ANNEX D

REBUTTAL SUBMISSIONS BY THE PARTIES

ANNEX D-1

EXECUTIVE SUMMARY OF THE REBUTTAL SUBMISSION BY THE UNITED STATES

(15 December 2006)

1. Turkey has employed a non-transparent, discretionary import licensing system for rice that prohibits or restricts the importation of rice and provides less favourable treatment to whatever rice is imported in spite of the hurdles Turkey has imposed. Turkey requires importers to submit an import license – the Control Certificate issued by Turkey's Ministry of Agriculture and Rural Affairs ("MARA") – in order to import rice. Turkey has furthermore restricted rice imports by declining to issue such Certificates. Further, since September 2003, Turkey has applied a tariff-rate quota ("TRQ") for rice under which it requires importers to submit two import licenses (the Control Certificate and an import permit from Turkey's Foreign Trade Undersecretariat ("FTU")) to import at the in-quota rates and also to purchase domestic rice. Turkey's import licensing regime for rice is inconsistent 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").

2. Despite Turkey's claims, the Control Certificate is neither required for customs purposes nor does it establish the fitness and compatibility of imported products with the relevant phytosanitary standards. The Control Certificate is not used for customs purposes; in fact, the Certificate is in addition to the normal customs documentation. Nor is it submitted to Turkish Customs – instead it is submitted to MARA. Further, MARA conducts its inspections for fitness and compatibility only after it has already granted a Control Certificate, so the Certificate is not even necessary for phytosanitary purposes. Therefore, MARA has no reason to require an importer to obtain a Control Certificate other than to provide MARA with an opportunity to permit or deny the importation of rice.

3. With respect to the over-quota rates, MARA has imposed restrictions on the issuance of Control Certificates to import rice. The United States has provided extensive documentary evidence that Turkey denies these import licenses pursuant to so-called "Letters of Acceptance," in which the Minister of Agriculture orders the blanket denial of Control Certificates to those importers who do not purchase domestic paddy rice. When importers have challenged MARA's denial of Control Certificates in Turkish court, Turkey has successfully defended its failure to issue Certificates. At least two courts have agreed with Turkey that the Letters of Acceptance are binding, and that MARA is acting in accordance with Turkish law in not granting the Certificates.

4. Turkey has completely ignored this documentary evidence in its submissions. In fact, Turkey's arguments before this Panel are diametrically opposed to the arguments it advances in Turkish court. Turkey's arguments in this proceeding are inconsistent with the Letters of Acceptance, the rejection letters MARA issued to importers, and recent domestic court decisions. Instead, Turkey focuses on its unverified Control Certificate data. However, such data only serve to confirm that the restrictions on the issuance of Control Certificates at the over-quota rates are in place and being enforced. Further, the United States has provided evidence, in the form of the Letters of Acceptance, rejection letters, and court documents, that Turkey's import licensing system for rice is discretionary, which is all that is needed to support findings that MARA's Control Certificates constitute a restriction on importation under Article XI:1 of the GATT 1994 and a breach of Article 4.2 of the Agreement on Agriculture.

5. With respect to in-quota quantities of rice, Turkey makes the receipt of import licenses from FTU contingent upon the purchase of large quantities of domestic paddy rice (the "domestic purchase

requirement"). This domestic purchase requirement is an additional import restriction that is inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 of the Agriculture Agreement. And because only domestic rice qualifies for the purchase requirement, Turkey's requirement alters the conditions of competition in a manner that discriminates against imported rice. Consequently, imported rice receives treatment less favourable than domestic rice and Turkey's requirement is inconsistent with Article III:4 of the GATT 1994.

The Control Certificate is an "Import License" Under Article XI:1 of the GATT 1994

6. The Certificate of Control is an "import license" for purposes of Article XI:1 of the GATT 1994 because MARA requires a Certificate in order for importation to take place. In paragraphs 59-62 of the US First Submission, the United States noted that the ordinary meaning of the term "import license" was "formal permission from an authority to bring in goods from another country". In order to import rice into Turkey, an importer has to obtain a Certificate of Control from MARA. To obtain the Certificate, an importer must follow certain procedures, including completing an application form and attaching an invoice. Because a Certificate of Control from MARA constitutes formal written permission from the Government of Turkey to import goods – in this case, rice – from another country, a Certificate is an "import license" within the ordinary meaning of that term. Footnote 1 to Article 1 of the Import Licensing Agreement, which provides relevant context for interpreting the term "import license" in Article XI:1, clarifies that a Member's characterization of a particular procedure as something other than "licensing" cannot be used to evade the disciplines of the Import Licensing Agreement.

7. Turkey has attempted to characterize the Certificate of Control as something other than an import license by arguing that the Certificate "amount[s] to administrative forms that are required exclusively for '*customs purposes*'." Turkey set forth a list of customs-related items that, if requested by a document, would allegedly prove that document was exclusively for customs purposes (and hence should not be considered an import license). It then asserted that, since MARA requests that importers provide such customs-related information in their applications for Control Certificates, such Certificates are clearly used for customs purposes and, as a consequence, are not import licenses for purposes of Article XI:1.

8. Of course, the question is not what information is requested for a document, but rather what is the function of the document. It would not be difficult for Members to provide that every import license asked for nothing more than some subset of the information normally requested for customs purposes. That would not render every import license exempt from the disciplines of the covered agreements. In this instance, if the Control Certificate were truly no more than ordinary customs documentation, the United States would not be proceeding with this dispute. But clearly Control Certificates are very different from ordinary customs documentation. Not only are they separate and apart from the ordinary customs documentation that Turkey <u>also</u> requires; in fact, they are not even documents of Turkish Customs, but of MARA. And they do not serve to facilitate customs entry. To the contrary, they serve to restrict entry.

9. Turkey's argument is not even consistent with Turkey's own approach, particularly its own statement that the FTU import permit is an import license. The FTU import permit, which Turkey requires from importers in order to import rice under the TRQ, arguably collects even more customs-related information than the Control Certificate does, and so, by Turkey's logic, should not be considered an import permit. At bottom, however, Turkey's proposed interpretation is flawed because it is contrary to customary rules of treaty interpretation, as reflected in the *Vienna Convention on the Law of Treaties*.

10. Article 31(1) of the *Vienna Convention* provides that: "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context

and in the light of its object and purpose". For purposes of the Article XI:1 analysis, one relevant term whose ordinary meaning must be discerned is "import license". The United States has shown that the ordinary meaning of the term "import license" is "formal permission from an authority to bring in goods from another country" and the United States has gone on to explain the text in its context and in light of the Agreement's object and purpose. Turkey, however, has ignored the ordinary meaning of the term "import license".

11. MARA's Control Certificate clearly lies within the ordinary meaning of the term "import license". If a form constitutes formal permission from an authority to bring in goods from another country, it is an "import license" under the ordinary meaning of the terms in Article XI:1. Here, the Certificate of Control fits this criterion. Without this document, which must be approved by MARA, not Turkish Customs, Turkey does not permit importers to import rice into Turkey. The Certificate is not something that is obtained by presenting goods at the border to customs and providing the necessary information to clear customs. Rather it is obtained in advance of shipment – in fact it would appear prudent to obtain it before making a sale of the rice. It is a prerequisite for importation in addition to the ordinary customs documentation.

12. Instead of explaining the ordinary meaning of the term "import license" in Article XI:1 of the GATT 1994, Turkey has seemingly argued that the term must be limited by the definition of the term "import licensing" in Article 1 of the Import Licensing Agreement. Turkey seems to suggest that, as import licenses under the Import Licensing Agreement are "procedures ... requiring the submission of an application or other documentation (other than that required for customs purposes)", if the Control Certificate requires documentation for customs purposes, it is not an import license for purposes of Article XI:1. Turkey's argument is incorrect.

13. The definition of "import licensing" in Article 1 is prefaced with the phrase "[f]or purposes of this Agreement," which acts to limit that specific definition to the provisions of the Import Licensing Agreement. That definition is not a definition for purposes of Article XI:1 of the GATT 1994 nor is it an exemption to Article XI nor does it restrict the scope of Article XI. Rather, the definition is relevant context for interpreting the meaning of the term "import license" in Article XI:1 of the GATT 1994. And in any event the context provided by the Article 1 definition confirms that the term "import license" in Article XI:1 covers the Certificate of Control. That definition of "import licensing" contains two key phrases that are relevant for the Panel's Article XI:1 analysis. The definition (1) covers administrative procedures "used for the operation of import licensing regimes" but (2) exempts from its scope those administrative procedures that require the submission of documentation "required for customs purposes".

14. With respect to the first point, the fact that a document is necessary in order to clear customs does not mean that it is not an import license. Indeed, the very nature of an import license is that it will be used for customs purposes since importation cannot occur without it. The relevant inquiry is simply this: what else is the form in question actually used for? In this case, the Certificate of Control, which is approved by the Turkish Ministry of Agriculture, not Turkish Customs, is being used as an import license: the document, when issued, constitutes formal written permission from the Government of Turkey to import rice. Turkey is not granting these Certificates outside the TRQ for imports of non-EC origin rice in order to enforce restrictions on such imports. Regarding the second point, the question is what is "required" for "customs" purposes. According to the ordinary meaning of those terms, this provision provides an exemption from the disciplines of the Import Licensing Agreement for administrative procedures requiring the submission of documentation that is necessary for purposes of a government's levying of duties on imports.

15. Customs authorities throughout the world collect information from importers with respect to the type of good being imported, quantity, value, and country of origin. All of these pieces of information are "required" in order for a customs authority to make a determination as to how much

of a duty to levy upon the import of a particular good. MARA's Control Certificate does not contribute to this process, since it is completely duplicative of what Turkish Customs already requires importers to provide separately. As would be expected, Turkish Customs requires that importers supply information that is necessary for a customs authority to be able to levy duties on imported merchandise, including: importer identification information, HTS number, description of the merchandise, quantity, country of origin, value, country where the merchandise was loaded, and the port. MARA requires that an importer submit much of this same information on its application for a Control Certificate. It is clear that MARA's Control Certificate is not "required" for customs purposes when Turkish Customs itself already collects this information. Thus, the context provided by Article 1 supports a finding that the Control Certificate is an import license within the ordinary meaning of that term under Article XI:1 of the GATT 1994.

16. MARA requires that importers obtain a Control Certificate in order to import rice for the reason suggested in the name of the document: MARA has injected itself into the importation process for purposes of "control". As evidenced by the Letters of Acceptance, MARA uses the denial of Certificates of Control outside the TRQ to control all imports of rice into Turkey.

17. Turkey also has argued that one of the purposes of the Control Certificate is to ensure the fitness and compatibility of goods with health standards and that MARA will only approve a Certificate when the product to be imported has met certain requirements, including "fitness for use". But Turkey and the United States agree that MARA does not even collect the phytosanitary certificate and make its inspection until after MARA has already granted the Control Certificate. Accordingly, Turkey's argument that the Control Certificate process is meant to ensure the fitness and compatibility of imported products with health standards is not supported by the facts.

Recent Court Decisions Confirm That the "Letters of Acceptance" Are Legal Restrictions Under Turkish Law and That Turkey Prohibits or Restricts Importation of Rice in Contravention of Article XI:1 of the GATT 1994

18. Turkey has continued to advance the argument that the Letters of Acceptance are internal, informal documents that are unenforceable and have no legal status in Turkey, and that the instances where the United States has documented that MARA has denied the issuance of Control Certificates, such as the Torunlar case, are exceptions from the norm. In making this argument, Turkey has ignored the contents of the Letters, which impose a blanket denial of Control Certificates outside the TRQ governing all imports of rice into Turkey. Turkey has also ignored the content of the rejection letters and the court documents submitted by the United States, which make clear that the denials of Control Certificates are not based on importers' failure to meet particular administrative requirements in individual cases, but rather that MARA simply does not issue Control Certificates unless an importer purchases domestic paddy rice. Turkey's argument also fails to accord with the fact that, in April 2006, a Turkish court agreed with MARA's position that the Letters of Acceptance provided for a blanket denial of Control Certificates to importers who do not purchase domestic paddy rice. In sum, Turkey's arguments before the Panel regarding the legal validity and enforceability of the Control Certificates stand in sharp contrast to the arguments it has made in domestic court and contradict the facts.

