TURKEY – MEASURES AFFECTING THE IMPORTATION OF RICE

(WT/DS334)

EXECUTIVE SUMMARY OF
THE FIRST SUBMISSION OF THE
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1. Simply put, this dispute is about market access. During the Uruguay Round, Turkey committed itself to permit imports of rice at a bound rate of 45 percent. Instead, Turkey has instituted a non-transparent, discretionary import licensing system to restrict and, at times, eliminate imports of rice. Specifically, since 2003, Turkey has applied a tariff-rate quota ("TRQ") for rice and has required licenses in order to import rice both at the in-quota and over-quota rates. With respect to the over-quota rate, Turkey's Ministry of Agriculture and Rural Affairs ("MARA") simply fails to issue licenses in accordance with a series of unpublished "Letters of Acceptance," in which the Minister of Agriculture agrees to "delay" the start date for the issuance of import licenses, or "Certificates of Control." Importers 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. One importer went to court in October 2004 seeking a court order for the government to grant him an import license after his application forms were returned and ultimately denied: as of December 2005, his rice was still sitting in a warehouse while the litigation remained pending.

2. With respect to the in-quota quantities, Turkey has made the receipt of licenses from the Turkish Foreign Trade Undersecretariat ("FTU") contingent upon the purchase of large quantities of domestic rice. The amount of rice that importers are required to purchase in order to import under the TRQ is contingent on three factors: (1) the type of rice to be imported (paddy, brown, or milled); (2) the source of the purchased domestic rice (the Turkish Grain Board ("TMO"), on the one hand, or Turkish producers or producer associations on the other); and (3) if purchased from Turkish paddy rice producers or producer associations, the region where the rice originates. As a result of this complicated system, the ratio of imported-to-purchased domestic rice varies greatly, depending on the interaction among the three variables, and in most cases, an importer has to purchase a larger quantity of domestic rice than the quantity of rice it wishes to import.

3. Because Turkey fails to issue licenses at the over-quota rate and Turkey closes the TRQ during the annual Turkish rice harvest, there is a complete ban on imports of rice during the August-October time period. Turkey relaxes and strengthens these import licensing measures at will, often with no advance written notice to importers, and frequently in contravention of what has been published in Turkey's Official Gazette. In taking these measures, Turkey has acted inconsistently with several provisions of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), *the Agreement on Import Licensing Procedures* ("Import Licensing Agreement"), the *Agreement on Agriculture* ("Agriculture Agreement"), and *the Agreement on Trade-Related Investment Measures* ("TRIMs Agreement").

4. The United States has sought to avoid dispute settlement on this issue and instead reach a mutually acceptable solution with Turkey. However, U.S. attempts to resolve this issue have thus far been unsuccessful. Therefore, on November 2, 2005, the United States requested consultations with the Government of Turkey pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the GATT 1994, Article 6 of the Import Licensing Agreement, Article 8 of the TRIMs Agreement,

and Article 19 of the Agriculture Agreement regarding Turkey's import restrictions on U.S. rice. Pursuant to this request, the United States and Turkey held consultations on December 1, 2005. These consultations failed to reach a mutually satisfactory resolution to this dispute. On February 6, 2006, the United States requested the establishment of a panel pursuant to Article 6 of the DSU, Article 6 of the Import Licensing Agreement, Article 8 of the TRIMs Agreement, and Article 19 of the Agriculture Agreement. The Dispute Settlement Body ("DSB") established the Panel on March 17 with standard terms of reference. Despite the ongoing Panel proceedings, the United States remains willing to reach a solution to this matter with Turkey.

5. In its first written submission, the United States advanced claims regarding (1) Turkey's denial of licenses to import rice at the over-quota rates (or Turkey's WTO bound rate of duty); (2) Turkey's TRQ regime, coupled with a domestic purchase requirement, which regulates in-quota trade; (3) Turkey's overall import licensing regime, that is, the denial of import licenses and the TRQ, acting in conjunction to restrict rice imports and distort the Turkish rice market; as well as other claims related to Turkey's import regime or restrictions on imports of rice.

