) and independent trade specialists. For consumption and stocks numbers, USDA utilizes a network of assessments from specialists in the Office of Agricultural Affairs at the U.S. Embassy in Ankara, agricultural economists in Washington, and international organizations (i.e. FAO, International Grains Council). The USDA official PSD numbers are reviewed and updated monthly by a U.S. interagency committee chaired by USDA's World Agricultural Outlook Board (WAOB), and consisting of: the Foreign Agricultural Service (FAS), the Economic Research Service (ERS), the Farm Service Agency (FSA), and the Agricultural Marketing Service (AMS).

2. The data provided by the United States for 2001/2002 through 2005/2006 is based on actual historical events. The data provided for 2006/2007 are projected forecasts. Most of the data correspond to the Turkish marketing year (MY), which is September/August. The data provided in the seventh and eighth rows of the chart, however, correspond to the International Trade Year (TY), which is January/December. In cases where TY data is used, the data corresponds to the second year of the split year listed at the top of each column.

Q3. (Both Parties) Can the Parties also provide monthly information on imports into Turkey of, separately, paddy, brown and milled rice, for the period from July 2003 to the end of 2006 (including estimates, as appropriate), by country of origin.

3. The United States provides monthly import data from the Turkish Statistics Corporation (formerly the Turkish State Institute of Statistics) in Exhibit US-53. The data, which is provided in both numerical and graphical formats, covers imports up to and including September 2006. For USDA's estimates of total Turkish imports in 2006, please see the seventh row of the last column of the chart provided by the United States in Exhibit US-45 (300,000 metric tons on a milled rice equivalent basis). The United States provides an analysis of the data, which confirms the existence of an import ban covering MFN trade, in the answer to Question 26(b).

Q4. (Both Parties) In paragraph 26 of its first submission, Turkey asserts that "from 2003 to date, Turkey has approved a total of 2,223 Certificates of Control,

allowing a total importation of 2,264,857 tonnes of foreign rice (paddy, brown and milled). Of the aforementioned quantity, 497.469 tonnes of rice equivalent have been allocated under the TRQ system since January 2004." In paragraph 65, Turkey asserts that "a high number of Certificates of Control (i.e., 2,223 between 2003 and 2006) were approved by MARA, corresponding to large amounts of imported rice (i.e., 939.013 tonnes of rice equivalent between 2003 and 2006), both in relation to MFN and TRQ trade."

- (a) Could the United States comment on the figures provided by Turkey. Can the United States also contrast these figures with the assertion contained in paragraph 1 of the United States' first submission that "[w]ith respect to the over-quota rate, Turkey's Ministry of Agriculture and Rural Affairs ('MARA') simply fails to issue licenses."**

4. The figures provided by Turkey in its first submission asserting that Turkey’s Ministry of Agriculture and Rural Affairs (MARA) issues Control Certificates for MFN trade have not been substantiated and are contradicted by the extensive documentary evidence presented by the United States. MARA fails to issue Certificates of Control at the over-quota rates of duty through the use of Letters of Acceptance. Letters of Acceptance are instruments in which the Turkish Grain Board’s General Directorate of Protection and Control recommends to the Minister of Agriculture that MARA “delay” the start date for issuing Certificates of Control for rice to importers who do not purchase domestic paddy rice. Thus, the only way an importer may import rice into Turkey is through the TRQ system, under which the importer is obliged to purchase domestic paddy rice as a condition upon importation. The Letters often differentiate between Certificates of Control for paddy rice and Certificates of Control for “rice,” which refers to milled rice.

5. The Minister’s signature at the bottom of the document indicates that the Minister has “accepted” the Turkish Grain Board’s recommendation. At this juncture, the United States is aware of Letters of Acceptance that cover the period September 1, 2003 through August 1, 2006:

- In Letter 964, dated September 10, 2003, the Minister of Agriculture accepted a recommendation to delay the start date for issuing Certificates to import rice until March 1, 2004;
- In Letter 107, dated January 23, 2004 (Exhibit US-12), Minister Guclu accepted a recommendation to delay the start date for issuing Certificates until July 1, 2004;
- In Letter 905, dated June 28, 2004 (Exhibit US-13), Minister Guclu again accepted a recommendation to delay the start date for issuing Certificates until January 1, 2005;
- In Letter 1795, dated December 30, 2004 (Exhibit US-14), Minister Guclu again

accepted a recommendation to delay the start date for issuing Control Certificates until July 30, 2005;

- In Letter 1304, dated July 29, 2005, the Minister of Agriculture accepted a recommendation to delay the start date for issuing Certificates “until a new policy is in place;” and
- In Letter 390, dated March 24, 2006 (Exhibit US-36), Minister Eker accepted a recommendation to delay the start date for issuing Certificates until April 1, 2006. The panel in this dispute was established on March 17, 2006.¹

Thus, under the plain terms of the Letters of Acceptance, MARA officials are unable to grant Certificates of Control outside the TRQ regime, which was confirmed by a legal brief submitted by MARA’s counsel in Turkish court.²

6. Turkey has asserted that this is not the case and that it does grant Certificates of Control, but it has not provided any documentary evidence to substantiate its claim. Further, as discussed in the U.S. first submission and oral statement, Turkey has failed to rebut the documentary evidence presented by the United States in this regard, including the Letters of Acceptance, rejection letters to importers issued by MARA officials, and MARA’s brief to the 1st Administrative Court of Ankara, in which MARA relied on the Letters of Acceptance as the sole legal basis for denying a Certificate of Control to a petitioning importer. Instead of providing documentary evidence of Certificates of Control granted for imports outside of the TRQ, Turkey has provided the chart contained in Annex 20. This chart raises several questions.

7. As an initial matter, the Letters of Acceptance only provide that MARA will not grant Control Certificates to importers who do not purchase domestic paddy rice. So, if MARA grants Control Certificates for importation under the TRQ, that fact would not rebut the U.S. evidence that Turkey has imposed a ban on MFN trade.

8. Second, there is a vast discrepancy between the amount of Control Certificates Turkey claims it granted this year through September 21, 2006, for imports of U.S. rice (400,000 metric

¹ Despite this Letter, MARA apparently has continued to deny Certificates to importers who apply for them (*see* Exhibits US-22, US-39, US-40, US-41, US-42, and US-44). The continued denial of Control Certificates is likely due to the objections of Turkish producers (*see* Exhibits US-21 and US-24) decrying the intended change in policy announced by Minister Tuzmen in his March 24, 2006 letter to USTR Portman (Exhibit US-35). Further, Letter 390 asserts that MARA would continue denying the issuance of Certificates during the Turkish rice harvest (Exhibit US-36).

² Exhibit US-31.

tons) and the amount of U.S. rice that U.S. trade data shows has actually been shipped to Turkey in 2006 (about 18,000 tons through October 26, 2006). The United States cannot explain this discrepancy. It is notable that Turkey’s chart shows a surge in Control Certificates in 2006, that is, when the DSB established the Panel. In addition, Turkey’s chart shows that the vast majority of Control Certificates that Turkey allegedly granted in 2004 and 2005 were under the TRQ. Given that Turkey has alleged that the TRQ (with a domestic purchase requirement) provides a *benefit* to imported rice, it is unclear why importers would have suddenly decided in 2006 that the TRQ (with domestic purchase) no longer provided them an advantage, such that importers switched en masse from importing under the TRQ to importing at the MFN rates. It is also unclear from Turkey’s chart whether the Control Certificates that MARA allegedly granted in 2006 were for outstanding applications that had been made in previous years or for new applications that were made after Minister Tuzmen’s announced change in policy on Control Certificates “as of April 1, 2006.” The chart also fails to indicate *when* the Certificates allegedly were granted – prior to April 1, 2006, which is when the alleged change in Turkish policy on Control Certificates began and which post-dates panel establishment, or after that date.

9. Third, even under Turkey’s own revised chart, at least 96 percent of the approved Control Certificates in 2004 and 83 percent of the approved Control Certificates in 2005 were for entry under the TRQ, for which domestic purchase is required. Given how much more expensive it is to import rice under the TRQ regime,³ such an overwhelming majority of importers would only “choose” to import rice under the TRQ if there were severe restrictions or a ban on importing at the over-quota rates.

10. Fourth, Annex 20 does not appear to account for imports of EU-origin rice. According to Turkish import data, Turkey imported approximately 25,000 and 32,000 tons of milled rice from Italy in 2004 and 2005, respectively.⁴ Yet according to Annex 20, Turkey only granted Certificates of Control for approximately 7,000 tons of out-of-quota rice in 2004 and approximately 24,000 tons of out-of-quota rice in 2005. The validity period of Certificates of Control is no longer than twelve months – the Communiqués reserve MARA’s right to shorten the validity periods of the Certificates – so Certificates obtained in prior years could not account for much of this apparent shortfall. This raises the question as to where EU rice imports can be found in Turkey’s chart, as Turkey has asserted that all rice imports need to obtain Control Certificates.

11. Fifth, as previously noted, Annex 20 does not establish when the Certificates were allegedly granted, which creates particular problems interpreting the data for 2003 because the United States is not aware of any restrictions in importation prior to September 2003. MARA did not implement the import ban until September 10, 2003. That is when Turkey’s Minister of

³ See paragraphs 32-37 of the U.S. oral statement and Exhibit US-52.

⁴ See Exhibit US-53.

Agriculture provided Ministerial approval to stop issuing Control Certificates. It is clear that there were no in-quota imports during the last four months of 2003, even though the first opening of the TRQ technically began on September 1, 2003, because Turkey did not announce the TRQ duty rates and domestic purchase requirement until late-April 2004. But these figures raise the obvious question as to when these Control Certificates for out-of-quota imports were allegedly granted.

12. Lastly, every Turkish importer the United States has spoken with has provided the same information: Turkey does not grant Control Certificates without the purchase of domestic paddy rice. The importers that have applied for Control Certificates outside the TRQ have been rejected or their applications have not been acted upon. Turkey has defended against related lawsuits brought by Torunlar and Mehmetoglu in Turkish court and has argued in court that it is bound by the Letters of Acceptance not to grant Control Certificates. In these circumstances, the figures in Annex 20 do not rebut the U.S. evidence that MARA is not granting Control Certificates outside the TRQs, unless Turkey is willing to make copies of the Control Certificates available to review.

Q5. (Both Parties) Can the Parties provide monthly information on Turkey's domestic production of, separately, paddy, brown and milled rice, for the period from July 2003 to the end of 2006 (including estimates, as appropriate).

13. In Exhibit US-45, the United States provided this data for September 2003/August 2004, September 2004/August 2005, September 2005/August 2006, and a forecast for the current year which began in September 2006. USDA is unable to provide this data on a monthly basis. USDA annual production estimates are based on a Turkish marketing year (MY). Paddy production estimates are converted to milled rice production estimates based on an annual milling rate.

Q6. (Both Parties) Can the Parties provide monthly information on Turkey's domestic consumption of, separately, paddy, brown and milled rice, for the period from July 2003 to the end of 2006 (including estimates, as appropriate).

14. In Exhibit US-45, the United States provided this data for September 2003/August 2004, September 2004/August 2005, September 2005/August 2006, and a forecast for the current year which began in September 2006. USDA was unable to obtain this data on a monthly basis. USDA annual consumption estimates are based on a Turkish marketing year (MY). All consumption estimates are based on a milled equivalent basis since nearly all rice consumed in Turkey is milled white rice.

Q7. (Both Parties) Can the Parties provide the following information regarding Turkey's monthly average domestic prices of, separately, paddy, brown and

milled rice, for the period from July 2003 to the end of 2006 (including estimates, as appropriate): (i) average prices for domestic production in the Turkish market; (ii) landed CIF prices; and, (iii) prices quoted by the Turkish Grain Board. Please indicate the source of your estimates and provide evidence, as appropriate.