19. Turkey has now acknowledged that there have been 14 lawsuits brought by importers against MARA with respect to MARA's failure to grant a Control Certificate, nine of which are ongoing and five of which were decided in favour of the government's position. The United States does not possess copies of all of the briefs and court decisions but, in two of those cases, counsel for MARA argued that the Letters of Acceptance precluded the granting of Control Certificates – and the relevant Turkish court agreed, denying the importer's motion for a stay.

20. For example, the court's decision in the Helin case makes clear that MARA is correct under Turkish law in relying on the Letters of Acceptance to deny Control Certificates to applicants. MARA argued that it was simply following "the letter and spirit of the law" when it relied on the Letters of Acceptance to deny a Control Certificate to Helin, and the court agreed, finding no basis for Helin's claim that MARA acted illegally. It is also clear from the court decision that the Letters are sweeping in scope; they apply to all rice imports, not simply those covered by Helin's case. Further, it is clear from the decision that the denial in Helin's case had nothing to do with any alleged failure on the part of the importer to provide certain documents or comply with the applicable administrative requirements. MARA did not issue a Control Certificate for the simple reason that, pursuant to Ministerial approvals by the Minister of Agriculture, it does not issue them.

21. In sum, Turkey has relied on the Letters of Acceptance as the basis for denying Control Certificates to importers. It has argued in its own domestic courts that the Letters of Acceptance are binding under Turkish law and that, as a result, MARA must deny the issuance of Control Certificates. The Turkish courts have agreed with the government's position. And, according to Turkey, the government is bound to comply with court decisions, in whole and without delay, pursuant to the Turkish Constitution. This contrasts with Turkey's argument before this Panel that the Letters of Acceptance are informal, internal documents that are unenforceable by Turkish courts and have no legal standing in Turkey.

Control Certificate Data Provided by Turkey Confirms That Turkey Has Restrictions in Place on the Issuance of Control Certificates for Non-EC Origin Imports Outside the TRQ

22. As just discussed, Turkey's Minister of Agriculture has ordered officials in his Ministry not to grant Control Certificates in clearly-worded, unambiguous documents. When importers have sued the government in Turkish court to demand that they be issued Control Certificates, Ministry lawyers have argued that MARA is bound by such orders. The Turkish courts have ruled in favour of the government's position. These facts alone demonstrate that Turkey is in breach of Article XI:1 of the GATT 1994. Thus, an examination of import and Control Certificate data is unnecessary to establish that Turkey is in breach of Article XI. Nevertheless, the US analysis of that data only serves to confirm that Turkey has imposed restrictions on the importation of non-EC origin rice outside the TRQ regime.

23. As a preliminary matter, the United States notes that Turkey has not provided copies of the actual Control Certificates, as the Panel requested, or even identified the importers. As a result, the United States is unable to confirm that the data are accurate. Further, the data leave many questions unanswered. Nevertheless, the data strongly support the US claim that there is a prohibition or restriction on imports at the over-quota rates of duty. Second, Turkey argues that it has granted a certain number of Certificates of Control over a given period of time. But that does not address the fact that Turkey is prohibiting or restricting imports at the *over-quota* rates. Thus, the question is not whether Certificates are being granted in general, but whether Certificates are being granted <u>for MFN trade</u> (that is, not involving in-quota quantities or imports of EC origin milled rice which, under the EC Quota Arrangement, enter Turkey duty free and are exempted from Turkish import restrictions).

24. Turkey's own data on Control Certificates reveal that, from September 10, 2003 through April 1, 2006, MARA in fact did not grant Control Certificates for non-EC origin imports of rice outside the TRQ regime, except for two brief periods of time, covering minuscule amounts of rice. The data indicate that, with few, relatively small exceptions, the Certificates MARA granted were for rice under the TRQ. When the TRQ closed, imports of non-EC-origin rice declined to very low levels, or ceased altogether. Therefore, the data submitted by Turkey lend additional confirmation to the US claim that MARA is enforcing a prohibition or restriction on MFN trade in rice.

Even if Turkey Were Not Enforcing the Restrictions on Over Quota Imports, Such Restrictions Would Still Constitute a Prohibition or Restriction on Importation Under Article XI:1 of the GATT 1994 and Discretionary Import Licensing Under Article 4.2 of the Agreement on Agriculture

25. The United States has provided evidence that Turkey prohibits or restricts the importation of rice outside the TRQ regime. The Letters of Acceptance, on their face, constitute an import prohibition or restriction. In the Letters of Acceptance, the General Directorate of the Turkish Grain Board recommends to the Minister of Agriculture that Control Certificates are not to be granted for specified periods of time, and the Minister of Agriculture signs the documents, thereby providing Ministerial approval for that decision. In addition, when importers have filed suit against MARA for not granting such Certificates for the import of rice outside the TRQ, MARA has relied on the fact that the Letters of Acceptance provide that no Control Certificates are to be granted as the sole legal basis for denying them. At least two Turkish courts have agreed with MARA that the Ministerial approvals contained in the Letters of Acceptance have effect under Turkish law and that, as a consequence, MARA cannot issue Control Certificates. Further, the import data and Control Certificate data confirm that Turkey has restrictions in place on the issuance of Control Certificates outside the TRQ for rice of non-EC origin.

26. Turkey's Control Certificate data confirm the presence of restrictions on over-quota imports of rice, although there were a few alleged instances where Turkey did grant Control Certificates for non-EC imports outside the TRQ. These instances are, as of yet, unverifiable because Turkey has not made the actual Certificates available for inspection, and the majority of those Certificates were allegedly granted in a six-week time period immediately following a meeting of the WTO Committee on Agriculture where the United States was highly critical of Turkey's import licensing regime for rice. However, for the United States to demonstrate successfully that Turkey is in breach of Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture, the United States is not required to show that no Control Certificates were granted at the MFN rate. The United States has demonstrated that Turkey is restricting at least some trade in rice, and that is sufficient to demonstrate a breach of Article XI:1.

27. Further, there are restrictions in place on their face in the form of the Letters of Acceptance; Turkey has relied upon those documents in open court as the legal basis for denying Control Certificates; and the Turkish courts have agreed with the Turkish government that the petitioning importers have no grounds for their lawsuit because the Letters of Acceptance are clear that Certificates are not to be granted. The fact that a few Certificates may have been issued does not change the fact that there is a legal prohibition or restriction in place. The Letters of Acceptance are an order from Turkey's Minister of Agriculture to the Provincial Agricultural Directorate that Control Certificates are not to be granted to importers who do not purchase domestic paddy rice. If importers were not already dissuaded by the Letters, it is unlikely that importers would have mis-read the significance of the court decisions described above.

28. Even if Turkey's data had demonstrated that the Letters of Acceptance were not enforced at all, that would not change the conclusion that the Letters breach Article XI:1 of the GATT 1994. A mandatory measure may still be found WTO-inconsistent even if it is not being enforced. In the *US – 1916 Act* dispute, the Appellate Body agreed that the panel could find a statute inconsistent "as such" with provisions of the covered agreements, despite the fact that the United States had never successfully prosecuted a case under the statute and had never imposed the criminal penalties provided in case of a violation. And in the *Malt Beverages (GATT)* dispute, the panel found that mandatory legislation that was either not being enforced or only being enforced nominally did not shield measures from being found in breach of the GATT 1947.

29. Here, it is clear that Turkey *is* enforcing the Letters of Acceptance, with the support of the Turkish judicial branch, and the United States has documented several instances of where the restrictions on the issuance of Control Certificates have been enforced, in the form of letters and court documents. Nevertheless, as noted by the *Malt Beverages (GATT)* panel, non-enforced mandatory measures may still breach a Member's obligations, and can affect the decision-making of economic actors. Here, even had they not been enforced, the Letters of Acceptance were known to many importers, and, as a consequence, could have deterred them from applying for Certificates to import rice at the MFN rates, or led them to seek to import under the TRQ. Thus, even were the Panel to conclude that the Letters were not enforced at all, the Panel should still find, in line with findings of past panels with respect to non-enforced mandatory measures, that Turkey's restrictions on MFN trade in rice are inconsistent with Article XI:1.

30. Lastly, Turkey's failure to issue Control Certificates for the import of rice at the over-quota rates of duty breaches both Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture because it constitutes discretionary import licensing. The Communiqués provide that, in order to apply for a Control Certificate, importers 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". This language appears to provide MARA with the discretion not to grant Control Certificates if an importer does not present certain unspecified documents – for example, a receipt showing that the importer has procured the appropriate quantity of domestic paddy rice. The Letters of Acceptance, even if they are, as Turkey implausibly argues, "informal internal documents" that are never enforced, provide strong evidence of this discretion. In each Letter cited by the United States, Turkey's Minister of Agriculture accepts recommendations from the Provincial Agricultural Directorate to delay the start date for issuance of Control Certificates. Therefore, it is certainly clear that *Turkey* believes it has the discretion not to grant Control Certificates if it wants to, and the United States has provided documentary evidence highlighting instances where Turkey has denied or failed to grant such Certificates. Discretionary import licensing is prohibited under Article 4.2 of the Agreement on Agriculture as well as Article XI:1 of the GATT 1994. Accordingly, Turkey's discretionary import licensing system for rice is a prohibited measure under Article 4.2 of the Agreement on Agriculture, as well as a restriction on importation under Article XI:1.

Turkey's Domestic Purchase Requirement Provides Less Favourable Treatment to Imported Rice in Breach of Article III:4 of the GATT 1994 and Imposes an Additional Cost on Importing Rice in Contravention of Article XI:1 of the GATT 1994

31. The United States has made two claims with respect to Turkey's requirement that importers of rice under the TRQ purchase large quantities of domestic paddy rice as a condition upon importation. First, the United States has argued that the domestic purchase requirement breaches Article III:4 of the GATT 1994 because Turkey predicates the ability to obtain a license to import rice under the TRQ, and hence to sell rice domestically, on purchasing domestic rice rather than imported rice. Purchasing imported rice does not provide the same benefit, thereby altering the conditions of competition and providing an incentive to purchase domestic rice. Thus, imported rice is treated less favourably than domestic rice.

32. The United States also has argued that the domestic purchase requirement imposes an additional cost on importing rice, thereby constituting a restriction on importation contrary to Article XI:1 of the GATT 1994. In sum, the United States has argued that it is more expensive to purchase one, two, or three tons of domestic rice as a condition upon importation, than to purchase zero tons of domestic rice in order to import. Turkey has been unable to rebut the US argument because it is a mathematical impossibility that it would cost an importer more to purchase zero tons of rice than it would to purchase x tons of rice, where x is any number greater than zero. Turkey completely ignores this fact, instead focusing its analysis on the cost of each ton that is purchased,

when the relevant question is the total cost to the importer of having to comply with the domestic purchase requirement in order to import rice.

33. Turkey also argues that, through the TRQ, it is simply pursuing the "legitimate objectives" of "greater market supply" and "market stabilization". On this point, the United States would simply note that Turkey has not invoked an Article XX defense in this dispute, and neither of the objectives cited by Turkey are listed in Article XX.

34. Turkey has argued that the US calculation of the cost of domestic purchase in Exhibit US-52, where the United States set forth several possible domestic purchase scenarios under the third TRQ opening, is inaccurate. Yet Turkey has failed to identify which specific figures in the model it finds objectionable. This is not surprising, since the United States utilized numbers that were supplied by Turkey or are consistent with data provided by Turkey.

Turkey's Argument That the Domestic Purchase Requirement Was Not Meant to Promote the Development of Turkey's Rice Industry Is Not Credible

35. The United States has argued that the TRIMs Agreement does not require that a Member demonstrate the existence of a TRIM, in addition to showing that a measure satisfies the elements of the illustrative list contained in the Annex to that agreement, in order to prove a breach of the TRIMs Agreement. However, even if it were necessary for the United States to show that the domestic purchase requirement is a TRIM in order to prevail on the Article 2.1 claim, the United States has done so. Turkey's professed inability to understand how the TRQ could have possibly affected investment in the domestic rice sector is not credible. The TRQ regime serves to aid in the development of the Turkish rice industry and this effect is intended. Turkey is forcing rice importers to purchase large quantities of domestic rice as a condition upon importation. This scheme makes it much more likely that rice produced by Turkish farmers will be purchased, and at higher prices. The Letters of Acceptance, as well as the substantial increase in Turkish production of paddy rice since 2003, confirm that Turkey instituted the domestic purchase requirement in order to strengthen the domestic rice industry.