U.S. Claims Relating to Turkey's Denial of Import Licenses

6. Turkey's denial of licenses to import rice at or below the bound rate of duty is inconsistent with Article XI:1 of the GATT 1994 because it prohibits or restricts imports at the over-quota rate, and when the TRQ is closed, it acts as a complete ban on rice imports. Turkey's denial of import licenses also constitutes discretionary import licensing: under Turkish law, MARA is supposed to grant import licenses automatically but in fact it does not issue any licenses at all. In addition, the Certificate of Control is an import license for purposes of Article XI:1, because MARA requires importers to complete an application for a Certificate, and that application must be granted in order for the importation to take place. The Certificate of Control would in any event be a prohibition or restriction on importation that is made effective by an "other measure" because, as the panel in *India Autos* found, Article XI:1 conveys "an intention to cover any type of measures restricting the entry of goods into the territory of a Member, other than those specifically excluded, namely, duties, taxes or other charges." Turkey's failure to issue Certificates of Control not only restricts the entry of rice into Turkey: in fact, it *prohibits* entry other than the in-quota quantity of the TRQ.

7. The range of measures that Members may not institute or maintain under Article XI:1 is quite broad. The provision encompasses all prohibitions or restrictions on importation other than those enumerated, regardless of whether a Member utilizes a quota, an import or export licensing regime, "or other measures" to effect the prohibition or restriction. Several panels have characterized the scope of this provision as "broad" and "comprehensive."

8. Turkey's denial of import licenses except for the in-quota quantity under the TRQ constitutes a "prohibition" on importation for purposes of Article XI:1 of the GATT 1994. A "prohibition" exists when it is legally impermissible to trade or bring in a particular good from another country. Turkey's ban on the importation of rice outside its TRQ regime is effected

through MARA's denial of Certificates of Control to importers. An importer who wants to import rice outside the TRQ regime is required to obtain a Certificate of Control from MARA as a condition of importation. However, through a series of unpublished Letters of Acceptance, the Minister of Agriculture decided, starting in September 2003, that MARA would "delay" the issuance of Certificates of Control.

9. The wording of the Letters demonstrates that Turkey imposes a "prohibition" on imports of rice within the meaning of Article XI:1 as it is clear on their face that the Minister of Agriculture instructs officials in his Ministry not to issue the Certificate of Control document to importers, and without such documents, importation cannot occur (unless Turkey has re-opened its distortive TRQ). Specifically, in each Letter, the General Directorate recommends that there be a "delay" in the issuance of such Certificates over a certain period of time, and the Minister of Agriculture signs the Letter to indicate his acceptance of the recommendation. When the time period covered by a Letter is about to expire, the General Directorate issues a new Letter in which it recommends a further "delay" in the start date for issuing Certificates. Without a Certificate of Control, an importer cannot import rice into Turkey, unless Turkey has re-opened its TRQ and the importer purchases domestic rice. In sum, Turkey, through its decision not to issue Certificates of Control, effectively prohibits all imports of rice at its WTO bound rate (the minimum market access to which it has committed). It is only when Turkey decides to re-open its distortive TRQ that imports may occur at all. During the times when that TRQ is closed – generally from August through October, a period which tracks the Turkish rice harvest – there is no mechanism to import rice into Turkey at all, a total ban on imports of rice. Minister Tuzmen confirmed that Certificates of Control were not being granted in a letter to Ambassador Portman when he stated that "the control certificate will be issued *as of April 1, 2006.*"

10. This situation is not unlike that in *Turkey Textiles*, in which the panel found that India had made out a *prima facie* case that Article XI:1 had been breached by showing that Turkey's measures, "on their face," imposed quantitative restrictions on imports. Similarly, in the instant dispute, the wording of the Letters of Acceptance is clear: the Minister of Agriculture gave a series of orders that no Certificates of Control shall be granted. Without such Certificates, no importation can occur. And that is exactly how MARA officials interpreted those documents, as evidenced by a May 1, 2005 letter from a Provincial Agriculture Directorate to a Turkish importer of U.S. rice. The Directorate denied the importer's April 25, 2006 request for a Certificate of Control to import medium grain milled rice from the United States "since it is not possible to prepare a control certificate according to our laws and regulations."

