

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

(WT/DS334)

**CLOSING STATEMENT OF
THE UNITED STATES OF AMERICA
AT THE SECOND MEETING OF THE PANEL**

January 18, 2007

1. Madam Chair and members of the Panel, we would like to thank you for agreeing to serve on this Panel in order to help resolve this dispute between the United States and Turkey. We would also like to thank the Secretariat for all of their hard work on this matter. Our closing remarks will be brief.

2. The manner in which Turkey has presented its arguments gives the impression that the issues in this dispute are more complicated than they actually are. In fact, the issues in this dispute are very straightforward:

3. First, **does the undisputed fact that importers are required to purchase large quantities of domestic paddy rice in order to import rice act as a restriction on the importation of rice?**

- Consider, when analyzing whether the domestic purchase requirement restricts importation at the border, that importers need to purchase at least as much domestic paddy rice as they want to import, which increases the cost of importation and ties up capital that could be used to import more rice.
- And consider that Turkey has accepted all of the numbers utilized in the U.S. calculation of the total cost of domestic purchase, except for one case where Turkey has actually reverted to a number that the United States originally provided (the \$295/metric ton spot price).

4. Second, **does the fact that only the purchase of *domestic* rice confers the ability to import create an incentive to purchase domestic rice over imported rice?**

- Consider further that past panels have found that any additional obstacle or disincentive to the internal sale of an imported product, as compared to the like domestic product, is sufficient to show a national treatment violation.

5. Third, **does the Control Certificate constitute an import license?**

- Consider that this is a document that an importer must acquire from MARA in order to have permission to import rice into Turkey, and that this description

comports with the ordinary meaning of the term “import license,” namely “formal permission from an authority in order to import goods into a country.”

- Consider further that there is no dispute between the parties that Turkey’s SPS procedure occurs after the Certificate is granted. There is also no dispute between the parties that the Certificate is not issued by Turkish Customs, does not replace the normal customs documentation that is necessary for customs clearance, nor that Turkish Customs already requires much of the same customs-related information as that requested for the Control Certificate.

6. **Fourth, is Turkey prohibiting or restricting the import of rice by operating a discretionary import licensing system and denying the issuance of Control Certificates?**

- Consider that the Letters of Acceptance on their face constitute a legal prohibition on the issuance of Control Certificates for MFN imports; that Turkey’s argument before the Panel that these Letters have no legal force is diametrically opposed to the argument the Turkish government is currently making in Turkish court; and that at least two Turkish courts have upheld the government’s position that the Letters of Acceptance have legal force under Turkish law.
- Consider further that, incredibly, Turkey is now claiming in this proceeding that Turkey’s Agriculture Minister acted *ultra vires* in issuing the Letters – just as Turkish importers are claiming in Turkish domestic court cases – yet instead of settling those cases and granting Control Certificates, the Turkish government continues to argue in several domestic court cases that what the Minister did was perfectly legal and enforceable under Turkish law.
- Lastly, consider that Turkish import data confirms that, except in rare instances, Turkey has not issued Control Certificates for MFN trade in rice, despite the much lower cost of importing outside the TRQ; and that neither the Panel nor the United States can confirm that this data is accurate because Turkey has refused the Panel’s request to provide the actual Control Certificates, a refusal from which the Panel may draw an appropriate inference.

7. Madam Chair, members of the Panel, the clear answer to all of these questions is ‘yes.’

The United States has set forth compelling and voluminous documentary evidence in making out its *prima facie* case, which Turkey has been unable to rebut. Indeed, it is difficult to conceive of how the United States could have provided more documentary evidence in this dispute given that

the measure in contention is a non-transparent import licensing regime. Instead, Turkey has relied on an argument we would describe as follows: how a Member characterizes a measure, not what the measure actually does, will determine whether that measure is subject to WTO disciplines. This is a dangerous argument that would allow Members easily to evade their WTO obligations, and we urge you to reject it.

8. Madam Chair, members of the Panel, that concludes our closing statement. We thank you for your attention, and we look forward to receiving your questions in due course.