36. The reasoning of the *Indonesia – Autos* panel on the investment issue supports the US argument that the domestic purchase requirement is a TRIM. The panel found that the Indonesian measures met the alleged "investment requirement" because they "aimed at encouraging the development of a local manufacturing capability for finished motor vehicles and parts and components in Indonesia. Inherent to this objective is that these measures necessarily have a significant impact on investment in these sectors." Turkey notes that the references in the Indonesian legislation to investment objectives differentiates that measure from the TRQ regime, because the TRQ legislation does not mention such objectives.

37. But the panel report also provides that "there is nothing in the TRIMs Agreement to suggest that a measure is not an investment measure simply on the grounds that a Member does not characterize the measure as such". In other words, the fact that Turkey did not specifically state investment objectives in the TRQ legislation does not preclude the conclusion that the domestic purchase requirement has an investment component. If the legal test rested upon a Member's characterization of a measure, then nothing would qualify, because a respondent in WTO dispute settlement would always characterize the measure at issue as not an investment measure. The relevant inquiry is what the measure in fact does. Nonetheless, Turkey did indicate in its Letters of Acceptance that the domestic purchase requirement had investment objectives, and one of those objectives – strengthening the competitiveness of the domestic industry – was cited by Indonesia as one of the investment objectives of the Indonesian measure that was the subject of a successful TRIMs claim in the *Indonesia – Autos* dispute.

ANNEX D-2

EXECUTIVE SUMMARY OF THE REBUTTAL SUBMISSION BY TURKEY
(20 December 2006)

I. INTRODUCTION

1. These rebuttals provide Turkey with the opportunity to clarify a number of issues that have arisen since the First Submission and particularly during the Oral Hearing. They are made in the light of the questions later posed by the Panel and the answers provided by the United States. In them, Turkey addresses principally the alleged "denial" of approval of Certificates of Control and the TRQ regime, providing additional elements of clarification and specific rebuttals to the allegations and statements made by the United States.

II. ON THE ALLEGED DENIAL OF APPROVAL OF CERTIFICATES OF CONTROL

A. THE CERTIFICATES OF CONTROL ARE NOT "*IMPORT LICENSES*"

2. Certificates of Control are not import licenses, but administrative forms that are required exclusively for "*customs purposes*". As indicated by Turkey in its First Submission[1], an important element of interpretative guidance in order to determine what may be considered as an import licence is to be found in Article 1.1 of the Agreement on Import Licensing Procedures.

3. The United States has not offered any evidence, arguments or legal rationale to define or circumscribe the concept of "*customs purposes*". Turkey believes that, *de jure* and *de facto*, its Certificates of Control are not and have never been applied as anything other than administrative forms serving legitimate "*customs purposes*" and aimed at collecting necessary customs clearance information and providing a considerable degree of trade facilitation for both importers and customs authorities.

4. Turkey submits that the "*customs purposes*" of Certificates of Control are evident both *de jure* and *de facto*. In Turkey, as in all WTO Members, the process of importation and customs clearance is more than just compliance with the obligation to pay the applicable duty and other charges. Customs clearance also includes compliance with all administrative requirements and fulfilment of various "*customs purposes*".[2] If all the required information is provided by the importers, the Certificates of Control are automatically approved.

5. Turkey agrees with the United States that the scope and objective of the Agreement on Import Licensing Procedures cover both the administrative procedures referred to as "*licensing*" (i.e., procedures that are *de jure* labelled as import licensing procedures) and the other similar administrative procedures that may function as *de facto* import licensing procedures, regardless of how a WTO Member characterizes them.

6. However, Turkey disagrees with the United States that the phrase "*other than that required for customs purposes*" is meant to provide an exception from the application of this Agreement for all documents that are actually "*customs*" in nature. Following the argument put forward by the United States, the Agreement on Import Licensing Procedures would not apply to customs documentation. This is not legally correct and clearly escapes the intent and logic of the drafters of the Agreement on

[1] See paras. 47-57 of Turkey's First Submission.
[2] See, in particular, para. 53 of Turkey's First Submission.

Import Licensing Procedures. One thing is an administrative procedure that serves the purposes of import licensing regimes (or that *de facto* acts as an import licensing regime), and another thing is an administrative procedure that is required for "*customs purposes*". Turkey concludes that the United States has misinterpreted the Agreement on Import Licensing Procedures and subsequently jumped to a hurried, un-demonstrated and un-evidenced conclusion that, either *de jure* or *de facto*, Turkey's Certificates of Control are not "*customs in nature*" and are used by Turkey to evade its WTO commitments under that Agreement[3].

7. Turkey strongly disagrees with the conclusion reached by the United States in its reply to Question 58 by the Panel. Along the same lines, the United States argues that '*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*". Again, after having avoided proving that the "*customs purposes*" of Turkey's Certificates of Control should not be considered within what the WTO system regards as "*customs*" in nature, the United States avoids indicating what are to be regarded as the defining characteristics of an "*import license*". Turkey believes that this is an essential point and a crucial issue in relation to what the Panel is asked to review for purposes of understanding the dispute and finding a solution.

8. Turkey considers that the actual scope of the "*carve-out*" for "*customs purposes*" provided under Article 1.1 of the Agreement on Import Licensing Procedures can only be clarified by an analysis of what "*customs purposes*" actually consist of. There is no 'narrow' or 'large' scope of the "*carve-out*", once it is assessed that a certain form is meant to comply with "*customs purposes*".

9. In relation to this, Turkey wishes to emphasize that it is not the scope and the content of the information requested by MARA for approval of the Certificate of Control that can change an administrative document used for "*customs purposes*" into an "*import license*". Turkey believes that the distinguishing factor between an "*import license*" and other documentation (such as that used for "*customs purposes*") is a matter of procedures and not of content of the documentation. In its Oral Statements, Turkey has already indicated to the Panel that the line of argument put forward by the United States would result in any document used in relation to importation (i.e., SPS certificates, certificates of origin, certificates of compliance with technical regulations) being regarded as an "*import license*". This is not the case. Turkey submits once again that the United States has not shown which elements of the Certificate of Control turn this administrative document into an "*import license*". It has merely asserted that it is an "*import license*".

10. Turkey would also like to draw the attention of the Panel to the trade facilitation purpose of the Certificates of Control, which is two-fold as it serves both the importers and MARA's officials in the exercise of their verification and inspection duties. In particular, the Certificates of Control offer importers a considerable degree of legal certainty and commercial predictability of customs procedures (i.e., inspections, identity checks and documentation review).[4]

11. On the other side, Certificates of Control enhance the necessary efficiency of MARA's officials in the management of their inspection and control duties. These forms are needed in order to facilitate the necessary cooperation, between MARA and customs authorities, which is required in the case of imports of agricultural products. In this respect, Turkey also considers that there is nothing particularly "*revealing*" in that it is MARA (i.e., Turkey's Ministry of Agriculture and Rural Affairs) that approves the Certificates of Control and carries-out customs inspections for sanitary and phytosanitary purposes.

[3] See, in particular, paras. 9-10 of the Oral Statements by the United States.
[4] See, in particular, Turkey's Replies to Questions posed by the Panel, question No. 14.

12. Finally, the fact that Certificates of Control are required for all imports, including TRQ imports which are already subject to an automatic import licensing regime, clearly proves that the Certificates of Control are required for "*customs purposes*" only and are not "*import licenses*". In its first submission, the United States wrongly stated that rice imports under the TRQ did not require Certificates of Control and argued that this made clear that the purpose of the Certificates of Control was to act as "*import licenses*".[5] The United States appears now to accept the fact that Certificates of Control are required for imports within the TRQ, yet it still avoids proving legally and factually that the Certificates of Control are "*import licenses*" and resorts to another unfounded and un-evidenced assumption.

B. THE CERTIFICATES OF CONTROL ARE NOT "*OTHER MEASURES*"

13. As an alternative to the Certificates of Control being considered as "*import licenses*", the United States argues that the alleged 'denial' of Certificates of Control to importers constitutes a "*prohibition*" or "*restriction*" of rice importation made effective by an "*other measure*" within the meaning of GATT Article XI:1. Turkey believes that the United States has failed in its pleadings and written replies to the questions by the Panel[6] to establish the grounds on which Turkey's Certificates of Control (and the alleged denial thereof) can or should be considered "*other measures*" for purposes of the application of GATT Article XI.

14. GATT Article XI:1 aims at preventing WTO Members from introducing or maintaining quantitative restrictions on the importation of products into their territory by means of "*prohibitions*" or "*restrictions*" other than duties, taxes and other charges, independently of whether these prohibitions or restrictions are achieved through quotas, import licenses or "*other measures*". Turkey reaffirms that the essential element to establish whether or not any measure introduced by a WTO Member results in a quantitative restriction is the existence of a "*prohibition*" or "*restriction*" on imports. This must be analyzed and proved both in terms of the *de jure* and *de facto* operation of the measure being reviewed. Only when a *de jure* or *de facto* "*prohibition*" or "*restriction*" of imports can be demonstrated, the specific measure being considered would amount to an "*other measure*" of the type that GATT Article XI:1 considers illegal because it institutes or maintains a quantitative restriction.

15. Turkey believes that the United States has not made a *prima facie* case on the existence of a 'denial of Certificates of Control to importers'. The United States appears to be claiming the existence of a *de jure* "*prohibition*" or "*restriction*" not on the basis of legislation in force, but on evidence (i.e., mere communications such as the so-called Letters of Acceptance and oral instructions given to officials) rather suited for a *de facto* complaint. Turkey notes that the United States has not made clear whether its claim relates to a *de jure* or *de facto* "*restriction*" and "*prohibition*." In any event, Turkey also believes that the United States has not established a *prima facie* case on the existence of either a *de jure* or a *de facto* "*prohibition*" or "*restriction*."

16. The United States has not identified any legislative measure relating to the alleged denial of approval of the Certificates of Control that would support a claim of a *de jure* "*prohibition*" or "*restriction*." On the other hand, when complaints are brought against alleged measures that are not expressed in the form of written and publicly available documents (i.e., *de facto* complaints), the Panel should exercise particular caution before supporting a conclusion as to the existence of a rule or norm. In this respect, Turkey recalls the general rules applicable to the burden of proof set out by the Appellate Body in *US – Wool Shirts and Blouses*, and reiterated by the Panel in *EC – Asbestos*.[7]

---

[5] See, *inter alia*, para. 55 of the First Submission by the United States.

[6] See, United States' Replies to Questions posed by the Panel, question No. 56.

[7] *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, Panel Report, paras 8.79 and 8.81.

17. Turkey submits that the United States has not provided conclusive evidence that there is an instance of *de jure* "*prohibition*" or "*restriction*". In fact, such evidence is not available and nothing can be found in Turkey's legislative and administrative framework to prove otherwise.[8] In addition, Turkey submits that the United States has also not provided conclusive evidence that there were instances of *de facto* "*prohibition*" or "*restriction*" of rice importation made effective through the alleged 'denial of Certificates of Control to importers'. In order to establish whether or not there is "*another measure*" within the meaning of GATT Article XI:1, Turkey believes that this factual determination must be made.

18. Turkey has already provided ample evidence showing that no *de facto* "*prohibition*" or "*restriction*" is to be found in relation to the approval of Certificates of Control.[9] In particular, Certificates of Control have been approved throughout the period of over 2 and a half years during which the United States allege that a 'blanket denial' was being enforced (i.e., between 10 September 2003 and 1 April 2006, including the months thereafter). A total of 2,242 Certificates of Control were approved between 2003 and 9 November 2006.[10] This stands as clear and irrefutable evidence against the idea that Turkey was maintaining a *de facto* import "*prohibition*" through a 'blanket denial' of Certificates of Control. In addition, and most importantly for purposes of the case at stake, Turkey submits that, of those 2,242 approved Certificates of Control, 1,335 (i.e., 59.5%) were approved in relation to out-of-quota trade (i.e., MFN or FTA trade).[11] The figure of 2,242 represented an approval rate of over 95% of all applications lodged by importers for approval of Certificates of Control. In particular, between 2003 and September 2006, a total of 2,324 applications for approval were put forward and resulted in the approval of 2,223 Certificates of Control. Only 102 applications (equal to a mere 4.38%) were rejected for 'non-compliance with the requirements set forth in the relevant legislation'.[12] Turkey believes that a rejection rate of less than 5% cannot be quantified or qualified into a *de facto* import "*restriction*".