11. Turkey's ban on the issuance of Certificates of Control, which ensured that importation of rice could not take place outside the TRQ regime, also constitutes a "restriction . . . on importation" contrary to Article XI:1. The ordinary meaning of the word "restriction" is a "limitation on action, a limiting condition or regulation." The *India Autos* panel, citing with approval this definition of "restriction" and recalling the broad reach of Article XI:1, stated that "any form of *limitation* imposed on, or in relation to importation constitutes a restriction on importation within the meaning of Article XI:1." Turkey's failure to grant Certificates of Control

to importers clearly places a limitation on imports. Turkey's decision not to issue Certificates of Control also demonstrates that it maintains discretionary, or non-automatic, import licensing, through which it makes effective restrictions on importation. In *India QRs*, the panel found that two aspects of India's import licensing system constituted discretionary import licensing, because licenses were granted in some, but not in all cases, and as a result, found Article XI:1 breaches in both instances. Here, Turkey fails to grant Certificates of Control 100 percent of the time, demonstrating that Turkey utilizes its discretion to impose restrictions on importation.

12. Because Turkey's denial of import licenses outside the TRQ is a WTO-inconsistent quantitative import restriction and also constitutes discretionary import licensing, Turkey also has breached Article 4.2 of the Agriculture Agreement. Other panels have found, in similar circumstances, that where a measure with respect to agricultural products is inconsistent with Article XI:1 of the GATT 1994, it is necessarily inconsistent with Article 4.2, which provides in footnote 1 that, *inter alia*, "quantitative import restrictions" and "discretionary import licensing" are measures that Members may not maintain, resort to, or revert to. In this dispute, the United States has demonstrated that Turkey's denial of import licenses constitutes a prohibition and restriction on importation and that, as a result, Turkey has acted inconsistently with Article XI:1. Similarly, Turkey is acting inconsistently with Article 4.2 of the Agriculture Agreement. In the Uruguay Round, Turkey committed to permit imports of rice automatically at a rate no greater than 45 percent *ad valorem*. As previously described, MARA has refused to grant import licenses to importers. This total ban on imports outside the TRQ constitutes a quantitative import restriction. Further, Turkey's denial of import licenses also amounts to discretionary import licensing, because MARA does not grant licenses automatically. That is, the denial of licenses demonstrates that Turkey has the discretion to grant or not to grant them, and without these licenses, importation cannot occur. These are measures set out in footnote 1 to Article 4.2 as measures "of the kind" that Turkey may not maintain, resort to, or revert to.

13. Additionally, Turkey's import licensing regime for imports outside the TRQ is non-transparent. For example, Turkey does not specify a time frame within which import license applications will be approved or rejected and does not provide applicants with the reasons for rejection. Further, Turkey has failed to notify its import licensing regime for rice to the WTO, despite a U.S. request that it do so. Its regime therefore is inconsistent with additional WTO provisions, including Articles 1.4(a) and (b) and 3.5(e) and (f) of the Import Licensing Agreement and Articles X:1 and X:2 of the GATT 1994.

U.S. Claims Relating to Turkey's TRQ Regime Requiring Domestic Purchase

14. Turkey's imposition of a domestic purchase requirement under its TRQ regime on importers of rice into Turkey is inconsistent with Article III:4 of the GATT 1994 because the measure treats imported rice less favorably than domestic rice and adversely affects the conditions of competition for imported rice in the Turkish market. There are three elements that must be satisfied to establish that a measure is in breach of Article III:4: (1) the imported and domestic products must be "like" products; (2) the measure is a law, regulation, or requirement

"affecting their internal sale, offering for sale, purchase, transportation, distribution or use"; and (3) the imported products are treated less favorably than domestic products.