(i) average prices for domestic production in the Turkish market

15. The United States was able to obtain prices for milled rice in Turkey, wholesale and retail, from Turkish representatives of the USA Rice Federation, the primary association of U.S. producers and exporters, but was unable to obtain such prices for paddy and brown rice. Exhibit US-54 shows prevailing prices of imported rice (U.S. Calrose and Egyptian), as well as Turkish rice (Baldo and Osmancik), in March, July, and November for the four years requested.

(ii) landed CIF prices

16. Please see Exhibit US-55. These prices were obtained from the Turkish Statistics Corporation.

(iii) prices quoted by the Turkish Grain Board

17. Please see Exhibit US-56. The 2003/2004 data was obtained from the Turkish Rice Millers Association. The remainder of the data was obtained from the website of the Turkish Grain Board (TMO). The paddy procurement prices presented in this exhibit are for paddy rice with a milling yield rate of 59-60 percent whole kernels which is the average milling rate for Turkish rice. The United States was unable to obtain paddy rice sales prices for osmancik for all four years, so that has not been included in the chart. The United States was unable to obtain monthly pricing data, so only annual pricing data is presented, although the United States understands that the prices quoted by TMO do not change on a monthly basis.

Q11. (United States) Can the United States please provide the source of data that it has used to determine relative average import cost of a tonne of rice as set out in paragraph 52 of its submission.

18. The \$295 per metric ton price cited in paragraph 52 was a spot price for U.S. Calrose paddy rice in late 2005 in the U.S. market.⁵ Upon further reflection, the United States decided it would be more accurate to use average prices for U.S. exports and Turkish domestic rice in 2005, as explained in the U.S. oral statement and presented in Exhibit US-52.

Q13. (Both Parties) In paragraph 4 of its closing statement during the first

⁵ Exhibit US-57.

substantive meeting with the Panel, the United States referred to "a bilateral agreement between the European Union and Turkey [under which] the European Union has an annual quota of 28,000 tons of milled rice".

(a) Please provide the provisions of that agreement, relevant to the importation of rice into Turkey.

19. Please see Exhibit US-58 (“Decision Regarding Tariff Quota Imposition on Import of Certain Agricultural Products of European Community Origin,” Official Gazette No. 23225, January 9, 1998). As provided in the EC Quota Arrangement, Turkey permits the duty free importation of 28,000 metric tons of milled rice from the European Communities into Turkey each year. Article 3 provides that Turkey’s Foreign Trade Undersecretariat will issue an import permit that an importer must submit to Turkish Customs for the shipment to be admitted into Turkey, but it is unclear whether this is a reference to the Certificates of Control or to some other document.

(b) Explain whether European imports of rice into Turkey are treated differently from other imports.

20. It is the understanding of the United States that in-quota imports of EC-origin rice are not subject to the restrictions and requirements imposed on imported rice and are permitted entry at any time during the year. The United States spoke with a representative of the Italian Rice Millers Federation this week, who confirmed that there are no restrictions on EC-origin rice that enters under the EC quota but that importers are required to purchase domestic paddy rice with respect to any imports of EC rice over the 28,000 metric ton annual cap. It is clear from Turkish import data that in-quota EC imports are treated differently because imports of EC-origin rice occur during periods when other imports have ceased. For example, during the three periods of time since September 10, 2003 when the TRQ has been closed (and thus only out-of-quota imports are possible) – September 10, 2003 through April 27, 2004, September-October 2004, and September-October 2005 – EC-origin rice has been able to enter Turkey, whereas imports from other major rice exporters, such as Egypt and the United States, suddenly cease completely or, at best, plummet to *de minimis* levels.⁶⁷

(c) More specifically, explain whether importers of European rice are

⁶ Turkish import data shows what appears to be a large shipment of Chinese rice in December 2003, which appears to be the lone instance where significant quantities of non-EC origin rice has entered Turkey while the TRQ was closed.

⁷ In addition, Turkish import data reveals that, in September 2006, which was just after the TRQ “expired” and which marks the beginning of the Turkish rice harvest, rice imports once again fell to zero.

required to obtain Certificates of Control in order to import rice into Turkey.

21. It is unclear to the United States from the terms of the EC Quota Arrangement whether importers of EC-origin rice are required to obtain Certificates of Control in order to import rice into Turkey.

Q14. (Both Parties) Can the Parties describe, in chronological order, the steps that are necessary to import rice into Turkey, in terms of the different documents that must be obtained and other formalities that have to be completed, identifying the authorities involved in each step. Please make reference to the relevant legal instruments and provide evidence where appropriate.

22. *Imports of Rice Generally:* An importer must complete a multitude of steps in order to import rice.⁸ First, the importer must obtain a Certificate of Control from MARA, specifically from the Provincial Agricultural Directorate office in Ankara. To obtain the Certificate, pursuant to Article 2 of the 2006 Communiqué the importer must submit the Certificate application form, the pro forma invoice or invoice, and “other documents which may be asked for, depending on product, by the Ministry.”⁹ Further, the FTU website provides that “if the product to be imported is found to meet the criteria required,” MARA will grant the Certificate.¹⁰

23. It is unclear to what specific documents the phrases “other documents which may be asked for, depending on the product” and “the criteria required” refer. Article 3 of the 2006 Communiqué appears to refer to the possibility that MARA may need to determine the compatibility of a product with human health and safety or animal and plant health. However, Article 2 of the Communiqué does not refer specifically to Article 3; rather, it is much broader.¹¹ As a result, Article 2 provides Turkey with sufficient flexibility to permit MARA to deny the

⁸ This step-by-step outline of the importation process was provided to the United States by Turkish importers.

⁹ Exhibit TR-1.

¹⁰ General Assessment of the Regime Regarding Technical Regulations and Standardisation for Foreign Trade (27 May 2005) (www.dtm.gov.tr) (Exhibit US-43).

¹¹ And, as discussed below, Turkish importers claim that MARA does not request the phytosanitary certificate at the stage when it decides whether or not to grant the Control Certificate. Rather, MARA does not require the presentation of a phytosanitary certificate until the Provincial Agricultural Directorate that has jurisdiction over the port where the importation is to be realized asks for it. But this step only takes place after MARA has already granted the Control Certificate.

Certificate if an importer does not provide with its Control Certificate application documentation from MARA demonstrating that the importer has purchased domestic paddy rice.

24. Second, assuming that the importer has actually obtained a Certificate of Control from MARA, it then would present the Certificate to the specific Turkish Customs office at the port where the importation is to take place and complete the required Customs form using the information contained in the Control Certificate.

25. Third, the importer then goes back to MARA a second time – specifically, to the Agricultural Provincial Directorate from the region where the port is located – and presents the Customs form and a phytosanitary certificate. If the Provincial Agricultural Directorate approves the importation (through analysis of product samples), the Directorate writes a letter granting permission for the importation.

26. Fourth, assuming that MARA approves the importation, the importer goes back to Turkish Customs a second time with the following documentation: the approval letter from the Provincial Agricultural Directorate, the invoice, the receipt for payment of the merchandise, a value declaration form from the exporter, the Control Certificate, the phytosanitary certificate, and if the payment for the merchandise has not been made in full, some documentation from the importer that it is acceptable to pay in installments. All of these documents must be originals. Turkish Customs then gives the importer an invoice for the total duties owed. The importer can pay the duty at that time or through a wire transfer.

27. With the receipt of payment of the duties and the Customs form, the importer can go to the port and secure the release of the product.

28. Importers have informed the United States that Turkish Customs will not let the importer begin the process if it does not present a Control Certificate. If an importer decides to make contractual arrangements for the shipment before obtaining a Certificate of Control, as Torunlar did, the importer is taking a risk. If MARA does not issue a Certificate, the shipment will not be allowed to clear Customs and is destined for a bonded warehouse.

29. ***Imports of Rice under the TRQ Regime:*** Under the TRQ regime, the importation process is even lengthier. First, the importer must purchase domestic paddy rice.¹² This

¹² The documents published in the Official Gazette allow importers to purchase domestic rice of any variety, but Letter of Acceptance 1795 confirms that the domestic purchase requirement can only be satisfied through the purchase of domestic paddy rice. Turkey did not appear to dispute this fact at the first substantive meeting. In this regard, the United States is submitting a revised translation of Letter 1795 to replace the current document labeled as Exhibit US-14. The language quoted by the United States in its first written submission was taken from this revised translation, which was done by a translator at the United States Department of State,

requirement has been tweaked over time but, as a general matter, the importer needs to purchase domestic paddy rice in specified quantities and obtain a receipt from the Turkish Grain Board documenting that the purchase has been made. The domestic purchase requirement has been modified over time in several respects. In the first TRQ opening (April 27, 2004 through August 31, 2004), importers could only purchase domestic paddy rice from TMO, and the amount of domestic paddy rice that was required to be purchased was not specified, at least not in the regulation.¹³ In both the second (November 1, 2004 through July 31, 2005) and third (November 1, 2005 through July 31, 2006) TRQ openings, importers could purchase domestic paddy from either TMO or Turkish producers and producer associations. While the precise quantities of rice that had to be purchased were specified, those amounts varied depending on the identity of the Turkish province from which the rice was purchased.¹⁴

30. Second, the importer needs to request that TMO provide a receipt documenting that the importer has purchased domestic paddy rice from either TMO or Turkish producers or producer associations.¹⁵

31. Third, the importer must apply to Turkey’s Foreign Trade Undersecretariat (FTU) for an import permit and attach the TMO receipt to the application.¹⁶ If FTU approves the importation, it will provide an import permit, which the importer must present to MARA when it applies for a Control Certificate.

32. Fourth, the importer must apply to MARA for a Certificate of Control.

33. Fifth, assuming that FTU grants an import permit and MARA issues a Certificate of Control, the importer would need to proceed through all the same steps outlined in the previous

Division of Translating Services. The United States inadvertently attached a different translation of this document with its first written submission, which is why the language quoted by the United States from Exhibit US-14 did not match the language in the exhibit as originally submitted. The United States regrets the error.

¹³ Article 1 of the April 2004 Notification (Exhibit US-3).

¹⁴ Article 1 of the September 2004 Regulation (Exhibit US-6) and Articles 1 and 2 of the September 2005 Notification (Exhibit US-11).

¹⁵ Application Form Sample In Order to Benefit From the Tariff Quota and Receive Import License for the Imports of Domes Types of Paddy Rice and Rice, Items 8 and 9 (Exhibit US-11).

¹⁶ See Article 2 of the April 2004 Notification (Exhibit US-3), Article 4 of the August 2004 Decision (Exhibit US-5), Article 4 of the September 2005 Decision (Exhibit US-10), and the Application Form (contained in Exhibit US-11).

section (“Imports of Rice Generally”), with the addition of presenting the import permit to Turkish Customs.¹⁷

Q16. (Both Parties) Does Turkey's import system for rice affect imports from the United States in particular, or does it apply to all imports in the same way?

34. Turkey’s import system for rice appears to affect all non-EC origin rice imports in the same way although, as the largest exporters of rice to Turkey, Egypt and the United States, are primarily affected by Turkey’s restrictions on the importation of rice.

Q17. (United States) Please identify the main importers in Turkey of rice originating from the United States. Please also provide information as to the volumes these importers were importing, specifying whether they are importing (or attempting to import) at the MFN rate or under the TRQ and the problems they have faced when accessing the Turkish market.

35. The main importers of U.S.-origin rice are Torunlar, Akel, and Goze, but they may also import rice from other sources. All three of these companies have a large milling capacity, so they prefer to import U.S. paddy rice.¹⁸ Two other Turkish importers, Erdogan and Multigrain, import small quantities of U.S.-origin rice as well, and both companies have milling facilities. The United States was unable to obtain further information regarding ETM. Importers agreed that they would rather import U.S. rice at the MFN rate if Turkey permitted it, which is confirmed by the repeated attempts of Torunlar, Mehmetoglu, and other importers to obtain Control Certificates outside the TRQ. However, the United States is unable to provide further information with respect to the remainder of the question. Please see the U.S. answer to Question 62 for more information in this regard.