19. Individual instances of non-approval by MARA of particular rice importers' applications must be seen as a natural component of the interaction between any WTO Member's administration and its business community and cannot be generalized into a '*denial of Certificates of Control to import rice*', particularly when the trade statistics and approval rates clearly indicate otherwise. The particular cases and instances of rejection used by the United States to build large part of their allegations were linked to a number of un-related irregularities and to their non-compliance with some of the requirements set forth for application in the relevant Turkish legislation.[13]

---

[8] See, in particular, Turkey's First Submission at paras. 64 and 67.

[9] See, in particular, Turkey's First Submission at paras. 63 to 69.

[10] See Annex TR-33 of Turkey's Replies to Questions posed by the Panel.

[11] See Annex TR-41 herewith.

[12] See Annex TR-35 of Turkey's Replies to Questions posed by the Panel.

[13] In relation to aspects of confidentiality and access to information, Turkey would like to address one issue which represents a very unfortunate and worrying development. The United States has recently argued that "*(…) most of the importers that the United States has contacted have been unwilling to provide additional documentation since the first panel meeting (…)*", implying that Turkish public authorities are putting "pressure" on rice importers not to give any information and documentation to the United States. Turkey strongly believes that the United States should circumstantiate this serious accusation and prove it with factual evidence. Since it is these importers which have had close ties with the United States and are the source of most of the information and documentation that the United States has provided to the Panel, Turkey believes that these statements should be treated with particular caution. Turkey maintains that neither its Government, nor its public authorities, have put any kind of "pressure" on rice importers in order to discourage them from further cooperating with the United States. At the same time, Turkey requests that the Panel demand an explanation from the United States on the allegations that the questions posed by the Panel were leaked to certain importers. This is again a serious accusation that the United States must be prepared and able to corroborate with evidence. If anything, it would appear somewhat odd that the same operators that are now reluctant to further cooperate

20. Turkey has repeatedly indicated that the "Letters of Acceptance" were mere instruments of internal communication among Turkish administrators and public officials. These communications often contained confidential positions and/or political statements which were aimed at debating or developing unofficial policy recommendations. These administrative communications never resulted in the adoption of laws or regulations. The fact that the existence and alleged legal value of the so-called "Letters of Acceptance" were used by certain parts of the Turkish administration during the course of domestic judicial proceedings doesn't change their nature as unofficial and unenforceable communications which are internal to the administration and aimed at developing or debating policy recommendations.

21. Furthermore, Turkey would like to emphasize through specific examples that a considerable amount of Certificates of Control were approved by MARA during the alleged period of operation of the so-called 'blanket denial' of approval of Certificates of Control made operational through the "Letters of Acceptance". If anything, this should be seen as convincing evidence that the so-called "Letters of Acceptance" were (and are) only internal communications suggesting policy recommendations and not formal trade policy measures binding on the administration.

22. In addition, evidence shows that the approval of Certificates of Control always followed, with minimal delays, the applications for approval that had been lodged by rice importers. This is contrary to what the United States claimed in its First Submission, in paragraph 24, that "the letter then recommends that the MARA once again 'delay' the period for issuing Certificates of Control until July 1, 2004". The fact that the compiled data show that Certificates of Control were not approved during certain periods (i.e., between 26 December 2003 and 20 May 2004) does not prove that the approval of Certificates of Control was being delayed and does not prove that trade did not take place. It only proves that, during certain periods, Certificates of Control were not approved.

23. This may have been the result of the combination of two factors, namely the absence of applications for approval and/or the existence of considerable "left-over" approved volumes in the hands of the importers as a result of the difference between the approved and realized quantities of rice imports.[14] It should be noted, in particular, that the applications for approval of Certificates of Control were, and remain, formal acts made by importers on the basis of business considerations and commercial calculations (i.e., profit margins, competitiveness of imported over domestic rice, speculative positions, currency fluctuations, etc.). These business determinations may have resulted in the lack of requests for approval of Certificates of Control during certain periods, but were never the result of specific policy decisions by the Government of Turkey.

24. Turkey believes that the evidence available and the allegations so far put forward by the United States only go as far as indicating that a limited amount of Certificates of Control (if 2,242 can be considered a small amount, both in terms of their number and quantity of allowed imports) were approved during a given period. As already indicated by Turkey, this in itself clearly proves that there was never a *de facto* import "*prohibition*". Most importantly, though, it falls short from proving that either Turkey was rejecting approval of Certificates of Control, by virtue of a *de jure* or *de facto* policy of import "*restriction*". Turkey believes that the burden of proof rests squarely on the United

---

with the United States would tell the United States that the Government of Turkey has leaked to them confidential information.

[14] In this respect, Turkey wishes to confirm once again that the period of validity of an approved Certificate of Control is of 12 months. Contrary to the allegation made by the United States in its replies to the questions posed by the Panel (question No. 38), the law does not give any right to MARA to shorten the validity periods of the Certificates of Control. Article 9 of the relevant Communiqués specifies that the validity periods of the Certificates of Control cannot be extended. Therefore, it is clear that in legal terms MARA has no right to shorten the validity periods of the Certificates of Control.

States to prove this occurrence beyond the mere judicial rhetoric. Turkey considers to have already provided enough factual evidence to indicate that there was never any *de facto* import "*prohibition*" or "*restriction*".

25. Turkey believes that the United States has not established a causal link, as established in *Argentina – Hides and Leather*,[15] between the "*contested measure*" (on which, incidentally, there is no clarity: is it the alleged 'blanket denial', is it the "Letters of Acceptance", is it the Certificate of Control as such, or is it something else?) and the level of imports of rice into Turkey. In fact, the United States has not even provided factual evidence that Turkey's level of imports was low. The number of Certificates of Control which were approved and the approval rate, together with the lack of any "causally-linked" factual evidence provided by the United States in support of its complaint, suggest that the case brought by the United States is largely centred on individual rejections, which were perfectly compatible with Turkish legislation and with Turkey's obligations under the WTO, and not on policies or measures of general application.

26. Turkey strongly contests the novel argument raised by the United States that a "*de minimis*" rate of approval of Certificates of Control in connection with MFN rice imports (even if proved and evidenced) would automatically result in a *de facto* import "*restriction*". Turkey believes that the "*de minimis*" rate of approval of Certificates of Control in connection with MFN rice imports, if it actually occurred, would have to find its natural and logical explanation in the business determinations and commercial decisions made by importers and traders in the normal course of trade. It is clear that both the TRQ and the FTA volumes of rice imports always provided appealing and real commercial and tariff advantages which the importers systematically tried to exploit. The trade statistics are clear testimony to these market trends. These very same trade statistics also show that, during the periods when the TRQ was closed or expired, rice originating in countries other than the EC (i.e., Argentina, Bulgaria, China, Egypt, India, Pakistan, Russia, Syria, Thailand, the United States, Uruguay and Vietnam) was imported at MFN or applied rates and, therefore, Certificates of Control were approved.[16]

III. THE TRQ REGIME

A. THE TRQ REGIME IS NO LONGER IN FORCE

27. Turkey would like to reaffirm that the legislative framework providing for the TRQ regime, including the domestic purchase requirement, is no longer in force and that Turkey has no intention to renew it. In light of this consideration, Turkey would like once again to respectfully invite this Panel to refrain from making any finding on the TRQ regime and its domestic purchase requirement or, should this Panel consider this necessary for the positive solution of the dispute, to refrain from making any recommendations on this matter.

28. Turkey has already noted that WTO case law supports the view that a panel is required to make recommendations to bring a measure found inconsistent into conformity 'provided that' such measure is still in force. In this respect, Turkey quoted *United States – Certain EC Products*,[17] *Chile – Price Band*,[18] and *Dominican Republic – Cigarettes*.[19] The United States appears to believe that these

[15] *Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather*, Panel Report, para. 11.21.

[16] See, in particular, Annex TR-33 to Turkey's Replies to Questions posed by the Panel.

[17] See, *United States – Import Measures on Certain Products from the European Communities*, Appellate Body Report, para. 81.

[18] See, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, Panel Report, para. 7.112.

cases are not of relevance to the dispute and, if of any relevance, they should be read as supporting the United States' view.

29. The United States believes that the reports cited respect the "distinction between measures that expired prior to the commencement of the panel proceedings and measures that expire after that." Turkey notes instead that under WTO case law, this distinction draws a line between the cases in which no finding is necessary and the cases in which, if a finding is made, no recommendation is due. Turkey finds that WTO case law supports the view that no finding is necessary on measures expired before the commencement of the Panel proceedings, whereas in the case of measures expired after the commencement of the Panel proceedings, if a finding is made, no recommendation is due.

30. After having clarified that the expiry of the measures before or after the commencement of the Panel's proceeding is only relevant for the Panel in order to decide whether or not to make a finding on the expired measure, but not on whether the Panel should issue recommendations, Turkey notes that the "commencement of the panel proceedings" corresponds to the establishment of the Panel (i.e., the 17 March 2006 for this dispute). As described in greater detail in Turkey's first submission, a great part of the legislative framework establishing Turkey's TRQ regime expired well before the establishment of this Panel and only two measures (i.e., Decree 2005/9315 and the implementing Communiqué No. 25943) expired shortly after the establishment of the Panel.

31. Turkey does not consider that a finding on any of these measures, including the ones expired soon after the commencement of panel proceedings, is necessary to secure a positive solution to the dispute. Turkey has repeatedly maintained, both at the consultations phase and throughout the submissions and oral statements presented so far, that it has no intention to renew these measures, neither extending them nor adopting new legislative instruments. Therefore, Turkey respectfully requests the Panel not to make findings on any of the measures relating to the TRQ regime or, in the alternative, to limit its findings to those measures which were still in force after the establishment of the Panel. In any event, Turkey respectfully requests that the Panel refrain from making any recommendation with respect to the TRQ regime.

B. OBSERVATIONS ON THE TRQ REGIME

32. With respect to the objectives, mechanisms, eligibility criteria and inherent commercial advantages of the now expired TRQ regime, Turkey notes that TRQs were opened in 2004 and 2005, not to protect or distort trade, but to achieve the necessary supply of rice into Turkey and to stabilize the domestic market. In fact, it is well known that Turkey is a net importer of rice and that imports are essential to stabilize the market (both in terms of price and quantities available). The TRQ provided a tariff advantage to imported rice up to predetermined quantities. Any interested importer could apply for a TRQ licence, which was systematically allocated on a "first-come-first-served" basis. There has never been discrimination on the basis of country of origin of the rice or nationality/affiliation of the importer applying for a license. The requirements for the application and evaluation procedures of the import licenses have always been clear, transparent and easy to implement for all importers. Similarly, the administrative procedures for licensing have always been simple and user-friendly. All documents required for application have always been published. When all application requirements were met, the import licenses have systematically been issued within 5 days.

33. The tariff quota system was never meant to act as a, and never had any, restrictive or discriminatory effects on trade and rice imports. In particular, it is wrong and misleading to state, as the United States does, that the fulfilment of the domestic purchase requirement by importers

[19] See, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*, Panel Report, para 7.363.

'provides the only way to import rice into Turkey'. Rather, the system was voluntary and conferred an advantage to the importers meeting the requirements stipulated in the legislation. Importers have always been free to make use of the system or not. Turkey has already shown that the high volumes of in-quota imports and the high numbers of licences which have been issued are testimony to the attractiveness and appeal that the tariff advantage has had in the business determinations made by individual rice importers. This in-quota advantage has always existed in parallel to the ability to import at the less advantageous MFN rates of duty.

34. Turkey has shown that the opening of the TRQ always resulted in the modification of the conditions of competition between domestic and imported products in favour of imported products. Turkey believes that the figures used by the United States to construct its simulation scenarios are extreme theoretical figures which are not based on general trade statistics, policies or laws. The United States has not linked these hypothetical scenarios to actual instances of trade and to specific occurrences. Turkey has provided a wealth of data to show that the actual advantages of importing rice within the TRQ were real and that trade statistics clearly show that importers largely benefited from TRQ openings.