15. The first prong of the Article III:4 test is whether the domestic and imported products are "like" products. In general, "like" products are products that have the same or similar properties. In examining whether products are "like" for purposes of Article III, several panels have found significant the fact that a measure distinguishes between a domestic and an imported product solely on the basis of origin. Moreover, one panel, noting that the statute at issue made a distinction between foreign and imported articles solely on the basis of origin, found that "there is no need to demonstrate the existence of actually traded like products in order to establish a violation of Article III:4." In this instance, Turkey's measures, on their face, make distinctions with respect to rice based on whether the origin of rice is foreign or domestic. The Letters of Acceptance bar the importation of foreign rice into Turkey, plainly stating that Certificates of Control will not be issued in order to protect producers of domestic rice. The domestic purchase requirement ensures that importers of foreign rice procure domestic rice as a condition upon importation. It is clear from the face of these measures that *Turkey* considers that foreign and domestic rice compete with each other; therefore, it is difficult to avoid the conclusion that at least *some* imported rice is "like" Turkish rice.

16. Even if Turkey's measures did not distinguish between foreign and imported rice on the basis of origin, U.S. and Turkish rice also constitute "like" products with respect to a more detailed examination. The Appellate Body, which has found a "relatively broad product scope" for finding that products are "like" for purposes of Article III:4, narrowed down the non-exhaustive list of factors that might be considered in such an examination to four: tariff classification; the "properties, nature and quality" of a product; a product's end-uses; and consumer preferences. Under this test, U.S. and Turkish rice are "like" products for purposes of Article III:4. Both products are classified under HS 1006. Turkey and the United States both produce the same two varieties of rice: medium-grain and long-grain. Their end use is the same: paddy rice and brown rice is destined for milling, and milled rice is destined for human consumption. Further, U.S. Calrose rice is directly competitive with the Turkish Osmancik variety: in March 2005, they were selling in retail outlets in Ankara at roughly the same price.

17. The second element that must be demonstrated to prove that a Member has failed to observe its Article III:4 obligations is that a measure (1) is a law, regulation, or requirement (2) "affecting [the] internal sale, offering for sale, purchase, . . . or use" of the like products at issue. The TRQ regime is comprised of several legal instruments, including decrees and notifications, that were promulgated by FTU and published in Turkey's Official Gazette. It is unclear to the United States whether Turkey's individual instruments should be characterized as "laws" or "regulations" but it is clear that all of these instruments are legally binding under Turkish law. Regarding whether the domestic purchase requirement could be characterized as a "requirement," the *India Autos* panel found that the term "requirement" encompassed obligations which "an enterprise voluntarily accepts in order to obtain an advantage from the government." In *FSC 21.5*, the panel found that a measure containing conditions that a person must satisfy to obtain an

advantage from the government is a "requirement" for purposes of Article III:4. Here, Turkey imposes a "requirement" that importers purchase domestic rice as a condition of importation if they want to pay a reduced rate of duty to import rice. Thus, the domestic purchase requirement under the TRQ satisfies the "law, regulation or requirement" standard.

18. The domestic purchase requirement also clearly affects the internal sale, offering for sale, purchase, and use of the like products. The use of the word "affecting" in Article III:4 implies that a measure would not have to deal directly with the internal sale, offering for sale, purchase or use of a product, but encompasses a much broader range of potential interaction with those elements. The Appellate Body has noted that the term "affecting" should be interpreted as having a "broad scope of application." In the instant dispute, there can be doubt that the domestic purchase requirement is "affecting" the internal sale, offering for sale, purchase, and use of rice. It provides *the only way* to import rice into Turkey. Turkey does not produce sufficient quantities of rice to meet its domestic needs so it must import, and imports comprise a substantial portion of the Turkish rice market. Without documentary proof from TMO that an importer has purchased a specific quantity of domestic rice, FTU will not grant that importer an import license to bring foreign rice into Turkey. Therefore, the domestic purchase requirement directly affects the internal sale, offering for sale, purchase, and use of rice in Turkey. Because domestic producers, unlike their foreign competitors, are not required to procure large quantities of rice from their competitors in order to sell rice in Turkey and, unlike their foreign competitors, are not limited in regard to whom they may sell their rice, the domestic purchase requirement has a seriously adverse effect on the conditions of competition between imported and domestic rice. Furthermore, only domestic rice can satisfy the purchase requirement – imported rice is excluded from eligibility.