Q18. (Both Parties) It would seem that in some respects Turkey's import regime for rice has changed since the initiation of this dispute before the WTO in November 2005. If this is correct, could the Parties specify:

- (a) The nature of those changes, including their dates and relevant legal instruments.**
- (b) The specific reasons for these changes.**

¹⁷ See Article 3 of the April 2004 Decree (Exhibit US-2), Article 4 of the August 2004 Decision (Exhibit US-5), and Article 4 of the September 2005 Decision (Exhibit US-10).

¹⁸ The United States previously was a large exporter of milled rice to Turkey. It is our understanding that U.S. rice exporters switched their exports from milled rice to paddy rice when Turkey lowered the tariff rate on paddy rice significantly below the tariff rate for milled rice.

(c) The potential effects of these changes.

36. With respect to the TRQ regime, the most recent TRQ opening covered the period November 1, 2005, through July 31, 2006. (The United States requested consultations on November 2, 2005.) The relevant legal instruments for the third TRQ opening are the following:

- Decision of the board of ministers: Decree No. 2005/9315 related to the implementation of a tariff contingent on the import of certain types of paddy rice and rice types (Official Gazette, No. 25935, 13 September 2005);¹⁹ and
- A notification related to the implementation of a tariff contingent on the import of certain paddy rice and rice types, from the Foreign Trade Undersecretariat (Official Gazette, No. 25943, 21 September 2005).²⁰

Further, the Decision of the board of ministers: Decree No. 2004/7333 related to the management of quota and tariff contingent on import (Official Gazette, No. 25473, 26 May 2004) provided FTU with the legal authority to make this and earlier openings of the TRQ and is still in force.²¹

37. Turkey claims that the TRQ “expired” on July 31, 2006, and will not be re-opened. Yet the TRQ already has “expired” and been re-opened on two occasions, despite Turkey’s statements to the contrary.²² The advent of these panel proceedings may also help explain why Turkey has not yet re-opened the TRQ with domestic purchase since July 31, 2006.²³ In addition, the United States has been informed by the trade that MARA is orally informing importers that the MFN tariffs will henceforth be calculated based upon government-determined reference prices for paddy, brown, and milled rice, respectively, rather than on the actual customs value of the merchandise.

38. With respect to imports outside the TRQ, the 2006 Communiqué was issued on December 31, 2005 to replace the 2005 Communiqué. According to the trade, the Communiqué is re-published in the Official Gazette every year, and the provisions of the 2005 and 2006 versions of the Communiqué are essentially the same.

¹⁹ Exhibit US-10.

²⁰ Exhibit US-11.

²¹ Exhibit US-4.

²² See, e.g., G/AG/R/41, para. 23 (February 17, 2005).

²³ See Exhibits US-21, 24, and 35-37.

39. Re-issuance of the Communiqué did not affect MARA’s decision not to grant Control Certificates outside the TRQ. In Letter of Acceptance 1304, dated July 29, 2005, Turkey’s Minister of Agriculture accepted a recommendation to delay the start date for issuing Control Certificates “until a new policy is in place.”²⁴ Turkey began to formulate its “new policy” in March 2006. In his March 24, 2006, letter to then-USTR Rob Portman, which was prompted by the establishment of this Panel on March 17, 2006, Turkish Minister of State Kursad Tuzmen stated that “the control certificate will be issued *as of* April 1, 2006.”²⁵ On the same day of Minister Tuzmen’s letter to Ambassador Portman, MARA issued Letter of Acceptance 390, in which Minister Bakan accepted a recommendation to delay the start date for issuing Certificates until April 1, 2006 for both paddy and milled rice.²⁶ Thus, the ban on imports of rice outside the TRQ scheme was still in place on March 17, 2006 – the date the DSB established this Panel.

40. Based on Minister Tuzmen’s letter and Letter of Acceptance 390, it appeared that, as of April 1, 2006, MARA would begin issuing Control Certificates without requiring importers to purchase domestic paddy rice under the TRQ. However, MARA apparently has continued to deny Certificates to importers who have applied for them.²⁷ This is likely due to the objections of Turkish producers decrying the intended change in policy.²⁸ (Such objections may have been what prompted Turkey’s apparent reliance on a reference price system, but the United States is unable to provide the Letter of Acceptance establishing the reference price regime, and importers are apparently being informed orally by MARA of the new reference prices.)

41. Further, Letter 390 states that the “closing date” to issue Control Certificates will be August 1, 2006, and that the ban on issuing Control Certificates to import rice during the harvest season “will be suitable to be kept in place.” This is borne out by Turkish import data, which show that in September 2006, rice imports into Turkey ceased.²⁹

Q21. (United States) In paragraphs 100 and 101 of its first submission, the United States has argued that Turkish regulations restrict the issuance of import licenses under the tariff-rate quotas (TRQs) to certain categories of persons, with the result that only domestic rice producers, and principally those with

²⁴ The United States was unable to obtain a copy of this document, but its contents are discussed in Letter of Acceptance 390 (Exhibit US-36).

²⁵ Exhibit US-35 (emphasis added).

²⁶ Exhibit US-36.

²⁷ See Exhibits US-22, US-39, US-40, US-41, US-42, and US-44.

²⁸ See Exhibits US-21 and US-24.

²⁹ See the chart in Exhibit US-53.

milling capacity, are eligible to import rice. The United States has referred to this as the "eligibility criteria". Can the United States clarify whether it views this argument as an additional and separate claim.

42. Turkey’s requirement that only those entities who purchase domestic paddy rice may import rice into Turkey is an “other measure” imposing a “restriction . . . on importation” that is inconsistent with Article XI:1 of the GATT 1994. This claim of inconsistency is separate from the U.S. claims regarding the domestic purchase requirement itself, which are concerned with the disparate treatment of imported and domestic products.

43. Specifically, Turkey restricts to the class of persons or entities that may import rice into Turkey; only those importers who purchase domestic paddy rice are eligible to import under the TRQ regime. First, the requirement is an “other measure” under Article XI:1. As noted in paragraph 57 of the U.S. first written submission, the term “other measure” has been interpreted quite broadly by past panel and Appellate Body reports. The *India Autos* panel called it a “broad residual category” that was reflective of the broad scope of coverage of Article XI:1. The limitation on eligible importers to those who purchase domestic paddy rice acts as a restriction on importation, and it is not a quota, export or import license, duty, tax, or charge.

44. In practice, this limitation on eligibility restricts eligible importers to Turkish rice millers. Paddy rice cannot be eaten. It must be milled before it can be consumed. Packers, retailers, and consumers do not have milling capacity. As they cannot mill the rice, it would be useless for them to purchase it. Only those with milling capacity purchase paddy rice; thus, millers are the only entities likely to be eligible to import rice, given the domestic purchase eligibility criterion. Not coincidentally, Torunlar, Akel, and Goze, the three largest Turkish importers of U.S. rice, all have large milling facilities, and the United States is unaware of any Turkish importers of U.S. rice that do not have milling facilities. Thus, the limitation on who may import rice into Turkey to those importers who purchase paddy rice acts as a restriction on importation and, as a result, breaches GATT 1994 Article XI:1.

Q22. (United States) For each of the measures that the United States has challenged in the current proceedings, please identify the relevant time periods that the Panel should consider in its analysis.

45. With respect to the measures that the United States has challenged in this proceeding, the key point in time is the state of the measures as they existed on March 17, 2006, when the DSB established this Panel and the Panel’s terms of reference. The Panel should consider evidence from any time period that would aid its analysis of the measures as they existed on that date.

46. With respect to Turkey’s failure to grant import licenses, or Control Certificates, at the over-quota rates of duty, the United States has presented evidence of Letters of Acceptance covering the period September 10, 2003 through August 1, 2006. With respect to the domestic purchase requirement, the United States has presented evidence that the TRQ regime, which

features the domestic purchase requirement, was first instituted on April 20, 2004. The TRQ regime is still in place, as the 1995 Decree and the May 2004 Decree remain in force,³⁰ and thus far has been opened on three separate occasions, the most recent opening covering the time period November 1, 2005 through July 31, 2006. The United States also has presented evidence in the form of court documents, Control Certificate rejection letters, and press clippings dating from this period, all of which the panel should consider in its analysis of the WTO-consistency of the measures as they existed on March 17, 2006.

Q25. (Both Parties) Can the "letters of acceptance" constitute a valid legal basis to override provisions contained in Decrees and Communiqués issued by the Turkish Foreign Trade Undersecretariat (FTU)?

47. The Letters of Acceptance do not necessarily override the terms of the FTU Communiqués. It is not clear that importation is supposed to be automatic even under the Communiqués. Pursuant to the 2006 Communiqué, an importer wishing to obtain a Certificate of Control from MARA must submit the Certificate application form, the pro forma invoice or invoice, and “other documents which may be asked for, depending on product, by the Ministry.”³¹ The 2005 Communiqué uses the same language, as noted in paragraph 20 of the U.S. first written submission.³² Further, the FTU website provides that “if the product to be imported is found to meet the criteria required,” MARA will grant the Certificate.³³

48. This language is broad enough to provide MARA with the flexibility to “ask for” other documents on a product-by-product basis. There is nothing in the FTU Communiqués limiting the type of documents that MARA can request. Letter of Acceptance 1795 makes clear that MARA will not grant Control Certificates to importers who do not purchase domestic paddy rice. Under the TRQ regime, importers need to document such purchases to FTU by presenting proof of purchase issued by the Turkish Grain Board in their applications for an FTU import permit. Receipts documenting the purchase of domestic paddy rice certainly constitute “other documents which may be asked for, depending on product, by the Ministry.”

49. Further, paragraph 11 of the 2005 and 2006 Communiqués, which are identical, provide that, “provisions of other applicable ordinances shall prevail on all other matters not treaded [sic] in the present Notification.” FTU has no role in the issuance of Control Certificates, which is

³⁰ See paragraphs 39 and 42 of the U.S. first written submission and Exhibit US-4.

³¹ See Article 2 of the 2006 Communiqué (Exhibit TR-1).

³² The U.S. translation of this phrase is “other documents that may be required.”

³³ General Assessment of the Regime Regarding Technical Regulations and Standardisation for Foreign Trade (27 May 2005) (www.dtm.gov.tr) (Exhibit US-43).

administered by MARA, or in the mechanics of fulfilling the domestic purchase requirement, which is overseen by the Turkish Grain Board. The Letters of Acceptance are Ministerial approvals that are directly applicable to these matters and, therefore, prevail over the Communiqués.

50. Even if the Letters of Acceptance were in conflict with the Communiqués, the Letters bar the issuance of Control Certificates on their face. Therefore, the Letters constitute a prohibition or restriction on importation under Article XI:1 of the GATT 1994 whether or not Turkey treats the Letters as legally binding and overriding the Communiqués. Moreover, the United States has provided ample evidence that MARA interprets the Letters as overriding the Communiqués. As shown in Exhibit US-31, counsel for MARA argued in Turkish domestic court that the Letters precluded MARA from issuing any Control Certificates for the periods specified and cited the Letters as the sole basis under which MARA could not grant a Certificate to Torunlar. When another importer, Mehmetoglu, requested a Control Certificate in April 2006, a MARA official responded that “it is not possible to prepare a control certificate according to our laws and regulations.”³⁴ This language can be interpreted in no other manner than as a general statement referring to the issuance of Control Certificates as a whole, not to the denial of a Control Certificate in that particular instance.

51. Letters of Acceptance 1304 and 390 confirm that this is the case. Letter 390, the subject of which is “[i]mport of rice and paddy rice,” notes that, pursuant to Letter 1304, “it was decided not to issue any control certificate until a new policy is in place.” The Letter stated that it was necessary to “finalize the new policy on rice/paddy rice import as soon as possible” and this document, dated March 24, 2006, apparently contained that new policy. The DSB established the panel in this dispute on March 17, 2006, or one week prior to the date that Minister Eker signed the Letter.

Q26. (United States) In paragraph 80 of its first submission, the United States states that the so-called "letters of acceptance", "apply to all importers seeking a Certificate of Control from MARA in order to import rice" and that they are "Ministerial Decisions taken by the Turkish Minister of Agriculture [that] are binding under Turkish law".