35. The choice to import within the TRQ in order to benefit from the tariff advantage was always dictated by business determinations and commercial decisions that were in no way influenced by the Turkish Government. These determinations and calculations were made by importers on the basis of a number of economic and market factors such as domestic and world prices of rice, domestic consumption, exchange rates, conditions of competition between rice of different origins, consumers' preferences, marketing strategies, etc. In any event, the TRQ always provided a significant advantage in favour of imported rice, even if the domestic purchase requirement of the TRQ acted as a balancing factor with respect to the tariff advantage.

36. The domestic purchase requirement was introduced because Turkey had to pursue, at the same time, two legitimate objectives: the one of greater market supply (through the TRQ) and that of market stabilization (through the domestic purchase requirement). The domestic purchase requirement of Turkey's TRQ regime partly moderated (or even magnified, as the data for 2004 and 2005 milled rice imports indicate) the advantageous effects, and not the adverse effects as claimed by the United States, that the TRQ was conferring to imported rice. The TRQ always conferred an advantage. The TRQ success rate, in terms of quota utilization, is clear evidence of this. The domestic purchase requirement did not take away this advantage, it was simply an element used by Turkey to define the scope of the advantage. The domestic purchase requirement must be seen as a fundamental trait of the TRQ system itself, just like the in-quota preferential rates of duty. Turkey maintains that it was fully entitled to decide, in line with its economic policies, the characteristics of the TRQ. For those importers that did not consider TRQ trade advantageous, MFN always remained an option. Turkey has shown that, contrary to what is claimed by the United States, TRQ and MFN rice importation always co-existed.

37. In relation to the allegations made by the United States that the so-called eligibility criteria would restrict the categories of importers/traders able to purchase domestic rice for the purpose of importing under the TRQ, Turkey recalls that there is no eligibility requirement in order to be able to purchase domestic rice. On the contrary, any restriction of the categories of eligible purchasers would have defeated the purpose and objectives of the TRQ system in that it would have diminished the chances that the entire TRQ be allocated and that the market be adequately supplied and, consequently, stabilized. The relevant legislation simply provides that domestic rice may only be purchased from paddy producers having permission to plant paddy rice, their cooperatives and unions, or from the TMO. Provided that the domestic purchase requirement had been complied with, any type of rice (i.e., paddy, brown and/or milled) could be imported into Turkey at the preferential tariff rates accorded by the TRQ.

IV. CONCLUSIONS

38. Turkey submits that the United States has not made a *prima facie* case, it has not proved its allegations, its legal arguments do not find grounds in WTO law and the interpretative guidance offered by WTO case law, and this dispute largely rests on a misunderstanding of facts and a number of individual instances that have little to do with international trade policy and more with domestic judicial proceedings and individual cases.

39. Turkey believes that this dispute may also be the consequence, to a considerable extent, of the relative lack of comparative advantage of rice from the United States vis-à-vis competing exporting countries trading with Turkey (i.e., the degree of competitiveness of United States' rice).

40. The real background to this case is that the United States has seen its rice progressively lose market share in Turkey to the advantage of other exporting countries. This is true both in relation to TRQ and MFN trade and particularly significant in a scenario of continued expansion of market access opportunities. Turkey never adopted its TRQs with the particular intent to diminish the market access opportunities of the United States (or, for that matter, of any other exporting country). The yearly increases in imported volumes are proof of this.

41. The success of the TRQ and the high utilization rates are testimony to the fact that the advantage provided by the TRQ was real and appealing enough for importers to exploit it, despite the allegedly burdensome impact of the domestic purchase requirement. The fact that imports from the United States may have declined (at the MFN rates as well as within the TRQ) has only to do with the progressive loss in competitiveness of rice from the United States vis-à-vis its competitors, and with the business determinations and commercial decisions freely made by rice importers on the basis of a number of economic and market factors. The most recent import statistics seem to support this conclusion. The market-share of rice from the United States has not increased now that imports are occurring only at the MFN (or applied) rates of duty and that the TRQ regime no longer applies.

ANNEX E

ORAL STATEMENTS BY THE PARTIES AT THE SECOND SUBSTANTIVE MEETING

ANNEX E-1

EXECUTIVE SUMMARY OF THE OPENING ORAL STATEMENT BY THE UNITED STATES AT THE SECOND SUBSTANTIVE MEETING

(25 January 2007)

1. Over the past several months, the Panel has read numerous submissions, examined dozens of exhibits, and listened to both Parties present oral argument. The United States wishes to provide a few general thoughts that we believe could help the Panel as it examines the evidence and evaluates the arguments that are being presented by the Parties with respect to the major claims.

The Control Certificate

2. With respect to the issues of whether a Control Certificate is an "import license" for purposes of Article XI:1 of the GATT 1994 and whether the Control Certificate system constitutes "import licensing" under the Import Licensing Agreement, Turkey errs in casting the US claim as an attack on the SPS measures of all WTO Members. The United States maintains its own SPS measures on agricultural products, and it goes without saying that the United States believes that SPS measures are critical to protecting the health and life of its citizens, plants, and animals and those of other nations, and has no interest in undermining its ability or the ability of other Members to adopt legitimate measures to ensure the compatibility of agricultural products with SPS measures.

3. That being said, none of this discussion of SPS measures is relevant for resolving the dispute that is currently before this Panel. Turkey's SPS argument simply overlooks the relevant inquiry: what is Turkey using the Control Certificate for?

4. Turkey has acknowledged that MARA conducts its SPS inspection after the Certificate has already been approved, so meeting SPS requirements is not a requirement for receiving a Certificate, and the Certificate is not a control or inspection procedure. Nor is the Certificate used simply as part of customs clearance. The Certificate, which is administered by the Ministry of Agriculture and Rural Affairs (MARA), requests submission of the same type of customs-related information that Turkish Customs already requires of importers, despite the fact that MARA is not involved in customs administration. Yet if MARA does not issue a Control Certificate, an importer cannot import rice into Turkey.

5. If a Control Certificate issued by MARA is unnecessary for SPS purposes and unnecessary for customs purposes, then why does MARA require that importers obtain a Certificate? The answer is clear: to restrict imports of rice. A Panel finding that MARA's Control Certificate is an "import license" for purposes of Article XI:1 and constitutes "import licensing" under the Import Licensing Agreement is consistent with the ordinary meaning of these terms in their context and in light of the object and purpose of the GATT 1994 and the Import Licensing Agreement respectively, and consistent with the facts in this dispute.

MFN Trade in Rice

6. With respect to the issue of over-quota trade, since September 10, 2003, Turkey has restricted rice imports outside the TRQ by not granting Control Certificates for non-EC origin imports. Turkey continually responds to this fact by stating that, in fact, it does grant Control Certificates and then it provides a large number. The number, which has changed over time and is currently 2,242, is incorrect and misleading for at least the following reasons, as shown in Exhibit US-71.

7. The 2,242 figure includes Certificates issued in two legally irrelevant time periods, namely the period prior to September 10, 2003, which is the date on which the first Letter of Acceptance of which the United States is aware was issued, and the period after March 17, 2006, which is the date when the Panel was established. Including these periods in the calculation makes the number of Certificates granted outside the TRQ appear larger than they really are during the legally relevant period. Subtracting those Certificates from the figure provided by Turkey yields a total of 1,718 Control Certificates allegedly granted.

8. The US claim is that Turkey is using Control Certificates to restrict out-of-quota (or MFN) rice trade. Three adjustments need to be made to arrive at the total figure for MFN trade:

– First, the figure provided by Turkey includes Certificates granted for in-quota imports. Certificates granted for in-quota trade represent 43 per cent of the Control Certificates granted, so inclusion of these Certificates further distorts the figure provided by Turkey. Subtracting those Certificates from the figure provided by Turkey yields a total of 969 Control Certificates allegedly granted.

– Second, the figure provided by Turkey includes Certificates granted for EC origin imports. Such imports are not subject to Turkish restrictions because they come in under a preferential trade arrangement; hence, the United States is not alleging that Turkey is failing to grant Control Certificates to importers of EC origin rice. However, Turkey has included those Certificates in its calculation anyway. Given that Certificates granted for imports of EC origin rice represent 91 per cent of the Control Certificates granted outside the TRQ, the number that Turkey has provided vastly overstates the number of Control Certificates that MARA has issued for out-of-quota imports of rice of non-EC origin. Subtracting those Certificates from the figure provided by Turkey yields a total of 91 Control Certificates allegedly granted.

– Third, the figure provided by Turkey also includes 35 Certificates granted for imports of rice from Macedonia. In a Power Point presentation posted on the website of Turkey's Secretariat General for EU Affairs, Turkey noted that, under the Turkey-Macedonia agreement, "Turkey has preferential import possibility within tariff quota (8,000 tons, 0% duty)".[1] Subtracting those Certificates from the figure provided by Turkey yields a total of 56 Control Certificates allegedly granted.

This figure is a mere 2.5 per cent of the 2,242 Control Certificate figure provided by Turkey.

9. Turkey has not provided the original Control Certificates, so the United States is unable to confirm that these 56 Certificates, or at least the ones provided with respect to US imports, were actually granted, despite the existence of a legal prohibition on the issuance of Control Certificates outside the TRQ. But these numbers pale in comparison to the 740 Control Certificates that MARA allegedly issued to importers under the TRQ during the same time period. In any event, a closer look at this figure reveals how even this tiny amount of Certificates overstates the amount of out-of-quota rice that Turkish authorities permitted to enter the Turkish market.

10. If the data are accurate, during the period September 10, 2003 – March 17, 2006, MARA granted:

– one Certificate for out-of-quota imports of rice for each of the following countries: Bulgaria (550 metric tons), China (742 metric tons), Pakistan (21 metric tons), and Thailand (21 metric tons);

[1] *See* Exhibit US-72 (http://www.abgs.gov.tr/tarama/tarama_files/11/SC11DET_16g_Rice.pdf).

– two Certificates for out-of-quota imports from Vietnam (300 metric tons total);

– ten Certificates for out-of-quota imports from Egypt. Those Certificates covered approximately 9,700 metric tons of rice over a 2 ½ year period. By contrast, during that same period, Turkish trade data indicates that 250,000 metric tons of Egyptian rice were imported using the TRQ's domestic purchase requirement; and

– 40 Certificates for out-of-quota imports of US rice. However, all but two of those Certificates were granted in a single period in April-May 2005, just after the United States had raised the issue of Turkey's failure to issue Control Certificates in Geneva.

Therefore, Turkey's own data supports a finding that there is a legal prohibition on the import of MFN rice.

11. Even if it were true that Turkey granted this small number of Control Certificates outside the TRQ – despite the existence of a legal prohibition, as the United States has documented – the United States still has met its burden to demonstrate a breach of Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture, for two reasons.

12. First, in order to demonstrate that a measure is inconsistent with Article XI:1, a complainant may show that there is a restriction on importation. The United States has proven that there is a legal prohibition in place, in that the Letters of Acceptance state as much on their face, and Turkish courts have supported that interpretation and upheld MARA's enforcement of the Letters. However, the United States has also demonstrated the presence of a restriction, which itself establishes a breach. And the United States has presented volumes of evidence in support of its claim that there is a restriction – the Letters of Acceptance, the rejection letters to importers, the numerous court documents, and articles from the Turkish press. Turkey has failed to rebut this evidence, as its arguments before the Panel flatly contradict what the documents say on their face and/or what Turkey is arguing in Turkish court.

13. Second, even if the documents submitted by the United States had no legal relevance in Turkey, as Turkey claims against all evidence to the contrary, the United States has still met its burden because the evidence it has provided shows that the granting of Control Certificates is discretionary. In the Letters of Acceptance, Turkish government officials state that Control Certificates must not be granted during particular time periods. Even if those Letters were completely disregarded by Turkish officials, the documents are compelling evidence that Turkish authorities possess the discretion not to issue Control Certificates. And the rejection letters and court documents show that this discretion has been utilized. Discretionary import licensing is a restriction on importation, which is prohibited by Article XI:1 of the GATT 1994, and is specifically prohibited under Article 4.2 of the Agreement on Agriculture.

14. In sum, while Turkey's own data bear out that there is a legal prohibition in place, the United States has, in any event, established that there is a legal restriction in place on imports of rice outside the TRQ and, even if that were not the case, that Turkey's import licensing system for rice is discretionary. That is all the United States must prove to sustain findings of inconsistency under these two provisions, and the United States has met that burden.