19. The third element that must be demonstrated to prove that a Member has failed to observe its Article III:4 obligations is that a measure accords imported products less favorable treatment than like domestic products. Previous panels have found that measures are inconsistent with Article III:4 if they impose requirements on foreign products that are not imposed on domestic products; create an incentive to purchase and use domestic products or a disincentive to utilize imported products; or "adversely affect . . . the equality of competitive opportunities of imported products in relation to like domestic products." Significantly, the Appellate Body in *FSC 21.5* noted that a measure could still be inconsistent with Article III:4 even if unfavorable treatment did not arise in every instance. On its face and by design, Turkey's TRQ regime treats imported rice less favorably than domestic rice *in every instance*. Imported rice cannot be sold in the domestic market under any circumstance unless the importer first purchases, at inflated prices, domestic rice. Domestic rice producers are not subject to the same requirement in order to bring their product to market, which provides them a tremendous advantage in the market. Further, because the domestic purchase requirement makes procuring imported rice more costly – oftentimes requiring an importer to purchase three or four times the quantity of domestic rice as the quantity of foreign rice an importer wants to import – the domestic purchase requirement creates a disincentive to purchase and import foreign rice. Consequently, by making the sourcing of imported rice less desirable, the domestic purchase requirement alters the decision-making

calculus of domestic entities when making purchasing decisions regarding rice. And by making imported rice ineligible to satisfy the purchase requirement, the conditions of competition are altered in favor of domestic rice. For these reasons, Turkey's domestic purchase requirement accords less favorable treatment to imported rice and hence, Turkey has acted inconsistently with Article III:4 of the GATT 1994.

20. To the extent Turkey's domestic purchase requirement is not viewed as a "law, regulation or requirement" within the meaning of Article III, this requirement breaches Article XI:1 of the GATT 1994, because it is a "restriction . . . on importation" within the meaning of Article XI:1. The domestic purchase requirement clearly falls within the scope of the phrase "whether made effective through quotas, import or export licences or other measures" because FTU will not issue an import license under the TRQ without proof of domestic purchase and the term "other measures" is broad enough to encompass a domestic purchase requirement. As noted by the *India Autos* panel, "any form of *limitation* imposed on, or in relation to importation constitutes a restriction on importation within the meaning of Article XI:1." In this case, the domestic purchase requirement, on its face, imposes a substantial restriction on imports of rice. Importation under the TRQ cannot be realized unless an importer purchases large quantities of domestic rice and presents proof of such purchases to FTU. The TRQ regime constitutes discretionary import licensing because receiving a license to import under the TRQ is non-automatic. Rather, importation under the TRQ is conditioned on domestic purchase. Further, the Turkish regulations have not always specified the amount of rice that would need to be procured in order to receive a portion of the quota, which has rendered importers completely unable to ship at times, or at best, has left them in a state of considerable uncertainty as to how much domestic rice they would need to procure in order to bring their shipments of foreign rice into the country.