(a) Can the United States elaborate on its assertion that the so-called "letters of acceptance" "apply to all importers seeking a Certificate of Control from MARA in order to import rice".

52. At the time of the U.S. first submission, the United States understood that MARA only required importers to obtain a Control Certificate for rice imports outside the TRQ regime. Thus, this statement was made in the context of discussing the import ban with respect to MFN trade.

³⁴ Exhibit US-22.

The United States has presented substantial evidence, including the Letters of Acceptance, rejection letters, court documents, and press reports, establishing that such a ban exists, and that there was a conscious decision by Turkey's Minister of Agriculture to implement such a ban. Turkey has not provided any documentary evidence to rebut these documents.

53. In its first written submission, Turkey has asserted that importers also are required to obtain Control Certificates for in-quota imports, and that it is issuing such documents freely. As mentioned in its oral statement at the first substantive meeting, the United States appreciates the clarification from Turkey, but notes that this requirement makes the TRQ regime more discretionary than the United States previously had understood, as importers are required to obtain two import licenses and appear before four Turkish government agencies in order to import rice.

54. In any event, Letter of Acceptance 1795 clarifies that MARA will not issue Certificates to importers who do not purchase domestic paddy rice, which is a requirement for in-quota importation, so the Letters only prohibit Control Certificate issuance outside the TRQ regime. And Turkey's Annex 20 confirms that Turkey distinguishes between Certificates issued for MFN trade and Certificates issued under the TRQ regime by laying out raw numbers of Certificates that allegedly have been granted and distinguishing between Certificates granted for in-quota trade and Certificates granted for out-of-quota trade. Therefore, even if Turkey is issuing Control Certificates under the TRQ, this has no bearing on the issue of Control Certificate issuance at the over-quota rates of duty.

55. The United States also is awaiting clarification from Turkey as to whether importers of EC-origin rice need to obtain Control Certificates, as such imports are subject to a separate quota regime established pursuant to a bilateral agreement between Turkey and the European Communities.

(b) Can the United States provide evidence to support its assertion that the so-called "letters of acceptance" "are binding under Turkish law".

56. In the first U.S. written submission, oral statement, and answers to previous questions, the United States has provided evidence that the Letters of Acceptance are binding under Turkish law. The Letters constitute Ministerial approvals of Turkey's Minister of Agriculture, who signs each document to indicate his assent, and are clear on their face that no Control Certificates are to be granted for specified periods of time.

57. MARA's interpretation of these documents has conformed with the plain meaning of the text of these documents. As previously mentioned, MARA's lawyer, arguing in Turkish domestic court to deny a Control Certificate to a petitioning importer, cited the Letters of Acceptance as precluding MARA from issuing any Control Certificates for the periods specified and as the exclusive legal basis under which MARA could not grant a Certificate to the importer.

The importer in question, Torunlar, which is one of the primary importers of U.S. rice, petitioned MARA unsuccessfully for a Control Certificate on three separate occasions in 2003 and 2004 before finally taking its case to court. MARA’s interpretation of the Letters of Acceptance, as reflected in its arguments before a Turkish tribunal, was not case specific but applied to all importers applying for Control Certificates. MARA confirmed this interpretation in April 2006 when, in responding to another importer’s request for a Control Certificate, it stated that “it is not possible to prepare a control certificate according to our laws and regulations.”³⁵ As discussed in the answer to Question 25, Letters of Acceptance 390 and 1304 confirm that the denial of Control Certificates is a blanket prohibition covering all imports of rice.

58. Turkey’s own import data confirms the existence of an import ban covering MFN trade. Since September 10, 2003, there have been three periods of time where the TRQ was closed: (1) September 10, 2003 through April 27, 2004; (2) September-October 2004; and (3) September-October 2005. Thus, during those periods of time, the only way to import rice into Turkey would have been at the MFN rates. The import data clearly shows four clear trends:

- With one exception, imports of non-EC origin rice during those periods were either zero or at *de minimis* levels;
- Rice imports were at high levels and/or rising in the months immediately preceding these periods, bottomed out during these periods, and resumed immediately following those periods at high levels;
- The TRQ is closed every year over the September/October period. Not coincidentally, these are the first two months of the Turkish rice harvest and, therefore, the time when Turkey would most want to protect its domestic producers by prohibiting importation; and
- During these periods, rice imports from Egypt, the United States, and other countries appeared to be at *de minimis* levels or, more commonly, zero, whereas rice imports from the European Communities continue unabated. EC imports are governed by a separate quota regime and are not subject to the restrictions challenged by the United States in these panel proceedings.

The import data thus also supports that the Letters of Acceptance are binding under Turkish law. To the extent Turkey is claiming that it ignores the Letters of Acceptance, the United States would note that, even if that were accurate (and the evidence indicates that it is not accurate) a

³⁵ Exhibit US-22.

failure to enforce a measure does not render that measure consistent with the WTO Agreement.³⁶ The Letters of Acceptance are on their face import restrictions and as such inconsistent with the WTO Agreement.

Q38. (Both Parties) In paragraph 25 of its first written submission, Turkey asserts that "[a]n approved Certificate of Control for rice importation will be valid, contrary to the claims from the United States, for a period of twelve months on the basis of Article 9(c) of the Communiqué No. 2006/05."

(b) Can the United States comment on this assertion.

59. The United States appreciates Turkey’s clarification that “chapters” in Article 9(c) refers to HTS chapters, and not to chapters within the individual Annexes, and thus, that Control Certificates for rice importation can be valid for up to twelve months, not four months. Nevertheless, the validity period – be it twelve months or twelve years – is irrelevant as Turkey’s Minister of Agriculture has ordered that Certificates are not to be granted to importers that do not purchase domestic paddy rice. Further, Turkish regulations do not preclude MARA from altering the validity periods for Control Certificates. Article 9 of the Communiqués states that the validity periods “shall not be extended.” However, Article 9 is silent on the question of whether MARA can *shorten* the validity periods.

Q42. (United States) In paragraph 62 of its first submission, the United States claims that "the 2005 Communiqué is clear that the Certificate is a document that Turkey's Ministry of Agriculture and Rural Affairs (MARA) requires as a condition for permitting importation; there is no mention of Turkish customs in the Communiqué." Could the United States address the situation before the entry into force of "the 2005 Communiqué" (Communiqué 25687).

60. The United States was unable to obtain a copy of the 2003 Communiqué, but the 2004 Communiqué appears to be essentially the same as the later Communiqués. We are in the process of translating this document, and will provide it with our rebuttal submission.

Q43. (United States) In paragraph 55 of its first submission, the United States asserts that the Turkish Foreign Trade Undersecretariat (FTU) "...will grant an import licence to import under the TRQ... without requiring that an importer obtain a Certificate of Control". In contrast, Turkey states in paragraph 33 of its first submission that "[i]n addition to the import licences obtained for purposes of quota allocation, of course, importers also had to comply with all other customs obligations and requirements, in particular

³⁶ Appellate Body Report, *United States – Antidumping Act of 1916*, WT/DS136/AB/R, WT/DS162/AB/R, adopted September 26, 2000.

the presentation and approval by MARA of the required Certificates of Control".

- (a) Can the United States demonstrate that Certificates of Control were not required to import rice inside the TRQ?**
- (b) Can the United States please provide evidence that imports inside the TRQ did not require a Certificate of Control?**

61. In order to answer more fully the panel’s questions, the United States has attempted to obtain additional evidence regarding in-quota trade. However, as discussed in the answer to Question 62, importers in Turkey have, for the most part, been unwilling to provide any documentation on this matter since the panel meeting.

62. The United States has not been able to identify provisions in any of the documents comprising the TRQ regime mandating that importers obtain Certificates of Control as a condition upon importation, but Turkey has now clarified that a Control Certificate is required under the TRQ. As previously discussed, this raises additional concerns about the discretionary nature of the TRQ regime because importers need to obtain two import licenses – a Control Certificate from MARA and an import permit from FTU – and obtain approval from four different Turkish government agencies – TMO, FTU, MARA, and Customs – in order to import rice into Turkey. Further, as previously discussed, the fact that importers may be required to present a Certificate of Control for imports within the TRQ does not rebut the U.S. evidence that Turkey does not grant Certificates for imports at the over-quota rates of duty.

Q45. (Both Parties) In paragraph 72 of its first submission, the United States asserts that "Turkey fails to grant Certificates of Control 100 percent of the time" and, similarly, that "Turkey never grants Certificates of Control."

- (a) Can the United States provide arguments to support its assertion and specify the exact period to which it refers.**

63. Pursuant to Ministerial approvals known as Letters of Acceptance, Turkey does not grant Control Certificates to import rice outside the TRQ. The cited statements were made in the context of the over-quota rates of duty and under the belief that MARA did not require Control Certificates for in-quota imports. Turkey has stated that it does, in fact, require Control Certificates under the TRQ regime and the EC Quota Arrangement. However, this does not alter the fact that Turkey’s Minister of Agriculture repeatedly has ordered MARA personnel not to grant any Control Certificates which, as clarified by Letter of Acceptance 1795, refers to situations where importers attempt to import without purchasing domestic paddy rice, i.e., outside the TRQ.

64. The time period to which the United States refers is September 10, 2003, through the

present. The first Letter of Acceptance of which the United States is aware was issued on September 10, 2003. In that Letter, the Minister of Agriculture accepted a recommendation from TMO to delay the start date on which MARA would grant Control Certificates. Following that Letter were at least five additional Letters of Acceptance with similar terms, which ensured that Certificates of Control would not be granted until April 1, 2006, or two weeks after the DSB established the panel in this dispute. The experiences of Mehmetoglu and ETM confirm that Turkey has continued to deny Certificates of Control since April 1.

Q46. (United States) In paragraph 67 of its first submission, the United States notes that a Minister of State from Turkey, in a letter to the US Trade Representative, dated 24 March 2006 pledged that "the control certificate will be issued as of April 1, 2006". Could the United States please elaborate on its related claim according to which, by this phrase, the Minister from Turkey would have "acknowledged that Certificates of Control were not being granted" and would have "confirmed that Turkey had not been issuing Certificates of Control up to that point in time".

65. In his March 24, 2006 letter, Minister Tuzmen stated that Control Certificates “*will be issued as of April 1, 2006*” (emphasis added). The logical implication of Minister Tuzmen’s statement is that Control Certificates were not being issued at that time, but that Turkey would begin (“will be”) issuing such Certificates beginning on (“as of”) April 1, 2006. This is confirmed by the context in which this letter was provided to the United States.

66. As discussed in the U.S. first written submission, the United States has been expressing, in bilateral discussions as well as in WTO committee meetings, its concern that MARA did not issue Control Certificates for some years. On November 2, 2005, the United States requested WTO consultations with respect to Turkey’s restrictions on the importation of rice, including Turkey’s failure to grant import licenses to import rice outside the TRQ. Consultations failed to resolve the dispute. As a result, on February 17, 2006 the United States made its first request to establish a panel to review the matter, which included Turkey’s failure to issue licenses outside the TRQ. The DSB established the panel on March 17, 2006. On March 24, 2006 – one week after the DSB established the panel in this dispute – Minister Tuzmen presented Ambassador Portman with the cited letter stating that Turkey would, “as of April 1, 2006,” issue Control Certificates.

67. Also on March 24, 2006, Letter of Acceptance 390 was issued. The Letter noted that on July 29, 2005, “it was decided not to issue any control certificate until a new policy is in place.” The Letter further noted that it had been necessary to solicit the views of the Turkish Grain Board in order to finalize a new policy as soon as possible. This Letter was apparently that new policy, meaning that control certificates were not being issued as of that date. The last paragraph of the Letter provided the following:

Taking into account the developments at WTO, I am asking your approval to

rearrange the dates to issue control certificates to import rice/paddy rice . The start date to issue certificates will be April 1, 2006 . . .³⁷

68. This alleged “start date” to issue certificates is consistent with Minister Tuzmen’s statement of the same day that “the control certificate will be issued as of April 1, 2006.” Moreover, the use of the term “start date” further confirms that MARA was not issuing Control Certificates at the time of Minister Tuzmen’s letter. Lastly, an April 28, 2006, letter from Mehmetoglu to MARA requesting a Control Certificate notes that a “letter numbered 14060 and dated 25.04.2006” – perhaps another Letter of Acceptance – noted that the “preparation period of control certificate for rice imports has started .”³⁸

69. The United States has presented evidence that, in fact, MARA did not start issuing Certificates as of April 1, 2006, as it had stated it would, perhaps because of intense domestic industry and importer opposition. Nonetheless, MARA’s stated intent to “start” issuing Control Certificates as of April 1, 2006, makes clear that MARA was not issuing Control Certificates to import outside the TRQ prior to that date.