The Domestic Purchase Requirement

15. With respect to the domestic purchase requirement, the key question to ask is whether a measure is providing differential treatment. If a measure treats an imported product less favourably than the like domestic product, the measure is inconsistent with Article III:4 of the GATT 1994. As is

clear from the text of this provision, as well as from the guidance provided by previous panels, any additional obstacle or hurdle to selling imported products domestically, any incentive or disincentive that favours the purchase of domestic over imported goods will adversely affect the competitive position of imported products in the domestic market and constitutes a breach of Article III:4.

16. In this instance, Turkey's domestic purchase requirement meets this standard. The domestic purchase requirement provides an advantage to domestic rice over imported rice because one can only obtain the advantage of an import license to import rice under the TRQ by purchasing domestic rice. The choice facing an importer is stark: an importer who applies for a portion of the TRQ and presents a receipt to Turkey's Foreign Trade Undersecretariat (FTU) for the purchase of 1,000 metric tons of US or Egyptian rice will not be permitted to import rice. However, if that same importer presents to FTU a receipt from a Turkish paddy rice producer for the purchase of 1,000 metric tons of Turkish paddy rice, FTU will grant that importer a permit to import a quantity of rice specified under Turkish regulations, provided that there is quota remaining. It is clear that this scheme provides an incentive to purchase domestic rice and correspondingly a disincentive to purchase imported rice, thereby giving domestic rice a tremendous advantage in the Turkish market.

17. Turkey has taken issue with the US calculations in Exhibit US-52 regarding the cost of the domestic purchase requirement, calculations which utilize Turkey's own figures or numbers consistent with Turkey's figures. As of yet, Turkey has failed to explain which of these figures it now finds objectionable. It continues to focus on the cost per ton rather than the total cost to the importer. However, arguing over the cost of the domestic purchase requirement is irrelevant for purposes of the Article III:4 analysis. Again, the issue is whether the measure provides differential and less favourable treatment to imports. Under the TRQ, purchasing imported rice will not qualify an importer to import rice from abroad; only the purchase of domestic rice will do that. The differential treatment provided by Turkey to imported and domestic rice with respect to the absorption requirement appears on the face of Turkey's regulations and is undisputed.

18. The domestic purchase requirement also is inconsistent with Article XI:1 of the GATT 1994. Under the TRQ, importers must purchase large quantities of domestic rice in order to import rice -- oftentimes between 2-4 times the quantity of domestic rice as the quantity of imported rice an importer wants to import. As demonstrated by the US calculations, which Turkey has failed to rebut, the domestic purchase requirement presents importers of rice with considerable expense as a condition for importing under the TRQ. The cost of satisfying the domestic purchase requirement acts as a restriction on the importation of rice in contravention of Article XI:1.

The Role of Panels in the WTO Dispute Settlement System

19. Quite simply, the United States believes that the role of a Panel established pursuant to the DSU is to assist the DSB to resolve the dispute presented by the parties. Panels are charged under the DSU with making findings and recommendations in order to do so. The United States believes that the Panel should evaluate the arguments raised by the parties in light of its role and responsibilities as set forth in the DSU and in its terms of reference.

20. In this regard, Turkey continues to request that the Panel ignore its mandate and not make findings or a recommendation on the TRQ regime, because that regime has allegedly expired. The United States has argued in its previous submissions and statements that the Panel is charged with making such findings and a recommendation with respect to the measures as they existed when this Panel was established. This interpretation is borne out by the text of the DSU, past panel reports cited by both Turkey and the United States, and the Appellate Body report in *Dominican Republic – Import and Sale of Cigarettes*. The TRQ regime existed on March 17, 2006, the date this Panel was established by the DSB. This fact is uncontested.

21. Turkey insists that it is not necessary for the Panel to make findings or a recommendation regarding the domestic purchase requirement in order to resolve the dispute between the Parties. But consider the following facts:

- Turkey and the United States continue to disagree on whether the TRQ regime is still in existence.

- Turkey has previously re-opened the TRQ on two separate occasions after the TRQ allegedly expired and, in one of those instances, Turkey informed the WTO membership sitting as the WTO Committee on Agriculture that the TRQ had expired and would not be re-imposed.

- Turkey has never repealed the legislation providing the legal basis under Turkish law for imposing a TRQ with an absorption requirement.

- Turkey continues to argue that there is nothing wrong with its TRQ scheme because it provides stability in the market with respect to price and supply. This line of argument strongly suggests that it will re-open the TRQ when it deems appropriate.

Given these facts, would it be helpful for the Panel to disregard its mandate and not make findings or a recommendation? The United States thinks that the answer is clearly 'no'. And Turkey has identified no legal basis under the DSU for the Panel to ignore its mandate.

22. There is yet another reason that the Panel should reject Turkey's argument on this matter. If the Panel were to find that the domestic purchase requirement is inconsistent with WTO rules but did not recommend that Turkey bring its measure into compliance with such rules, Turkey could re-impose a domestic purchase requirement and then claim before a WTO compliance panel – likely comprised of the same three panelists who are hearing this dispute – that the panel would not have jurisdiction to make findings on the consistency of that measure with WTO rules because it was not a "measure taken to comply" under Article 21.3 of the DSU. Returning to the same question – would such a development be helpful for resolving the dispute between the parties? – the United States again submits that the answer is 'no'.

ANNEX E-2

CLOSING ORAL STATEMENT BY THE UNITED STATES AT THE SECOND SUBSTANTIVE MEETING

(18 January 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 analysing 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 US 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 <u>any</u> 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 <u>after</u> 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 <u>or</u> 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.

ANNEX E-3

OPENING ORAL STATEMENT BY TURKEY AT THE SECOND SUBSTANTIVE MEETING

(17 January 2007)

Dear Madame Chair, distinguished Members of the Panel,

Introduction

1. Turkey would like to reiterate its gratitude to the Panel for its work and assistance in the resolution of this dispute.

2. Turkey welcomes the opportunity to submit its views in this last oral hearing in front of the Panel. Turkey has already provided a comprehensive set of information, arguments, statistical data, written replies to questions by the Panel, and rebuttals to the claims made by the United States.

3. In this oral statement, Turkey wishes to emphasise certain factual and legal arguments aimed at addressing certain issues brought by the United States in its last submission and confirming Turkey's conclusion that its regime for the importation of rice is fully compatible with WTO rules. In particular, this oral statement addresses a number of factual and legal considerations related to: the Certificates of Control; the expired Tariff Rate Quota (TRQ); and other general allegations made by the United States.

Certificates of Control

4. Turkey's Certificates of Control are not import licenses, both *de jure* and *de facto*. They are not legally constructed as instruments having an import licensing function and they have never been applied as an import licensing instrument. Turkey believes that the exact understanding of this issue is fundamental in order to evaluate its rice import regime. The allegations and arguments brought by the United States continue to confuse between cause and effects on the basis of a wrong or misleading interpretation of the evidence provided. Turkey will now attempt yet again to clarify the legal nature, administrative framework and factual trends that have surrounded the operation of the Certificates of Control during the period under examination.

5. Turkey believes that the scrutiny of WTO inconsistency of its instrument known as Certificate of Control must be conducted under either a *de jure* or *de facto* lens. It must be noted that this scrutiny is paramount to the *de jure* or *de facto* review of the existence or not of a prohibition or restriction, which Turkey considers essential to interpret the Certificate of Control as an "*other measure*" under GATT Article XI. This other review has already been thoroughly conducted by Turkey in its earlier submissions.[1]

6. Turkey believes that its Certificate of Control is not *de jure* inconsistent with any of its WTO obligations. This is proved and supported by both legal considerations and factual evidence. In particular, Turkey submits that there is nothing in Turkish law providing for the ability of the Turkish Government or its administration to use the Certificate of Control as an import license. There is no provision that gives the relevant authority discretion not to approve Certificates of Control. To do so would be not only inconsistent with the function and customs purposes of the Certificate of Control, but also illegal in that Turkish law clearly provides for import licensing systems and procedures under

[1] See paras. 63-69 of Turkey's First Submission; paras. 16-17 of Turkey's Oral Statements; and paras. 18-20 of Turkey's Rebuttals.

separate legislative instruments. Turkey maintains that the United States has not proved the existence of any legal element of *de jure* inconsistency with WTO obligations. The allegations brought by the United States (i.e., that Certificates of Control applied only to MFN trade; that the period of validity was only four months, that the approved quantities had to be imported all at once; that volume restrictions were imposed; and that no Certificates of Control were needed for FTA imports) were incorrect and have been systematically rebutted by Turkey.

7. Furthermore, the existence of the so-called Letters of Acceptance cannot be intended as evidence of a *de jure* WTO inconsistency of the Certificate of Control instrument *per se*. The Letters of Acceptance are not legal features of the Certificate of Control system. Turkey would like to emphasise that this is a crucial element in order to properly understand the legal framework and operation of the Certificate of Control. If anything, as rightly argued by the European Communities in its Third Party Written Submission, the Letters of Acceptance may only provide an element of factual evidence for a *de facto* finding and are rather suited for a *de facto* complaint. The United States has not made such complaint and it has not provided any related arguments. And yet, the United States emphasises in its Rebuttal Submission[2] that it is the Letters of Acceptance that restrict rice imports. There is an inherent confusion here. The United States has not made a *de facto* complaint but relies exclusively on the fact of the Letters of Acceptance.

8. To further support the argument that there is no *de jure* violation of WTO obligations, Turkey would like to refer to the factual evidence that it has so far provided, which clearly indicates that Certificates of Control have been approved throughout the period under examination (i.e., 10 September 2003 to date). The fact that Certificates of Control have been approved in relation to applications for TRQ rice imports in higher rates than what has occurred with respect to applications for MFN rice imports, cannot prove a *de jure* WTO inconsistency of the instrument of Certificate of Control *per se*. Turkey believes that the United States has not proved the existence of any factual element of *de jure* inconsistency with WTO obligations.

9. On the other hand, in fact, with respect to the *de facto* scrutiny of the WTO consistency of the Certificate of Control instrument, Turkey believes that the statistical data provided in previous submissions clearly show that Certificates of Control were, in reality, approved throughout the period of scrutiny. It is true that Certificates of Control were, at times, mainly approved for imports of rice within the TRQ, but Turkey believes that this cannot, in itself, be valid proof of a *de facto* discrimination or WTO inconsistency of the instrument *per se*. The United States has failed to prove that Turkey has systematically not approved Certificates of Control. The United States has merely claimed the existence of an alleged 'blanket denial', but Turkey believes to have satisfactorily proved that no 'blanket denial' was ever in place. In particular, Turkey questions the curious approach of the United States that considers the Certificates of Control approved for over-quota trade as exceptions to the 'blanket denial'. Either there is a 'blanket denial' or there is not.

10. Certificates of Control are approved on the basis of specific requests which are put forward by importers or traders (in terms of the number of Certificates of Control, type of rice, origin of rice, and quantities sought for importation). The United States has not provided conclusive evidence that individual requests were not approved because of a 'blanket denial'. The United States has alleged that the low rate of approval of Certificates of Control in relation to MFN rice imports during certain periods is proof of the existence of a 'blanket denial'. This cannot be regarded as sufficient and conclusive evidence. Turkey believes that the low rate of approval of Certificates of Control during certain periods was the consequence of the low rate of requests put forward by importers.

11. Importers put forward requests for approval of Certificates of Control on the basis of business determinations and commercial considerations that are totally independent from Governmental

[2] See paras. 45, 55 and 65 thereof.

influence or the alleged trade-restrictive practices. These business determinations are based on a number of commercial factors, such as the import networks used by the traders, their commercial traditions, consumer preferences, quality, brand names, requests by distribution chains, currency fluctuations, existence of tariff advantages, quota rent exploitations, licenses entitlement, proximity of export markets, etc. The United States has not proved that the alleged 'blanket denial' existed *de facto* other than through unsupported allegations and indirect assumptions. One such assumption is the trade-distortive intentions of Turkey as allegedly evidenced in the so-called Letters of Acceptance.

12. As previously indicated by Turkey in its submissions, Turkey accepts that the so-called Letters of Acceptance were written and were in circulation. However, while these letters were internal communications aimed at developing policies, they were not the policies themselves. These administrative communications never resulted in the adoption of laws or regulations and, therefore, they are not to be regarded as measures of the type that support a *de jure* complaint. The fact that these Letters of Acceptance have been used in open Court proceedings by MARA and, in the case referred to by the United States in their rebuttals,[3] have been used by Turkish Court to discharge MARA from the accusations of the plaintiff, cannot be considered as evidence of a systematic denial of approval of Certificates of Control and cannot turn the Letters of Acceptance into measures equivalent to laws or regulations.