21. Another aspect of the domestic purchase requirement – the eligibility criteria – accords less favorable treatment to U.S. rice and thus, is inconsistent with Article III:4 of the GATT 1994. Turkish regulations restrict the issuance of import licenses under the TRQ to certain categories of persons, namely (1) domestic producers who have a permit to grow paddy rice; (2) domestic producers who purchase paddy rice from Turkish producer associations of which they are members; or (3) those who procure rice from TMO, which will undoubtedly be domestic producers as well. As a result of these criteria, only domestic rice producers, principally those with milling capacity, will be eligible to import rice. This state of affairs negatively affects competitive conditions for imported rice in the Turkish marketplace. The Turkish millers primarily want to import paddy rice to send to their milling facilities, increase their milling capacity, and keep out imported milled rice which competes with Turkish milled rice and reduces the domestic price. Whereas domestic producers can sell their rice to anyone along the production chain, from the paddy producer to the ultimate consumer, U.S. producers do not have that choice. They are not permitted to sell rice directly to consumers. Instead, they are forced to market their rice through their Turkish competitors.

22. To the extent that the eligibility criteria to purchase rice are not viewed as a "law, regulation or requirement" within the meaning of Article III, these criteria breach Article XI:1 of

the GATT 1994, because they constitute a "restriction . . . on importation" within the meaning of Article XI:1. The eligibility criteria for importing under the TRQ fall within the ambit of the phrase "whether made effective through quotas, import or export licences or other measures" because FTU will not issue an import license under the TRQ to a person who has not met the eligibility criteria, and the term "other measures" is broad enough in scope to encompass eligibility criteria. The eligibility criteria for purchasing domestic rice under the TRQ act as a restriction on importation because they limit the range of entities that may import rice into Turkey to certain categories of persons described above. As a result of these criteria, only domestic rice producers, principally those with milling capacity, will be eligible to import rice. Consumers would not have a permit to grow paddy rice or be members of a Turkish rice producer association, and because consumers do not have milling capacity, they would never be interested in purchasing domestic paddy rice from TMO.

23. In addition, Turkey is in breach of Article 2.1 and Paragraph 1(a) of the Annex 1 of the TRIMs Agreement because it has instituted a domestic purchase requirement, which importers must fulfill in order to obtain the advantage of importing rice at duty rates below the bound rates. To prove that a measure is inconsistent with Article 2.1, the United States must demonstrate that the domestic purchase requirement is a measure with the characteristics set forth in paragraph 1(a) of the Annex, namely that such a measure (1) is mandatory or enforceable under domestic law or under administrative rulings, or compliance with the measure is necessary to obtain an advantage; and (2) requires the purchase or use by a company of domestic products (e.g., based on the type, volume, or value of products). Turkey's domestic purchase requirement satisfies both of these elements, and hence, is within the ambit of paragraph 1(a). Turkey requires importers to purchase domestic rice in certain specified quantities, and fulfilling (and documenting to FTU) the domestic purchase requirement is necessary to obtain an advantage, namely importing rice under the lower rates of duty under the TRQ regime.

24. Turkey's domestic purchase requirement also is inconsistent with Article 4.2 of the Agriculture Agreement because it constitutes a measure listed in footnote 1 to Article 4.2 of the kind which should have been converted into ordinary customs duties – namely, discretionary import licensing and non-tariff measures maintained through state-trading enterprises. FTU will only grant a license to import rice under the TRQ to those importers who procure large quantities of domestic rice from TMO, Turkish producers, or Turkish producer associations and who present to FTU proof of such purchase. As the issuance of licenses is not automatic but contingent on domestic purchase, Turkey's maintenance of a domestic purchase requirement to import under the TRQ constitutes discretionary import licensing. The domestic purchase requirement is also a non-tariff measure maintained through a state-trading enterprise because TMO administers the domestic purchase requirement aspect of the TRQ. An importer may only import rice under the TRQ if it purchases rice domestically, including from TMO, which sells rice at prices it announces. In addition, the importer must obtain proof of such purchase from TMO, which must be presented to FTU. If an importer does not present that documentation, FTU will not grant a license to import under the TRQ. Lastly, 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.

25. Turkey also has acted inconsistently with Article 3.5(h) of the Import Licensing Agreement because it administers the TRQ in such a way that the full amount of the quotas cannot be reached. Specifically, Turkey sets 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. Further, the high cost of domestic purchase makes importing under the TRQ much more expensive to the importer, who is likely a miller, than simply procuring rice domestically, and hence discourages the full utilization of the TRQ.