Q47. (United States) In paragraph 72 of its first submission, referring to Turkey’s alleged failure to grant Certificates of Control, the United States refers to the case of an importer who attempted to obtain a Certificate of Control back in 2003 and was still waiting for a response from Turkey’s Ministry of Agriculture and Rural Affairs (MARA). Could the United States identify other cases in which MARA has denied or not approved importers’ applications for Certificates of Control to import rice outside the TRQ?

70. As discussed further in response to Question 63, four Turkish importers – Torunlar, Mehmetoglu, Goze, and Akel – account for approximately 90 percent of all imported rice into Turkey. The United States and Egypt are the two largest exporters of rice to Turkey.

71. Torunlar is one of the major importers of U.S. rice into Turkey. The case referenced in paragraph 72 of the U.S. first written submission, and elaborated upon in paragraphs 28-31 of that submission, relates to Torunlar. As discussed in the U.S. submission, Torunlar applied to MARA for a Control Certificate to import rice outside the TRQ three times between August 2003 and January 2004, but MARA would not grant the Certificate. Torunlar was forced to file suit in Turkish Court to try to obtain the Certificate.

72. The United States understands that Mehmetoglu is the major importer of Egyptian rice into Turkey. As discussed in paragraphs 35-36 of the U.S. first written submission, Mehmetoglu

³⁷ Exhibit US-36 (emphasis added).

³⁸ Exhibit US-42 (emphasis added).

heard about Minister Tuzmen’s announcement that Control Certificates would be issued as of April 1, 2006, and decided to submit an application on April 10, 2006. After not hearing back from the Provincial Agriculture Directorate, Mehmetoglu sent several letters to MARA complaining about the lack of action on its application, noting that provincial officials had informed the company that they had been orally instructed not to provide Certificates, and requesting an explanation for why its application would not be granted. On May 1, 2006, the Provincial Agriculture Directorate provided the explanation that Mehmetoglu had requested, namely that “it is not possible to prepare a control certificate according to our laws and regulations.”

73. Subsequent to the first panel meeting in this dispute, the United States has learned that Mehmetoglu had applied to MARA for Control Certificates to import milled rice outside the TRQ on three other occasions in 2005 and 2006. When MARA refused to grant its applications, Mehmetoglu filed three separate lawsuits in Turkish court in order to obtain a Control Certificate. Two of those lawsuits remain pending but, in one case, the court issued a decision in favor of the government’s position that it could not issue Control Certificates. The court’s opinion cites as grounds for its decision two Letters of Acceptance: Letter of Acceptance 1795, dated December 30, 2004 (Exhibit US-14), and Letter of Acceptance 1304, dated July 29, 2005, which provided that Control Certificates would not be issued during the time periods in which Mehmetoglu requested them. The United States has obtained the relevant court documents, but is still in the process of translating them. We will provide the translated documents and further detail on their contents with the U.S. rebuttal submission.

74. A representative from Akel, another Turkish importer that imports rice mostly from the United States, informed U.S. officials that it also applied for Control Certificates, but its applications were not granted. A representative of Goze, another importer of U.S. rice, informed U.S. officials that it did not apply for a Control Certificate because it knew that MARA was not granting any Control Certificates without domestic purchase. Finally, as discussed in paragraph 37 of the U.S. first written submission, another Turkish importer, ETM, also tried to obtain a Control Certificate in April 2006 after Minister Tuzmen’s announcement that it would begin issuing Certificates, with the same result as Mehmetoglu and Akel.

Q48. (United States) In paragraph 2 of its first submission, the United States alleges that “[i]mporters who have applied for licenses often wait for months or even years for a response to their applications, and if they do receive a response, their license applications are denied with little reason (e.g., spelling errors) or denied with no reason provided at all.” Please provide additional information relating to the factual claim that importers who have applied for Certificates of Control often wait for months or even years for a response to their applications, as well as other instances where this treatment has occurred.

75. Torunlar, one of the primary importers of U.S. rice into Turkey, applied for a Control

Certificate in August 2003. More than two years later, on December 12, 2005, Torunlar sent a letter to the Provincial Directorate of Agriculture in which it continued to plead its case for a Control Certificate. During the intervening period, Torunlar made three attempts to apply for a Certificate. As discussed in paragraph 28 of the U.S. first submission, MARA rejected the first request because certain documents allegedly were missing. MARA rejected the second request due to alleged spelling errors. MARA rejected the third request in September 2004 – more than eight months after Torunlar first applied for a Certificate – without providing any explanation for the rejection.

76. Mehmetoglu, one of the primary importers of Egyptian rice, has applied for a Control Certificate to import outside the TRQ at least three times in 2005 and 2006, and none of those applications have been granted. MARA rejected one of Mehmetoglu’s requests on May 1, 2006, but only after Mehmetoglu sent three letters to MARA demanding an explanation for the delay in the issuance of the Control Certificate. As noted in the U.S. response to Question 47, the United States has obtained additional documentation with respect to Mehmetoglu’s other requests for Control Certificates, and subsequent lawsuits, and will provide that information and additional argumentation in the U.S. rebuttal submission.

77. The United States is aware of other instances where MARA has not acted on importer applications for Control Certificates, some of which are discussed in the answer to Question 47. However, as elaborated upon in response to Question 62, most of the importers that the United States has contacted have been unwilling to provide additional documentation since the first panel meeting. Thus, the United States is unable to provide additional documentary evidence with respect to other importers’ experiences with the Control Certificate application process. Nevertheless, the general rule appears to be that, if an importer does apply for a Control Certificate, MARA will not respond to the application, either at all, or in a timely fashion, and if it does respond, the application will be rejected.

Q49. (Both Parties) During the first substantive meeting, Turkey asserted that once an importer obtains a Certificate of Control, the actual importation depends on market-related factors, such as relative exchange rates, demand, prices, etc.

(a) Can the United States comment on this point?

78. Turkey’s Minister of Agriculture provides that no Control Certificates are to be granted at the over-quota rates of duty. However, assuming that Control Certificates were granted, Turkey’s assertion would have been correct. Market-related factors would have been a part of importers’ decision making if trade were not restricted. For example:

- The United States had a record high medium grain crop during the August 2004/September 2005 marketing year. These abundant supplies and lower U.S. prices coincided with a continued drought in Australia resulting in nearly record

U.S. exports of medium grain rice over this period. The U.S. stocks to use ratio of 22 percent for medium grain rice during that marketing year indicates that the United States could have exported even larger volumes than it did if importation was not de facto restricted to a small group of importers and if entities in Turkey could have made purchasing decisions based on market-related factors. Turkey showed no import response to lower prices because importers could not obtain the necessary Control Certificates.

- Australia had been a regular supplier to Turkey prior to the imposition of the import ban in mid-September 2003. In 2005/2006, Australian exports rebounded from drought the previous marketing year. However, Turkey did not return as a customer.
- Egypt also had significantly larger exportable supplies during the time period under examination by the Panel, due to expanded area planted paired with the highest field yields of any rice producing country in the world. Nevertheless, Turkish imports still showed months of zero imports from one of their largest suppliers.

79. The fact that Turkey’s Annex 20 shows a wide differential in 2003 and 2006 between Control Certificates granted and actual imports is not reflective of a lack of competitiveness but rather the existence of the import restrictions raised by the United States in these panel proceedings. In Exhibit US-59, the United States has presented the data from Annex 20 in graphical form. In 2003, the pace of Turkish imports was tracking the volume of outstanding Control Certificates at pace – at least in January through early-September 2003 – before imports were halted. The most likely explanation as to why realized imports fell short of Control Certificate volumes in 2003 was Turkey’s decision, pursuant to Letter of Acceptance 964, to prohibit the issuance of Control Certificates as of September 10, 2003. Thus, rice imports were prohibited for nearly four months, or one third of the calendar year. In 2004 and 2005, realization rates were very high because, according to Turkey’s import data, virtually all imports were within the TRQ regime. By contrast, Control Certificates covering nearly 1 million tons in 2006 are grossly out of line with actual imports through September 2006 and outpace trade-to-date by nearly 500 percent. The United States cannot explain this discrepancy and agrees with Korea that Turkey needs to provide an explanation.

Q50. (Both Parties) Under what circumstances, or on what grounds, if any, would Turkey's Ministry of Agriculture and Rural Affairs (MARA) not issue a Certificate of Control?

80. Pursuant to the Letters of Acceptance, MARA does not have any legal authority to issue Certificates of Control to importers who do not purchase domestic paddy rice. Each Letter spells out explicitly that Turkey’s Minister of Agriculture accepts a recommendation from TMO not to grant such Certificates for a particular period of time and provides Ministerial approval to

“delay” the start date for issuing such Certificates. MARA considers itself to be bound strictly by these Letters. When Torunlar petitioned the 1st Administrative Court of Ankara to force MARA to issue a Control Certificate, MARA’s counsel cited these Letters as the sole legal basis for its failure to issue a Certificate. When Mehmetoglu applied for a Certificate in April 2006, the Provincial Agriculture Directorate replied that it was not possible to issue a Certificate under Turkish laws and regulations. When Mehmetoglu sued MARA in Turkish court to force the Ministry to issue a Control Certificate without domestic purchase, the Court issued an opinion in favor of the government, citing the Letters of Acceptance as the legal basis for rejecting the Control Certificate applications. Letter of Acceptance 1795 confirms that the failure to issue Control Certificates only applies to importers attempting to import rice outside the TRQ regime, i.e., without purchasing domestic paddy rice.

81. Turkey has clarified that it does, in fact, grant Control Certificates under the TRQ regime and to importers of rice from the European Communities, which is governed by a separate quota regime than rice from other sources. Nonetheless, this does not alter the fact that Turkey’s Minister of Agriculture has ordered officials of his ministry not to grant any Control Certificates to importers who do not purchase domestic paddy rice, i.e., outside the TRQs. And, as the United States mentioned in paragraph 24 of its oral statement, if Turkey requires importers under the TRQ regime to obtain a Control Certificate, in addition to the import permit already required by FTU, the TRQ regime is even more discretionary than the United States previously understood.

Q51. (United States) In paragraph 71 of its first submission, the United States claims that "Turkey did not grant [Certificates of Control] at all for a period of over 2 ½ years and is still not granting them." Could the United States please specify the exact period(s) during which Turkey allegedly did not grant any Certificates of Control. Please identify the reason provided in each case when there was a formal rejection.

82. The time period referenced in paragraph 71 – “over 2 ½ years” – is September 10, 2003 through April 1, 2006. The first Letter of Acceptance of which the United States is aware was issued on September 10, 2003. In that Letter, the Minister of Agriculture accepted a recommendation from TMO and provided Ministerial approval to delay the start date on which MARA would begin to grant Control Certificates. Following that Letter were at least five additional Letters of Acceptance with similar terms, which ensured that Certificates of Control would not be granted until April 1, 2006, or two weeks after the DSB established the panel in this dispute.