13. Turkey submits that the Letters of Acceptance were used, during domestic trial proceedings, to demonstrate that MARA's Provincial Directorate was acting under intra-ministerial administrative instructions in relation to individual applications. The Turkish Court stated that the conduct of MARA's Provincial Directorate was in line with ministerial guidelines. The ruling of the Court discharged MARA by finding that the Provincial Directorate was acting within the confines of its ministerial hierarchy. Furthermore, the fact that a Turkish Court of first instance has given value to a Letter of Acceptance is not relevant. This Panel has to decide whether, *de jure*, there is any provision in the Turkish law on Certificates of Control which gives any administrative authority the discretion to deny their approval. There is none. The cases cited are not relevant because the Turkish Courts have not decided on this issue.

14. When the Letters of Acceptance are considered as factual evidence, the record shows that, despite their existence and the informal circulation within the administration, Certificates of Control were approved in relation to applications made for all types of rice imports (i.e., MFN, FTA and TRQ). The applications for approval of Certificates of Control, whether for MFN, FTA or TRQ rice volumes, were always made by individual importers on the basis of business determinations and commercial factors. The relatively small amounts of requests under MFN, as compared to TRQ requests, cannot be factual evidence of the alleged existence of a 'blanket denial', but stands, on the contrary, as further evidence that importers preferred to deal with TRQ rice for the obvious tariff advantage that such trade entailed. Turkey fails to understand how the United States can persevere in disregarding this obvious truth. The individual instances of domestic litigation must be objectively seen as a natural component of the interaction between any WTO Member's administration and its business community and cannot be used to prove an instance of systematic trade restriction, let alone a trade prohibition (i.e., the 'blanket denial').

15. Turkey would now like to briefly turn to the issue of the purpose and function of the Certificate of Control. As already extensively indicated, the Certificate of Control is a reference document needed to process the customs clearance of specific consignments of a variety of goods, including rice. First and foremost, the Certificate of Control allows MARA and Turkey's customs authorities to verify, on a single document, all required customs information, including the product's compliance with relevant standards and technical regulations.

[3] See paras. 24-26 of the United States' Rebuttal Submission.

16. In relation to certain products (i.e., foodstuffs and other sensitive commodities imported for human or animal consumption), the effectiveness of Turkey's post-entry market surveillance is still in the process of development. It is for this very reason that the Government of Turkey still places (in what must be considered a totally WTO legitimate approach under both the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade) emphasis on conducting strict and rigorous processes of product pre-approval and early certification (by MARA, which is the competent ministry for rice). This scrutiny would be difficult to conduct after importation and cannot be entirely left to customs authorities.

17. The Certificate of Control system is designed to centralize the competence and the responsibility for products' compatibility in the authority (i.e., MARA for agricultural products such as rice) which is best suited to verify compliance with all the relevant legislation, and which will ultimately be liable for the products' safety. The approval by MARA of the Certificates of Control is, therefore, meant to grant a safe, uniform and consistent application of the requirements envisaged by the relevant legislation for food products. This is the function of the Certificate of Control. Contrary to what is being claimed by the United States, the function of the Certificate of Control is not that of an import license. Turkey believes that ample legal arguments and factual evidence have been provided up to now to support this statement both *de jure* and *de facto*. Turkey wishes again to draw the attention of the Panel to this crucial aspect.

18. Nothing in WTO law and practice prevents WTO Members from deciding what domestic instruments may be best suited to achieve the legitimate goals of customs inspection, product certification, product safety, fitness for use, etc., which are essential to responsibly engage in international trade while, at the same time, fulfilling WTO obligations and preserving full sovereignty. It is obvious that a review and WTO scrutiny of these mechanisms is available to verify that such instruments do not become trade barriers or disguised forms of protectionism. However, Turkey is confident that the legal arguments and considerable amount of factual evidence provided are clear and conclusive proof that Turkey's Certificate of Control instrument is a legitimate and WTO-consistent instrument, both *de jure* and *de facto*, which has been responsibly used to pursue legitimate regulatory objectives.

19. As already indicated in Turkey's Replies to the Questions posed by the Panel, the control procedures at importation stage are conducted in a three-step process which consists of documentation control, identity checks, and physical inspections. In particular, it must be underlined that the procedures that take place at central level (i.e., with MARA, in order to successfully apply for a Certificate of Control) and the ones that are exhausted at border level (i.e., the physical checks on the rice being imported, which must show compliance "in practice" with all requirements, standards and technical regulations certified "in theory" by MARA when approving the Certificate of Control on the basis of the information provided by the importers) are all part of the same process of certification, verification, inspection and customs clearance.

20. Contrary to what is maintained by the United States, this process is not "duplicative" in nature. The Certificate of Control includes the importers' declarations that the products comply with the applicable standards and is intended to provide pre-advice of the planned customs clearance at particular points-of-entry of individual consignments. As indicated above, these aspects are essential to ensure the necessary degree of administrative integration, foreseeability of customs clearance, and uniformity of action between the central government and the SPS control and inspection laboratories at customs points-of-entry. Turkey would like to emphasize again that it sees nothing sinister in this division of competences between MARA and customs authorities. There is nothing "revealing" in the cooperation of various parts of its administration towards the uniform application and supervision of customs clearance and import control, particularly with regard to certain sensitive commodities (such as rice, which is destined for human consumption). Suggesting, as the United States does, that it is questionable that part of the customs purposes of the Certificate of Control are fulfilled by actions to

be undertaken with MARA appears highly objectionable. Nowhere is it stated or provided that all customs purposes must be sought or fulfilled at once and within a single authority at customs level.

21. It is true that physical inspections of imported products do take place upon importation (i.e., after the Certificates of Control have been approved), but this must be seen as a legitimate and perfectly normal right of any Government. The process of early certification by MARA and the actual verifications and inspections at customs level, carried-out by MARA officials at customs points-of-entry, appear as the only effective instruments for Turkey to guarantee that the products placed in free circulation on its market are safe and fit for consumption. Turkey remains eager to discuss with the United States alternative ways to approach this regulatory matter in light of even greater trade-facilitation objectives, but it is not willing to forego its legitimate WTO rights and it believes that its current system is fully consistent with WTO law.

22. In fact, Turkey firmly believes that its Certificate of Control already acts as an element of trade facilitation. It provides legal certainty and commercial predictability to importers engaged in rice importation. Once approved, the Certificate of Control is a guarantee for the importer that all elements and requirements needed to clear customs are present and will allow importation (provided, of course, that the consignment imported corresponds to the information supplied and passes the phytosanitary and food safety inspections). The importer will then feel confident to conclude all necessary business engagements for purposes of importation. This element of legal certainty must be seen as a tool of trade facilitation. It provides administrative certainty for importers and avoids possible time-consuming and costly procedures at border control. Provided that all legal requirements are met, Certificates of Control are always (and always have been) swiftly and automatically approved. This must be remembered as it indicates the relatively low administrative burden which this instrument places on traders.

23. As a final remark on the Certificate of Control, Turkey wishes to recall that GATT Article XI:1 does not define the concept of "*import license*". Neither is this concept defined by Article 4.2 of the Agreement on Agriculture or by any previous GATT or WTO panel or Appellate Body decision. An element of interpretative guidance appears to be available under Article 1.1 of the Agreement on Import Licensing Procedures, where it is clearly indicated that the submission of an application or other documentation required for "*customs purposes*" falls outside of the definition of import licensing.

Turkey believes that, in the absence of a precise definition of the concept of "*import license*" under GATT Article XI:1, Article 1.1 of the Agreement on Import Licensing Procedures must necessarily provide an element of interpretative guidance. Therefore, Turkey submits that, while the non-applicability of GATT Article XI:1 cannot be an automatic result of the inapplicability of the Agreement on Import Licensing Procedures, the practical result should be the same, as a consequence of the recourse to the interpretative guidance on the meaning of the term "*import license*" offered by the Agreement on Import Licensing Procedures for purposes of the application of the GATT 1994.

24. In WTO law, definitions provided under certain covered agreements must be of relevance for the interpretation of other WTO agreements. In particular, this is required by the general need to guarantee consistency and uniformity of application of WTO law and obligations. In relation to the issue at stake, it would be paradoxical to consider the Certificate of Control as not falling under Article 1.1 of the Agreement on Import Licensing Procedures, in as much as it benefits of the so-called carve-out for "*customs purposes*", while it is considered an import license under GATT Article XI:1. Turkey believes that, in order to guarantee consistency and uniformity of application of WTO law, the interpretative guidelines provided by Article 1:1 of the Agreement on Import Licensing Procedures, including the "*customs purposes*" carve-out, must apply to GATT Article XI:1 and to the legal reasoning conducted to determine what is an "*import licence*" and whether or not the Certificate of Control fits that profile.

25. In particular, if the so-called carve-out is meant, under Article 1:1 of the Agreement on Import Licensing Procedures, to interpret and "restrict" the scope of the Agreement on Import Licensing Procedures in relation to instruments that have "*customs purposes*", Turkey firmly believes that the same interpretative tool should be used to "restrict" the scope of application of GATT Article XI:1 if the same "*customs purposes*" carve-out is applicable to a given instrument. In any event, the fact that, on the basis of this interpretation, the Certificate of Control is not an import license (within the meaning of Article 1:1 of the Agreement on Import Licensing Procedures and GATT Article XI:1), does not exempt the Certificate of Control from being reviewed as an "other measure" under GATT Article XI:1. To this end, Turkey believes to have provided sufficient and conclusive arguments and factual evidence that the alleged denial of approval of the Certificates of Control does not fall within the meaning of GATT Article XI:1 "*other measure*" because no prohibition or restriction has been proved, both *de jure* and *de facto*.

The Expired Tariff Rate Quota Regime

26. After having already thoroughly addressed the issue of the now expired TRQ regime in its previous submissions, Turkey simply wishes here to share with the Panel a number of general considerations with respect to its former TRQ regime.

27. First of all, Turkey would like to once again emphasize that the TRQ regime has expired and it has not been renewed. Turkey has also provided repeated reassurances and commitments not to reintroduce it as a system of market stabilization. Turkey would like to refer to what has already been stated in its previous submissions. In particular, Turkey wishes to recall that, when measures are no longer in force, WTO case law supports the view that no finding is necessary on measures expired before the commencement of the panel proceedings, whereas in the case of measures expired after the commencement of the panel proceedings, if a finding is made, no recommendation is due.

28. WTO case law specifically supports the view that a panel is not necessarily required to make findings in respect of measures expired before the commencement of the panel proceedings and that the discretion in deciding whether or not to make a finding on such measures must be guided by the "*object and purpose of the dispute settlement system*".[4] In exercising such discretion, the Panel must consider whether making a finding would secure a positive solution to the dispute. On the other hand, Turkey has also noted that certain panel and Appellate Body reports have found it "inconsistent" to make recommendations on measures that are no longer in force and that panels are to avoid making recommendations regarding measures that no longer exist, both in relation to measures that expired before or after the commencement of the panel proceedings.

29. Turkey does not consider that a finding on any of its expired TRQ measures, including the ones expired soon after the commencement of panel proceedings, is necessary to secure a positive solution to the dispute. Turkey has repeatedly maintained, both at the consultations phase and throughout the submissions and oral statements presented so far, that it has no intention to renew these measures, neither extending them nor adopting new legislative instruments. Therefore, Turkey respectfully requests the Panel not to make findings on any of the measures relating to the TRQ regime or, in the alternative, to limit its findings to those measures which were still in force after the establishment of the Panel. In any event, Turkey respectfully requests that the Panel refrain from making any recommendation with respect to the TRQ regime.

30. Secondly, Turkey once again wishes to emphasize that the high volumes of in-quota imports and the high number of TRQ licenses which were issued are testimony to the attractiveness and

[4] See, *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, para. 7.1652.

appeal that the tariff advantage had among individual rice importers. Turkey refers to Annex TR-42 where it has set out new scenarios which prove the advantage provided by the TRQ regime. In these scenarios, Turkey has used the United States' average FOB price of US$ 295, provided by the United States in its First Submission, and added insurance and freight costs based on customary values declared by Turkish importers.[5] Scenarios 3 and 4 show that the advantage provided under the TRQ for the purchase of 1 tonne of paddy rice amounted to, respectively, US$ 31 and US$ 34.