26. Turkey first opened the TRQ in April 2004, making it retroactive to September 1, 2003, and has closed and re-opened the TRQ several times since then. Turkey most recently opened the TRQ on November 1, 2005, while MARA was continuing to deny import licenses at the over-quota rates. This most recent opening is likewise inconsistent with the provisions of the covered agreements previously discussed.

U.S. Claims Relating to Turkey's Import Licensing Regime As a Whole

27. Moreover, Turkey's overall import licensing regime – the TRQ, licenses for which are contingent on domestic purchase, acting in conjunction with the denial of any licenses to import at the over-quota rates – is inconsistent with Article XI:1 of the GATT 1994. Each component of Turkey's import licensing system – the TRQ regime and the denial of Certificates of Control outside that regime – is inconsistent with Article XI:1 operating independently, as previously described. In addition, the two components also give rise to a breach of Article XI:1 acting in conjunction. Turkey's denial of Certificates of Control outside the TRQ is what forces importers to utilize the TRQ: no economically rational importer would import under the TRQ given the choice, because the domestic purchase requirement is so large and therefore importing under the TRQ is so costly. As a consequence of the interaction between the two components, however, all importation of rice into Turkey takes place through the TRQ, which is a discretionary import licensing system: FTU only grants import licenses if importers agree to purchase large quantities of domestic rice from TMO, domestic producers, or domestic producer associations. Turkey's import licensing regime for rice constitutes a serious market access restriction under Article XI:1, but it also frequently amounts to a prohibition on imports. Turkey has completely banned imports of rice outside the TRQ by denying the issuance of import licenses. Consequently, when Turkey temporarily closes the TRQ each year during the Turkish rice harvest, there is a total ban on imports of rice into Turkey. This "seasonal ban" was in place during the domestic rice harvest in 2003, 2004, and 2005. Moreover, 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.

28. Turkey's import licensing regime also constitutes a breach of Article 4.2 of the Agriculture Agreement. The United States already has established that both aspects of Turkey's

import licensing regime are inconsistent with Article 4.2 of the Agriculture Agreement: the domestic purchase requirements under the TRQ constitute discretionary import licensing and non-tariff measures maintained through state-trading enterprises, which are measures set forth in footnote 1 to Article 4.2; and Turkey's denial of Certificates of Control outside the TRQ constitutes a quantitative import restriction and discretionary import licensing, which also are measures set forth in footnote 1. Furthermore, the United States previously demonstrated that Turkey's import licensing regime as a whole is inconsistent with GATT Article XI:1's ban regarding prohibitions or restrictions on importation. Because Article 4.2 of the Agriculture Agreement prohibits Members from employing quantitative import restrictions and discretionary import licensing in place of ordinary customs duties, the two measures operating in conjunction are necessarily in breach of Article 4.2.

29. Turkey's import licensing regime is also inconsistent with Articles 3.5(a), 5.1, 5.2(a), (b), (c), (d), (e), (g), and (h), 5.3, and 5.4 of the Import Licensing Agreement because Turkey has not provided information concerning the issuance of Certificates of Control at the over-quota rates of duty and the number of Certificates that had been granted over the last year, nor has it notified its non-automatic import licensing regime for rice to the WTO Import Licensing Committee.

30. For the reasons set out above, the United States respectfully requests the Panel to find that Turkey's import licensing regime for rice, including the most recent opening of the TRQ, is inconsistent with Articles III:4, X:1, X:2, and XI:1 of the GATT 1994; Article 4.2 of the Agriculture Agreement; Articles 1.4(a) and (b), 3.5(a), (e), (f), and (h), 5.1, 5.2(a), (b), (c), (d), (e), (g), and (h), 5.3, and 5.4 of the Import Licensing Agreement; and Article 2.1 and paragraph 1(a) of Annex 1 of the TRIMs Agreement, and recommend that Turkey bring its measures into conformity with its WTO obligations.