83. The United States has been informed by the trade that importers knew that MARA was not granting Certificates so many did not bother applying for them. Those who did apply for Certificates either had their applications rejected or did not receive a response after waiting months or even years. As elaborated upon in the U.S. response to Question 62, most of the importers that the United States has contacted have been unwilling to provide additional

documentation on this matter since the panel meeting. However, the evidence the United States has provided thus far makes clear that Turkey does not, consistent with the plain language of the Letters of Acceptance, grant Certificates of Control for imports outside the TRQ (i.e., without domestic purchase):

- In Torunlar’s case, MARA rejected Torunlar’s first request because certain documents allegedly were missing, the second request due to alleged spelling errors, and the third request without explanation.
- One of Mehmetoglu’s requests was rejected on the grounds that “it is not possible to prepare a control certificate according to our laws and regulations.” In the correspondence with MARA, Mehmetoglu makes reference to conversations between the importer and MARA in which MARA officials said that they had been orally instructed not to provide Control Certificates. As previously mentioned, the United States will provide further information on Mehmetoglu’s other Control Certificate requests and related court documentation in the rebuttal submission.
- ETM’s request for a Control Certificate was not granted, but was never formally rejected. The company says that it was informed orally that no documents were missing, yet “based on the verbal instructions of the Ministry’s Undersecretariat, the preparation of documents were stopped.”³⁹

84. Turkey has clarified that it does, in fact, grant Control Certificates under the TRQ regime and to importers of rice from the European Communities. (Imports of EC-origin rice are governed by a separate quota regime than is rice from other sources, and a representative of the Italian Rice Millers Association has confirmed that in-quota imports are not subject to any of the restrictions and requirements being imposed by Turkey on other imports.) Again, this information does not alter the fact that Turkey’s Minister of Agriculture repeatedly has ordered officials of his ministry not to grant any Control Certificates which, as clarified by Letter of Acceptance 1795, applies to importers attempting to import without purchasing domestic paddy rice, i.e., outside the TRQs.

Q52. (United States) In paragraph 26 of its first written submission, Turkey asserts that "Certificates of Control have been systematically and regularly approved on a non-discriminatory basis since the entering into force of 'The Regime for Technical Regulations and Standardization for Foreign Trade' in 1996." Can the United States comment on this assertion.

85. The United States has only presented documentation concerning this matter from

³⁹ Exhibit US-44.

September 10, 2003, to the present. Rice exporters had raised concerns regarding Turkey’s seasonal import ban prior to that date, but the United States has not submitted evidence on this point. From September 10, 2003, onward, however, the United States has provided evidence contradicting Turkey’s assertion that it is granting Control Certificates. As previously discussed, pursuant to the explicit terms of the Letters of Acceptance, Turkey does not grant Control Certificates to import rice outside the TRQ.⁴⁰ It did not grant Certificates from September 10, 2003, through the date of panel establishment and has yet to provide any evidence that it is granting such Certificates now. In fact, the United States presented evidence in the form of correspondence between importers (Mehmetoglu and ETM) and news reports demonstrating that Turkey has continued to deny Certificates of Control since April 1, and the court documents from the Mehmetoglu litigation will provide further confirmation that MARA is not issuing Control Certificates.

Q56. (United States) In paragraph 63 of its first submission, the United States asserts that the Certificates of Control would in any event be a prohibition or restriction on importation that is made effective by an "other measure" within the meaning of Article XI:1 of GATT 1994. Please elaborate on what grounds the United States argues that the Certificates of Control and the alleged denial thereof can be considered an "other measure" for purposes of the application of Article XI:1 of GATT 1994.

86. As noted by the United States in its first submission, the range of measures covered by Article XI:1 of the GATT 1994 is broad.⁴¹ Other than duties, taxes, or other types of charges, WTO Members are not permitted to employ any prohibition or restriction on imports whether through quotas, import licenses, or “other measures.” Past panels have also interpreted Article XI:1 as covering a broad scope of measures.

87. Turkey’s prohibition on MFN trade in rice is made effective through MARA’s decision not to grant import licenses, or Control Certificates, for importers who do not purchase domestic paddy rice. The blanket prohibition on the issuance of Control Certificates is operationalized through the Letters of Acceptance (which are Ministerial approvals to delay the start date for issuance of Control Certificates), substantiated by the court documents, rejection letters, and newspaper articles submitted by the United States, and borne out by Turkey’s own import data.

88. If the panel were to find that Control Certificates are not import licenses for purposes of Article XI:1 of the GATT 1994, the United States believes that MARA’s failure to issue Control Certificates constitutes an “other measure” for such purposes. On its face, the term “other

⁴⁰ As previously mentioned, Turkey has clarified that Control Certificates are granted under the TRQ regime and the EC Quota Arrangement.

⁴¹ See paragraphs 57 and 63 of the U.S. first written submission.

measures” is extremely broad and covers any measure other than quotas, import or export licenses, duties, taxes, or other charges. Read in context, the term “other measures” covers any other type of measure that a Member could take that would prohibit or restrict imports, other than those measures specifically mentioned in Article XI:1.

89. In order to import rice at the over-quota rates of duty, an importer must obtain a Control Certificate from MARA. Turkey’s Minister of Agriculture decided not to issue such Certificates, as evidenced by the Letters of Acceptance and the rest of the documentary evidence presented by the United States. MARA’s failure to issue such Certificates blocks imports of rice outside the TRQ regime. Accordingly, Turkey’s failure to provide importers with Control Certificates outside the TRQ is an “other measure” amounting to a prohibition or restriction on importation, and thereby is in breach of Article XI:1 of the GATT 1994.

Q57. (United States) In footnote 90 to paragraph 58 of its first submission, the United States claims that "even if Turkey did issue Certificates of Control, the conditions of use associated with such Certificates would constitute a 'restriction' on importation for purposes of Article XI:1." Could the United States provide detailed arguments for this claim.

90. Turkey has stated that Control Certificates to import rice – assuming they were granted – are valid for twelve months and can be utilized for more than one shipment. Regardless of whether or not that is the case, as previously discussed, the United States is not planning to pursue this claim further.

Q58. (United States) As noted by the United States in paragraph 19 of its first submission, according to Article 1 of the Turkish Foreign Trade Undersecretariat's (FTU) Communiqué No. 2005/5, Turkey's Ministry of Agriculture and Rural Affairs (MARA) determines the "fitness and compatibility" of certain products, including rice, with respect to human health and safety and other concerns. Accordingly, rice importers must present a Certificate of Control from MARA to Turkish Customs upon importation. Subsequently, in paragraph 62 of its submission, the United States argues that MARA's requirement that importers obtain a Certificate of Control is consistent with the definition of "import licensing" for purposes of Article 1 of the Agreement on Import Licensing. In the United States' view, is verification of the fitness and compatibility of imported agricultural products with relevant human health and safety regulations an administrative procedure that goes beyond what is required for customs purposes?

91. The Import Licensing Agreement covers “administrative procedures *used for the operation of import licensing regimes* requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative

body as a prior condition for importation into the customs territory of the importing Member” (emphasis added). With respect, the United States believes that the relevant inquiry is whether a particular administrative procedure “used for the operation of an import licensing regime” goes beyond what is required for customs purposes.

92. Verification of the fitness and compatibility of agricultural products with the relevant health and safety regulations is a procedure that is sometimes required with respect to both imported and domestic products. So there is not necessarily any linkage between obtaining a phytosanitary certificate and importation. And, in the United States’ view, it is unnecessary for the panel to decide, for purposes of resolving this dispute, whether the verification of the fitness and compatibility of agricultural products is an administrative procedure that goes beyond what is required for customs purposes. Rather, what matters is how a measure – whether it be a requirement to obtain a Control Certificate, a receipt for domestic purchase, or a phytosanitary certificate – is “used for the operation of an import licensing regime.”

93. Here, Turkey is using the denial of the Control Certificate, which has all of the characteristics of an import license, as a WTO-inconsistent trade barrier. Turkey is not, to our knowledge, using the issue of “fitness and compatibility” to block or restrict rice importation. In fact, importers have informed U.S. officials that MARA’s Provincial Agricultural Directorates do not even ask for the phytosanitary certificate until *after* the Provincial Agricultural Directorate in Ankara has granted the Control Certificate. The U.S. claim is that MARA is simply not granting the Certificates as the key factor in its operation of its import licensing regime, and that Turkey is using its failure to issue Control Certificates – irrespective of the individual elements comprising the Certificates – as an import barrier. Because the United States is not arguing that Turkey is using the verification of the fitness and compatibility of imported rice as an import barrier, the Panel does not need to reach the issue of whether an analysis of fitness and compatibility is an administrative procedure that goes beyond what is required for customs purposes.

Q60. (Both Parties) In paragraph 26 of the provisional version of its oral statement, Australia indicates that "the measure at issue is Turkey's alleged blanket denial of Certificates of Control." Could the Parties comment on this statement. If appropriate, provide evidence to support your statements.

94. To be more precise, one of the measures being challenged by the United States is Turkey’s blanket denial of Certificates of Control outside the TRQ regime, which amounts to a prohibition or restriction on importation that is in breach of Article XI:1 of the GATT 1994. As discussed in the answer to Question 4, the instrument used by MARA to effectuate the denial of Control Certificates is the Letter of Acceptance. There are other measures being challenged, including the Control Certificates themselves.

95. Turkey has clarified that it grants Control Certificates under the TRQ regime and to importers of rice from the European Communities under a separate quota regime.

Q61. (Both Parties) In paragraph 27 of the provisional version of its oral statements, Australia indicates that "[i]f the Panel finds that Turkey has in fact adopted a practice of denying Certificates of Control altogether... this could constitute a 'measure of general application' for the purposes of Article X:2 [of the GATT 1994], whether or not the Letters of Acceptance themselves can be enforced". Could the Parties comment on this statement.

96. Turkey’s decision not to issue Control Certificates at the over-quota rates of duty, which were operationalized through the Letters of Acceptance, is a “measure of general application” for purposes of Article X:2 of the GATT 1994. In *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, the Appellate Body upheld the panel’s finding that a country-specific safeguard was a “measure of general application” under Article X:2 because it “affects an unidentified number of economic operators, including domestic and foreign producers.”⁴²

97. In this dispute, each Letter of Acceptance applies to all non-TRQ rice trade, with the exception of trade governed by the EC Quota Arrangement, and Letter of Acceptance 390 confirms that the Letters are part of a policy governing all imports of paddy and milled rice outside the TRQ. Thus, the ban on the issuance of Control Certificates applies to all trade outside the TRQ regime, and it affects an unknown number of potential rice exporters from Egypt, the United States, and other WTO Members, as well as Turkish importers, millers, producers, wholesalers, packers, retailers, and consumers.

98. With regard to Australia’s second point, the United States has provided ample documentary evidence that the Letters are being enforced – which will be further supplemented by the Mehmetoglu court documents – and that such Letters amount to more than individual instances of denial, but rather to a blanket ban. In any event, the Appellate Body in the *1916 Act* dispute found that mere non-enforcement of a measure does not preclude a finding of WTO-inconsistency. In that dispute, the measure at issue had never been enforced by the United States. By contrast, in the instant dispute the United States already has provided several instances where MARA has enforced the ban.

Q62. (United States) In its first submission the United States refers to three importers who were allegedly denied Certificates of Control to import rice

⁴² *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/AB/R, adopted February 25, 1997, page 21. The Appellate Body further noted that “[t]he essential implication [of Article X:2] is that Members and other persons affected, or likely to be affected, by governmental measures imposing restraints, requirements and other burdens, should have a reasonable opportunity to acquire authentic information about such measures and accordingly to protect and adjust their activities or alternatively to seek modification of such measures.” See also *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/R, adopted February 25, 1997, para. 7.65.

into Turkey (Torunlar, Mehmetoglu, and ETM). Could the United States indicate additional cases where the importation of rice into Turkey was denied.

99. Prior to the first substantive meeting of the panel with the parties, Turkish importers had been extremely open and helpful in discussing Turkey’s import licensing regime for rice and providing illustrative documentation.⁴³ After the first substantive meeting, the United States contacted several importers to solicit further documentation that would help to answer the panel’s questions. Unfortunately, since the panel meeting most of the importers have become unwilling to provide such information. One importer contacted by U.S. officials already had been provided with a copy of the panel’s confidential questions from an unknown source. Thus, the United States is not able to provide further elaboration on this question or questions 64 through 66.