31. Contrary to what the United States has alleged, importers always freely chose to take advantage of this in-quota tariff preference. At all times, this opportunity has existed in parallel to the ability to import at the less advantageous MFN rates of duty. Turkey has already shown that the choice to import within the TRQ, in order to benefit from the tariff advantage, was always dictated by business determinations and commercial decisions that were made by importers on the basis of a number of economic and market factors such as domestic and world prices of rice, domestic consumption, exchange rates, conditions of competition between rice of different origins, consumers' preferences, marketing strategies, etc.

32. Thirdly, Turkey submits that its domestic purchase requirement was introduced within the TRQ in order to partly moderate the advantageous effects of the preferential rates (i.e., advantages which were totally in favour of imported products). The domestic purchase requirement was never meant to promote the domestic industry, rather it was designed to pursue the legitimate objective of market stabilization by keeping prices at level that would, at the same time, allow trade while maintaining a viable balance between consumer's interests and producers' expectations. There is no "investment" element in the domestic purchase requirement.

General Considerations

33. Throughout these Panel proceedings, Turkey has argued that the United States has not made a *prima facie* case, that it has not proved its allegations, that its legal arguments do not find grounds in WTO law and the interpretative guidance offered by WTO case law, and that this dispute largely rests on a misunderstanding of facts and a number of individual instances that have little to do with international trade policy and more with domestic judicial proceedings. Turkey hopes that the arguments and factual evidence that it has so far provided to the benefit of the Panel and the United States stand as sufficient and conclusive proof that Turkey never adopted a legal framework aimed *de jure* at distorting trade and never implemented or applied its legislative and administrative measures in a *de facto* trade distortive fashion.

34. The obvious question may be why, then, if Turkey's system has always been, both *de jure* and *de facto*, in line with its WTO obligations, would the United States have felt discriminated upon and decided to bring this matter to the attention of a WTO panel in formal dispute settlement proceedings? Turkey believes that this dispute may, in fact, be the consequence, to a considerable extent, of the relative lack of comparative advantage of rice from the United States vis-à-vis competing exporting countries trading with Turkey (i.e., the degree of competitiveness of United States' rice), as shown in Annex TR-43. This circumstance would also explain why the United States appears to challenge so vehemently the (now expired) TRQ and its domestic purchase requirement, while it is widely known that all countries and traders active in international trade are traditionally enthusiastic about TRQs and the quota rents that they offer (provided, of course, that they are administrated in a non-discriminatory fashion, as it was always the case for Turkey's rice TRQs).

[5] For the purpose of these calculations, Turkey has used the United States average FOB price, as there is concern that some Turkish CIF prices may be distorted by traders' practices of tax avoidance and tax minimization. See also Turkey's Reply to Questions Posed by the Panel, Questions Nos. 7 and 49(c). Turkey notes that its average CIF price of US$ 260 is even lower than the average United States' FOB price of US$ 295.

35. As indicated in its last rebuttal submission, Turkey believes that, unfortunately, the real background to this case may be that the United States has seen its rice exports to Turkey progressively lose market share to the advantage of other exporting countries. This is true both in relation to TRQ and MFN trade and particularly significant in a scenario of continued expansion of market access opportunities given by trends of yearly increases in imported volumes. While Turkey understands that it would have been more desirable for purposes of the United States' maintenance of market share that Turkey had not "burdened" its TRQ regime with the domestic purchase requirement, Turkey believes that its TRQ regime was a totally legitimate instrument which was adopted and administered with only two clear objectives in mind: that of greater market supply (through the TRQ itself and the lower applicable rates of duty) and that of market stabilization (through the domestic purchase requirement). Turkey never adopted its TRQs with the particular intent to diminish the market access opportunities of the United States (or, for that matter, of any other exporting country).

36. The success of the TRQ and the high utilization rates are testimony to the fact that the advantage provided by the TRQ was real and appealing enough for importers to exploit it, despite the allegedly burdensome impact of the domestic purchase requirement. The fact that imports from the United States may have declined (at the MFN rates as well as within the TRQ) has only to do with the progressive loss in competitiveness of rice from the United States vis-à-vis its competitors and with the business determinations and commercial decisions freely made by rice importers on the basis of a number of economic and market factors. Even the most recent import statistics appear to support this conclusion. The market-share of rice from the United States has not increased even now that imports are occurring only at the MFN (or applied) rates of duty and that the TRQ regime no longer applies.

37. As previously indicated, Turkey has systematically sought to avoid dispute settlement on this issue and to reach a mutually acceptable solution with the United States. Despite the unfortunate escalation of this matter into formal WTO dispute settlement, Turkey remains willing to address the United States' specific trade concerns in line with Turkey's WTO obligations and legitimate rights.

38. Dear Madame Chair, distinguished Members of the Panel, this concludes Turkey's oral statement. Turkey would like to reiterate its gratitude to this Panel for its assistance in the resolution of this dispute and stands ready to address any further questions that the Panel may have.

ANNEX E-4

CLOSING ORAL STATEMENT BY TURKEY AT THE SECOND SUBSTANTIVE MEETING

(18 January 2007)

Dear Madame Chair, distinguished Members of the Panel,

1. The United States argues that Turkey instituted a policy to systematically deny the approval of Certificates of Control for out-of-quota trade so as to induce traders to import within the TRQ. To succeed, the United States must show either *de jure* or *de facto* that there was a systematic denial of approvals so as to result in a prohibition or restriction on import. The United States has failed to do so. The United States has not identified the provisions of the law governing Certificates of Control which constitute a prohibition or restriction to support a *de jure* claim.

2. The United States is arguing that the absence of approvals for Certificates of Control is proof, in itself, of the systematic policy to deny approvals. The evidence that the United States has provided is not sufficient to sustain this argument. The United States must show that traders have applied for and been systematically denied approvals. What has been shown is denial in individual cases. The United States has not shown that the absence of approvals is not due to the absence of requests.

3. Let's look at the evidence provided by the United States. It boils down to two things: the Letters of Acceptance and their related Court cases as well as the correspondence between Turkey and the United States. The diplomatic Letter to Ambassador Portman was designed to reassure the United States that, with the phasing-out of the TRQ, traders would likely resume trading on MFN terms. It was not an implicit confirmation of any systematic denial of the approval of Certificates of Control.

4. Turkey has shown that the Letters of Acceptance did not result in the 'blanket denial' of approval of Certificates of Control. On the United States' own calculation, a minimum of 969 Certificates of Control were applied for and approved for out-of-quota rice importation. The fact that many of these out-of-quota Certificates of Control were used for FTA trade does not support the argument by the United States. It merely confirms that traders preferred the terms of trade available under the free trade agreements. These Certificates of Control were approved during the period when the Letters of Acceptance were allegedly causing a 'blanket denial' of approvals. Turkey concludes that the Letters of Acceptance were not the cause of a reduction in exports by the United States nor were they evidence of a 'blanket denial'.

5. Turkey argues that a more plausible reason for the lack of requests for approval of Certificates of Control in relation to rice originating in the United States was the progressive fall in competitiveness of paddy rice from the United States and the attractiveness of trade in TRQ and FTA rice.

6. The United States has not shown that there was a systematic rejection of requests for approval. They have given evidence in relation to five individual cases which have resulted in domestic litigation. This represents 0.2% of the approved Certificates of Control. Turkey has even indicated that there are, in fact, fourteen cases pending and the average rate of non approval is 4.38% over the last 3 years.[1] Five or fourteen cases or 4.38% rejections of total requests is not convincing evidence of large scale denial of requests. The United States needs to show something more than 5 or fourteen individual cases to show systematic denial.

[1] See Annex TR-35.

7. The key issue that Turkey would like to underline is that the Letters of Acceptance are not and have never been a legal instrument within the Certificate of Control system. They are not legislative measures or "other measures" of the type that supports a *de jure* complaint. They may, at best, be elements of factual evidence to be used to bring a *de facto* complaint. Turkey argues that the United States has not brought such a case. In any event, should they be considered as evidence in relation to a *de facto* review, Turkey submits that it has provided substantial and convincing evidence in order to rebut their probatory value and to indicate why importers were not applying for Certificates of Control in respect to MFN trade, but rather for FTA or TRQ imports.

8. This factual evidence brought by Turkey is clear and stands as a powerful counter-argument against the evidentiary value of the Letters of Acceptance. Importers were applying for TRQ and FTA rice imports for the commercially-appealing tariff advantages that were offered by this type of trade. In addition, requests for approval of Certificates of Control for rice originating in the United States were even less likely given the progressive loss of competitiveness of paddy rice from the United States. Turkey believes that it has provided enough evidence of this, both in terms of its own statistical data, of the interpretation of data provided by the United States (i.e., the scenarios) and, last but not least, FAO data.

9. The Turkish Court of first instance, in the Helin case, did not address whether Turkish law provides MARA with any discretion to deny the approval of Certificates of Control once the requisite formalities have been duly fulfilled. The Court of first instance appears to have given effect to an *ultra vires* act. Turkey notes that the other cases submitted by the United States take the correct approach and challenge the *vires* of the denial and, implicitly, the legality of the Letters of Acceptance.

10. Turkey has argued that Certificates of Control are not import licences, that there is no *de jure* discretion in relation to their approval when an application has been duly made, and that the United States has not shown or cited any element of Turkish law in support of its case. The United States cannot succeed in a *de jure* complaint for the very simple fact that it has not shown what elements of the law constitute a restriction or prohibition.

11. In any event, the fact that the Certificate of Control is not an import license (within the meaning of Article 1:1 of the Agreement on Import Licensing Procedures and GATT Article XI:1), does not exempt the Certificate of Control from being reviewed as an "*other measure*" under GATT Article XI:1. However, Turkey believes it has provided sufficient and conclusive arguments and factual evidence that the alleged denial of approval of the Certificates of Control does not fall within the meaning of GATT Article XI:1 "*other measure*" because no prohibition or restriction has been proved, both *de jure* and *de facto*. Only when a *de jure* or *de facto* prohibition or restriction of imports can be demonstrated, the specific measure being considered would amount to an "*other measure*" of the type that GATT Article XI:1 considers illegal.

12. Why does Turkey have a Certificate of Control system? The Certificate of Control is a document used as part of Turkey's customs procedures. It is therefore a document used for customs purposes. Importation and customs-clearance involve a number of elements. There is a documentation element, a verification element, a physical inspection element and, ultimately, a tax collection element. The Certificate of Control is part of the documentation phase. The fact that responsibility for part of the documentation phase is allocated to MARA and part to the customs authorities does not make the Certificate of Control any less of a document used for customs purposes.

13. It is perfectly legitimate and common practice in many WTO Members to allocate responsibility for the different elements of customs or market entry to different governmental authorities. The allocation of responsibility to MARA is not decisive. The question is: is this a

document used for customs purposes? It is. Early notification and information-collection through the Certificate of Control occurs at MARA because MARA is the competent Turkish authority in relation to agricultural commodities.

14. On a single document, all required customs information, including the products' compliance with relevant standards and technical regulations, is collected. In relation to certain products (i.e., food products and products destined to human and animal consumption), the Certificate of Control allows the gathering of the necessary information before the goods arrive to customs.

15. Many WTO Members have pre-import documentary requirement. We note that the United States itself now requires, under its *Public Health Security and Bioterrorism Preparedness and Response Act of 2002*, prior notice of food importation. In particular, the Food and Drugs Administration (FDA) and not the US Customs Service, must be notified in advance of any shipments of food for humans and animals that are imported into the United States. Is this requirement to be considered an import licence? We believe not, just like the Certificate of Control is not and should not be considered an import licence, but a legitimate means for Turkey to achieve its legitimate objectives.

16. Turkey remains free under WTO rules to allocate governmental responsibilities to whatever government authority it considers appropriate. The name of the authority is not the main issue. The only question is whether the document is for customs purposes. The Certificate of Control is used for customs purposes.

17. Turkey does not wish to enter into a debate on the legal questions surrounding recommendations and findings of panels in this closing statement. Turkey asks the Panel to review its arguments set out in the written pleadings. Turkey merely observes that the case cited by the United States in its oral statement does not support its argument.

Turkey thanks the Panel for its continued assistance towards the resolution of this dispute and looks forward to its written questions.