Q63. (Both parties) During the first substantive meeting with the Panel, Turkey asserted that the case of the difficulties faced by Torunlar in trying to import rice was exceptional.

(c) Can the United States specify the origins of rice imported by the three importers identified in its first submission (Torunlar, Mehmetoglu, and ETM).

(e) Can the Parties provide information regarding the importance and share of these three importers (Torunlar, Mehmetoglu, and ETM) in total imports of rice into Turkey and, more specifically, in imports of US rice into Turkey during the relevant period.

100. Torunlar, Mehmetoglu, Goze, and Akel are the top Turkish rice importers. Torunlar, Goze, and Akel import paddy rice from the United States, and Mehmetoglu imports Egyptian milled rice. According to officials at the U.S. Embassy in Ankara, these four companies account for approximately 90 percent of the imported rice in Turkey. The United States is unable to provide more detailed information (see answer to question 62).

Q64. (United States) In paragraph 28 of its first submission, the United States asserts that one importer, Torunlar, has been trying since 2003, without success, to import rice - and to get previously imported rice out of the warehouse - on the strength of a Certificate of Control. Was Torunlar seeking to import rice at the MFN rate of duty, under the tariff quota system, or both?

⁴³ See, e.g., Exhibits US-22, US-23, US-28, US-29, US-30, US-31, US-32, US-33, US-34, US-39, US-40, US-41, US-42, and US-44.

101. See answer to question 62.

Q65. (United States) In paragraph 30 of its first submission, the United States asserts that Torunlar had previously had no problems obtaining a Certificate of Control to import rice into Turkey. Can the United States clarify when, and how many times, had Torunlar obtained Certificates of Control for the importation of rice.

102. See answer to question 62.

Q66. (Both Parties) In paragraph 31 of its first submission, the United States asserts that Torunlar's lawsuit against the Ministry of Agriculture and Rural Affairs (MARA) "is still pending", making reference to a letter from the Ankara Governorship Province Agriculture Department (Exhibit US-33). What is the current status of the lawsuit to date?

103. See answer to question 62.

Q69. (United States) In paragraph 41 of its first submission, the United States notes that Article 2 of Communiqué No. 25445 ("Application of Tariff Quota for the Importation of Some Species of Paddy Rice and Rice"), concerning the domestic purchase requirement, "...specified that the sources of the rice that had to be purchased in order to benefit from the reduced tariff rates under the TRQ were TMO, Turkish producers, or Turkish producers associations, and rice imports would be allocated according to the amount of rice one wanted to import". Can the United States identify the specific section of Article 2 where this is stated.

104. Article 1, rather than Article 2, of Communiqué No. 25445 provides that rice imports would be allocated according to the amount of rice an importer wished to import. As the United States notes in paragraph 41 of its first written submission, this first opening of the TRQ, as contrasted with the two most recent TRQ openings, does not provide the precise quantities of domestic rice that an importer must purchase in order to import. It appears that the amount of rice that must be purchase domestically is left to the discretion of TMO.

105. Furthermore, the United States was incorrect in asserting that “the sources of the rice that had to be purchased in order to benefit from the reduced tariff rates under the TRQ were TMO, Turkish producers, or Turkish producers associations.” Under this first opening of the TRQ, importers were required to purchase domestic rice from TMO. FTU did not provide importers with the option of purchasing rice from Turkish producers or producer associations until the second and third openings of the TRQ.

Q70. (United States) In paragraph 100 of its first submission, the United States

asserts that the category of persons who purchase rice from the Turkish Grain Board would "undoubtedly be domestic producers as well". Turkey responds, in paragraph 100 of its first submission, that the United States "fails to argue or prove the validity of this assertion and its factual occurrence". Please provide the basis for asserting that those who purchase rice from the Turkish Grain Board would necessarily be domestic producers.

106. Letter of Acceptance 1795 clarifies that MARA will not grant Control Certificates to importers who do not purchase domestic paddy rice from the Turkish Grain Board or Turkish producers or producer associations. In the most recent opening of the TRQ, an importer wishing to import rice needed to purchase a larger quantity of domestic paddy rice than the amount of rice the importer wanted to import in order to realize the importation. Under this scheme, as a theoretical matter anyone can import rice who purchases paddy rice. The domestic purchase requirement in effect restricts importation to those entities with milling capacity. Thus, for greater precision, the reference to domestic producers in paragraph 100 was meant to refer to producers of rice for consumption (i.e., millers), not to growers.

107. As an initial matter, the domestic purchase requirement is more onerous for importers that are trying to import milled rice than paddy rice. This is most likely by design as Turkey wants to develop its milling capacity so it attempts to discourage imports of milled rice. Turkey's domestic tariff schedule, which provides for a much higher MFN rate for milled rice (45 percent *ad valorem*) than for paddy rice (34 percent *ad valorem*), confirms that intention.

108. In any event, non-millers would have no reason or desire to purchase paddy rice, not to mention the large quantities of paddy rice that are necessary to import milled rice under the TRQ. Paddy rice needs to be further processed and would not be sold to consumers in raw form. For an entity without milling capacity, this rice is useless, and milling facilities are not a minor investment. Building and maintaining a rice milling facility requires the investment of several hundred thousand to several million U.S. dollars to engineer a system of sophisticated equipment in an adequate building with storage capacity. It would require the permanent installation of bulky machinery, such as: shellers to remove the husk; destoners to remove small foreign material; millers to remove bran layers; polishers to whiten the kernel; sorters to remove the broken pieces; and a host of conveyers and holding tanks to keep the system running smoothly. As a consequence, Turkish packagers, retailers, and consumers would not have the capacity or the desire to purchase paddy rice and, therefore, it is hardly surprising that the three main importers of U.S. rice – Torunlar, Akel, and Goze – have large milling facilities.

109. Given these factors, it is clear that the requirement to purchase domestic paddy rice imposes a significant impediment to those entities wanting to import rice, thereby ensuring that only importers with milling capacity would actually import rice into Turkey.

Q72. (Both Parties) Can Turkey comment on the United States' assertion contained in paragraph 123 of its first submission, that "Turkey ensures that

the full amount of the quotas cannot be reached by setting the domestic purchase requirement so high that the entire Turkish domestic production of rice would be purchased by importers before the in-quota amount was reached" and that, "[b]ased on the levels of domestic purchase set forth thus far, there is no way for importers to be able to import anywhere approaching the 300,000 metric ton limit on milled rice imports." If that were the case, please refer in particular to the reasons Turkey would have, if any, in setting the import quotas above the actual level of possible realisation of imports. Does the United States have any comments on the matter?

110. Turkey's total rice imports in MY 2001/2002 and 2002/2003 were approximately 300,000 metric tons and 325,000 metric tons, respectively. However, the domestic purchase requirement is so large that the alleged 300,000 metric ton (milled rice equivalent) cap (or 500,000 metric tons of paddy rice under the conversion factor) cannot be reached.

111. Total paddy rice production in Turkey was 415,000 metric tons in MY2003/2004, 500,000 metric tons in MY2004/2005, and 600,000 metric tons in MY2005/2006, for an average of 505,000 metric tons per marketing year.⁴⁴ The most generous domestic purchase requirement in the most recent TRQ opening was for importers who wanted to import paddy rice and purchased domestic paddy rice from Turkish producers or producer associations in certain designated provinces. Pursuant to the first row of the chart contained in the September 2005 Notification, such importers could import 800 kilograms of paddy rice for every ton of domestic paddy rice they purchased, for a ratio of 1:1.25.⁴⁵ Assuming that no milled rice was imported and all paddy rice could be imported using the least onerous ratio available, importers would have to purchase 625,000 metric tons of paddy rice in order to import 500,000 tons of paddy rice. Turkey's average paddy rice production in the past three marketing years is 505,000 metric tons. The 625,000 metric ton figure is not only much larger than the average, but it is larger than the 600,000 metric tons of paddy rice produced in MY2005/2006, Turkey's largest harvest to date.

112. In fact, it is not possible to even approach the cap, because the scenario outlined above is unrealistic. Egypt exports milled rice to Turkey, and the domestic purchase ratio for importing milled rice is much more onerous than the ratio for importing paddy rice: importers need to

⁴⁴ Turkish paddy rice production was 360,000 metric tons in both MY2001/2002 and MY 2002/2003, before increasing rapidly over the past three years. This is probably not a coincidence, but the intended effect of Turkey's import licensing system. Because Turkish producers know that their entire crop will be purchased at prices that are significantly higher than the world price, they are encouraged to produce larger quantities of paddy rice each year, thereby diminishing the need for imports over time.

⁴⁵ See Exhibit US-11.

purchase two or three times the quantity of domestic rice than the amount of milled rice they want to import. Second, there is a footnote to the first row of the chart contained in the September 2005 Notification. The footnote provides that the domestic purchase requirement is much larger with respect to imports from certain other enumerated provinces which, interestingly enough, account for approximately 80-85 percent of Turkish paddy rice production. For those purchasing paddy rice from these provinces – most likely the majority – importers would need to purchase nearly two times as much domestic paddy rice as the amount of paddy rice they wanted to import, and nearly three times as much domestic paddy rice as the amount of milled rice they wanted to import.

Q73. (Both Parties) In paragraph 23 of the written version of its oral statements, Australia indicates that "...WTO jurisprudence supports the view that the imposition of an 'additional requirement' or an 'extra hurdle' on imported products, when compared to like domestic products, constitutes less favourable treatment..." Australia adds that "these 'extra hurdles' need not be onerous in commercial and/or practical terms to be inconsistent with Article III:4 of GATT 1994". Could the Parties comment on this statement.

113. The United States agrees with Australia. In paragraph 97 of its first written submission, for example, the United States noted that the *Canada Wheat* panel found that measures are inconsistent with Article III:4 of the GATT 1994 if they impose requirements on foreign products that are not imposed on domestic products.⁴⁶ The panel noted that Article III:4 did not contain a de minimis exception, and the fact that an extra requirement on an imported product might not be onerous in commercial and/or practical terms did not change the fact that it was still an additional requirement to which the like domestic product was not subject and thus was inconsistent with Article III:4.⁴⁷

114. Previous reports lend support to this interpretation of Article III:4. First, the Appellate Body in the *Section 211* dispute found that a provision imposing an additional hurdle on foreign successors-in-interest that was not imposed on domestic successors-in-interest was inconsistent with U.S. national treatment obligations in Article 2(1) of the Paris Convention (1967) and Article 3.1 of the TRIPS Agreement.⁴⁸ The panel noted that, although these were not the same provisions as Article III:4 of the GATT 1994, the Appellate Body’s reasoning was nevertheless

⁴⁶ *Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain*, WT/DS276/R, adopted September 27, 2004, para. 6.185 (“*Canada Wheat (Panel)*”).

⁴⁷ *Canada Wheat (Panel)*, para. 6.190.

⁴⁸ *Canada Wheat (Panel)*, para. 6.185, citing *United States – Section 211 Omnibus Appropriations Act of 1998*, WT/DS176/AB/R, adopted February 1, 2002, para. 268.

persuasive since the issue was national treatment.⁴⁹ Second, the GATT panel in the *Malt Beverages* dispute found a U.S. requirement that only imported beer had to be distributed through an “additional level of distribution” – in that case, in-state wholesalers or other middlemen – constituted less favorable treatment for imports and was in breach of Article III:4 of the GATT.⁵⁰

Q74. (Both Parties) In pages 2 and 3 of the written version of its oral statements, Korea indicates that "[n]o matter how much the cost of buying domestic rice was lowered by virtue of the so called domestic purchase requirement, it can not be denied that importers had to resource additional funds to purchase domestic rice, and foreign rice could be imported more if such funds were not forced to be used to buy domestic rice. The main focus in this issue is not the price of domestic rice but the additional obligation imposed on the importers". Could the Parties comment on this statement.

115. Korea is correct that the domestic purchase requirement imposes an additional cost on importers seeking to import rice. Importers cannot purchase as much imported rice as they would like because some of their resources that would have been devoted to purchasing imported rice have to be expended to satisfy the domestic purchase requirement. This requirement is therefore a restriction on imports inconsistent with Article XI:1 of GATT 1994.

116. The United States disagrees with Turkey’s argument that the cost of buying domestic rice is lowered by the domestic purchase requirement. In order to reach this conclusion, Turkey completely ignores the domestic purchase requirement and focuses on the average costs of each ton of rice that is part of the transaction. But that misses the point. An importer only cares about the total cost of the transaction, not the average cost of each ton, and no importer, if given the choice, would choose to purchase two tons of rice to import one ton of rice, if it was possible to import that one ton of rice without domestic purchase.

Q75. (Both Parties) Two of the Third Parties in their oral statements have presented views on the applicability of the Agreement on Trade-Related Investment Measures (TRIMs Agreement). China in paragraphs 4 and 5 of the provisional version of its oral statement, asserted that "Turkey ignores the fact that the US fails to define what 'trade-related investment measure' is and to prove Turkey's measure constitutes a TRIM"; and adds that "[i]n no case it is proper to bring a measure out of the coverage of TRIMs Agreement

⁴⁹ *Canada Wheat (Panel)*, para. 6.185.

⁵⁰ *Canada Wheat (Panel)*, para. 6.185, citing *United States – Measures Affecting Alcoholic and Malt Beverages*, adopted June 19, 1992, BISD 39S/206, paras. 5.32 and 5.35.

under the jurisdiction of it." Korea, in page 3 of the written version of its oral statement, noted that the TRIMs Agreement can only be applied to investment measures, which must have both a trade and an investment element. In the case of the domestic purchase requirement, it asserted that "there does not appear to be an investment element", and if so, "it can not be an investment measure, therefore the TRIMs Agreement could not be applied." Could the Parties please comment on the assertions made by China and Korea in their oral statements.

117. The proposed interpretation of China and Korea is not consistent with the text of the TRIMs Agreement. As the United States explains in paragraphs 110-112 of its first written submission, the TRIMs Agreement does not define what are “investment measures related to trade in goods” that would breach Article III:4; instead, it provides a non-exhaustive “Illustrative List” of such measures in the Annex to the Agreement. Accordingly China is wrong to claim that the United States has an obligation to define a TRIM. Nor does the TRIMs Agreement impose a separate requirement that a measure must satisfy in addition to the illustrative list in order to be in breach of the TRIMs Agreement. To satisfy the requirements of paragraph 1(a) of the Annex, and thereby prove that a measure is inconsistent with Article 2.1, the United States must demonstrate that the domestic purchase requirement mandates that importers purchase domestic products and that importer compliance with the domestic purchase requirement is necessary to obtain an advantage. Turkey’s domestic purchase requirement satisfies both elements: Turkey requires importers to purchase domestic rice in certain specified quantities, and fulfilling the domestic purchase requirement is necessary to obtain an advantage, namely importing rice under the lower rates of duty under the TRQ regime. Thus, Turkey has breached Article 2.1 and paragraph 1(a) of Annex 1 of the TRIMs Agreement.

118. And in any event, the TRIMs Agreement does not limit the type of “investment” at issue in an “investment measure.” A definition of the term “invest” is: to “expend (money, effort) in something from which a return or profit is expected, now esp. in the purchase of property, shares, etc., for the sake of interest, dividends, or profits accruing from them.”⁵¹ Thus, an investment is an expending of money in order to realize a profit. The definition confirms the traditional identification of investing in property or the stock market, but recognizes that such are only examples how one may “invest.” Any productive activity will involve investment.

119. Taking the ordinary meaning of the term “trade-related investment measure,” Turkey’s domestic purchase requirement is a TRIM that is inconsistent with Article 2.1 of the TRIMs Agreement. It requires importers to expend money in Turkey to purchase domestic rice as a condition for importation, which importers must do to make a profit. And the requirement is related to trade because it is a condition that importers must fulfill in order to import rice into Turkey. The domestic purchase requirement is really no different than a local content

⁵¹ *The New Shorter Oxford English Dictionary*, Volume I, p. 1410.

requirement, where an auto manufacturer is required to source a certain percentage of parts and components domestically as a condition for being able to build automobiles in the host country (and ostensibly turn a profit). Both domestic purchase and local content requirements affect investments in a country's industry and affect trade flows and, therefore, both are subject to the disciplines of the TRIMs Agreement.

Q76. (United States) Can the United States identify which are the trade-related investment measures it is challenging in the current proceedings.

120. As discussed in the answer to Question 75, the domestic purchase requirement is the trade-related investment measure that the United States is challenging in this proceeding.

Q77. (Both Parties) In paragraph 122 of its first submission, Turkey asserts that the deadlines for the submission of applications for import licenses was extended twice in 2005, as "evidence that Turkey did not intend to discourage full utilization of the quotas."

(a) Can the United States comment on this assertion.

121. Turkey's assertion is incorrect. As discussed in the U.S. answer to Question 72, it is not possible for the 300,000 metric ton (milled rice equivalent) cap to be reached, given the current size of Turkey's crop of paddy rice and the large quantities of domestic paddy rice that importers are required to source domestically as a condition for importing rice into Turkey. Turkey claims that the TRQ provides a benefit to imported rice and actually provides an advantage to foreign rice over domestic rice (despite the fact that Turkey requires an importer to purchase a larger quantity of domestic paddy rice than the amount of rice the importer wishes to import). If that were the case, one would expect that importers would use up the quota well before the end of the application period. The fact that Turkey has been forced to extend the deadlines for importers to apply for a portion of the TRQ demonstrates the fallacy of that argument.

Q78. (United States) Can the United States comment on Turkey's assertion contained in paragraph 125 of its first submission, that it has provided "relevant data and trade statistics clearly indicating that MFN trade in rice has effectively occurred throughout the operation of the TRQ regime."

122. The only information that Turkey has provided on MFN trade is the chart contained in Annex 20. The United States noted in its response to Question 4 that the chart raises many more questions than it answers and has not been substantiated with documentary evidence. Further, Turkey has not rebutted any of the documentary evidence provided by the United States, including the Letters of Acceptance, rejection letters, court documents, and newspaper articles, which indicate that MARA has imposed a ban on rice trade outside the TRQ regime.

Q81. (Both Parties) In its oral statement, Thailand has raised the issue of "the

inconsistency of Turkey's rice TRQ regime with its obligations under Article II of GATT 1994 with respect to its Schedule of Concessions". Further, in paragraph 5 of the written version of its oral statement, it based its argument on "the factual evidence submitted by the United States, [according to which] the treatment actually accorded by Turkey under its TRQ regime is 'less favourable' than that provided in its Schedule to all Members." Can the Parties comment on the issue raised by Thailand in its oral statement.

123. The United States did not make an Article II claim in its request for the establishment of a panel. Therefore, this issue is outside the panel’s terms of reference.

Q83. (Both Parties) In page 1 of the written version of its oral statements, Korea indicates that "the disproportionate number of certificates for out-quota imports should be explained by Turkey in order to avoid the suspicion that the issuance of out-quota certificates have been deliberately controlled". In page 2, Korea also notes that "the proportion of out-quota certificates to in-quota certificates in 2006 is much higher than it is for the years 2004 and 2005" and states that "[a]n explanation for this should be sought so as to avoid the assumption that Turkey loosened its grip on out-quota certificates only after having been challenged in the WTO". Could the Parties comment on these statements.

124. If Korea’s statement on page 1 refers to the disproportionate number of Control Certificates that MARA purportedly granted in 2006, the United States agrees that there is no obvious explanation for why out-of-quota trade in rice would have dramatically increased sometime in 2006, which is when the DSB established this panel, whereas trade in 2004-2005 was largely confined to the TRQ regime. In any event, as noted by the United States in paragraphs 19-21 of its oral statement as well as in its response to Question 4, the numbers provided in Annex 20 for 2006 do not appear to make sense, and no conclusions can be drawn without examining the actual Control Certificates. For instance, Turkey’s assertion that it has granted Control Certificates for 400,000 metric tons of U.S. rice as of September 2006 does not correspond with the fact that the United States has thus far exported approximately 18,000 metric tons of rice to Turkey in 2006 and has never exported anywhere close to 400,000 metric tons of rice to Turkey.

Q84. (Both Parties) In the hypothetical case that Certificates of Control do not qualify as import licenses under the Import Licensing Agreement, would it automatically flow that such documents cannot qualify as import licenses under GATT 1994 either?

125. No. The definition of “import licensing” in Article 1 of the Import Licensing Agreement provides relevant context for interpreting the term “import license” in Article XI:1 of the GATT 1994 but Article 1, by its very terms, limits the definition set forth therein to the Import

Licensing Agreement. As the United States discussed in paragraphs 59-63 of its first written submission, the ordinary meaning of the term “import license” is formal permission from an authority to bring in goods from another country. A Certificate of Control from MARA constitutes formal written permission from the Government of Turkey to import goods from another country. Thus, a Certificate of Control is an “import license” within the ordinary meaning of those terms.

Q91. (Both Parties) Is the Turkish Grain Board a state trading enterprise as defined in GATT Article XVII and the Understanding on the Interpretation of Article XVII of the GATT 1994?

126. Yes. Paragraph 1 of the Understanding on the Interpretation of Article XVII of the GATT 1994 provides the following “working definition” of a state-trading enterprise:

Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports.

127. The Turkish Grain Board (TMO) is an entity of the Turkish government that has been granted exclusive rights and privileges through various Ministerial Decrees. By exercising those rights and privileges, TMO is able to influence directly the importation of rice into Turkey. TMO administers all trade in rice under the TRQ regime and, as MARA has banned MFN trade in rice, TMO administers all trade in rice in the Turkish market.

128. TMO possesses a myriad of tools with which to influence and control the Turkish rice trade. All importers need a receipt from TMO documenting that the domestic purchase requirement under the TRQ has been satisfied. If an importer does not present that documentation to FTU, FTU will not grant a license to import under the TRQ. The domestic purchase requirement can be met by an importer purchasing domestic paddy rice from Turkish producers or producer associations or from TMO itself. TMO determines the procurement prices at which it purchases paddy rice from Turkish producers and also determines the prices at which it sells such rice to importers as a condition upon importation, and the TMO prices influence rice prices in the Turkish market. Additionally, the domestic purchase requirement itself is set each year by TMO officials after TMO holds discussions with Turkish producers on the projected size of the impending rice crop.

129. Lastly, under the TRQ regulations TMO is permitted to import 50,000 metric tons of milled rice in order to help stabilize the domestic market in the event that prices increase.⁵² A July 13, 2006, Turkish newspaper article entitled “TMO is given priority to import rice to prevent

⁵² Exhibits US-5 and US-10.

extra high import prices” discusses TMO’s ability to influence domestic prices by, among other things, importing rice. The article, which discusses the possibility that TMO would be given priority by FTU to import the 28,000 metric tons of milled rice under the EC Quota Arrangement, summarizes a conversation with Mr. Sukru Yildiz, the General Manager of TMO. In that conversation, Mr. Yildiz stated that FTU’s decision to grant permission to TMO to import duty free rice was expected to stabilize prices in the market. Mr. Yildiz added that TMO did not plan to import at that time since the market appeared to be stable, but it would do so on an expedited basis if prices increased during Ramadan.⁵³

⁵³ Exhibit US-20.

Table of Exhibits

Exhibit US-	Title of Exhibit
53	Monthly Turkish Import Data for Paddy, Brown, and Milled Rice
54	Prices for Milled Rice in the Turkish Market
55	Average Landed CIF Prices, By Month and Type of Rice
56	Turkish Grain Board Announced Prices
57	The Creed Rice Market Report, December 21, 2005
58	Decision regarding Tariff Quota Imposition on Import of Certain Agricultural Products of European Community Origin (Official Gazette, No. 23225, January 9, 1998), amended by a Board of Ministers Decision of December 13, 2001 (Official Gazette, No. 24626, December 30, 2001) (English translation)
59	Annual Turkish Control Certificates Compared to Actual Turkish Imports